



SAN FRANCISCO PLANNING DEPARTMENT

February 11, 2020

Ms. Angela Calvillo, Clerk
Honorable Supervisor Aaron Peskin
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

**Re: Transmittal of Planning Department Case Number 2019-020940PCA:
Intermediate Length Occupancies
Board File No. 191075
Planning Commission Recommendation: Approval with Modification**

Dear Ms. Calvillo and Supervisor Peskin,

On January 30, 2020, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Peskin that would amend the Planning Code create the Intermediate Length Occupancy Residential Use Characteristic and amend the Administrative Code. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

- Enact an Interim Control on new Intermediate Length Occupancies and collect data on the scale of the activity; and
- Clarify proposed Administrative Code amendments exempting non-profit organizations from any cap on the number of Dwelling Units used for Intermediate Length Occupancy; add this clarified language to the Planning Code.

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

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

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

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Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc:

Austin Yang, Deputy City Attorney
Sunny Angulo, Aide to Supervisor Peskin
Erica Major, Office of the Clerk of the Board

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20633

HEARING DATE: JANUARY 30, 2020

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Project Name: Intermediate Length Occupancies
Case Number: 2019-020940PCA [Board File No. 191075]
Initiated by: Supervisor Peskin / Introduced October 22, 2019; Substituted January 14, 2020
Staff Contact: Diego Sanchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

RESOLUTION APPROVING A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND THE PLANNING CODE TO CREATE THE INTERMEDIATE LENGTH OCCUPANCY RESIDENTIAL USE CHARACTERISTIC; AMEND 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 IMPACT OF NEW INTERMEDIATE LENGTH OCCUPANCY UNITS IN THE CITY; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on October 22, 2019 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 191075, which would amend the Planning Code to create the intermediate length occupancy residential use characteristic; amend 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 impact of new intermediate length occupancy units in the City;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on January 16, 2020; and,

WHEREAS, at its January 16, 2020 hearing the Commission voted unanimously to continue its consideration of the proposed Ordinance to its January 30, 2020 hearing; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) 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 Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The proposed modifications include:

1. Enact an Interim Control on new Intermediate Length Occupancies and collect data on the scale of the activity.
2. Clarify proposed Administrative Code amendments exempting non-profit organizations from any cap on the number of Dwelling Units used for Intermediate Length Occupancy; add this clarified language to the Planning Code.

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. There is a legitimate, on-going demand in the City for intermediate length residential tenancies. Employment demands are one reason intermediate length residential tenancies are needed. Individuals in higher education, healthcare, and traveling theater/arts often require stays of greater than a month but less than a year. Life's twists and turns are another reason. Unexpected illness can require an out of town family stay; changes in marital status may necessitate a temporary residence; or the relocation to a new locale can compel an intermediate length occupancy.
2. However, it is currently difficult to grasp the scale of intermediate length residential tenancies (ILO) in San Francisco. Because ILO is legal and unregulated no public agency or office currently tracks the activity. In short, the City does not have an exact figure on the number of Residential Uses, subject to the Rent Ordinance or otherwise, involved in ILO activity.

3. In lieu of permanent controls, an interim control on the use of residences for new ILO should be enacted. This would provide time for the City to collect data on ILO activity. To date the City does not have data on the number of Residential Uses in San Francisco being used for this activity. Nor does it know where this activity most frequently occurs. It is imperative that the City have this type of data before it implements severe restrictions on an activity that serves a legitimate purpose, but which could also pose a threat to the City's housing supply.
4. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 1

IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

Policy 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

The Ordinance would the City provide a full range of housing options by allowing Intermediate Length Occupancies in new buildings while reserving older units subject to the Rent Ordinance for long term tenancies, many of which serve permanent San Francisco residents.

OBJECTIVE 2

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

Policy 2.6

Ensure housing supply is not converted to de facto commercial use through short term rentals.

The proposed Ordinance would restrict the number of housing units that could be converted to a commercial use through rental terms that are not long or permanent.

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.

Policy 3.4

Preserve "naturally affordable" housing types, such as smaller and older ownership units.

Policy 3.5

Retain permanently affordable residential hotels and single room occupancy (SRO) units.

The proposed Ordinance protects the affordability of the existing housing stock by restricting new intermediate length occupancies to new housing stock, avoiding the use of rent controlled, smaller or older, and residential or SRO units for intermediate length occupancies.

