

File No. 120299

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date October 1, 2012

Board of Supervisors Meeting Date _____

Cmte Board

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OTHER (Use back side if additional space is needed)

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Completed by: Alisa Miller Date September 28, 2012

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Administrative Code - Extending Restrictions of the Apartment Conversion Ordinance to
2 Corporate-Sponsored Short Term Occupancies; Allowing Civil Actions by Certain Non-Profit
3 Entities]

4 **Ordinance amending the San Francisco Administrative Code by amending Chapter 41A**
5 **to extend the restrictions against converting apartment units to short-term**
6 **occupancies to tenants or guests of corporate entities that rent such apartments;**
7 **allowing civil actions to be brought by certain non-profit entities; and making**
8 **environmental findings.**

9 NOTE: Additions are *single-underline italics Times New Roman*;
10 deletions are *strike-through italics Times New Roman*.
11 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough-normal~~.

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

13 Section 1. Findings. The Planning Department has determined that the actions
14 contemplated in this ordinance comply with the California Environmental Quality Act
15 (California Public Resources Code Section 21000 et seq.): Said determination is on file with
16 the Clerk of the Board of Supervisors in File No. 120299 and is incorporated
17 herein by reference.

18 Section 2. The San Francisco Administrative Code is hereby amended by Chapter
19 41A, to read as follows:

20 **CHAPTER 41A: APARTMENT UNIT CONVERSION AND DEMOLITION**

21 Sec. 41A.1. Title.

22 Sec. 41A.2. Purpose.

23 Sec. 41A.3. Findings.
24
25

1 Sec. 41A.5. Unlawful Conversion; Remedies.

2 Sec. 41A.6. Report on Apartment Conversion.

3 Sec. 41A.7. Construction.

4 Sec. 41A.8. Procedures for Determining and Appealing Administrative Penalties.

5
6 **SEC. 41A.1. TITLE.**

7 This chapter shall be known as the Apartment Unit Conversion Ordinance.

8 **SEC. 41A.2. PURPOSE.**

9 It is the purpose of this ordinance to benefit the general public by minimizing adverse
10 impacts on the housing supply and on persons and households of all income levels resulting
11 from the loss of apartment units through their conversion to tourist and transient use. This is to
12 be accomplished by regulating the conversion of apartment units to tourist and transient use,
13 and through appropriate administrative and judicial remedies.

14 **SEC. 41A.3. FINDINGS.**

15 The Board of Supervisors finds that:

16 (a) There is a severe shortage of decent, safe, sanitary and affordable rental housing in
17 the City and County of San Francisco.

18 (b) The people of the City and County of San Francisco, cognizant of the housing
19 shortage in San Francisco, on November 4, 1980, adopted a declaration of policy to increase
20 the City and County's housing supply by 20,000 units.

21 (c) Many of the City and County's elderly, disabled and low-income persons and
22 households reside in apartment units.
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1 (d) As a result of the removal of apartment units from the rental housing market, a
2 housing emergency exists within the City and County of San Francisco for its elderly, disabled
3 and low-income households.

4 (e) The Board of Supervisors and the Mayor of the City and County of San Francisco
5 recognized this housing emergency and enacted an ordinance which established a
6 moratorium on the conversion of apartment units to tourist and transient use.

7 (f) The conversion of apartment units to tourist and transient use impacts especially on
8 persons seeking housing in the low to moderate price range.

9 (g) It is in the public interest that conversion of apartment units be regulated and that
10 remedies be provided when unlawful conversion has occurred, in order to protect the resident
11 tenants and to conserve the limited housing resources.

12
13 **SEC. 41A.4. DEFINITIONS.**

14 (a) Apartment Unit. Room or rooms in any building, or portion thereof, which is
15 designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the
16 home or residence of four or more households living independently of each other in dwelling
17 units as defined in the San Francisco Housing Code, provided that the apartment unit was
18 occupied by a permanent resident on or after February 8, 1981. It is presumed that an
19 apartment unit was occupied by a permanent resident on or after February 8, 1981, and the
20 owner has the burden of proof to show that an apartment unit is not subject to this Chapter.

21 (b) Residential Use. Any use for occupancy as a dwelling unit by a permanent resident.

22 (c) Tourist or Transient Use. Use of an apartment unit for occupancy ~~on~~ for less than a
23 30-day term of tenancy, or occupancy for less than 30 days of an apartment unit leased by a business
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1 entity, whether on a short-term or long term basis, including any occupancy by employees or guests for
2 less than 30 days where payment of the rent is contracted for or paid by the business entity.

