

[Administrative Code – Short-Term Residential Rentals]

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Ordinance amending 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 and other departments as needed; and affirming the Planning Department’s determination under the California Environmental Quality Act.

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

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

Section 1. Environmental Findings. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 150363 and is incorporated herein by reference. The Board affirms this determination.

1 Section 2. The Administrative Code is hereby amended by revising Sections 41A.4,
2 41A.5, 41A. 6, and 41A.7 and adding Section 41A.8, to read as follows:

3
4 **SEC. 41A.4. DEFINITIONS.**

5 Whenever used in this Chapter 41A, the following words and phrases shall have the
6 definitions provided in this Section:

7 * * * *

8 **Director.** The Director of the Planning Department, or his or her designee.

9 * * * *

10 **Interested Party.** A Permanent Resident of the building in which the Tourist or
11 Transient Use is alleged to occur, any homeowner association associated with the Residential
12 Unit in which the Tourist or Transient Use is alleged to occur, the Owner of the Residential
13 Unit in which the Tourist or Transient Use is alleged to occur, a Permanent Resident or Owner of
14 a property within 100 feet of the property containing the Residential Unit in which the Tourist or
15 Transient Use is alleged to occur, the City and County of San Francisco, or any non-profit
16 organization exempt from taxation pursuant to Title 26, Section 501 of the United States
17 Code, which has the preservation or improvement of housing as a stated purpose in its
18 articles of incorporation or bylaws.

19 * * * *

20 **Short-Term Residential Rental.** A Tourist or Transient Use where all of the following
21 conditions are met:

- 22 (a) the Residential Unit is offered for Tourist or Transient Use by the Permanent
23 Resident of the Residential Unit;
- 24 (b) the Permanent Resident is a natural person;
- 25

1 (c) the Permanent Resident has registered the Residential Unit and maintains good
2 standing on the Department's Short-Term Residential Rental Registry; and

3 (d) the Residential Unit: is not subject to the Inclusionary Affordable Housing Program
4 set forth in Planning Code Section 415et seq.; is not a residential hotel unit subject to the
5 provisions of Chapter 41, unless such unit has been issued a Permit to Convert under Section
6 41.12; is not otherwise a designated as a below market rate or income-restricted Residential
7 Unit under City, state, or federal law; has not been the subject of an eviction pursuant to the
8 Ellis Act and Administrative Code Section 37.9(a)(13) within the five year period prior to
9 applying for the Registry if such eviction occurred after November 1, 2014; and no other
10 requirement of federal or state law, this Municipal Code, or any other applicable law or
11 regulation prohibits the permanent resident from subleasing, renting, or otherwise allowing
12 Short-Term Residential Rental of the Residential Unit.

13 **Short-Term Residential Rental Registry or Registry.** A database of information
14 maintained by the Department that includes information regarding Permanent Residents who
15 are permitted to offer Residential Units for Short-Term Residential Rental. Only one
16 Permanent Resident per Residential Unit may be included on the Registry at any given time.
17 The Registry shall be available for public review to the extent required by law, except that, to
18 the extent permitted by law, the Department shall redact any Permanent Resident names and
19 street and unit numbers from the records available for public review.

20 * * * *

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

22 (a) **Unlawful Actions.** Except as set forth in subsection 41A.5(g), it shall be unlawful
23 for

- 24 (1) any Owner to offer a Residential Unit for rent for Tourist or Transient Use;
25

1 (2) any Owner to offer a Residential Unit for rent to a Business Entity that will
2 allow the use of a Residential Unit for Tourist or Transient Use; or

3 (3) any Business Entity to allow the use of a Residential Unit for Tourist or
4 Transient Use.

