

BOARD of SUPERVISORS



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October 30, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On October 22, 2019, Supervisor Peskin submitted the following proposed legislation:

File No. 191075

Ordinance amending the Planning Code to create the Intermediate Length Occupancy residential use characteristic; amending the Administrative Code to clarify existing law regarding the enforceability of fixed-term leases in rental units covered by the just cause protections of the Residential Rent Stabilization and Arbitration Ordinance (the "Rent Ordinance"), prohibit the use of rental units for temporary occupancies by non-tenants, require landlords to disclose in advertisements for such units that the units are subject to the Rent Ordinance, and authorize enforcement through administrative and/or civil penalties; requiring the Controller to conduct a study to analyze the impacts of new Intermediate Length Occupancy units in the City; 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, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

The proposed ordinances are being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinances are pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Don Lewis, Environmental Planning

1 [Planning, Administrative Codes - Residential Occupancy]

2

3 **Ordinance amending the Planning Code to create the Intermediate Length Occupancy**

4 **residential use characteristic; amending the Administrative Code to clarify existing**

5 **law regarding the enforceability of fixed-term leases in rental units covered by the just**

6 **cause protections of the Residential Rent Stabilization and Arbitration Ordinance (the**

7 **“Rent Ordinance”), prohibit the use of rental units for temporary occupancies by non-**

8 **tenants, require landlords to disclose in advertisements for such units that the units**

9 **are subject to the Rent Ordinance, and authorize enforcement through administrative**

10 **and/or civil penalties; requiring the Controller to conduct a study to analyze the**

11 **impacts of new Intermediate Length Occupancy units in the City; affirming the**

12 **Planning Department’s determination under the California Environmental Quality Act;**

13 **and making findings of consistency with the General Plan, and the eight priority**

14 **policies of Planning Code, Section 101.1, and findings of public necessity,**

15 **convenience, and welfare under Planning Code, Section 302.**

16

17 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.

18 **Additions to Codes** are in *single-underline italics Times New Roman font*.

19 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.

20 **Board amendment additions** are in double-underlined Arial font.

21 **Board amendment deletions** are in ~~strikethrough Arial font~~.

22 **Asterisks (* * * *)** indicate the omission of unchanged Code

23 subsections or parts of tables.

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

25 Section 1. CEQA, General Plan, and Planning Code Findings.

1 (a) The Planning Department has determined that the actions contemplated in this
2 ordinance comply with the California Environmental Quality Act (California Public Resources
3 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
4 Supervisors in File No. _____ and is incorporated herein by reference. The Board affirms
5 this determination.

6 (b) On _____, the Planning Commission, in Resolution No. _____, adopted
7 findings that the actions contemplated in this ordinance are consistent, on balance, with the
8 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
9 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
10 Board of Supervisors in File No. _____, and is incorporated herein by reference.

11 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
12 ordinance will serve the public necessity, convenience and welfare for the reasons set forth
13 in Planning Commission Resolution No. _____, and incorporates such reasons by this
14 reference thereto. A copy of said Resolution is on file with the Clerk of the Board of
15 Supervisors in File No. _____, and is incorporated herein by reference.

16
17 Section 2. The Planning Code is hereby amended by revising Section 102 (including
18 placing a new defined term in alphabetical sequence), adding Section 202.10, and revising
19 Sections 209.1, 209.2, 209.3, 209.4, 210.1, 210.2, 210.3, 210.4, and 710, to read as follows:

20 **SEC. 102. DEFINITIONS.**

21 * * * *

22 *Intermediate Length Occupancy.* *A Residential Use characteristic that applies to a Dwelling*
23 *Unit offered for occupancy by a natural person for an initial stay, whether through lease, subscription,*
24 *license, or otherwise, for a duration of greater than 30 consecutive days but less than one year. This*
25 *use characteristic is subject to the requirements of Section 202.10.*

1 * * * *

2 **Residential Use.** A Use Category consisting of uses that provide housing for San
3 Francisco residents, rather than visitors, including Dwelling Units, Group Housing,
4 Residential Hotels, and Senior Housing, Homeless Shelters, and for the purposes of Article 4
5 only any residential components of Institutional Uses. Single Room Occupancy, *Intermediate*
6 *Length Occupancy*, and Student Housing designations are considered characteristics of certain
7 Residential Uses.

