



SAN FRANCISCO PLANNING DEPARTMENT

July 23, 2015

Mr. John Arntz
Director of Elections
Department of Elections
City and County of San Francisco
1 Carlton B. Goodlett Place
City Hall, Room 48
San Francisco, CA 94102

RE: Voter Approval of Short-Term Residential Rentals – November 2015 Ballot

Dear Director Arntz,

Thank you for the opportunity to review the “Voter Approval of Short-Term Residential Rentals” initiative measure (“Measure”) that will appear on the November 3, 2015 ballot. As you requested, and in anticipation of the Ballot Simplification Committee’s (“BSC”) preparation of a fair and impartial summary of the Measure, the Planning Department (“Department”) is providing an objective analysis of the Measure’s impact on current law and current Department and City practices along with technical observations intended to inform the BSC’s deliberations.

1. **The Measure would change the current law’s procedures and conditions in a number of ways that significantly affect the practice of short-term residential rentals. The most significant of these alterations include the removal of a distinction between unhosted and hosted rentals in favor of a 75-day total hard cap on both types of short-term rentals, new requirements for hosting platforms, and allowing a private right of action for units in violation of short-term rentals. These major changes to our practice are discussed in items number two through seven, beginning on page three.**

Some changes, although different from the current law’s stipulations, would only affect the Department’s procedures and resources in minor ways. The following are changes laid forth in the Measure that would have a minor effect on the Department’s procedures:

- a) **The Measure would change the Department’s policy on issuing certificates to legal in-law units.**

Under current law, legal accessory dwelling units and legal in-law units are not prohibited from obtaining a short-term residential rental certificate so long as the applicant is the permanent resident of said unit. The Measure would preclude the Department from issuing short-term residential registration certificates to permanent residents of accessory dwelling units and in-law units.

b) The Measure would allow private right of action for units found to be in violation of the short-term residential rental conversion ordinance.

Under current law, complaints alleging illegal short-term residential rentals may be brought through three, independent enforcement processes: Administrative enforcement, civil action, and criminal action. All three of these processes must be initiated by the Department or the City Attorney; interested parties may only bring a civil action after a determination of violation has been made by the Department. Under the proposed Measure, any interested party who files a complaint alleging illegal short-term residential rental may file a lawsuit against the respondent under certain circumstances. The interested party may file a lawsuit either after the Department has made a determination of violation and issued a notice to the respondent and complainant, and the City Attorney has been given 30 days from the date of the Director's notice to file for civil action and has taken no action, or, after the Director has made a determination that a violation does not exist and has informed the complainant and the respondent of this decision. This new ability for a private lawsuit will alter the Department's enforcement procedures slightly through the new requirements for noticing to complainants of the Director's determination of violation, as well as affecting the timeline for the Department's handling and pursuing potential violations of short-term residential rental.

c) The Measure would remove the current law's distinction between hosted and unhosted rentals, instead favoring a 75-day total hard cap on the number of nights a unit may be rented short-term in any given calendar year.

Under current law, registered hosts may rent their unit in its entirety, while they are not present in the unit (known as "unhosted rentals"), for a total of 90 days per calendar year. Additionally, a registered host may rent a portion of their unit while they are present for an unlimited number of days in any given calendar year ("hosted rentals"). The Measure would remove this distinction between hosted and unhosted rentals and instead create a 75-day total hard cap for any type of short-term rental stay. The removal of the distinction between hosted and unhosted rentals would simplify the department's enforcement efforts by having a single length of stay that would be permitted. The specific number of 75-days as the hard cap set forth in the Measure will likely not affect the Department's handling of short-term residential rental registration or enforcement.

d) The Measure will expand the types of violations a Hosting Platform may incur and therefore will likely lead to increased enforcement cases for the Department.

Under current law, Hosting Platforms are required to provide notice to all hosts that include the information contained in the Admin. Code Chapter 41A. The Measure would increase the requirements for Hosting Platforms by mandating the Hosting Platform to remove any listing without a City-issued Registration Number, cease listing a unit after it has been rented for 75 days in a calendar year, and report on a quarterly basis to the Department, the number of nights each Residential Unit has been rented for said period. A violation of any of these requirements is grounds for administrative penalties and civil action. This increase in requirements will likely result in an increase in the number of complaints filed to the Department.

2. The Measure would affect the potential amount the courts may order in civil penalties.

Under current law, changes to the regulation of short-term residential rentals as laid forth in Admin. Code Chapter 41A may be adopted through the City's legislative process, which requires approval of the Board of Supervisors ("Board") and Mayor, after receiving recommendations from the Planning Commission. If the Measure is approved, any changes to Chapter 41A that might conflict with the Measure may require a vote of the people.

Under current law, the City or interested party may ask a court to award civil penalties of up to \$1,000 per day in violation. The Measure would modify the potential amount of civil penalties the City or an interested party may seek. The Measure states the court may award civil penalties of not less than \$250 per unit per day in violation and not more than \$1,000 per unit per day in violation. These fines could not be altered legislatively.