5 (b) **Records Required.** The Owner and Business Entity, if any, shall retain and make
6 available to the Department records to demonstrate compliance with this Chapter 41A upon
7 written request as provided herein. ~~Any Permanent Resident offering his or her Primary Residence
8 as a Short-Term Residential Rental shall retain and make available to the Department records to
9 demonstrate compliance with this Chapter 41A, including but not limited to records demonstrating
10 Primary Residency, the number of days per calendar year he or she has occupied the Residential Unit,
11 and the number of days per calendar year, with dates and duration of each stay, the Residential Unit
12 has been rented for Short-Term Residential Rental Use.~~

13 (c) **Determination of Violation.** Upon the filing of a written Complaint that an Owner
14 or Business Entity has engaged in an alleged unlawful Conversion or that a Hosting Platform
15 is not complying with the requirements of subsection (g)(4)(A), the Director shall take
16 reasonable steps necessary to determine the validity of the Complaint. The Director may
17 independently determine whether an Owner or Business Entity may be renting a Residential
18 Unit for Tourist or Transient Use in violation of this Chapter 41A or whether a Hosting Platform
19 has failed to comply with the requirements of subsection (g)(4)(A). To determine if there is a
20 violation of this Chapter 41A, the Director may initiate an investigation of the subject property
21 or Hosting Platform's allegedly unlawful activities. This investigation may include, but is not
22 limited to, an inspection of the subject property and/or a request for any pertinent information
23 from the Owner, Business Entity, or Hosting Platform, such as leases, business records, or
24 other documents. The Director shall have discretion to determine whether there is a potential
25 violation of this Chapter 41A and whether to conduct an administrative review hearing as set

1 forth below. Notwithstanding any other provision of this Chapter 41A, any alleged violation
2 related to failure to comply with the requirements of the Business and Tax Regulations Code
3 shall be enforced by the Treasurer/Tax Collector under the provisions of that Code.

4 (d) **Civil Action.**

5 (1) The City may institute civil proceedings for injunctive and monetary relief, including
6 civil penalties, against an Owner, Business Entity, or Hosting Platform for violations of this Chapter
7 41A under any circumstances, without regard to whether a Complaint has been filed or the Director
8 has made a determination of a violation through an administrative review hearing as set forth in this
9 Chapter 41A.

10 (2) **Private Rights of Action.**

11 (A) Following the filing of a Complaint and the determination of a violation
12 by the Director through an administrative review hearing ~~as set forth in this Chapter 41A, the City~~
13 ~~may institute civil proceedings for injunctive and monetary relief against a Hosting Platform for~~
14 ~~violation of subsection (g)(4)(A) or the City or any other Interested Party may institute civil~~
15 proceedings for injunctive and monetary relief against an Owner or Business Entity.

16 (B) An Interested Party who is a Permanent Resident of the building in which
17 the Tourist or Transient Use is alleged to occur, is a Permanent Resident of a property within 100 feet
18 of the property containing the Residential Unit in which the Tourist or Transient Use is alleged to
19 occur, or is a homeowner association associated with the Residential Unit in which the Tourist or
20 Transient Use is alleged to occur may institute a civil action for injunctive and monetary relief against
21 an Owner or Business Entity if:

22 (i) The Interested Party has filed a Complaint with the Department;

23 (ii) The Director has not made a written determination pursuant to subsection
24 41A.6(a) that there is no violation of this Chapter 41A or basis for an investigation for an unlawful
25 activity;

1 (iii) An administrative hearing officer has not issued a final determination
2 pursuant to subsection 41A.6(b) regarding the Complaint within 105 days of the filing of the Complaint
3 with the Department;

4 (iv) After such 105-day period has passed, the Interested Party has provided 30
5 days' written notice to the Department and the City Attorney's Office of its intent to initiate civil
6 proceedings; and

7 (v) The City has not initiated civil proceedings by the end of that 30-day notice
8 period.

9 Under this subsection 41A.5(d)(2)(B), the prevailing party shall be entitled to the costs of suit,
10 including reasonable attorneys' fees, pursuant to an order of the Court.

11 (3) ~~In addition,~~ Civil Penalties. If the City is the prevailing party in any civil action
12 under this subsection (d): an Owner or Business Entity in violation of this Chapter 41A or a
13 Hosting Platform in violation of subsection (g)(4)(A) may be liable for civil penalties of not
14 more than \$1,000 per day for the period of the unlawful activity. Interested Parties other than the
15 City may not seek or obtain civil penalties.

