



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** October 18, 2016

**TO:** Carolyn Lehr, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT: Study Session: Short-term Rental Ordinance**

### RECOMMENDATION

Staff recommends that the City Council review this report, receive public comment, and provide direction regarding preparation of an ordinance addressing short term rentals, defined as rentals of residential units or rooms for 30 days or less, often advertised on platforms such as Airbnb, HomeAway, FlipKey, and VRBO.

### BACKGROUND

The City Council has directed staff to report on short-term rentals, and options for regulating them.

On March 24, 2016, the Planning Commission held a study session. There was no clear consensus and a wide range of opinions expressed by the Commissioners, ranging from no changes to current regulations, to allowing short term rentals with regulations, to a total prohibition. The one point on which the Commissioners did agree was that short-term rentals could be allowed in single family detached houses.

On July 13, 2016, the Housing Committee discussed the topic and made a recommendation that short-term rentals be allowed only in buildings with one to four units in one ownership. The committee further recommended that hosts be required to obtain a business license and pay Transient Occupancy Tax, that short-term rentals be limited to 90 days per year, that hosts be required to post noise hours and emergency contact information, that fines be set high enough to disincentivize short-term rentals where they are prohibited, and to make enforcement complaint driven.

On Tuesday, July 19, 2016, the City Council held a study session. As noted in the staff report for that study session (see Attachment 1), 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. 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. At the July 19 study session, the Council generally agreed with the Housing Committee's recommendation

that short-term rentals should only be allowed in smaller buildings, and that enforcement should be complaint-driven. Although the committee recommended up to four units, the Council was willing to consider larger buildings, possibly up to 20 units. Staff was directed to survey the older residential neighborhoods to determine what properties would be affected.

## DISCUSSION

As directed by the Council, staff has researched properties in the Triangle and Doyle neighborhoods. In these older neighborhoods, there are 266 single-family houses, 104 duplexes, 62 triplexes, 42 four-plexes, and 23 buildings with 5-12 units. In terms of parcels, there are 212 lots with one unit, 200 lots with 2-4 units, and 33 lots with 1-12 units. No properties in these neighborhoods have more than 12 units.

### Survey of Property Owners

Staff surveyed owners of properties with two or more units in the Doyle and Triangle neighborhoods. Of 270 owners, 63 (36%) responded. Results are listed in Attachment 2 and discussed below.

Prohibition in leases. Fifty-nine (94%) of respondents indicated that they do *not* allow short-term rentals. Only four allow them.

Problem in the neighborhood? Almost half (29 respondents, 46%) said there is *not* a problem with short-term rentals in their neighborhoods; other responses included yes (9), don't know (14) or no response (10).

Whether and where to allow. Twenty-seven (45%) of the respondents said the City should prohibit short-term rentals altogether, 11 said they should be allowed everywhere, 12 said they should only be allowed in detached single family houses, five said they should be allowed in 1-4 unit buildings, five said they should be allowed in buildings with different numbers of units, seven did not respond, and one didn't know.

Reasons to allow. Four respondents thought short-term rentals should be allowed, so more people could visit Emeryville, so visitors could stay near parks, because Emeryville doesn't need any more regulations, or because homeowners and landlords should decide policies about use of their own property.

Reasons to prohibit. Comments on why short-term rentals should be prohibited included parking problems, strangers, visitors not having background checks or an investment in the community, change in the culture of a community because neighbors don't know each other, visitors coming and going at all hours and partying all night, and effect on stability of the rental market.

Reasons to limit to single family houses. Two commenters thought short-term rentals should be limited to single family detached houses and not allowed in multi-unit buildings, one because multi-family residents don't know who has the right to enter the building if there are short-term rentals, and the other because it interferes with tenants' quiet enjoyment of their homes.

Reasons to limit to owner occupied buildings. Two commenters thought short-term rentals should be limited to owner occupied buildings, and one noted that subletting invalidates the owner's insurance.

Requirements needed in the ordinance. One commenter thought the ordinance should require tenant hosts to have permission from the owner or manager.

Questions about the Transient Occupancy Tax. Two respondents asked about the Transient Occupancy Tax (TOT). One asked if the City can make Airbnb collect and remit TOT. Cities have no way to force platforms collect and remit TOT. Some cities have negotiated agreements with Airbnb to do this, but Airbnb does not provide any information about individual units with the TOT remittance. A bill to require platforms to collect and remit TOT is stalled in the State legislature. The other question was about who would have to pay the tax. If the City were to permit and regulate some short-term rentals, then the hosts would be responsible for the tax.

