

Office of the City Manager

## **REVISED AGENDA MATERIAL**

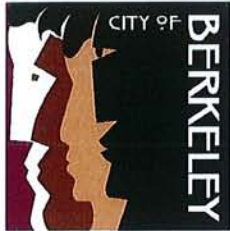
**Meeting Date: June 9, 2015**

**Item Number: 32**

**Item Description: Short-Term Rental Regulations Referral**

Revised agenda materials submitted by:

- Mayor Tom Bates
- Councilmember Jesse Arreguin
- Councilmember Linda Maio



Office of the Mayor

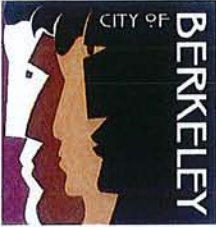
ACTION CALENDAR  
May 26, 2015

**Amendments for Item 21: Short-Term Rental Regulations Referral**

**Recommendation:**

1. Refer to the Planning and Housing Advisory commissions regulations that would legalize short-term rentals, defined as rentals not exceeding 14 days, in both single-family and multi-family buildings with the following recommended guidelines:
  - The [dwelling unit property](#) must be owner/tenant-occupied at least 9 months of the year and the [dwelling unit property](#) may not be rented more than 90 days if the host is not present, with no limit to the amount of rental days when the host is present
  - Either the host or rental-platform company must pay the transient occupancy tax (TOT) and an additional enforcement fee, to be established as a percentage of rents, not exceed the cost of the program
  - The host must have a valid business license and be covered by liability insurance of at least \$500,000
  - The host must notify abutting and confronting neighbors that he/she will be making short-term rentals available [and said notice shall contain information on applicable sections of Berkeley's Community Noise Ordinance](#)
  - [The host must provide information on applicable sections of Berkeley's Community Noise Ordinance to guests](#)
  - When the host is not present, he/she must designate a local contact to handle complaints
  - Short-term rentals in rental housing require approval from the building owner or property-management company
  - Short-term rentals are subject to the Second-Response Ordinance and upon a third violation within 180 days, the host would be prohibited from operating a short-term rental for one year
2. Request the City Manager direct staff to provide information to the commissions, as part of their considerations, on the status of the bed and breakfasts provided amnesty in 2003 as per BMC 23C.06.





Jesse Arreguín  
City Councilmember, District 4

CONSENT CALENDAR  
May 26, 2015

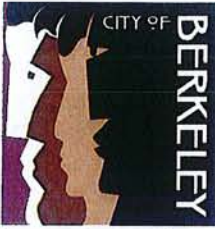
To: Honorable Mayor and Members of the City Council  
From: Councilmember Jesse Arreguín  
Subject: Amendment to Item # 21: Short-Term Rentals Regulation Referral

RECOMMENDATION

Refer to the Planning and Housing Advisory commissions and Rent Stabilization Board regulations that would legalize short-term rentals, defined as rentals not exceeding 14 consecutive days at a time, in both single-family and multi-family buildings with the following recommended guidelines:

- Establishing a new zoning use "Short-Term Residential Rental" which is defined as a rental of a single-family home or unit in a multi-family property which is offered by a Permanent Resident of the unit who is a natural human being, and not owned by a company or corporation. Inclusionary units and other income-restricted units, as well as units which are prohibited by law or regulation from being subleased or rented as a rental for less than 14 days are prohibited from being used as a Short-Term Residential Rental.
- The ~~property~~ unit must be the owner or tenants' primary residence and be owner/tenant-occupied at least 9 months of the year and the property may not be rented more than 90 days if the host is not present, with no limit to the amount of rental days when the host is present
- Either the host or rental-platform company must pay the transient occupancy tax and an additional enforcement fee\*, to be established as a percentage of rents, not to exceed the cost of the program.
- The host must have a valid business license and be covered by liability insurance of at least \$500,000. When someone who intends to rent their unit as an un-hosted rental applies for a business license, they must provide to the City information on designating the proposed rental period, which are limited by the maximum number of days specified in this policy. This notice must be provided to neighbors as part of the notification process.
- The host must provide written notice, to be developed by the City, notifying abutting and confronting neighbors, as well as neighbors in units above and below a rental unit proposed to be rented as a short-term rental, that he/she will



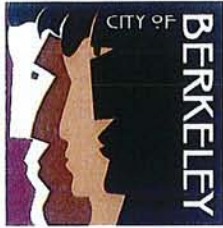


Jesse Arreguín

City Councilmember, District 4

be making short-term rentals available. The written notice shall include the name of the individual hosting the short term rental, a daytime and emergency contact number (in which someone can call 24 hours a day), the rental periods of the short term rental filed with the City, and information on the city's short term rental policy including how to file a complaint if there is a violation.

