

San Francisco Proposes Regulations for Airbnb and Similar Platforms

After more than a year of meetings with stakeholders (including landlords, tenants, Airbnb and internet providers with similar platforms), there has emerged enough of a consensus on regulation of short term apartment rentals to make possible the introduction of legislation at the Board of Supervisors to legalize and regulate aspects of this growing phenomenon. Among such stakeholders, landlords are most likely to continue to challenge many aspects of this proposed legislation, however.

Nonetheless, San Francisco Supervisor David Chiu introduced legislation on April 15, 2014 that allows local residents to rent their "primary residence" on a limited basis for a period of less than 30 days to overnight guests. Tenants or landlords who wish to become "hosts" for these guests would need to register with the City and prove they occupy the unit 75 percent of the year (or a portion of the year under circumstances described below). The same 14% hotel tax would apply as currently applies to hotel rooms. The legislation's intent is to partially diminish the loss of City housing due to short term rentals. This legislation would apply only to buildings of two or more units.

Under the proposed rules, the Department of Building Inspection (DBI) would create and maintain a registry of permitted "hosts". These hosts would then apply and pay a fee to receive a permit. To qualify to be a host, tenants or owners who rent out their units would need to meet the following requirements:

1. Maintain rental or homeowners' property or casualty insurance for at least \$150,000 worth of property damage.
2. If no such insurance is obtained, use a hosting platform that provides a means by which the platform company will guarantee payments as to property damage in an amount not less than \$150,000 per incident.
3. Prove that they have lived in the unit for at least 275 days a year (or a portion of that time if there has been no occupancy for the full preceding calendar year).
4. Prove that they have lived in their unit for at least 60 days before renting out the unit.
5. Occupy the unit as a "primary residence" as documented by car registration, driver's license, voter registration, a homeowner's tax exemption or similar evidence.
6. Be a natural person and not an entity.



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7. Maintain records for at least two years demonstrating compliance with the rules.
8. For units subject to rent control, charge no more rent than the rent the primary resident is paying to his or her landlord.
9. Pay the same transient occupancy tax paid by City hotels, namely 14% of the amount paid for the stay. In the case of a hosting platform, the hosting platform may collect and pay the transient occupancy tax to the City.

The legislation also regulates “hosting platforms” such as Airbnb and VRBO (Vacation Rental By Owners). These hosting platforms would have to notify hosts about the City’s regulations, and would have to remove a listing for one year when a host has not obtained a permit from the City. The City would create and maintain a registry of all the permanent residents who are allowed to offer their units for such short-term residential rental use. There will be an application and renewal fee for the registry. The registry will be available for public review to the extent not prohibited by privacy laws.

Effect of Proposed Law On Existing Leases.

The Legislative Digest written by the legislative staff at the Board of Supervisors has written the following with regard to the law's effect on current residential leases:

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

Upon violations of the proposed law, DBI, tenants in the building where the use is taking place and non-profit housing organizations will be able to file a complaint with the City. The City will next hold a hearing on the allegation. DBI would allow the violation to be corrected within a certain timeframe and if there is no correction, DBI may prohibit an owner or lessee from listing his or her residential unit on any hosting platform for one year. Once a violation is found by DBI and there is no cure after notification to cure, the City or building tenants or a nonprofit housing organization may also file a civil action in court to enforce the law and recover penalties.

The City may sue an owner or tenant or business entity for injunctive and monetary relief and such parties may be liable for a civil penalty of up to \$1,000 per day, including attorneys’ fees up to the amount of the monetary award. It will also be a misdemeanor.

The law requires that DBI designate a contact person within its Department for members of the public who wish to file complaints.

Conclusion: More Negotiations To Come.

Many landlords and the San Francisco Apartment Association have stated that this new law does not adequately address many of their concerns. Their concerns are numerous, including but not limited to the fear that short-term renters could pose a safety and health risk to other tenants. Many property owners believe that people who are using a unit for transient use are not as careful as those who use a unit as a primary residence.

Airbnb has indicated it will be advocating for some small changes to Chiu's proposals, particularly regarding

a proposed registration system that could make public certain personal information about people who rent out space. Airbnb is concerned that in theory, such information could make tenants vulnerable to landlord retaliation. This legislation will have at least three and perhaps many more months of hearings and comments.

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