

1 [Administrative Code - Extending Restrictions of the Apartment Conversion Ordinance to
2 Corporate-Sponsored Short Term Occupancies; Allowing Civil Actions by Certain Non-Profit
3 Entities]

4 **Ordinance amending the San Francisco Administrative Code by amending Chapter 41A**
5 **to extend the restrictions against converting apartment units to short-term**
6 **occupancies to tenants or guests of corporate entities that rent such apartments;**
7 **allowing civil actions to be brought by certain non-profit entities; and making**
8 **environmental findings.**

9 NOTE: Additions are *single-underline italics Times New Roman*;
10 deletions are ~~*strike-through italics Times New Roman*~~.
11 Board amendment additions are double-underlined;
12 Board amendment deletions are ~~strikethrough-normal~~.

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

14 Section 1. Findings. The Planning Department has determined that the actions
15 contemplated in this ordinance comply with the California Environmental Quality Act
16 (California Public Resources Code Section 21000 et seq.). Said determination is on file with
17 the Clerk of the Board of Supervisors in File No. _____ and is incorporated
18 herein by reference.

19 Section 2. The San Francisco Administrative Code is hereby amended by Chapter
20 41A, to read as follows:

21 **CHAPTER 41A: APARTMENT UNIT CONVERSION AND DEMOLITION**

22 Sec. 41A.1. Title.

23 Sec. 41A.2. Purpose.

24 Sec. 41A.3. Findings.

1 Sec. 41A.5. Unlawful Conversion; Remedies.

2 Sec. 41A.6. Report on Apartment Conversion.

3 Sec. 41A.7. Construction.

4 Sec. 41A.8. Procedures for Determining and Appealing Administrative Penalties.

5
6 **SEC. 41A.1. TITLE.**

7 This chapter shall be known as the Apartment Unit Conversion Ordinance.

8 **SEC. 41A.2. PURPOSE.**

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

14
15 **SEC. 41A.3. FINDINGS.**

16 The Board of Supervisors finds that:

17 (a) There is a severe shortage of decent, safe, sanitary and affordable rental housing in
18 the City and County of San Francisco.

19 (b) The people of the City and County of San Francisco, cognizant of the housing
20 shortage in San Francisco, on November 4, 1980, adopted a declaration of policy to increase
21 the City and County's housing supply by 20,000 units.

22 (c) Many of the City and County's elderly, disabled and low-income persons and
23 households reside in apartment units.

1 (d) As a result of the removal of apartment units from the rental housing market, a
2 housing emergency exists within the City and County of San Francisco for its elderly, disabled
3 and low-income households.

4 (e) The Board of Supervisors and the Mayor of the City and County of San Francisco
5 recognized this housing emergency and enacted an ordinance which established a
6 moratorium on the conversion of apartment units to tourist and transient use.

7 (f) The conversion of apartment units to tourist and transient use impacts especially on
8 persons seeking housing in the low to moderate price range.

9 (g) It is in the public interest that conversion of apartment units be regulated and that
10 remedies be provided when unlawful conversion has occurred, in order to protect the resident
11 tenants and to conserve the limited housing resources.

12
13 **SEC. 41A.4. DEFINITIONS.**

14 (a) Apartment Unit. Room or rooms in any building, or portion thereof, which is
15 designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the
16 home or residence of four or more households living independently of each other in dwelling
17 units as defined in the San Francisco Housing Code, provided that the apartment unit was
18 occupied by a permanent resident on or after February 8, 1981. It is presumed that an
19 apartment unit was occupied by a permanent resident on or after February 8, 1981, and the
20 owner has the burden of proof to show that an apartment unit is not subject to this Chapter.

21 (b) Residential Use. Any use for occupancy as a dwelling unit by a permanent resident.

