

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: August 15, 2018

Final Decision Date Deadline: August 15, 2018

**STATEMENT OF THE ISSUE:** The advent of Air B&B, VRBO, Home of Residence, and other short-term rental platforms have led many California cities to adopt Ordinances aimed at regulating the use of these short-term rentals and mitigating the impact that short term rentals may impose on the City's rental housing supply. At their Regular Meeting on July 18, 2018, Board members directed staff to explore the Rent Program's possible role in regulating short-term rentals, specifically after a Rental Unit has been Withdrawn from the Rental Market pursuant to the Ellis Act. Staff members have conducted a preliminary review of the City's existing policy framework and are seeking direction from the Board to continue this research and devise recommendations for the Board's consideration at a future meeting.

## INDICATE APPROPRIATE BODY

- |   |   |  |  |   |
|---|---|--|--|---|
| <input type="checkbox"/> City Council               | <input type="checkbox"/> Redevelopment Agency                             | <input type="checkbox"/> Housing Authority     | <input type="checkbox"/> Surplus Property Authority          | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> |   |

## ITEM

- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- Public Hearing                       Regulation                       Other:
- Contract/Agreement                       Rent Board As Whole
- Grant Application/Acceptance                       Claims Filed Against City of Richmond
- Resolution                       Video/PowerPoint Presentation (contact KCRT @ 620.6759)

**RECOMMENDED ACTION:** DIRECT staff members to study the issue of the Short-Term Rental housing market as it relates to withdrawn accommodations and propose policy solutions that the Board could recommend to the City Council for consideration to mitigate possible adverse effects of Short-Term Rentals on the City's rental housing supply – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

AGENDA ITEM NO:

**H-2.**



# AGENDA REPORT

**DATE:** August 15, 2018

**TO:** Chair Gray and Members of the Rent Board

**FROM:** Nicolas Traylor, Executive Director  
Charles Oshinuga, Staff Attorney

**SUBJECT:** SHORT TERM-RENTALS (AIR B&B, VRBO)

## **STATEMENT OF THE ISSUE:**

The advent of Air B&B, VRBO, Home of Residence, and other short-term rental platforms have led many California cities to adopt Ordinances aimed at regulating the use of these short-term rentals and mitigating the impact that short term rentals may impose on the City's rental housing supply. At their Regular Meeting on July 18, 2018, Board members directed staff to explore the Rent Program's possible role in regulating short-term rentals, specifically after a Rental Unit has been Withdrawn from the Rental Market pursuant to the Ellis Act. Staff members have conducted a preliminary review of the City's existing policy framework and are seeking direction from the Board to continue this research and devise recommendations for the Board's consideration at a future meeting.

## **RECOMMENDED ACTION:**

DIRECT staff members to study the issue of the Short-Term Rental housing market as it relates to withdrawn accommodations and propose policy solutions that the Board could recommend to the City Council for consideration to mitigate possible adverse effects of Short-Term Rentals on the City's rental housing supply – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

## **FISCAL IMPACT:**

There is no fiscal impact related to this item at this time.

**DISCUSSION:**Background

Short-term rentals of residences and its related platforms such as Air B&B and VRBO have had a significant impact on cities in the Bay Area. While some local government officials view short-term rentals as an opportunity to provide ancillary income to city residents, help expand city tourism and available transient occupancy opportunities during peak hotel/motel occupancy times, such as major sporting events, and stimulate commercial activity within a city, others perceive short-term rentals as disruptive to communities, providing yet another mode of displacement of renters, and a threat to the existing rental housing stock.<sup>1,2</sup> To address these negative impacts, cities such as Tiburon, Danville, Monterey, and Pacific Grove, have gone as far as to pass ordinances prohibiting short-term rentals, in effect punishing individuals who engage in Air B&B and similar platforms. Yet not all cities have addressed its legitimate concerns with short-term rentals with a total ban. Many cities, such as San Francisco, Marin, San Jose, and Berkeley, have passed short-term rental ordinances, regulating the activity of renting one's residence out on a short-term basis and mitigating the impact this activity may have.

Currently, the City of Richmond does not have a short-term rental ordinance aimed specifically at regulating the use of platforms such as Air B&B. However, the City does employ its broad definition of a "hotel" found in Richmond Municipal Code Section 7.88.020(2), to levy taxes on any resident engaged in the use of short-term rentals. These provisions of the Municipal Code are unclear as to whether residents engaged in short-term rentals would be regulated in the same fashion as hotels.

The City of Richmond, separate from the Rent Board, has jurisdiction over regulating the use of Short-Term Rentals, such as Air B&B, VRBO, etc.

The City of Richmond is governed by its General Plan. The General Plan is the "blueprint" of the City, and it is used to establish zones for different types of development, uses, traffic patterns, and future development. When it pertains to the issue of land use, the City has sole authority in governance and related regulation.

A short-term rental is a particular "use" of a property. It is neither residential nor commercial; rather it is considered a conditional use involving "transient occupancy". Generally, where a resident seeks to engage in a use other than what the property has been zoned, the resident must seek a permit with the Planning and Building Services Department to obtain a conditional use permit. Therefore, the Planning and Building

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<sup>1</sup> Hill, Stephen. "The Unsavory Side of Airbnb." October 19, 2015. *The American Prospect*. Accessed 8/10/18. <http://prospect.org/article/evictions-and-conversions-dark-side-airbnb>

<sup>2</sup> Dillon, Liam. "California Lawmakers can't figure out what to do with Airbnb. Here's Why." February 3, 2017. *Los Angeles Times*. Accessed 8/10/18. <http://www.latimes.com/politics/la-pol-sac-airbnb-laws-california-legislature-20170203-story.html>.

Services Department is responsible for the regulation of short-term rentals specifically and other uses of land generally.

This view is consistent with the actions of other Bay Area cities. Where a city seeks to regulate the use of short-term rentals, the City Council or Board of Supervisor typically directs its Planning Commission to conduct a study and bring forth policy proposal for the Council to consider. These policy proposals are later converted into an Ordinance for adoption. An example of how the City of San Jose engaged in this process is contained in Attachment 1.

### Cities with Rent Stabilization Programs collaborate with their respective Building and Planning Departments to address concerns posed by Short-term Rentals

As mentioned, one of the concerns posed by short-term rentals is that they can potentially decrease the City's rental housing stock and result in displacement. Each potential Rental Unit that is not rented out to a Tenant, is one less unit on the rental market and one less unit of housing. At times, Landlords will engage the Ellis Act to withdraw entire properties from the rental market and engage in the short-term rentals of these withdrawn units. This not only impacts the Rent Program, but the City of Richmond at large.

Despite the importance of this issue, the Rent Board does not govern or regulate land use, and therefore, it would be inappropriate for the Board to act independently to craft policy governing the use of short-term rentals. However, where concerns arise that impact both the Rent Board and the City of Richmond, there is often room for collaboration. The City of San Francisco provides an insightful example of such collaboration.

The City of San Francisco dealt with an issue concerning the Ellis Act, condo-conversion, and short-term rentals. Specifically, owners were utilizing the Ellis Act to withdraw their units, thereby escaping the reach of the City's Rent Stabilization Ordinance, and subsequently would convert their property to "for sale" condominiums or simply engage in short-term rentals of the units. To address this situation, in collaboration with the Rent Board, the San Francisco Board of Supervisors passed a Residential Conversion and Demolition Ordinance. This Ordinance is managed by its Building and Planning Department and regulates the conversion and demolition of buildings.

The Conversion and Demolition Ordinance includes provisions that limit the use of a property after it has been withdrawn from the rental market via the Ellis Act. Specifically, where a building has been withdrawn from the rental market, an owner may not engage in a short-term rental use for 5 years (Attachment 2.)

The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (hereinafter, "Rent Ordinance") addresses short-term rentals.

The Rent Ordinance regulates the Rents of a rental unit and evictions; it does not regulate land use, which controls permissible use of a property. The Rent Ordinance does, however, address short-term rentals as it relates to Rent amounts and evictions. The Rent Ordinance fully exempts from its provisions particular short-term rentals. Specifically, Richmond Municipal Code Section 11.100.030(d)(2) exempts, "Rental units in hotels, motels, inns, tourists homes and rooming and boarding houses which are rented *primarily to transient guests* for a period of fewer than fourteen (14) days." Where a short-term rental is engaged in its authorized use for a period of more than 14 days, the full provisions of the Rent Ordinance attach, and the respective Rental Units fall within the Rent Board's purview.

### Conclusion

The regulation of rents and evictions can only go so far in achieving the overall goal of the Rent Ordinance. If the Rent Board seeks to address the potential loss of housing stock due to short-term rentals or other changes of use of property, collaboration with the Planning and Building Services Department would be necessary to formulate potential policy solutions. If the City Council were to pass an ordinance that regulated short-term rentals, the ordinance could limit the amount of days a short-term rental could occur in Controlled Rental Units, place restrictions on who may engage in short-term renting of residences, etc. Collaboration with Building and Planning would ensure that any potential ordinance is tailored, in part, to address the concerns of the Rent Board.

### **DOCUMENTS ATTACHED:**

Attachment 1 – City of San Jose's Planning Commissions Staff Report regarding Short-term Rentals.

