

LEGISLATIVE DIGEST

[Administrative, Planning Codes – Amending Regulation of Short-Term Residential Rentals and Establishing Fee]

Ordinance amending the Administrative Code to provide an exception for permanent residents to the prohibition on short-term residential rentals under certain conditions; to create procedures, including a registry administered by the Department of Building Inspection, for tracking short-term residential rentals and compliance; to establish an application fee for the registry; amending the Planning Code to clarify that short-term residential rentals shall not change a unit’s type as residential; and, making environmental findings and findings of consistency with the General Plan and the eight priority policies of Planning Code Section 101.1.

Existing Law

Under Chapter 41A of the San Francisco Administrative Code, renting a residential unit for less than a 30-day term is prohibited. Similar prohibitions are found in the Planning Code. These restrictions are designed to prohibit owners, businesses, and residents from converting rental units and other residences in the City from longer-term residential use to tourist use (also referred to as transient or hotel use).

The Department of Building Inspection (DBI) enforces the provisions of Chapter 41A. Additionally, other tenants in the building where the tourist or transient use is alleged and housing non-profits may file a complaint with DBI. After a complaint has been filed and after a violation has been found, the City, the tenant, or the non-profit may also file a civil action in court to enforce the provisions of Chapter 41A and recover penalties.

Amendments to Current Law

The proposed amendments to Administrative Code Chapter 41A (as well as some additional amendments to Chapter 37 and the Planning Code) would allow permanent residents to rent all or portions of their unit for tourist or transient use under certain conditions. This use is referred to as a “Short-Term Residential Rental” if it complies with all of the requirements of the proposed legislation. A permanent resident is an owner or lessee who has lived in the unit for at least 60 consecutive days and intends to make the unit his or her primary residence. The legislation defines “residential unit” for the purposes of 41A as units in buildings with two or more units.

The legislation would require DBI to create and maintain a registry of all the permanent residents who are allowed to offer their units for short-term residential rental. The legislation creates an application and renewal fee for the registry.

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The legislation also includes requirements for “hosting platforms.” Hosting platforms are people or businesses that provide a way for individuals to offer a residential unit for tourist or transient use. This service is usually, though not necessarily, provided online and includes advertising the residential unit through a website provided by the hosting platform. Under the legislation, hosting platforms are required to provide certain notice to anyone using their services regarding the City’s restrictions regarding short-term rentals. Examples of hosting platforms currently providing these types of services include Airbnb and VRBO, among others.

The proposed legislation would allow tourist or transient use of a residential unit if:

1. the residential unit is offered for tourist or transient use by the permanent resident of the residential unit; and
2. the permanent resident:
 - a.) is a natural person;
 - b.) has registered the unit and maintains good standing on the DBI registry;
 - c.) lives in the residential unit at least 275 days a year (or proportion of a year if he or she has not rented or owned the residential unit for the full preceding calendar year);
 - d.) maintains records for two years demonstrating compliance with these requirements;
 - e.) complies with all applicable laws, including collecting and remitting all required transient occupancy taxes;
 - f.) maintains homeowner’s or renter’s property or casualty insurance of not less than \$150,000 or conducts each transaction through a hosting platform that provides a guarantee program relating to property damage in an amount not less than \$150,000 to owners per incident; and
 - g.) for units subject to the rent control provisions of Section 37.3, complies with the initial rent limitation for subtenants and charges no more rent than the rent the primary resident is paying to any landlord per month.

The proposed legislation generally does not change Chapter 41A’s existing enforcement procedures, except by adding a provision that a violation is not corrected within the timeframe established by an administrative hearing officer, DBI may prohibit the an owner or lessee from listing the residential unit on any hosting platform for one year.

The proposed legislation also amends Chapter 37.9 of the Administrative Code. Under the current provisions of Chapter 37.9, a landlord may evict a tenant if the tenant is using or permitting a rental unit to be used for any illegal purpose. The proposed legislation would carve out an exception to this where the “illegal purpose” rationale is based solely on a first violation of Chapter 41A that has been cured within 30 days written notice to the tenant.

The proposed legislation would also make amendments to the Planning Code so that renting a residential unit as a short-term residential rental in compliance with Chapter 41A would not change the unit’s status as residential use.

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