5. **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 Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail because it concerns itself with regulating residential tenancies.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character and would potentially help maintain that character through its regulation of intermediate length residential tenancies.

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

The proposed Ordinance would have a beneficial effect on the City's supply of affordable housing as it would prohibit any non-permanent tenancy in that housing stock.

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

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking because it concerns itself with regulating residential tenancies.

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 Ordinance 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 because the proposed Ordinance only regulates residential uses.

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

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake because it proposes to regulate residential tenancies.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings because it only proposes to regulate the length of residential tenancies.

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

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vista because it proposes to regulate residential tenancy lengths not the building envelope of residential buildings.

6. **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 APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on January 30, 2020.



Jonas P. Ionin
Commission Secretary

AYES: Fung, Koppel, Melgar, Moore

NOES: None

ABSENT: Johnson, Richards

RECUSED: Diamond

ADOPTED: January 30, 2020



MEMO TO THE PLANNING COMMISSION

Hearing Date: January 30, 2020

Continued from the January 16, 2020 Hearing

Date: January 23, 2020
Case No.: **2019-020940PCA**
Project Name: **Intermediate Length Occupancies**
Initiated by: Supervisor Aaron Peskin
Staff Contact: Diego Sanchez – 415-575-9082
diego.sanchez@sfgov.org
Reviewed by: Aaron Starr – 415-558-6409
aaron.starr@sfgov.org
Recommendation: **Approve with Modifications**

BACKGROUND

On January 16, 2020 the Planning Commission (Commission) deliberated over Supervisor Peskin’s Intermediate Length Occupancies (ILO) Ordinance. This Ordinance proposes to create the ILO use characteristic which is broadly defined as offering a Dwelling Unit for occupancy by a natural person for a duration of between 30 and 365 days. The Ordinance also proposes to limit the number of ILO in the City and where they may be located. Last, by amending the Administrative Code, the Ordinance prohibits “Non-Tenant Uses,” which it defines to include renting a unit to a corporate entity or other non-natural person, and requires online rental listings to include a Rent Ordinance disclosure.

On January 14, 2020 Supervisor Peskin introduced a substitute to the proposed Ordinance. Because of that timing, Planning Department Staff (Staff) could not include a copy of the changes proposed by the substitute Ordinance in the staff report. Those changes are found below.

After hearing from the legislative sponsor, Staff, and the public, the Commission discussed and deliberated over the merits of the proposed Ordinance. In response to a desire to further discuss the proposed Ordinance with the legislative sponsor, the Commission voted 5-0 to continue the item to January 30, 2020.

CURRENT PROPOSAL

The substitute Ordinance makes the following changes to the originally introduced Ordinance:

Planning Code

1. Proposed regulations on buildings with nine Dwelling Units or less are clarified. These include explicitly indicating that ILO in buildings with nine Dwelling Units or less are principal-

ly permitted provided that (A) no more than 25% of the Dwelling Units in the building are ILO and (B) that each Dwelling Unit used for ILO is identified.

2. Language concerning the zoning districts in which ILO is allowed is clarified. The originally introduced Ordinance contained language stating that ILO would be allowed wherever Dwelling Units are allowed. That language is removed, and the substitute Ordinance indicates that ILO is allowed only in those zoning districts with zoning control tables being proposed for amendment.
3. The maximum number of Dwelling Units allowed to be used as ILO in the City is increased from 500 to 1,000.
4. New language was added clarifying that ILOs are subject to the existing Planning Code provisions on the abandonment of uses. This language was absent from the originally introduced Ordinance.
5. The substitute Ordinance includes language that directs the Planning Department to create procedures for evaluating proposed ILO. It also requires owners or operators of proposed ILO to submit a complete application within 24 months of the effective date of the substitute Ordinance.

Administrative Code

1. The date when “Non-Tenant Uses” are prohibited is changed. The original Ordinance proposed February 1, 2020 and the substitute Ordinance is proposing April 1, 2020.
2. The date when online rental listings are required to include a Rent Ordinance disclosure is changed. The original Ordinance proposed February 1, 2020 and the substitute Ordinance is proposing April 1, 2020.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

RECOMMENDATION: Approve with Modifications

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt a Draft Resolution to that effect. The Department’s proposed recommendations are as follows:

