



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: July 19, 2016

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Study Session: Short-term Rentals

RECOMMENDATION

Staff recommends that the City Council review this report, receive public comment, and provide direction on whether and how to regulate short term rentals.

BACKGROUND

The City Council has directed staff to report on short-term rentals, and on options for regulating them. On March 24, 2016, the Planning Commission held a study session and made recommendations, which are described below.

DISCUSSION

Current Situation

Short-term rentals defined. Short term rental is renting out a room in a residential unit, or renting out an entire unit, for 30 days or less. Many short-term rentals are facilitated by online platforms such as Airbnb, VRBO, and HomeAway. (Corporate housing is for more than 30 days, so it is not technically a short-term rental.)



Short-term rentals in Emeryville.

In Emeryville in April 2016, 119 unique properties were listed on short term rental platforms, according to Host Compliance, a company that tracks host addresses. On this map, red dots represent Airbnb and blue dots represent HomeAway. The listings are located in most of the residential areas and the marinas.

Staff researched 38 unique Airbnb listings and garnered the following information:

Room rents: average \$79/night, range \$42 - \$129/night
Unit rents: average \$200/night, range \$65 - \$995/night
Kind of unit: room 47%, entire unit 53%
Kind of structure: multi-unit 47%, house 34%, second unit 5%, other 5% (boat, camper)
Availability: always or usually 63%, temporary 28%, can't tell 3%

Multiplying the sample percentages by the 119 unique total properties listed, we can make the following estimates:

Kind of unit: 56 rooms, 63 entire units
Kind of structure: 56 in multi-unit buildings, 40 in houses, 6 second units, 6 boat/camper
Availability: 75 always or usually, 33 temporary, 4 can't tell

When the owner or primary lessor is present in the unit, the rental is said to be "hosted"; when the owner or primary lessor is not present, it is said to be "non-hosted". Rental of entire units is non-hosted, although a few units are second units behind or within houses, so the host could be nearby. Rental of rooms is likely to be hosted, although this may not always be the case.

Entire units always or usually available. Almost a third of the Airbnb units that the City observed were entire units that are always available. Applying that to the 119 listed units, we can estimate that about 38 entire units are removed from the long-term rental housing stock. That is half of one percent of the overall housing stock (7125 units). The breakdown is 25% of the detached house listings, 32% of the condominium/apartment/townhouse listings, and all of the second unit/boat/camper listings.

Applying the percentages in the City observation of Airbnb rentals to the total number of unique listings provided by Host Compliance, we can estimate the following breakdown of units and rooms that are always or usually available:

Estimated number of short-term rentals always or usually available

	Units	Rooms	Total
In a House	10	17	27
In a Multi-Unit Building	17	20	37
In 2 nd Unit/Boat/Camper	13	0	13
Total	40	37	77

Airbnb in general has attracted primarily leisure travelers, but is increasing its business travel clients. Emeryville's hotel guests are about two-thirds business and one-third leisure.

Survey of Property Managers

Staff surveyed the managers of 13 of Emeryville's 26 large condominium complexes, nine of the ten large market-rate apartment complexes, all four live/work complexes, and both marinas. The other managers did not return phone calls or emails. The results are tabulated in Attachment 1 and summarized below.

Prohibition in leases and CC&Rs. Except for one live/work complex manager, all of the managers surveyed said that they do not allow short-term rentals. Short-term rentals are prohibited in leases for apartments, and in conditions, covenants and restrictions (CC&Rs) for condominiums. Managers also inform residents of the prohibition through reminders, newsletters and letters. They enforce the prohibition by talking with hosts, sending notices or letters, taking hosts to court, fining hosts, taking away access to common areas, and issuing eviction notices. One said a letter citing the CC&Rs was generally successful. They want to preserve their right to prohibit short-term rentals.

Residents' objections to short-term rentals. The managers report that most residents do not like short-term rentals due to concerns about safety, security, maintenance of common areas, noise, disruption, unfamiliar faces, not following the rules, and parking. One noted that residential development projects were not built to work like hotels, and another noted wear and tear from extra traffic and luggage. Two mentioned that owners of full-time short term rental units do not participate in homeowners association maintenance work. Harbormasters said that live-aboards do not want parties coming in, and that it is risky using a boat if you are not a boater.

