

1 [Administrative Code - Short-Term Residential Rentals]

2

3 **Ordinance amending the Administrative Code to revise the Residential Unit Conversion**
 4 **Ordinance to: limit short-term rental of a Residential Unit to no more than 120 days per**
 5 **calendar year; revise the definition of Interested Parties who may enforce the**
 6 **provisions of Chapter 41A, through a private right of action to include Permanent**
 7 **Residents residing within 100 feet of the Residential Unit; create an additional private**
 8 **right of action under certain circumstances; direct the Mayor to create an Office of**
 9 **Short-Term Residential Rental Administration and Enforcement staffed by the Planning**
 10 **Department, Department of Building Inspection, and Tax Collector's Office; and**
 11 **affirming the Planning Department's determination under the California Environmental**
 12 **Quality Act.**

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

17

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

19

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

25

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 Registry or Registry.** A database of information
21 maintained by the Department that includes information regarding Permanent Residents who
22 are permitted to offer Residential Units for Short-Term Residential Rental. Only one
23 Permanent Resident per Residential Unit may be included on the Registry at any given time.
24 The Registry shall be available for public review to the extent required by law, except that, to
25

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

20 (c) **Determination of Violation.** Upon the filing of a written Complaint that an Owner
21 or Business Entity has engaged in an alleged unlawful Conversion or that a Hosting Platform
22 is not complying with the requirements of subsection (g)(4)(A), the Director shall take
23 reasonable steps necessary to determine the validity of the Complaint. The Director may
24 independently determine whether an Owner or Business Entity may be renting a Residential
25 Unit for Tourist or Transient Use in violation of this Chapter 41A or whether a Hosting Platform

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

11 (d) **Civil Action.**

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

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

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

23 (B) An Interested Party who is a Permanent Resident of the building in which
24 the Tourist or Transient Use is alleged to occur, is a Permanent Resident of a property within 100 feet
25 of the property containing the Residential Unit in which the Tourist or Transient Use is alleged to

1 occur, or is a homeowner association associated with the Residential Unit in which the Tourist or
2 Transient Use is alleged to occur may institute a civil action for injunctive and monetary relief against
3 an Owner or Business Entity if:

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

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

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

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

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

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

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

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

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

6 * * * *

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

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

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

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

22 * * * *

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

24 (A) **Notice to Users of Hosting Platform.** All Hosting Platforms shall
25 provide the following information in a notice to any user listing a Residential Unit located

1 within the City and County of San Francisco through the Hosting Platform's service. The
2 notice shall be provided prior to the user listing the Residential Unit and shall include the
3 following information: that Administrative Code Chapters 37 and 41A regulate Short-Term
4 Rental of Residential Units; the requirements for Permanent Residency and registration of the
5 unit with the Department; and the transient occupancy tax obligations to the City.

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

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

19 * * * *

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

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

22 (1) Within 30 days of the filing of a Complaint and upon the Director's
23 independent finding that there may be a violation of this Chapter 41A, the Director shall notify
24 the Owner by certified mail that the Owner's Residential Unit is the subject of an investigation
25 for an unlawful use and provide the date, time, and place of an administrative review hearing

1 in which the Owner can respond to the Complaint. ~~If the Director finds there is no violation of this~~
2 ~~Chapter or basis for an investigation for an unlawful activity, the Director shall so inform the~~
3 ~~complainant within 30 days of the filing of the Complaint.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (A) For the initial violation, not more than four times the standard hourly
24 administrative rate of \$121.00 for each unlawfully converted unit, or for each identified failure
25

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

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

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

14 (2) **Prohibition on Registration and Listing Unit(s) on Any Housing**
15 **Platform.** In the event of multiple violations, the Department shall remove the Residential
16 Unit(s) from the Registry for one year and include the Residential Unit(s) on a list maintained
17 by the Department of Residential Units that may not be listed on any Hosting Platform until
18 compliance. Any Owner or Business Entity who continues to list a Residential Unit in violation
19 of this section shall be liable for additional administrative penalties and civil penalties of up to
20 \$1,000 per day of unlawful inclusion.

21 * * * *

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

24 The Mayor shall establish an Office of Short-Term Residential Rental Administration and
25 Enforcement, which shall provide a single location to receive and process applications for the Registry

1 and which shall be staffed by the Department, the Department of Building Inspection, and the Tax
2 Collector's Office as needed to process applications for the Registry and enforce the requirements of
3 this Chapter 41A in a timely and efficient manner. It is the intent of this Board in directing the
4 establishment of this office to streamline both the process of administering the Registry and enforcing
5 the requirements of this Chapter 41A to protect residential housing from unlawful conversion to Tourist
6 or Transient Use.

7 **SEC. 41A.8 CONSTRUCTION.**

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

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

14
15 Section 3. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance.

19
20 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
24 additions, and Board amendment deletions in accordance with the "Note" that appears under
25 the official title of the ordinance.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3
4 By: _____
5 MARLENA BYRNE
6 Deputy City Attorney

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