Attachment 2 – San Francisco Conversion and Demolition Ordinance



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** November 21, 2014

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**SUBJECT: AN ORDINANCE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (ZONING CODE) TO ALLOW AND REGULATE TRANSIENT OCCUPANCY AS AN INCIDENTAL USE TO PRIMARY RESIDENTIAL USES, TO MODIFY PERMITTING REQUIREMENTS AND OCCUPANCY LIMITATIONS FOR BED AND BREAKFAST INNS, TO AMEND AND ADD LONG-TERM ROOM RENTAL LIMITATIONS AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20.**

### RECOMMENDATION

The Planning Commission voted unanimously (7-0-0) to recommend that the City Council approve the proposed ordinance as recommended by the Planning Director with the following changes and additions:

1. Revise the limitation for the use from 90 days to 365 days per calendar year with a host (property owner or primary tenant) present and from 90 days to 180 days per calendar year with no host present;
2. Add a provision to require hosts to join a registry to be administered by the City of San José, and to be used by City staff to collect and monitor data on the use; and
3. Provide a status report to the City Council on the effectiveness of the ordinance 18 months after the ordinance is implemented.

### OUTCOME

Should the City Council approve the proposed ordinance, the established provisions would allow short-term rentals of residences or "incidental transient occupancy" for up to a specified number of days per calendar year as a Permitted Use with or without a "host" (owner or primary tenant) present, and with or without a "hosting platform," such as Airbnb, as would be defined in the Zoning Code. Incidental transient occupancy would be required to comply with proposed

HONORABLE MAYOR AND CITY COUNCIL

November 21, 2014

Subject: PP14-084 Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 2

specific performance standards and other provisions in the Zoning Code.

### **BACKGROUND**

On November 20, 2014, the Planning Commission conducted a public hearing on the proposed ordinance. See the attached Staff Report to the Planning Commission for the full analysis, description of the public outreach, and coordination conducted on the proposed amendments to Title 20 (the Zoning Code).

### **ANALYSIS**

City staff summarized the recommended provisions and stated that the changes to the Zoning Code are intended to implement direction from the Mayor and Council to facilitate collection of Transient Occupancy Tax (TOT) from incidental transient occupancy of homes/apartments to generate revenue and to have a level playing field with hotel/motels and bed and breakfast inns. Staff noted that at the Neighborhoods Commission's public hearing on November 12, 2014, Commissioners had questioned the ability of the City to collect taxes from hosts and suggested that the proposed ordinance be considered as a "pilot," with the expectation that it may need to be revised after the City analyzes the effectiveness of its initial implementation. In response to comments from the Neighborhoods Commission hearing, staff added proposed text in Table 20-165 of the draft ordinance that clarifies the responsibilities and record-keeping requirements of the host for payment of TOT.

#### **Public Testimony**

At the Planning Commission hearing, some members of the public spoke in favor of making the proposed provisions for incidental transient occupancy more lenient for hosts to encourage income generation for homeowners and revenue for the City. Other speakers recommended more limitations for incidental transient occupancy so that the hospitality industry, and in particular hotel workers, would not be negatively impacted by the proposed ordinance.

Several speakers who identified themselves as Airbnb hosts stated that short-term home-sharing (incidental transient occupancy) allows visitors to live like local residents, brings additional revenue to the City, and helps homeowners keep and improve their homes with the income they earn from the use.

In response to a question from Commissioner Kline as to whether the proposed 90-day per calendar year cap for the use was too limiting, a speaker, who identified herself as a host, stated that she wanted the use to be allowed 365 days a year to accommodate nurses who stay more than 90 days per year, as well as other occupants more regularly throughout the year.

Another speaker stated that home-sharing allows guests to experience San José like local residents and spend money in neighborhoods, and it allows local businesses to get extra

# ITEM H-2 ATTACHMENT 1

HONORABLE MAYOR AND CITY COUNCIL

November 21, 2014

Subject: PP14-084 Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 3

customers. She added that San José is the capital of Silicon Valley, the champion of innovation, and home-sharing has helped guests pitching start-ups make business connections.

One speaker mentioned that the Airbnb platform allows pre-vetting of guests, that guests behave well, and short-term home-sharing helps homeowners avoid the challenges a landlord may face by taking a long-term renter through an eviction process. Another speaker noted that San Francisco doesn't limit the total number of days for home-sharing if the host is present.

Commissioner Kline asked a speaker what he would recommend for a limit if there was no host. The speaker responded that 180 days would be reasonable. Several speakers emphasized that the duration of the use and the number of guests (incidental transient occupants) allowed in a residence should not be limited.

Some speakers expressed concerns about long-term impacts to the hotel industry from incidental transient occupancy. One speaker stated that a Salesforce convention in San Francisco used Airbnb to arrange accommodations in homes, which took business away from hotels, and that the controls for health, safety, habitability, and insurance that are required for hotel operations are not in place in short-term home-rentals. Another speaker who identified herself as a unionized hotel worker stated that allowing incidental transient occupancy without strict limitations would threaten her livelihood.

A representative from Working Partnerships USA said that incidental transient occupancy transforms residential properties into unregulated hotels, which undermines the City's investment in the hospitality industry, and which could exacerbate the local housing crisis. She said she was concerned that neighborhood instability would occur as a result of transient occupancy in residences and that the item was being fast-tracked. She suggested that it should be deferred to have the City conduct more research about the use. She recommended a cap of 30 days for transient occupancy, and insurance requirements.

## **Planning Commission Discussion**

Planning staff explained that the intent of the proposed cap on the number of days per year for host and no-host operation of the "incidental transient occupancy" use, and on the number of guests per residence, is to ensure that this use is implemented as a minor commercial component of the primary residential use of a home.

The Planning Commission asked staff to clarify the rationale for the proposed provisions and to address issues raised by the speakers. Staff responded that the proposed provisions are intended to respond to the existing context for how incidental transient occupancy is currently operated in San José and to provide performance standards for regulation of this use; the proposed criteria are aligned with provisions currently in the Zoning Code for other types of transient occupancy, and for other incidental uses in residences including but not limited to long-term rentals.

Commissioner O'Halloran commented that he would like to consider the proposed ordinance in terms of a pilot approach to regulating incidental transient occupancy. He asked staff to consider

# ITEM H-2 ATTACHMENT 1

HONORABLE MAYOR AND CITY COUNCIL

November 21, 2014

Subject: PP14-084 Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 4

the impact of the ordinance on the hospitality industry when presenting a status report. Staff from the Office of Economic Development responded that the City did discuss the proposal with representatives of the hospitality industry, and that these representatives acknowledged that hotels and motels are currently generally at capacity when conventions and large special events occur.

Commissioner Yob asked about the need and effectiveness of Code Enforcement for incidental transient occupancy. Staff responded that a handful of complaints had been made regarding parking and noise impacts from guests, and that long-term residents had the impression that Code Enforcement resources were inadequate to address these concerns as a priority.

Commissioner Bit-Badal questioned staff about the extent and effectiveness of public outreach. Staff summarized public engagement, and noted that no one had stated that incidental transient occupancy should be completely prohibited; rather, the consensus is to limit it.

Commissioner Pham expressed concerns that the proposed ordinance was very open-ended and did not address issues such as insurance requirements. Chair Kamkar said that incidental transient occupancy can allow people to hold onto their homes.

Commissioner Kline observed that the internet has a habit of pushing adjustments to regulations and that we have to consider the "carrot and stick" balance between strictness versus degree of compliance. Commissioner Bit-Badal agreed with Commissioner Kline's sentiments to start with less strict regulations and then tighten if necessary. Planning staff and Senior Deputy City Attorney Lee cautioned that implementing at the outset a more permissive regulatory program, while not foreclosing later more restrictive regulations, could potentially result in legal nonconforming status for uses then legally established. Commissioners Abelite and Yob expressed concern about this possibility.

Chair Kamkar emphasized that hosts need to be honest in reporting income. The Planning Commission then approved a motion to support the staff recommendation with the modifications as noted above in the "Recommendation" section of this memorandum.

## **EVALUATION AND FOLLOW-UP**

As recommended by the Planning Commission, staff would provide a status report to the City Council on the effectiveness of the ordinance 18 months after the ordinance is implemented.

## **POLICY ALTERNATIVES**

- **Alternative #1:** Approve the proposed ordinance per Planning staff recommendation with modification to the maximum allowable days per calendar year for host and no-host operation of incidental transient occupancy to 365 days and 180 days respectively, in response to Planning Commission's recommendation.

ITEM H-2  
ATTACHMENT 1

HONORABLE MAYOR AND CITY COUNCIL

November 21, 2014

Subject: PP14-084 Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 5

**Pros:**

More days per calendar year allowed for incidental transient occupancy could increase TOT revenue to the City and ancillary revenue for resident hosts.

**Cons:**

The surrounding neighborhoods will be more greatly affected. The availability of long-term housing, which already is in short supply, could be further reduced. The long-term viability of the hospitality industry could be negatively impacted.

**Reason for not recommending:** Established residential neighborhoods may become less stable and more transient.

- **Alternative #2:** Approve the proposed ordinance with a City-administered registry requirement for hosts as recommended by the Planning Commission.

**Pros:**

This proposal would facilitate staff monitoring of the use. It could allow staff to better understand and track the impacts of this decision.

**Cons:**

This proposal would create costs for the City to administer the registry necessitating more time for staff to formulate the provisions for the ordinance and determine how to recover costs for administration, possibly necessitating a registry fee.

**Reason for not recommending:** This proposal could reduce net revenue that the City could obtain from TOT on incidental transient occupancy, thereby compromising the intent of the Mayor's direction if a cost recovery fee is imposed.

- **Alternative #3:** Do not approve the proposed Ordinance.

**Pros:**

The existing prohibition on incidental transient occupancy protects the scarce housing supply and the viability of the hospitality industry.

**Cons:**

The use already exists and is unregulated. Existing provisions in the Zoning Code limit opportunities for the City to collect TOT on the use.