Opinions about City regulation. Of the 28 managers surveyed, 16 thought the City should allow short-term rentals, six said the City should not allow them, and six were not sure. Of those who thought they should be allowed, eight said they should be allowed in single family houses, four thought the City should allow them in all kinds of units, and two thought they should be allowed in condominiums. One apartment manager wanted them to be allowed because they might wish to convert vacant units to short-term rentals in the future.

Neighboring Cities' Approaches

Small cities. Of the 14 cities that are similar to Emeryville in terms of size, proximity to San Francisco, and density, one expressly allows short-term rentals in houses, one prohibits short-term rentals, and the rest do not regulate them. Of those, five have decided not to regulate them, five are considering it at some level, and two are taking a "wait and see" approach. Reasons for not regulating them include lack of staff and not seeing it as a big issue.

Small cities near San Francisco and Short Term Rentals							
	Allow	No Regulations					Prohibit
City	In single family houses	Not planning to regulate	Evaluate later	Staff discussing	Commission or Council considering regulating	Commission or Council considering prohibiting	
Alameda		•					
Albany	•						
Piedmont						•	
El Cerrito					•		
Hercules		•					
Pinole		•					
Larkspur							•
San Anselmo			•				
Belmont		•					
Burlingame					•		
Foster City				•			
Milbrae			•				
San Carlos				•			
Los Altos		•					

Medium-Size Cities. Of cities that are slightly larger than Emeryville, Petaluma regulates short term rentals, San Rafael is discussing it, and Newark does not allow it. Oakland does not have recent or proposed regulations specific to short-term rentals. Berkeley recently adopted an ordinance. Petaluma's and Berkeley's ordinances both require a permit/registration with a fee, limit non-hosted unit rental to 90 days per year, allow room rental in hosted units an unlimited number of days per year, require hosts to give the noise regulations to guests, and encourage or require notifying adjacent neighbors.

San Francisco. San Francisco's ordinance also requires registration with a fee, limits non-hosted short-term rentals to 90 days per year, and allows unlimited hosted room rentals. In addition, San Francisco requires hosts to prove that the unit is their primary, permanent residence; limits short-term rentals to units in multi-unit buildings; requires the platform to remit Transit Occupancy Tax (but not documentation of it); requires hosts to report on the number of short-term rental days each year; requires hosts to carry homeowner or renter insurance; and requires that there be no outstanding code enforcement actions. The Board of Supervisors recently passed a requirement that hosts post registration numbers with listings.

Emeryville Regulations

Planning Regulations. Emeryville's Planning Regulations do not address short-term rentals. They do have some provisions for Bed and Breakfasts that could be interpreted as applying to them. The Planning Regulations define residential use as primarily non-transient, define lodging as provision of sleeping accommodations to the public on a primarily short term basis, and define Bed and Breakfast as lodging that is part of a residential unit. The regulations require a Bed and Breakfast unit to have a separate private entry that is not shared with any other unit; they do not allow access through a common lobby, hall, pathway or elevator. The regulations also require the owner to reside in the unit containing the Bed and Breakfast. Bed and Breakfast is allowable with a use permit in the Residential Zones, but not in the Marina Zone.

Noise Ordinance. Emeryville's noise ordinance limits noise such as amplified sound and loud yelling or singing to 7am-9pm Monday-Friday and 8am-9pm Saturday-Sunday. This ordinance can be used to address disturbances made by guests in short term rental units.

Transient Occupancy Tax. Most cities, including Emeryville, collect Transient Occupancy Tax (TOT) from hotels. Emeryville's TOT is 12%. The four hotels in Emeryville together paid a total of \$6,275,815 in Transient Occupancy Taxes in 2015. Short-term rentals fit the definition of a hotel and are legally subject to the tax, but none of the hosts have paid it. To make it clear, the terms "short term rental" and "vacation rental" could be added to the list of uses subject to TOT in the Municipal Code.

Staff estimates that TOT owed on all current short-term rentals, including year-round short-term rental of non-hosted entire units, is about \$200,000 per year. If the City did not wish to allow year-round short-term rental of non-hosted entire units, TOT revenue would range from about \$23,000 for hosted rentals in detached houses to about \$158,000 for hosted rentals and temporary short-term rental of units that are the hosts' primary, permanent residences in all types of units.

