

LEGISLATIVE DIGEST

[Planning, Administrative Codes - Residential Occupancy]

Ordinance amending the Planning Code to create the Intermediate Length Occupancy residential use characteristic; amending 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 impacts of new Intermediate Length Occupancy units in the City; affirming the Planning Department’s determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Planning Code Section 102 defines Residential Use as a category of uses that “provide housing for San Francisco residents, rather than visitors.” Under Planning Code Section 102, a Use Characteristic is a “feature of a Use, related to its physical layout, location, design, access, or other characteristics.” The Planning Code regulates Residential Uses, and Use Characteristics through the zoning controls.

The City’s Rent Ordinance (Admin. Code Ch. 37) protects tenants in covered rental units from evictions without just cause. Expiration of a lease generally is not a just cause to evict. See Admin. Code § 37.2(a)(2). In addition, an agreement that requires a tenant to waive their rights under Chapter 37 is void as contrary to public policy. Id. § 37.9(e).

Amendments to Current Law

The legislation would amend the Planning Code and create a new Residential Use Characteristic -- Intermediate Length Occupancy. In addition to being subject to the zoning table of the relevant zoning district, the Use Characteristic would be subject to a new section 202.10. Section 202.10 would state that the Use Characteristic applies to development projects proposing construction of ten or more new Dwelling Units. A request to establish such use would be subject to a Conditional Use Authorization, which would require the Planning Commission to make specific findings. The legislation would provide that no more than 500 Intermediate Length Occupancy units would be permitted. Inclusionary and other below-market-rate units, and units subject to the Rent Ordinance would not be eligible for this Use Characteristic, and the use characteristic would not apply to Residential Hotels, or

Student Housing. The legislation would also require annual reporting by an owner or operator of an Intermediate Length Occupancy unit.

The legislation would amend the Rent Ordinance in several respects:

- First, it would clarify existing law (see Admin. Code §§ 37.9(a)(2), 37.9(e)) by stating that an agreement that would require a tenant to vacate a rental unit at the expiration of a stated term (a “fixed-term agreement”) is void as contrary to public policy, unless an existing just cause exception applies (for example, where the landlord resides in the same rental unit as the tenant).
- Second, it would regulate “non-tenant uses” by restricting when landlords can allow their units to be occupied by persons or entities who are not tenants. Renting a rental unit to a corporate entity or other non-natural person for any purpose, or using a rental unit as housing for one’s employees or “licensees,” are examples of non-tenant uses. Commencing February 1, 2020, it would be unlawful to use a rental unit for a non-tenant use, and any such “non-tenants” would be deemed tenants and could seek just cause protections as forth in the Rent Ordinance. However, the prohibition on non-tenant uses would not apply (1) if the landlord has entered into a contract before February 1, 2020 that specifically authorized the non-tenant use; (2) to the use of a rental unit as a lawful short-term rental under Administrative Code Chapter 41A; (3) where the landlord is using the unit to house an employee in charge or maintaining or managing the building; or (4) to rental units operated by non-profits that provide housing as part of their primary mission.
- The legislation would also require landlords to include a disclosure when advertising their rental units online. The disclosure would state that the unit is subject to the Rent Ordinance, and that the Rent Ordinance limits evictions with just cause, and that any waiver by a tenant of their rights under the Rent Ordinance is void as contrary to public policy. The Rent Board would have the power to monitor violations and impose administrative penalties for violations that are not timely corrected.
- Finally, the legislation would authorize the City Attorney or a non-profit tenants’ rights organization to sue for civil penalties.

The legislation would also direct the Controller, in consultation with the Planning Department and other City agencies as necessary, to conduct a study to analyze the impacts created by the development of new Intermediate Length Occupancy units on the City and relevant City services.