

LEGISLATIVE DIGEST

[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 120 days per calendar year~~; revise the definition of Interested Parties who may enforce the provisions of Chapter 41A through a private right of action to include Permanent Residents residing within 100 feet of the Residential Unit; create an additional private right of action under certain circumstances; change the administrative hearing process from mandatory to at the request of any party found in violation of this Chapter; require hosts to submit quarterly reports to the Planning Department; and direct the Mayor to create an Office of Short-Term Residential Rental Administration and Enforcement staffed by the Planning Department and other departments as needed; 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).

AMENDED IN BOARD
7/14/2015

FILE NO. 150363

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. 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, 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.

Amendments to Current Law

The proposed amendments to Administrative Code Chapter 41A would prohibit a unit from being offered as a short-term residential rental if it has 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.

The proposed ordinance would expand the definition of Interested Party (meaning those who can sue to enforce the requirements of Chapter 41A through a private right of action) to include a Permanent Resident or Owner 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 requires hosts to submit quarterly reports regarding, among other information, the number of nights their Residential Unit has been rented as a short-term rental.

The proposed legislation requires the Planning Department to include information on the Department's website about any pending or resolved Complaints regarding violations of Chapter 41A.

AMENDED IN BOARD
7/14/2015

FILE NO. 150363

The proposed legislation changes the administrative enforcement process by no longer requiring that the Planning Director hold an administrative hearing before finding that an Owner, tenant, Business Entity, or Hosting Platform has violated the requirements of Chapter 41A. Instead, the party found in violation of Chapter 41A may request a hearing to review the determination of violation.

The proposed legislation provides that the City may enforce the requirements of Chapter 41A against an Owner (which under the existing law is defined as including a 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 if it wins the lawsuit.

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, and attorneys' fees after the Planning Director has made a determination that a violation has occurred.

The proposed legislation amends the Code to add an additional private right of action. This would allow certain 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 who is a Permanent Resident of the building or of a building within 100 feet of the building where the violation has occurred or a homeowners' association associated with the unit may file a lawsuit against an Owner (property owner or tenant) or Business Entity who is allegedly violating Chapter 41A if:

- The Interested Party has filed a Complaint with the City;
- The Planning Director has not made a determination that there is no violation of Chapter 41A or no basis for an investigation;
- 135 days have passed since the filing of the Complaint and an administrative hearing officer has not issued a final determination regarding the Complaint;
- After the 135-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). Under this second private right of action, the prevailing party is entitled to attorneys' fees.

The proposed legislation directs the Mayor to create an Office of Short-Term Residential Rental Administration and Enforcement, staffed by the Planning Department and any other relevant departments, including if necessary the Department of Building Inspection and the Tax Collector's Office. This new office would provide a single-location for members of the public to apply for the Registry and for staff enforcement of Chapter 41A's requirements.

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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.

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