8 * * * *

9 **Use Characteristic.** A feature of a Use, related to its physical layout, location,
10 design, access, or other characteristics. Use Characteristics may be regulated
11 independently of a Use itself. Residential Use Characteristics include Single Room
12 Occupancy, *Intermediate Length Occupancy*, and Student Housing. Commercial Use
13 Characteristics include Drive-up Facility, Formula Retail, Hours of Operation, Maritime Use,
14 Open Air Sales, Outdoor Activity, and Walk-Up Facility.

15 * * * *

16 **SEC. 202.10. LIMITATION ON INTERMEDIATE LENGTH OCCUPANCIES.**

17 *(a) Purpose. To preserve the existing stock of housing and ensure that new Dwelling Units*
18 *are made available for long-term occupancy by permanent San Francisco residents with initial terms*
19 *of occupancy of at least one year, the following provisions shall apply to Intermediate Length*
20 *Occupancy units.*

21 **(b) Applicability.**

22 *(1) Any development project that creates 10 or more new Dwelling Units, and that*
23 *has not received its first building or site permit as of the effective date of the ordinance establishing*
24 *this Section 202.10, in Board File No. _____, shall be eligible to include Intermediate Length*
25 *Occupancy units.*

1 (2) The limitations of this Section 202.10 shall not apply to:

2 (A) any Dwelling Unit that is defined as Student Housing in Section 102;

3 (B) a Residential Hotel unit subject to the provisions of Administrative Code

4 Chapter 41; or

5 (C) a development project creating nine or fewer new Dwelling Units.

6 (3) Dwelling Units that are subject to the City's Inclusionary Affordable Housing
7 Program set forth in Sections 415.1. et seq., or otherwise designated as below market rate or income-
8 restricted under City, state, or federal law, or subject to the Rent Ordinance, Administrative Code
9 Chapter 37, shall not be eligible to be Intermediate Length Occupancy units.

10 (c) Controls.

11 (1) Intermediate Length Occupancy use characteristic may be permitted with a
12 Conditional Use Authorization anywhere Dwelling Units are permitted.

13 (2) Any request to authorize the establishment of an Intermediate Length
14 Occupancy use characteristic shall require a conditional use authorization under Section 303, and
15 include the following findings:

16 (A) No more than 20% of the Dwelling Units may be offered as Intermediate
17 Length Occupancy units.

18 (B) Each unit proposed to be offered as an Intermediate Length Occupancy
19 unit must be specifically identified.

20 (3) No more than a total of 500 Intermediate Length Occupancy units shall be
21 permitted in the City.

22 (4) Any unit designated as an Intermediate Length Occupancy unit pursuant to this
23 subsection (c) may be offered for an initial term of occupancy of one year or greater without losing
24 this use characteristic.

1	Single Room	§ 102	P	P	P	P	P
2	Occupancy						

3 * * * *

4 **SEC. 209.2. RM (RESIDENTIAL, MIXED) DISTRICTS.**

5 * * * *

6 **Table 209.2**

7 **ZONING CONTROL TABLE FOR RM DISTRICTS**

8	Zoning	§ References	RM-1	RM-2	RM-3	RM-4
9	Category					

10 * * * *

11 **RESIDENTIAL STANDARDS AND USES**

12 * * * *

13 **Use Characteristics**

14	<i>Intermediate</i>	<u>§ 102</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
15	<i>Length</i>					
16	<i>Occupancy</i>					
17	Single Room	§ 102	P	P	P	P
18	Occupancy					

19 * * * *

20 **SEC. 209.3. RC (RESIDENTIAL-COMMERCIAL) DISTRICTS.**

21 * * * *

22 **Table 209.3**

23 **ZONING CONTROL TABLE FOR RESIDENTIAL-COMMERCIAL DISTRICTS**

24	Zoning Category	§ References	RC-3	RC-4
25				

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length</i>	<u>§ 102</u>	<u>C</u>	<u>C</u>
<i>Occupancy</i>			
Single Room	§ 102	P	P
Occupancy			

* * * *

SEC. 209.4. RTO (RESIDENTIAL TRANSIT ORIENTED) DISTRICTS.

