



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Department Memorandum Administrative Code Amendment Short-Term Residential Rentals and Hosting Platforms

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*To:* Members of the Planning Commission  
*From:* AnMarie Rodgers, Senior Policy Advisor  
*Date:* May 12, 2016  
*Regarding:* **Newly Introduced Ordinance to Regulate Short-Term Residential Rentals and Hosting Platforms [Board File No. 160423]**  
*Introduction Date:* April 26, 2016

### PURPOSE

On April 26, 2016, Supervisors Campos, Peskin, Avalos, and Mar introduced a new Ordinance [BF 160423] that would regulate short-term rentals and hosting platforms. At the April 28, 2016 Planning Commission hearing, the Commission requested a memorandum describing the newly introduced Ordinance. As this proposed Ordinance does not amend the Planning Code, the Ordinance may be heard by the Board of Supervisors within 30 days of introduction<sup>1</sup>. This timeframe means the Board may consider it any time after May 26, 2016.

### BACKGROUND

The Commission has considered the issue of short-term rentals at length since 2014. A ballot initiative, which ultimately failed, was also considered by the voters in 2015. The background section of this memo describes these earlier proposals to regulate short-term rentals.

#### 2014 Ordinance Regulating Short-Term Rentals

On April 15, 2014, Supervisor David Chiu introduced the first San Francisco ordinance that proposed specific regulations for short-term vacation rentals. The proposed Ordinance would have amended the Administrative Code to 1) provide an exception for permanent residents to the longstanding prohibition on short-term residential rentals, under certain conditions; 2) create procedures for short-term rentals, including establishing a registry administered by the Department of Building Inspection, for tracking short-term residential rentals and compliance; 3) establish an application fee for the registry; and 4) amend the Planning Code to clarify that short-term residential rentals shall not change a unit's use type

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<sup>1</sup> While the Board may act relatively quickly on this proposed change to the Administrative Code, under Planning Code Section 306.4, proposed Ordinances which amend the Planning Code cannot be acted upon by the Board of Supervisors until either the Planning Commission makes a recommendation or at least 90 days have passed without action by the Commission.

away from a residential designation. The Planning Commission considered this ordinance on August 7, 2014 during a seven hour public hearing. After public comment closed, the Commission recommended approval with 16 amendments proposed to be made to the legislation. The 2014 Ordinance was amended multiple times, resulting in a total of nine (9) versions before the Ordinance [BF 140381/Ord. 218-14] was finally approved by the Board of Supervisors on October 21, 2014 and signed by Mayor Edwin Lee on October 27, 2014.

### **2015 Ordinances Regulating Short-Term Rentals**

After the first ordinance regulating short-term rentals was approved, a series of three additional ordinances were proposed. While the first of these ordinances was actually introduced in the fall of 2014, the remaining two were introduced in early 2015 and all three were considered by the Planning Commission on April 23, 2015. Therefore for the purposes of this memo, all three of these ordinances will be called the “2015 Ordinances Regulating Short-Term Rentals<sup>2</sup>”. Ultimately, it was the ordinance sponsored by Mayor Edwin Lee and Supervisor Farrell which succeeded in passing the Board of Supervisors on July 30, 2015. This ordinance amended the Administrative Code to 1) direct the Mayor to create an Office of Short-Term Residential Rental Administration and Enforcement staffed by the Planning Department and other departments as needed; 2) revise the definition of Interested Parties who may enforce the provisions of Chapter 41A through a private right of action to include Permanent Residents residing within 100 feet of the Residential Unit; 3) create an additional private right of action under certain circumstances; 4) change the administrative hearing process from mandatory to at the request of any party found in violation of this Chapter; and 5) require hosts to submit quarterly reports to the Planning Department.

### **2015 Ballot Initiative Regulating Short-Term Rentals**

On November 3, 2015, the voters of San Francisco considered a ballot initiative known as “Proposition F—Initiative to Restrict Short-Term Rentals”. The Department for Elections summarized this measure for the voters as follows: “Shall the City limit short-term rentals of a housing unit to 75 days per year regardless of whether the rental is hosted or unhosted; require owners to provide proof that they authorize the unit as a short-term rental; require residents who offer short-term rentals to submit quarterly reports on the number of days they live in the unit and the number of days the unit is rented; prohibit short-term rentals of in-law units; allow interested parties to sue hosting platforms; and make it a misdemeanor for a hosting platform to unlawfully list a unit as a short-term rental?”. As an Ordinance destined for voter consideration, the Planning Commission did not make recommendations on this ordinance. This measure was reported by Ballotpedia to be “the most contentious measure on the San Francisco ballot” in 2015<sup>3</sup>. The measure was ultimately defeated “by a sizable margin” with 55% of the voters opposed and 45% of voters in support<sup>4</sup> of the controls.

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<sup>2</sup> The 2015 Ordinances include: Board File Numbers 141036, 150364, 150363 which were introduced respectively by Supervisors Kim and Breed; Supervisors Campos, Mar and Avalos; and Mayor Edwin Lee and Supervisor Farrell.

