



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC  
DEVELOPMENT COMMITTEE  
REGULAR MEETING**

**Thursday, November 18, 2021  
10:30 AM**

Committee Members:

Councilmembers Sophie Hahn, Rigel Robinson, and Lori Droste  
Alternate: Councilmember Ben Bartlett

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH  
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council Land Use, Housing, & Economic Development Committee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://us02web.zoom.us/j/85083833204>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **850 8383 3204**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

# AGENDA

## Roll Call

## Public Comment on Non-Agenda Matters

## Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

### 1. Minutes - November 4, 2021

## Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

### 2. Small Business Listening Session

### 3. Streamlining Toxic Remediation in Manufacturing Districts

**From: Councilmember Taplin (Author)**

**Referred: October 25, 2021**

**Due: April 17, 2022**

**Recommendation:** Refer to the City Manager and Planning Commission several amendments to the zoning code in order to facilitate toxic remediation in manufacturing districts and to develop a streamlined process that would allow for one application process, rather than separate application processes for the City's Planning Department and the Toxics Division.

**Financial Implications:** Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

### 4. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

**From: Councilmember Harrison (Author)**

**Referred: July 28, 2020**

**Due: February 3, 2022**

**Recommendation:** Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment

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*Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Wednesday, November 10, 2021.



Mark Numainville, City Clerk

## Communications

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@cityofberkeley.info](mailto:policycommittee@cityofberkeley.info).*



**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC  
DEVELOPMENT COMMITTEE  
REGULAR MEETING**

**Thursday, November 4, 2021  
10:30 AM**

Committee Members:

Councilmembers Sophie Hahn, Rigel Robinson, and Lori Droste  
Alternate: Councilmember Ben Bartlett

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Written communications submitted by mail or e-mail to the Land Use, Housing, & Economic Development Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

## MINUTES

**Roll Call:** 10:31 am. Councilmembers Droste and Robinson present. Councilmember Hahn absent.

**Public Comment on Non-Agenda Matters:** 1 speaker.

### Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes – October 7, 2021**

**Action:** M/S/C (Droste/Robinson) to approve the October 7, 2021 minutes.

**Vote:** Ayes – Droste, Robinson; Noes – None; Abstain – None; Absent – Hahn.

### Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

**2. Referral to the City Manager to Streamline Accessory Dwelling Unit (ADU) Permit Review and Approval**

**From:** Councilmember Kesarwani (Author), Councilmember Wengraf (Co-Sponsor), Councilmember Droste (Co-Sponsor), and Councilmember Bartlett (Co-Sponsor)

**Referred:** April 26, 2021

**Due:** February 14, 2022

**Recommendation:** 1. Refer to the City Manager to streamline the Accessory Dwelling Unit (ADU) permitting process in order to reduce staff time spent on review and enhance customer service. Further, assess effectiveness of process improvements specified below by reviewing over time: the number of ADUs permitted, average amount of staff time spent on ADU permit review, and permit fee levels.

2. Recommend that the City Manager develop for Planning staff use an ADU Universal Checklist and accompanying user-friendly webpage: a. ADU Universal Checklist. A clear set of universal guidelines and construction requirements should be developed among staff from Planning (both Land Use and Building and Safety Divisions), Fire, and Public Works Departments that is easy to follow in order to eliminate (or significantly reduce) the need for multiple departments to review ADU permit applications and for multiple rounds of review by the same department. The Universal Checklist should be a single document utilized by all City staff to review ADU permit applications and by customers to understand code requirements. The Universal Checklist should enable all City staff and customers to have the same

## Committee Action Items

clear understanding of all of the requirements that, if adhered to, would expedite the permitting process and lead to lower permit fees over time. b. Accompanying User-Friendly Webpage. As a companion to the ADU Universal Checklist, the City should also create a user-friendly webpage for customers (and prospective customers) with up-to-date information that provides clarity and greater certainty about the process and expected timeline for the creation of an ADU or Junior ADU, which is within a main dwelling unit. At a minimum, the webpage should include: i. A list of relevant fees and expected payment amounts for permits, inspections, and other requirements; ii. Plan requirements, worksheets, and projected timelines for each step of the process; and iii. Consolidated up-to-date state and local regulations that are easy to understand.