3. The Measure would increase the Department's noticing requirement for short-term residential rental registration applications.

- a) Under current law, the Department sends written, mailed notification upon receipt of an application for a short-term residential rental registration to the owner(s) of record (if the applicant is not also the sole owner). If the unit in question is in an RH-1(D) zoning district, the Department also sends mailed notice to any directly associated homeowner association that has previously requested such notice.

The Measure would significantly increase the noticing requirement. Under the Measure, in addition to the notice to the property owner(s) upon receipt of an application, the Department would also be required to send mailed notice within five days of the issuance of a short-term residential rental registration number. The Measure would expand the notification requirement to include the applicant, tenants, permanent resident, and homeowner's association (if applicable) within the same building of the short-term residential rental in question. This written, mailed notification requirement would additionally include all individuals having made a written request for notification of the unit, and all owners and occupants of properties within 100 feet of the short-term residential rental in question. The greatly expanded noticing requirement would place a high demand on staff resources and materials. The Department estimates that the new demands on staff include the drafting and mailing of an average of 40 additional notices per issued registration certificate. The Department estimates the new demand on materials includes the paper and postage required to mail an average of 40 additional notices per issued registration certificate. Under the presumption that staff may issue one thousand registration certificates in a calendar year, the estimated annual cost to the Department is approximately \$45,000.

- b) Under current law, the Department is not required to post written notice of an issued short-term residential rental registration number on the subject building.

The Measure would require the Department to post physical notice of each issuance of a short-term residential rental registration number on the subject building within five days of the issuance of the registration number. The notice would be required to remain posted for 30 days. The Department estimates this will increase the amount of staff time and materials at a cost to the Department of approximately \$63,350 per every one thousand registration numbers issued. The Department estimates staff would additionally expend extra resources monitoring the compliance of the 30 day posting period requirement and likely have difficulty in determining the responsible party when a sign is removed before the 30 day period has expired.

4. **The Measure creates enforcement procedures that conflict with Administrative Code § 41A.6, which is not proposed to be amended through this ballot measure. Additionally, the Measure's proposed enforcement mechanisms amended in Administrative Code § 41A.5(c), 41A.5(d), 41A.5(e), 41A.5(f), and 41A.5(g) do not differentiate between administrative enforcement and a civil action (or lawsuit), which are meant to function as two separate and independent processes. The amendments create an enforcement system that is unable to coexist contemporaneously. If approved, the Department would be required to attempt to marry these conflicting enforcement procedures in addition to proposing amendments to Admin. Code § 41A.6 at a later date.**

Under current law three separate enforcement processes exist under which an alleged short-term residential rental violation may be prosecuted: administrative enforcement, civil action, and criminal action. All three methods of enforcement serve a purpose in the current law. Typically, civil action is initiated when a violation remains out of compliance after the administrative enforcement process has been exhausted. Civil and criminal actions may also be pursued based on the egregiousness of the violation. Criminal action was not amended in the Measure. Administrative enforcement and civil action were amended in the Measure. Both of these processes are described separately in the current Administrative Code § 41A.5(c), and Administrative Code § 41A.5(d) respectively. Currently, the majority of short-term residential rental violation cases are enforced under the administrative enforcement process first. Specific procedures for the administrative enforcement process are described in Administrative Code § 41A.6.

Existing Administrative Enforcement Process

Under § 41A.6 the Department, upon receipt of a complaint alleging a short-term residential rental violation, investigates the complaint and upon determination of a violation, issues a notice to the respondent requiring their appearance at an administrative review hearing within 45 days of the notice of complaint. Notice of the hearing is posted by the Department on the subject building prior to the hearing date. A hearing officer is appointed by the Director to oversee the hearing. Within 30 working days of the hearing a written decision is issued by the hearing officer. If found in violation, the respondent is liable for administrative penalties at increasing rates for each separate occurrence of a violation of short-term residential rental. For the initial occurrence of a violation, the Department assesses penalties at a rate of four times the standard hourly

administrative rate of \$121.00 per unit, per day in violation totaling, \$484.00 per unit per day in violation. For the second occurrence of a violation, the Department assesses penalties at a rate of eight times the standard hourly administrative rate, totaling \$968.00 per unit per day in violation. For the third occurrence of a violation, the Department assesses penalties at a rate of twelve times the standard hourly rate, totaling \$1,452.00 per unit per day in violation. Admin. Code § 41A.6 was not amended in the Measure.

Existing Civil Action (a.k.a lawsuit)

Under the current law's § 41A.5, the second of the enforcement processes that may be brought forth against a short-term residential rental violation is a civil action. Civil action may be instituted by the City Attorney's Office at any time or by an interested party once the Director has determined a violation exists through the administrative review hearing, which is set forth in the administrative enforcement process. Civil action is not a required enforcement procedure for short-term residential rental violations. Civil penalties, unlike administrative penalties, are sought in a civil suit filed by the City Attorney. The penalties levied under civil action cases are for no more than \$1,000 per day for the period of unlawful activity in addition to injunctive relief and damages. Any monetary award obtained by the City is to first be used to reimburse City departments and agencies, including the City Attorney's Office, for all costs and fees incurred in enforcement of the case.