- When the host is not present, he/she must designate a local contact to handle complaints
- Short-term rentals in rental housing require approval from the building owner or property management company
- Rental fees for short-term rentals in rental units cannot exceed the lawful rent ceiling
- Short-term rentals are subject to the Second-Response Ordinance and upon a third violation within 180 days, the host would be prohibited from operating a short-term rental for one year
- Hosting companies must ensure that each short-term rental permitted by the city list its business license number on the rental ad on the hosting platform website.
- Ensure that any short-term rental policy have no negative impact on units historically under rent control, and that vacant rental units cannot be used as short-term rentals
- The City should dedicate sufficient staff to enforce this policy and allow for the filing of complaints to the city over alleged violations of this policy. After filing a complaint and determination that violations exist through an administrative hearing review, if a violation occurs the City shall impose monetary penalties. If an owner illegally converts multiple rental units to short term rentals in violation of this policy, then the monetary penalties will be substantially higher (no less than the amount of rent collected while out of compliance). If after repeated citations, the owner/tenant/hosting company has not complied, an interested party may institute civil proceedings for injunctive and monetary relief against an owner, business entity or hosting platform. The City Manager and City commissions should review proposed amendments to San Francisco's Short Term Rental policy around enforcement and legal action.



Jesse Arreguín

City Councilmember, District 4

- The City may institute civil proceedings for injunctive and monetary relief, including civil penalties, against an owner, business entity or hosting platform for violations of this policy.

Request the City Manager direct staff to provide information to the commissions, as part of their considerations, on the status of the bed and breakfasts provided amnesty in 2003 as per BMC 23C.06. In addition, the City Manager should direct staff to determine how many Short-Term Rentals currently exist in the City of Berkeley (including how many units in multi-family properties, and whether the units historically under rent control are being rented as short term rentals). In addition, the City Manager should direct staff to take enforcement action against units historically under rent control currently being used illegally as short-term rentals, including fines and injunctive relief.

#### FISCAL IMPACTS

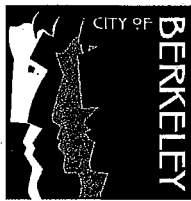
Transient occupancy tax and enforcement fee revenues. The cost of administrating an enforcement program.

#### ENVIRONMENTAL SUSTAINABILITY

Not applicable

#### CONTACT PERSON

Jesse Arreguín, Councilmember, District 4      (510) 981-7140



Office of Councilmember Linda Maio

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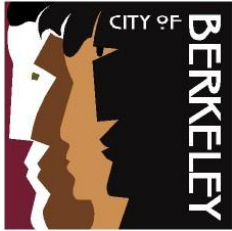
## Item 21: Short-Term Rental Regulations Referral, Clarification

### **If host is present:**

- a. Applies to *rooms* that are rented in people's homes (whether the homes/apartments are owned or rented)
- b. Does not apply to entire apartments or houses, only *rooms* in homes, unless the owner is away
- c. Regulates only *room* rentals of less than 14 consecutive days -- two weeks or less (short stays)
- d. If host is present, there is no limit to number of short-term room-rental stays

**If host is not present** short-term room-rental or entire home rental (14 days or less) is limited to 90 days per year, subject to guideline requirements.





Office of the Mayor

ACTION CALENDAR  
June 9, 2015  
(Continued from May 26, 2015)

TO: Members of the City Council  
FROM: Mayor Tom Bates & Councilmember Lori Droste  
SUBJECT: Short-Term Rental Regulations Referral

RECOMMENDATION

Refer to the Planning and Housing Advisory commissions regulations that would legalize short-term rentals, defined as rentals not exceeding 14 consecutive days, in both single-family and multi-family buildings with the following recommended guidelines:

- The property must be owner/tenant-occupied at least 9 months of the year and the property may not be rented more than 90 days if the host is not present, with no limit to the amount of rental days when the host is present
- Either the host or rental-platform company must pay the transient occupancy tax and an additional enforcement fee,\* to be established as a percentage of rents, not exceed the cost of the program
- The host must have a valid business license and be covered by liability insurance of at least \$500,000
- The host must notify abutting and confronting neighbors that he/she will be making short-term rentals available
- When the host is not present, he/she must designate a local contact to handle complaints
- Short-term rentals in rental housing require approval from the building owner or property management company
- Short-term rentals are subject to the Second-Response Ordinance and upon a third violation within 180 days, the host would be prohibited from operating a short-term rental for one year

Request the City Manager direct staff to provide information to the commissions, as part of their considerations, on the status of the bed and breakfasts provided amnesty in 2003 as per BMC 23C.06.