3. Recommend that the City Manager consider adoption of the following two best practices: a. Pre-Approved ADU Design Plans. Consider development of (1) free ADU designs available to download--of varying sizes and styles--that already conform to all City and state requirements and safety codes; and/or (2) a list of vendors with architectural designs and construction drawings that have already been approved by the City and are available to customers for a nominal fee to the architect. b. ADU Ally. Consider dedicating existing Planning staff member(s) time to the role of an "ADU Ally." The ADU Ally is a customer-facing staff person(s) who is an expert on all current state and local ADU regulations and acts as an ally to customers through the planning and building process.

**Financial Implications:** See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

**Action:** 1 speaker. M/S/C (Droste/Robinson) Qualified positive recommendation with direction for the item to be updated to include progress already made in this area as described by the Planning Director.

**Vote:** Ayes – Droste, Robinson; Noes – None; Abstain – None; Absent – Hahn.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

### 3. Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

**From:** Councilmember Harrison (Author)

**Referred:** July 28, 2020

**Due:** February 3, 2022

**Recommendation:** Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Unscheduled Items

### 4. Streamlining Toxic Remediation in Manufacturing Districts

**From:** Councilmember Taplin (Author)

**Referred:** October 25, 2021

**Due:** April 16, 2022

**Recommendation:** Refer to the City Manager and Planning Commission several amendments to the zoning code in order to facilitate toxic remediation in manufacturing districts and to develop a streamlined process that would allow for one application process, rather than separate application processes for the City's Planning Department and the Toxics Division.

**Financial Implications:** Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Items for Future Agendas

- None

## Adjournment

**Action:** M/S/C (Droste/Robinson) to adjourn the meeting.

**Vote:** Ayes – Droste, Robinson; Noes – None; Abstain – None; Absent – Hahn.


Adjourned at 11:14 a.m.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on November 4, 2021.

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Sarah K. Bunting, Assistant City Clerk





No Material  
Available for  
this Item

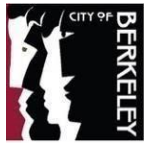
There is no material for this item.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley Land Use, Housing, & Economic Development Policy Committee  
Webpage:**

[https://www.cityofberkeley.info/Clerk/Home/  
Policy\\_Committee\\_Land\\_Use,\\_Housing\\_Economic\\_Development.aspx](https://www.cityofberkeley.info/Clerk/Home/Policy_Committee_Land_Use,_Housing_Economic_Development.aspx)





BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
 DISTRICT 2

CONSENT CALENDAR  
 Nov. 9, 2021

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Taplin  
 Subject: Streamlining Toxic Remediation in Manufacturing Districts

RECOMMENDATION

Refer to the City Manager and Planning Commission several amendments to the zoning code in order to facilitate toxic remediation in manufacturing districts and to develop a streamlined process that would allow for one application process, rather than separate application processes for the City's Planning Department and the Toxics Division.

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Streamlining toxic remediation in manufacturing districts is a Strategic Plan Priority Project, advancing our goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. Expediting toxic remediation is also a racial equity issue, in light of research showing that environmental hazards are more likely to be sited in minority neighborhoods.<sup>123</sup>

The current process for toxic remediation in manufacturing districts that require the removal of a building, whether or not it is currently in use, is lengthy and inefficient. There may be some amendments that can be made to the zoning code to make the process much more efficient.

Currently, the City of Berkeley Municipal Code Section 23C.08.050 reads as follows:

**Demolitions of Buildings Used for Commercial, Manufacturing or Community, Institutional or Other Non-residential Uses**

A. A main building used for non-residential purposes may be demolished subject to issuance of a Use Permit.

<sup>1</sup> Pastor, M., Sadd, J., & Hipp, J. (2001). Which came first? Toxic facilities, minority move-in, and environmental justice. *Journal of urban affairs*, 23(1), 1-21.

<sup>2</sup> Neumann, C. M., Forman, D. L., & Rothlein, J. E. (1998). Hazard screening of chemical releases and environmental equity analysis of populations proximate to toxic release inventory facilities in Oregon. *Environmental Health Perspectives*, 106(4), 217-226.

<sup>3</sup> Bolin, B., Matranga, E., Hackett, E. J., Sadalla, E. K., Pijawka, K. D., Brewer, D., & Sicotte, D. (2000). Environmental equity in a sunbelt city: the spatial distribution of toxic hazards in Phoenix, Arizona. *Global Environmental Change Part B: Environmental Hazards*, 2(1), 11-24.