<sup>3</sup> Ballotpedia. Retrieved from: [https://ballotpedia.org/City\\_of\\_San\\_Francisco\\_Initiative\\_to\\_Restrict\\_Short-Term\\_Rentals,\\_Proposition\\_F\\_\(November\\_2015\)](https://ballotpedia.org/City_of_San_Francisco_Initiative_to_Restrict_Short-Term_Rentals,_Proposition_F_(November_2015)) Retrieved on May 5, 2016.

<sup>4</sup> Hamilton, Matt and Romney, Lee. “Airbnb wins in San Francisco, and so does Mayor Ed Lee” Los Angeles Times. November 3, 2015.

## PLANNING COMMISSION RECOMMENDATIONS

### 2014 Ordinance Regulating Short-Term Rentals

As described earlier, the Commission recommended 16 amendments to the 2014 ordinance (See Attachment A: Resolution 19213 for the Commission's complete recommendations). Of these recommendations, Supervisor Chiu incorporated the following changes suggested by the Commission prior to consideration by the Board of Supervisors:

- Requiring hosts to post a registration number online
- Requiring that units can only be offered by permanent residents of the unit
- Requiring a searchable registry that is linked to the unit address not the individual
- Hosting platforms must remit the hotel taxes & inform hosts of local laws
- Hosts must maintain proper insurance

As the Ordinance was considered by the Board of Supervisors, the Commission's remaining requested modifications were summarized as follows<sup>5</sup>:

1. **Ensure that the system is not abused by creating real limits on the number of days a unit can be rented.** To accomplish this goal, staff need after-the-fact reporting, either by the host or the hosting platform. Ideally, staff would receive cooperation from corporate partners to verify these reports.
2. **Dedicated budget for enforcement staff.** Other cities have created entire enforcement divisions for short-term rentals and San Francisco needs to ensure we have the resources to protect our housing.
3. **Create limits for hosted units too.** Concrete limits are critical; otherwise, it would be nearly impossible for the City to determine if the host is or is not present. If hosted rentals have an unlimited ability to lease the unit year-round, the Commission advised, this would create a loophole that may turn a unit from housing for our city's residents to tourist use.

### 2015 Ordinances Regulating Short-Term Rentals

The Planning Commission reviewed all three of the 2015 ordinances at the April 23, 2015 hearing. Because of the complexity of the issues, the Commission took 15 separate votes on the various recommendations proposed by Planning Staff. These recommendations and the corresponding vote were included in the Planning Commission's transmittal sent to the Board of Supervisors<sup>6</sup>.

In brief summary, the Commission voted in favor of

1. Allowing the short-term rental limit to be raised 120 days;
2. Removing the distinction between hosted and non-hosted rentals;

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<sup>5</sup> While summarized here, the Board Committee also had the complete commission recommendations for the 2014 Ordinance as memorialized in Resolution Number 19213 (Attachment A to this memorandum).

<sup>6</sup> The Planning Commission's full recommendations for the three 2015 Ordinances is described in full in Resolution Number 19360 (Attachment B to this memorandum).

3. Allowing private rights-of-action for certain non-profits;
4. Prohibiting Ellis Acted units from being used as short-term rentals for five years;
5. Including Permanent Resident or owner residing within 100 feet to the definition of Interested Party; and
6. Including the provision that would direct the Mayor to set up a short-term rental office composed of the Planning Department the Tax Collector and the Department of Building Inspection to administer the City's short-term rental program.

The Commission did not vote in favor of:

1. Making it illegal for a short-term rental platform to post a listing without verifying that the unit is in good standing on the City's short-term rental registry;
2. Requiring short-term rental hosts to provide data to the City on a quarterly basis on how many nights the units had been rented; and
3. Expanding the right-of private action to any interested party within 100' of the subject property.

### SUMMARY OF THE CURRENT LOCAL LAW WITH AN EMPHASIS ON ELEMENTS THAT MAY BE AMENDED BY THE NEWLY PROPOSED ORDINANCE

The existing requirements in the Administrative Code prohibit short-term rentals (rentals of less than 30 days) of residential units within the City. In February of 2015, the City amended the Administrative Code to allow short-term rentals *if* the permanent resident registers the unit with the City *and* agrees to adhere to various rules and restrictions, including but not limited to a 90 day cap on unhosted rentals and payment of Transit Occupancy Taxes. There is currently no cap on the number of days a hosted rental unit may be rented.

Chapter 41A currently includes two requirements for Hosting Platforms: (1) that the platforms provide notice to users of short term rental laws in San Francisco<sup>7</sup>; and (2) that platforms comply with the requirements of the Business and Tax Code. Only violations of the notice requirement subject Hosting Platforms to administrative, civil, and criminal penalty provisions of Chapter 41A. Chapter 41A contains no provisions regarding monitoring of Hosting Platforms by the Office of Short Term Rentals ("Office") or requiring responses by Hosting Platforms to requests for information from the Office.