BACKGROUND

In recent years, many cities have been grappling with the legality and growth of short-term rentals as facilitated by online rental platforms such as AirBnB, Craigslist, FlipKey, HomeAway, and VRBO. As more cities decide to legalize these formerly prohibited

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\* Other cities require permit fees paid by hosts to cover the cost of enforcement, whereas Berkeley would instead collect a percentage of all rents paid to cover this cost.

uses, issues have arisen around housing affordability, safety, and parking as well as around enforcement. In drafting legislation, cities have consistently examined certain aspects of short-term rentals, including distinguishing between single-family homes and multi-family buildings, permitting and registration, residency requirements, neighbor notification, the need for inspections, and the imposition of taxes and fees. (See attached table)

Short-term residential rentals are prohibited in Berkeley, however in 2003, Berkeley passed an ordinance granting amnesty to existing bed and breakfasts.<sup>1</sup> As a result, twelve bed and breakfasts were legalized, with their operation tied to the specific owner or operator of the time.<sup>2</sup> In April 2014, though still prohibited, the Berkeley City Council referred to the City Manager the “creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses.”<sup>3</sup> On April 2, 2015, there were 814 short-term rental listings on Airbnb, 151 on VRBO, 169 on HomeAway, and 28 listing on FlipKey located within Berkeley city limits.

### **PORTLAND**

Portland, one of the most visible cities in the move to regulate Airbnb rentals, legalized short-term rentals in September 2014, starting with houses and expanding to condos and apartments in January 2015. Portland mandates a permit fee based on number of rooms, a fire and safety inspection, neighbor and neighborhood association notification, and posting of permit numbers on the premises as well as in listings.<sup>4</sup>

By December 2014, less than 10 percent of Portland hosts had applied for permits leading the city to pass an additional ordinance in January 2015, forcing hosting platforms to require permits before allowing listings and to disclose the addresses of their users<sup>5</sup> as well as fining platforms \$500 for each unregistered listing.<sup>6</sup> By March 19, 2015, while six of 11 hosting platforms were working with the city, five continued to face possible fines of \$503,000 collectively for noncompliance.<sup>7</sup> In addition, because of compliance rates continuing to be less than 10% (184 of 2000 local hosts) there has been talk of additional legislation to compel Airbnb to lock the listings of people who haven't registered as a means of encouraging hosts to comply with the law.<sup>8</sup>

### **SAN FRANCISCO**

San Francisco formally legalized short-term rentals in February 2015 with a public registry, \$50 registration fee every two years, a cap on the number of days properties can be rented, and an in-person registration process by the permanent resident only.<sup>9</sup> In August 2014, before the Board of Supervisors passed this legislation, the San Francisco Planning Department commented that the proposed legislation “does not provide a meaningful enforcement mechanism.” The Department recommended active monitoring by both the City and hosting platforms, a 90-day cap on all rentals, and to allow enforcement by the Planning Department, while acknowledging the lack of resources to do proactive monitoring in the same report.<sup>10</sup>



In March 2015, there were at least 6,200 listings across the city (5,000 on Airbnb and 1,200 on VRBO/Homeaway), but only 413 hosts had begun the registration process. Even with such low compliance, the Planning Department will have to hire a third staffer to process registrations because it can only handle 50 to 60 host visits a week.<sup>11</sup> Because of enforcement complications and low registration rates, the Board of Supervisors is now considering legislation that includes a cap all rentals to 90 days with or without the host present, prohibition of short-term rentals in certain neighborhoods, monthly data disclosure from hosting platforms on the number of stays for listings, and a \$1000-a-day fine to hosting platforms for each unregistered unit.<sup>12</sup>

### **SAN JOSE**

San Jose legalized short-term rentals for both houses and apartments in December 2014. San Jose requires that hosts obtain a permit, limits rentals to 180 days a year when the host is not present, and requires a designated a “Local Contact Person” who can respond to complaints about renters.<sup>13</sup> San Jose has 300 rentals per night and has had fewer than 10 complaints relating to Airbnb. A status report on the effectiveness of the ordinance is slated for mid-2016. San Jose expects modest TOT revenue of \$150,000 annually.<sup>14</sup>

While battles rage on in cities like New York and Los Angeles over whether Airbnb is driving up housing prices, Thomas Davidoff, an assistant professor at the Sauder School of Business at the University of British Columbia, found that Airbnb increases the price of a one-bedroom unit by about \$6 a month in New York City and \$19 a month in San Francisco.<sup>15</sup> Airbnb spokesman Nick Papas has said, “Hundreds of hosts are working to follow the rules, but we have heard from countless people in Portland and San Francisco who are concerned about the needless red tape involved in the process.”<sup>16</sup>

The commissions should consider legislation in other cities in regards to their level of success in host registration and compliance, their need for additional legislation, and the implications on enforcement needs. The commissions should also examine how bed and breakfasts legalized in 2003 could be incorporated into new regulations.

