

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Kevin Guy, Director, Office of Short-Term Rental Administration and Enforcement
Robert Collins, Acting Executive Director, Rent Board
Olson Lee, Director, Mayor's Office of Housing and Community Development
Tiffany Bohee, Executive Director, Office of Community Investment and Infrastructure

FROM: Andrea Ausberry, Assistant Clerk
Land Use and Transportation Committee

DATE: May 3, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Campos on April 26, 2016.

File No. 160423

Ordinance amending the Administrative Code to revise the Residential Unit Conversion Ordinance to require Hosting Platforms verify that a Residential Unit is on the City Registry prior to listing; require Hosting Platforms respond to notices and requests for information; provide for civil, administrative, and criminal penalties against Hosting Platforms for violations of the Residential Unit Conversion Ordinance; 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: andrea.ausberry@sfgov.org

c: Sophie Hayward, Mayor's Office of Housing and Community Development
Eugene Flannery, Mayor's Office of Housing and Community Development
Natasha Jones, Commission on Community Investment and Infrastructure
Claudia Guerra, Commission on Community Investment and Infrastructure

1 [Administrative Code - Short-Term Residential Rentals and Hosting Platforms]

2
3 **Ordinance amending the Administrative Code to revise the Residential Unit Conversion**
4 **Ordinance to require Hosting Platforms verify that a Residential Unit is on the City**
5 **Registry prior to listing; require Hosting Platforms respond to notices and requests for**
6 **information; provide for civil, administrative, and criminal penalties against Hosting**
7 **Platforms for violations of the Residential Unit Conversion Ordinance; and affirming**
8 **the Planning Department's determination under the California Environmental Quality**
9 **Act.**

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

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

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

23 Section 2. The Administrative Code is hereby amended by revising Sections 41A.4,
24 41A.5, 41A.6, and 41A.7, to read as follows:

25 **SEC. 41A.4. DEFINITIONS.**

1 Whenever used in this Chapter 41A, the following words and phrases shall have the
2 definitions provided in this Section:

3 * * * *

4 **Short-Term Residential Rental Registry or Registry.** A database of information
5 maintained by the Department that includes a unique registration number for each Short-Term
6 Residential Rental and information regarding Permanent Residents who are permitted to offer
7 Residential Units for Short-Term Residential Rental. Only one Permanent Resident per
8 Residential Unit may be included on the Registry at any given time. The Registry shall be
9 available for public review to the extent required by law, except that, to the extent permitted by
10 law, the Department shall redact any Permanent Resident names and street and unit numbers
11 from the records available for public review.

12 * * * *

13 **SEC. 41A.5. UNLAWFUL CONVERSION; REMEDIES.**

14 * * * *

15 **(d) Civil Action.**

16 * * * *

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

22 * * * *

23 **(e) Criminal Penalties.** Any Owner or Business Entity who rents a Residential Unit for
24 Tourist or Transient Use in violation of this Chapter 41A, or any Hosting Platform that provides a
25 listing for a Residential Unit for Tourist or Transient Use in violation of this Chapter 41A, without

1 correcting or remedying the violation as provided for in subsection 41A.6(c)(6), shall be guilty
2 of a misdemeanor. Any person convicted of a misdemeanor hereunder shall be punishable by
3 a fine of not more than \$1,000 or by imprisonment in the County Jail for a period of not more
4 than six months, or by both. Each Residential Unit rented for Tourist or Transient Use shall
5 constitute a separate offense.

6 * * * *

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

8 * * * *

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

10 **(A) Notice to Users of Hosting Platform.** All Hosting Platforms shall
11 provide the following information in a notice to any user listing a Residential Unit located
12 within the City and County of San Francisco through the Hosting Platform's service. The
13 notice shall be provided prior to the user listing the Residential Unit and shall include the
14 following information: that Administrative Code Chapters 37 and 41A regulate Short-Term
15 Rental of Residential Units; the requirements for Permanent Residency and registration of the
16 unit with the Department; and the transient occupancy tax obligations to the City.

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

24 *(C) Prior to listing a Residential Unit within the City to be rented for Tourist or*
25 *Transient Use, a Hosting Platform shall verify with the Office of Short-Term Residential Rental*

1 Administration and Enforcement that the Residential Unit is listed on the Registry and has a valid
2 registration number. Hosting Platforms shall comply with this subsection (g)(4)(C) by:

3 (i) Providing the verified registration number on each listing in the area
4 of the listing dedicated to information verified or compiled by the Hosting Platform about the host, such
5 as host response rate, host ratings time, and date of joining the platform; or

6 (ii) Ensuring that the host has included a Hosting Platform-verified
7 registration number within the listing and that the number is visible to all users of the Hosting
8 Platform; or

9 (iii) Sending the verified registration number, Residential Unit street
10 address (including any unit number), and host name to the Office of Short-Term Residential Rental
11 Administration and Enforcement by electronic mail prior to posting the listing on the platform.