**Reason for not recommending:** Existing provisions in the Zoning Code do not facilitate the implementation of Council direction for collecting TOT on the use and having a level playing field with the hospitality industry.

# ITEM H-2 ATTACHMENT 1

HONORABLE MAYOR AND CITY COUNCIL

November 21, 2014

Subject: PP14-084 Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 6

## PUBLIC OUTREACH

Planning staff has engaged the public on the proposed ordinance through: 1) a community meeting held the evening of October 30, 2014 with interested stakeholders including residents, affordable housing representatives, representatives of the hospitality industry, and a representative from a hosting platform for incidental transient occupancy, which was attended by approximately 50 people; 2) with the PBCE Developers' Roundtable held the morning of October 17, 2014, which was attended by approximately 20 people; and 3) a presentation to the Neighborhoods Commission on November 12, 2014. These meetings provided forums for public input on the proposed amendments. Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

## COORDINATION

Preparation of this report and the proposed ordinance were coordinated with the City Attorney's Office and the Office of Economic Development.

## CEQA

Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 and addenda thereto (File No. PP14-084).

/s/

HARRY FREITAS, SECRETARY

Planning Commission

For questions please contact Steve Piasecki, Interim Planning Official, at 408-535-7893.

Attachments: Planning Commission Staff Report

ITEM H-2  
ATTACHMENT 1

PC AGENDA: 11-19-14

ITEM: 4.e.



## Memorandum

TO: PLANNING COMMISSION

FROM: Harry Freitas

SUBJECT: SEE BELOW

DATE: November 7, 2014

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**SUBJECT: An Ordinance of the City of San José amending Title 20 of the San José Municipal Code (Zoning Ordinance or Zoning Code) to amend Sections 20.30.110 of Chapter 20.30 and 20.60.030 of Chapter 20.60, and 20.200.470 of Chapter 20.200; to add new Sections 20.40.115 of Chapter 20.40, 20.70.130 of Chapter 20.70, and 20.75.230 of Chapter 20.75; to amend Part 2 of Chapter 20.80; and to add a new Part 2.5 to Chapter 20.80, all to allow and regulate transient occupancy as an incidental use to primary residential uses, to modify permitting requirements and occupancy limitations for Bed and Breakfast Inns, to amend and add long-term room rental limitations and to make other technical, non-substantive, or formatting changes in those sections of Title 20.**

### RECOMMENDATION

Recommend to the City Council the approval of the ordinance outlined in this memorandum to amend Title 20 of the San José Municipal Code to allow and regulate transient occupancy (not to exceed 30 days in duration per rental period) as an incidental use to primary residential uses, to modify permitting requirements and occupancy limitations for Bed and Breakfast Inns, to amend and add long-term room rental limitations, and to make other technical, non-substantive, or formatting changes within those sections of Title 20 all to further the Innovative Economy and Fiscal Sustainability Goals and Policies in the Envision San José 2040 General Plan.

### OUTCOME

The proposed amendments to the Zoning Ordinance (Zoning Code or Title 20) would allow short-term rentals of residences or "incidental transient occupancy" for up to 90 days per calendar year as a Permitted Use with or without a "host" (owner or primary tenant) present, and with or without a "hosting platform," as would be defined in the Zoning Code. Incidental transient occupancy would be required to comply with proposed specific performance standards and other provisions in the Zoning Code.

### BACKGROUND

Short-term rentals of residences can provide ancillary income to the City's residents, help expand the City's tourism and available transient occupancy opportunities during peak hotel/motel occupancy times, such as major sporting events, and help stimulate commercial activity throughout the City.

PLANNING COMMISSION

November 19, 2014

Subject: Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 2

Currently, the City does not have provisions in its Municipal Code to allow short-term rentals of residences (not to exceed 30 days in duration per rental period) as a Permitted Use. However, in fact, these rentals exist in San José, and they meet a demand that visitors and other new arrivals have for short-term occupancy in the City. If effectively managed, short-term rental of residences can provide homeowners and primary tenants an additional opportunity for income to hold on to their residences and invest in upkeep, which can support neighborhood stability and identity.

Short-term rentals that do not exceed 30 days in duration are a type of transient occupancy that is subject to the City's transient occupancy tax of 10% (TOT) per the provisions in Title 4 of the San José Municipal Code. If the City were to allow and regulate these uses effectively, the City could collect TOT from them, thereby increasing revenue to the City's General Fund.

**Council Direction**

On March 6, 2014, in his Budget Message, Mayor Reed stated, "the Administration should explore applying the TOT to non-hotel lessors utilizing internet-transacted vacation rentals" to generate revenue and have a level playing field with hotels. Subsequently, on April 1, 2014 Councilmember Campos stated during a Rules Committee meeting that the Administration should "develop a method and implementation plan for the requirement that all shareable housing and temporary rental services doing business in San José collect and pay the TOT." Given this interest, City staff from the Office of Economic Development, the Department of PBCE, and the City Attorney's Office has collaborated on a proposed ordinance to legalize short-term rentals of residences. A separate recommendation to Council would include an Agreement with Airbnb to foster remittance of the TOT to the City from Airbnb hosts.

**ANALYSIS**

The proposed ordinance would allow incidental transient occupancy as a Permitted Use for the purposes of: 1) obtaining TOT revenue for the City; and 2) establishing performance standards for these rentals in order to maintain compatibility with surrounding land uses.

Given the relatively small-scale and scattered locations of incidental transient occupancy today in the City in comparison to the presence in other large cities worldwide, and given the potential costs of regulation that could be incurred by the City, staff recommends a regulatory approach that relies on keeping the implementation of the proposed ordinance simple and low-cost for City staff and hosts.

As proposed by staff, incidental transient occupancy would be allowed by right in conventional and Planned Development Zoning Districts in residences where the residence itself is permitted and is in conformance with all applicable Zoning Code provisions, including performance criteria set forth in Table 20-165 (see attached Draft Ordinance). The provisions would allow incidental transient occupancy for up to 90 days per calendar year with or without a host (owner or primary tenant) present, and with or without a "hosting platform," as would be defined in the Zoning Code.

PLANNING COMMISSION

November 19, 2014

Subject: Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 3

To prevent landlords from turning rent-controlled units into full-time short-term rental properties that could result in displacement of renters of affordable units, the performance standards would limit the lessor of such units to “a Person who occupies the unit that is being used for Incidental Transient Occupancy for at least sixty (60) consecutive days, with the intent to establish that dwelling as the Host’s Primary Residence.”

The ordinance would not preclude the rights of landlords or homeowners’ associations to prohibit short-term rentals.

The ordinance would also update provisions for Bed and Breakfast Inns and long-term residential rentals to distinguish more clearly each type of use from each other and align standards to type of use with the intent of maintaining a level playing field among these uses and with Hotels/Motels.

#### **General Plan Consistency**

San José’s economy relies on innovation, providing job opportunities and fiscal resources for the City’s residents. General Plan Policies for a Diverse and Innovative Economy address the need to provide broad economic prosperity and support for businesses of all sizes. Along with the Fiscal Sustainability Policies, these Policies also strive for reliable funding sources for the City through economic development actions. San José must manage revenue sources and expenditures to deliver services that protect public health and safety, promote the local economy, and improve the quality of life for San José’s residents in a financially sound and cost-effective manner.

The proposed amendments are consistent with the Innovative Economy and Fiscal Sustainability Goals, Policies and Implementation Actions in the Envision San José 2040 General Plan including but not limited to the following:

**Goal IE-1 – Land Use and Employment.** Proactively manage land uses to provide and enhance economic development and job growth in San José.

- The proposed amendments to the Zoning Code would facilitate economic development by providing clear provisions for residents in San José to have opportunities for ancillary income generation from the incidental transient occupancy of a portion or all of their residences.

**Action IE-2.8 – Business Growth and Retention.** Evaluate and periodically update the City’s policies, regulations and ordinances to maintain San José’s competitive ability to attract and grow businesses, including small businesses and home occupations.

- The proposed amendments would facilitate small home-based businesses of short-term rentals.

**Goal FS-2 – Cultivate Fiscal Resources.** Maintain and expand the revenue sources available to finance the provision of City services.

- The proposed amendments could establish a basis for the City to expand revenue sources available to finance the provision of City services.

PLANNING COMMISSION

November 19, 2014

Subject: Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 4

**Goal FS-3 – Fiscally Sustainable Land Use Framework.** Make land use decisions that improve the City's fiscal condition. Manage San José's future growth in an orderly, planned manner that is consistent with our ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

- The proposed amendments would potentially help achieve more equitable sharing of the cost of services provided by the City to residents.

**Policy FS-3.4 – Fiscally Sustainable Land Use Framework.** Promote land use policy and implementation actions that improve our City's fiscal sustainability. Maintain or enhance the City's projected total net revenue through amendments made to this General Plan in each Review process. Discourage proposed rezonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase its service costs to the City without offsetting increases in revenue.

- The proposed amendments would establish provisions that could improve the City's fiscal sustainability through the collection of TOT revenue from incidental transient occupancy.

**PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

Planning staff has engaged the public on the proposed ordinance through: 1) a community meeting held the evening of October 30, 2014 with interested stakeholders including residents, affordable housing representatives, representatives of the hospitality industry, and a representative from a hosting platform for incidental transient occupancy, which was attended by approximately 50 people; and 2) with the PBCE Developers' Roundtable held the morning of October 17, 2014, which was attended by approximately 20 people. These meetings provided forums for public input on the proposed amendments.

As of the writing of this staff report, the proposed ordinance is scheduled for presentation to the Neighborhoods Commission on November 12, 2014. After that public meeting, staff will provide a summary of the outcome to the Planning Commission.