B. A demolition of an accessory building containing less than 300 square feet of floor area is permitted as of right; an accessory building containing 300 square feet or more of floor area may be demolished subject to an AUP.

C. Any application for a Use Permit or AUP to demolish a non-residential building or structure which is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review prior to consideration of the Use Permit or AUP. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the Board its comments on the application. The Board shall consider the recommendations of the LPC in considering its action on the application.

D. A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the Board or Zoning Officer finds that the demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and one of the following findings that the demolition:

1. Is required to allow a proposed new building or other proposed new Use;
2. Will remove a building which is unusable for activities which are compatible with the purposes of the District in which it is located or which is infeasible to modify for such uses;
3. Will remove a structure which represents an unabatable attractive nuisance to the public; or
4. Is required for the furtherance of specific plans or projects sponsored by the City or other local district or authority. In such cases, it shall be demonstrated that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project. (Ord. 6478-NS § 4 (part), 1999)

Prior to any demolition, the project must be granted a Use Permit or an AUP, requiring findings, none of which include toxic remediation under a building.

BMC Section 23E.80.909 Paragraph D states that

D. Except as permitted under 23E.80.045, subdivisions A.1 or A.2, in order to approve a Use Permit under Section 23E.80.045 to change the use of or remove more than 25% of the floor area of a building currently or most recently used for manufacturing, wholesale trade or warehousing, the Zoning Officer or Board must find:

1. Any necessary Use Permits that have been approved to provide comparable quality replacement manufacturing, wholesale trade and/or warehousing space in Berkeley at a comparable rent and that such replacement space will be available before the demolition or change of use of the space; or
2. As a result of lawful business and building activities, there are exceptional physical circumstances (exclusive of the presence of hazardous materials in the building(s), soil or groundwater) found at the building not generally found in industrial buildings in the District which make it financially infeasible to reuse the building for any of the range of manufacturing, wholesale trade or warehouse uses permitted in the District. The analysis of the financial feasibility effects

(which shall be verified by the City) of these physical circumstances shall consider those costs necessary to make the building meet current minimum standards for manufacturing, wholesale trade or warehouse buildings; and 3. Appropriate mitigation has been made for loss of the manufacturing, warehousing or wholesale trade space in excess of 25% of that space through providing such space elsewhere in the City, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.

This requires findings that allow the removal of a building where there are “exceptional physical circumstances,” but such circumstances specifically do not include “presence of hazardous materials in the building(s), soil, or groundwater.”

### BACKGROUND

In order to streamline toxic soil remediation, former Councilmembers Wozniak and Moore recommended adding a fifth provision to Chapter 23C.08.050 Paragraph D stating: “It is required to allow the remediation of toxic soil in conformance with DTSC Clean-up Requirements and a City of Berkeley approved toxic clean-up and monitoring program.”

The councilmembers additionally recommended that Chapter 23E.80.090 Findings should be amended to include a new finding number 4 stating that: “As a result of previous building activities there are hazardous materials that are required to be remediated and monitored which could not otherwise be fully characterized, remediated or monitored without demolition of the building(s).”

The City Council approved this referral<sup>4</sup> to the Planning Commission in 2012, but the Commission failed to address this issue last year. The Commission must be directed to consider the above recommendations to improve the toxic remediation process as soon as possible, with support from city staff as needed.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

More efficient toxic remediation.

### CONTACT PERSON

Councilmember Terry Taplin      Council District 2      510-981-7120

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<sup>4</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/05May/2012-05-01\\_Item\\_20\\_Amend\\_the\\_Zoning\\_Code\\_to\\_Facilitate\\_Toxic\\_Remediation.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/05May/2012-05-01_Item_20_Amend_the_Zoning_Code_to_Facilitate_Toxic_Remediation.pdf)





Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
July 28, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Amendments to Berkeley Municipal Code 23C.22: Short Term Rentals

RECOMMENDATION

Amend Berkeley Municipal Code 23C.22: Short Term Rentals to clarify the ordinance and insure adequate host responsibilities, tenant protections and remedies for violating the ordinance.