- 1. Enact an interim control on new ILO and collect data on the scale of the activity.** Staff is recommending that, despite the clarifications in the substitute Ordinance and in lieu of permanent controls, an interim control on the use of residences for new ILO be enacted. To date, the City does not have data on the number of Residential Uses being used for this activity. Nor does it know where this activity most frequently occurs, or which populations this use most serves. Further, it is unclear under what circumstances the Department would recommend approval or

denial of an ILO CU application, and cannot create meaningful conditional use criteria for ILOs, as directed by the revised ordinance. It is imperative that the City have this type of data before it implements severe restrictions on an activity that serves a legitimate purpose, but which could also pose a threat to the City's housing supply. An interim control affords time to craft a regulatory scheme to collect data on this activity. This would greatly inform any policy decisions regulating ILO.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Substituted Board of Supervisors File No. 191075



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Amendment

HEARING DATE: JANUARY 16, 2020
90-DAY DEADLINE: JANUARY 28, 2020

Project Name: **Intermediate Length Occupancies**
Case Number: **2019-020940PCA** [Board File No. 191075]
Initiated by: Supervisor Peskin / Introduced October 22, 2019
Staff Contact: Diego Sanchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to create the Intermediate Length Occupancy residential use characteristic. It would also amend 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, and require the Controller to conduct a study to analyze the impacts of new Intermediate Length Occupancy units in the City.

The Way It Is

The two Residential Use Characteristics in the Planning Code are Single Room Occupancy and Student Housing. Neither of these explicitly regulate the length of occupancy.

The Way It Would Be

Intermediate Length Occupancy (ILO) would be the third Residential Use Characteristic in the Planning Code and exclusive to Dwelling Units offered for occupancy by a *natural person*. Occupancies would be restricted to a duration of greater than 30 consecutive days but less than a year.

ILO in buildings with ten or more Dwelling Units would have the following limitations:

- A. ILOs would be allowed in projects having secured a first building or site permit as of the Ordinance’s effective date;
- B. ILOs would require Conditional Use Authorization;

- C. ILOs would be allowed only where no more than 20% of Dwelling Units in a project are designated for ILO;
- D. No more than 500 ILOs would be permitted at any one time in the City;
- E. The ILO owner/operator would be required to submit annual reports to the Planning Department regarding its use, including the number of times the unit was used for ILO, the average duration of stays in the ILO and the average vacancy between stays.

ILOs in buildings with up to nine Dwelling Units would not be subject to the five Planning Code limitations (A-E) listed above.

The Residential Rent Stabilization and Arbitration Ordinance (Rent Ordinance) provisions regulating the recovery of possession of a rental unit by a landlord do not explicitly state that (a) a provision in a lease or rental agreement requiring a tenant to vacate a rental unit at the expiration of a stated term or that (b) purports to characterize a tenant's failure to vacate at the end of the stated term as a just cause for eviction is void. Those provisions also do not prohibit a landlord from attempting to recover possession of the unit without just cause.

The Rent Ordinance would be amended to state that any provision in a lease or rental agreement (a) requiring a tenant to vacate a rental unit at the expiration of a stated term or that (b) purports to characterize a tenant's failure to vacate at the end of the stated term as a just cause for eviction would be void. The Rent Ordinance would also be amended to prohibit a landlord from attempting to recover possession of the unit without just cause.

The Rent Ordinance does not regulate whether a rental unit is being rented to a corporate entity, or if the unit is being used as housing for one's employees, licenses, or independent contractors.

The Rent Ordinance would be amended to classify the occupancy of a rental unit by a person who is not a tenant, as defined in the Rent Ordinance, as a Non-Tenant Use. A Non-Tenant Use would include a rental unit being rented to a corporate entity, or being used as housing for one's employees, licensees, or independent contractors. Non-Tenant Uses would be prohibited as of February 1, 2020, except:

- A. Where the rental unit is subject to an agreement authorizing a Non-Tenant Use that was entered into before February 1, 2020, for the existing duration of that agreement;
- B. The use of the rental unit is as a lawful short-term rental under Administrative Code Chapter 41A;

C. Where the landlord is providing the rental unit to a residential manager; or

Where an organization with tax-exempt status (501(c)(3) or 501(c)(4)) is providing access to the unit in furtherance of its primary mission to provide housing.

The Rent Ordinance does not explicitly require that every online listing for a rental unit contain a specific disclosure regarding the unit's status under the Rent Ordinance.

The Rent Ordinance would be amended to require that every online listing for a rental unit, excluding listings by landlords or master tenants who will reside in the same rental unit as their tenants or subtenants, contain a disclosure stating that the rental unit is subject to the Rent Ordinance.