3 (d) Permanent Resident. A person who occupies an apartment unit for at least 60
4 consecutive days with intent to establish that unit as his or her principal place of residence.

5 (e) Conversion or Convert. The change of the use or to rent an apartment unit from
6 residential use to tourist or transient use.

7 (f) Owner. Owner includes any person who is the owner of record of the real property.
8 Owner includes a lessee where an interested party alleges that a lessee is offering an
9 apartment unit for tourist or transient use.

10 (g) Interested Party. A permanent resident of the building in which the tourist or
11 transient use is alleged to occur, ~~of~~ the City and County of San Francisco, or any non-profit
12 organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, which
13 has the preservation or improvement of housing as a stated purpose in its articles of incorporation or
14 bylaws.

15
16 (h) Director. The Director of the Department of Building Inspection.

17 **SEC. 41A.5. UNLAWFUL CONVERSION; REMEDIES.**

18 (a) Unlawful Actions. It shall be unlawful for any owner to offer an apartment unit for
19 rent for tourist or transient use.

20 (b) Determination of Violation. Upon the filing of a complaint ~~by a permanent resident~~ that
21 an unlawful conversion has occurred, the Director shall take reasonable steps necessary to
22 determine the validity of the complaint. The Director may independently determine whether an
23 owner may be renting an apartment unit for tourist or transient use as defined in this Chapter.
24 To determine if there is a violation of this Chapter, the Director may initiate an investigation of
25

1 the subject property. This investigation may include, but is not limited to, an inspection of the
2 subject property and a request for any pertinent information from the owner, such as leases or
3 other documents.

4 (c) Civil Action. *Except as provided by Subsection (1) below,* Any interested party may
5 institute proceedings for injunctive and monetary relief for violation of this Chapter. In addition,
6 the owner may be liable for civil penalties of not more than \$1,000 per day for the period of
7 the unlawful rental. If the interested party is the prevailing party, such party shall be entitled to
8 the costs of enforcing this Chapter, including reasonable attorneys' fees, pursuant to an order
9 of the Court. If the interested party is a permanent resident or a non-profit organization, then
10 the interested party shall retain the entire monetary award. Any monetary award obtained by
11 the City and County of San Francisco in such a civil action shall be deposited in the Mayor's
12 Office of Housing, Housing Affordability Fund less the reasonable costs incurred by the City
13 and County of San Francisco in pursuing the civil action.

14 *(1) If the interested party is a permanent resident, such resident, as a condition to initiating civil*
15 *proceedings pursuant to Subsection (c), must satisfy the requirements set forth in Section 41A.8(b)(2).*

16 (d) Criminal Penalties. Any owner who rents an apartment unit for tourist or transient
17 use as defined in this Chapter shall be guilty of a misdemeanor. Any person convicted of a
18 misdemeanor hereunder shall be punishable by a fine of not more than \$1,000 or by
19 imprisonment in the County Jail for a period of not more than six months, or by both. Each
20 apartment unit rented for tourist or transient use shall constitute a separate offense.

21 (e) Method of Enforcement, Director. The Director shall have the authority to enforce
22 this Chapter against violations thereof by any or all of the means provided for in this Section.

23 **SEC. 41A.6. REPORT ON APARTMENT CONVERSION.**
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1 (a) The Department of City Planning shall report to the Board of Supervisors on the
2 conversion of apartment units to tourist and commercial uses and shall formulate
3 comprehensive legislation for the Board of Supervisors to consider within one year of the
4 passage of this ordinance.

5 (b) The Department of City Planning shall specifically determine the following:

6 (1) The social, economic and physical impact of such conversion upon low and
7 moderate-income households, which comprise a significant portion of the residents of
8 apartment units. These groups shall include, but not be limited to, the elderly, the disabled,
9 minorities, single heads of households with minor children, and other persons with limited
10 economic resources;

11 (2) The impact that such conversions will have upon the total stock of low and
12 moderate-income housing in the City and County of San Francisco as a whole, as well as the
13 impact upon the areas in which the units in question are located;

14 (3) The effect of prohibition of the conversion of said apartment units to tourist or
15 commercial uses unless replacement housing units are provided on a one-to-one basis.

16 **SEC. 41A.7. CONSTRUCTION.**

17 (a) Nothing in this Chapter may be construed to supersede any other lawfully enacted
18 ordinance of the City and County of San Francisco.

