


Rent Stabilization Board
Office of the Executive Director

DATE: May 13, 2015

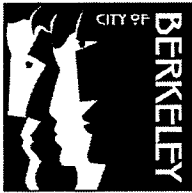
TO: Honorable Mayor Bates and Members of the Berkeley City Council

FROM: Jay Kelekian, Executive Director
By: Matt Brown, Staff Attorney 

SUBJECT: Attached Letter from Rent Board Commissioners regarding Short-Term Rentals

Attached please find a letter from the Board regarding regulation of short-term rentals in Berkeley. Board Commissioners directed me to send this to you at their regularly-scheduled meeting on May 11, 2015.

Please contact me (Jay Kelekian) should you have any questions or concerns.



Rent Stabilization Board

May 11, 2015

Honorable Mayor Bates and Members of the City Council
City of Berkeley
2180 Milvia St., Fifth Floor
Berkeley, CA 94704

VIA EMAIL AND INTER-DEPARTMENT DELIVERY

Subject: **Short-Term Rentals**

Dear City Council:

The Rent Board wants to thank Councilperson Droste and Mayor Bates, as well as their staff, for moving Berkeley forward on regulation of Short-Term Rentals (STRs). We agree with some of the proposed policies contained in the draft referral item, but want to point out areas of concern and share what our Committee on STRs has considered.

A summary of our major Rent Board concerns are as follows:

1) *Loss of Housing:*

We hope that any Council policy recommendations to the Housing Advisory Commission and Planning Commission will focus on ensuring that whole units with kitchens that are not occupied by the host most of the year will remain available for permanent residents. Owners of multiple rental units in Berkeley should not be allowed to go into the hotel business.

2) *Enforcement:*

Regulations must provide a workable enforcement mechanism with adequate funding and staffing. Penalties and remedies should be clear.

3) *Tenants Rights:*

Berkeley's new regulations must preserve rights tenants currently hold, such as the right to quiet enjoyment of their home as well as the right to sublet if they already hold that privilege. Council should include the Rent Board for input in their referral.

Details of these areas of concern as they relate to the draft Short-Term Rentals Referral are presented below.

BACKGROUND

Board Action to Date:

At our February meeting, the Rent Board requested that our staff provide a legal analysis of current laws regarding rentals of less than 14 days as well as how state and local regulations, including the Rent Ordinance, would interact with possible regulations of short-term rentals (STRs). The analysis is pending.

At the same meeting, we also created an Ad-Hoc Committee on Short-Term Rentals. That committee has met weekly, and examined many aspects of STRs, including the current situation, specific examples of rent-controlled units advertised as STRs, policies and laws from other jurisdictions, comments from renters impacted by neighboring units being marketed to tourists, materials from the Planning Commission, and the draft proposal by Mayor Bates and Councilperson Droste.

At our April 20 meeting, the Rent Board approved a letter to the Planning Commission, which was also sent to the Council, outlining the Board's most basic position on such rentals:

- Renting units primarily as vacation rentals is contributing to the housing crisis.
- Preservation of existing rental housing stock for residents should be paramount.
- New policies should consider health and safety concerns.
- Regulations should consider the impact of tourist rentals on neighbors and neighborhoods that may not be zoned for commercial use and/or are not accustomed to tourist housing in their neighborhood.

