

DATE: June 23, 2015

TO: The Berkeley Planning Commission

FROM: Berkeley Home Sharers

RE: Recommendations on Revisions to Proposed Regulations for Short-term Rentals

Dear Planning Commission:

I. Introduction

Berkeley Home Sharers (B.H.S.) is a grassroots group of Berkeley short term rental hosts organized to ensure fair and reasonable regulations of short term rentals.

As residents of Berkeley who care about our community, we want to see our activities benefit Berkeley and its communities, and continue to improve the lives of its hosts.

We call upon the Berkeley City Council and Berkeley Planning Commission to be as visionary in your approach to short term rentals as you have historically been on so many other issues.

We applaud the Berkeley City Council's general support for this newly emerging economic and cultural activity, and we understand and support your desire to prevent problems.

As a general rule, we prescribe to the principle that regulations should only be passed which are necessary, appropriate to the dimensions of the activity, effective, and enforceable. We recognize that limited access to data and knowledge about the day-to-day operations, potential problems, and functional needs of home sharing may make it difficult to develop recommendations that Berkeley leaders and the homesharing community, alike, can be confident about.

Therefore, we are doing our part to educate the City Council, Planning Commission, Rent Stabilization Board, and other local regulatory bodies to the needs, contributions, and concerns of the 800 short term rental hosts living in your districts in Berkeley.

To that end, we offer these comments and proposed revisions to your draft recommendations. We believe our proposed revisions will simultaneously address the concerns, while also protecting hosts' livelihood and quality of life, and supporting short term rentals as an important tourism-based, local economy initiative for Berkeley.

The bottom line is, if left unchanged, the current BCC recommendations would:

- Cut the number of short term rentals by at least half, doing grave injury to the livelihoods of approximately 400 of your constituents, forcing some of them out of their homes.
- Reduce potential tax revenues by nearly \$1M/year
- Reduce income to neighborhood businesses by approximately \$7M/year

We believe these revenues are too important to sacrifice to unnecessarily burdensome and exclusionary policies, especially given the many worthy organizations and programs impacted by the recent City budget hearings.

On the impacts side of the equation, our activity is small. Based on data our group derived from Airbnb listings, there are approximately 800 Berkeley listings, 50% of which are rooms in homes, and 50% of which are in-laws and ADUs, with only a small fraction potentially available as year-round long term rentals (likely less than 10 percent). The potential impacts are just too small to justify the time, expense, and deep personal harm involved in crafting and enforcing regulations as strict as some of those included in the current BCC recommendations.

We hope you will don your most visionary hats, and fully embrace this powerfully humanizing contribution to Berkeley's economy and culture by issuing fair and reasonable regulations that will let homesharing thrive in Berkeley.

Our Comments On and Revisions To the BCC Recommendations

1. **Owner Occupancy.** BCC Recommendation. The dwelling unit must be the owner/tenant's primary residence and be owner/tenant occupied at least 9 months of the year and the unit may not be rented more than 90 days a year if the host is not present, with no limit to the number of days when the host is present. BHS Proposed Revision. The dwelling unit must be the owner/tenant's primary residence, or an attached, detached, or accessory dwelling unit on the same property as the owner/tenant's primary residence, and be owner/tenant occupied at least 6 months of the year, and the

unit may not be rented more than 180 days a year if the host is not present, with no limit to the number of days when the host is present. BHS Response. We object to the requirement that a dwelling unit must be the owner/tenant's primary residence. We think the City should allow the short term rental of ONE additional unit on the same property where the owner resides (e.g., an attached, detached, or accessory dwelling unit).