16 (4) Attorneys' Fees and Costs. If the City or any other ~~the~~ Interested Party is the
17 prevailing party, the City or the Interested Party shall be entitled to the costs of enforcing this
18 Chapter 41A, including reasonable attorneys' fees, pursuant to an order of the Court.

19 (5) Any monetary award obtained by the City and County of San Francisco in
20 such a civil action shall be deposited in the Department to be used for enforcement of Chapter
21 41A. The Department, through the use of these funds, shall reimburse City departments and
22 agencies, including the City Attorney's Office, for all costs and fees incurred in the
23 enforcement of this Chapter 41A.

24 * * * *

25 **(g) Exception for Short-Term Residential Rental.**

1 (1) Notwithstanding the restrictions set forth in this Section 41A.5, a Permanent
2 Resident may offer his or her Primary Residence as a Short-Term Residential Rental if:

3 (A) ~~The Permanent Resident occupies the Residential Unit for no less than 275~~
4 ~~days out of the calendar year in which the Residential Unit is rented as a Short-Term Residential~~
5 ~~Rental or, if the Permanent Resident has not rented or owned the Residential Unit for the full preceding~~
6 ~~calendar year, for no less than 75% of the days he or she has owned or rented the Residential Unit~~ The
7 Residential Unit is rented for Tourist or Transient Use for no more than 120 days during any calendar
8 year;

9 (B) The Permanent Resident maintains records for two years
10 demonstrating compliance with this Chapter 41A, including but not limited to information
11 demonstrating Primary Residency, ~~the number of days per calendar year he or she has occupied the~~
12 ~~Residential Unit,~~ the number of days per calendar year the Residential Unit has been rented as
13 a Short-Term Residential Rental, and compliance with the insurance requirement in
14 Subsection (D). These records shall be made available to the Department upon request;

15 * * * *

16 (4) **Requirements for Hosting Platforms.**

17 (A) **Notice to Users of Hosting Platform.** All Hosting Platforms shall
18 provide the following information in a notice to any user listing a Residential Unit located
19 within the City and County of San Francisco through the Hosting Platform's service. The
20 notice shall be provided prior to the user listing the Residential Unit and shall include the
21 following information: that Administrative Code Chapters 37 and 41A regulate Short-Term
22 Rental of Residential Units; the requirements for Permanent Residency and registration of the
23 unit with the Department; and the transient occupancy tax obligations to the City.

24 (B) A Hosting Platform shall comply with the requirements of the
25 Business and Tax Regulations Code by, among any other applicable requirements, collecting

1 and remitting all required Transient Occupancy Taxes, and this provision shall not relieve a
2 Hosting Platform of liability related to an occupant's, resident's, Business Entity's, or Owner's
3 failure to comply with the requirements of the Business and Tax Regulations Code. A Hosting
4 Platform shall maintain a record demonstrating that the taxes have been remitted to the Tax
5 Collector and shall make this record available to the Tax Collector upon request.

6 (C) Any violation of a Hosting Platform's responsibilities under
7 subsection (g)(~~54~~)(A) shall subject the Hosting Platform to the administrative penalties and
8 enforcement provisions of this Chapter 41A, including but not limited to payment of civil
9 penalties of up to \$1,000 per day for the period of the failure to comply, with the exception that
10 a violation related to failure to comply with the requirements of the Business and Tax
11 Regulations Code shall be enforced by the Treasurer/Tax Collector under that Code.