Community members acknowledged that incidental transient occupancy was currently present in residences that are scattered throughout the City, even though the San José Municipal Code does not include provisions to allow the use as Permitted (i.e., allowed without Planning approval by the City). Given this existing context, there is general consensus to amend the Zoning Code to

PLANNING COMMISSION

November 19, 2014

Subject: Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 5

regulate this type of use, rather than completely prohibit it. Primary issues that community members raised related to whether the use occurs with or without a host present, the allowable scale and intensity of the use, and where in the City the use may be allowed, including performance standards for property maintenance, parking, host and occupant behavior – such as informing neighbors about when the use will occur and by whom, outdoor activities, maximum noise levels, and minimum trash collection, so that the host and the occupants will be good neighbors.

Community members were also interested in aligning revenue expectations with City service demands raised by the use, including, in particular, demands on Code Enforcement resources. Additionally, some community members voiced preferences for the City to create and maintain a level playing field between requirements for hotels/motels and the proposed incidental transient occupancy use. There were also community members who expressed concerns about the degree to which incidental transient occupancy could negatively impact affordable housing options in the City. More specifically, community comments can be summarized as follows:

1. Require a business license for a host to operate – ideally, regardless of whether or not a hosting platform is used, and regardless of whether host is present or not, but definitely if there are provisions in the proposed ordinance that would allow incidental transient occupancy without a host onsite.
2. Limit the number of days per year both without a host present and with a host present.
3. Allow far fewer than 90 days – or don't allow at all a “no-host” option – at least in “suburban” parts of the City.
4. Align the total number of occupants allowed in a residence to the number of bedrooms in the residence or to the size of the residence.
5. Include provisions for quiet hours, such as lower maximum noise levels and limitations on outdoor activity between certain hours (e.g., between 10:00 PM and 7:00 AM).
6. Require a public registry for each site with contact information for each host and guest information included.
7. Clarify that revenue received by the City through TOT collection from legalizing the incidental transient occupancy use should go to more effective and additional Code Enforcement because the use creates costs for the City to provide services; ideally, there should be cost recovery from revenue generated by the use.
8. Include provisions for neighbors to be able to contact a property manager or host – at the very least require provisions for an interested party to contact a host representative and get a response 24 hours a day, 365 days a year.

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

PLANNING COMMISSION

November 19, 2014

Subject: Title 20 Changes to Allow Incidental Transient Occupancy in Residences

Page 6

**Staff Response**

To the extent provided by law and where practical within the scope of the Zoning Code, staff's recommended amendments address the concerns raised by members of the public. The City's requirements for payment of business tax currently apply to a host if the number of units used for incidental transient occupancy is three (3) or more (i.e., three rooms rented independently to three different transient users if the host is present or three residences if a host is not present). Incidental transient occupancy use that involves fewer than three (3) rental units is not subject to the City's business tax.

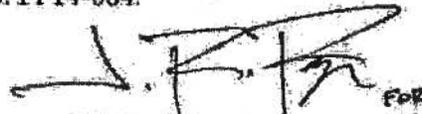
Staff is not opposed to exploring the concept of a public registry of hosts if the scale of incidental transient occupancy increases significantly. However, at the time of the writing of this staff report, based on information that staff has obtained from the City's Code Enforcement Division, from hosting platforms, and from community members, staff has concluded that the current level of incidental transient occupancy in the City may not warrant the investment of City resources to establish and maintain such a public registry. Staff recommends, instead, that the City monitor the level of growth of this use for the next two years with implementation of the ordinance as currently proposed by staff, and consider a registry requirement if there is a significant increase in complaints to Code Enforcement during this period. The City Council could choose to budget General Fund TOT revenues to help offset City costs for Code Enforcement needed to address any complaints about such uses.

**COORDINATION**

The preparation of the proposed ordinance and this staff report were coordinated with the Office of Economic Development and the City Attorney's Office.

**CEQA**

Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 and addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program approved previously. The Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan entitled, "Envision San José 2040 General Plan," for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, adequately describes the activity for the purposes of CEQA. The project does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San José may take action on the project as being within the scope of the Final EIR, File No. PPI4-084.



HARRY FREITAS, DIRECTOR  
Planning, Building and Code Enforcement

For questions, please contact Jenny Nusbaum, Senior Planner at 408-535-7872.

Attachments: Draft Ordinance

RD:MD1:JMD  
11/19/2014

*DRAFT*

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 20.30.110 OF CHAPTER 20.30, 20.60.030 OF CHAPTER 20.60 AND 20.200.470 OF CHAPTER 20.200, ADDING NEW SECTIONS 20.40.115 OF CHAPTER 20.40, 20.70.130 OF CHAPTER 20.70 AND 20.75.230 OF CHAPTER 20.75, AMENDING PART 2 OF CHAPTER 20.80, AND ADDING A NEW PART 2.5 TO CHAPTER 20.80, ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, TO ALLOW AND REGULATE TRANSIENT OCCUPANCY AS AN INCIDENTAL USE OF RESIDENCES AND TO MODIFY PERMITTING REQUIREMENTS AND OCCUPANCY LIMITATIONS FOR BED AND BREAKFAST INNS TO AMEND AND ADD LONG-TERM ROOM RENTAL LIMITATIONS AND TO MAKE OTHER NON SUBSTANTIVE OR FORMATTING CHANGES WITHIN THESE SECTIONS OF TITLE 20**

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the City has certified that certain Final Program Environmental Impact Report ("FEIR") for the Envision San José 2040 General Plan and the City Council adopted its related Resolution No. 76041 in connection therewith; and

**WHEREAS**, pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance and that adoption of this Ordinance is within the scope of and in furtherance of the Envision San José 2040 General Plan FEIR, for which findings were adopted by City Council through its Resolution No. 76041 on November 1, 2011; and

ITEM H-2  
ATTACHMENT 1

RD:MD1:JMD  
11/19/2014

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the Final EIR and related City Council Resolution No. 76041 prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:**

**SECTION 1.** Section 20.30.110 of Chapter 20.30 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**"20.30.110 Incidental Uses.**

In addition to the occupancy of a dwelling as a residence, the following incidental uses are permitted:

- A. The rental of rooms in a One (1)-Family Dwelling to up to three (3) Guests and in a Two (2)-Family Dwelling to up to two (2) Guests, by each Family and in a Multiple Dwelling Unit to up to two (2) Guests per unit, if such use is clearly incidental to the occupancy of the dwelling unit by said Family as its own residence, and such rental is for a period of time longer than thirty (30) days and there are no more than six (6) persons living in the dwelling.
- B. Use of the dwelling, including a permitted Secondary Dwelling or permitted Guesthouse, for Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80.
- C. State licensed Family Day Care Home.

RD:MD1:JMD  
11/19/2014

GD. The following non-commercial activities:

1. A garage sale consisting of the occupants' personal property;
2. Sale of goods hand-produced by the occupants;
3. Sales parties held for the purpose of selling goods to invited Guests. Such parties shall be held inside a permanent structure or in the rear yard of the dwelling unit.

DE. To qualify as a non-commercial activity:

1. No more than two (2) such sales are allowed in any calendar year;
2. No such sale can be conducted for more than four (4) consecutive days;
3. Such sales shall only be conducted between the hours of 9:00 a.m. and 9:00 p.m.”

**SECTION 2.** Chapter 20.40 of Title 20 of the San José Municipal Code is hereby amended to add a new Section 20.40.115 to be entitled and read as follows:

**“20.40.115 Incidental Use, Residential**

Where residential use has been permitted pursuant to a Conditional Use Permit, Special Use Permit or Administrative Permit, Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted incidental use of the permitted dwelling.”

RD:MD1:JMD  
11/19/2014

**SECTION 3.** Section 20.60.030 of Chapter 20.60 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**"20.60.030 Uses**

The use regulations for territory situated in a Planned Development District shall be as follows:

- A. Unless and until a Planned Development Permit has been issued and been effectuated, property in such territory may be used only as if it were in its base district alone.
- B. If a Planned Development Permit is effective, any use or combination of uses provided for in said permit is allowed in accordance with and in strict compliance with all terms, provisions and conditions of said permit. Each permitted use shall be confined and limited to the particular location designated therefore in said permit. No use, other than the particular uses specified in the permit, shall be permitted, except as set forth elsewhere in this Title 20.
- C. If a Planned Development Permit permits a residential use. Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted use of the permitted dwelling.
- D. If a Planned Development Permit has been issued, the Planned Development District may nevertheless be disregarded and property in such territory used as if it were in its base district alone if such use is confined to part of the subject territory not covered by the permit

RD:MD1:JMD  
11/19/2014

and a requirement to make such use of such part is not a condition of such permit.

**SECTION 4.** Chapter 20.70 of the San José Municipal Code is hereby amended by adding a Section to be numbered and entitled and read as follows:

**“20.70.130 Incidental Use, Residential**

Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 of a Live/Work Unit or Multiple Dwelling is a permitted incidental use of the dwelling.”

**SECTION 5.** Chapter 20.75 of the San José Municipal Code is hereby amended by adding a Section to be numbered and entitled and read as follows:

**20.75.230 Incidental Use, Residential**

Where residential use has been permitted pursuant to a Conditional Use Permit, Special Use Permit or Administrative Permit, Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted use of the permitted dwelling.”