Business License. Because they pay the TOT, hotels are only required to pay the base fee (currently \$10 per year) for business licenses, plus business tax on other services such as restaurants and conference room rentals. A business license would be part of the registration requirement for short-term rentals, and, like hotels, they would pay only the base fee.

San Francisco Bay Conservation and Development Commission Regulations

The San Francisco Bay Conservation and Development Commission (BCDC) allows 10% of the boats in a marina to be live-aboard boats, in order to provide security at night. BCDC does not allow any commercial activity in marinas, other than specifically permitted operations such as commercial fishing boats. That ban applies to short term rental of boats in the marinas.

Benefits and Concerns Regarding Short-term rentals

Benefits. Short-term rentals provide the following benefits:

- Short term rental of a room, or of a unit while the resident is away for short periods, provides income that helps residents to meet rising housing costs.
- Short term rental of a room fosters social interaction between guests and hosts; many hosts take some time to introduce guests to the city.
- Short-term rentals provide transients with a low-cost alternative to hotels, increasing tourism.
- Short-term rentals provide a place for people to stay when they arrive in the area, while they are seeking long-term housing.

Concerns. City staff has not received complaints about short-term rentals. However, the following concerns relating to land use have been expressed at City Council and Planning Commission meetings, in the survey of residential property managers, and in articles about short-term rentals:

- Neighbors are concerned about noise, security, parking, condition of common areas, and the residential character of the neighborhood or residential complex.
- Housing advocates are concerned about removal of units from the long-term housing market, and about removal of rooms from the long-term roommate market.
- Cities are concerned about the safety of units for guest occupation.

Planning Commission Comments

The Planning Commission held a study session on short-term rentals on March 24, 2016. The Commissioners expressed a wide range of opinions. A majority of the Commissioners agreed that the City should prohibit short-term rentals in multi-unit buildings, allow short-term rentals in single family detached houses, require short-term rentals to be hosted, and require hosts to obtain business licenses and pay the TOT. Two Commissioners wanted to leave it to homeowner associations to enforce their CC&Rs prohibiting short-term rentals, and one said that a requirement for a private entrance was not needed. One Commissioner thought owners of houses and condominiums should be allowed to offer short-term rentals. One Commissioner mentioned limiting short term rental in single-family houses to a certain number of days. One Commissioner liked Petaluma's ordinance, which limits un-hosted short-term rentals to 90 days, and requires hosts to notify neighbors and provide noise regulations to guests. Two Commissioners called for requiring inspections and making sure any work was done with building permits; one said an inspection fee could pay for code enforcement for short-term rentals. None of the Commissioners wanted to prohibit short-term rentals altogether in all housing types.

Options

Staff has identified the following options for dealing with short-term rentals:

- (1) Allow and regulate short-term rentals only in single-family detached houses;
- (2) Prohibit short-term rentals altogether;
- (3) Allow and regulate short-term rentals city-wide; or
- (4) Leave the regulations unchanged;
- (5) If short-term rentals are to be allowed to any extent, direct staff and City Attorney to pursue an agreement with short-term rental platforms to collect any resulting TOT that is due the City in compliance with current ordinances.

If short-term rentals are allowed, the City could allow only hosted room rentals, or could also allow temporary whole-unit rental of units that are the hosts' permanent, primary residence.

If short-term rentals are allowed, a permit would enable staff to track them in order to enforce the regulations. Regulations could mitigate the impacts on neighbors, the City's supply of rental housing stock, and guest safety.