### FISCAL IMPACTS

Transient occupancy tax and enforcement fee revenues. The cost of administering an enforcement program.

### ENVIRONMENTAL SUSTAINABILITY

Not applicable

### CONTACT PERSON

Tom Bates	Mayor	510-981-7100
Gregory Magofna	Mayor’s Staff	510-981-7100

## ATTACHMENTS AND LINKS

- <sup>1</sup> <http://www.ci.berkeley.ca.us/citycouncil/2003citycouncil/packet/061003/2003-06-10%20Item%2032%20Part%201.pdf>
- <sup>2</sup> Berkeley Municipal Code Chapter 23C.06
- <sup>3</sup> [http://www.cityofberkeley.info/Clerk/City\\_Council/2014/04\\_Apr/Documents/2014-04-29\\_Item\\_35\\_City\\_Manger\\_Referral\\_Policy\\_for\\_Companies.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2014/04_Apr/Documents/2014-04-29_Item_35_City_Manger_Referral_Policy_for_Companies.aspx)
- <sup>4</sup> <https://www.portlandoregon.gov/bds/65603>
- <sup>5</sup> <http://www.opb.org/news/article/city-of-portland-passes-law-requiring-addresses-of-airbnb-rentals/>
- <sup>6</sup> <http://portlandtribune.com/pt/9-news/244479-112102-airbnb-resists-city-efforts-to-regulate-it->
- <sup>7</sup> <http://www.geekwire.com/2015/airbnb-faces-massive-fines-as-portland-registration-deadline-looms/>
- <sup>8</sup> <http://portlandtribune.com/pt/9-news/254015-123167-city-gets-little-traction-trying-to-rein-in-short-term-rentals>
- <sup>9</sup> <http://www.sf-planning.org/index.aspx?page=4004#q01>
- <sup>10</sup> <http://commissions.sfplanning.org/cpcpackets/2014.0707T.pdf>
- <sup>11</sup> <http://www.sfgate.com/business/article/S-F-Airbnb-law-off-to-slow-start-hosts-say-6110902.php>
- <sup>12</sup> <http://www.sfexaminer.com/sanfrancisco/supes-explore-increased-regulations-on-airbnb-and-leap/Content?oid=2924597>
- <sup>13</sup> <http://www.sanJoseca.gov/DocumentCenter/View/39150>
- <sup>14</sup> [http://www.mercurynews.com/news/ci\\_27106719/san-jose-becomes-one-of-the-first-us-cities-to-tax-airbnb-stays](http://www.mercurynews.com/news/ci_27106719/san-jose-becomes-one-of-the-first-us-cities-to-tax-airbnb-stays)
- <sup>15</sup> <http://blogs.wsj.com/developments/2015/03/30/airbnb-pushes-up-apartment-rents-slightly-study-says/>
- <sup>14</sup> Table of Airbnb regulations of selected cities
- <sup>16</sup> <http://www.sfgate.com/business/article/S-F-Airbnb-law-off-to-slow-start-hosts-say-6110902.php>

	Berkeley (proposed)	San Francisco	Portland	Grand Rapids	San Jose
Single-Family Rentals	Yes	Yes	Yes	Yes	Yes
Multi-Family Rentals	Owner or property management approval needed	Yes	Yes	No	Yes
Host Residency Req.	Must live on property 9 mo.s of year	Resident of SF & have lived in house for 9 mo.s out of past year	Must live in house for 270 days out of the year	Must live in the rental property	Have lived there for 60 days and intends to make it primary residence
Business License Req.	Yes	Yes	Yes	Yes	Yes
Permit/Registration Fee	none	\$50 fee every two years	\$100 or \$178 initial fee based on # of rooms, \$62 renewal every two years	\$287 annual fee	variable from \$1040-1550
Enforcement Fee	% of rents to be established by Council resolution	No	No	No	No
Hotel Tax	Yes	Yes	Yes	No	Yes
Duration and Room Limits	If host is present, no limit If host not present, 90-day limit	Multi-family: 90 days/year when host not present.	Max of two rooms per night.	One room and two adults at one time	None if hosts present, 180 d/y if not present # of people dependent on dwelling size, type



Neighbor notification	Abutting and confronting neighbors	None	property owners abutting and confronting, Neighborhood Assoc, District Coalition of Neighborhoods (at time of permit)	All neighbors within 300 feet	Adjacent units
City-wide permit limit	None	None	None	200	None
Liability Insurance Req.	\$500,000	\$500,000	None	None	None
Complaints and Inspections	Host must designate contact when not present, Complaint-based city enforcement	Complaint-based city enforcement	Inspection when registering, then every 6 years	Inspection not required, but is possible	No, but need to designate someone to respond to complaints if host not present
Public Directory	None	Yes	None	None	None
Permit No. in Ads	No	No	Yes	Yes	No