



**Rent Stabilization Board
Office of the Executive Director**

DATE: January 23, 2017
TO: Honorable Members of the Berkeley City Council
FROM: John Selawsky, Chairperson
Jay Kelekian, Executive Director
SUBJECT: Support for Short Term Rentals Ordinance with Amendments

Background

The Rent Board has consistently expressed concerns about the possibility of long-term housing being taken off the market for use as short-term rentals. The Board shares the City's goal of increasing the net amount of space used to house people rather than converting our most affordable long term housing units to short-term rentals.

On May 11, 2015, the Board submitted a letter to the City Council enumerating these concerns, and in the interim has submitted various communications to the Housing Advisory Commission, the Planning Commission, and the 4x4 Committee. Of particular concern were two possibilities: first that so-called "in-law units" that defy straightforward characterization under local law, might be converted into short-term rentals, and second that hosts of short-term rentals might purchase or lease dwellings for the purpose of operating short-term rentals rather than residing in them or using them for long-term rentals. These patterns have been seen in other cities, which have struggled to devise effective regulations.

The original proposed short-term rental ordinance has been amended numerous times, and did not become publicly available until January 12, 2017. At the January 19, 2017 Rent Board meeting, the Board discussed the new proposal and was generally favorable, but made specific recommendations to better support the shared intent (increasing the net housing supply) expressed by Council representatives to the 4x4 Committee.

The Rent Board's recommended amendments more effectively prevent the conversion of long-term rentals to short-term use, and better ensure that hosts actually reside in the dwellings used for short-term rentals. The Board also unanimously recommended the addition of enforcement language similar to that used by the City of San Francisco (attached) to prevent hosting platforms from ignoring local regulations, an unfortunate necessity given the uncooperative stance taken by prominent hosting platforms in the past.

M/S/C: Tregub/Townley, 8-0-0-1(Harr absent)

Recommendation

The Rent Board supports the latest proposal but respectfully requests that the City Council adopt the amended language detailed below, for the purpose of ensuring that long-term rental units are not converted to short-term use, that hosts actually reside in the dwellings that they list as short-term rentals, and that hosting platforms do not subvert the short-term rental ordinance.

Amend Section 23C.22.020 as follows:

D. Short-Term Rentals are allowed in Accessory Buildings and in existing Accessory Dwelling Units (“ADU”s) unless such ADUs or Accessory Buildings have a history of use ~~are used for~~ for long term rentals, as determined by evidenced by current registration with the Rent Stabilization Board. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date of this ordinance.

Amend Section 23C.22030 as follows, re-lettering the subsections accordingly:

E. “Host Residence” means a Host’s ~~domicile~~ principal place of residence, as defined by whether the Host carries on basic living activities at the dwelling place and is the Host’s usual place of return. ~~as documented by~~ Motor vehicle registration, driver’s license, voter registration or other evidence as may be required by the City shall be indicia of principal residency.

G. “Long Term Rentals” are rentals for residential purposes lasting 14 consecutive days or longer.

San Francisco short-term rentals ordinance (Administrative Code Sec. 41A)

Section 41A.4 Definitions

Booking Service. A Booking Service is any reservation and/or payment service provided by a person or entity that facilitates a **short-term rental** transaction between an Owner or Business Entity and a prospective tourist or transient user, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the **short-term rental** transaction.

Section 41A.5(g)(4)

(4) Requirements for Hosting Platforms.

(A) All Hosting Platforms shall provide the following information in a notice to any user listing a Residential Unit located within the City and County of San Francisco through the Hosting Platform's service. The notice shall be provided prior to the user listing the Residential Unit and shall include the following information: that Administrative Code Chapters 37 and 41A regulate Short-Term Rental of Residential Units; the requirements for Permanent Residency and registration of the unit with the Department; and the transient occupancy tax obligations to the City.

(B) A Hosting Platform shall comply with the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required Transient Occupancy Taxes, and this provision shall not relieve a Hosting Platform of liability related to an occupant's, resident's, Business Entity's, or Owner's failure to comply with the requirements of the Business and Tax Regulations Code. A Hosting Platform shall maintain a record demonstrating that the taxes have been remitted to the Tax Collector.

(C) A Hosting Platform may provide, and collect a fee for, Booking Services in connection with short-term rentals for Residential Units located in the City and County of San Francisco only when those Residential Units are lawfully registered on the Short Term Residential Rental Registry at the time the Residential Unit is rented for short term rental .

(D) Commencing November 5, 2016, and on the fifth day of every month thereafter, a Hosting Platform shall provide a signed affidavit to the Office of Short Term Rentals verifying that the Hosting Platform has complied with subsection (g)(4)(C) of this Section 41A.5 in the immediately preceding month.

(E) For not less than three years following the end of the calendar year in which the short-term rental transaction occurred, the Hosting Platform shall maintain and be able, in response to a lawful request, to provide to the Office of Short Term Rentals for each short-term rental transaction for which a Hosting Platform has provided a Booking Service:

(i) The name of the Owner or Business Entity who offered a Residential Unit for Tourist or Transient Use,

- (ii) The address of the Residential Unit,
- (iii) The dates for which the tourist or transient user procured use of the Residential Unit using the Booking Service provided by the Hosting Platform,
- (iv) The registration number for the Residential Unit, and
- (v) The affidavit required in subsection (g)(4)(D).

Section 41A.7(b)

(b) **Monitor Hosting Platforms.** In addition to the administrative enforcement duties outlined in Section 41A.6, the Office of Short-Term Residential Rental Administration and Enforcement shall actively monitor Hosting Platform listings. Within 15 business days of the effective date of Ordinance No. 104-16, the Office of Short-Term Residential Rental Administration and Enforcement shall complete a comprehensive review of active Hosting Platform listings and produce an inventory of potentially non-compliant listings discovered during the review. Subsequent reviews of Hosting Platform listings shall be performed on at least a monthly basis.

(1) The Office of Short-Term Residential Rental Administration and Enforcement shall, upon completion of a Hosting Platform review or discovery of a potentially non-compliant listing, immediately provide notice to Hosting Platforms by electronic mail of all listings that do not have valid registration numbers or are otherwise not in compliance with this Chapter 41A. These notices shall be provided to the City Attorney's Office.

(2) The Office of Short-Term Residential Rental Administration and Enforcement shall have the power to issue and serve administrative subpoenas as necessary to determine whether Owners, Business Entities, and Hosting Platforms have complied with Administrative Code Chapter 41A. The Office of Short-Term Residential Rental Administration and Enforcement shall issue and serve subpoenas to the Hosting Platforms to obtain information necessary to determine whether violations of Administrative Code Chapter 41A have occurred within a reasonable time not to exceed 30 days of discovering potential violations through a monthly review or other investigation effort. Owners, Business Entities, and Hosting Platforms shall have a reasonable opportunity to challenge the administrative subpoena by seeking judicial review before suffering any penalties for refusing to comply.