**SECTION 6.** Part 2 of Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**“Part 2**

**BED & BREAKFAST INNS**

**20.80.110 Bed and Breakfast Inns - Criteria for Approval**

- A. No Development Permit may be issued for a Bed and Breakfast Inn unless the following criteria are met:

ITEM H-2  
ATTACHMENT 1

RD:MD1:JMD  
11/19/2014

1. The inn is owner-occupied.
  2. The Building is of historical and/or architectural significance and was designed for residential occupancy.
  3. No separate cooking facilities for Guests are provided.
  4. No more than one daily meal, breakfast, is served to Guests.
  5. No more than one Guest Room has an external entryway.
  6. No Guest may occupy accommodations in the inn for a period of more than ~~fourteen~~ thirty (30) calendar days, counting portions of calendar days as a full calendar day in any three-month period.
  7. A certificate of occupancy for Group R occupancy is obtained from the City Building Division, and all applicable Building and Fire regulations are met.
  8. Any loan funds provided by the City of San José or the redevelopment agency for rehabilitation and/or repair of the subject Building as a residential Building have been repaid in full.
- B. The criteria set forth in subsection A. above shall be deemed to be conditions of any development permit for a Bed and Breakfast Inn, and failure to adhere to said criteria shall be a violation of this Title.

RD:MD1:JMD  
11/19/2014

- C. All Development Permits for a Bed and Breakfast Inn shall set forth the maximum number of Guest Rooms or Guests that may occupy the premises, at any given time, for overnight lodging.

SECTION 7. Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to by adding a Part to be numbered and entitled and read as follows:

**"Part 2.5**

**Transient Occupancy as an Incidental Use to a Residence**

20.80.150 Definitions

The definitions set forth in the Section shall govern the interpretation of this Part:

- A. "Adjacent Properties" means the dwelling units located to the sides, rear, front, including across the street, above and below, the dwelling unit in which the Incidental Transient Occupancy is located.
- B. "Host" means any Person, as defined in Title 1 of this Code, who is the owner of record of residential real property, or any Person who is a lessee of residential real property pursuant to a written agreement for the lease of such real property, who offers a dwelling unit, or portion thereof, for Incidental Transient Occupancy.
- C. "Host Present" means the Host is present on the premises of the dwelling unit that is being used for Incidental Transient Occupancy during the term of the Transient Occupancy at all times between the hours of 10pm - 6am.

RD:MD1:JMD  
11/19/2014

- D. "Hosting Platform" means a Person that provides a means through which a host may offer a dwelling unit, or portion thereof, for Incidental Transient Occupancy. This service is usually, though not necessarily, provided through an internet based platform and generally allows an owner or tenant to advertise the dwelling unit through a website provided by the Hosting Platform and provides a means for potential Incidental Transient Users to arrange Incidental Transient Occupancy and payment therefor, whether the Transient User pays rent directly to the Host or to the Hosting Platform.
- E. "Incidental Transient Occupancy" means the use or possession or the right to the use or possession of any room or rooms, or portions thereof for dwelling, sleeping or lodging purposes in any One-Family Dwelling, Two Family Dwelling, Multiple Dwelling, Mobilehome, Live/Work Unit, or Secondary Dwelling, by a Transient User.
- F. "Local Contact Person" mean a person designated by the Host who shall be available at all twenty-four (24) hours per day, seven (7) days per week during the term of any Transient Occupancy for the purpose of (i.) responding within sixty (60) minutes to complaints regarding condition or operation of the dwelling unit or portion thereof used for Incidental Transient Occupancy, or the conduct of Transient Users; and (ii) taking remedial action to resolve such complaints.
- G. "Primary Residence" means a permanent resident's usual place of return for housing as documented by motor vehicle registration, driver's license, voter registration or other such evidence.

RD:MD1:JMD  
11/19/2014

H. "Transient User" mean a person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full calendar days.

**20.80.160 General**

Incidental Transient Occupancy meeting the criteria of this Part is an allowed use in any One-Family Dwelling, Two-Family Dwelling, Multiple Family Dwelling, Mobilehome, Live/Work Unit, Secondary Dwelling or Guest House.

**20.80.170 Performance Criteria**

Incidental Transient Occupancy of a residential dwelling is only allowed as an incidental use of such dwelling if the Incidental Transient Occupancy conforms to each of the performance criteria set forth in Table 20-165 below.

Table 20-165 Performance Criteria	
Number of Occupants One-Family Dwelling or Mobilehome - Host Present	Incidental Transient Occupancy by up to three (3) Transient Users in a One-Family Dwelling or Mobilehome with the Host present.
Number of Occupants in each Dwelling Unit in Two-Family or Multiple Family Dwelling - Host Present	Incidental Transient Occupancy by up to two (2) Transient Users in each dwelling unit in a Two-Family Dwelling or Multiple Family Dwelling with the Host Present.
Number of Occupants -	Incidental Transient Occupancy where the Host is

**ITEM H-2  
ATTACHMENT 1**

RD:MD1:JMD  
11/19/2014

Host Not Present	not present shall be limited to the two (2) people in a studio unit, three (3) people in a one bedroom unit and two (2) people per bedroom for each bedroom in excess of one bedroom, but not to exceed ten (10) persons total.
Contact Information - Host Not Present	For Incidental Transient Occupancy where the Host is not present on the premises during the term of the Transient Occupancy, the Host shall provide written notice of the name and telephone number of the Local Contact Person to all Transient Users and to all occupants of all Adjacent Properties.
Annual Limit on Number of Days for Incidental Transient Occupancy	___ day for the calendar year ___ and ninety (90) days per calendar year thereafter.
Parking Requirements for Incidental Transient Occupancy	For Incidental Transient Occupancies with the Host Present, the dwelling unit has the required number of parking spaces for the dwelling type as set forth in Section 20.90.060.
Limitation in Dwellings Subject to Parts 1-6 of Chapter 17.23 of this Code	Incidental Transient Occupancy is only a permitted use in a dwelling that is subject to Parts 1-6 of Chapter 17.23 of this Code, if the Host is a Person who occupies the unit that is being used for Incidental Transient Occupancy for at least sixty (60) consecutive days, with the intent to establish that dwelling as the Host's Primary Residence.
Payment of Transient Occupancy Tax	Transient Occupancy taxes are collected and paid to the City pursuant to Chapter 4.72 and 4.74 of this Code. <del>Transient Occupancy taxes are the responsibility of the Host, but may be paid by a Hosting Platform on behalf of a Host by shall be collected and paid by the Host unless if the</del> Incidental Transient Occupancy is created through a Hosting Platform that has an agreement with the City for collection and payment of such Transient Occupancy taxes.
Compliance with All Requirements of the Housing Code for	Any building or portion thereof used for Incidental Transient Occupancy shall comply with the requirements of the Housing Code (Chapter

ITEM H-2  
ATTACHMENT 1

RD:MD1:JMD  
11/19/2014

Dwellings	17.20.)
Recordkeeping Requirements	The Host shall retain records documenting the compliance with these Performance Criteria for a period of three (3) years after each period of Incidental Transient Occupancy. <del>The Host and shall provide copies of such records documenting the compliance with these Performance Criteria including but not limited to records showing payment of transient occupancy taxes by a Hosting Platform on behalf of a Host</del> upon request to City Manager, City Attorney, City Auditor or any designee of City Manager, City Attorney or City Auditor.

ITEM H-2  
ATTACHMENT 1

RD:MD1:JMD  
11/19/2014

SECTION 8. Section 20.200.470 of Chapter 20.200 of Title 20 of the San José  
Municipal Code is hereby amended to read as follows:

20.200.470 Guesthouse

"Guesthouse" means a building which is designed or used to accommodate a maximum of ten (10) Guests, where Guest Rooms are provided (1) for a fixed period of at least thirty (30) consecutive calendar days, in exchange for an agreed payment of a fixed amount of money or other compensation based on the period of occupancy; or (2) for Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80."

PASSED FOR PUBLICATION of title this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

## CHAPTER 41A: RESIDENTIAL UNIT CONVERSION AND DEMOLITION

<u>Sec. 41A.1.</u>	Title.
<u>Sec. 41A.2.</u>	Purpose.
<u>Sec. 41A.3.</u>	Findings.
<u>Sec. 41A.4.</u>	Definitions.
<u>Sec. 41A.5.</u>	Unlawful Conversion; Remedies.
<u>Sec. 41A.6.</u>	Administrative Enforcement Procedures.
<u>Sec. 41A.7.</u>	Office of Short-Term Residential Rental Administration and Enforcement.
<u>Sec. 41A.8.</u>	Construction.

### SEC. 41A.1. TITLE.

This chapter shall be known as the Residential Unit Conversion Ordinance.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

### SEC. 41A.2. PURPOSE.

It is the purpose of this ordinance to benefit the general public by minimizing adverse impacts on the housing supply and on persons and households of all income levels resulting from the loss of residential units through their conversion to tourist and transient use. This is to be accomplished by regulating the conversion of residential units to tourist and transient use, and through appropriate administrative and judicial remedies.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

### SEC. 41A.3. FINDINGS.

The Board of Supervisors finds that:

- (a) There is a severe shortage of decent, safe, sanitary and affordable rental housing in the City and County of San Francisco.
- (b) The people of the City and County of San Francisco, cognizant of the housing shortage in San Francisco, on November 4, 1980, adopted a declaration of policy to increase the City and County's housing supply by 20,000 units.
- (c) Many of the City and County's elderly, disabled and low-income persons and households reside in affordable residential units.
- (d) As a result of the removal of residential units from the housing market, a housing emergency exists within the City and County of San Francisco for its elderly, disabled and low-income households.
- (e) The Board of Supervisors and the Mayor of the City and County of San Francisco recognized this housing emergency and enacted an ordinance which established a moratorium on the conversion of residential units to tourist and transient use.
- (f) The conversion of residential units to tourist and transient use impacts especially on persons seeking housing in the low to moderate price range.
- (g) It is in the public interest that conversion of residential units be regulated and that remedies be provided when unlawful conversion has occurred, in order to protect the residents and to conserve the limited housing resources.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

### SEC. 41A.4. DEFINITIONS.

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

**Booking Service.** A Booking Service is any reservation and/or payment service provided by a person or entity that facilitates a short-term rental transaction between an Owner or Business Entity and a prospective tourist or transient user, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the short-term rental transaction.

