



CALinnovates

To: San Francisco Voters
From: CALinnovates
Date: September 4, 2015
Re: Proposition F Advisory Letter

PROP F: RIPE FOR ABUSE

Frivolous lawsuits come in all shapes and sizes. Some are brought purely to harass. Others amount to little more than outright blackmail undertaken to extract monetary and other unfavorable concessions from the vulnerable or unsuspecting. Aided by poorly conceived statutes and rent-seeking lawyers with a “sue first” approach, these meritless lawsuits are not only vexatious for the victims, they undermine the social fabric of our communities, and places a chilling effect on otherwise lawful activities.

Proposition F includes a private right of action designed specifically to encourage these types of lawsuits between neighbors. Under the measure, so-called “interested parties” are given financial incentives to surreptitiously monitor and report their neighbor’s activities. Neighbors can bring suits against one another over perceived violations of the City’s short-term rental ordinance – regardless of whether the enforcement authorities found any merit in their complaint. In such actions, these private enforcers are authorized to pocket civil penalties of up to \$1,000 per day for each alleged violation.² In addition, they are entitled to recover their attorney and litigation fees, which may exceed any other part of the plaintiff’s recovery. And to make it easier for litigious neighbors and their lawyers to locate potential defendants, the proposed legislation requires that the City post public notices,³ notify neighbors,⁴ and provide a publicly accessible database listing the addresses and other personal information of any residents engaged in short-term rentals.⁵

Such a private right of action carries with it an inherent potential for abuse. With the promise of financial rewards and an enabling litigious environment, Proposition F creates perverse incentives for enterprising individuals to leverage otherwise meritless claims into personal gain. Much like California’s Proposition 65, here, the proposed legislation would give rise to a cottage industry of professional plaintiffs and their bounty hunter attorneys that specialize in misusing the civil justice system for profit. And as is often the case with frivolous suits, many of the accused would opt to settle such lawsuits in order to avoid the cost of defending themselves in court.

² Section 41A.5(e)-(f)

³ 41A.5(l)(3)(D), requiring a notice to be posted on the site of the short term rental.

⁴ 41A.5(l)(3)(D)(1), requiring an additional notice to be sent to all properties within 100 feet of a rental.

⁵ See Section 41A.4, “Short-Term Residential Rental Registry or Registry”

Aside from the potential financial windfalls, the proposed private cause of action also provides opportunities for malicious neighbors to turn our courts into common forums for airing personal grievances. Using violations of the ordinance as a pretext, neighbors can launch vindictive lawsuits against each other in efforts to settle private grudges without having to proffer any evidence of violation. In fact, Section 41A.5(f) specifically permits a private lawsuit to proceed, even in cases where the Planning Department has made an official determination that no violation has occurred. Under such circumstances, it is not difficult to imagine a scenario where a spiteful person, who could not otherwise bring a valid nuisance claim against his/her neighbors' children, using Prop F to sue his/her neighbor for allowing their relatives to visit for the weekend.

Given such misaligned incentives, the use of a private cause of action as an enforcement tool quickly would devolve into abusive and wasteful litigation, flooding the courts with hundreds of lawsuits that have no basis whatsoever in law or fact. The cost of defending against a single frivolous lawsuit can be prohibitive expensive, potentially bankrupting the accused individuals. Unfortunately, however, Proposition F does not provide the victims of these lawsuits with any meaningful remedy in law or methods to recover the very real losses they would incur as a result of a wrongful suit. Such lawsuits not only impose substantial burdens the litigants, but siphons resources that would otherwise support jobs, families and community investment.