* * * *

Table 209.4

ZONING CONTROL TABLE FOR RTO DISTRICTS

Zoning Category	§ References	RTO	RTO-M

* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length</i>	<u>§ 102</u>	<u>C</u>	<u>C</u>
<i>Occupancy</i>			
Single Room	§ 102	P	P
Occupancy			

* * * *

SEC. 210.1. C-2 DISTRICTS: COMMUNITY BUSINESS.

* * * *

Table 210.1

ZONING CONTROL TABLE FOR C-2 DISTRICTS

Zoning Category	§ References	C-2
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* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length</i>	<u>§ 102</u>	<u>C</u>
<i>Occupancy</i>		
Single Room Occupancy	§ 102	P

* * * *

SEC. 210.2. C-3 DISTRICTS: DOWNTOWN COMMERCIAL.

* * * *

Table 210.2

ZONING CONTROL TABLE FOR C-3 DISTRICTS

Zoning Category	§ References	C-3-O	C-3-O(SD)	C-3-R	C-3-G	C-3-S
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* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate</i>	<u>§ 102</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<i>Length</i>						
<i>Occupancy</i>						
Single Room	§ 102	P	P	P	P	P
Occupancy						

* * * *

SEC. 210.3. PDR DISTRICTS.

* * * *

Table 210.3

ZONING CONTROL TABLE FOR PDR DISTRICTS

Zoning Category	§ References	PDR-1-B	PDR-1-D	PDR-1-G	PDR-2
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* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate</i>	<u>§ 102</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
<i>Length</i>					
<i>Occupancy</i>					
Single Room	§ 102	NP	NP	NP	NP
Occupancy					

* * * *

SEC. 210.4. M DISTRICTS: INDUSTRIAL.

* * * *

Table 210.4

ZONING CONTROL TABLE FOR M DISTRICTS

Zoning Category	§ References	M-1	M-2
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* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length</i>	<u>§ 102</u>	<u>C</u>	<u>C</u>
<i>Occupancy</i>			
Single Room	§ 102	P	P
Occupancy			

* * * *

SEC. 710. NC-1 – NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT.

* * * *

Table 710. NEIGHBORHOOD COMMERCIAL CLUSTER DISTRICT NC-1

ZONING CONTROL TABLE

* * * *

Zoning Category	§ References	NC-1 Controls
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* * * *

RESIDENTIAL STANDARDS AND USES

* * * *

Use Characteristics

<i>Intermediate Length</i>	<u>§ 102</u>	<u>C</u>
<i>Occupancy</i>		

Single Room Occupancy	§ 102	P
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Section 3. Amendment of Specific Zoning Control Tables.

Zoning Control Tables 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 723, 724, 725, 726, 728, 729, 730, 731, 732, 733, 734, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, and 764 are hereby amended identically to the amendment of Zoning Control Table 710 in Section 2 of this ordinance, to create “Intermediate Length Occupancy” as a new Residential Use Characteristic, including any zoning controls.

Section 4. The Administrative Code is hereby amended by adding Section 37.9F, to read as follows:

SEC. 37.9F. CIRCUMVENTION OF TENANT PROTECTIONS.

(a) Findings. As market rents continue to increase in San Francisco, landlords of rent-controlled units have a greater incentive to prevent long-term tenancies. Complementing the just cause protections in Section 37.9, this Section 37.9F addresses the growing efforts among some landlords to induce their tenants into believing that they are required to vacate their units at a specific time designated in the lease or agreement, despite existing law to the contrary, or to try to avoid certain landlord-tenant obligations altogether. This trend is especially common with respect to corporate rentals, though it is not limited to corporate rentals. Such tactics by landlords undermine rent control and frustrate the purpose of ensuring that rent-controlled units in the City remain available as a long-term housing option for the City’s renters.

(b) Prohibition of Fixed-Term Agreements. Consistent with Section 37.9(a)(2) and Section 37.9(e), any provision of any lease or rental agreement that purports to require a tenant to vacate a rental unit at the expiration of a stated term, or that purports to characterize a tenant’s failure to vacate the rental unit at the end of the stated term as a just cause for eviction (either of them, a “Fixed-Term Agreement”), shall be void as contrary to public policy, and a landlord may not

1 attempt to recover possession of the unit without just cause. This prohibition shall not apply where
2 this Chapter 37 expressly authorizes a fixed-term tenancy (e.g., Section 37.2(a)(D)), or where it
3 expressly authorizes a tenant to be evicted without just cause (e.g., Section 37.9(b)).

