

REVISED LEGISLATIVE DIGEST
(Amended in Committee, 04/27/2020)

[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 (“ILO”) that is applicable only to Dwelling Units. 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 provide:

- At the March 9, 2020 Land Use Committee hearing, the legislation was amended to clarify the treatment of buildings with nine or fewer Dwelling Units.
 - ILO units would not be permitted in buildings with three or fewer Dwelling Units.

- For buildings between four and nine Dwelling Units, ILO units would be principally permitted, but only 25% of the Dwelling Units would be allowed to be permitted as ILO.
- For buildings with 10 or more Dwelling Units, ILO units would be prohibited. However, an owner or operator of seeking to establish an ILO unit could seek a Conditional Use Authorization to establish ILO units in a building with 10 or more Dwelling Units. For buildings with 10 or more Dwelling Units, only 20% of those units may be permitted as ILO units.
 - At the March 9, 2020 Land Use Committee hearing, the legislation was amended to include criteria to be consideration as part of the Conditional Use Authorization. These criteria include a requirement to cluster ILO units near the downtown core, and requiring that no more than 1/3 of the total allowable ILO units are in neighborhoods identified as sensitive communities.
- The legislation would provide that no more than 1,000 Intermediate Length Occupancy units would be permitted.
- The legislation would also require annual reporting by an owner or operator of an Intermediate Length Occupancy unit.
- Exempted Units: The legislation would exempt Residential Hotels, and Student Housing from the provisions of Section 202.10. At the February 24, 2020 Land Use Committee hearing, the legislation was amended to exempt 501(c)(3) organizations that provide access to dwelling units as part of their primary mission to provide housing. A charitable organization that provides access under this exemption would still need to provide annual reporting to the Planning Department.
- Ineligible Units: Inclusionary and other below-market-rate units, and units subject to the rent increase limitations of the Rent Ordinance would not be eligible for this Use Characteristic. At the February 24, 2020 Land Use Committee hearing, the legislation was amended to provide that any Dwelling Unit in a project that received its first construction or site permit after the effective date of the ordinance would not be eligible to receive an ILO permit.
- The legislation would require the Planning Department to develop standards to evaluate applications to establish the ILO Use Characteristic within six months of the effective date of the ordinance.
- Owners and operators of ILO units would have 24 months to submit complete applications to establish ILO units.

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 April 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 April 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. At the April 27 meeting of the Land Use Committee, the ordinance was amended to exclude housing provided to teachers as a condition of their employment from the definition of a non-tenant use.
- 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 without 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.

Background

The sponsor introduced a substitute ordinance on January 14, 2020. Changes included in the substitute include:

- Allowing existing units to be eligible for the ILO use characteristic; however Inclusionary and below market rate units, as well as units subject to the rent increase limitations of the Rent Ordinance are not eligible for the ILO use characteristic.
- Increasing the total number of permitted ILO units to 1,000.
- Allowing up to 25% of Dwelling Units in buildings with nine or fewer Dwelling Units to be principally permitted.
- Providing owners and operators of ILO units 24 months to submit a complete application to establish the ILO use.

FILE NO. 191075

As described above, at the February 24, 2020 Land Use Committee hearing, the legislation was amended to add additional types of exempt units, and ineligible units.

The legislation was amended at the March 9, 2020 Land Use Committee hearing. The amendments include clarifying the treatment of buildings with nine or fewer Dwelling Units, and adding criteria for consideration by the Planning Commission in considering a request for a Conditional Use Authorization.

At the April 27 meeting of the Land Use Committee, the ordinance was amended to exclude housing provided to teachers as a condition of their employment from the definition of a non-tenant use.

n:\legana\as2019\1800552\01444318.docx