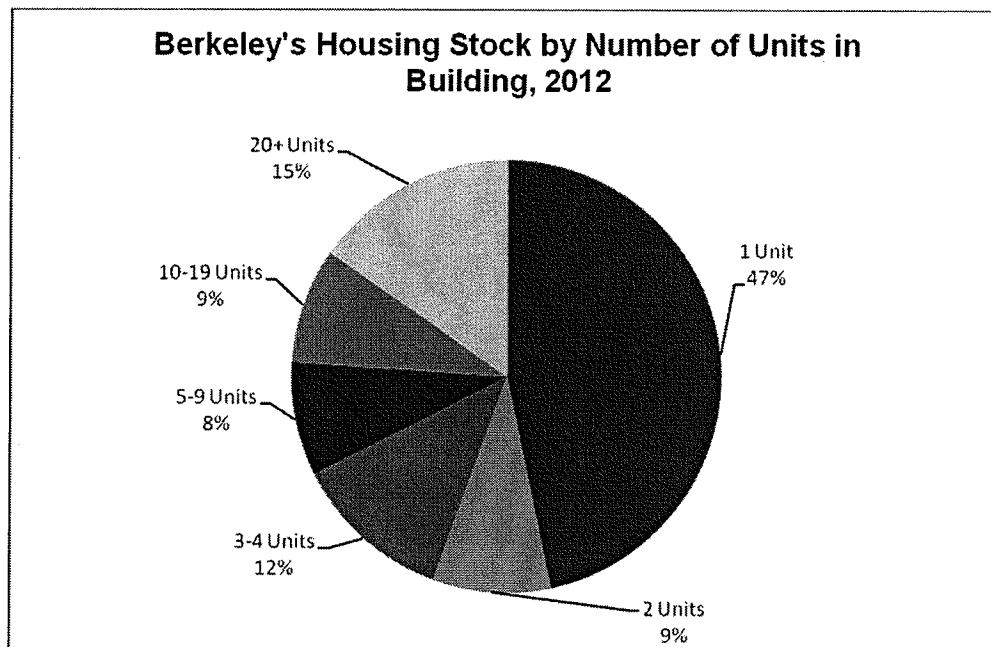
MAJOR AREAS OF CONCERN

1) Loss of Housing:

The draft Short-Term Rentals Referral as reviewed by our Committee in April contains some ambiguous language, although the intent appears to be in line with what the Rent Board wants: only residential units occupied by the host for the majority of the year should be listed as STRs. To that end, permitted hosts should be defined in any ordinance as a natural person, not an LLC or corporation.

We are also concerned that the draft uses the term "properties" and not "units" when discussing the owner/tenant occupancy guideline. According to the census data included in the table below, one in five units in Berkeley are in a building containing two to four units. According to Rent Board data, of the 1914 duplexes, only 464 do not have an owner who lives on the property. Thus, Berkeley could see a significant loss of available rental housing if we imitate Portland's rule that whole units can be rented as STRs if the owner lives on the parcel. We believe there should be a one-host, one-unit rule; namely that the unit should be the host's primary residence, the place where they vote, file their taxes, sleep, at least 270 days of the year.

The following chart is from the City's Draft 2015-2023 Housing Element.



2) Enforcement:

The Rent Board supports provisions that a host must occupy the unit as their primary residence for the majority of the year, but we have read about problems enforcing such provisions in other jurisdictions. Replicating laws that Portland and San Francisco have decided they must amend seems impractical. Allowing unlimited rental nights if the host is present in the unit has caused problems with enforcement and verification. Similar provisions should be considered carefully. As noted in the draft referral, San Francisco is now considering limiting STRs to 90 days whether the host is present or not.

Creating a local ordinance that compels hosting platforms to collect taxes and provide rental data to the City seems key. The Rent Board is monitoring Senate Bill 593(McGuire), which would compel data sharing as well as AB 1220 (Harper) which would ban cities from requiring that STRs pay a hotel-type local tax.

In addition, the draft referral calls for a complaint-driven system, but has no provisions for a public directory or a permit number in the ads which we believe is crucial for enforcement purposes. How can the public tell if a STR is in compliance without such information?

Additionally, the draft referral calls for neighbor notification but does not consider neighbors above and below the unit. We are also concerned that, after notification, there is no mechanism for neighbors to object and no process identified for complaints or penalties. Perhaps a number of other Berkeley ordinances would be triggered by the majority of the types of neighbor complaints, but these intersecting laws should at least be referenced in STR regulations and outreach materials.

3) Tenants' Rights:

Tenants have come to the Board and Commissioners voicing their concerns about Short-Term Rentals and the serious impacts they have had on their quality of life.

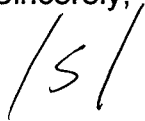
Additionally, the STR Committee has asked staff to include information in the pending legal analysis regarding whether the draft referral's provision that tenants need permission from the owner may be in conflict with local or state laws.

The Rent Board is also monitoring SB 761 (Hall), which would require hosting platforms to notify hosts that listing a rental unit can result in eviction in some circumstances. We are also discussing outreach about how existing Berkeley laws impact tenants who rent their homes as STRs and in particular the provision that master tenants can only charge a proportional share of the rent to subtenants.

CONCLUSION

Because of the complicated nature of landlord-tenant laws at the state, local and federal level, it is essential that the Rent Board have a voice in local regulations on short-term rentals. While there may be times when allowing such rentals serves the purposes in the Rent Ordinance and Housing Element, allowing unlimited short-term rentals or creating regulations that lack enforcement mechanisms will contribute to the housing crisis in Berkeley.

Sincerely,



Jesse Townley
Chair, Berkeley Rent Board