BACKGROUND

The use of residences in San Francisco for business travelers or other individuals seeking intermediate length tenancies is not new. The project at 2100 Market Street, however, recently raised concerns over the use of the City's housing supply for these purposes.

As part of a 2016 Conditional Use authorization for the site, the Planning Commission authorized 60 Dwelling Units, including seven on-site Inclusionary Affordable Housing Units.¹ At authorization it was understood that the market rate units would be leased for typical one-year lengths. Upon marketing of the market rate units in 2019 it became known that they would not be used to house permanent tenants. Instead, they would be used for intermittent stays, akin to an extended stay hotel. This riled many who, despite recognizing intermittent stays as legal, felt victim of a misrepresentation of the project's ultimate use.²

ISSUES AND CONSIDERATIONS

Residential Uses and Residential Use Characteristics

A Residential Use, as defined in the Planning Code, is a use that provides housing for San Francisco residents, rather than visitors.³ The Planning Code defines Dwelling Units, Group Housing, Residential Hotels, Senior Housing and Homeless Shelters as Residential Uses.

¹ Planning Commission Motion 19560

² Brinklow, Adam. "SF ponders what to do with corporate rentals like Sonder." <https://sf.curbed.com/2019/7/29/20744749/san-francisco-sonder-corporate-rentals-housing-crisis-sf> Accessed 7 November 2019.

Waxman, Laura. "'Corporate rentals' draw scrutiny from city officials." <https://www.sfxaminer.com/news/short-term-corporate-rentals-draw-scrutiny-from-city-officials/> Accessed 7 November 2019.

³ Planning Code Section 102, Definitions, Residential Use

In addition to Uses, the Planning Code also identifies Use Characteristics, which are a feature of a use and can be applied to different uses.⁴ Features include the physical layout, design, and access of a use, among other considerations. Residential Use Characteristics include Single Room Occupancy and Student Housing. The Planning Code regulates Use Characteristics independently of a Use. This means that while Dwelling Units may be principally permitted in a zoning district, using that Dwelling Unit as Student Housing, for example, may require Conditional Use authorization.

Regulating Residential Occupancy Lengths

The Planning Code does not have extensive regulations on occupancy lengths in Residential Uses. There are at least two reasons for the lack of this regulation in the Planning Code. One is that the enforcement of lease lengths, among other lease conditions, is a difficult and an atypical land use task. The Planning Department generally avoids intervening in agreements between private parties, such as rental agreements and their conditions. This includes regulating or adjudicating disputes over leases lengths, lease rates, and tenancy rights such as allowed lessees. The Ordinance would require Planning Department Staff to enforce or monitor such lease conditions, for which it is presently ill equipped. The first is one allowing only a natural person to occupy an ILO in a building of 10 or more Dwelling Units. The second is one regulating an occupancy for a period of between 30 and 364 days.

The other reason the Planning Code lacks an occupancy length regulation is because the effects of most Residential Uses do not markedly differ solely based on the length of stay of any one user. For example, the land use effects of residential activity do not vary greatly whether a household stays in a Dwelling Unit for six months or twelve.

Where the land use effects do differ, other municipal codes are utilized. In the case of residential rentals of less than 30 days (Short Term Rentals), the Administrative Code dedicates an entire chapter to their regulation.⁵ In conjunction with this regulation a half dozen full time staff are currently tasked with the implementation and enforcement of this activity in a separate government capacity.⁶ Similar regulatory expansions on the use of residential property would require an equivalent resource allocation to ensure success.

Intermediate Length Occupancies Can Satisfy Legitimate Needs

There are scores of individuals that seek a residential lease for less than the standard one-year term. There are also multiple reasons compelling one to seek such a residential lease. Employment demands are one such reason. Individuals in higher education, healthcare, and traveling theater/arts often require stays of greater than a month but less than a year. Life's twists and turns are another reason. Unexpected illness can require an out of town family stay; changes in marital status may necessitate a temporary residence; or the relocation to a new locale can compel an intermediate length occupancy. In sum, there is a legitimate, on-going demand in the City for intermediate length residential tenancies. New regulations on these tenancies, including quantitative limits, should reflect this reality.

