

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

4 **Ordinance amending the San Francisco Administrative Code by amending Chapter 41A**
5 **to 1) extend the restrictions against converting apartment units to short-term**
6 **occupancies to tenants or guests of business entities that rent such apartments; (2)**
7 **allow civil actions to be brought by certain non-profit entities; (3) revise enforcement**
8 **procedures; and 4) making environmental findings.**

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

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

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

20 Section 2. The San Francisco Administrative Code is hereby amended by Chapter
21 41A, to read as follows:

22 **CHAPTER 41A: ~~APARTMENT~~ RESIDENTIAL UNIT CONVERSION AND**
23 **DEMOLITION**

24 Sec. 41A.1. Title.

25 Sec. 41A.2. Purpose.

1 Sec. 41A.3. Findings.

2 Sec. 41A.4. Definitions.

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

4 ~~Sec. 41A.6. Report on Apartment Conversion.~~

5 ~~Sec. 41A.7. Construction.~~

6 Sec. 41A.86. Procedures for Determining ~~and Appealing~~ Administrative Penalties.

7 ~~Sec. 41A.7. Construction~~

8 **SEC. 41A.1. TITLE.**

9 This chapter shall be known as the ~~Apartment~~ Residential Unit Conversion Ordinance.

10 **SEC. 41A.2. PURPOSE.**

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

16 **SEC. 41A.3. FINDINGS.**

17 The Board of Supervisors finds that:

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

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

23 (c) Many of the City and County's elderly, disabled and low-income persons and
24 households reside in ~~apartment~~ affordable residential units.

1 (d) As a result of the removal of *apartment residential* units from the *rental* housing
2 market, a housing emergency exists within the City and County of San Francisco for its
3 elderly, disabled 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 residential* units to tourist and transient use.

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

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

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

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

22 (b) Residential Use. Any use for occupancy ~~as~~ of a dwelling unit by a permanent
23 resident.

24 (c) Tourist or Transient Use. Use of an ~~apartment~~ *residential* unit for occupancy ~~on~~ for
25 less than a 30-day term of tenancy, or occupancy for less than 30 days of a residential unit leased

1 or owned by a business entity, whether on a short-term or long term basis, including any occupancy by
2 employees or guests for less than 30 days where payment for the residential unit is contracted for or
3 paid by the business entity.

4 (d) Permanent Resident. A person who occupies an apartment residential unit for at least
5 60 consecutive days with intent to establish that unit as his or her principal place of residence.

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

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

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

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 (1) any owner to offer an apartment
19 residential unit for rent for tourist or transient use, (2) any owner to offer a residential unit for rent
20 to a business entity that will allow the use of a residential unit for tourist or transient use, or (3) any
21 business entity to allow the use of a residential unit for tourist or transient use.

22 (b) Records Required. The owner and business entity shall retain and make available to the
23 Department of Building Inspection occupancy records to demonstrate compliance with this Chapter.

24 (bc) Determination of Violation. Upon the filing of a complaint by a permanent resident
25 that an unlawful conversion has occurred, the Director shall take reasonable steps necessary

1 to determine the validity of the complaint. The Director may independently determine whether
2 an owner or business entity may be renting an ~~apartment-residential~~ unit for tourist or transient
3 use as defined in this Chapter. To determine if there is a violation of this Chapter, the Director
4 may initiate an investigation of the subject property. This investigation may include, but is not
5 limited to, an inspection of the subject property and a request for any pertinent information
6 from the owner, such as leases or other documents. The Director shall have discretion to
7 determine whether there is a potential violation of this Chapter 41A and whether to conduct an
8 administrative review hearing as set forth below.

9 (ed) Civil Action. ~~Except as provided by Subsection (1) below, Following the filing of a~~
10 ~~complaint and the determination of a violation by the Director through an administrative review~~
11 ~~hearing as set forth in this Chapter 41A, Any~~ interested party may institute proceedings for
12 injunctive and monetary relief ~~for violation of this Chapter~~. In addition, the owner or business entity
13 may be liable for civil penalties of not more than \$1,000 per day for the period of the unlawful
14 rental. If the City or the interested party is the prevailing party, ~~such~~ the City or the interested
15 party shall be entitled to the costs of enforcing this Chapter, including reasonable attorneys'
16 fees, up to the amount of the monetary award, pursuant to an order of the Court. ~~If the interested~~
17 ~~party is a permanent resident, then the interested party shall retain the entire monetary award.~~ Any
18 monetary award obtained by the City and County of San Francisco in such a civil action shall
19 be 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 the civil action.

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

23 (de) Criminal Penalties. Any owner or business entity who rents an ~~apartment-residential~~
24 unit for tourist or transient use as defined in this Chapter shall be guilty of a misdemeanor.
25 Any person convicted of a misdemeanor hereunder shall be punishable by a fine of not more

1 than \$1,000 or by imprisonment in the County Jail for a period of not more than six months, or
2 by both. Each *apartment residential* unit rented for tourist or transient use shall constitute a
3 separate offense.

