

LEGISLATIVE DIGEST
(Substituted 4/21/2015)

[Administrative Code – Short-Term Residential Rentals]

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; require Hosting Platforms to verify that a Residential Unit is on the City Registry prior to listing, remove a listing once a Residential Unit has been rented for Tourist or Transient Use for more than 60 days in a calendar year, and provide certain usage data to the Planning Department; revise the definition of Interested Parties who may enforce the provision of Chapter 41A through a private right of action to include Permanent Residents residing within 100 feet; amend the private right of action provisions to allow for a private right of action against Hosting Platforms and create an additional private right of action against Owners, Business Entities, and Hosting Platforms under certain circumstances; and provide for criminal penalties against Hosting Platforms in violation of this Chapter 41A; 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 Planning Department and otherwise meets the requirements, described in Chapter 41A, for renting the unit as a Short-Term Residential Rental.

Chapter 41A defines a Short-Term Residential Rental as a rental for less than 30 days where the unit: is offered by the Permanent Resident of the unit who is a human being, not a company; has been registered on the Planning Department's Registry; is not subject to the City’s Inclusionary Affordable Housing Program; is not a residential hotel unit; is not otherwise designated as a below market rate or income-restricted unit under any law; and is not otherwise prohibited by a law or regulation from being subleased or rented as a rental for less than 30-days.

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.

These limitations are designed to prohibit Owners, Business Entities that may own residential units, and other people, including tenants, from converting rental units from residential use to tourist use (also referred to as transient or hotel use).

Existing law also regulates “Hosting Platforms”, which are individuals or businesses that provide a means for a person to advertise their Residential Unit for short-term rent. Existing law requires these Hosting Platforms to provide notice to users of the City’s regulation of short-term residential rentals.

Chapter 41A is administered and enforced by the Planning Department. Chapter 41A requires the Planning Department to make the Registry available for public review, but directs the Department to redact any Permanent Resident’s names to the extent permitted by law. Once the Planning Department receives a completed application for the Registry, it sends a notice by mail to the owner of the Residential Unit.

If someone suspects that a Residential Unit is being offered as a short-term rental in violation of Chapter 41A, he or she may file a Complaint with the Planning Department. After a Complaint has been filed with the Planning Department and the Planning Director has held an administrative review hearing and determined that a tenant, Owner, Business Entity that owns the unit, or a Hosting Platform (this is defined as usually meaning an online advertising platform) has violated Chapter 41A, the City may sue any violator for injunctive and monetary relief, including damages, civil penalties, and attorneys’ fees.

Additionally, the Code provides for a private right of action, which allows an Interested Party to sue a violator 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, civil penalties (of up to \$1000 per day for the days of violation), and attorneys’ fees. Interested Party is defined as a Permanent Resident of the building, the Owner of the unit, any homeowners’ association linked to the unit, or a housing non-profit.

Existing law provides for misdemeanor criminal penalties against an Owner (meaning tenant or owner) or Business Entity (owner) who violates Chapter 41A and unlawfully rents a unit as a short-term rental.

Amendments to Current Law

The proposed ordinance limits the number of days that unit can be rented as a Short-Term Residential Rental to 60 days per calendar year, regardless of whether the rental is hosted or unhosted.

The proposed legislation would add new requirements for Hosting Platforms. Hosting Platforms would be required to verify that a unit in the City is registered with the Planning Department before it can be listed for short-term rental. A Hosting Platform would also be required to remove a listing once it knew the unit had been rented for short-term rental for more than 60 days within a calendar year. Hosting Platforms would be required to submit a quarterly report to the Planning Department, indicating the number of nights a unit in the City has been rented as a short-term rental.

The proposed ordinance would remove the owner of the Residential Unit at issue from the definition of Interested Party (meaning those who can sue to enforce the requirements of Chapter 41A through a private right of action). But, it would expand the definition to include a Permanent Resident (which could be an owner or tenant) of a property within 100 feet of the Residential Unit where the violation is allegedly occurring.

The proposed amendments would direct the Planning Department to redact the street and unit numbers of any residences included in the Registry (as well as Permanent Residents' names) from records available for public review, to the extent permitted by law.

The proposed legislation provides that the City may enforce the requirements of Chapter 41A against an Owner (which under the proposed legislation and existing law is defined as including a tenant), Business Entity, or Hosting Platform through filing a lawsuit at any time.

Both existing law and the proposed ordinance allow any other Interested Party to 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, civil penalties, and attorneys' fees after the Planning Director has made a determination that a violation has occurred. The proposed legislation would also allow an Interested Party to sue a Hosting Platform for violations of Chapter 41A.

The proposed legislation amends the Code to add an additional private right of action. This would allow Interested Parties to file a lawsuit to enforce the requirements of Chapter 41A without first waiting for the Planning Director to make a final determination of violation under one set of circumstances. Specifically, an Interested Party may file a lawsuit against an Owner (property owner or tenant), Business Entity, or Hosting Platform who is allegedly violating Chapter 41A if:

- The Interested Party has filed a Complaint with the City;
- 60 days have passed since the Complaint was filed and the Planning Director has not made a determination that there is no violation of Chapter 41A or no basis for an investigation;
- After the 60-day period passes, the Interested Party notifies the City of its intent to file a lawsuit; and
- The City does not file its own lawsuit by the end of the 30-day notice period.

Under this second, new private right of action, if the City files its own lawsuit, the Interested Party may not (although they may wait until after the Director finds a violation and file a lawsuit then). If the Interested Party prevails, it can get damages, an injunction, costs including attorneys' fees, and civil penalties.

The proposed legislation would allow for misdemeanor criminal penalties against a Hosting Platform, as well as an Owner (meaning tenant or owner) or Business Entity (owner), who violates the requirements of Chapter 41A.

Background Information

In October 2014, Administrative Code Chapter 41A and the Planning Code were amended to allow Short-Term Residential Rentals, beginning in February 2015. Prior to those amendments, rental of residential units for less than 30-day terms was prohibited City-wide under both Chapter 41A and the Planning Code.

This version of the legislation was introduced as substitute legislation on April 21, 2015. It differs from the version of the ordinance introduced on April 14, 2015 in that the prior version would have prohibited short-term rentals of “in-law” units created under Planning Code Sections 207.3 and 715.1, which were recently enacted to allow legalization of illegal accessory dwelling units.

Additionally, the substitute legislation requires the Planning Department to send mailed notice to the property owner, any Permanent Resident of the building, any homeowners’ association associated with the Residential Unit, and any individual or neighborhood association that has requested notification, when a completed application for the Registry has been received. The prior version, and current law, only require the Planning Department to notify the owner of the Residential Unit.

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