### **The City's Overall Concerns**

In summary, the City Council, Housing Committee, and Planning Commission have expressed the following concerns regarding short-term rentals:

- Impacts on neighbors in the same building or complex as short-term rentals, who share a wall, ceiling, or common area
- Removal of units from the long-term housing market
- Safety of guests and neighbors
- Loss of Transient Occupancy Tax (TOT)

### **Recommended Code Provisions**

The City has the ability to regulate short-term rentals as a land use through the City's Planning Regulations. Therefore, regulations should focus on how to mitigate the impacts of short term rentals. In considering the concerns articulated by City Council and advisory bodies, staff recommends that the ordinance include the following provisions:

- Allow hosted (primary occupant present) rental of a room for an unlimited number of nights per year, and non-hosted rental of an entire unit for 90 days per year, in single-family detached houses, with a permit.

- Prohibit other short-term rentals.
- Require the following permit criteria:
  - Proof that the house is the host's primary, permanent residence
  - Property owner's permission if the host is not the owner
  - Self-certification that the property being rented complies with applicable building and fire codes, including smoke detector and carbon monoxide detector
  - Diagram of exits and fire extinguisher locations, to be posted
  - Post City's noise hours and emergency contact information for the unit owner or owner's agent in the rental unit
  - Business Tax Certificate
  - Payment of Transient Occupancy Tax

### **Recommended Ordinance Structure**

Staff recommends a new Article 21, Short-Term Rentals, of Chapter 5, Citywide Use and Development Regulations, of Title 9, Planning Regulations, along with some edits to Chapter 2, Use Classifications, and Chapter 3, Zoning Districts, deleting "Bed and Breakfast" and adding "Short-Term Rentals".

Short-term rentals would be defined as always an accessory use to residential uses, and would not appear in the matrix of uses permitted, conditionally permitted and prohibited. If hosts meet the permit criteria, they would receive a permit.

Short-term rental permits would have to be renewed each year. If verified complaints are received, or if the permit criteria are no longer met, the permit could be revoked, suspended, or not renewed.

The new Planning Regulations Article would refer to code chapters regarding Transient Occupancy Tax, Business Tax Certificate (business license), and enforcement.

### **Enforcement**

If a short-term rental property has a permit but is not following the rules or has repeated complaints, the City can revoke or decline to renew the permit. If short-term rental is occurring where it is not allowed or is operating without a permit, the first step is to prove that short-term rental is occurring. Because it is difficult to distinguish paying guests from non-paying guests, City staff cannot tell from observation whether there is a violation. In order to prove that short-term rental is occurring, the City must subpoena the records of third parties such as online platform companies to confirm the short-term rental. Then the City can issue a Notice of Violation followed by a citation (using the new Administrative Citations and Summary Abatement Ordinance, introduced on September 20, 2016 and expected to be passed on October 18, 2016), hold an administrative hearing, collect fines and costs, and/or file a civil lawsuit. In the case of

violation of a short-term rental ordinance, the cure would be to cease the operation of the short-term rental or to obtain the required permit for an allowable short-term rental.

### **Collection of Transient Occupancy Tax**

Hosts with permits would be responsible for paying the Transient Occupancy Tax (TOT). Some cities have negotiated with platforms, such as Airbnb, to collect and remit TOT. The issue with these agreements is that they typically lack the ability to easily audit the amount remitted to ensure that all of the TOT owed has been remitted. In addition, hosts may use multiple platforms, and therefore, the City may still need to collect TOT directly from a permittee.

### **FISCAL IMPACT**

If enforcement is complaint driven, as it is with other sections of the Municipal Code, then the City would not need to hire a vendor to search out illegal short-term rentals. This would reduce the cost of enforcing the ordinance. One-time initial costs would include staff time to develop the ordinance; present it to the Housing Committee, Planning Commission, and City Council; and notify residents and property managers before and after adoption; along with mailing costs for notification. Annual costs include staff time to answer questions, enforce the ordinance, provide legal support for enforcement, issue business licenses, receive fines and collect TOT. To the extent that there is compliance with the ordinance, there would be revenue from annual registration renewals, business tax certificates, and TOT.

### **CONCLUSION**

Staff requests that the City Council provide direction on the following discussion questions:

1. Does the Council agree that short-term rentals should be limited to single-family detached houses and prohibited elsewhere?
2. Does the Council agree that hosted short-term rentals of rooms should be unlimited, and non-hosted rentals of entire units should be limited to 90 days per year?
3. Does the Council agree with the permit criteria listed above under "Recommended Code Provisions"?
4. Does the Council agree that short-term rental operators should be required to obtain an annual permit and pay a registration fee?
5. Does the Council agree that enforcement should be complaint driven?
6. Does the Council have other concerns or comments?

**PREPARED BY:** Diana Keena, Associate Planner

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



Carolyn Lehr, City Manager

**Attachments:**

1. Staff Report from City Council Study Session on July 19, 2016
2. Short-Term Rental Survey Results - Older Residential Neighborhoods