

BOARD of SUPERVISORS



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MEMORANDUM

TO: Kevin Guy, Director, Office of Short-Term Rental Administration and Enforcement
John Rahaim, Director, Planning Department

FROM: Alisa Somera, Legislative Deputy Director
Land Use and Transportation Committee

DATE: October 25, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Breed on October 18, 2016:

File No. 161093

Ordinance amending the Administrative Code to revise the Residential Unit Conversion Ordinance to limit short-term rental of a residential unit to no more than 60 days per calendar year if the unit was registered on or after October 11, 2016; prohibit neighbors outside the building at issue from filing a private right of action; allow certain nonprofit organizations to file a private right of action prior to a final determination of a violation by the Director of the Planning Department; shorten the waiting period for certain interested parties to file a private right of action; and affirming the Planning Department's determination under the California Environmental Quality Act.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Scott Sanchez, Planning Department
Lisa Gibson, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department

1 [Administrative Code - Short-Term Residential Rental Limit of 60 Days Per Year and Private
2 Right of Action]

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 60 days per**
5 **calendar year if the unit was registered on or after October 11, 2016; prohibit neighbors**
6 **outside the building at issue from filing a private right of action; allow certain nonprofit**
7 **organizations to file a private right of action prior to a final determination of a violation**
8 **by the Director of the Planning Department; shorten the waiting period for certain**
9 **interested parties to file a private right of action; and affirming the Planning**
10 **Department's determination under the California Environmental Quality Act.**

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

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

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

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

SEC. SEC. 41A.4. DEFINITIONS.

1 * * * *

2 **Interested Party.** A Permanent Resident of the building in which the Tourist or
3 Transient Use is alleged to occur, any homeowner association associated with the Residential
4 Unit in which the Tourist or Transient Use is alleged to occur, the Owner of the Residential
5 Unit in which the Tourist or Transient Use is alleged to occur, ~~a Permanent Resident or Owner of~~
6 ~~a property within 100 feet of the property containing the Residential Unit in which the Tourist or~~
7 ~~Transient Use is alleged to occur~~, the City and County of San Francisco, or any non-profit
8 organization exempt from taxation pursuant to Title 26, Section 501 of the United States
9 Code, which has the preservation or improvement of housing as a stated purpose in its
10 articles of incorporation or bylaws.

11 * * * *

12 **41A.5. UNLAWFUL CONVERSION; REMEDIES.**

13 * * * *

14 (d) **Civil Action.**

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

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

20 (A) Following the filing of a Complaint and the final determination of a
21 violation by the Director, any Interested Party may institute civil proceedings for injunctive and
22 monetary relief against an Owner or Business Entity.

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

1 ~~alleged to occur~~, (ii) is a non-profit organization exempt from taxation pursuant to Title 26, Section
2 501 of the United States Code, which has the preservation or improvement of housing as a stated
3 purpose in its articles of incorporation or bylaws, or (iii) is a homeowner association associated
4 with the Residential Unit in which the Tourist or Transient Use is alleged to occur may institute
5 a civil action for injunctive and monetary relief against an Owner or Business Entity if

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

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

10 (iii) An administrative hearing officer has not issued a final
11 determination pursuant to subsection 41A.6(c) regarding the Complaint within ~~135~~30 days of
12 the filing of the Complaint with the Department;

13 (iv) After such ~~135~~30-day period has passed, the Interested Party
14 has provided 30 days' written notice to the Department and the City Attorney's Office of its
15 intent to initiate civil proceedings; and

16 (v) The City has not initiated civil proceedings by the end of that
17 30-day notice period or the City Attorney's Office has informed the Interested Party in writing that
18 the City Attorney's Office does not intend to initiate civil proceedings during the 30-day notice period.

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

22 * * * *

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

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

1 (A) The Permanent Resident occupies the Residential Unit for no less
2 than 275 days out of the calendar year in which the Residential Unit is rented as a Short-Term
3 Residential Rental or, if the Permanent Resident has not rented or owned the Residential Unit
4 for the full preceding calendar year, for no less than 75% of the days he or she has owned or
5 rented the Residential Unit, and in either case the Permanent Resident submits a complete
6 application to register the Residential Unit on the Registry:

7 (i) prior to October 11, 2016, and the Residential Unit is rented as a
8 Short-Term Residential Rental for no more than 90 days per calendar year at times when the
9 Permanent Resident is not also occupying the Residential Unit and for an unlimited number of days per
10 year at times when the Permanent Resident is also occupying the Residential Unit; or

11 (ii) on or after October 11, 2016, and the Residential Unit is rented as a
12 Short-Term Residential Rental for no more than 60 days per calendar year regardless of whether the
13 Permanent Resident is also occupying the Residential Unit during a given short-term rental period;

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

21 (C) The Permanent Resident complies with any and all applicable
22 provisions of state and federal law and the San Francisco Municipal Code, including but not
23 limited to the requirements of the Business and Tax Regulations Code by, among any other
24 applicable requirements, collecting and remitting all required transient occupancy taxes, and
25 the occupancy requirements of the Housing Code;