Enforcement of these regulations is difficult because Hosting Platforms generally do not post addresses, contact information, or registration numbers for listings. The Office of Short-Term Rentals lacks a direct method for determining if a listing has a valid registration number, or if a complaint's allegations of short term rental violations at a specific address correspond to listings on a platform. Hosting Platforms have not been responsive to voluntary requests from the Office of Short-Term Rentals for information about the status of potentially non-compliant listings. The City currently does not mandate that the Hosting Platforms verify compliance with the registration requirements.

This Ordinance would expand Hosting Platforms' responsibilities to include verifying that listings have valid registration numbers and responding to demands from the Office for information regarding a

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<sup>7</sup> Currently, the Office of Short-Term Rentals has reported the issuance of two Notices of Violation to platforms (Homeaway/VRBO, and Flipkey) for failing to meet this requirement.

listing's compliance with Chapter 41A. This Ordinance also provides that violations of any of these four responsibilities—notice to users, compliance with taxes, verifying registration, and responding to demands for information—would be subject to the administrative and civil penalties.

## SUMMARY OF THE 2016 PROPOSED ORDINANCE

This proposed Ordinance [BF 160423] would amend Chapter 41A to require Hosting Platforms verify each unit has a valid registration prior to listing a unit. Hosting Platforms will have three options for complying with this requirement: (1) provide the verified registration number in the listing within the area of the web page/listing that currently contains information verified or compiled by the Hosting Platforms (such as host response rate, rating, and membership status); or (2) ensure that the host has included a verified registration number in the listing; or (3) if no registration number appears in the listing, provide the verified registration number and unit information to the Office of Short-Term Rentals prior to posting the listing on the platform.

This Ordinance also amends Chapter 41A to mandate that Hosting Platforms respond within one business day to demands from the Office for information regarding the compliance of any listing. This Ordinance clarifies that civil, administrative, and criminal penalty provisions of Chapter 41A to apply to violations by a Hosting Platform of any of the four Hosting Platform requirements—(1) failure to provide notice to hosts of Chapter 41A rules, (2) failure to collect or pay taxes, (3) failure to verify and display or disclose registration numbers and compliance information, and (4) failure to respond to demands for information—that Hosting Platforms are mandated to perform.

This Ordinance also requires that the Office of Short-Term Rentals perform regular monitoring of Hosting Platforms to identify non-compliant or potentially non-compliant listings and provide quarterly reports on the results of the monitoring efforts—including number of units identified, notices sent out, responses received, and penalties imposed—to the Board of Supervisors.

## SUMMARY OF OUTSTANDING RECOMMENDATIONS AND THE NEWLY PROPOSED ORDINANCE

There are no outstanding requested modifications of the Commission that would be impeded by the proposed Ordinance. The outstanding requested modifications of the Commission that would be furthered by the proposed Ordinance include the following.

### From the Commission's 2014 Recommendation (Resolution Number 19213)

2. Modify the Ordinance so that the proposed city-run registry tracks the number of nights a unit has been rented.

*Staff Comment:* The Office of Short-Term Rentals now has a registry of units that may be rented on a short-term basis. The proposed Ordinance would generally require hosting platforms to confirm the number of nights that a unit has been rented upon request by the Office.

5. Amend the Ordinance so that a posting on a short-term rental site without first registering with the City constitutes a violation that can be assessed a penalty, even if the unit was not rented.

*Staff Comment:* While it is currently a violation to post listings of San Francisco units without registering, the violation only resulted in fines for the individual hosts. Under the proposed Ordinance, such listings would now also be finable offenses for hosting platforms too.

7. Grant citation authority to the Planning Department if it is chosen to be the enforcement agency for short-term rentals, and provide for increased penalties for repeat violators.

*Staff Comment:* While this recommendation originally described extending powers to staff that would be similar to Building Department inspectors, the proposed Ordinance does further extend finable offenses for hosting platforms. Under the current law, hosting platforms may only be fined for failing to inform potential hosts of local laws. Under the proposed Ordinance four new requirements for Hosting Platforms may result in fines: (1) failure to provide notice to hosts of Chapter 41A rules, (2) failure to collect or pay taxes, (3) failure to verify and display or disclose registration numbers and/ or compliance information, and (4) failure to respond to demands for information—that Hosting Platforms are mandated to perform. The information that Hosting Platforms must provide include the following for each requested listings: registration number, street address, and host name.

#### **From the Commission’s 2015 Recommendation (Resolution Number 19360)**

11. Do not Require Hosting Platforms to report quarterly to the Planning Department the number of nights the Residential Unit was occupied as a Short-Term Residential Rental, per the Campos ordinance.