**Business Entity.** A corporation, partnership, or other legal entity that is not a natural person that owns or leases one or more residential units.

**Complaint.** A complaint submitted to the Department alleging a violation of this Chapter 41A and that includes the Residential Unit's address, including unit number, date(s) and nature of alleged violation(s), and any available contact information for the Owner and/or resident of the Residential Unit at issue.

**Conversion or Convert.** A change of use from Residential Use to Tourist or Transient Use, including, but not limited to, renting a Residential Unit as a Tourist or Transient Use.

**Department.** The Planning Department.

**Director.** The Director of the Planning Department, or his or her designee.

**Hosting Platform.** A person or entity that participates in the short-term rental business by providing, and collecting or receiving a fee for, Booking Services through which an Owner may offer a Residential Unit for Tourist or Transient Use. Hosting Platforms usually, though not necessarily, provide Booking Services through an online platform that allows an Owner to advertise the Residential Unit through a website provided by the Hosting Platform and the Hosting Platform conducts a transaction by which potential tourist or transient users arrange Tourist or Transient Use and payment, whether the tourist or transient pays rent directly to the Owner or to the Hosting Platform.

**Interested Party.** A Permanent Resident of the building in which the Tourist or Transient Use is alleged to occur, any homeowner association associated with the Residential Unit in which the Tourist or Transient Use is alleged to occur, the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur, a Permanent Resident or Owner of a property within 100 feet of the property containing the Residential Unit in which the Tourist or Transient Use is alleged to occur, the City and County of San Francisco, or any non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, which has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws.

**Owner.** Owner includes any person who is the owner of record of the real property. As used in this Chapter 41A, the term "Owner" includes a lessee where the lessee is offering a Residential Unit for Tourist or Transient use.

**Permanent Resident.** A person who occupies a Residential Unit for at least 60 consecutive days with intent to establish that unit as his or her primary residence. A Permanent Resident may be an owner or a lessee.

**Primary Residence.** The Permanent Resident's usual place of return for housing as documented by at least two of the following: motor vehicle registration; driver's license; voter registration; tax documents showing the Residential Unit as the Permanent Resident's residence for the purposes of a home owner's tax exemption; or a utility bill. A person may have only one Primary Residence.

**Residential Unit.** Room or rooms, including a condominium or a room or dwelling unit that forms part of a tenancy-in-common arrangement, in any building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied for Residential Use as defined in the San Francisco Housing Code.

**Residential Use.** Any use for occupancy of a Residential Unit by a Permanent Resident.

**Short-Term Residential Rental.** A Tourist or Transient Use where all of the following conditions are met:

- (a) the Residential Unit is offered for Tourist or Transient Use by the Permanent Resident of the Residential Unit;
- (b) the Permanent Resident is a natural person;
- (c) the Permanent Resident has registered the Residential Unit and maintains good standing on the Department's Short-Term Residential Rental Registry; and
- (d) the Residential Unit: is not subject to the Inclusionary Affordable Housing Program set forth in Planning Code Section 41.5 *et seq.*; is not a residential hotel unit subject to the provisions of Chapter 41, unless such unit has been issued a Permit to Convert under Section 41.12; is not otherwise designated as a below market rate or income-restricted Residential Unit under City, state, or federal law; has not been the subject of an eviction pursuant to the Ellis Act and Administrative Code Section 37.9(a)(13) within the five year period prior to applying for the Registry if such eviction occurred after November 1, 2014; and no other requirement of federal or state law, this Municipal Code, or any other applicable law or regulation prohibits the permanent resident from subleasing, renting, or otherwise allowing Short-Term Residential Rental of the Residential Unit.

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

**Tourist or Transient Use.** Any use of a Residential Unit for occupancy for less than a 30-day term of tenancy, or occupancy for less than 30 days of a Residential Unit leased or owned by a Business Entity, whether on a short-term or long-term basis, including any occupancy by employees or guests of a Business Entity for less than 30 days where payment for the Residential Unit is contracted for or paid by the Business Entity.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 74-98, App. 3/16/98; Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; Ord. 218-14, File No. 140381, App. 10/27/2014, Eff. 11/26/2014, Oper. 2/1/2015; Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016)

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

- (a) **Unlawful Actions.** Except as set forth in subsection 41A.5(g), it shall be unlawful for
  - (1) any Owner to offer a Residential Unit for rent for Tourist or Transient Use;
  - (2) any Owner to offer a Residential Unit for rent to a Business Entity that will allow the use of a Residential Unit for Tourist or Transient Use; or
  - (3) any Business Entity to allow the use of a Residential Unit for Tourist or Transient Use.
- (b) **Records Required.** The Owner and Business Entity, if any, shall retain and make available to the Department records to demonstrate compliance with this Chapter 41A upon written request as provided herein.
- (c) **Determination of Violation.** Upon the filing of a written Complaint that an Owner or Business Entity has engaged in an alleged unlawful Conversion or that a Hosting Platform is not complying with the requirements of subsection (g)(4)(A), the Director shall take reasonable steps necessary to determine the validity of the Complaint. The Director may independently determine whether an Owner or Business Entity may be renting a Residential Unit for Tourist or Transient Use in violation of this Chapter 41A or whether a Hosting Platform has failed to comply with the requirements of subsection (g)(4)(A). To determine if there is a violation of this Chapter 41A, the Director may initiate an investigation of the subject property or Hosting Platform's allegedly unlawful activities. This investigation may include, but is not limited to, an inspection of the subject property and/or a request for any pertinent information from the Owner, Business Entity, or Hosting Platform, such as leases, business records, or other documents. The Director shall have discretion to determine whether there is a potential violation of this Chapter 41A. Notwithstanding any other provision of this Chapter 41A, any alleged violation related to failure to comply with the requirements of the Business and Tax Regulations Code shall be enforced by the Treasurer/Tax Collector under the provisions of that Code.
- (d) **Civil Action.**
  - (1) The City may institute civil proceedings for injunctive and monetary relief, including civil penalties, against an Owner, Business Entity, or Hosting Platform for violations of this Chapter 41A under any circumstances, without regard to whether a Complaint has been filed or the Director has made a determination of a violation.
  - (2) **Private Rights of Action.**
    - (A) Following the filing of a Complaint and the final determination of a violation by the Director, any Interested Party may institute civil proceedings for injunctive and monetary relief against an Owner or Business Entity.
    - (B) An Interested Party who is a Permanent Resident of the building in which the Tourist or Transient Use is alleged to occur, is a Permanent Resident of a property within 100 feet of the property containing the Residential Unit in which the Tourist or Transient Use is alleged to occur, or is a homeowner association associated with the Residential Unit in which the Tourist or Transient Use is alleged to occur may institute a civil action for injunctive and monetary relief against an Owner or Business Entity if
      - (i) The Interested Party has filed a Complaint with the Department;

- (ii) The Director has not made a written determination pursuant to subsection 41A.6(a) that there is no violation of this Chapter 41A or basis for an investigation for an unlawful activity;
- (iii) An administrative hearing officer has not issued a final determination pursuant to subsection 41A.6(c) regarding the Complaint within 135 days of the filing of the Complaint with the Department;
- (iv) After such 135-day period has passed, the Interested Party has provided 30 days' written notice to the Department and the City Attorney's Office of its intent to initiate civil proceedings; and
- (v) The City has not initiated civil proceedings by the end of that 30-day notice period.

Under this subsection 41A.5(d)(2)(B), the prevailing party shall be entitled to the costs of suit, including reasonable attorneys' fees, pursuant to an order of the Court.

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

(4) **Attorneys' Fees and Costs.** If the City or any other Interested Party is the prevailing party, the City or the Interested Party shall be entitled to the costs of enforcing this Chapter 41A, including reasonable attorneys' fees, pursuant to an order of the Court.

(5) Any monetary award obtained by the City and County of San Francisco in such a civil action shall be deposited in the Department to be used for enforcement of Chapter 41A. The Department, through the use of these funds, shall reimburse City departments and agencies, including the City Attorney's Office, for all costs and fees incurred in the enforcement of this Chapter 41A.

(e) **Criminal Penalties.** Any Owner or Business Entity who rents a Residential Unit for Tourist or Transient Use in violation of this Chapter 41A, or any Hosting Platform that provides a Booking Service for a Residential Unit to be used for Tourist or Transient Use in violation of the Hosting Platform's obligations under this Chapter 41A, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor hereunder shall be punishable by a fine of not more than \$1,000 or by imprisonment in the County Jail for a period of not more than six months, or by both. Each Residential Unit rented for Tourist or Transient Use shall constitute a separate offense.

(f) **Method of Enforcement, Director.** The Director shall have the authority to enforce this Chapter against violations thereof by any or all of the means provided for in this Chapter 41A.