22 (c) Tourist or Transient Use. Use of an apartment unit for occupancy ~~on~~ for less than a
23 30-day term of tenancy, or occupancy for less than 30 days of an apartment unit leased by a business
24
25

1 entity, whether on a short-term or long term basis, including any occupancy by employees or guests for
2 less than 30 days where payment of the rent is contracted for or paid by the business entity.

3 (d) Permanent Resident. A person who occupies an apartment unit for at least 60
4 consecutive days with intent to establish that unit as his or her principal place of residence.

5 (e) Conversion or Convert. The change of the use or to rent an apartment unit from
6 residential use to tourist or transient use.

7 (f) Owner. Owner includes any person who is the owner of record of the real property.
8 Owner includes a lessee where an interested party alleges that a lessee is offering an
9 apartment unit for tourist or transient use.

10 (g) Interested Party. A permanent resident of the building in which the tourist or
11 transient use is alleged to occur, ~~of~~ the City and County of San Francisco, or any non-profit
12 organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, which
13 has the preservation or improvement of housing as a stated purpose in its articles of incorporation or
14 bylaws.

15
16 (h) Director. The Director of the Department of Building Inspection.

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

18 (a) Unlawful Actions. It shall be unlawful for any owner to offer an apartment unit for
19 rent for tourist or transient use.

20 (b) Determination of Violation. Upon the filing of a complaint ~~by a permanent resident~~ that
21 an unlawful conversion has occurred, the Director shall take reasonable steps necessary to
22 determine the validity of the complaint. The Director may independently determine whether an
23 owner may be renting an apartment unit for tourist or transient use as defined in this Chapter.
24 To determine if there is a violation of this Chapter, the Director may initiate an investigation of
25

1 the subject property. This investigation may include, but is not limited to, an inspection of the
2 subject property and a request for any pertinent information from the owner, such as leases or
3 other documents.

4 (c) Civil Action. ~~Except as provided by Subsection (1) below,~~ Any interested party may
5 institute proceedings for injunctive and monetary relief for violation of this Chapter. In addition,
6 the owner may be liable for civil penalties of not more than \$1,000 per day for the period of
7 the unlawful rental. If the interested party is the prevailing party, such party shall be entitled to
8 the costs of enforcing this Chapter, including reasonable attorneys' fees, pursuant to an order
9 of the Court. If the interested party is a permanent resident or a non-profit organization, then
10 the interested party shall retain the entire monetary award. Any monetary award obtained by
11 the City and County of San Francisco in such a civil action shall be deposited in the Mayor's
12 Office of Housing, Housing Affordability Fund less the reasonable costs incurred by the City
13 and County of San Francisco in pursuing the civil action.

14 ~~(1) If the interested party is a permanent resident, such resident, as a condition to initiating civil~~
15 ~~proceedings pursuant to Subsection (c), must satisfy the requirements set forth in Section 41A.8(b)(2).~~

16
17 (d) Criminal Penalties. Any owner who rents an apartment unit for tourist or transient
18 use as defined in this Chapter shall be guilty of a misdemeanor. Any person convicted of a
19 misdemeanor hereunder shall be punishable by a fine of not more than \$1,000 or by
20 imprisonment in the County Jail for a period of not more than six months, or by both. Each
21 apartment unit rented for tourist or transient use shall constitute a separate offense.

22 (e) Method of Enforcement, Director. The Director shall have the authority to enforce
23 this Chapter against violations thereof by any or all of the means provided for in this Section.

24 **SEC. 41A.6. REPORT ON APARTMENT CONVERSION.**

1 (a) The Department of City Planning shall report to the Board of Supervisors on the
2 conversion of apartment units to tourist and commercial uses and shall formulate
3 comprehensive legislation for the Board of Supervisors to consider within one year of the
4 passage of this ordinance.

