

To: Rent Stabilization Board Commissioners

From: Commissioner Alejandro Soto-Vigil

Date: January 19, 2017

Subject: Amendment to Short-Term Rental Recommendations to the Berkeley City Council

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**Recommendation:**

That the Board support holding host platforms accountable by:

1. Prohibiting Hosting Platforms from providing "booking services" (which means taking a payment for arranging the rental) for units that are not registered by the City for short-term rentals;
2. The proposed ordinance should have the following basic elements:
  - a. Definition of "Booking Services."
  - b. Prohibition on providing Booking Services to Short-Term Rentals that don't have a valid Zoning Certificate.
  - c. Enforcement through fines and subpoena power;
3. Amend section 23C.22.050(L) to include "The Hosting Platform, if applicable, shall provide the Business License number and/or Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, as specified by staff."

**Background:**

The main issue is that the proposed City ordinance does not hold hosting platforms (such as AirBnb, HomeAway, etc) accountable to following regulations proscribed in the ordinance. This makes it very difficult for the City to identify property owners who do not following the newly enacted regulations. The above recommendations are designed to fix the accountability problem in Berkeley before we have a similar problem that San Francisco encountered.

Airbnb sued San Francisco over its regulation. In a nutshell, a judge indicated that he is unlikely to rule in Airbnb's favor, because the ordinance regulates business activity, not online content per se. It is important that the City amend Title 9 of the Berkeley Municipal Code (Business Licenses and Regulations) along the same lines as what San Francisco did. Staff and the City Attorney will have to craft the Berkeley ordinance that it fit Berkeley's code, but the SF ordinance should be a good guide, and the Berkeley ordinance should have the following basic elements:

- a. Definition of "Booking Services."
- b. Prohibition on providing Booking Services to Short-Term Rentals that don't have a valid Zoning Certificate.
- c. Enforcement through fines and subpoena power.

It would also be good to amend section 23C.22.050(L) of the proposed ordinance because it doesn't make much sense to require Hosts (not Hosting Platforms) to provide their Zoning Certificate numbers to the City when the Host gets that number from the City in the first place. It would make more sense (and accomplish the intent of the City Council) to require Hosting Platforms to provide that number to the City when they facilitate the rental of a unit.

Attachment:

1. Relevant Language to San Francisco Short-Term Rental Ordinance