For example, if short-term rentals were allowed, regulations could address the land use issues as follows:

Impacts on neighbors

- Character of residential neighborhood – require host to notify neighbors and give them 24/7 contact information
- Noise – require host to give noise ordinance summary to guests; do not renew or revoke permit if complaints persist
- Security – require host to check guest identification and keep guests' contact information
- Parking – require host to provide parking
- Parties – limit number of guests allowed in a short-term rental at any time

Impacts on housing stock

- Units – require evidence of hosts' permanent, primary occupancy; limit un-hosted rental of units to 90 days per year
- Rooms – limit hosted rental of rooms to 90 days per year

Impacts on guests

- Safety – require hosts to post a diagram of exit routes and fire extinguisher location; require inspections

Number of Likely Short-Term Rentals Under Four Policy Options

As shown in the table below, staff estimates that allowing only hosted room rentals in detached single-family houses would result in about 10 short-term rentals. Allowing hosted room rentals and temporary short-term rental of entire houses by hosts who are the primary, permanent residents of those units would result in about 12 short-term rentals. Allowing hosted room rentals in all kinds of units would result in about 22 short-term rentals. Allowing hosted room rentals and temporary short-term rental of entire units by hosts who are the primary, permanent residents of those units would result in about 30 short-term rentals. These estimates are based on owner occupied units only, because most leases prohibit short-term rentals.

Expected Short-Term Rentals Under Four Policy Options

Policy Option	Sample Percent ¹	Estimated Number ²	Owner Occupied ²
House Hosted Room	21%	25	10
House Hosted Room + Entire Unit	26%	31	12
All Kinds Hosted Room	47%	56	22
All Kinds Hosted Room + Entire Unit	63%	75	30

¹ Count / 38 listings in sample conducted by City staff in May 2016

² Percent x 119 total units listed in April 2016

³ Number x 40% - percentage of units in Emeryville that are owner-occupied

Enforcement

Cities that regulate or prohibit short-term rentals have faced enforcement challenges, primarily because platforms are not required to give cities information about the location or owners of listed properties. It takes 20 to 40 minutes for staff to track down the address of each listing. One option is to make enforcement complaint driven. Another option is contract with a third party that finds addresses of short-term rentals. The contractor could also send warning letters to violators of the ordinance and non-payers of the Transient Occupancy Tax, and could staff a 24/7 hotline for neighbors to call.

If short-term rentals are prohibited in some or all housing types, fines could be set higher than rents to provide a deterrent. For example, the fine could be \$200 per day the rental is listed for the first violation, \$400 per day listed for the second violation, and \$600 per day listed for the third violation.

Enforcement would begin with the issuance of warning letters. Next steps as needed would be phone calls, levying fines, recording liens on hosts' property, filing lawsuits, and going to court.

Staffing and Vendor Services

If the City changes the regulations to prohibit, limit, or regulate short-term rentals, then staff from the City Attorney's office, Community Development Department, and Finance Department would need to work on developing and implementing the ordinance.

To develop the ordinance, the City Attorney's Office would need to research and draft the ordinance and required notices. The Community Development Department would assist in drafting the ordinance, and would present the draft to the Housing Committee, Planning Commission and City Council. The Finance Department would provide input and review. Staff would mail notices twice to all of the city's residents, residential property managers, and residential commercial business license holders – once to notify them of the upcoming meetings, and once after adoption to inform them of the ordinance provisions.

Implementing the ordinance would involve the City Attorney's Office, Community Development Department, and Finance Department. Depending on what the ordinance prohibits and allows, the balance between enforcing a prohibition and regulating allowed units would shift.

FISCAL IMPACT

A summary of estimated cost and revenue for five options is shown in Attachment 2. The net fiscal effect of the options ranges from a net cost of about \$46,820 for total prohibition to net revenue of \$80,582 for hosted and permanent resident occupied short-term rentals in all unit types. This analysis assumes that all units would comply with the regulations by registering and paying business license tax and TOT, which may not be realistic. To the extent that there is noncompliance, the net revenue could be reduced or even become a net cost.

CONCLUSION

Staff recommends that the City Council take public comment, and provide direction on whether and how to regulate short-term rentals.

PREPARED BY: Diana Keena, Associate Planner

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Carolyn Lehr, City Manager

Attachments:

1. Property Manager Survey Results Regarding Short-Term Rentals
2. Estimated Cost and Revenue for Short-Term Rental Ordinance

Property Manager Survey Results Regarding Short-Term Rentals (STR)

Do you allow STR?

- 27 No
- 1 Yes

How many STR units do you have?

- 20 None
- 3 Occasionally or 2
- 3 In the past 1-3

How do you know about them?