4 **(c) Restrictions on Non-Tenant Uses.**

5 (1) A rental unit is being used for a “Non-Tenant Use” when the landlord is
6 allowing the unit to be occupied by a person or entity who is not a “tenant” as defined in Section
7 37.2(t). Renting a unit to a corporate entity or other non-natural person, or using a unit as housing
8 for one’s employees, licensees, or independent contractors rather than one’s tenants, are nonexclusive
9 examples of Non-Tenant Uses. This subsection (c) is not intended to narrow the definition of “tenant”
10 under Section 37.2(t) or to limit the just cause protections in Section 37.9; the sole intent is to prevent
11 landlords from circumventing or undermining the tenant protections of this Chapter 37, by restricting
12 when a landlord may provide a rental unit to a person or entity to the extent that person or entity does
13 not otherwise qualify as a “tenant.”

14 (2) Commencing February 1, 2020, it shall be unlawful to use a rental unit or allow
15 a rental unit to be used for a Non-Tenant Use, subject to the exemptions listed in subsection (c)(3).
16 Any provision of any agreement entered into on or after February 1, 2020 that purports to allow a unit
17 to be used for an unauthorized Non-Tenant Use shall be void as contrary to public policy, and the
18 occupants shall instead be deemed tenants under Section 37.2(t).

19 (3) This subsection (c) does not apply to any of the following:

20 (A) where the rental unit is subject to an agreement authorizing a Non-Tenant
21 Use that was entered into before February 1, 2020, for the existing duration of that agreement.

22 (B) the use of a rental unit as a lawful short-term rental as set forth in
23 Administrative Code Chapter 41A.

1 be deposited in the General Fund of the City and County of San Francisco to be used for enforcement
2 of this Section 37.9F.

3 (2) The City Attorney may bring a civil action in San Francisco Superior Court
4 against a party who has failed to comply with this Section 37.9F. A nonprofit organization with tax
5 exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission
6 of protecting the rights of tenants in San Francisco may also bring such a civil action, provided that
7 the organization shall first provide 30 days' written notice of its intent to initiate civil proceedings by
8 -serving a draft complaint on the City Attorney's Office and on any known address(es) of the affected
9 tenant(s), and may not initiate civil proceedings until the end of this 30 day period. A party who
10 violates this Section 37.9F may be liable for civil penalties of not more than two times the amount paid
11 or received for use of the rental unit during the period of the unlawful activity, and each rental unit
12 used in violation of this Section 37.9F shall constitute a separate violation. Any monetary award
13 obtained in such a civil action shall be deposited in the General Fund of the City and County of San
14 Francisco to be used for enforcement of this Section 37.9F. The court shall also award reasonable
15 attorney's fees and costs to the City Attorney or a nonprofit organization that is the prevailing party in
16 such a civil action.

17 (3) The remedies available under this subsection (e) shall be in addition to any
18 other existing remedies that may be available.

19
20 Section 5. Controller's Study. No later than January 1, 2021, the Controller, with the
21 support of consultants as necessary and consistent with the civil service provisions of the
22 Charter, and in consultation with the Planning Department and other City agencies as
23 necessary, shall conduct a study to analyze the impacts created by the development of new
24 Intermediate Length Occupancy units on the City and relevant City services. The Controller's
25 study shall be submitted to⁽¹⁾ the Board of Supervisors.

1 Section 6. 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
4 Board of Supervisors overrides the Mayor's veto of the ordinance.

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

12
13 Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word
14 of this ordinance, or any application thereof to any person or circumstance, is held to be
15 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
16 shall not affect the validity of the remaining portions or applications of the ordinance. The
17 Board of Supervisors hereby declares that it would have passed this ordinance and each and
18 every section, subsection, sentence, clause, phrase, and word not declared invalid or
19 unconstitutional without regard to whether any other portion of this ordinance or application
20 thereof would be subsequently declared invalid or unconstitutional.

