

[Administrative Code – Short-Term Residential Rentals]

1
2 **Ordinance amending the Administrative Code to revise the Residential Unit Conversion**
3 **Ordinance to: limit short-term rental of a Residential Unit to no more than 6075 days**
4 **per calendar year; require Hosting Platforms to verify that a Residential Unit is on the**
5 **City Registry prior to listing, remove a listing once a Residential Unit has been rented**
6 **for Tourist or Transient Use for more than 6075 days in a calendar year, and provide**
7 **certain useage data to the Planning Department; revise the definition of Interested**
8 **Parties who may enforce the provision of Chapter 41A through a private right of action**
9 **to include Permanent Residents residing within 100 feet; amend the private right of**
10 **action provisions to allow for a private right of action against Hosting Platforms and**
11 **create an additional private right of action against Owners, Business Entities, and**
12 **Hosting Platforms under certain circumstances; and provide for criminal penalties**
13 **against Hosting Platforms in violation of this Chapter 41A; and affirming the Planning**
14 **Department’s determination under the California Environmental Quality Act.**

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

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

23 Section 1. Environmental Findings. The Planning Department has determined that the
24 actions contemplated in this ordinance comply with the California Environmental Quality Act
25 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with

1 the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein
2 by reference. The Board affirms this determination.

3
4 Section 2. The Administrative Code is hereby amended by revising Sections 41A.4,
5 41A.5 and 41A. 6, to read as follows:

6 **SEC. 41A.4. DEFINITIONS.**

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

9 * * * *

10 **Complaint.** A complaint submitted to the Department, or to the Department and the City
11 Attorney on the same day, alleging a violation of this Chapter 41A and that includes the
12 Residential Unit's address, including unit number, date(s) and nature of alleged violation(s),
13 and any available contact information for the Owner and/or resident of the Residential Unit at
14 issue.

15 * * * *

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

17 * * * *

18 **Interested Party.** A Permanent Resident of the building in which the Tourist or
19 Transient Use is alleged to occur, any homeowner association associated with the Residential
20 Unit in which the Tourist or Transient Use is alleged to occur, ~~the Owner of the Residential~~
21 ~~Unit in which the Tourist or Transient Use is alleged to occur,~~ a Permanent Resident of a property
22 within 100 feet of the property containing the Residential Unit in which the Tourist or Transient Use is
23 alleged to occur, the City and County of San Francisco, or any non-profit organization exempt
24 from taxation pursuant to Title 26, Section 501 of the United States Code, which has the
25

1 preservation or improvement of housing as a stated purpose in its articles of incorporation or
2 bylaws.

3 * * * *

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

6 (a) the Residential Unit is offered for Tourist or Transient Use by the Permanent
7 Resident of the Residential Unit;

8 (b) the Permanent Resident is a natural person;

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

11 (d) the Residential Unit: is not subject to the Inclusionary Affordable Housing Program
12 set forth in Planning Code Section 415et seq.; is not a residential hotel unit subject to the
13 provisions of Chapter 41, unless such unit has been issued a Permit to Convert under Section
14 41.12; is not otherwise ~~a~~ designated as a below market rate or income-restricted Residential
15 Unit under City, state, or federal law; has not been the subject of an eviction pursuant to the
16 Ellis Act and Administrative Code Section 37.9(a)(13) within the five year period prior to
17 applying for the Registry if such eviction occurred after November 1, 2014; and no other
18 requirement of federal or state law, this Municipal Code, or any other applicable law or
19 regulation prohibits the permanent resident from subleasing, renting, or otherwise allowing
20 Short-Term Residential Rental of the Residential Unit.

21 **Short-Term Residential Rental Registry or Registry.** A database of information
22 maintained by the Department that includes a unique registration number for each Short-Term
23 Residential Rental and information regarding Permanent Residents who are permitted to offer
24 Residential Units for Short-Term Residential Rental. Only one Permanent Resident per
25 Residential Unit may be included on the Registry at any given time. The Registry shall be

1 available for public review to the extent required by law, except that, to the extent permitted by
2 law, the Department shall redact any Permanent Resident names and street and unit numbers
3 from the records available for public review.

