

LEGISLATIVE DIGEST

(10/7/14 - Duplicated as Amended and Further Amended In Board)

[Administrative, Planning Codes - Amending Regulation of Short-Term Residential Rentals and Establishing Fee]

Ordinance amending the Administrative Code to provide an exception for permanent residents to the prohibition on short-term residential rentals under certain conditions; to create procedures, including a registry administered by the Planning Department, for tracking short-term residential rentals and compliance; to establish an application fee for the registry; amending the Planning Code to clarify that short-term residential rentals shall not change a unit's type as residential; 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.

Existing Law

Under Chapter 41A of the San Francisco Administrative Code, renting a residential unit for less than a 30-day term is prohibited. Similar prohibitions are found in the Planning Code. These restrictions are designed to prohibit owners, businesses, and residents from converting rental units from residential use to tourist use (also referred to as transient or hotel use).

The Department of Building Inspection (DBI) enforces the provisions of Chapter 41A, and the Planning Department enforces the provisions of the Planning Code. Additionally, other tenants in the building where the tourist or transient use is alleged or housing non-profits may file a complaint with DBI. After a complaint has been filed and after a the City has determined through an administrative hearing process that a violation of Chapter 41A has occurred, the City, any permanent resident in the building, or the non-profit may also file a civil action in court to enforce the provisions of Chapter 41A and recover civil penalties. Any administrative or civil penalties recovered by the City go to the Mayor's Office of Housing's Housing Affordability Fund, after the City's reasonable costs for enforcement are covered.

Amendments to Current Law

The proposed amendments to Administrative Code Chapter 41A (as well as some additional amendments to Chapter 37 and the Planning Code) would allow permanent residents to rent all or portions of their unit for tourist or transient use under certain conditions. This "Short-Term Residential Rental" use is allowed if it complies with all of the requirements of the proposed legislation. A permanent resident is an owner or lessee who has lived in the unit for at least 60 consecutive days and intends to make the unit his or her primary residence. The proposed legislation would apply to all residential units in the City.

The legislation would remove enforcement of the requirements of Chapter 41A from DBI's jurisdiction and place it with the Planning Department. It would also require the Planning Department to create and maintain a registry of all the permanent residents who may offer their units for Short-Term Residential Rental and to issue each person and their unit a unique registration number, which would have to be included in any listing for the unit for short-term rental. Once the Planning Department has received a complete initial application to join the registry, the Department will send mailed notice to the owner of record of the residential unit and, if the unit is in a RH-1(D) Zoning District (single-family, detached dwellings), to any homeowner association the dwelling is a part of.

The legislation creates an application and renewal fee for the registry, which is initially set at \$50, but may be changed after a report by the Planning Director and a determination by the City Controller that the fee should be adjusted to appropriately cover the costs of administering and enforcing the program.

The legislation also includes requirements for "hosting platforms." Hosting platforms are people or businesses that provide a way for individuals to offer a residential unit for tourist or transient use. This service is usually, though not necessarily, provided online and includes advertising the residential unit through a website provided by the hosting platform and sometimes also conducting or facilitating the transaction. Under the legislation, hosting platforms are required to provide notice to anyone using their services regarding the City's restrictions regarding Short-Term Residential Rentals and must collect and remit all required transient occupancy taxes to the City. Examples of hosting platforms currently providing these types of services include Airbnb and VRBO, among others.

The proposed legislation would allow tourist or transient use of a residential unit as a Short-Term Residential Rental if:

1. The residential unit is:
 - a.) offered for tourist or transient use by the permanent resident of the residential unit;
 - b.) not subject to the City's affordable housing program (also referred to as the Inclusionary Affordable Housing Program, found in Planning Code Section 415 *et seq.*);
 - c.) not a residential hotel unit as defined in Administrative Code Chapter 41 (also referred to as a single room occupancy (SRO) unit);
 - d.) not otherwise a below-market or income-restricted unit under federal, state, or local law;
 - e.) not restricted by any other federal, state, or local law or regulation from being sublet, rented, or otherwise used as a short-term residential rental;
 - f.) not subject to any outstanding Building, Electrical, Plumbing, Mechanical, Fire, Health, Housing, Police, or Planning Code violations;
 - g.) has not been the subject of an Ellis Act eviction (where the property owner seeks to go out of the rental business) after November 1, 2014 and within five years of applying for the Registry; and