4 (ef) Method of Enforcement, Director. The Director shall have the authority to enforce
5 this Chapter against violations thereof by any or all of the means provided for in this
6 ~~Section~~ Chapter 41A.

7 **~~SEC. 41A.6. REPORT ON APARTMENT CONVERSION.~~**

8 ~~(a) The Department of City Planning shall report to the Board of Supervisors on the conversion~~
9 ~~of apartment units to tourist and commercial uses and shall formulate comprehensive legislation for the~~
10 ~~Board of Supervisors to consider within one year of the passage of this ordinance.~~

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

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

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

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

21 **~~SEC. 41A.76. CONSTRUCTION.~~**

22 ~~(a) Nothing in this Chapter may be construed to supersede any other lawfully enacted~~
23 ~~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 of this~~
2 ~~chapter or the application thereof is held to be unconstitutional or to be otherwise invalid by any court~~
3 ~~of competent jurisdiction, such invalidity shall not affect other provisions of this Chapter.~~

4 **SEC. 41A.86. PROCEDURES FOR DETERMINING ~~AND APPEALING~~**
5 **ADMINISTRATIVE PENALTIES.**

6 (a) Notice of Complaint. Within ~~10~~15 days of the filing of a complaint ~~or~~and upon the
7 Director's independent finding that there may be a violation of this Chapter, the Director shall
8 notify the owner by certified mail that the owner's ~~apartment~~ residential unit is the subject of an
9 investigation for an unlawful use rental and provide the date, time, and place of an administrative
10 review hearing in which the owner can respond to the complaint.

11 ~~(b) Administrative Review Hearing; Director's Determination of a Violation; Notice. In the~~
12 ~~event the Director determines that an administrative review hearing shall be conducted, the Director's~~
13 ~~appointed hearing officer will hold an administrative review hearing within 60 days of the filing of the~~
14 ~~complaint to~~Upon reviewing the all information set forth in the complaint, if any, and any information
15 obtained by the Director during his or her provided by the Interested Party, members of the public, City
16 staff and the Owner for the investigation, and the Director hearing officer shall thereafter make a
17 determinatione whether the an owner has violated this Chapter. The Director shall notify by
18 certified mail the complainant and the owner of his or her determination.

19 (1) Notice of the hearing shall be conspicuously posted on the building that is the subject of the
20 hearing. The owner shall state under oath at the hearing that the notice remained posted for at least 10
21 calendar days prior the hearing. The Director shall appoint a hearing officer to conduct the hearing.

22 (2) Pre-hearing Submission. No less than ten working days prior to the administrative review
23 hearing, parties to the hearing shall submit written information to the Director including, but not
24 limited to, the issues to be determined by the hearing officer and the evidence to be offered at the
25

1 hearing. Such information shall be forwarded to the hearing officer prior to the hearing along with any
2 information compiled by the Director.

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

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

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

19 (6) Hearing Officer Decision and Collection of Penalties. If any imposed administrative
20 penalties and costs have not been deposited at the time of the Hearing Officer's decision, the Director
21 may proceed to collect the penalties and costs pursuant to the lien procedures set forth in Subsection
22 41A.6(e), consistent with the Hearing Officer's decision.

23 ~~(4)~~ (7) Remedy of Violation. If the ~~Hearing Officer~~ Director determines that a violation has
24 occurred, the ~~Director's notice shall:~~ Hearing Officer's Decision should:

1 (iA) Specify a reasonable period of time during which the owner must correct or
2 otherwise remedy the violation; and

3 (iiB) State that if the violation is not corrected or otherwise remedied within this
4 period, the owner may be required to pay the administrative penalties set forth in
5 Subsection 41A.6(c).

6 (82) If the ~~Hearing Officer~~ Director determines that no violation has occurred, ~~for purposes~~
7 ~~of filing a civil action authorized by Section 41A.5(e)(1)~~, the Director's determination is final.

8 (c) Imposition of Administrative Penalties for Unabated Violations and Enforcement
9 Costs.

10 (1) Administrative Penalties. If the ~~Director, upon further investigation, finds that the~~
11 violation has continued unabated beyond the time specified in the notice required by ~~the~~
12 ~~Hearing Officer, in Subsection (b)(1)(A), the Director may impose~~ an administrative penalty of not
13 more than ~~three~~ four times the standard hourly administrative rate of \$104.00 ~~rental rate shall be~~
14 charged for each unlawfully converted unit from the day the unlawful ~~rental~~ use commenced
15 until such time as the unlawful ~~use rental~~ terminates. ~~The rental rate charged shall be the rent~~
16 ~~charged, whether daily, weekly, or otherwise calculated, for the apartment unit during the period of the~~
17 ~~unlawful use.~~