4 * * * *

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

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

- 8 (1) any Owner to offer a Residential Unit for rent for Tourist or Transient Use;
- 9 (2) any Owner to offer a Residential Unit for rent to a Business Entity that will
10 allow the use of a Residential Unit for Tourist or Transient Use; or
- 11 (3) any Business Entity to allow the use of a Residential Unit for Tourist or
12 Transient Use.

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

21 (c) **Determination of Violation.** Upon the filing of a written Complaint that an Owner
22 or Business Entity has engaged in an alleged unlawful Conversion or that a Hosting Platform
23 is not complying with the requirements of subsection (g)(4)(A), (C), or (D), the Director shall
24 take reasonable steps necessary to determine the validity of the Complaint. The Director may
25 independently determine whether an Owner or Business Entity may be renting a Residential

1 Unit for Tourist or Transient Use in violation of this Chapter 41A or whether a Hosting Platform
2 has failed to comply with the requirements of subsection (g)(4)(A), (C), or (D). To determine if
3 there is a violation of this Chapter 41A, the Director may initiate an investigation of the subject
4 property or Hosting Platform's allegedly unlawful activities. This investigation may include, but
5 is not limited to, an inspection of the subject property and/or a request for any pertinent
6 information from the Owner, Business Entity, or Hosting Platform, such as leases, business
7 records, or other documents. The Director shall have discretion to determine whether there is
8 a potential violation of this Chapter 41A and whether to conduct an administrative review
9 hearing as set forth below. Notwithstanding any other provision of this Chapter 41A, any
10 alleged 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 the provisions of
12 that Code.

13 (d) **Civil Action.**

14 (1) The City may institute civil proceedings for injunctive and monetary relief, including
15 civil penalties, against an Owner, Business Entity, or Hosting Platform for violations of this Chapter
16 41A under any circumstances, without regard to whether a Complaint has been filed or the Director
17 has made a determination of a violation through an administrative review hearing as set forth in this
18 Chapter 41A.

19 (2) Private Rights of Action.

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

1 (B) An Interested Party may institute a civil action for injunctive and monetary
2 relief against an Owner, Business Entity, or Hosting Platform if:

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

4 (ii) ~~60~~30 days have passed since the filing of the Complaint;

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

8 (iv) After such ~~60~~30-day period has passed, the Interested Party has
9 provided 30 days' written notice to the Department and the City Attorney's Office of its intent to initiate
10 civil proceedings; and

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

13 (3) ~~In addition,~~ Civil Penalties. If the City or an Interested Party is the prevailing party
14 in any civil action under this subsection (d), an Owner or Business Entity in violation of this
15 Chapter 41A or a Hosting Platform in violation of subsection (g)(4)(A), (C), or (D) may be liable
16 for civil penalties of not less than \$250 or more than \$1,000 per day for the period of the
17 unlawful activity.

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

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

1 (e) **Criminal Penalties.** Any Owner or Business Entity who rents a Residential Unit for
2 Tourist or Transient Use in violation of this Chapter 41A or a Hosting Platform who provides a
3 listing for a Residential Unit for Tourist or Transient Use in violation of subsections (g)(4)(A), (C), or
4 (D) without correcting or remedying the violation as provided for in subsection 41A.6(b)(7)
5 shall be guilty of a misdemeanor. Any person convicted of a misdemeanor hereunder shall be
6 punishable by a fine of not more than \$1,000 or by imprisonment in the County Jail for a
7 period of not more than six months, or by both. Each Residential Unit rented for Tourist or
8 Transient Use shall constitute a separate offense.

9 * * * *

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

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

13 (A) ~~The Permanent Resident occupies the Residential Unit for no less than 275~~
14 ~~days out of the calendar year in which the Residential Unit is rented as a Short-Term Residential~~
15 ~~Rental or, if the Permanent Resident has not rented or owned the Residential Unit for the full preceding~~
16 ~~calendar year, for no less than 75% of the days he or she has owned or rented the Residential Unit~~ The
17 Residential Unit is rented for Tourist or Transient Use for no more than ~~60~~75 days during any
18 calendar year;

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

25 * * * *

1 (3) **Short-Term Residential Rental Registry Applications, Fee, and**
2 **Reporting Requirement.**