12 (C-D) Any violation of a Hosting Platform's responsibilities under
13 subsections (g)(4)(A), (B), or (C), or 41A.7(b) shall subject the Hosting Platform to the
14 administrative penalties and enforcement provisions of this Chapter 41A, including but not
15 limited to payment of civil penalties of up to \$1,000 per day for the period of the failure to
16 comply, with the exception that any violation related to failure to comply with the requirements
17 of the Business and Tax Regulations Code shall be enforced by the Treasurer/Tax Collector
18 under that Code.

19 (5) The exception set forth in this subsection (g) provides an exception only to
20 the requirements of this Chapter 41A. It does not confer a right to lease, sublease, or
21 otherwise offer a residential unit for Short-Term Residential Use where such use is not
22 otherwise allowed by law, a homeowners association agreement or requirements, any
23 applicable covenant, condition, and restriction, a rental agreement, or any other restriction,
24 requirement, or enforceable agreement. All Owners and residents are required to comply with
25

1 the requirements of Administrative Code Chapter 37, the Residential Rent Stabilization and
2 Arbitration Ordinance, including but not limited to the requirements of Section 37.3(c).

3 (6) **Department Contact Person.** The Department shall designate a contact
4 person for members of the public who wish to file Complaints under this Chapter 41A or who
5 otherwise seek information regarding this Chapter or Short-Term Residential Rentals. This
6 contact person shall also provide information to the public upon request regarding quality of
7 life issues, including, for example, noise violations, vandalism, or illegal dumping, and shall
8 direct the member of the public and/or forward any such Complaints to the appropriate City
9 department.

10 (7) Notwithstanding any other provision of this Chapter 41A, nothing in this
11 Chapter shall relieve an individual, Business Entity, or Hosting Platform of the obligations
12 imposed by any and all applicable provisions of state law and the *San Francisco* Municipal
13 Code including but not limited to those obligations imposed by the Business and Tax
14 Regulations Code. Further, nothing in this Chapter shall be construed to limit any remedies
15 available under any and all applicable provisions of state law and the *San Francisco* Municipal
16 Code including but not limited to the Business and Tax Regulations Code.

17 ~~(8) Annual Department Reporting Requirement. Within one year of the effective date of~~
18 ~~this ordinance and annually thereafter, the Department shall provide a report to the Board of~~
19 ~~Supervisors regarding the Department's administration and enforcement of the Short-Term Residential~~
20 ~~Rental program. The study shall make recommendations regarding proposed amendments to this~~
21 ~~Chapter 41A necessary to reduce any adverse effects of the Short-Term Residential Rental program.~~

23 **SEC. 41A.6. ADMINISTRATIVE ENFORCEMENT PROCEDURES.**

24 * * * *

25 (d) **Administrative Penalties for Violations and Enforcement Costs.**

1 (1) **Administrative Penalties.** Administrative penalties shall be assessed as
2 follows:

3 (A) For the initial violation, not more than four times the standard hourly
4 administrative rate of \$121.00 for each unlawfully converted unit, or for each identified failure
5 of a Hosting Platform to comply with the requirements of subsections 41A.5(g)(4)(A), (B), (C),
6 or 41A.7(b), per day from the notice of violation until such time as the unlawful activity
7 terminates;

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

13 (C) For the third and any subsequent violation by the same Owner(s),
14 Business Entity, or Hosting Platform, not more than 12 ~~twelve~~ times the standard hourly
15 administrative rate of \$121.00 for each unlawfully converted unit or for each identified failure of
16 a Hosting Platform to comply with the requirements of subsections 41A.5(g)(4)(A), (B), (C), or
17 41A.7(b), per day from the day the unlawful activity commenced until such time as the unlawful
18 activity terminates.

19 (2) **Prohibition on Registration and Listing Unit(s) on Any Housing**
20 **Platform.** In the event of multiple violations, the Department shall remove the Residential
21 Unit(s) from the Registry for one year and include the Residential Unit(s) on a list maintained
22 by the Department of Residential Units that may not be listed on any Hosting Platform until
23 compliance. Any Owner, ~~or Business Entity~~ or Hosting Platform who continues to list a
24 Residential Unit in violation of this Section 41A.6 shall be liable for additional administrative
25 penalties and civil penalties of up to \$1,000 per day of unlawful inclusion.

1 (e) **Notice of Violation and Imposition of Penalties.** The Director shall notify the
2 Owner or Hosting Platform by certified mail of the violation and that administrative penalties
3 shall be imposed pursuant to this Chapter 41A. The notice shall state the time of the existence
4 of the violation and the resulting imposition of penalties. Payment of the administrative
5 penalties and enforcement costs shall be made within 30 days of the certified mailed notice to
6 the Owner or Hosting Platform. If the administrative penalties and enforcement costs are not
7 paid, the Director shall refer the matter to the Treasurer/Tax Collector and/or initiate lien
8 procedures to secure the amount of the penalties and costs against the real property that is
9 subject to this Chapter, under Article XX of Chapter 10 of the Administrative Code to make the
10 penalty, plus accrued interest, a lien against the real property regulated under this Chapter.
11 Except for the release of the lien recording fee authorized by Administrative Code Section
12 10.237, all sums collected by the Tax Collector pursuant to this ordinance shall be deposited
13 as set forth in subsection (f) below.