BACKGROUND

Berkeley has had regulations on short term rentals (STRs) since 2017, allowing STRs in most residential and commercial zones, as long as the host pays the transient occupancy tax and the unit being rented fits particular criteria (no Below Market Rate unit may be a short term rental, no unit may be a short term rental if it has had a No Fault Eviction in the past five years, etc). The City of Santa Monica also has an ordinance regulating STRs that places the regulatory burden on the *host platform* (i.e., AirBnB or other corporate host platforms) rather than the individual renting out their unit. Santa Monica placed four obligations on the host platform: collecting and remitting transient occupancy taxes, regularly disclosing listings and booking information to the City, refraining from booking properties not licensed by the City, and refraining from collecting fees for ancillary services.<sup>1</sup> The Ninth Circuit Court of Appeals upheld the legality in the case of *Homeaway.com v. Santa Monica*, thus confirming the rights of Cities to regulate short term rental host platforms.

The proposed amendments update the City of Berkeley's STR regulations to more closely align with Santa Monica's ordinance, as well as other amendments intended to ensure that the short term rentals in Berkeley serve the needs of the City. The primary five changes are as follows:

**1) Regulatory burden shifted to the Host Platform**

We clarify the definition of a hosting platform in 23C.22.030.H (page 2) as a marketplace that derives revenue from maintaining said short term rental marketplace. Regulating the host platform consolidates regulation and ensures that the transient

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<sup>1</sup> *Homeaway.com v Santa Monica*. United State Court of Appeals for the Ninth Circuit. No. 18-55367.

occupancy tax owned to the City gets paid. Recommended changes to 23C.22.050.H and I (page 5) state that if a hosting platform is utilized to book a short term rental, both it and the individual host are legally responsible and are jointly liable for remitting the transient occupancy tax. New section 23C.22.050.I (pages 5-6) also outlines new duties of the hosting platform, including a regular disclosure of short term rental listings in the City as well as their address, length of stay, and listed prices. In addition, the hosting platform is responsible for ensuring that all short term rentals are appropriately licensed with a Zoning Certificate and adds the requirements that STRs must list the Zoning Certificate on any STR advertisements. The new regulations also include a safe harbor clause, making clear that hosting platforms that disclose listings, regularly remit the transient occupancy tax, and ensure the listing has a Zoning Certificate will be presumed to be in compliance with the chapter.

## **2) Hosts can have only one residence**

Individual people have the right to rent out their homes on a short term basis, but in a housing crisis, it is in the best interest of the City to ensure that no one has extra units for STRs when they could house someone long term instead. To that end, 23C.22.030.F and 23C.22.030.I (pages 2-3) clarify that hosts may not have more than one principle place of residency, which may include accessory buildings or ADUs.

## **3) Short term rentals limited to single ADUs, single Accessory Buildings or Golden Duplexes not rented for the past ten years**

The current ordinance limits use of Accessory Buildings or Accessory Dwelling Units to those that have not been rented for ten years. Additions to Section 23C.22.020.D (page 1) expand that prohibition to include more than one Accessory Building or ADU on a property and prohibits short term rentals in Golden Duplexes if those units have been rented in the last ten years. Unpermitted use of these units would be investigated by the Rent Stabilization Board under Section 23C.22.060.I (page 7).

## **4) Closing 14/30 day loophole**

Under current law, any rental over 14 days is not a short term rental and thus does not require paying a transient occupancy tax. Any rental that is shorter than 30 days is not a long term rental and thus rent control and other rental protections are awarded to the tenant. As it now stands there are instances of regularly renting a unit for a period of time between 14 days and fewer than 30 days, thus circumventing standard regulations. 23C.22.030.N (page 3) and 23C.22.040 (page 4) close this loophole by disallowing rentals between 14 and 30 days, and stating that no Zoning Certificate or advertisement for a short term rental may be permitted for rentals longer than 14 days.

## **5) Remedies**

New language under 23C.22.060E and 23C.22.060.J (page 7) clarify that in the case of a private right of action the prevailing party is entitled to recover reasonable costs and attorney's fees, thus making private right of action more financially feasible. The new



Resolution in Support of Senate Bill 54 and Assembly Bill 1080:  
The California Circular Economy and Plastic Pollution Reduction Act

ACTION CALENDAR  
July 28, 2020

language also gives the City the right to issue administrative subpoenas to determine whether short term rentals are in compliance with the chapter. Both of these edits are intended to encourage enforcement and compliance.