⁴ Planning Code Section 102, Definitions, Use Characteristic

⁵ Administrative Code Chapter 41A, Residential Unit Conversion and Demolition

⁶ Office of Short-Term Rentals <https://shorttermrentals.sfgov.org/>

Prohibited Uses and Continuation Through Non-Conforming Status

When the Planning Code is amended to prohibit a legal use or activity, that use or activity is afforded non-conforming status. Non-conforming status allows the use or activity to continue to operate under specific conditions that prohibit expansion or intensification, among others. This is done because forcing closure or cessation of a legal use or activity is too harsh, and abrupt. The Ordinance would require that existing ILO, a legal and unregulated activity, cease if they are in buildings subject to the Rent Ordinance or in any building with 10 or more Dwelling Units. This abrupt cessation runs counter to the standard treatment of legal uses or activities that are subsequently prohibited.

Quantifying the Scale of Intermediate Length Occupancies

It is currently difficult to grasp the scale of ILO activity in San Francisco, because ILO is legal, unregulated and no public agency or office currently tracks the activity. Therefore, the City does not have an exact figure on the number of Residential Uses, including those units subject to the Rent Ordinance, involved in ILO activity.

Initial Estimates

In November 2019, Planning Department Staff requested from the Office of Short-Term Rentals (OSTR) an estimate of the number of listings for greater than 30 days on one platform for the month of October 2019. OSTR staff found that there were approximately 2,700 listings for stays greater than 30 days on one platform in October 2019. It is important to emphasize that this figure is simply one estimate, potentially fraught with inaccuracies.

Planning Department Staff also spoke with the Corporate Housing Providers Association (CHPA), the trade association supporting corporate housing providers. CHPA estimated that between its members and unassociated corporate housing providers there are approximately 3,000 units in San Francisco used for ILO. They also mentioned that its members do not use Below Market Rate units or units subject to the Rent Ordinance for ILO. CHPA did not provide similar data for unassociated corporate housing providers.

Until a thorough inquiry is undertaken the exact number of units being used for ILO will be unknown. This uncertainty complicates any regulation establishing quantitative limits on ILO activity.

Data Collection

One way the City could collect data on the scale of ILO is through a registry of residential properties being used for ILO. An ILO owner or operator would file a building permit application to register their units, with the incentive that these units would be given non-conforming status should subsequent regulations prohibit existing ILO. This process would provide the City with data on the number and location of ILO, including the number of units subject to the Rent Ordinance being used for ILO. It would also help inform any future regulations by grounding them in data based on existing conditions.

Interim Controls

The Board of Supervisors or the Planning Commission may impose interim zoning controls for several reasons. One is to help fulfill the goals of guiding, controlling and regulating future growth and

development within the City, as stated in the Purposes of the Planning Code.⁷ Another is to help preserve the City's rental housing stock.⁸

The value of an interim control is that it slows or pauses the growth of an activity of concern for a period of up to 24 months. During that period, the City may gather data about the activity of concern and better assess its scale. This helps inform an improved regulatory scheme for the activity of concern, should one be found necessary.

General Plan Compliance

The proposed Ordinance is, on balance, in alignment with General Plan Policies surrounding the City's housing supply. For example, the proposed Ordinance is aligned with the direction to maintain the existing housing supply available for residential use and prevent its conversion to a de facto commercial use.⁹ It is also aligned with the goals of preserving the span of affordable units, including rent controlled, "naturally" affordable and deed restricted units, for long term use.¹⁰

Racial and Social Equity Analysis

Understanding the benefits, burdens and opportunities to advance racial and social equity that proposed Planning Code and Zoning Map amendments provide is part of the Department's Racial and Social Equity Initiative. This is also consistent with the Mayor's Citywide Strategic Initiatives for equity and accountability and with the Office of Racial Equity, which will require all Departments to conduct this analysis.

It is unclear whether the proposed Planning Code amendments will improve racial and social equity in San Francisco. On one hand the proposed Ordinance could prove beneficial. The Ordinance proposes to prohibit the use of affordable deed restricted units and rent controlled units for intermediate length tenancies. Because of general income and wealth disparities, accessing longer term tenancies in these unit types are especially beneficial to the housing security of racial and ethnic minorities. Keeping these unit types available for long term tenancies therefore can help improve life circumstances in those communities. Further, it is commonly understood that ILO are significantly geared toward business travelers in economic sectors or corporate roles where racial and ethnic minorities are underrepresented. This includes the tech

⁷ Planning Code Section 101.1, Purposes

⁸ Planning Code Section 306.7, Interim Zoning Controls

⁹ Housing Element, Objective 2 Retain existing housing units, and promote safety and maintenance standards, without jeopardizing affordability, Policy 2.6 Ensure housing supply is not converted to de facto commercial use through short term rentals.