3 (A) **Application.** Registration shall be for a two-year term, which may be
4 renewed by the Permanent Resident by filing a completed renewal application. Initial and
5 renewal applications shall be in a form prescribed by the Department. The Department shall
6 determine, in its sole discretion, the completeness of an application. Upon receipt of a
7 complete initial application, the Department shall send mailed notice to the owner of record of
8 the Residential Unit, any Permanent Resident of the building in which the Residential Unit is located,
9 any homeowners' association associated with the Residential Unit, and any individual or neighborhood
10 association that has requested notification regarding Registry applications for the property on which
11 the Residential Unit is located, informing the ~~m~~ owner that an application ~~to the Registry~~ for the unit
12 has been received. ~~If the Residential Unit is in a RH-1(D) zoning district, the Department shall also~~
13 ~~send mailed notice to any directly associated homeowner association that has previously requested~~
14 ~~such notice.~~

15 Both the initial application and any renewal application shall contain information
16 sufficient to show that the Residential Unit is the Primary Residence of the applicant, that the
17 applicant is the unit's Permanent Resident, and that the applicant has the required insurance
18 coverage and business registration certificate. In addition to the information set forth here, the
19 Department may require any other additional information necessary to show the Permanent
20 Resident's compliance with this Chapter 41A. Primary Residency shall be established by
21 showing the Residential Unit is listed as the applicant's residence on at least two of the
22 following: motor vehicle registration; driver's license; voter registration; tax documents
23 showing the Residential Unit as the Permanent Resident's Primary Residence for home
24 owner's tax exemption purposes; or utility bill. A renewal application shall contain sufficient
25 information to show that the applicant is the Permanent Resident ~~and has occupied the unit for at~~

1 ~~least 275 days of each of the two preceding calendar years.~~ Upon the Department's determination
2 that an application is complete, the unit shall be entered into the Short-Term Residential
3 Rental Registry and assigned an individual registration number.

4 (B) **Fee.** The fee for the initial application and for each renewal shall be
5 \$50, payable to the Director. The application fee shall be due at the time of application.
6 Beginning with fiscal year 2014-2015, fees set forth in this Section may be adjusted each
7 year, without further action by the Board of Supervisors, as set forth in this Section. Within six
8 months of ~~the operative date of this ordinance~~ February 1, 2015 and after holding a duly noticed
9 informational hearing at the Planning Commission, the Director shall report to the Controller
10 the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of
11 establishing and maintaining the registry and enforcing the requirements of this Chapter 41A,
12 as well as any other information that the Controller determines appropriate to the performance
13 of the duties set forth in this Chapter. After the hearing by the Planning Commission, but not
14 later than August 1, 2015, the Controller shall determine whether the current fees have
15 produced or are projected to produce revenues sufficient to support the costs of establishing
16 and maintaining the registry, enforcing the requirements of this Chapter 41A and any other
17 services set forth in this Chapter and that the fees will not produce revenue that is significantly
18 more than the costs of providing such services. The Controller shall, if necessary, adjust the
19 fees upward or downward for the upcoming fiscal year as appropriate to ensure that the
20 program recovers the costs of operation without producing revenue that is significantly more
21 than such costs. The adjusted rates shall become operative on July 1.

22 (C) **Reporting Requirement.** To maintain good standing on the
23 Registry, the Permanent Resident shall submit a report to the Department on January 1 of
24 each year regarding the number of days the Residential Unit or any portion thereof has been
25 rented as a Short-Term Residential Rental since either initial registration or the last report,

1 whichever is more recent, and any additional information the Department may require to
2 demonstrate compliance with this Chapter 41A.

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

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

11 (B) A Hosting Platform shall comply with the requirements of the
12 Business and Tax Regulations Code by, among any other applicable requirements, collecting
13 and remitting all required Transient Occupancy Taxes, and this provision shall not relieve a
14 Hosting Platform of liability related to an occupant's, resident's, Business Entity's, or Owner's
15 failure to comply with the requirements of the Business and Tax Regulations Code. A Hosting
16 Platform shall maintain a record demonstrating that the taxes have been remitted to the Tax
17 Collector and shall make this record available to the Tax Collector upon request.