21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23
24 By:


AUSTIN M. YANG
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning, Administrative Codes - Residential Occupancy]

Ordinance amending the Planning Code to create the Intermediate Length Occupancy residential use characteristic; amending the Administrative Code to clarify existing law regarding the enforceability of fixed-term leases in rental units covered by the just cause protections of the Residential Rent Stabilization and Arbitration Ordinance (the “Rent Ordinance”), prohibit the use of rental units for temporary occupancies by non-tenants, require landlords to disclose in advertisements for such units that the units are subject to the Rent Ordinance, and authorize enforcement through administrative and/or civil penalties; requiring the Controller to conduct a study to analyze the impacts of new Intermediate Length Occupancy units in the City; 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, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Planning Code Section 102 defines Residential Use as a category of uses that “provide housing for San Francisco residents, rather than visitors.” Under Planning Code Section 102, a Use Characteristic is a “feature of a Use, related to its physical layout, location, design, access, or other characteristics.” The Planning Code regulates Residential Uses, and Use Characteristics through the zoning controls.

The City’s Rent Ordinance (Admin. Code Ch. 37) protects tenants in covered rental units from evictions without just cause. Expiration of a lease generally is not a just cause to evict. See Admin. Code § 37.2(a)(2). In addition, an agreement that requires a tenant to waive their rights under Chapter 37 is void as contrary to public policy. Id. § 37.9(e).

Amendments to Current Law

The legislation would amend the Planning Code and create a new Residential Use Characteristic -- Intermediate Length Occupancy. In addition to being subject to the zoning table of the relevant zoning district, the Use Characteristic would be subject to a new section 202.10. Section 202.10 would state that the Use Characteristic applies to development projects proposing construction of ten or more new Dwelling Units. A request to establish such use would be subject to a Conditional Use Authorization, which would require the Planning Commission to make specific findings. The legislation would provide that no more than 500 Intermediate Length Occupancy units would be permitted. Inclusionary and other below-market-rate units, and units subject to the Rent Ordinance would not be eligible for this Use Characteristic, and the use characteristic would not apply to Residential Hotels, or

Student Housing. The legislation would also require annual reporting by an owner or operator of an Intermediate Length Occupancy unit.

The legislation would amend the Rent Ordinance in several respects:

- First, it would clarify existing law (see Admin. Code §§ 37.9(a)(2), 37.9(e)) by stating that an agreement that would require a tenant to vacate a rental unit at the expiration of a stated term (a “fixed-term agreement”) is void as contrary to public policy, unless an existing just cause exception applies (for example, where the landlord resides in the same rental unit as the tenant).
- Second, it would regulate “non-tenant uses” by restricting when landlords can allow their units to be occupied by persons or entities who are not tenants. Renting a rental unit to a corporate entity or other non-natural person for any purpose, or using a rental unit as housing for one’s employees or “licensees,” are examples of non-tenant uses. Commencing February 1, 2020, it would be unlawful to use a rental unit for a non-tenant use, and any such “non-tenants” would be deemed tenants and could seek just cause protections as forth in the Rent Ordinance. However, the prohibition on non-tenant uses would not apply (1) if the landlord has entered into a contract before February 1, 2020 that specifically authorized the non-tenant use; (2) to the use of a rental unit as a lawful short-term rental under Administrative Code Chapter 41A; (3) where the landlord is using the unit to house an employee in charge or maintaining or managing the building; or (4) to rental units operated by non-profits that provide housing as part of their primary mission.
- The legislation would also require landlords to include a disclosure when advertising their rental units online. The disclosure would state that the unit is subject to the Rent Ordinance, and that the Rent Ordinance limits evictions with just cause, and that any waiver by a tenant of their rights under the Rent Ordinance is void as contrary to public policy. The Rent Board would have the power to monitor violations and impose administrative penalties for violations that are not timely corrected.
- Finally, the legislation would authorize the City Attorney or a non-profit tenants’ rights organization to sue for civil penalties.

The legislation would also direct the Controller, in consultation with the Planning Department and other City agencies as necessary, to conduct a study to analyze the impacts created by the development of new Intermediate Length Occupancy units on the City and relevant City services.