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| <p><b>Item 3</b><br/><b>File 16-0423</b></p>  | <p><b>Departments:</b><br/>City Administrator (ADM)<br/>Office of Short Term Rental Administration and Enforcement</p> |
| <p><b>EXECUTIVE SUMMARY</b></p>   |  |
| <p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance would amend the City’s Administrative Code to revise the Residential Unit Conversion Ordinance to (a) require Hosting Platforms to verify that a Residential Unit is on the City Registry prior to listing; (b) require the Office of Short Term Rentals to monitor Hosting Platforms, issue non-compliance notices and for Hosting Platforms to respond expeditiously to such notices; (c) provide for civil, administrative and criminal penalties against Hosting Platforms for violations; (d) require quarterly and annual reports to the Board of Supervisors and (e) affirm the Planning Department’s determination under the California Environmental Quality Act.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• On October 21, 2014, the City’s Codes were amended to allow permanent residents to provide short-term residential rentals by (a) registering the unit with the City, (b) obtaining a business license and paying the City’s Transient Occupancy Taxes, and (d) complying with specified other City rules and regulations.</li> <li>• A new Office of Short Term Rental Administration and Enforcement (Office of Short Term Rentals) was created in 2015 to provide a centralized location for the City’s Registry and to coordinate complaints and enforcement of the City’s short-term rental regulations.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The Office of Short Term Rentals FY 2015-16 budget is currently \$475,000 and includes three FTE staff, as well as three Planning Department staff. The proposed legislation is estimated to result in additional one-time costs of \$119,685 and ongoing annual costs of \$452,345. Together with the existing FY 2015-16 budget, projected annual ongoing costs would be \$927,345, excluding one-time costs of \$119,685.</li> <li>• In FY 2015-16, fee and penalty revenues are projected to total \$253,000, which is used to support this program. The shortfall of \$222,000 is supported by the City’s General Fund.</li> <li>• Total projected revenues to be realized from the proposed ordinance cannot be estimated at this time.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• It may be easier for the City to monitor compliance and reduce the City’s cost if the proposed ordinance is amended to require Hosting Platforms (1) post the City’s registration number in a standardized location on their website or in a manner that is clearly distinct and consistently identifiable, and (2) provide additional data upfront that will facilitate the creation of the listing of compliant vs non-compliant listings for the City.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• The Board of Supervisors may want to consider the potential amendments identified in the Policy Consideration section above.</li> <li>• Approval of the proposed ordinance is a policy decision for the Board of Supervisors.</li> </ul> |  |

## MANDATE STATEMENT

According to Charter Section 2.105, all legislative acts shall be by ordinance and require the affirmative vote of at least a majority of the members of the Board of Supervisors.

## BACKGROUND

On October 21, 2014, the Board of Supervisors amended the City's Administrative Code and Planning Codes to allow some residential properties to provide short-term residential rentals (File 14-0381; Ordinance 218-14). A short-term residential rental is defined as a rental of all or a portion of a residential unit for periods of less than 30 nights. Under the existing Chapter 41A Administrative Code provisions, permanent residents who are permitted to offer short-term residential rentals are required to (a) register the unit with the City<sup>1</sup>, including submitting documents to prove residency in the unit being registered, (b) obtain a business license and pay the City's Transient Occupancy Taxes<sup>2</sup>, (c) agree to a 90-day limit on unhosted rentals, and (d) comply with specified other City rules and regulations.

Under the existing Code provisions, Hosting Platforms<sup>3</sup> are required to (a) provide notice to their short term residential users regarding the rental laws in San Francisco<sup>4</sup>, (b) comply with the requirements of the City's Business and Tax Code, including collecting and remitting all required Transient Occupancy Taxes and (c) maintain records demonstrating that all taxes have been remitted to the City's Tax Collector. Violations of the noticing requirements can subject Hosting Platforms to administrative, civil and criminal penalties.

Chapter 41 of the Administrative Code was subsequently amended in July 2015 to establish a new Office of Short Term Rental Administration and Enforcement (Office of Short Term Rentals) in the City Administrator's Office to provide a centralized location for applicants for the City's registry and to coordinate complaints and enforcement of the City's short-term rental regulations. The Office of Short Term Rentals is currently located at 1650 Mission Street, in the City Planning Department. In FY 2015-16, the Office of Short Term Rentals budget is \$475,000, including three FTE staff. In addition, three Planning Department staff are assigned to the Office of Short Term Rentals.

According to Mr. Kevin Guy, Director of the Office of Short Term Rentals, compliance with these short term rental Code provisions is currently primarily the responsibility of the short term rental hosts. Currently, Hosting Platforms do not generally post specific addresses or owners' names or list City registration numbers in standardized formats on their websites to allow the City to easily determine compliance. Hosting Platforms also have not been fully responsive to

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<sup>1</sup> Registration of short-term residential units was originally in the City's Planning Department, and subsequently moved to the new Office of Short Term Rentals.