5 (b) The Department of City Planning shall specifically determine the following:

6 (1) The social, economic and physical impact of such conversion upon low and
7 moderate-income households, which comprise a significant portion of the residents of
8 apartment units. These groups shall include, but not be limited to, the elderly, the disabled,
9 minorities, single heads of households with minor children, and other persons with limited
10 economic resources;

11 (2) The impact that such conversions will have upon the total stock of low and
12 moderate-income housing in the City and County of San Francisco as a whole, as well as the
13 impact upon the areas in which the units in question are located;

14 (3) The effect of prohibition of the conversion of said apartment units to tourist or
15 commercial uses unless replacement housing units are provided on a one-to-one basis.

16
17 **SEC. 41A.7. CONSTRUCTION.**

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

20 (b) Clauses of this Chapter are declared to be severable and if any provision or clause
21 of this chapter or the application thereof is held to be unconstitutional or to be otherwise
22 invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of
23 this Chapter.
24
25

1 **SEC. 41A.8. PROCEDURES FOR DETERMINING AND APPEALING**

2 **ADMINISTRATIVE PENALTIES.**

3 (a) Notice of Complaint. Within 10 days of the filing of a complaint or upon the
4 Director's independent finding that there may be a violation of this Chapter, the Director shall
5 notify the owner by certified mail that the owner's apartment unit is the subject of an
6 investigation for an unlawful rental.

7 (b) Director's Determination of a Violation; Notice. Upon reviewing the information set
8 forth in the complaint, if any, and any information obtained by the Director during his or her
9 investigation, the Director shall determine whether an owner has violated this Chapter. The
10 Director shall notify by certified mail the complainant and the owner of his or her
11 determination.

12 (1) If the Director determines that a violation has occurred, the Director's notice shall:

13 (A) Specify a reasonable period of time during which the owner must correct or
14 otherwise remedy the violation; and

15 (B) State that if the violation is not corrected or otherwise remedied within this period,
16 the owner may be required to pay the administrative penalties set forth in Subsection (c).

17 (2) If the Director determines that no violation has occurred, for purposes of filing a civil
18 action authorized by Section 41A.5(c)(1), the Director's determination is final.

19 (c) Imposition of Administrative Penalties for Unabated Violations and Enforcement
20 Costs.

21 (1) Administrative Penalties. If the Director, upon further investigation, finds that the
22 violation has continued unabated beyond the time specified in the notice required by
23 Subsection (b)(1)(A), the Director may impose an administrative penalty of not more than
24
25

1 three times the rental rate charged for each unlawfully converted unit from the day the
2 unlawful rental commenced until such time as the unlawful rental terminates. The rental rate
3 charged shall be the rent charged, whether daily, weekly, or otherwise calculated, for the
4 apartment unit during the period of the unlawful use.

5 (2) Enforcement Costs. The Director also may require the owner to reimburse the City
6 for the costs of enforcement of this Chapter, which shall include, but not be limited to,
7 reasonable attorneys' fees.

8 (d) Notice of Director's Determination of Continuing Violation and Imposition of
9 Penalties. The Director shall notify the owner by certified mail that the violation has continued
10 unabated and that administrative penalties shall be imposed pursuant to Subsection (c). The
11 notice shall state the basis of the Director's determination regarding the continued existence
12 of the violation and the resulting imposition of penalties. The notice also shall inform the
13 owner of the right to request a hearing within 10 days of the notice date to contest the
14 Director's determination on the continuation of the violation and the imposition of penalties.

15 (e) Confirmation of Continuing Violation and Imposition of Penalties. If no request is
16 timely filed for an administrative review hearing, the Director's determination regarding the
17 continuation of the violation and the imposition of penalties shall be deemed *final confirmed*.
18 The Director may then request payment of the administrative penalties and enforcement costs
19 within 30 days of the certified mailed notice to the owner. If the administrative penalties and
20 enforcement costs are not paid, the Director is authorized to initiate lien procedures to secure
21 the amount of the penalties and costs against the real property that is subject to this Chapter,
22 *consistent with* ~~pursuant to~~ the provisions of Section 41.20(d) of this Code; provided however,
23 that the City Treasurer shall distribute all sums collected pursuant to Subsection (~~1~~) herein.
24
25

