

Rent Stabilization Board
Office of the Executive Director

DATE: February 6, 2017

TO: Honorable Members of the Berkeley Rent Board

FROM: Jay Kelekian, Executive Director

SUBJECT: Update and Possible Action on Short Term Rentals Ordinance

Background

On January 19, 2017, the Rent Board expressed concerns regarding the proposed Short-Term Rentals Ordinance, centering on the possibility that long-term rental units might be converted to short-term use. On January 23, 2017, those concerns were submitted to the City Council in the form of a letter (attached hereto) from the Chair and the Executive Director.

On January 24, 2017, the City Council adopted a first reading of the proposed Short-Term Rentals Ordinance. The version adopted on first reading included amendments that addressed the Board's January 19, 2017 concerns, as well as one amendment that bears further discussion.

Specifically, the most recent two versions of the proposed Short-Term Rentals ordinance have included a prohibition against the conversion of long-term rental units to short-term use. Councilmember Lori Droste introduced an amendment (bold and underlined below) applying the prohibition only to current owners.

Section 23C.22.020.D.

*D. Short-Term Rentals are allowed in Accessory Buildings and in existing Accessory Dwelling Units ("ADU"s) unless such ADUs are or have been used for long term rentals **by the current owner**, as defined by the requirements of the Rent Stabilization and Good Cause for Eviction Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date of this ordinance.*

This amendment has the effect of allowing short-term rentals in an accessory unit with a history of use as a long-term rental so long as it has been vacant since its most recent purchase. Virtually all homes with accessory units, even those that are currently prohibited from being used as short-term rentals could be marketed as available for use as short-term rentals by a new owner, so long as that owner never uses the unit for long-term rentals.

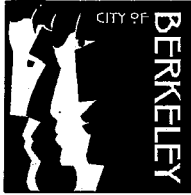
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Recommendation

The Rent Board's primary goal regarding short-term rentals has always been prevention of the conversion of long-term rentals to short-term use. Staff recommends that the Board discuss the "current owner" amendment and take action, if necessary to further this goal.



**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.

Action Calendar – Old Business

41b. Short-Term Rental Regulations Ordinance, Amending BMC 23C.22 and Amending Titles 23D and 23E

From: City Manager

Recommendation: Adopt first reading of an Ordinance regulating Short-Term Rentals, adding BMC Chapter 23C.22 and amending Titles 23D and 23E to make related changes.

Financial Implications: See report

Contact: Carol Johnson, Planning and Development, 981-7400

Action: 11 speakers. M/S/C (Hahn/Davila) to adopt the first reading of Ordinance No. 7,521–N.S. as submitted by Councilmember Hahn in Supplemental Reports Packet #1, including the revisions submitted by Mayor Arreguin in Supplemental Reports Packet #2, retaining the stricken sentence in 23C.22.020.C., and with further amendments in Section 23C.22.020.D., and Section 23C.22.030.C. as listed below. Second reading scheduled for February 14, 2017.

Section 23C.22.020.D.

D. Short-Term Rentals are allowed in Accessory Buildings and in existing Accessory Dwelling Units (“ADU”s) unless such ADUs are or have been used for long term rentals by the current owner, as defined by the requirements of the Rent Stabilization and Good Cause for Eviction Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date of this ordinance.

Section 23C.22.030.C.

C. “Host Present” or “Host Presence” means the Host is living in the Host Residence during the short-term rental period. For purposes of an Accessory Building or authorized Accessory Dwelling Unit, the Host is present if he or she is present in the primary dwelling or Accessory Dwelling Unit.

Vote: All Ayes.