<sup>2</sup> Transient Occupancy Taxes are considered Hotel Taxes and are assessed at the current rate of 14%.

<sup>3</sup> Hosting Platforms are defined as entities that provide a means through which an owner may offer a residential unit for tourist or transient use, usually through an online website which allows an owner to also advertise the residential unit and arrange payments.

<sup>4</sup> Administrative Code Chapter 37, the Residential Rent stabilization and Arbitration Ordinance and Chapter 41A, Residential Unit Conversion and Demolition Ordinance, regulate Short-Term Rental of Residential Units.

the City's requests for information regarding potentially non-compliant listings. The proposed ordinance would provide additional compliance requirements for the Hosting Platforms.

## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend Chapter 41A of the City's Administrative Code to:

- (a) Require Hosting Platforms to verify that a residential unit is on the City's Registry prior to listing the unit to be rented on the Hosting Platform.
- (b) Require the Office of Short Term Rentals to monitor Hosting Platforms and issue non-compliant notices and require Hosting Platforms to respond expeditiously.
- (c) Provide for civil, administrative and criminal penalties against Hosting Platforms for violations of the Residential Unit Conversion Ordinance and deposit any additional fees and penalties in the Housing Trust Fund for use by the Small Sites Program.
- (d) Require the Office of Short Term Rentals to provide quarterly and annual reports to the Board of Supervisors.
- (e) Affirm the Planning Department's determination under the California Environmental Quality Act (CEQA).

### **Verify Residential Unit is on City Registry**

Currently, the Office of Short Term Rentals maintains the City's Short-Term Residential Rental Registry (City's Registry) which includes a unique registration number for each approved short-term residential rental unit. Under the proposed ordinance, Hosting Platforms would have the following three options for verifying that a residential unit is on the City's Registry and has a valid registration number prior to posting a listing to be rented on the Hosting Platform:

- (1) Provide the verified registration number on each web page listing that contains verified information for the specified residential unit, such as host response rates, host ratings and date of joining the platform;
- (2) Ensure that the host posting the listing for a residential unit includes a verified registration number within their listing and the registration number is visible to all users; or
- (3) Provide the verified registration number, residential unit street address, unit number and host name to the Office of Short Term Rentals by electronic mail before posting the listing on the Hosting Platform.

### **Monitoring Hosting Platforms, Non-Compliant Notices and Required Responses**

The proposed ordinance would require the Office of Short Term Rentals to actively monitor Hosting Platform listings to ensure that Hosting Platforms are only listing residential units included on the City's Registry, by conducting an initial comprehensive review of active Hosting Platforms listings, with subsequent reviews conducted at least monthly. Based on these reviews, the Office of Short-Term Rentals would be required to identify and immediately notice the Hosting Platforms and the City Attorney by electronic mail of all non-compliant listings. Hosting Platforms would be required to respond to such notices within one business day or be

subject to specified administrative penalties and enforcement provisions, including civil penalties of up to \$1,000 per day.

### **Quarterly and Annual Reports to Board of Supervisors**

The Office of Short Term Rentals would be required to provide quarterly reports to the Board of Supervisors summarizing the results of the Office's monitoring efforts, including the number of non-compliant units identified, number of notices issued, Hosting Platform responses received and penalties imposed. In addition, the Office of Short Term Rentals (not the Planning Department) would be required to provide annual reports to the Board of Supervisors regarding the administration and enforcement of the Short-Term Residential Rental program.

### **Provide Civil, Administrative and Criminal Penalties**

Under the proposed ordinance, civil, administrative and criminal penalties would also apply to violations by a Hosting Platform for failure to (a) provide notices to hosts regarding Chapter 41A rules, (b) collect or pay taxes, (c) verify, display or disclose registration numbers and compliance information, and (d) respond to requests for information. Currently civil and administrative penalties only apply to Hosting Platforms that fail to (a) provide notices to hosts regarding Chapter 41A rules and (b) collect or pay taxes. In addition, any fees and penalties collected pursuant to Chapter 41A would now be deposited in the Housing Trust Fund for use by the Small Sites Program<sup>5</sup> after reimbursement for all City costs incurred for the enforcement of Chapter 41A.

### **California Environmental Quality Act Determination (CEQA)**

On May 6, 2016, the Planning Department determined that the actions contemplated in this ordinance would not result in a physical change in the environment and therefore comply with CEQA.