2. The permanent resident:
 - a.) is a natural person;
 - b.) has registered the unit and maintains good standing on the registry;
 - c.) lives in the residential unit at least 275 days a year (or proportion of a year if he or she has not rented or owned the residential unit for the full preceding calendar year);
 - d.) maintains records for two years demonstrating compliance with these requirements;
 - e.) complies with all applicable laws, including collecting and remitting all required transient occupancy taxes;
 - f.) maintains liability insurance of not less than \$500,000 or conducts each transaction through a hosting platform that provides equal or greater coverage;
 - g.) includes the Planning Department issued registration number on any listing for the unit;
 - h.) for units subject to the rent control provisions of Section 37.3, complies with the initial rent limitation for subtenants and charges no more rent than the rent the primary resident is paying to any landlord per month;
 - i.) maintains a valid business registration certificate;
 - j.) posts a notice inside the door of the unit with information regarding the location of fire extinguishers, gas shut off valves, fire exits, and fire pull alarms; and
 - k.) submits a yearly report to the Planning Department on January 1 with the number of days the residential unit has been rented as a Short-Term Residential Rental in the previous year.

Only one permanent resident may be associated with a residential unit. Offering a residential unit that is not listed on the registry for tourist or transient use is a violation of the ordinance.

The proposed legislation does not change or alter any obligations or restrictions that might be found in a individual lease, homeowners association agreement, or any covenants, conditions, or restrictions on the property. Thus, if a person's lease or homeowners association requirements prohibit this type of short-term rental, this legislation expressly does not change that. It also does not allow this use if such a use is not allowed under some other federal, state, or local law.

The proposed legislation includes some changes to Chapter 41A's existing enforcement procedures. It requires the Planning Director to notify anyone who files a Complaint if he or she finds that there is no violation or basis for an investigation within 30 days of the complaint filing. The proposed legislation would add a provision that if a violation is not corrected within the timeframe established by an administrative hearing officer, Planning shall remove the listing from the registry and prohibit the owner or lessee from listing the residential unit on any hosting platform for one year. The proposed legislation also expands the definition of "Interested Party"—i.e. those persons or entities that are permitted to file a lawsuit against someone the Planning Department has found to be in violation of Chapter 41A after an administrative hearing—to include a homeowner association within the building in which the unlawful activity has occurred, as well as another permanent resident of the building, the City,

or a housing non-profit. The proposed legislation also provides for three tiers of administrative penalties, increasing the penalties for subsequent violations. The proposed legislation also provides that any administrative or civil penalties collected by the City through enforcement of this Chapter would go to the Planning Department for enforcement of this Chapter, after reimbursing other City Department's for the cost of enforcement.

The proposed legislation provides that the City may enforce the requirements of Chapter 41A against an Owner (defined as a property owner or tenant), Business Entity, or Hosting Platform through filing a lawsuit at any time. It also provides that only the City may be entitled to civil penalties (of up to \$1000 per day for the period of violation) if it wins the lawsuit. Any other interested party may file a lawsuit against an Owner (again, meaning property owner or tenant) or Business Entity who has violated Chapter 41A and seek damages, injunctive relief, and attorneys' fees. To do so, the Interested Party must first file a Complaint with the Planning Department, and then the Planning Director must hold a review hearing and make a determination that a violation has occurred. Only once the determination of violation becomes final may the an Interested Party file a lawsuit.

A housing non-profit Interested Party may file a lawsuit without the Planning Director making a final determination of violation under two sets of circumstances. Under one, the a housing non-profit may file a lawsuit against an Owner (property owner or tenant) or Business Entity if: the Owner or Business Entity has evicted a tenant in the building under the Ellis Act after October 7, 2014 and within 60 months of the Complaint; the housing non-profit has filed a Complaint with the City; 30 days have passed since the filing of the Complaint; the housing non-profit has then notified the City of its intent to file a lawsuit; and then the City does not file its own lawsuit by the end of the 30 day notice period. If the City files its own lawsuit, the nonprofit may not. Under this scenario, the housing non-profit may seek damages, injunctive relief, and attorneys' fees.

Under the other set of circumstances, a housing non-profit Interested Party that has existed for at least five years from February 1, 2015, may sue an Owner (property owner or tenant) or Business Entity of a rent controlled building with three or more units for violating this Chapter. The housing non-profit may seek injunctive relief and attorneys' fees (but not damages). This lawsuit may be filed within 45 days of the nonprofit filing a Complaint with the Planning Department, regardless of whether the City is also moving ahead with administrative enforcement or filing its own lawsuit.

The proposed legislation also amends Chapter 37.9 of the Administrative Code. Under the current provisions of Chapter 37.9, a landlord may evict a tenant for just cause if the tenant is using or permitting a rental unit to be used for any "illegal purpose." The proposed legislation provides that a first-time violation of Chapter 41A that has been cured within 30 days of written notice to the tenant is not considered an "illegal purpose" for which the tenant can be evicted for just cause.

The proposed legislation would also make amendments to the Planning Code so that renting a residential unit as a short-term residential rental in compliance with Chapter 41A would not change the unit's status as residential use.

The proposed legislation would not become operative until February 1, 2015.

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