

[Administrative Code – Amending Regulation of Short-Term Residential Rentals]

Ordinance amending Chapter 41A of the Administrative Code to prohibit certain residential units that have been the subject of an Ellis Act eviction from use as short-term residential rentals and provide for private rights of action to enforce the requirements of this Chapter; 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. The Board of Supervisors of the City and County of San Francisco hereby finds and determines that:

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

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

SEC. 41A.4. DEFINITIONS.

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

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
7 Permanent 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
10 maintains good standing on the Department's Short-Term Residential Rental Registry; and

11 (d) the Residential Unit: is not subject to the Inclusionary Affordable Housing
12 Program set forth in Planning Code Section 415 et seq.; is not a residential hotel unit subject
13 to the provisions of Chapter 41, unless such unit has been issued a Permit to Convert under
14 Section 41.12; is not otherwise a designated as a below market rate or income-restricted
15 Residential Unit under City, state, or federal law; has not been the subject of an eviction
16 pursuant to the Ellis Act and Administrative Code Section 37.9(a)(13) within the five year
17 period prior to applying for the Registry if such eviction occurred after November 1, 2014; and
18 no other requirement of federal or state law, this Municipal Code, or any other applicable law
19 or 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 information regarding Permanent Residents who
23 are permitted to offer Residential Units for Short-Term Residential Rental. Only one
24 Permanent Resident per Residential Unit may be included on the Registry at any given time.
25 The Registry shall be available for public review to the extent required by law, except that, to

1 the extent permitted by law, the Department shall redact any Permanent Resident names from
2 the records available for public review.

3 * * * *

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

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

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

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

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

12 * * * *

13 (c) **Determination of Violation.** Upon the filing of a written Complaint that an
14 Owner or Business Entity has engaged in an alleged unlawful Conversion or that a Hosting
15 Platform 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,
6 including civil penalties, against an Owner, Business Entity, or Hosting Platform for violations
7 of this Chapter 41A at any time. Following the filing of a Complaint and the determination of a
8 violation by the Director through an administrative review hearing as set forth in this Chapter
9 41A, ~~the City may institute civil proceedings for injunctive and monetary relief against a~~
10 ~~Hosting Platform for violation of subsection (g)(4)(A) or the City or any other Interested Party~~
11 may institute civil proceedings for injunctive and monetary relief against an Owner or Business
12 Entity.

13 (2) Notwithstanding subsection (d)(1), an Interested Party that is a non-profit
14 organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code
15 that has the preservation or improvement of housing as a stated purpose in its articles of
16 incorporation or bylaws may institute a civil action against the Owner or Business Entity in the
17 timeframe provided in this subsection (d)(2) if, within 60 months prior to the date of the filing of
18 the Complaint, the Owner or Business Entity terminated the tenancy of one or more tenants in
19 the building pursuant to Administrative Code Section 37.9(a)(13) where the tenant was served
20 with a notice of eviction after October 7, 2014. An Interested Party may institute a civil action
21 under this subsection (d)(2) only if:

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

23 (B) 30 days have passed since the filing of the Complaint;

1 (C) After such 30-day period has passed, the Interested Party has
2 provided 30 days' written notice to the Department and the City Attorney's Office of its intent
3 to initiate civil proceedings; and

4 (D) The City has not initiated civil proceedings by the end of that 30-
5 day period.

6 (3) Notwithstanding subsection (d)(1), an Interested Party that is a non-profit
7 organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code
8 that has the preservation or improvement of housing as a stated purpose in its articles of
9 incorporation or bylaws and has existed as such for no less than five years from February 1,
10 2015, may institute civil proceedings against an Owner or Business Entity of a rent-controlled
11 building of at least three Residential Units for injunctive relief. An Interested Party initiating
12 civil proceedings under this subsection (d)(3) shall not be entitled to damages. An Interested
13 Party may institute a civil action under this subsection (d)(2) only if:

14 (A) The Interested Party has filed a Complaint with the Department;

15 (B) 45 days have passed since the filing of the Complaint; and

16 (C) After such 45-day period has passed, the Interested Party has
17 provided written notice to the Department and the City Attorney's Office of its intent to initiate
18 civil proceedings.

19 (4) In addition, if the City is the prevailing party in any civil action under this
20 subsection (d), an Owner or Business Entity in violation of this Chapter or a Hosting Platform
21 in violation of subsection (g)(4)(A) may be liable for civil penalties of not more than \$1,000 per
22 day for the period of the unlawful activity; other Interested Parties may not seek civil penalties.
23 If the City or any other the Interested Party is the prevailing party, the City or the Interested
24 Party shall be entitled to the costs of enforcing this Chapter 41A, including reasonable
25 attorneys' fees pursuant to an order of the Court. Any monetary award obtained by the City

1 and County of San Francisco in such a civil action shall be deposited in the Department to be
2 used for enforcement of Chapter 41A. The Department, through the use of these funds, shall
3 reimburse City departments and agencies, including the City Attorney's Office, for all costs
4 and fees incurred in the enforcement of this Chapter 41A.

5 * * * *

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

7 * * * *

8 (4) Requirements for Hosting Platforms.

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

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

23 (C) Any violation of a Hosting Platform's responsibilities under
24 subsection (g)(~~54~~)(A) shall subject the Hosting Platform to the administrative penalties and
25 enforcement provisions of this Chapter, including but not limited to payment of civil penalties

1 of up to \$1,000 per day for the period of the failure to comply, with the exception that any
2 violation related to failure to comply with the requirements of the Business and Tax
3 Regulations Code shall be enforced by the Treasurer/Tax Collector under that Code.

4 * * * *

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6 Section 3. Other Uncodified Provisions.

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

11 (b) Undertaking for the General Welfare. In enacting and implementing this
12 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
13 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
14 would be liable in money damages to any person who claims that such breach proximately
15 caused injury.

16 (c) No Conflict with State or Federal Law. Nothing in this ordinance shall be
17 interpreted or applied so as to create any requirement, power, or duty in conflict with any
18 State or federal law.

19 (d) Severability. If any of section, subsection, sentence, clause, phrase or word of
20 this ordinance is for any reason held to be invalid or unconstitutional by a decision of any
21 court of competent jurisdiction, such decision shall not affect the validity of the remaining
22 portions of the ordinance. The Board of Supervisors hereby declares that it would have
23 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and
24 word not declared invalid or unconstitutional without regard to whether any other portion of
25 this ordinance would be subsequently declared invalid or unconstitutional.

1 (e) 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.

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

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

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