- 11 Check websites regularly
- 8 Neighbor complaints
- 4 Staff notices or checks
- 2 Unusual activity
- 1 Check package addressees

What are residents' reactions?

- 16 Not favorable
- 2 Some want to do it

Why don't residents like them?

- 11 Security/safety
- 7 Maintenance of common areas
- 6 Noise/disruption
- 3 Unfamiliar faces
- 3 They don't follow the rules
- 2 Parking

How do you inform residents of the prohibition?

- 7 Lease
- 7 CC&Rs
(codes, covenants and restrictions)
- 4 Reminders
- 1 Newsletter
- 1 Letter
- 1 Tell them when they move in

How do you enforce your prohibition?

- 12 Notice or letter
- 5 Fines
- 5 Eviction notice
- 4 Talk to them
- 3 Block access to common areas
- 3 Hearing

What are the challenges of STR?

- 10 Security/safety
- 6 Maintenance of common areas
- 5 Irresponsible or annoying behavior
- 3 Liability/legal issues
- 3 None
- 1 Theft
- 1 Noise
- 1 Not following the rules
- 1 It's hard to regulate

What are the benefits of STR?

- 8 None for the property manager
- 7 Income for residents
- 1 It draws shoppers
- 1 Transient Occupancy Tax
for the City

Should the City allow STR?

- 16 Yes
- 6 No
- 6 Not sure

Should they be allowed in some kinds of units and not others?

- 8 Allow in single family houses
- 4 Allow in all kinds of units
- 2 Allow in condominiums

Should the City regulate STR?

- 13 Yes
- 6 No
- 9 Not sure

What regulations should the City have?

- 4 Allow us to prohibit in our complex
- 4 Require pre-screening of guests
- 3 Limit the number of days
- 3 Require registration or a permit
- 2 Collect transient occupancy tax
- 1 Apply hotel rules
- 1 Control the pricing
- 1 Prohibit

Estimated Cost and Revenue for Short-Term Rental Ordinance

Development of Ordinance - One Time

Department	Hours	Rate	Cost
City Attorney	50	300	15,000
Community Development	70	150	10,500
Finance	20	150	3,000
Mailing Expenses			15,000
<i>Total</i>			<i>43,500</i>

Implementation of Ordinance - Annual Cost

Department	Prohibition	Houses - Hosted Room Rentals Only	Houses - Hosted & Permanent Resident Occupied	All Unit Types - Hosted Room Rentals	All Unit Types - Hosted & Resident Occupied
Community Development	9,300	11,375	11,850	14,225	16,125
Finance	900	2,550	3,000	5,550	7,650
City Attorney	30,000	28,800	31,800	33,300	34,500
Contractor	6,620	9,560	9,560	11,320	11,320
<i>Total</i>	<i>46,820</i>	<i>52,285</i>	<i>56,210</i>	<i>64,395</i>	<i>69,595</i>

Implementation of Ordinance - Annual Revenues

Transient Occupancy Tax*	0	20,107	20,635	63,194	137,877
Business License Fees (\$10)	0	100	120	220	300
Registrations (\$250)	0	2,500	3,000	5,500	7,500
Inspections (\$150)	0	1,500	1,800	3,300	4,500
Fines Minus Collection Cost	0	0	0	0	0
<i>Total</i>	<i>0</i>	<i>24,207</i>	<i>25,555</i>	<i>72,214</i>	<i>150,177</i>

Comparison of Annual Costs and Revenues

Costs	<i>46,820</i>	<i>52,285</i>	<i>56,210</i>	<i>64,395</i>	<i>69,595</i>
Revenues	<i>0</i>	<i>24,207</i>	<i>25,555</i>	<i>72,214</i>	<i>150,177</i>
Net	<i>(46,820)</i>	<i>(28,078)</i>	<i>(30,655)</i>	<i>7,819</i>	<i>80,582</i>

*Room: avg rent \$79 x TOT rate 12% x 83% occupancy (Oakland airbnb) x 365 = \$2,872.44/year

Whole unit: avg rent \$200 x TOT rate 12% x 2wks/y observed x 5.5 nights avg stay = \$264/year

NOTE: These estimates assume full compliance with regulations, which may not be realistic.