Finally, the ordinance clarifies the definitions of the terms Accessory Building, Accessory Dwelling Unit, and the Transient Occupancy Tax and defines a Golden Duplex and other clarifying language.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

ATTACHMENTS

Ordinance

## 100Chapter 23C.22 Short-Term Rentals

### 23C.22.010 Purposes

The purposes of the Short-Term Rentals related regulations contained in this Chapter are:

- A. To prevent long-term rental units from being replaced with Short-Term Rentals and protect affordable housing units from conversion.
- B. To preserve and protect neighborhood character and livability from nuisances that are often associated with Short-Term Rentals.
- C. To generate City revenue to share City infrastructure cost and other public expenditures by operation of Short-Term Rentals under established standards.
- D. To provide alternative forms of lodging. (Ord. 7521-NS § 1 (part), 2017)

### 23C.22.020 Applicability

- A. Short-Term Rentals shall be allowed in residential uses in the following zoning districts: R-1, R-1A, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-NS, C-SA, C-T, C-W, and MU-R.
- B. Short-Term Rentals shall be prohibited in below market rate (BMR) units. BMR units for Short-Term Rental purposes refer to Dwelling Units whose rents are listed as a result of deed restrictions or agreements with public agencies, and whose tenants must be income-qualified.
- C. A property containing a Dwelling Unit protected by a No-Fault Eviction cannot operate Short-Term Rentals for five years from eviction unless it is a single-family home that has been vacated for purposes of Owner Occupancy in compliance with the Rent Stabilization Ordinance.
- D. Short-Term Rentals are only allowed in a single, Accessory Building and in single existing Accessory Dwelling Units (ADUs), or a Golden Duplex unless such ADUs are or have within the last 10 (ten) years preceding the effective date of this ordinance been used for long term rentals, as defined by the requirements of the Rent Stabilization Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date this Ordinance first became effective. (Ord. 7521-NS § 1 (part), 2017)

### 23C.22.030 Definitions

The definitions set forth in this Section shall govern the meaning of the following terms as used in this Chapter:

A. Accessory Building: A detached building containing habitable space, excluding a kitchen, which is smaller in size than the main building on the same lot, and the use of which is incidental to the primary use of the lot.

B. Accessory Dwelling Unit: A secondary dwelling unit that is located on a lot which is occupied by one legally established Single-Family Dwelling that conforms to the standards of Section 23C.24. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements and provide the following features independent of the Single-Family Dwelling: 1) exterior access to Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes an efficiency unit and a manufactured home, as defined in the Health and Safety Code.

C. "Adjacent Properties" mean the Dwelling Units abutting and confronting, as well as above and below, a Dwelling Unit within which a Short-Term Rental is located.

D. "Dwelling Unit" means a building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.

E. "Golden Duplex" means an owner-occupied duplex that is exempt from rent control and eviction protection, so long as it was occupied by the owner on December 31, 1979 and is currently occupied by the owner.

F. "Host" means any Owner and is used interchangeably in this Title with Owner Host. An Owner Host is a person who is the owner of record of residential real property, as documented by a deed or other such evidence of ownership, who offers his or her Host Residence, or a portion thereof, as a Short-Term Rental. For purposes of offering a Short-Term Rental, an Owner Host may not have more than one "Host Residence" in the City of Berkeley, excluding an Accessory Building or an Accessory Dwelling Unit on the same residential real property. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers their Host Residence, or portion thereof, as a Short-Term Rental.

G. "Host Present" or "Host Presence" means the Host is living in the Host Residence during the Short-Term Rental period. In the case of a parcel comprised of a Single Family Dwelling and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the Host is considered Present if he or she is present in any Dwelling Unit on such property during the Short Term Rental period.

H. "Hosting Platform" means a business or person that provides a marketplace through which an Owner Host may offer a Dwelling Unit for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a Dwelling Unit to be advertised through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange and pay for Short-Term Rentals, and from which operator of the Hosting Platform derives revenue, including booking fees or advertising revenues, from providing or maintaining the marketplace.

L. "Host Residence" means a Host's principal place of residence as defined by whether the Host carries on basic living activities at the place of residence, and whether the place of residence is the Host's usual place of return. Motor vehicle registration, driver's license, voter registration or other evidence as may be required by the City shall be indicia of principal residency. A Host may have only one place of principal residency in the City and if that principal place of residency contains more than one dwelling unit, the principal place of residency shall be only one such dwelling unit.