19 (b) Clauses of this Chapter are declared to be severable and if any provision or clause
20 of this chapter or the application thereof is held to be unconstitutional or to be otherwise
21 invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of
22 this Chapter.
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1 **SEC. 41A.8. PROCEDURES FOR DETERMINING AND APPEALING**

2 **ADMINISTRATIVE PENALTIES.**

3 (a) Notice of Complaint. Within 10 days of the filing of a complaint or upon the
4 Director's independent finding that there may be a violation of this Chapter, the Director shall
5 notify the owner by certified mail that the owner's apartment unit is the subject of an
6 investigation for an unlawful rental.

7 (b) Director's Determination of a Violation; Notice. Upon reviewing the information set
8 forth in the complaint, if any, and any information obtained by the Director during his or her
9 investigation, the Director shall determine whether an owner has violated this Chapter. The
10 Director shall notify by certified mail the complainant and the owner of his or her
11 determination.

12 (1) If the Director determines that a violation has occurred, the Director's notice shall:

13 (A) Specify a reasonable period of time during which the owner must correct or
14 otherwise remedy the violation; and

15 (B) State that if the violation is not corrected or otherwise remedied within this period,
16 the owner may be required to pay the administrative penalties set forth in Subsection (c).

17 (2) If the Director determines that no violation has occurred, for purposes of filing a civil
18 action authorized by Section 41A.5(c)(1), the Director's determination is final.

19 (c) Imposition of Administrative Penalties for Unabated Violations and Enforcement
20 Costs.

21 (1) Administrative Penalties. If the Director, upon further investigation, finds that the
22 violation has continued unabated beyond the time specified in the notice required by
23 Subsection (b)(1)(A), the Director may impose an administrative penalty of not more than
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1 three times the rental rate charged for each unlawfully converted unit from the day the
2 unlawful rental commenced until such time as the unlawful rental terminates. The rental rate
3 charged shall be the rent charged, whether daily, weekly, or otherwise calculated, for the
4 apartment unit during the period of the unlawful use.

5 (2) Enforcement Costs. The Director also may require the owner to reimburse the City
6 for the costs of enforcement of this Chapter, which shall include, but not be limited to,
7 reasonable attorneys' fees.

8 (d) Notice of Director's Determination of Continuing Violation and Imposition of
9 Penalties. The Director shall notify the owner by certified mail that the violation has continued
10 unabated and that administrative penalties shall be imposed pursuant to Subsection (c). The
11 notice shall state the basis of the Director's determination regarding the continued existence
12 of the violation and the resulting imposition of penalties. The notice also shall inform the
13 owner of the right to request a hearing within 10 days of the notice date to contest the
14 Director's determination on the continuation of the violation and the imposition of penalties.

15 (e) Confirmation of Continuing Violation and Imposition of Penalties. If no request is
16 timely filed for an administrative review hearing, the Director's determination regarding the
17 continuation of the violation and the imposition of penalties shall be deemed *final confirmed*.
18 The Director may then request payment of the administrative penalties and enforcement costs
19 within 30 days of the certified mailed notice to the owner. If the administrative penalties and
20 enforcement costs are not paid, the Director is authorized to initiate lien procedures to secure
21 the amount of the penalties and costs against the real property that is subject to this Chapter,
22 *consistent with pursuant to* the provisions of Section 41.20(d) of this Code; provided however,
23 that the City Treasurer shall distribute all sums collected pursuant to Subsection (~~1~~) herein.
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1 (f) Notice of Administrative Review Hearing. Whenever an administrative review
2 hearing is requested pursuant to Subsection (d), the Director, within 45 calendar days of the
3 request, shall notify the owner of the date, time, and place of the hearing by certified mail.
4 Notice of the hearing shall be conspicuously posted on the building that is the subject of the
5 hearing. The owner shall state under oath at the hearing that the notice remained posted for
6 at least 10 calendar days prior the hearing. The Director shall appoint a hearing officer to
7 conduct the hearing.

8 (g) Pre-hearing Submission. No less than three working days prior to the administrative
9 review hearing, parties to the hearing shall submit written information to the Department of
10 Building Inspection including, but not limited to, the following: the issues to be determined by
11 the hearing officer and the evidence to be offered at the hearing. Such information shall be
12 forwarded to the hearing officer prior to the hearing along with any information compiled by
13 the Director.