*Staff Comment:* While Hosting Platforms would not be required to report to the Office of Short-Term Rentals on a quarterly basis, the proposed Ordinance requires Hosting Platforms to provide information requested by the Office of Short-Term Rentals about specific listings within one business day. This would allow the Office of Short-Term Rentals to collect information on a per listing or combined query basis. The proposed Ordinance would require the Office of Short-Term Rentals to provide a monthly comprehensive review of Hosting Platforms to identify all listing violations. Preparing these comprehensive inventories of non-complaint listings may be difficult to implement for two reasons:

1) The Office of Short-Term Rentals would have the initial responsibility of generating a list of non-compliant listings for each hosting platform and providing that information to the platforms. The platforms would then be required to review this information and either verify or dispute the non-complaint status of the listings in the City’s list. The Office of Short-Term Rentals utilizes “webscrapes” that collect and aggregate data from each listing on the hosting platforms in an automated manner. However, there are limitations to the data that can be collected through webscrapes. Exact addresses of listings are not displayed on platform listings, therefore, this data cannot be obtained through webscrapes. Many of the hosting platforms are formatted in a way that conceals the registration numbers in a manner that is difficult to consistently and accurately capture through webscrapes. Therefore, preparing a precise initial inventory of non-compliant listings could require staff to manually inspect thousands of listings within the 15-day timeframe specified in the legislation, and then compare each listing against the City’s registry. Revisions could be made to the legislation to facilitate implementation, such as requiring platforms to first provide addresses associated with each listing to the Office of Short-Term Rentals prior to the preparation of the initial list of non-compliant listings. In addition, requiring the platforms to standardize the display of registration numbers would allow accurate, automated collection of

*this information through webscrapes, expediting the on-going monthly monitoring of non-compliant listings in the future.*

- 2) *While there are a few major hosting platforms that account for the bulk of listings in the City (Airbnb, VRBO/Homeaway, and Flipkey), there are also international “mirror” sites of major hosting platforms that are oriented towards overseas customers, numerous smaller hosting platforms that list properties in San Francisco, and “concierge” services that act as booking portals to the major hosting platforms. Since the smaller hosting platforms and concierge services tend to be established and abandoned frequently, it may be difficult to inventory and analyze the full range of all on-line services which meet the definition of a “Hosting Platform” and are active from month-to-month.*

**Attachments:**

- Attachment A: Planning Commission Recommendation on the 2014 Ordinance on Short-Term Rentals. Planning Commission Resolution Number 19213
- Attachment B: Planning Commission Recommendation on Three 2015 Ordinances Relating to Short-Term Rentals. Planning Commission Resolution Number 19360



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 19213 HEARING DATE AUGUST 7, 2014

*Project Name:* **Amendments Relating to Short-Term Rentals**  
*Case Number:* 2014.0707T [Board File No. 140381]  
*Initiated by:* Supervisor David Chiu/ Introduced April 15, 2014  
*Staff Contact:* Aaron Starr, Acting Manager Legislative Affairs  
aaron.starr@sfgov.org, 415-558-6362  
*Reviewed by:* AnMarie Rodgers, Senior Policy Advisor  
anmarie.rodgers@sfgov.org, 415-558-6395  
*Recommendation:* **Recommend Approval with Modifications**

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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND THE ADMINISTRATIVE CODE TO PROVIDE AN EXCEPTION FOR PERMANENT RESIDENTS TO THE PROHIBITION ON SHORT-TERM RESIDENTIAL RENTALS UNDER CERTAIN CONDITIONS; TO CREATE PROCEDURES, INCLUDING A REGISTRY ADMINISTERED BY THE DEPARTMENT OF BUILDING INSPECTION, FOR TRACKING SHORT-TERM RESIDENTIAL RENTALS AND COMPLIANCE; TO ESTABLISH AN APPLICATION FEE FOR THE REGISTRY; AMENDING THE PLANNING CODE TO CLARIFY THAT SHORT-TERM RESIDENTIAL RENTALS SHALL NOT CHANGE A UNIT'S TYPE AS RESIDENTIAL; AND MAKING ENVIRONMENTAL FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.

WHEREAS, on April 15, 2014, Supervisor Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 140381, which would amend the Administrative Code to provide an exception for permanent residents to the prohibition on short-term residential rentals under certain conditions; to create procedures, including a registry administered by the Department of Building Inspection, for tracking short-term residential rentals and compliance; to establish an application fee for the registry; and amend the Planning Code to clarify that short-term residential rentals shall not change a unit's type as residential.

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on August 7, 2014; and,

WHEREAS, the proposed Ordinance has been determined not to be a project under the California Environmental Quality Act Section 15060(c) and 15378; and



WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance.

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance.

The proposed modifications recommended by the Planning Commission include:

1. Place short-term rental controls in the Planning Code so that the Planning Department is the agency responsible for enforcing on short-term rentals.
2. Modify the Ordinance so that the proposed city-run registry tracks the number of nights a unit has been rented.
3. Require any short-term rental platform or company doing business in San Francisco to provide information on the number of nights a property was rented. Information should be reported back to the city on a quarterly basis at a minimum.
4. Identify units that are on the proposed short-term registry in the Department's Property Information Map.
5. Amend the Ordinance so that a posting on a short-term rental site without first registering with the City constitutes a violation that can be assessed a penalty, even if the unit was not rented.
6. Require the registration number from the City-run registry to accompany all short-term rental postings.
7. Grant citation authority to the Planning Department if it is chosen to be the enforcement agency for short-term rentals, and provide for increased penalties for repeat violators.
8. Limit hosted rentals by nights rented, similar to the restrictions placed on non-hosted rentals, or by limiting the number of rooms that can be rented at any one time.
9. Limit single-family homes to the same restrictions as multi-unit buildings.
10. Require the property owner's consent in tenant occupied units and/or a 30-day notification by the Department to the owner prior to listing a unit on the short-term rental registry.
11. Prohibit SROs from being used as short-term rentals.
12. If the Planning Department is chosen as the enforcement agency, provide increased funding to the Planning Department for more enforcement staff to monitor short-term rentals.
13. Consider placing limits on allowing BMR (Below Market Rate) units to be used as short-term rentals.
14. Require the Planning Department to maintain a list of registered hosting platforms.
15. Prohibit units with outstanding Planning or Building Code violations from being listed on the short-term rental registry until those violations have been abated.
16. Conduct further investigation into the insurance requirements for short-term rental hosts.