18 (C) Prior to listing a Residential Unit within the City to be rented for Tourist or
19 Transient Use, a Hosting Platform shall verify with the Planning Department that the Residential Unit
20 is listed on the Registry. A Hosting Platform shall not provide any such listing unless the listing
21 includes a registration number and the Hosting Platform has verified that the Residential Unit is listed
22 on the Registry. Additionally, if a Hosting Platform has information that a Residential Unit has been
23 rented for Tourist or Transient Use for more than ~~60~~75 days within a calendar year, the Hosting
24 Platform shall immediately remove such listing from its platform.

1 (D) Reporting Requirement. A Hosting Platform that collects data indicating
2 whether a Residential Unit has been rented for a given day, shall submit a quarterly report to the
3 Department indicating the number of nights a Residential Unit in the City was rented for Tourist or
4 Transient Use. This report shall include the street address, including unit number, of the Residential
5 Unit and the number of days, with dates and duration of stay, the Residential Unit was rented for
6 Tourist or Transient Use.

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

13 (5) The exception set forth in this subsection (g) provides an exception only to
14 the requirements of this Chapter 41A. It does not confer a right to lease, sublease, or
15 otherwise offer a residential unit for Short-Term Residential Use where such use is not
16 otherwise allowed by law, a homeowners association agreement or requirements, any
17 applicable covenant, condition, and restriction, a rental agreement, or any other restriction,
18 requirement, or enforceable agreement. All Owners and residents are required to comply with
19 the requirements of Administrative Code Chapter 37, the Residential Rent Stabilization and
20 Arbitration Ordinance, including but not limited to the requirements of Section 37.3(c).

21 Additionally, this Chapter 41A shall not be construed as precluding an otherwise lawful application to
22 conduct a Tourist or Transient Use where such use is permitted or conditionally permitted under the
23 Planning Code.

24 * * * *

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

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

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

9 (2) If the Complaint concerns the failure of a Hosting Platform to comply with the
10 requirements of subsections 41A.5(g)(4)(A), (C), or (D), within 30 days of the filing of the
11 Complaint and upon the Director's independent finding that there may be a violation of this
12 Chapter, the Director shall notify the Hosting Platform by certified mail that the Hosting
13 Platform is the subject of an investigation for failure to comply with the requirements of that
14 subsection and provide the date, time, and place of an administrative review hearing in which
15 the Hosting Platform can respond to the Complaint.

16 * * * *

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

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

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

24 (B) ~~F~~For the second violation by the same Owner(s), Business Entity, or
25 Hosting Platform, not more than eight times the standard hourly administrative rate of \$121.00

1 for each unlawfully converted unit, or for each identified failure of a Hosting Platform to comply
2 with the requirements of subsection 41A.5 (g)(4)(A), (C), or (D), per day from the day the
3 unlawful activity commenced until such time as the unlawful activity terminates; and
4 (C) ~~f~~For the third and any subsequent violation by the same Owner(s),
5 Business Entity, or Hosting Platform, not more than twelve times the standard hourly
6 administrative rate of \$121.00 for each unlawfully converted unit or for each identified failure
7 of a Hosting Platform to comply with the requirements of subsection 41A.5 (g)(4)(A), (C), or
8 (D) per day from the day the unlawful activity commenced until such time as the unlawful
9 activity terminates.

10 (2) **Prohibition on Registration and Listing Unit(s) on Any Housing**

11 **Platform.** In the event of multiple violations, the Department shall remove the Residential
12 Unit(s) from the Registry for one year and include the Residential Unit(s) on a list maintained
13 by the Department of Residential Units that may not be listed on any Hosting Platform until
14 compliance. Any Owner or Business Entity who continues to list a Residential Unit in violation
15 of this section shall be liable for additional administrative penalties and civil penalties of up to
16 \$1,000 per day of unlawful inclusion. Any Hosting Platform that continues to list a Residential Unit
17 in violation of this subsection and subsection 41A.5(g)(4)(C) shall be liable for additional
18 administrative and civil penalties of up to \$1,000 per day of unlawful inclusion.

19 * * * *

20
21 Section 3. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.

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

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10
11 By: _____
12 MARLENA G. BYRNE
Deputy City Attorney

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