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

(1) Notwithstanding the restrictions set forth in this Section 41A.5, a Permanent Resident may offer his or her Primary Residence as a Short-Term Residential Rental if:

(A) The Permanent Resident occupies the Residential Unit for no less than 275 days out of the calendar year in which the Residential Unit is rented as a Short-Term Residential Rental or, if the Permanent Resident has not rented or owned the Residential Unit for the full preceding calendar year, for no less than 75% of the days he or she has owned or rented the Residential Unit;

(B) The Permanent Resident maintains records for two years demonstrating compliance with this Chapter 41A, including but not limited to information demonstrating Primary Residency, the number of days per calendar year he or she has occupied the Residential Unit, the number of days per calendar year the Residential Unit has been rented as a Short-Term Residential Rental, and compliance with the insurance requirement in Subsection (D). These records shall be made available to the Department upon request;

(C) The Permanent Resident complies with any and all applicable provisions of state and federal law and the San Francisco Municipal Code, including but not limited to the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required transient occupancy taxes, and the occupancy requirements of the Housing Code;

(D) The Permanent Resident maintains liability insurance appropriate to cover the Short-Term Residential Rental Use in the aggregate of not less than \$500,000 or conducts each Short-Term Residential Rental transaction through a Hosting Platform that provides equal or greater coverage. Such coverage shall defend and indemnify the Owner(s), as named additional insured, and any tenant(s) in the building for their bodily injury and property damage arising from the Short-Term Residential Use;

(E) The Residential Unit is registered on the Short-Term Residential Rental Registry;

(F) The Permanent Resident includes the Department-issued registration number on any Hosting Platform listing or other listing offering the Residential Unit for use as a Short-Term Residential Rental;

(G) For units subject to the rent control provisions of Section 37.3, the Permanent Resident complies with the initial rent limitation for subtenants and charges no more rent than the Permanent Resident is paying to any landlord per month; and

(H) The Permanent Resident can demonstrate to the satisfaction of the Department that the Residential Unit and the property on which it is located is not subject to any outstanding Building, Electrical, Plumbing, Mechanical, Fire, Health, Housing, Police, or Planning Code enforcement, including any notices of violation, notices to cure, orders of abatement, cease and desist orders, or correction notices. The Department shall not include a property that is subject to any such outstanding violations in the Registry. If such a violation occurs once a Residential Unit has been included in the Registry, the Department shall suspend the Residential Unit's registration and registration number until the violation has been cured.

(2) **Additional Requirements.**

(A) Offering a Residential Unit for Short-Term Residential Rental, including but not limited to advertising the Residential Unit's availability, while not maintaining good standing on the Registry shall constitute an unlawful conversion in violation of this Chapter 41A and shall subject the person or entity offering the unit in such a manner to the administrative penalties and enforcement procedures, including civil penalties, of this Chapter.

(B) Only one Permanent Resident may be associated with a Residential Unit on the Registry, and it shall be unlawful for any other person, even if that person meets the qualifications of a "Permanent Resident," to offer a Residential Unit for Short-Term Residential Rental.

(C) A Permanent Resident offering a Residential Unit for Short-Term Residential Rental shall maintain a valid business registration certificate.

(D) A Permanent Resident offering a Residential Unit for Short-Term Residential Rental shall post a clearly printed sign inside his or her Residential Unit on the inside of the front door that provides information regarding the location of all fire extinguishers in the unit and building, gas shut off valves, fire exits, and pull fire alarms.

(3) **Short-Term Residential Rental Registry Applications, Fee, and Reporting Requirement.**

(A) **Application.** Registration shall be for a two-year term, which may be renewed by the Permanent Resident by filing a completed renewal application. Initial and renewal applications shall be in a form prescribed by the Department. The Department shall determine, in its sole discretion, the completeness of an

application. Upon receipt of a complete initial application, the Department shall send mailed notice to the owner of record of the Residential Unit, informing the owner that an application to the Registry for the unit has been received. If the Residential Unit is in a RH-1(D) zoning district, the following additional requirements shall apply: the Department shall also send mailed notice to any directly associated homeowner association that has previously requested such notice and to any owners and occupants within 300 feet of the property; the Department shall hold the application for 45 days after sending such notice; and the Department shall review and consider any information submitted by any such homeowner association, neighboring owner or occupant, or member of the public regarding the eligibility of the permanent resident and/or the residential unit for listing on the Registry received during the 45-day hold period.

Both the initial application and any renewal application shall contain information sufficient to show that the Residential Unit is the Primary Residence of the applicant, that the applicant is the unit's Permanent Resident, and that the applicant has the required insurance coverage and business registration certificate. In addition to the information set forth here, the Department may require any other additional information necessary to show the Permanent Resident's compliance with this Chapter 41A. Primary Residency shall be established by showing the Residential Unit is listed as the applicant's residence on at least two of the following: motor vehicle registration; driver's license; voter registration; tax documents showing the Residential Unit as the Permanent Resident's Primary Residence for home owner's tax exemption purposes; or utility bill. A renewal application shall contain sufficient information to show that the applicant is the Permanent Resident and has occupied the unit for at least 275 days of each of the two preceding calendar years. Upon the Department's determination that an application is complete, the unit shall be entered into the Short-Term Residential Rental Registry and assigned an individual registration number.

(B) **Fee.** The fee for the initial application and for each renewal shall be \$50, payable to the Director. The application fee shall be due at the time of application. Beginning with fiscal year 2014-2015, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section. Within six months of the operative date of this ordinance<sup>\*</sup> and after holding a duly noticed informational hearing at the Planning Commission, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of establishing and maintaining the registry and enforcing the requirements of this Chapter 41A, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Chapter. After the hearing by the Planning Commission, but not later than August 1, 2015, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of establishing and maintaining the registry, enforcing the requirements of this Chapter 41A and any other services set forth in this Chapter and that the fees will not produce revenue that is significantly more than the costs of providing such services. The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue that is significantly more than such costs. The adjusted rates shall become operative on July 1.

(C) **Reporting Requirement.** To maintain good standing on the Registry, the Permanent Resident shall submit a quarterly report to the Department beginning on January 1, 2016, and on January 1, April 1, July 1, and October 1 of each year thereafter, regarding the number of days the Residential Unit or any portion thereof has been rented as a Short Term Residential Rental since either initial registration or the last report, whichever is more recent, and any additional information the Department may require to demonstrate compliance with this Chapter 41A.

#### (4) Requirements for Hosting Platforms.

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

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

(C) A Hosting Platform may provide, and collect a fee for, Booking Services in connection with short-term rentals for Residential Units located in the City and County of San Francisco only when the Hosting Platform exercises reasonable care to confirm that those Residential Units are lawfully registered on the Short-Term Residential Rental Registry at the time the Residential Unit is rented for short-term rental. Whenever a Hosting Platform complies with administrative guidelines issued by the Office of Short-Term Residential Rental Administration and Enforcement to confirm that the Residential Unit is lawfully registered on the Short-Term Rental Registry, the Hosting Platform shall be deemed to have exercised reasonable care for the purpose of this subsection (g)(4)(C).

(D) Commencing November 5, 2016, and on the fifth day of every month thereafter, a Hosting Platform shall provide a signed affidavit to the Office of Short Term Rentals verifying that the Hosting Platform has complied with subsection (g)(4)(C) of this Section 41A.5 in the immediately preceding month.

(E) For not less than three years following the end of the calendar year in which the short-term rental transaction occurred, the Hosting Platform shall maintain and be able, in response to a lawful request, to provide to the Office of Short Term Rentals for each short-term rental transaction for which a Hosting Platform has provided a Booking Service:

- (i) The name of the Owner or Business Entity who offered a Residential Unit for Tourist or Transient Use,
- (ii) The address of the Residential Unit,
- (iii) The dates for which the tourist or transient user procured use of the Residential Unit using the Booking Service provided by the Hosting Platform,
- (iv) The registration number for the Residential Unit, and
- (v) The affidavit required in subsection (g)(4)(D).

(5) The exception set forth in this subsection (g) provides an exception only to the requirements of this Chapter 41A. It does not confer a right to lease, sublease, or otherwise offer a residential unit for Short-Term Residential Use where such use is not otherwise allowed by law, a homeowners association agreement or requirements, any applicable covenant, condition, and restriction, a rental agreement, or any other restriction, requirement, or enforceable agreement. All Owners and residents are required to comply with the requirements of Administrative Code Chapter 37, the Residential Rent Stabilization and Arbitration Ordinance, including but not limited to the requirements of Section 37.3(c).

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

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

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 74-98, App. 3/6/98; Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; Ord. 218-14, File No. 140381, App. 10/27/2014, Eff. 11/26/2014, Oper. 2/1/2015; Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016; Ord. 89-17, File No. 170158, App. 4/14/2017, Eff. 5/14/2017)

**\* Editor's Note:**

The reference in Sec. 41A.5(g)(3)(B) to "the operative date of this ordinance" was added to the Code as part of the amendments included in Ord. 218-14, Oper. 2/1/2015.

**SEC. 41A.6. ADMINISTRATIVE ENFORCEMENT PROCEDURES.****(a) Determination and Notice of Violation.**

(1) After the Director has determined that a violation of this Chapter 41A exists, the Director shall notify the responsible Owner, Business Entity, or Hosting Platform of the determination of violation by certified mail and shall post the notice of violation in a conspicuous location on, or if access to the property is not available in a conspicuous location as close as practicable to, the building or property where the Residential Unit is located.

(2) Once a Complaint has been filed or once the Director has made a determination of violation in the absence of a Complaint, the Department shall include information regarding the Complaint or violation, including whether the Complaint is pending or resolved and, if resolved, any final determination, on the Department's website.