## **FINDINGS**

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Commission believes that short-term rentals need to be regulated in order to preserve the City's housing stock, reduce negative effects on affordable housing, and to protect the livability of residential neighborhoods. The City's current regulations are no longer sufficient to address this new technology and its associated effects, and if this industry remains unregulated, the Commission believes that the City will continue to lose permanent housing.
2. The Commission finds that the Planning Department should be the agency in charge of monitoring and enforcing on short-term rentals because this is essentially a land use issue and the Planning Department is the City agency responsible for regulating land use.
3. As drafted, the Commission finds that the proposed Ordinance does not have a meaningful enforcement mechanism. Currently to participate in the short-term rental program, permanent residents would be required to maintain records for at least two years to demonstrate compliance with City law. However, the ordinance provides no way for the enforcement agency to verify that these records are correct and accurate. To address this issue, the Commission recommends that the City start a centralized registry for all short-term rentals that tracks the properties that are being used as short-term rentals and the number of nights each property is rented. A central registry that tracks the number of days each property is rented is essential for any Department to effectively enforce the proposed short-term rental restriction, without it the new regulations are essentially ineffective. Without making these amendments to the proposed ordinance, the Department's enforcement difficulties would increase greatly. Creating a reasonable path to legalize some short-term usage is a laudable goal, but it must be paired with enforceable limits to prevent excessive conversion of the housing stock to transient use.
4. The Commission finds that the Ordinance should be amended so that a posting on a short-term rental site constitutes a violation. This will allow for quick and effective enforcement, and help act as a deterrent for would be scofflaws.
5. The Commission finds that requiring the registration number from the City-run registry to accompany all short-term rental postings will make it easier for the Planning Department's enforcement team to monitor short-term rental sites by providing a quick way to verify that a property was properly registered with the City.
6. The Commission finds that the Planning Department's enforcement process does not allow the Department to effectively respond to complaints and does not help deter would be violators. Granting citation authority to the Planning Department if the Department is chosen to be the enforcement agency for short-term rentals would allow the Department to issue a citation immediately.
7. The Commission finds that including all dwelling units in the short-term rental controls will help protect housing affordability, and it will also protect the character of our lowest intensity

residential districts, as most of the City's single-family homes are located in RH-1 (Residential, House, Single-Family) and RH-2 (Residential House, Two-Unit) zoning districts.

8. The Commission finds that hosted rentals should have some limitations, either on the number of nights that a permanent resident can conduct a hosted rental, or the number of rooms that can be rented in any one unit at one time.
9. The Commission finds that more investigation needs to be done into the types of insurance available for short-term renters, and the appropriate amount of such insurance.
10. The Commission finds that SRO units should not be allowed to be rented as short-term rentals under this program, and that further investigation should be made into whether or not BMR units should be allowed to be rented as short-term rentals.
11. The Commission finds that the Planning Department does not have adequate enforcement staff to monitor short-term rentals, and if the Planning Department is chosen as the enforcement agency for short-term rentals, additional resources for staffing should be added to the Department's budget.
12. The Commission finds that property owners should be made aware that their tenant is using his or her unit as a short-term rental prior to having that unit listed on the proposed short-term rental registry.
13. The Commission finds that buildings with Planning or Building Code violations should not be listed on the short-term rental registry until such violations are abated.
14. **General Plan Compliance.** The proposed amendments to the Planning Code are consistent with the following Objectives and Policies of the General Plan.

## **HOUSING ELEMENT**

### **OBJECTIVE 2**

**RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.**

*With the Commission's proposed amendments, the Ordinance would be consistent with Object two of the Housing Element because it would limit the number of days that a unit could be utilized as a short-term rental reducing the likelihood that permanent housing would be converted into transient housing.*

### **OBJECTIVE 3**

**PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.**

**POLICY 3.1**

Preserve rental units; especially rent controlled units, to meet the City's affordable housing needs.