Analysis of the Measure's Changes to Existing Administrative Enforcement Process and Civil Action

The Measure appears to have conflated the two procedures described above by eliminating the current Admin. Code § 41A.5(c) Determination of a Violation and § 41A.5(d) Civil Action. The Measure introduces a new Admin. Code § 41A.5(c) titled "Civil Action". The Department believes this newly created § 41A.5(c) was misnamed by the Measure's authors. Although this section's title indicates the enforcement procedures described within are for "civil action", the processes contained in the section describe both administrative and civil processes for enforcement. Additionally, the Measure does not amend Admin. Code § 41A.6 wherein the procedure for administrative enforcement is set forth. By amending Admin. Code § 41A.5(c-d), without also amending Admin. Code § 41A.6 the authors of the Measure have created a system of conflicting enforcement procedures. Examples of the conflict are as follows:

-Under Admin. Code § 41A.6, (which would remain active under the Measure), when a complaint is received by the Department the Director has 30 days to find a unit in violation and send a notice to the respondent stating the date and time for an administrative review hearing. The administrative review hearing is always required when a violation is confirmed. Congruently to the procedures active in § 41A.6, the Measure's amended Administrative Code § 41A.5(c-g) states within 60 days of the receipt of a complaint, the complaint shall be investigated and a report shall be submitted to the Director and the City Attorney. The Director may hold an investigative hearing after review of the report, if he/she determines one is required to further establish the facts of the case. Under this amended code section, a hearing is not required. The Director

however, must consult with the City Attorney on determining whether a violation has occurred. If the Director determines a violation has occurred, he or she shall notify the complainant and respondent and direct the respondent to cease and desist from the violation and take any action deemed necessary to remedy the violation, including payment of all costs including attorney's fees and hearing costs. If the Measure is enacted, these two procedures for enforcing potential short-term residential rental violations will conflict in the number of days for the Department to initially respond to a complaint, the involvement of the City Attorney, the conditions under which a hearing may or must be held, the reasoning for holding a hearing, the steps for investigating a complaint, and the types of fines and penalties that may be incurred by the respondent.

5. The Measure would increase the reporting requirement for registered hosts to the Department.

Under current law, registered hosts are required to report annually, every January 1, the number of days the residential unit has been rented as a short-term residential rental. Although this language remains under the Measure's Admin. Code § 41A.5(l)(3)(C), the Measure also establishes a greater requirement for required reporting by hosts in Admin. Code § 41A.5(b) stating that the Department will receive mandatory reports from registered hosts on a quarterly basis. Presuming the more restrictive of these two requirements takes precedence, the Department will need to establish a database with a capacity large enough to receive and process the quarterly reports of registered hosts. The Measure additionally requires all Hosting Platforms to submit records on the number of nights a unit has been rented short-term for all hosts within the City on a quarterly basis, which is a new requirement. The Department will need to develop two databases to receive the information presented by both the Hosting Platforms operating in San Francisco in addition to registered hosts. The information contained in the quarterly reporting by hosts will provide additional information to the department to enforce against violators by requiring hosts keeping track of the number of nights they rent short-term and monitoring to ensure they do not exceed this limit.

6. The Measure's increased requirements for Hosting Platforms will significantly increase the amount of data available to the Department.

Under current law, Hosting Platforms are required to provide notice to all hosts containing the information presented in the Admin. Code Chapter 41A. The Measure would increase the requirements for Hosting Platforms by mandating the Hosting Platform report on a quarterly basis to the Department, the number of nights each Residential Unit has been rented for said period, remove any listing without a City-issued Registration Number, and cease listing a unit after it has been rented for 75-days in a calendar year. The information contained in the quarterly reporting by Hosting Platforms will provide additional information to the Department to enforce against violators by aiding in identifying hosts who are unregistered or who have exceeded the 75-day rental cap. The requirements of hosting platforms to remove listings after the maximum number of days of rental have occurred, and to remove listings without a City-issued registration number will lessen the Department's work load in identifying violators. In addition, the requirements mandating hosting platforms to remove nonconforming listings would streamline to Department's efforts by clearly

identifying violators who post their unit on a hosting platform after it has already been rented for the maximum allowance of days for that calendar year.

7. On July 21, 2015, the City of San Francisco Board of Supervisors approved on second reading amendments to Chapter 41A, the current law regulating short-term residential rentals. Thus it appears likely that current law may change before the November 2014 election. If changes to the current law occur, the Department will update this memo upon the request of the Director of Elections.

Please do not hesitate to consult us at your deliberations move forward by contacting Zoning Administrator, Scott Sanchez, of my staff at scott.sanchez@sfgov.org or (415) 558-6350.

Sincerely,

A handwritten signature in black ink, appearing to read "John Rahaim". The signature is written in a cursive style with a large initial "J" and "R".

John Rahaim
Director of Planning