- A regulation that disallows such units as STRs would dramatically reduce home sharing in Berkeley — by as much as 30%.
- The revenue that Berkeley would otherwise enjoy from short term visitors will leave Berkeley and fund the tax coffers and local businesses of neighboring towns - El Cerrito, Albany, and Oakland.
- Berkeley would lose significant potential tax revenue by prohibiting STRs from including one additional unit. Of the approximately 800 listings we identified in Berkeley, we calculate that half of these are rooms in homes, and the other half is comprised of “entire homes” which includes attached or detached in-laws or ADUs (approximately 50% of the “entire home” listings are attached/detached in-laws or ADUs – or 25% of the total listings). The estimated total TOT revenue for one year for 800 listings is \$1.8M (based on 50% occupancy at an average rate of \$100 a night and 12% TOT). Thus, a loss of 200 ADU/in-law type units could reduce TOT revenue by 25% or \$.45M. In addition to lost TOT revenue, prohibiting STRs from including an additional unit, the City's businesses would lose revenue. By our estimates, guests spend at least \$100 a day locally (in SF, guests spend \$247 a day). Thus, elimination of these units would result in a loss of \$3.65M in annual revenue for local businesses.
- In addition to lost TOT revenue, prohibiting STRs from including an additional unit, the City's businesses would lose revenue. By our estimates, guests spend at least \$100 a day locally (in SF, guests spend \$247 a day). Thus, elimination of these units would result in a loss of \$6.3 million in annual revenue for local businesses.
- Many hosts depend heavily on the STR income they make from ADUs or similar units. They would incur financial difficulty because their own affordable housing depends on that income. Moreover, most of these units are unsuitable for a long-term tenant (e.g., because they have no kitchen or bathroom). Other owners may rely on the unit for family to stay when they come to town, so they cannot rent it out to a long-term tenant.
- We are fortunate to have two sources of support on this issue. Jesse Townley, of the Berkeley Rent Stabilization Board, has stated he is not averse to ADUs as STRs because the Rent Board has no stake in protecting those for long-term tenants. His understanding of such units is that they are part of the main dwelling; they are considered another room of the house. Likewise, he suggests that the Rent Board is not concerned with golden duplexes and in-law units that are not suitable or available as long term rentals, and not registered with the Rent Board. Additionally, at least three members of the Planning Commission (Shoshana, Harry and Tracey) indicated openness to hosts using one additional unit as a STR on the property where they live.
- We would like to increase the number of days a host can rent an unhosted rental that is their primary residence from 90 to 180. This length of time would not increase the likelihood of removing a potential long-term rental from the market.

- We would like to decrease the amount of time from 9 months to 6 months that hosts must live at their primary residence during a year to be allowed to use it as an unhosted rental. The rationale for this is that many people, especially in a university community, take trips or go on sabbatical for more than 3 months. Requiring 9 months of residency would remove a viable option for them to supplement their income, afford their travel, and offer a STR to those who need it, while avoiding the potential problems associated with long-term tenants (e.g., the tenant refuses to leave when the owner gets back, resulting in the cost of a civil suit just to get their home back, which has happened in Berkeley).
- If the recommendation is passed without our proposed revision, we request a permit system to allow owners or tenants to seek an exception to the 9 month/ 90 day rule, if they can provide a good reason for it.

2. Taxes. BCC Recommendation: Either the host or the rental platform must pay the transient occupancy tax (TOT) and an additional enforcement fee. BHS Comments: We do not object to paying our fair share of taxes and reasonable enforcement fees that are comparable to those paid by long term landlords. However, we question the appropriateness of enforcement activities for STR's burdening the Rent Stabilization Board, which is responsible for regulations and enforcement pertaining to landlord/tenant laws, not to hotels, B&B's, or other short term accommodations. By definition, short-term guests are not tenants or subtenants, and hosts are not landlords. Hence, the Rent Stabilization Board should not be responsible to enforce STR regulations in Berkeley.

3. Business License. BCC Recommendation: The host must have a valid business license and be covered by liability insurance of at least \$500k. BHS Comments: No objection.

4. Business License Number On Listing. BCC Recommendations: The city will request hosting platforms list the business license number in online listings. BHS Comments: For the reasons below, we oppose any requirement that hosting platforms display hosts' business license numbers on their public listings, and we request that BCC strike this item from its recommendations.

- As homeowners and tenants inviting carefully selected visitors into our private homes, publicizing a business license number is a privacy and security issue for us. Armed with a business license number, anyone who sees a given host's listing can find that person's home address. Using this information along with the calendar indicating when a host may be gone would make it easy for a criminal to target that residence for burglaries. For these reasons, Airbnb does not disclose addresses to anyone until they pay for a booking, and the City should follow suit. It is critical for the personal safety of hosts and their guests that the address remain confidential to all but paying guests with reservations.

- This is also a fairness issue. Those who offer long-term rentals are not required to list a business license in their advertisements. Those offering STRs should not be required to do so, either. To require higher standards, for no good reason, would be unnecessary and punitive.

5. Notification. BCC Recommendation: The host must provide a one time notification to abutting and confronting neighbors, including units above and below, that he/she will be making short term rentals available, which would include primary contact information, secondary contact info, and links to

the Berkeley community noise and smoke-free multi-unit housing ordinance. BHS Comments: For the reasons below, we object to this provision, and we ask BCC for realistic recognition of insufficient need for it, and the pitfalls associated with it, and we ask you to strike this provision.

- The notification requirement seems based on an erroneous assumption that STRs cause more problems for neighbors than do long-term rentals. If anything, we believe they cause far fewer problems, due to a) identity verification and screening of guests, b) hosts' reviews of guests, c) hosts' protection of their own quality of life, d) host's house rules, and d) the desire by most guests to respect the home and neighborhoods of their hosts. While hosts may (or may not) have more guests over the course of a year than a neighbor does, our guests are arguably more motivated than our neighbors' visiting family and friends to respect neighbors and keep their impact minimal. None of these safeguards are present with long term rentals or student rentals.

- A special notification process is likely to cue neighbors to view as problematic a STR that they might otherwise find acceptable.

- Requiring notification of neighbors will unnecessarily pit neighbor against neighbor. City Council and City Planning members are aware that neighbors use City regulations all the time to bully each other. (e.g., Don't like your neighbor's political views? Then complain to the City about their STR. Don't like that your neighbor has a hot tub when you can't afford one? Call the city and complain about excessive noise at your neighbor's STR.) In short, if you create opportunities for people to abuse the law and bully others through city regulations, they will certainly do so.

- This recommendation also raises a parity issue: property owners and management companies are not required to notify their neighbors about their intention to rent out their properties to long term tenants. We see no reason that those offering STRs should be required to do so.

6. Local Contact. BCC Recommendation: When the host is not present, he/she must designate a local contact to handle complaints BHS Comments: No objection.

7. Noise Ordinance Notice to Guests. BCC Recommendation: The host must provide info on applicable sections of Berkeley community noise and smoke-free multi-unit housing ordinances to guests. BHS Comments: No objection.

8. Landlord/Management Company Approval BCC Recommendations: Short term rentals in rental housing require approval from the building owner or property management company. BHS Comments: No objection.

9. 3rd Violation BCC Recommendations: Short term rentals are subject to the Second Response Ordinance and upon a 3rd violation in 180 days, the host would be prohibited from operating a short term rental for 1 year. BHS Proposed Revision: Short term rentals are subject to the Second Response Ordinance. BHS Comments: We strongly object to a policy forcing hosts to close their business for an entire year as a result of noise complaints by neighbors.

- Berkeley already has a noise ordinance that applies to all residents, visitors, landlords, and hotels alike, with a schedule of fines for repeat violations. We caution the Council against making new regulations when no evidence suggests the need for such.

- Neither property owners with long-term rentals, nor hotels, nor fraternities, nor rooming houses, nor Bed & Breakfasts are required to close their business for an entire year if they have 3 noise complaints in 180 days. Instead, they are fined. We urge the Council to apply the same rules to STR hosts as it does to all citizens and lodging operations
- Forcing hosts to stop doing business for a year would be unnecessarily and harshly punitive; would seriously affect hosts' income and quality of life; and in many cases, would drive hosts out of their homes and onto public assistance (creating a tax burden instead of a tax contributor).
- Any neighbor who has a personal vendetta against another neighbor for any reason (a common dynamic in residential neighborhoods), could shut down a host's STR by making 3 frivolous or fictitious noise complaints. We have heard reports of people making noise complaints, for instance, simply because a neighbor dropped a chair. We urge the City Council not to set up avenues for neighbors to bully neighbors, particularly in a manner which could cost us our livelihoods or our homes.

Arreguin Proposal - Not Presently Included in the BCC Recommendations

1. Proposed Zoning Definition of STR's. Establishing a new zoning use, "short term residential rental," which is defined as a rental of a single family home or unit in a multi-family property which is offered by a permanent resident of the unit who is a natural human being, not owned by a company or corporation. Inclusionary units and other income-restricted units, as well as units prohibited by law from being subleased for less than 14 days, are prohibited from being used as STR's.

- BHS Comments:
- We support the effort to distinguish residential hosts from corporations seeking to profit by removing long term rentals from the market.
- However, some hosts, even those who only host on a part-time basis, become incorporated as an LLC to afford themselves more protection from liability (our homes are at stake).
- BHS Proposed Revision. Establishing a new zoning use, "short term residential rental," which is defined as a rental of a single family home, unit in a multi-family property, or an attached, detached, or accessory dwelling unit, which is offered by a permanent resident on the same property who is a natural human being, not owned by a company or corporation. Inclusionary units and other income-restricted units, as well as units prohibited by law from being subleased for less than 14 days, are prohibited from being used as STR's.

2. Rent Ceiling. Rental fees for short term rentals in rental units cannot exceed the lawful rent ceiling.

BHS Comments: We request that the BCC reject applying the rent ceiling to STRs.

- This regulation would be overly burdensome for tenant hosts in particular, and in many cases, would make it impossible to continue their operations, and/or force them out of their homes.
- Our analysis of the breakdown of costs associated with offering a STR room shows that a tenant host has to spend around 100% of the cost of proportional rent for furnishings, household supplies, utilities, breakfast, services, repairs—all above and beyond the proportionate rent the landlord collects

for that room. In other words, it costs \$750/month (with higher cost furnishings and equipment pro-rated over a year) to host a guest in a room whose share of rent would be \$750/month. Thus, the host must charge at least \$1,500/month for that room in order to break even, and \$2,000/month if he wants any compensation for his labor. Hence, a tenant host who cannot charge more than the amount allowed by the rent ceiling would be forced to operate at a loss, and quite likely a significant loss. Tenants who have permission from their landlords should be able to make their housing more affordable by offering STRs.

- This provision would result in a loss of half the projected TOT revenue for the City.
- This provision would remove one avenue by which tenant hosts are making their own housing affordable.
- No other form of short-term housing (e.g., hotels, B&Bs, campgrounds, hostels) is subject to a rent ceiling law.

3. Rent Control Units Not Eligible as STRs.

We object to rent control units being excluded from rental as STR's when their primary residents travel or otherwise must be away from home for short periods.

4. Civil Proceedings.

BHS Comments: We see no reason the City should allow "interested parties" to institute civil proceedings against owners, hosts, businesses, or hosting platforms, over the issue of STRs.

- The City is studying setting up a schedule to fine hosts who violate the ordinance. There is no need to both levy fines AND institute lawsuits against hosts. When the City fines a host, it can put a lien on their property. That should be sufficient.
- The premise of the justice system is that only those injured by another party should be able to sue that party. Neighbors are not injured by violations to STR ordinances (they already have the right to sue over issues, such as noise or harassment, or a wide variety of other civil issues). Nor is the Rent Board injured by any host's violation of the technicalities of any ordinance.
- Nor indeed is anyone injured by a host's potential violation of an ordinance, a violation that could simply be an oversight or a small technical issue. Permitting any interested party a right of civil action could result in property owners and tenants being bullied, extorted, harassed, and subject to enormous costs, all over small infractions or technical details in this ordinance. We object to such unwarranted and unjustified persecution being permitted by law.
- Rights of action and civil proceedings are very badly abused, and result in many frivolous lawsuits. The City of Berkeley should not pave the way for frivolous lawsuits.

Conclusion

Berkeley Home Sharers would like to thank the Berkeley City Council and Berkeley Planning Commission for its attention to our written and verbal comments. We hope you will see that by creating policies that support, rather than suppress, short term rentals that do not reduce long term housing stock, Berkeley can enjoy the many economic and cultural benefits of homesharing, while supporting housing affordability for hosts, residents, and visitors alike.