14 (f) **Deposit of Penalties.** Any fees and penalties collected pursuant to this Chapter
15 41A shall be deposited in the Housing Trust Fund for use by the Small Sites Program~~Department~~,
16 which shall reimburse City departments and agencies, including the Department and the City
17 Attorney's Office, for all costs and fees incurred in the enforcement of this Chapter 41A.

18 * * * *

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

21 (a) The Mayor shall establish an Office of Short-Term Residential Rental
22 Administration and Enforcement, which shall provide a single location to receive and process
23 applications for the Registry and Complaints regarding violations of this Chapter 41A. This
24 office shall be staffed by the Department and other departments as appropriate, with
25 participation from the Department of Building Inspection, the Treasurer/Tax Collector's Office,

1 and other departments as needed, to process applications for the Registry and enforce the
2 requirements of this Chapter 41A in a timely and efficient manner. It is the intent of this Board
3 of Supervisors in directing the establishment of this office to streamline both the process of
4 administering the Registry and enforcing the requirements of this Chapter 41A to protect
5 residential housing from unlawful conversion to Tourist or Transient Use.

6 (b) Monitor Hosting Platforms. In addition to the administrative enforcement duties
7 outlined in Section 41A.6, the Office of Short-Term Residential Rental Administration and Enforcement
8 shall actively monitor Hosting Platform listings to ensure that Hosting Platforms are only listing
9 Residential Units that are listed on the Registry. Within 15 business days of the Effective Date, the
10 Office of Short-Term Residential Rental Administration and Enforcement shall complete a
11 comprehensive review of active Hosting Platform listings and produce an inventory of non-compliant
12 listings discovered during the review. Subsequent reviews of Hosting Platform listings shall be
13 performed on at least a monthly basis.

14 (1) The Office of Short-Term Residential Rental Administration and Enforcement shall,
15 upon completion of a Hosting Platform review or discovery of a potentially non-compliant listing,
16 immediately provide notice to Hosting Platforms by electronic mail of all listings that do not have valid
17 registration numbers or are otherwise not in compliance with this Chapter 41A. These notices shall be
18 provided to the City Attorney's Office.

19 (2) Hosting Platforms shall respond to each notice sent pursuant to subsection (b)(1) by
20 confirming, for each listing identified in the notice, that the listing has a valid registration number and
21 providing that number and any other requested information relevant to determining whether the listing
22 complies with the provisions of this Chapter 41A (including unit address and host information) to the
23 Office of Short-Term Residential Rental Administration and Enforcement.

24 (3) For each listing that a Hosting Platform fails to provide the requested information
25 within one City business day of the notice being sent by the Office of Short-Term Residential Rental

1 Administration and Enforcement, the Hosting Platform shall be subject to the administrative penalties
2 and enforcement provisions of this Chapter 41A, including but not limited to payment of civil penalties
3 of up to \$1,000 per day until the Hosting Platform complies with subsection (b)(2).

4 **(c) Reporting to Board of Supervisors.**

5 (1) Annual Reports. The Office of Short-Term Residential Rental Administration and
6 Enforcement shall provide a report to the Board of Supervisors regarding the administration and
7 enforcement of the Short-Term Residential Rental program on an annual basis. The report shall make
8 recommendations regarding proposed amendments to this Chapter 41A necessary to reduce any
9 adverse effects of the Short-Term Residential Rental program.

10 (2) Quarterly Reports. The Office of Short-Term Residential Rental Administration and
11 Enforcement shall provide quarterly reports to the Board of Supervisors summarizing the Host
12 Platform monitoring activities during the preceding quarter. The periods covered by the quarterly
13 reports shall commence on January 1, April 1, July 1, and October 1, respectively. At a minimum, each
14 report shall include the number of notices sent to Hosting Platforms, the total number of listings
15 included in those notices, the number of listings that were confirmed as non-compliant or otherwise
16 removed or modified by the Hosting Platforms in response to the notices, and the number and amount
17 of penalties imposed on Hosting Platforms for failing to respond to notices. Each report shall break
18 down information by zip code, supervisorial district, and any other criteria as may be requested by the
19 Board of Supervisors.

20
21 * * * *

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

1
2 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
3 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
4 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
5 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
6 additions, and Board amendment deletions in accordance with the "Note" that appears under
7 the official title of the ordinance.
8

9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By:


12 ROBB KAPLA
13 Deputy City Attorney

14 n:\egana\as2016\1500663\01101023.docx
15
16
17
18
19
20
21
22
23
24
25