¹⁰ Housing Element, 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. Policy 3.4 Preserve "naturally affordable" housing types, such as smaller and older ownership units. Policy 3.5 Retain permanently affordable residential hotels and single room occupancy (SRO) units

sector,¹¹ university professorships,¹² or in executive management positions,¹³ among others. It is also understood, anecdotally, that rents for ILO units are higher than those for long term tenancies. If ILO is severely restricted, as the Ordinance proposes, it is plausible that these units would become available for long term tenancies, and at lower rental rates, for racial and ethnic minorities.

On the other hand, the Ordinance could adversely affect racial and social equity. As mentioned earlier, tenancies of over a month, but less than a year, are often needed to deal with life's emergencies. These occur in racial and ethnic minority households as well. Substantially restricting their supply will also affect these households.

The analysis is challenging because of the significant lack of data on the scale of ILO activity in San Francisco. For example, the City does not have an accurate estimate, much less an exact figure, of the number of Residential Uses being used for ILO. Further, it does not know how many units subject to the Rent Ordinance are being used for ILO. The City has not investigated the rate of growth, or contraction, in San Francisco of this activity over the last five or ten years or have any forecasts for the near future. It also does not have comprehensive data regarding where ILO occurs. More to the point, it is unknown whether this activity commonly occurs in neighborhoods with higher concentrations of racial and ethnic minorities. Having this information would help clarify whether the proposed Planning Code Amendments would help improve or worsen racial and social equity in San Francisco.

Implementation

The Department has determined that this Ordinance will impact our current implementation procedures. Specifically, there are concerns about staffing levels required to enforce the proposed prohibition on the use of existing units for ILO and to monitor the reporting requirements for Dwelling Units allowed as ILO. Short Term Rentals are an analogous situation and one where resources were allocated to hire multiple staff to successfully implement and enforce the new regulations on their use.

¹¹ Harrison, Sara. "Five years of tech diversity reports- and little progress." <https://www.wired.com/story/five-years-tech-diversity-reports-little-progress/>. Accessed 16 December 2019

Dickey, Megan Rose. "The future of diversity and inclusion in tech." <https://techcrunch.com/2019/06/17/the-future-of-diversity-and-inclusion-in-tech/>. Accessed 16 December 2019

¹² Davis, Leslie and Fry, Richard. "College faculty have become more racially and ethnically diverse, but remain far less so than students." <https://www.pewresearch.org/fact-tank/2019/07/31/us-college-faculty-student-diversity/>. Accessed 16 December 2019

¹³ Jones, Stacy. "White Men Account for 72% of corporate leadership at 16 of the Fortune 500 Companies." <https://fortune.com/2017/06/09/white-men-senior-executives-fortune-500-companies-diversity-data/>. Accessed 17 December 2019

Wang, John. "Corporate America still lacks leaders of Color – and that's a problem." https://www.huffpost.com/entry/corporate-america-still-lacks-leaders-of-color-and-thats-a-problem_n_5bd1f2eae4b0d38b58813fc2. Accessed 17 December 2019

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Enact an interim control on new ILO and collect data on the scale of the activity.

BASIS FOR RECOMMENDATION

The Department supports the intentions of the Ordinance as far as they seek to regulate an activity that effects the City's housing supply. Using residences for tenancies of more than a month but less than a year is not a new practice, but the City has never tracked its extent. In this context, Staff is making the following recommendation:

Recommendation 1: Enact an interim control on new ILO and collect data on the scale of the activity.

Staff is recommending that in lieu of permanent controls, an interim control on the use of residences for new ILO be enacted. To date, the City does not have data on the number of Residential Uses being used for this activity. Nor does it know where this activity most frequently occurs, or which populations this use serves the most. It is imperative that the City have this type of data before it implements severe restrictions on an activity that serves a legitimate purpose, but which could also pose a threat to the City's housing supply. An interim control affords time to collect data on this activity in order to make an informed policy decision. That said, for an interim control to successfully function, Staff would need criteria on which to judge any forthcoming ILO.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

As of the date of this report, the Planning Department has received correspondence from a trade association representing firms that lease units for what would be considered ILO.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Letters from Public
- Exhibit C: Board of Supervisors File No. 191075