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

21 (d) Notice of ~~Director's Determination of~~ Continuing Violation and Imposition of Penalties.
22 The Director shall notify the owner by certified mail that the violation has continued unabated
23 and that administrative penalties shall be imposed pursuant to ~~Subsection (e)~~ this Chapter 41A.
24 The notice shall state the basis time of the ~~Director's determination regarding the~~ continued
25 existence of the violation and the resulting imposition of penalties. ~~The notice also shall inform~~

1 ~~the owner of the right to request a hearing within 10 days of the notice date to contest the Director's~~
2 ~~determination on the continuation of the violation and the imposition of penalties. (e) Confirmation of~~
3 ~~Continuing Violation and Imposition of Penalties. If no request is timely filed for an administrative~~
4 ~~review hearing, the Director's determination regarding the continuation of the violation and the~~
5 ~~imposition of penalties shall be deemed confirmed. The Director may then request p~~Payment of the
6 administrative penalties and enforcement costs shall be made within 30 days of the certified
7 mailed notice to the owner. If the administrative penalties and enforcement costs are not paid,
8 the Director ~~is authorized to~~ shall initiate lien procedures to secure the amount of the penalties
9 and costs against the real property that is subject to this Chapter, under Article XX of Chapter
10 10 of the San Francisco Administrative Code to make the penalty, plus accrued interest, a lien against
11 the real property regulated under this Chapter. Except for the release of the lien recording fee
12 authorized by Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to
13 this ordinance shall be held in trust by the Treasurer and distributed as provided in Section 41A.5(d) of
14 this Chapter. pursuant to the provisions of Section 41.20(d) of this Code; provided however, that the
15 City Treasurer shall distribute all sums collected pursuant to Subsection (l1) herein.

16 ~~(f) Notice of Administrative Review Hearing. Whenever an administrative review hearing is~~
17 ~~requested pursuant to Subsection (d), the Director, within 45 calendar days of the request, shall notify~~
18 ~~the owner of the date, time, and place of the hearing by certified mail. Notice of the hearing shall be~~
19 ~~conspicuously posted on the building that is the subject of the hearing. The owner shall state under~~
20 ~~oath at the hearing that the notice remained posted for at least 10 calendar days prior the hearing. The~~
21 ~~Director shall appoint a hearing officer to conduct the hearing.~~

22 ~~(g) Pre hearing Submission. No less than three working days prior to the administrative review~~
23 ~~hearing, parties to the hearing shall submit written information to the Department of Building~~
24 ~~Inspection including, but not limited to, the following: the issues to be determined by the hearing officer~~

1 ~~and the evidence to be offered at the hearing. Such information shall be forwarded to the hearing~~
2 ~~officer prior to the hearing along with any information compiled by the Director.~~

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

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

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

21 ~~(k) Collection of Penalties after Municipal Court Decision. If the court finds in favor of the~~
22 ~~contestant, the amount of the municipal court filing fee shall be reimbursed to the contestant by the City~~
23 ~~and County of San Francisco. If the administrative penalty has been deposited, the City and County of~~
24 ~~San Francisco shall distribute the administrative penalty in accordance with the judgment of the court.~~

1 *If the administrative penalties and enforcement costs have not been deposited and the decision of the*
2 *municipal court is against the contestant, the Director may proceed to collect the penalties and costs.*

3 (ge) Deposit of Penalties. Administrative penalties paid pursuant to this Chapter shall
4 be deposited in the Mayor's Office of Housing, Housing Affordability Fund less the reasonable
5 costs incurred by the City and County of San Francisco in pursuing enforcement under this
6 Chapter 41A. the lien procedures set forth in Subsection (e), if such procedures were undertaken. If
7 enforcement costs were imposed pursuant to Subsection (e), such funds shall be distributed
8 according to the purpose for which they were collected.

9 **SEC. 41A.7. CONSTRUCTION.**

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

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

15 Section 3. Effective Date. This ordinance shall become effective 30 days from the
16 date of passage.

17 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to
18 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
19 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that

20 //

21 //

22 //

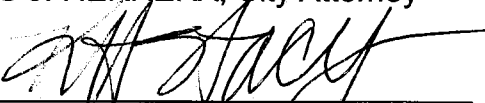
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1 are explicitly shown in this legislation as additions, deletions, Board amendment additions,
2 and Board amendment deletions in accordance with the "Note" that appears under the official
3 title of the legislation.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By:


8 KATE HERRMANN STACY
9 Deputy City Attorney



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 120299

Date Passed: October 23, 2012

Ordinance amending the San Francisco Administrative Code by amending Chapter 41A to 1) extend the restrictions against converting apartment units to short-term occupancies to tenants or guests of business entities that rent such apartments; (2) allow civil actions to be brought by certain non-profit entities; (3) revise enforcement procedures; and 4) making environmental findings.

October 01, 2012 Land Use and Economic Development Committee - RECOMMENDED

October 16, 2012 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener


October 23, 2012 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Campos, Chiu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

Excused: 1 - Chu

File No. 120299

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 10/23/2012 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board



Mayor



Date Approved