

ORDINANCE NO. 7,521-N.S.

SHORT-TERM RENTALS; ADDING BERKELEY MUNICIPAL CODE CHAPTER 23C.22 AND AMENDING BERKELEY MUNICIPAL CODE TITLES 23D AND 23E

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23C.22 is hereby added to read as follows:

**Chapter 23C.22**  
**SHORT-TERM RENTALS**

**Sections:**

- 23C.22.010 Purposes**
- 23C.22.020 Applicability**
- 23C.22.030 Definitions**
- 23C.22.040 Permit Required**
- 23C.22.050 Operating Standards and Requirements**
- 23C.22.060 Remedies**

**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.

**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 unit with a No-Fault Eviction cannot operate Short-Term Rentals for five years 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 allowed in Accessory Buildings and in existing Accessory Dwelling Units (ADUs) 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 and Good Cause for Eviction Ordinance. Short-Term Rentals shall not be allowed in Accessory Dwelling Units permitted after the date of this ordinance.

**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. "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.
- B. "Host" means any Owner or Tenant 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. A Tenant Host is a lessee of residential real property, as documented by a lease or other such evidence, who offers his or her Host Residence, or portion thereof, as a Short-Term Rental.
- C. "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 primary unit 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 unit on such parcel.
- D. "Hosting Platform" means a business or person that provides a means through which a Host may offer a dwelling unit, or portion thereof, for Short-Term Rentals. A Hosting Platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a property owner or tenant to advertise the dwelling unit through a website provided by the Hosting Platform and provides a means for potential Short-Term Rental Transients to arrange short-term rentals, whether the Short-Term Rental Transient pays rent directly to the Host or to the Hosting Platform.
- E. "Host Residence" means a Host's principal place of residence, as defined by whether the Host carries on basic living activities at the dwelling place and, whether such dwelling place 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.
- F. "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.

- G. "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.
- H. "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.
- I. "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 less than 14 consecutive days.

**23C.22.040 Permit Required**

Short Term Rentals are permitted only in the Host Residence. A Zoning Certificate for Short-Term Rental shall be required for each Host to operate a Short-Term Rental.

**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.

**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 in subdivisions C, E and B of Section 23C.22.030.
- 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.** Initial, one-time notification of the establishment of a Short-Term Rental by ZC 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, Local Contact or other information.

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.** Either the Host or Hosting Platform must pay the transient occupancy tax (TOT).

I. **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).

J. **Payment of Taxes.** The Host shall pay all City taxes and fees owed in a timely manner.

K. 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.

L. No Hosting Platform shall facilitate the Short Term Rental of any unit that does not possess a valid Zoning Certificate and Business License if required pursuant to Chapter 9.04, at the time of such rental.

#### **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, 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 relief to prevent or remedy a public nuisance as defined in 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.
- 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.

**Section 2.** That the "Accessory Uses and Structures" section of Berkeley Municipal Code Table 23D.16.030 is amended as follows:

Table 23D.16.030		
Use and Required Permits		
Use	Classification	Special Requirements
<b>Accessory Uses and Structures</b>		
Accessory Buildings or Structures	ZC	Must satisfy the requirements of Chapter 23D.08
If has either habitable space and/or exceeds the requirements under Chapter 23D.08	AUP	
When located on a vacant lot without a Main Building	AUP	
Accessory Dwelling Units in compliance with Section 23D.10.040	ZC	
Accessory Dwelling Unit that does not comply with requirements under Section 23D.10.040	AUP	Subject to making applicable findings in Section 23D.10.060
Short-Term Rental	ZC	Subject to requirements of Chapter 23C.22
Child Care; Family Day Care		
Small Family Day Care Homes: of eight or fewer	ZC	

→ Pages 6-20  
deliberately omitted

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Moderate Impact	UP(PH)	Subject to requirements under Section 23C.16.030.B
Hospitals	Prohibited	
Hotels, Residential	Prohibited	
Hot Tubs, Jacuzzis, Spas	AUP	See Section 23D.08.060.C
Libraries	UP(PH)	Subject to additional parking requirements; see Section 23E.84.080.B
Nursing Homes	UP(PH)	Subject to additional parking requirements; see Section 23E.84.080.B
Parks, Playgrounds, and outdoor recreation facilities	UP(PH)	If the park, playground, or outdoor recreation facility is likely to be used by children, subject to the finding under 23E.84.090.H
Public Safety and Emergency Services	UP(PH)	
Public Utilities Substations, Buildings, Tanks	UP(PH)	
Religious Assembly Uses	UP(PH)	
Schools, Public or Private and Other Educational Institutions	UP(PH)	Subject to the findings in Section 23E.84.090.H
Senior Congregate Housing Six or fewer persons Seven or more persons New Construction	ZC AUP UP(PH)	Changes of use from an existing dwelling unit

**Section 18.** Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 14, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

**Ayes:** Bartlett, Davila, Hahn, Maio, Worthington and Arreguin.

**Noes:** Droste and Wengraf.

**Absent:** None.