1 (D) The Permanent Resident maintains liability insurance appropriate to
2 cover the Short-Term Residential Rental Use in the aggregate of not less than \$500,000 or
3 conducts each Short-Term Residential Rental transaction through a Hosting Platform that
4 provides equal or greater coverage. Such coverage shall defend and indemnify the Owner(s),
5 as named additional insured, and any tenant(s) in the building for their bodily injury and
6 property damage arising from the Short-Term Residential Use;

7 (E) The Residential Unit is registered on the Short-Term Residential
8 Rental Registry;

9 (F) The Permanent Resident includes the Department-issued registration
10 number on any Hosting Platform listing or other listing offering the Residential Unit for use as
11 a Short-Term Residential Rental;

12 (G) For units subject to the rent control provisions of Section 37.3, the
13 Permanent Resident complies with the initial rent limitation for subtenants and charges no
14 more rent than the rent the Permanent Resident is paying to any landlord per month; and

15 (H) The Permanent Resident can demonstrate to the satisfaction of the
16 Department that the Residential Unit and the property on which it is located is not subject to
17 any outstanding Building, Electrical, Plumbing, Mechanical, Fire, Health, Housing, Police, or
18 Planning Code enforcement, including any notices of violation, notices to cure, orders of
19 abatement, cease and desist orders, or correction notices. The Department shall not include a
20 property that is subject to any such outstanding violations in the Registry. If such a violation
21 occurs once a Residential Unit has been included in the Registry, the Department shall
22 suspend the Residential Unit's registration and registration number until the violation has been
23 cured.

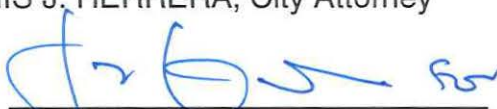
24 * * * *

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

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

12
13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By:



16 MARLENA BYRNE
17 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Short-Term Residential Rental Limit of 60 Days per Year and Private Right of Action]

Ordinance amending the Administrative Code to revise the Residential Unit Conversion Ordinance to limit short-term rental of a residential unit to no more than 60 days per calendar year if the unit was registered on or after October 11, 2016; prohibit neighbors outside the building at issue from filing a private right of action; allow certain nonprofit organizations to file a private right of action prior to a final determination of a violation by the Director of the Planning Department; shorten the waiting period for certain interested parties to file a private right of action; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Under Chapter 41A of the San Francisco Administrative Code, renting a residential unit for less than a 30-day term is prohibited unless it is offered by the Permanent Resident of the unit, who registers the unit with the Office of Short Term Rentals and otherwise meets the requirements, described in Chapter 41A, for renting the unit as a Short-Term Residential Rental.

Under existing law, Short-Term Residential Rentals are limited to 90 days per year for unhosted rentals (meaning the Permanent Resident is not in the unit when the unit is rented) and are unlimited for hosted rentals (which is when the Permanent Resident continues to reside in the unit during the rental period). This requirement states that the Permanent Resident must reside in the unit for no less than 275 days out of the calendar year.

Chapter 41A also provides for a private right of action, which allows an Interested Party to sue a violator of Chapter 41A, who is not a Hosting Platform (meaning they can sue an owner, tenant, or business entity that owns or leases the unit), for injunctive and monetary relief, including damages, and attorneys' fees after the Planning Director has made a final determination of violation. Interested Party is defined as a permanent resident of the building, owners or permanent residents within 100 feet of the unit, the owner of the unit at issue, any homeowners' association linked to the unit, and non-profit organizations dedicated to improvement of housing.

The Code also provides a private right of action where there has been a delay in issuance of a final determination of violation (where the Interested Party filed a complaint with the City, but a final determination of violation has not been made within 135 days of the filing of a complaint). This private right of action is provided to Interested Parties who are permanent residents of the building, owners or permanent residents within 100 feet of the unit, and any homeowners' association linked to the unit.

Amendments to Current Law

The proposed ordinance limits the number of days that units registered on or after October 11, 2016 may be rented as a Short-Term Residential Rental to no more than 60 days per calendar year, regardless of whether the rental is hosted or unhosted. Units registered prior to the October 11, 2016 will continue to be allowed to have up to 90 days per year of unhosted rentals and unlimited hosted rentals.

The proposed ordinance also removes owners and permanent residents of property within 100 feet of the building at issue from the definition of "Interested Party." This means that people who own or reside in property within 100 feet of the building that is alleged to have the Short-Term Residential Rental violation would no longer be able to bring a private right of action under Chapter 41A.

The proposed ordinance also allows certain nonprofit housing organizations to file a private right of action where there has been a delay in issuance of a final determination of violation. In these situations, the ordinance would allow nonprofit organizations and certain other interested parties to file suit if an administrative hearing officer has not issued a final determination within 30 days of the filing of a complaint—rather than 135 days under current law—and the City has not filed suit within 30 days after receiving notice of the parties' intent to sue.

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