J. "Host Responsibilities" means the requirements that a "Host" is obligated to comply with as set forth in this Ordinance.

K. "Local Contact" means a person designated by the Host who shall be available during the term of any Short-Term Rental for the purpose of (i) responding within sixty minutes to complaints regarding the condition or operation of the Dwelling Unit or portion thereof used for Short-Term Rental, or the conduct of Short-Term Rental Transients; and (ii) taking appropriate remedial action on behalf of the Host, up to and including termination of the Short Term Rental, if allowed by and pursuant to the Short Term Rental agreement, to resolve such complaints.

L. "No Fault Eviction" means an eviction pursuant to the Ellis Act or Sections 13.76.130.A.9 or 10 of the Berkeley Municipal Code.

M. "Short-Term Rental" or "STR" means the use of any Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portions thereof for dwelling, sleeping or lodging purposes by Short-Term Rental Transients. Short-Term Rental shall be an accessory use to a residential use and be considered neither a Tourist Hotel nor a Residential Hotel for purposes of this Title.

N. Short Term Rentals are allowed for 14 or fewer consecutive days. Any rental for more than 14 consecutive days is not permitted as a Short Term Rental, and any rental for more than 14 consecutive days and less than 30 consecutive days is not permitted in the City of Berkeley.

O. "Short-Term Rental Transient" or "STR Transient" means any person who rents a Dwelling Unit, authorized Accessory Dwelling Unit or Accessory Building, or portion thereof, [for 14 or fewer consecutive days](#).

P. ["Transient Occupancy Tax" or "TOT" means local transient tax as set forth in Berkeley Municipal Code Section 7.36. The tax is paid by the Short-Term Rental Transient at the time payment is made for the Short-Term Rental. The TOT is then remitted to the City.](#)

### **23C.22.040 Permit And License Required**

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate [and a Business License](#) for a Short-Term Rental shall be required for each Host to operate a Short-Term Rental. [A Host must provide the Uniform Resource Locator \(URL\) — specifically, the website address — for any and all advertisements for the STR, if applicable, on the Zoning Certificate application.](#)

[No Zoning Certificate may be issued to allow for a Short-Term Rental of more than 14 consecutive days, and no advertisement for a Short Term Rental of more than 14 consecutive days is allowed.](#)

### **23C.22.050 Operating Standards and Requirements**

A Short-Term Rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section, [and the Host complies with all Host Responsibilities set forth in this Ordinance.](#)

#### A. Proof of Host Residency.

1. An Owner-Host of a Short-Term Rental must provide documentation of Owner Host and Host Residence status and, if applicable, Host Presence, as defined [above](#).

2. A Tenant-Host must provide documentation of lessee status, Host Residence and Host Presence, if applicable, as defined in subdivisions C, E, and B of Section [23C.22.030](#). In addition, a Tenant-Host must present written authorization allowing for a Short-Term Rental in the Host Residence from the building owner or authorized agent of the owner.

#### B. STR Duration and Required Residency Timeframes

1. When the Host is Present, the unit, or a portion thereof, may be rented as a Short-Term Rental for an unlimited number of days during the calendar year.

2. When the Host is not Present, the number of days that the unit can be used for Short-Term Rental purposes shall be limited to 90 days per calendar year.

C. Number of Occupants. The maximum number of Short-Term Rental Transients allowed for a Short-Term Rental unit shall be as provided for in the Berkeley Housing Code (BMC Chapter [19.40](#)).

D. Notification.

(i) Initial, one-time notification of the establishment of a Short-Term Rental by [Zoning Certificate](#) and Business license, shall be provided to the residents of all Adjacent Properties. Notification shall include Host and Local Contact information. Additional notification shall be required within a week of updated Host [or Local Contact information](#).

(ii) In any advertisement for the STR, a Host must include the [Zoning Certificate number](#).

E. Enforcement Fee. For the initial enforcement period, while enforcement costs are being determined, the Host shall pay an additional enforcement fee in an amount equal to 2% of the rents charged by that Host, not to exceed the cost of the regulatory program established by this Chapter over time. Such fees may be paid by the Hosting Platform on behalf of the Host. After the initial enforcement period, the Council may revise the enforcement fee by resolution.