*With the Commission's proposed amendments the Ordinance would help preserve rental units by ensure that they are not converted into full time short-term rentals.*

**OBJECTIVE 11**

**SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.**

**POLICY 11.8**

Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

*While not an entirely new use, short-term rentals are proliferating within the City like never before and having a new and distinct effect on the City's residential neighborhoods. With the Commission's proposed amendments, the proposed Ordinance would help preserve the distinct residential character of the City's residential neighborhoods by limiting the number of nights a residential unit can be rented out as a short-term rental.*

**COMMERCE AND INDUSTRY ELEMENT**

**OBJECTIVE 2**

**MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.**

**POLICY 2.1**

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

*Short-term rentals are commercial activity and this Ordinance seeks to retain that commercial activity in the City while providing sufficient regulatory controls to ensure that any negative effects are addressed.*

**OBJECTIVE 3**

**PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED**

**Policy 3.4**

Assist newly emerging economic activities.

*Short-term rentals and short-term rental hosting platforms are an emerging economic activity; the proposed Ordinance would legalize this activity within San Francisco.*

15. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood-serving retail uses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*With the Commission's proposed amendments, the Ordinance would minimize any effects that short-term rentals would have on existing housing and neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*With the Commission's proposed amendments, the Ordinance would help preserve the City's supply of affordable housing, by ensuring that long term housing for permanent residents is maintained as long-term housing. Further, the Commission recommends that SRO units not be allowed to be rented as short-term rentals under this program, and recommends further study into whether or not BMRs should be allowed to be rented as short-term rentals under this proposal.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an effect on the City's parks and open space access to sunlight and vistas.*

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on August 7, 2014.

Jonas P. Ionin  
Commission Secretary

AYES: Commissioners Antonini, Fong, Hillis, and Johnson

NOES: Commissioners Moore and Sugaya

ABSENT: Commissioner Wu

ADOPTED: August 7, 2014



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 19360

HEARING DATE APRIL 23, 2015

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*Project Name:* **Amendments Relating to Short-Term Rentals**  
*Case Number:* **2014-001033PCA, 2015-003861PCA, and 2015-004765PCA**  
[Board File No. 141036, 150295, 150363]  
*Initiated by:* Supervisor Kim/ Introduced October 7, 2014  
Supervisor Campos/Draft Ordinance Introduced March 24, 2015  
Mayor Edwin Lee, Supervisor Farrell/ Introduced April 14, 2015  
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*Reviewed by:* AnMarie Rodgers, Senior Policy Advisor  
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*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS THE THREE PROPOSED ORDINANCES THAT WOULD AMEND CHAPTER 41A OF THE ADMINISTRATIVE CODE; AND MAKING ENVIRONMENTAL FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN, AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1.**

WHEREAS, on October 7, 2014, Supervisors Kim and Breed introduced a proposed Ordinance (hereinafter "Kim" ordinance) under Board of Supervisors (hereinafter "Board") File Number 141036, which would amend the Administrative Code, Chapter 41A, to prohibit certain residential units that have been the subject of an Ellis Act eviction from use as short-term residential (hereinafter STR) rentals and provide for private rights of action to enforce the requirements of this Chapter; and

WHEREAS, on April 14, 2015, Supervisor Campos introduced a proposed Ordinance (hereinafter "Campos" ordinance) under Board File Number 150295, amending the Administrative Code, Chapter 41A, to revise the Residential Unit Conversion Ordinance to: limit short-term rental of a Residential Unit to no more than 60 days per calendar year; require Hosting Platforms to verify that a Residential Unit is on the City Registry prior to listing, remove a listing once a Residential Unit has been rented for Tourist or Transient Use for more than 60 days in a calendar year, and provide certain useage data to the Planning Department; prohibit short-term rental of certain "in-law" units; revise the definition of Interested Parties who may enforce the provision of Chapter 41A through a private right of action to include Permanent Residents residing within 100 feet; amend the private right of action provisions to allow for a private right of action against Hosting Platforms and create an additional private right of action against Owners, Business Entities, and Hosting Platforms under certain circumstances; and provide for criminal penalties against Hosting Platforms in violation of this Chapter 41A; and

WHEREAS, on April 14, Mayor Edwin Lee and Supervisor Farrell introduced a proposed Ordinance (hereinafter “Mayoral” ordinance) under Board File Number 150364 amending the Administrative Code, Chapter 41A, to revise the Residential Unit Conversion Ordinance to limit short-term rental of a Residential Unit to no more than 120 days per calendar year; revise the definition of Interested Parties who may enforce the provisions of the Administrative Code, Chapter 41A, through a private right of action to include Permanent Residents residing within 100 feet of the Residential Unit; create an additional private right of action under certain circumstances; and direct the Mayor to create an Office of Short-Term Residential Rental Administration and Enforcement staffed by the Planning Department, Department of Building Inspection, and Tax Collector’s Office; and

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinances on April 23, 2015; and,

WHEREAS, the three proposed Ordinances have been determined not to be a project under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinances.

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinances.