12 * * * *

13 **SEC. 41A.6. PROCEDURES FOR DETERMINING ADMINISTRATIVE PENALTIES.**

14 (a) **Notice of Complaint.**

15 (1) Within 30 days of the filing of a Complaint and upon the Director's
16 independent finding that there may be a violation of this Chapter 41A, the Director shall notify
17 the Owner by certified mail that the Owner's Residential Unit is the subject of an investigation
18 for an unlawful use and provide the date, time, and place of an administrative review hearing
19 in which the Owner can respond to the Complaint. ~~If the Director finds there is no violation of this~~
20 ~~Chapter or basis for an investigation for an unlawful activity, the Director shall so inform the~~
21 ~~complainant within 30 days of the filing of the Complaint.~~

22 (2) If the Complaint concerns the failure of a Hosting Platform to comply with the
23 requirements of subsection 41A.5 (g)(4)(A), within 30 days of the filing of the Complaint and
24 upon the Director's independent finding that there may be a violation of this Chapter, the
25 Director shall notify the Hosting Platform by certified mail that the Hosting Platform is the

1 subject of an investigation for failure to comply with the requirements of that subsection and
2 provide the date, time, and place of an administrative review hearing in which the Hosting
3 Platform can respond to the Complaint.

4 (3) Once a Complaint has been filed, the Department shall include information
5 regarding the Complaint, including whether the Complaint is pending or resolved and, if resolved, any
6 final determination, on the Department's website.

7 (4) If the Director finds there is no violation of this Chapter or basis for an
8 investigation for an unlawful activity, the Director shall so inform the complainant within 30 days of
9 the filing of the Complaint.

10 (b) **Administrative Review Hearings.** In the event the Director determines that an
11 administrative review hearing shall be conducted, the Director's appointed hearing officer will
12 hold an administrative review hearing within 45 days of the Director's finding that there may
13 be a violation of this Chapter 41A to review all information provided by the Interested Party,
14 members of the public, City staff, and the Owner or Hosting Platform for the investigation and
15 the hearing officer shall thereafter make a determination whether the Owner or Hosting
16 Platform has violated this Chapter.

17 (1) For hearings regarding alleged unlawful conversions, notice of the hearing
18 shall be conspicuously posted on the building that is the subject of the hearing. The Director
19 shall appoint a hearing officer to conduct the hearing.

20 (2) **Pre-hearing Submission.** No less than ten days prior to the administrative
21 review hearing, parties to the hearing shall submit written information to the Director including,
22 but not limited to, the issues to be determined by the hearing officer and the evidence to be
23 offered at the hearing. Such information shall be forwarded to the hearing officer prior to the
24 hearing along with any information compiled by the Director.

1 (3) **Hearing Procedure.** If more than one hearing is requested for Residential
2 Units located in the same building at or about the same time, the Director shall consolidate all
3 of the hearings into one hearing. The hearing shall be recorded. Any party to the hearing may
4 at his or her own expense cause the hearing to be recorded by a certified court reporter.
5 Parties may be represented by counsel and shall have the right to cross-examine witnesses.
6 All testimony shall be given under oath. Written decisions and findings shall be rendered by
7 the hearing officer within 30 days of the hearing. Copies of the findings and decision shall be
8 served upon the parties by certified mail. A notice that a copy of the findings and decision is
9 available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday
10 shall be posted by the Owner or the Director in the building in the same location in which the
11 notice of the administrative review hearing was posted.

12 (4) **Failure to Appear.** In the event the Owner, authorized Hosting Platform
13 representative, or an interested party fails to appear at the hearing, the hearing officer may
14 nevertheless make a determination based on the evidence in the record and files at the time
15 of the hearing, and issue a written decision and findings.

16 (5) **Finality of the Hearing Officer's Decision and Judicial Review.** The
17 decision of the hearing officer shall be final. Within 20 days after service of the hearing
18 officer's decision, any party may seek judicial review of the hearing officer's decision.

19 (6) **Hearing Officer Decision and Collection of Penalties.** Upon the Hearing
20 Officer's decision, the Director may proceed to collect the penalties and costs pursuant to the
21 lien procedures set forth in Subsection 41A.6(d), consistent with the Hearing Officer's
22 decision.