(3) **Contents of Notice.** The notice shall cite to this Chapter 41A and describe the violation(s) with specificity. The notice of violation shall: state that the responsible party shall immediately correct all violations; and assess any applicable administrative penalties as set forth in Subsection 41A.6(d)(1). The notice of violation shall also inform the responsible party of the right to request a Director's hearing under Subsection 41A.6(b) to appeal the determination of violation and any assessed administrative penalties.

(4) If the Director finds there is no violation of this Chapter or basis for an investigation for an unlawful activity, the Director shall so inform the complainant within 60 days of the filing of any Complaint.

(b) **Request for Hearing.** Within 30 days of the notice of violation, the responsible party may request a Director's hearing to appeal the determination of violation and any assessed administrative penalties. The Director shall send a notice of the date, hour, and place of the hearing to the responsible party at the address specified in the request for hearing and to any member of the public who has expressed an interest in the matter.

(c) **Administrative Review Hearings.** The Director may designate a member of Department staff to act in his or her place as the hearing officer. The Director's appointed hearing officer shall hold an administrative review hearing within 45 days of the request for hearing to review all information provided by the Interested Party, members of the public, City staff, and the Owner, Business Entity, or Hosting Platform for the investigation, and the hearing officer shall thereafter make a determination whether the Owner, Business Entity, or Hosting Platform has violated this Chapter 41A.

(1) **Pre-hearing Submission.** No less than ten days prior to the administrative review hearing, parties to the hearing shall submit written information to the Director including, but not limited to, the issues to be determined by the hearing officer and the evidence to be offered at the hearing. Such information shall be forwarded to the hearing officer prior to the hearing along with any information compiled by the Director.

(2) **Hearing Procedure.** If more than one hearing is requested for Residential Units located in the same building at or about the same time, the Director shall consolidate all of the hearings into one hearing. The hearing shall be recorded. Any party to the hearing may at his or her own expense cause the hearing to be recorded by a certified court reporter. Parties may be represented by counsel. All testimony shall be given under oath. Written decisions and findings shall be rendered by the hearing officer within 30 days of the hearing. Copies of the findings and decision shall be served upon the parties by certified mail. A notice that a copy of the findings and decision is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be posted by the Owner or the Director in the building in the same location in which the notice of the administrative review hearing was posted.

(3) **Failure to Appear.** In the event the Owner, authorized Hosting Platform representative, or an interested party fails to appear at the hearing, the hearing officer may nevertheless make a determination based on the evidence in the record and files at the time of the hearing, and issue a written decision and findings.

(4) **Finality of the Hearing Officer's Decision and Judicial Review.** The decision of the hearing officer shall be final. Within 20 days after service of the hearing officer's decision, any party may seek judicial review of the hearing officer's decision.

(5) **Hearing Officer Decision and Collection of Penalties.** Upon the hearing officer's decision, or if no hearing is requested upon the expiration of the appeal period, the Director may proceed to collect the penalties and costs pursuant to the lien procedures set forth in Subsection 41A.6(e), consistent with the hearing officer's decision or the determination of violation if no hearing is requested.

(6) **Remedy of Violation.** If the hearing officer determines that a violation has occurred, the hearing officer's decision shall:

(A) Specify a reasonable period of time during which the Owner, Business Entity, or Hosting Platform must correct or otherwise remedy the violation;

(B) Detail the amount of any administrative penalties the Owner or Hosting Platform shall be required to pay as set forth in Subsection 41A.6(d); and,

(C) For violations by Owners, state that if the violation is not corrected or otherwise remedied within this period, the Department shall remove or prohibit the registration of the Residential Unit from the Short-Term Residential Registry for one year even if the Residential Unit otherwise meets the requirements for Short-Term Residential Rental.

(7) If the hearing officer determines that no violation has occurred, the determination is final.

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

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

(A) For the initial violation by an Owner or Business Entity, not more than four times the standard hourly administrative rate of \$121 for:

(i) each unlawfully converted unit per day from the notice of violation until such time as the unlawful activity terminates; or

(ii) the initial failure of a Hosting Platform to comply with its obligations under subsection 41A.5(g)(4).

(B) For the second and any subsequent violation by the same Owner(s), Business Entity, or Hosting Platform, not more than eight times the standard hourly administrative rate of \$121 for:

(i) each unlawfully converted unit per day from the notice of violation until such time as the unlawful activity terminates; or

(ii) the second and any subsequent failure of a Hosting Platform to comply with its obligations under subsection 41A.5(g)(4).

(2) **Prohibition on Registration and Listing Unit(s) on Any Housing Platform.** In the event of multiple violations of any Owner's or Business Entity's obligations under this Chapter 41A, the Department shall remove the Residential Unit(s) from the Registry for one year and include the Residential Unit(s) on a list maintained by the Department of Residential Units that may not be offered for Tourist or Transient Use until compliance. Any Owner or Business Entity who continues to offer for rent a Residential Unit in violation of this Section 41A.6 shall be liable for additional administrative penalties and civil penalties of up to \$1,000 per day of unlawful inclusion.

(e) **Notice of Violation and Imposition of Penalties.** The Director shall notify the Owner or Hosting Platform by certified mail of the violation and that administrative penalties shall be imposed pursuant to this Chapter 41A. The notice shall state the time of the existence of the violation and the resulting imposition of

penalties. Payment of the administrative penalties and enforcement costs shall be made within 30 days of the certified mailed notice to the Owner or Hosting Platform. If the administrative penalties and enforcement costs are not paid, the Director shall refer the matter to the Treasurer/Tax Collector and/or initiate lien procedures to secure the amount of the penalties and costs against the real property that is subject to this Chapter, under Article XX of Chapter 10 of the Administrative Code to make the penalty, plus accrued interest, a lien against the real property regulated under this Chapter. Except for the release of the lien recording fee authorized by Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to this ordinance shall be deposited as set forth in subsection (f) below.

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

(Added as Sec. 41A.8 by Ord. 74-98, App. 3/6/98; redesignated and amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; amended by Ord. 218-14, File No. 140381, App. 10/27/2014, Eff. 11/26/2014, Oper. 2/1/2015; Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016)

(Former Sec. 41A.6 added by Ord. 331-81, App. 6/26/81; repealed by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

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

(a) The Mayor shall establish an Office of Short-Term Residential Rental Administration and Enforcement, which shall provide a single location to receive and process applications for the Registry and Complaints regarding violations of this Chapter 41A. This office shall be staffed by the Department and other departments as appropriate, with participation from the Department of Building Inspection, the Treasurer/Tax Collector's Office, and other departments as needed, to process applications for the Registry and enforce the requirements of this Chapter 41A in a timely and efficient manner. It is the intent of this Board of Supervisors in directing the establishment of this office to streamline both the process of administering the Registry and enforcing the requirements of this Chapter 41A to protect residential housing from unlawful conversion to Tourist or Transient Use. The Office of Short-Term Residential Rental Administration and Enforcement shall promulgate rules and regulations to simplify and streamline the application process and to minimize the time between the filing of applications and their final approval.

(b) **Monitor Hosting Platforms.** In addition to the administrative enforcement duties outlined in Section 41A.6, the Office of Short-Term Residential Rental Administration and Enforcement shall actively monitor Hosting Platform listings. Within 15 business days of the effective date of Ordinance No. 104-16, the Office of Short-Term Residential Rental Administration and Enforcement shall complete a comprehensive review of active Hosting Platform listings and produce an inventory of potentially non-compliant listings discovered during the review. Subsequent reviews of Hosting Platform listings shall be performed on at least a monthly basis.

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

(2) The Office of Short-Term Residential Rental Administration and Enforcement shall have the power to issue and serve administrative subpoenas as necessary to determine whether Owners, Business Entities, and Hosting Platforms have complied with Administrative Code Chapter 41A. The Office of Short-Term Residential Rental Administration and Enforcement shall issue and serve subpoenas to the Hosting Platforms to obtain information necessary to determine whether violations of Administrative Code Chapter 41A have occurred within a reasonable time not to exceed 30 days of discovering potential violations through a monthly review or other investigation effort. Owners, Business Entities, and Hosting Platforms shall have a reasonable opportunity to challenge the administrative subpoena by seeking judicial review before suffering any penalties for refusing to comply.

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

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

(2) **Quarterly Reports.** The Office of Short-Term Residential Rental Administration and Enforcement shall provide quarterly reports to the Board of Supervisors summarizing the Host Platform monitoring activities during the preceding quarter. The periods covered by the quarterly reports shall commence on January 1, April 1, July 1, and October 1, respectively. At a minimum, each report shall include the number of notices sent to Hosting Platforms, the total number of listings included in those notices, the number of any administrative subpoenas issued upon discovery of potentially non-compliant listings, and the number and amount of penalties imposed on Owners, Business Entities, or Hosting Platforms for violations of their respective obligations under this Chapter 41A. Each report shall break down information by zip code, supervisorial district, and any other criteria as may be requested by the Board of Supervisors.

(Added by Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; amended by Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016)

(Former Sec. 41A.7 added by Ord. 331-81, App. 6/26/81; repealed and reenacted by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; redesignated as Sec. 41A.8 and amended by Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015)

## **SEC. 41A.8. CONSTRUCTION.**

(a) Nothing in this Chapter 41A may be construed to supersede any other lawfully enacted ordinance of the City and County of San Francisco.

(b) Clauses of this Chapter 41A are declared to be severable and if any provision or clause of this Chapter 41A or the application thereof is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this Chapter 41A.

(Added as Sec. 41A.7 by Ord. 331-81, App. 6/26/81; repealed and reenacted by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; redesignated and amended by Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015)

(Former Sec. 41A.8 added by Ord. 74-98, App. 3/6/98; redesignated as Sec. 41A.6 and amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

## **CHAPTER 41B: [RESERVED]**

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