The Planning Commission adopted the following recommendations regarding the three proposed Ordinances:

1. Remove the distinction between hosted and un-hosted rentals, per the Campos and Mayoral ordinances. **PASSED**

AYES: Fong, Johnson, Moore, Richards, and Wu  
NOES: Antonini, Hillis  
ABSENT: none

2. Prohibit units that have been subject to an Ellis Act Eviction within the last 5 years from registering on the STR registry, per the Kim ordinance. **PASSED**

AYES: Fong, Hillis, Johnson, Moore, Richards, and Wu  
NOES: Antonini  
ABSENT: none



3. Allow the City to institute civil proceedings against a Hosting Platform, Business Entity, or Owner at any time, per all three ordinances. **PASSED**  
AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu  
NOES: none  
ABSENT: none
4. Allow private right of action for non-profits as outlined in the Kim ordinance. **PASSED**  
AYES: Fong, Hillis, Johnson, Moore, Richards, and Wu  
NOES: Antonini  
ABSENT: none
5. Add "Permanent Resident or owner residing within 100 feet" to the definition of Interested Party per the Campos ordinance and the Mayoral ordinance. **PASSED**  
AYES: Antonini, Fong, Hillis, Johnson, Moore, and Wu  
NOES: none  
ABSENT: Richards
6. Prohibit Hosting Platforms from listing any unit that did not maintain good standing on the City's STR registry, per the Campos ordinance. **FAILED**  
AYES: Moore, Richards, and Wu  
NOES: Antonini, Fong, Hillis, and Johnson  
ABSENT: none
7. Add a provision to the STR law directing the Mayor to set up a STR Office that would be staffed by the Planning Department, Department of Building Inspection and The Tax Collector's office, per the Mayoral ordinance. **PASSED**  
AYES: Antonini, Fong, Hillis, and Johnson  
NOES: Moore, Richards, and Wu  
ABSENT: none
8. Make the maximum number of nights a unit can be used as a hosted or un-hosted STR at 120 days. Adjust as needed if future studies can confirm the point where such use would incentive the illegal conversion of residential units to fulltime tourist use, per the changes proposed in the Mayoral ordinance. **PASSED**  
AYES: Antonini, Fong, Hillis, and Johnson  
NOES: Moore, Richards, and Wu  
ABSENT: none
9. Remove the provision in the Administrative Code that requires an Administrative Hearing if a violation is found. This modification was proposed by the Planning Department. **PASSED**  
AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu

NOES: none  
ABSENT: none

10. Remove the provision in the Administrative Code that allows cross-examination of witnesses during the Administrative Hearing. This modification was proposed by the Planning Department. **PASSED**

AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu  
NOES: none  
ABSENT: none

11. Do not Require Hosting Platforms to report quarterly to the Planning Department the number of nights the Residential Unit was occupied as a Short-Term Residential Rental, per the Campos ordinance. **PASSED**

AYES: Antonini, Fong, Hillis, and Johnson  
NOES: Moore, Richards, and Wu  
ABSENT: none

12. Do not remove "the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur" from the definition of Interested Party, per the Campos ordinance. **PASSED**

AYES: Antonini, Fong, Hillis, Johnson, Moore, and Richards  
NOES: Wu  
ABSENT: none

13. Do not allow private rights of action for any Interested Party after 90 days if the Department has not instituted civil action, as proposed in the Campos ordinance. **PASSED**

AYES: Antonini, Fong, Hillis, and Johnson  
NOES: Moore, Richards, and Wu  
ABSENT: none

14. Do not prohibit units that have been approved under Section 207.3 of 715.1 of the Planning Code from being used as a STR, per the Campos ordinance. **PASSED**

AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu  
NOES: none  
ABSENT: none

15. Do require noticing to "*any Permanent Resident of the building in which the Residential Unit is located, any homeowners' association associated with the Residential Unit, and any individual or neighborhood association that has requested notification regarding Registry applications for the property on which the Residential Unit is located,*" informing them that an application to the Registry for the unit has been received, per the most recent version of the Campos ordinance introduced on 4/21/15. **PASSED**

AYES: Antonini, Fong, Hillis, Johnson, Moore, Richards, and Wu  
NOES: none  
ABSENT: none

In addition, the Planning Commission considered and recommended further study on the following issues, but did not take action on them.

1. Allowing Private Right of Action against Hosting Platforms, per the Campos Ordinance;
2. The 135 day timeline for Private Rights of Action, per the Mayoral Ordinance;
3. Prohibiting Interested Parties from receiving Civil Penalties, per the Mayoral Ordinance; and
4. Allowing a different number of days for Hosted and Non-hosted rentals.

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. Generally, the Commission supports efforts to amend the law now that the City has a better understanding of STR and now that implementation of the STR program has begun. The Commission continues to believe that STRs should be allowed within a reasonable regulatory structure. Many of the proposed amendments in these three ordinances would add regulation that enables limited STR while seeking to protect the public interest by minimizing the potential effects on neighborhoods and the housing stock. The proposed amendments generally increase the City's capacity for enforcement either by adding additional resources, data for checks and balances or more easily verified limits. However, some proposed changes would undermine the City's enforcement ability and rights the rights of landlords.
2. The Commission finds that removing the distinction between hosted and un-hosted rentals is a great improvement to the current law. Without this change, enforcement of the law would continue to be compromised as the Planning Department has not identified an effective method to determine if a rental is truly hosted or not. Further, the distinction between hosted and un-hosted rentals creates an avenue to operate a fulltime bed and breakfast type use in their home without public notice or Planning Commission review.
3. Paramount to the Commission's recommendations is protecting the existing housing stock for San Francisco's residents and workers. An Ellis Act Eviction, by its very nature, is the property owner's statement that they are exiting the rental market. The existing and proposed versions of the law seek to keep the unit as primarily residential by limiting STR to the occupant of the unit. An owner move-in eviction is another eviction type that would allow the owner to move in and engage in STR. By allowing STR in owner-move in evictions; the owners' rights to STR are maintained. Removing the capacity for STR in the circumstance of Ellis Act Eviction removes a potential enforcement problem and removes the incentive to evict tenants when STRs may be more lucrative.