1 (f) Notice of Administrative Review Hearing. Whenever an administrative review
2 hearing is requested pursuant to Subsection (d), the Director, within 45 calendar days of the
3 request, shall notify the owner of the date, time, and place of the hearing by certified mail.
4 Notice of the hearing shall be conspicuously posted on the building that is the subject of the
5 hearing. The owner shall state under oath at the hearing that the notice remained posted for
6 at least 10 calendar days prior the hearing. The Director shall appoint a hearing officer to
7 conduct the hearing.

8 (g) Pre-hearing Submission. No less than three working days prior to the administrative
9 review hearing, parties to the hearing shall submit written information to the Department of
10 Building Inspection including, but not limited to, the following: the issues to be determined by
11 the hearing officer and the evidence to be offered at the hearing. Such information shall be
12 forwarded to the hearing officer prior to the hearing along with any information compiled by
13 the Director.

14 (h) Hearing Procedure. If more than one hearing is requested for apartment units
15 located in the same building at or about the same time, the Director shall consolidate all of the
16 hearings into one hearing. The hearing shall be tape recorded. Any party to the hearing may
17 at his or her own expense, cause the hearing to be recorded by a certified court reporter.
18 Parties may be represented by counsel and have the right to cross-examine witnesses. All
19 testimony shall be given under oath. Written decisions and findings shall be rendered by the
20 hearing officer within 20 working days of the hearing. Copies of the findings and decision shall
21 be served upon the parties by certified mail. A notice that a copy of the findings and decision
22 is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through
23 Friday shall be posted by the owner in the building in the same location in which the notice of
24 the administrative review hearing was posted.
25

1 (i) Finality of the Hearing Officer's Decision and Appeal. The decision of the hearing
2 officer shall be final. Within 20 days after service of the hearing officer's decision, any party
3 other than the City and County of San Francisco, may seek review of the hearing officer's
4 decision by the municipal court, according to the procedures set forth in California
5 Government Code Section 53069.4.

6 (j) Confirmation of Hearing Officer Decision. If no notice of appeal of the hearing
7 officer's decision is timely filed, the decision shall be deemed confirmed. If any imposed
8 administrative penalties and costs have not been deposited at this time, the Director may
9 proceed to collect the penalties and costs pursuant to the lien procedures set forth in
10 Subsection (e).

11 (k) Collection of Penalties after Municipal Court Decision. If the court finds in favor of
12 the contestant, the amount of the municipal court filing fee shall be reimbursed to the
13 contestant by the City and County of San Francisco. If the administrative penalty has been
14 deposited, the City and County of San Francisco shall distribute the administrative penalty in
15 accordance with the judgment of the court. If the administrative penalties and enforcement
16 costs have not been deposited and the decision of the municipal court is against the
17 contestant, the Director may proceed to collect the penalties and costs.

18 (l) Deposit of Penalties. Administrative penalties paid pursuant to this Chapter shall be
19 deposited in the Mayor's Office of Housing, Housing Affordability Fund less the reasonable
20 costs incurred by the City and County of San Francisco in pursuing enforcement under this
21 Chapter 41A. the lien procedures set forth in Subsection (e), if such procedures were undertaken. If
22 enforcement costs were imposed pursuant to Subsection (c), such funds shall be distributed
23 according to the purpose for which they were collected.
24
25

1 Section 3. Effective Date. This ordinance shall become effective 30 days from the
2 date of passage.

3 Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to
4 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
5 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that
6 are explicitly shown in this legislation as additions, deletions, Board amendment additions,
7 and Board amendment deletions in accordance with the "Note" that appears under the official
8 title of the legislation.

9
10 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

11 By: 
12 KATE HERRMANN STACY
13 Deputy City Attorney