F. Liability Insurance. Liability insurance is required of the Host, or Hosting Platform on behalf of the Host, in the amount of at least \$1,000,000.

G. Documents Provided to STR Transients. Electronic or paper copies of the Community Noise Ordinance and Smoke-Free Multi-Unit Housing Ordinance must be provided to STR Transients upon booking and upon arrival.

H. Transient Occupancy Tax. (“TOT”). The TOT shall be collected on all Short-Term Rentals. The Host is responsible for collecting and remitting the TOT, in coordination with any Hosting Platform, if utilized, to the City. If a Hosting Platform collects payment for rentals, then both it and the Host shall have legal responsibility for collection and remittance of the TOT.

I. Housing Platform Responsibilities.

(i) Subject to applicable laws, A Hosting Platform shall disclose to the City on a regular basis each rental listing located in the City, the names of the person or persons responsible for each such listing, the address of each such listing, the length of stay for each such listing, and the price paid for each booking transaction.

(ii) A Hosting Platform shall not complete any booking transaction for any STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform receives a fee the booking transaction.

(iii) A Hosting Platform shall not collect or receive a fee for a STR unless the Host has a valid Zoning Certificate at the time the Hosting Platform would otherwise be entitled to receive a fee for the booking transaction.

(iv) Safe Harbor: A Hosting Platform operating exclusively on the internet, which operates in compliance with subsections (i), (ii) and (iii) above, shall be presumed to be in compliance with this Chapter.

J. Housing Code Compliance. Any building or portion thereof used for Short-Term Rentals shall comply with the requirements of the Berkeley Housing Code (BMC Chapter [19.40](#)).

K. Payment of Additional Taxes: The Host shall pay all City taxes and fees owed, in addition to the TOT, if applicable, in a timely manner. [100](#)

L. The Host shall be responsible for listing on any rental ad the Zoning Certificate number. The Host shall also provide both the Business License number, if required pursuant to Chapter [9.04](#), and Zoning Certificate for the STR to the City and/or a vendor hired by the City to administer this Chapter, upon request.

### **23C.22.060 Remedies**

A. Compliance with Second-Response Ordinance. The Host shall comply with the Second Response Ordinance (BMC Chapter [13.48](#)). The Host shall be prohibited from operating Short-Term Rentals for one year upon issuance of a third violation affidavit.

B. Violation of any provision of this Chapter is punishable as set forth in Chapters [1.20](#) and [1.28](#).

C. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters [1.24](#), [1.26](#) and [23B.64](#).

D. In any enforcement action by the City, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section [38773.5](#), attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of

attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

E. Any resident of the City may bring a private action for injunctive or other relief to prevent or remedy a public nuisance as defined in this Chapter, or to prevent or remedy any other violation of this Chapter. No action may be brought under this subdivision unless and until the prospective plaintiff has given the City and the prospective defendant(s) at least 30 days written notice of the alleged public nuisance and the City has failed to initiate proceedings within that period, or after initiation, has failed to diligently prosecute. The prevailing party in any such action shall be entitled to recover reasonable costs and attorney's fees.

F. Any occurrence at a Short-Term Rental unit that constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

G. It shall be a public nuisance for any STR Transient of a Short-Term Rental unit where an event is taking place to refuse access to, or interfere with access by, Fire Department or other City personnel responding to an emergency call or investigating a situation.

H. Notwithstanding any provision of Chapter [13.48](#) to the contrary, a public nuisance as defined in this Section shall be subject to remedies set forth in Section [23C.22.060](#). (Ord. 7521-NS § 1 (part), 2017)

I. A violation of this Chapter by a Host Owner who offers or rents a rent controlled unit, multiple ADU's, multiple Accessory Buildings, or a Golden Duplex, may be reported to the Berkeley Rent Stabilization Board for investigation by the Board. Upon report of a violation to the Rent Stabilization Board, the Board is required to provide a written report of the investigation within 30 days. Where a violation is found, the Rent Board will immediately provide the written report supporting its finding of a violation to the City Attorney's office for remedial action by the City.

J. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding Short-Term Rentals located in the City, including but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the STR and related listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days



from the date of service. A person or entity that has been served with an administrative subpoena may seek judicial review during that 30 day period.