4. The Commission finds that the proposed Ordinance increases the Department's enforcement powers and gives the City more power in prosecuting the most egregious cases by allowing the City to take immediate action against repeat offenders.
5. The Commission finds that the proposed ordinances increases the Department's enforcement capacity by allowing non-profits that have in their bylaws a focus on housing the ability to go after some of the city more vulnerable housing, including units where an Ellis Act Eviction has occurred within the last five years and in buildings with three or more rent-controlled units.
6. The Commission finds that including in the definition of Interested Party "residents and owners within 100" of the unit in questions allows those most directly impacted by STR to initiate civil proceedings once the Department has found a violation.
7. The Commission finds that prohibiting Hosting Platforms from listing any unit that did not maintain good standing on the City STR registry would diminish the City's role in enforcing its own laws.
8. The Commission finds that increasing the limit on STRs for individual properties to 120 days would not incentivize the conversion of rental housing to short-term rentals; however, should more data become available that provides further insight on this issue, this limit should be reconsidered.
9. The Commission finds that the City should pursue improved data collection and technologic solutions to inform policy-makers and assist with enforcement, and explore collaboration with other city agencies that may provide better information across hosting platform types rather than requiring Hosting Platforms to provide quarterly report to the City on the number of nights units listed on their serves are rented.
10. The Commission finds that unit owners have an inherent interest in the unit that they own and therefore should not be removed from the definition of Interested Party.
11. The Commission finds that allowing any Interested Party to initiate civil proceedings before the Planning Department has determined if a violation has occurred could open up the entire process for abuses. Further, it would limit the Planning Department's ability to bring decisive action against violators.
12. The Commission finds that the current regulation, which only allows the primary resident to register the unit as a STR, is sufficient enough to ensure that Accessory Dwelling Units are not illegally converted to a permanent hotel use. The Commission does not find a policy reason to prohibit the permanent residents of these units from participating in the City's STR program.
13. **General Plan Compliance.** The proposed amendments to the Planning Code are consistent with the following Objectives and Policies of the General Plan.

## HOUSING ELEMENT

### OBJECTIVE 2

RETAIN EXISTING HOUSING UNITS, AND PROMOTE SAFETY AND MAINTENANCE STANDARDS, WITHOUT JEOPARDIZING AFFORDABILITY.

*As amended, the proposed Ordinances would be consistent with Object two of the Housing Element because they would limit the number of days that a unit could be utilized as a short term rental and how much that could be charged for a short-term rental, helping to preserve the City's existing housing stock.*

### OBJECTIVE 3

PROTECT THE AFFORDABILITY OF THE EXISTING HOUSING STOCK, ESPECIALLY RENTAL UNITS.

#### POLICY 3.1

Preserve rental units; especially rent controlled units, to meet the City's affordable housing needs.

*With the proposed amendments, the proposed Ordinances would help preserve rental units by ensure that they are not converted into full time short-term rentals.*

### OBJECTIVE 11

SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS.

#### POLICY 11.8

Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

*While not an entirely a new use, short-term rentals are proliferating within the City like never before and having a new and distinct impact on the City's residential neighborhoods. With the Commission's proposed amendments, the proposed Ordinances would help preserve the distinct residential character of the City's residential neighborhoods by limiting the number of nights a residential unit can be rented out as a short-term rental.*

## COMMERCE AND INDUSTRY ELEMENT

### OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

#### POLICY 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

*Short-term rentals are commercial activity and these Ordinances seeks to retain that commercial activity in the City while providing sufficient regulatory controls to ensure that any negative impacts are addressed.*

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS,  
PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED

Policy 3.4

Assist newly emerging economic activities

*Short-term rentals and short-term rental hosting platforms are an emerging economic activity; the proposed Ordinances would maintain the legality of this activity within San Francisco.*

14. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinances would not have a negative effect on neighborhood-serving retail uses.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The Commission's proposed amendments to the proposed Ordinances seek to minimize any impacts that this proposal would have on existing housing and neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinances would not negatively affect the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinances would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinances would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinances would not have an impact on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinances would not have an impact on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinances would not have an impact on the City's parks and open space access to sunlight and vistas.*

- 8. Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT WITH MODIFICATIONS the proposed Ordinances as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 23, 2015.

Jonas P. Ionin  
Commission Secretary

ADOPTED: April 23, 2015