23 (7) **Remedy of Violation.** If the Hearing Officer determines that a violation has
24 occurred, the Hearing Officer's Decision shall:

1 (A) Specify a reasonable period of time during which the Owner,
2 Business Entity, or Hosting Platform must correct or otherwise remedy the violation;

3 (B) Detail the amount of any administrative penalties the Owner or
4 Hosting Platform shall be required to pay as set forth in Subsection 41A.6(c); and,

5 (C) For violations by Owners, state that if the violation is not corrected or
6 otherwise remedied within this period, the Department shall remove or prohibit the registration
7 of the Residential Unit from the Short-Term Residential Registry for one year even if the
8 Residential Unit otherwise meets the requirements for Short-Term Residential Rental.

9 (8) If the Hearing Officer determines that no violation has occurred, the
10 determination is final.

11 (c) **Imposition of Penalties for Violations and Enforcement Costs.**

12 (1) **Administrative Penalties.** If the Hearing Officer determines that a violation
13 has occurred, an administrative penalty shall be assessed as follows:

14 (A) For the initial violation, not more than four times the standard hourly
15 administrative rate of \$121.00 for each unlawfully converted unit, or for each identified failure
16 of a Hosting Platform to comply with the requirements of subsection 41A.5(g)(4)(A), per day
17 from the notice of Complaint until such time as the unlawful activity terminates;

18 (B) ~~f~~For the second violation by the same Owner(s), Business Entity, or
19 Hosting Platform, not more than eight times the standard hourly administrative rate of \$121.00
20 for each unlawfully converted unit, or for each identified failure of a Hosting Platform to comply
21 with the requirements of subsection 41A.5 (g)(4)(A), per day from the day the unlawful activity
22 commenced until such time as the unlawful activity terminates; and

23 (C) ~~f~~For the third and any subsequent violation by the same Owner(s),
24 Business Entity, or Hosting Platform, not more than twelve times the standard hourly
25 administrative rate of \$121.00 for each unlawfully converted unit or for each identified failure

1 of a Hosting Platform to comply with the requirements of subsection 41A.5 (g)(4)(A) per day
2 from the day the unlawful activity commenced until such time as the unlawful activity
3 terminates.

4 (2) **Prohibition on Registration and Listing Unit(s) on Any Housing**
5 **Platform.** In the event of multiple violations, the Department shall remove the Residential
6 Unit(s) from the Registry for one year and include the Residential Unit(s) on a list maintained
7 by the Department of Residential Units that may not be listed on any Hosting Platform until
8 compliance. Any Owner or Business Entity who continues to list a Residential Unit in violation
9 of this section shall be liable for additional administrative penalties and civil penalties of up to
10 \$1,000 per day of unlawful inclusion.

11 * * * *

12 **SEC. 41A.7. OFFICE OF SHORT-TERM RESIDENTIAL RENTAL ADMINISTRATION**
13 **AND ENFORCEMENT.**

14 *The Mayor shall establish an Office of Short-Term Residential Rental Administration and*
15 *Enforcement, which shall provide a single location to receive and process applications for the Registry*
16 *and complaints regarding violations of this Chapter 41A. ~~and which~~ This Office shall be staffed*
17 *by the Department and other departments as appropriate, with participation from the Department*
18 *of Building Inspection, ~~and the Treasurer/Tax Collector's Office,~~ and other departments as needed*
19 *to process applications for the Registry and enforce the requirements of this Chapter 41A in a timely*
20 *and efficient manner. It is the intent of this Board in directing the establishment of this office to*
21 *streamline both the process of administering the Registry and enforcing the requirements of this*
22 *Chapter 41A to protect residential housing from unlawful conversion to Tourist or Transient Use.*

23 **SEC. 41A.8 CONSTRUCTION.**

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

1 (b) Clauses of this Chapter are declared to be severable and if any provision or clause
2 of this chapter or the application thereof is held to be unconstitutional or to be otherwise
3 invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of
4 this Chapter.

5
6 Section 3. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.

10
11 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the "Note" that appears under
16 the official title of the ordinance.

17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19
20 By: _____
21 MARLENA BYRNE
22 Deputy City Attorney

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