## **FISCAL IMPACT**

### **Existing and Projected Costs**

As noted above, the Office of Short Term Rentals FY 2015-16 budget is currently \$475,000 and includes three FTE staff, with three additional staff provided by the Planning Department. If the proposed legislation is approved, Mr. Guy estimates requiring approximately three additional FTE 5291 Planner 3 staff positions to inspect and monitor the approximately 12,500 listings on various Hosting Platform websites on a monthly ongoing basis, using web scrapes as well as manual inspections of such listings. In addition, assuming this new staff identifies numerous non-compliant listings and these listings are then removed from the Hosting Platforms, a significant number of new applications to register short-term rental units are likely. This surge in applications may require the addition of a temporary 5275 Planner Technician and Department of Technology Programmer Analyst staff to develop an online registration application site.

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<sup>5</sup> The Housing Trust Fund for use by the Small Sites Program is primarily for the acquisition of new sites for affordable housing in the City.

Mr. Guy also notes that if the Office of Short Term Rentals needs to hire additional staff, it may require the Office to move and lease additional office space, as there is insufficient additional space in the Planning Department. An estimated \$19,200 of additional annual rent and an unknown cost to move is included in the projected costs. In addition, depending on the amount of non-compliance determined, costs for City Attorney services may increase, although the amount of such costs is currently unknown.

As shown in the Table below, the total additional one-time costs are estimated at \$119,685 and ongoing costs are estimated at \$452,345. Together with the existing FY 2015-16 budget, projected annual ongoing costs for the Office of Short Term Rentals would increase to \$927,345, excluding one-time additional expenses of \$119,685.

**Table: Projected One-Time and Ongoing Costs**

|                                  | <b>Full-time Equivalent (FTE) Staff</b> | <b>One-Time Costs</b> | <b>Ongoing Costs</b> |
|----------------------------------|---|-----------------------|----------------------|
| 5291 Planner 3                   | 3.33                                    |                       | 388,145              |
| 5275 Planner Technician          | 0.67                                    | \$61,628              |                      |
| 1062 IS Programmer Analyst       | 0.25                                    | 30,057                |                      |
| Web scraping                     |   |                       | 45,000               |
| Workstations (4 new staff)       |   | 28,000                |                      |
| City Attorney                    |   |                       | Unknown              |
| Rent                             |   |                       | 19,200               |
| Moving                           |   | Unknown               |                      |
| <b>Total Estimated New Costs</b> | <b>4.25</b>                             | <b>\$119,685</b>      | <b>\$452,345</b>     |
| <b>Current FY 2015-16 Budget</b> | <b>3.00</b>                             |                       | <b>475,000</b>       |
| <b>Total Projected Budget</b>    |   |                       | <b>\$927,345</b>     |

**Existing and Projected Revenues**

The Office of Short Term Rentals is partially supported by \$50 registration fees and various civil, criminal and administrative penalties. In FY 2015-16, these fee and penalty revenues are estimated to total \$253,000. Such revenues are used to offset City costs to administer and enforce the short term rental program. In FY 2015-16, with annual costs of \$475,000 and annual revenues of \$253,000 (53% coverage), there is a projected shortfall of \$222,000. The shortfall for the Office of Short Term Rentals is supported by the City’s General Fund.

If the proposed ordinance is approved, the Office of Short Term Rentals estimates receiving approximately \$75,000 of revenues from application fees. Mr. Guy reports that the amount of revenues to be realized from civil, criminal and administrative penalties will vary significantly depending on the level of compliance by the Hosting Platforms, which cannot be estimated at this time. Under the proposed ordinance, any revenues generated beyond the costs to

administer the short term rental program would be deposited in the Housing Trust Fund for Small Sites Program.

Given the additional functions and costs associated with the proposed legislation, approval of the proposed ordinance is a policy decision for the Board of Supervisors.

### **POLICY CONSIDERATION**

The one-time and ongoing costs of the proposed ordinance shown in the Table above are based on the Office of Short Term Rentals current activities and projections. However, Mr. Guy notes that the actual fiscal impact could vary based on the level of compliance by the Hosting Platforms in response to the new legislation. In addition, Mr. Guy notes that it would be easier for the City to monitor compliance and the City's cost to implement the proposed ordinance could be reduced by an indeterminate amount, if the proposed ordinance was amended to require that the Hosting Platforms:

- (1) Post the City's registration number in a standardized location on their website or in a manner that is clearly distinct and consistently identifiable, and
- (2) Provide additional data upfront that will facilitate the creation of the listing of compliant vs non-compliant listings for the City.

### **RECOMMENDATIONS**

1. The Board of Supervisors may want to consider the potential amendments identified in the Policy Consideration section above.
2. Approval of the proposed ordinance is a policy decision for the Board of Supervisors.