14 (h) Hearing Procedure. If more than one hearing is requested for apartment units
15 located in the same building at or about the same time, the Director shall consolidate all of the
16 hearings into one hearing. The hearing shall be tape recorded. Any party to the hearing may
17 at his or her own expense, cause the hearing to be recorded by a certified court reporter.
18 Parties may be represented by counsel and have the right to cross-examine witnesses. All
19 testimony shall be given under oath. Written decisions and findings shall be rendered by the
20 hearing officer within 20 working days of the hearing. Copies of the findings and decision shall
21 be served upon the parties by certified mail. A notice that a copy of the findings and decision
22 is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through
23 Friday shall be posted by the owner in the building in the same location in which the notice of
24 the administrative review hearing was posted.
25

1 (i) Finality of the Hearing Officer's Decision and Appeal. The decision of the hearing
2 officer shall be final. Within 20 days after service of the hearing officer's decision, any party
3 other than the City and County of San Francisco, may seek review of the hearing officer's
4 decision by the municipal court, according to the procedures set forth in California
5 Government Code Section 53069.4.

6 (j) Confirmation of Hearing Officer Decision. If no notice of appeal of the hearing
7 officer's decision is timely filed, the decision shall be deemed confirmed. If any imposed
8 administrative penalties and costs have not been deposited at this time, the Director may
9 proceed to collect the penalties and costs pursuant to the lien procedures set forth in
10 Subsection (e).

11 (k) Collection of Penalties after Municipal Court Decision. If the court finds in favor of
12 the contestant, the amount of the municipal court filing fee shall be reimbursed to the
13 contestant by the City and County of San Francisco. If the administrative penalty has been
14 deposited, the City and County of San Francisco shall distribute the administrative penalty in
15 accordance with the judgment of the court. If the administrative penalties and enforcement
16 costs have not been deposited and the decision of the municipal court is against the
17 contestant, the Director may proceed to collect the penalties and costs.


18 (l) Deposit of Penalties. Administrative penalties paid pursuant to this Chapter shall be
19 deposited in the Mayor's Office of Housing, Housing Affordability Fund less the reasonable
20 costs incurred by the City and County of San Francisco in pursuing enforcement under this
21 Chapter 41A. the lien procedures set forth in Subsection (e), if such procedures were undertaken. If
22 enforcement costs were imposed pursuant to Subsection (c), such funds shall be distributed
23 according to the purpose for which they were collected.
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1 Section 3. Effective Date. This ordinance shall become effective 30 days from the
2 date of passage.

3 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to
4 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
5 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that
6 are explicitly shown in this legislation as additions, deletions, Board amendment additions,
7 and Board amendment deletions in accordance with the "Note" that appears under the official
8 title of the legislation.

9
10 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

11
12 By:


13 KATE HERRMANN STACY
Deputy City Attorney

LEGISLATIVE DIGEST

[Administrative Code - Extending Restrictions of the Apartment Conversion Ordinance to Corporate-Sponsored Short Term Occupancies; Allowing Civil Actions by Certain Non-Profit Entities]

Ordinance amending the San Francisco Administrative Code Chapter 41A to extend the restrictions against converting apartment units to short-term occupancies to tenants or guests of corporate entities that rent such apartments; allowing civil actions to be brought by certain non-profit entities; and making environmental findings.

Existing Law

Administrative Code Chapter 41A prohibits the occupancy of an apartment unit for less than thirty days, which is defined as a tourist or transient use. Chapter 41A provides both civil remedies and criminal penalties for violations, and authorizes the Director of Building Inspection to enforce the provisions of Chapter 41A. The ordinance also permits a permanent resident of a building, where unlawful tourist or transient use is alleged to occur, to institute proceedings for injunctive and monetary relief for a violation of Chapter 41A.

Amendments to Current Law

This Ordinance specifies that even where a business entity may have a long term lease for an apartment unit, if the business entity leases or permits the use of the apartment unit for less than 30 days, such activity is illegal under Chapter 41A. In addition, the amendments permit a non-profit organization, which has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws, to institute proceedings for injunctive and monetary relief for a violation of Chapter 41A.

BOARD of SUPERVISORS



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

April 2, 2012

File No. 120299

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On March 27, 2012, Supervisor Chiu introduced the following proposed legislation:

File No. 120299

Ordinance amending the San Francisco Administrative Code Chapter 41A to extend the restrictions against converting apartment units to short-term occupancies to tenants or guests of corporate entities that rent such apartments; allowing civil actions to be brought by certain non-profit entities; and making environmental findings.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

*Not a project per CEQA
Guidelines Sections
15060(c)(3) and
15398.
N. Turrell
April 2, 2012*

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee:
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor inquire
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2012 MAR 27 PM 4:59

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

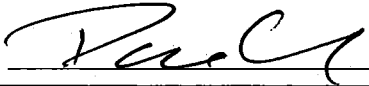
- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

Sponsor(s):

Subject:

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: