



Information Report

Planning Commission

December 16, 2015

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: December 16, 2015

TO: Members of the Planning Commission

FROM: Kelly Cha, Assistant Planner
Alex Amoroso, Principal Planner

SUBJECT: Final Draft of the Draft Short-Term Rental Ordinance

Introduction

This information report provides the Draft STR Ordinance with updates. The draft STR ordinance is anticipated for public hearing at a January 2016 Commission meeting. The final draft of the Draft STR Ordinance (Attachment 1) will be presented at the public hearing and is provided to the Commission for early review.

On October 21, 2015, the Commission took public comment on the Draft Short-Term Rental (STR) Ordinance and discussed various concerns and issues. The majority of the public comments and the Commission discussion focused on whether to allow STR in Accessory Dwelling Units, and enforcement issues. The final draft of the Draft STR Ordinance reflects comments received at the last Commission meeting, as well as other solicited comments from other City departments and Commissions.

Staff will schedule a public hearing in January 2016 and bring back the Draft STR Ordinance for Commission consideration. Minor revisions may be made to the Public Hearing version of the Draft STR Ordinance. Any changes will be brought to the attention of the Commission at that time.

Discussion

The Discussion section explains changes reflected on the final draft of the Draft STR Ordinance (Attachment 1) since it was presented at the Planning Commission on October 21, 2015. Modifications are shown in a different color and underlined.

Staff continues interdepartmental conversation with City Attorney's Office (CAO) and Housing Advisory Commission (HAC). The CAO comments have been directly reflected in the final draft of the Draft STR Ordinance (Attachment 1), and HAC's input from their meeting on December 3, 2015 is attached (Attachment 2).

City Attorney Input

Staff consulted the City Attorney's Office for input on the Nuisance and Remedies sections. The City Attorney pointed out that the Nuisance and Remedies sections had duplicate and unnecessary information. Based on this feedback, the Nuisance section was removed and Remedies section was revised.

Housing Advisory Commission

On December 3, 2015, the HAC reviewed the draft STR ordinance and identified a number of issues that they believe should be addressed. These include:

- Business license requirement: due to the privacy concerns, the City Council decided to against linking business license number on the hosting platform; therefore, the draft STR Ordinance did not include this requirement.
- Transient Occupancy Tax (TOT): HAC wants it included as part of the purposes but the City has other methods for collecting the appropriate fees from the STR platforms, without use of the TOT.
- Potential evictions that may be associated with STRs: HAC's concern is that evictions may occur, but STR units must be either owner- or tenant-occupied units as noted in the residency requirements.

The minutes from the HAC meeting (Attachment 2) includes recommendations for language changes. HAC recommendations have not been addressed in the Draft STR Ordinance, but will be discussed at the time of the Public Hearing.

Highlighted Text Changes in the Draft STR Ordinance

The following text changes were made in response to the public comments received at the Planning Commission on October 21, 2015:

- Allowing STR in Accessory Dwelling Units (ADUs): these changes are reflected in Subsection 23C.XX.020.B (Applicability) and Subsection 23C.XX.050.C (STR Duration and Required Residency Timeframes), as well as the definition on "Host" (Subsection 23C.XX.030.B).
- Preventing further housing displacement: Only housing units that meet the Host Residency requirements can be used as STRs. STR definition (Subsection 23C.XX.030.E) has been revised in order to include the reference to the Subsection 23C.XX.050.A (Proof of Host Residency).
- Better neighborhood notifications for STR: Subsection 23C.XX.050.F (Notification) has been revised to require annual notification to all adjacent properties, instead of one-time notification.

Recommendations

Staff recommends that a public hearing on the Draft STR Ordinance in early 2016.

Attachments

1. Final draft of the Draft STR Ordinance
2. HAC Meeting Minutes on the Draft STR Ordinance from 12/3/2015 (Item 11)

Additional Information

1. HAC Packet from the December 3, 2015 meeting (Item #11):
http://www.ci.berkeley.ca.us/uploadedFiles/Housing/Commissions/Commission_for_Housing_Advisory/12-03-15-FullPacketpdf.pdf
2. City Council Referral on STR Regulations from June 23, 2015:
http://www.ci.berkeley.ca.us/Clerk/City_Council/2015/06_Jun/Documents/2015-06-23_Item_46_Short-Term.aspx
3. Previous Planning Commission staff reports on STRs:
 - Planning Commission on March 18, 2015 (Item 10):
http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-03-18_AGENDA%20PACKET-Combined.pdf
 - Planning Commission on September 16, 2015 (Item 10):
http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-09-16_Item%2010_Short%20Term%20Rental%20Regulations-Combined.pdf
 - Planning Commission on October 21, 2015 (Item 10):
http://www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2015-10-21_Item%2010_Short-Term%20Rentals-Combined.pdf

1 **Chapter 23C.XX**

2 **SHORT-TERM RENTAL**

3 **Sections:**

- 4 **23C.XX.010 Purposes**
5 **23C.XX.020 Applicability**
6 **23C.XX.030 Definitions**
7 **23C.XX.040 Permit Required**
8 **23C.XX.050 Operating Standards**
9 **23C.XX.060 Nuisance**
10 **23C.XX.070 Remedies**

11 **Section 23C.XX.010 Purposes**

12 The purposes of the short-term rentals (STRs) related regulations contains in this Chapter
13 are:

- 14 A. To establish standards of operation for STRs within the City of Berkeley.
15 B. To provide alternative forms of lodging.
16 C. To prevent long-term rental units from being replaced with STRs and protect
17 affordable housing units from conversion.
18 D. To preserve and protect neighborhood character and livability from nuisances that
19 often associated with the STRs.

20 **Section 23C.XX.020 Applicability**

- 21 A. STRs shall be allowed in residential uses in the following zoning districts: R-1, R-1A,
22 ~~ES-R~~, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, C-DMU, C-1, C-SA, C-T, and C-W.
23 B. STRs shall be prohibited in below market rate (BMR) units. BMR units for STR
24 purposes refer to and accessory dwelling units whose rents are listed as a result of
25 deed restrictions or agreements with public agencies.

26 **Section 23C.XX.030 Definitions**

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

- 29 A. "Adjacent properties" mean the dwelling units abutting and confronting, as well as
30 above and below, a dwelling unit within which a STR is located.
- 31 B. "Host" means any person who is the owner of record of residential real property, or
32 any person who is a lessee of residential real property, who offers his or her Primary
33 Residence a dwelling unit, or portion thereof. A Host may STR rent an Accessory
34 Dwelling Unit, permitted under Berkeley Municipal Code Chapter 23D.10.
- 35 C. "Host present" means the host is living at the premises of the dwelling unit that is being
36 used for STRs during the short-term rental period or living in the Primary Residence
37 or the Accessory Dwelling Unit.
- 38 D. "Hosting Platform" means a business or person that provides a means through which
39 a Host may offer a dwelling unit, or portion thereof, for STRs. This service is usually,
40 though not necessarily, provided through an internet-based platform. It generally
41 allows a property owner or tenant to advertise the dwelling unit through a website
42 provided by the Hosting Platform and provides a means for potential STR Transient
43 to arrange short-term rentals, whether the STR Transient pays rent directly to the host
44 or to the hosting platform.
- 45 E. "Short-Term Rental (STR)" means the use of any room or rooms, or portions thereof
46 for dwelling, sleeping or lodging purposes in any single-family dwelling, two-family
47 dwelling, multi-family dwelling, or Accessory Dwelling Unit, permitted under Berkeley
48 Municipal Code Chapter 23D.10, by STR Transients. STR shall be an accessory use
49 to a residential use and be considered neither a tourist hotel nor a residential hotel for
50 purposes of this Title. STRs are subjects to Host Residency requirement under
51 Subsection 23C.XX.050.A.
- 52 F. "Local Contact" means a person designated by the Host who shall be available during
53 the term of any short-term rental for the purpose of (i) responding within sixty minutes
54 to complaints regarding the condition or operation of the dwelling unit or portion
55 thereof used for short-term rental, or the conduct of STR Transients; and (ii) taking
56 remedial action to resolve such complaints.
- 57 G. "Primary Residence" means a permanent resident's usual place of return for housing
58 as documented by motor vehicle registration, driver's license, voter registration or
59 other such evidence.
- 60 H. "STR Transient" means any person who rents a unit used for STR purposes.

61 **Section 23C.XX.040 Permit Required**

62 A Zoning Certificate for STR Business License shall be required for each host to operate
63 a STR.

64 **Section 23C.XX.050 Operating Standards and Requirements**

65 The STR is allowed only if it conforms to each of the operating standards and
66 requirements set forth in this Section.

67 A. Proof of Host Residency.

68 1. A property owner Host of an STR must provide documentation of property
69 ownership for the proposed STR to the City.

70 2. A tenant Host of an STR must provide written permission of the owner. The tenant
71 must present written authorization from the building owner or property
72 management company.

73 B. STR Duration and Required Residency Timeframes

74 1. When the Host is present and living in the unit used for STR purposes, the unit, or
75 a portion thereof, may be rented as an STR for an unlimited number of days during
76 the calendar year.

77 2. When the Host is not present in a unit used for STR purposes, including the Host's
78 ADU, the Host must demonstrate his or her residency in the unit, Host's Primary
79 Residence, for at least 265 consecutive days of the calendar year. The number of
80 days that the unit used for STR purposes without the Host in the unit shall be
81 limited to 90 days per calendar year.

82 C. Number of Occupants.

83 1. [Option 1] The maximum number of STR Transients allowed for STRs shall be two
84 STR Transients per bedroom. Living rooms, dining rooms, kitchens, bathrooms,
85 studies, media rooms, and other non-bedrooms shall not be included for maximum
86 STR Transient count.

87 2. [Option 2] The maximum number of STR Transients allowed for STRS shall comply
88 with the Berkeley Housing Code (BMC Chapter 19.40).

89 D. Parking Requirement. Any building or portion thereof used for STRs shall comply with
90 applicable parking requirements for the appropriate zoning district.

91 E. Building Code Compliance. Any building or portion thereof used for STRs shall comply
92 with the requirements of the Berkeley Building Code (BMC Title 19).

93 F. Notification. AnnualOne-time notification shall be required to all adjacent properties
94 that a STR may occur at the subject property. Notification shall include Host and Local
95 Contact information.

96 ~~G. Transient Occupancy Tax. Payment of the transient occupancy tax, of an amount~~
97 ~~determined by Council, is required from either the host or hosting platform. Note: The~~
98 ~~Referral is unclear how to determine the TOT Payer.~~

99 H.G. Enforcement Fee. Either the Host or Hosting Platform is required to pay an
100 additional enforcement fee of an amount determined by Council.

101 H.H. Liability Insurance. Liability insurance is required of the Host and the insurance
102 amount shall be at least \$500,000.

103 ~~J.I.~~ Compliance with Second-Response Ordinance. The Host shall comply with the
104 Second Response Ordinance (BMC Chapter 13.48). The Host shall be prohibited from
105 operating STRs for one year upon a third violation within 180 days.

106 ~~K.J.~~ Documents provided to STR Transients. Community Noise Ordinance and Smoke-
107 Free Multi-Unit Housing Ordinance must be provided to transients upon arrival.

108 **~~Section 23C.XX.060 — Nuisance~~**

109 ~~A. Any occurrence at a short-term rental unit in a manner which that constitutes a~~
110 ~~substantial disturbance of the quiet enjoyment of private or public property in a~~
111 ~~significant segment of a neighborhood, such as excessive noise or traffic, obstruction~~
112 ~~of public streets by crowds or vehicles, public intoxication, the service to or~~
113 ~~consumption of alcohol by minors, fights, disturbances of the peace, litter or other~~
114 ~~similar conditions, constitutes a public nuisance.~~

115 ~~B. It shall be a public nuisance for any short-term rental transient of a short-term rental~~
116 ~~units where an event is taking place to refuse access to, or interfere with access by,~~
117 ~~Fire Department personnel responding to an emergency call or investigating a~~
118 ~~situation.~~

119 ~~C. Notwithstanding any provision of Chapter 13.48 to the contrary, a public nuisance as~~
120 ~~defined in this Section shall be subject to the remedies set forth in Section~~
121 ~~23C.XX.070.~~

122 **Section 23C.XX.070 Remedies**

123 A. This Chapter may be enforced as set forth in Chapters 1.20 and 1.28.

124 B. Violation of any provision of this Chapter is hereby declared to be a public nuisance
125 subject to abatement under Chapters 1.24, 1.26 and 23B.64.

126 C. In any enforcement action, the prevailing party shall be entitled to recover reasonable
127 attorneys' fees and costs; provided that, pursuant to Government Code Section
128 38773.5, attorneys' fees shall only be available in an action or proceeding in which the
129 City has elected, at the commencement of such action or proceeding, to seek recovery
130 of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees
131 to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the
132 City in the action or proceeding.

133 ~~D. In cases where the owner of a short-term rental unit has been unwilling or unable to~~
134 ~~control the use of that short-term rental unit so as to prevent repeated violations of this~~
135 ~~Chapter, the City may revoke the registered Zoning Certificate for Business License~~
136 ~~and associated Business License under Chapter 23B.64.~~

137 ~~E. Remedy Determination~~

138 ~~1. In determining the appropriate remedy, if any, for a public nuisance under this~~
139 ~~Chapter, the City shall consider factors such as the severity and impact of the~~
140 ~~nuisance, whether it was an isolated event that is not likely to recur and whether it~~

141 ~~was preventable. Remedies for public nuisance should be reasonably designed to~~
142 ~~address the nuisance that the City determines occurred.~~

143 ~~2. Nuisance determinations, and remedies for nuisances, applicable to short-term~~
144 ~~rental units shall apply only to the unit or units involved in or causing the nuisance,~~
145 ~~and remedies shall be designed to affect residents of other units as little as~~
146 ~~feasible.~~

147 ~~F. Nothing in this Chapter is intended to create a monetary remedy against any persons~~
148 ~~involved, including not limited to short-term rental transients, host, and the designated~~
149 ~~local contact person.~~

150 G.D. Any resident of the City may bring a private action for injunctive relief to prevent or
151 remedy a public nuisance as defined in this Chapter. No action may be brought under
152 this subdivision unless and until the prospective plaintiff has given the City and the
153 prospective defendant(s) at least 30 days written notice of the alleged public nuisance
154 and the City has failed to initiate proceedings within that period, or after initiation, has
155 failed to diligently prosecute. Notwithstanding subdivision (F), in any action prosecuted
156 under this Section a prevailing plaintiff may recover reasonable attorneys' fees.



Housing Advisory Commission

HOUSING ADVISORY COMMISSION
Regular Meeting
Thursday, December 3, 2015

Time: 7:05 p.m.

South Berkeley Senior Center
2939 Ellis Street – Berkeley
Secretary – Amy Davidson, (510) 981-5406

DRAFT MINUTES

PRELIMINARY MATTERS

1. Roll Call

Present: Heidi Abramson, Diego Aguilar-Canabal, Tor Berg, Kathleen Crandall, Brendan Darrow (7:10 p.m.), Jill Martinucci, Alejandro Soto-Vigil, Igor Tregub, and Marian Wolfe. Absent: None.

Commissioners in attendance: 9 of 9

Staff Present: Babka, Davidson, Lee, Tran, and Vasquez.

Members of the public in attendance: 25

Public Speakers: 10

2. Agenda Approval

Action: M/S/C (Soto-Vigil/Wolfe) to approve agenda as amended (move item 8 ahead of 7).

Vote: Ayes: Abramson, Aguilar-Canabal, Berg, Crandall, Darrow, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: None.

3. Public Comment

2 speakers

4. Approval of November 5, 2015 Minutes

Action: M/S/C (Wolfe/Abramson) to approve minutes.

Vote: Ayes: Abramson, Aguilar-Canabal, Crandall, Darrow, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: Berg and Martinucci. Absent: None.

CONSENT ITEM

5. Approve 2016 Calendar

Action: M/S/C (Wolfe/Tregub) to approve the 2016 meeting calendar.

Vote: Ayes: Abramson, Aguilar-Canabal, Berg, Crandall, Darrow, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: None.

UPDATES / ACTION ITEMS

6. Update on Berkeley Housing Authority (BHA) Programs and Requested Strategies for City Support

Public speakers: 3. Tia Ingram (Executive Director of the BHA) and Carole Norris (Chair of the BHA Board of Commissioners) presented.

7. Public Hearing on Community Needs

Public speakers: 9.

Action: M/S/C (Tregub/Martinucci) to close the public hearing.

Vote: Ayes: Abramson, Aguilar-Canabal, Berg, Crandall, Darrow, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: None.

8. Update from BRIDGE Housing and Berkeley Food and Housing Project on the Berkeley Way Parking Lot Project

BRIDGE Housing and Berkeley Food and Housing Project presented.

9. Update on Public Facilities Projects and Appointment of CDBG Subcommittee

Action: M/S/C (Soto-Vigil/Abramson) to form a CDBG subcommittee with the following members: Berg, Crandall, Martinucci, and Tregub.

Vote: Ayes: Abramson, Aguilar-Canabal, Berg, Crandall, Darrow, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: None.

10. Update on Housing Trust Fund 2015 Applications and Appointment of Housing Trust Fund (HTF) Subcommittee

Action: M/S/C (Tregub/Darrow) to form an HTF subcommittee with the following members: Abramson, Aguilar-Canabal, Darrow, and Soto-Vigil.

Vote: Ayes: Abramson, Aguilar-Canabal, Berg, Crandall, Darrow, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: None.

11. Short Term Rental Regulations

Action A: M/S/C (Tregub/Darrow) to add the following language to the ordinance where appropriate: A property containing a unit with a “no-fault eviction” cannot become a short term rental for five years.

Vote: Ayes: Aguilar-Canabal, Darrow, Martinucci, Soto-Vigil, and Tregub. Noes: Abramson and Crandall. Abstain: Berg and Wolfe. Absent: None.

Action B: M/S/C (Martinucci/Tregub) to recommend the Planning Commission include the following guidelines from Council’s June 9, 2015 referral (with one change in third bullet point):

- Either the host or rental-platform company must pay the transient occupancy tax (TOT) and an additional enforcement fee, to be established as a percentage of rents, not exceed the cost of the program
- The host must have a valid business license and be covered by liability insurance of at least \$500,000
- The City will require (Council used “request”) hosting platforms list the business license number in online listings

Vote: Ayes: Abramson, Aguilar-Canabal, Berg, Darrow, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: Crandall. Absent: None.

Action: M/S/F (Soto-Vigil/Darrow) to restate HAC's support that the Ordinance should explicitly state that units subject to the provisions of the Rent Stabilization and Good Cause for Eviction Ordinance may not be removed from the long-term rental market for conversion into short-term rentals.

Vote: Ayes: Aguilar-Canabal, Darrow, Soto-Vigil, Tregub. Noes: None. Abstain: Crandall, Martinucci, and Wolfe. Absent: Abramson (left at 10:29 p.m.) and Berg (left at 10:30 p.m.).

12. Update on Council Items

- a. 12/1 housing worksession
- b. February 16 Council worksession on housing

13. Future Items

14. Announcements

15. Adjourn

Action: M/S/C (Darrow/Soto-Vigil) to adjourn the meeting at 10:32 p.m.

Votes: Ayes: Aguilar-Canabal, Crandall, Darrow, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: Abramson (left at 10:29 p.m.) and Berg (left at 10:30 p.m.).

Approved on DATE, 2015

_____, Amy Davidson, Secretary