



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, March 18, 2015  
7:00 PM

North Berkeley Senior Center  
1901 Hearst Ave / MLK Jr Way

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=13072>

### PRELIMINARY MATTERS

- Roll Call:** **Murphy, Stephen (Chair)**, appointed by Councilmember Capitelli, District 5  
**Matthews, Deborah (Vice Chair)**, appointed by Councilmember Moore, District 2  
**Novosel, Jim**, appointed by Councilmember Maio, District 1  
**Bartlett, Benjamin**, appointed by Councilmember Anderson, District 3  
**Poschman, Gene**, appointed by Councilmember Arreguin, District 4  
**Pollack, Harry**, appointed by Councilmember Wengraf, District 6  
**Lam, Elizabeth**, appointed by Councilmember Worthington, District 7  
**Chapple, Karen**, appointed by Councilmember Droste, District 8  
**Davis, Tracy**, appointed by Mayor Bates
- Order of Agenda:** The Commission may rearrange the agenda or place additional agenda items on the Consent Calendar.
- Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “*Public Testimony Guidelines*” below):
- Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting.
- Chairperson’s Report:** Report by Planning Commission Chair.
- Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- Approval of Minutes:** Approval of draft minutes of February 18, 2015.
- Future Agenda Items and Other Planning-Related Events:** None.

**CONSENT CALENDAR ITEMS** (See “*Consent Calendar Guidelines*” below): None.

**AGENDA ITEMS:** All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- |     |  |   |
|-----|--|---|
| 9.  | <b>Discussion:</b><br><b>Recommendation:</b><br><b>Written Materials:</b><br><b>Web Information:</b><br><b>Continued From:</b> | <b>Consider Commercial Quota Modifications</b><br>Provide feedback and direction to staff.<br>Attached.<br>Links attached to report<br>None.  |
| 10. | <b>Discussion:</b><br><b>Recommendation:</b><br><b>Written Materials:</b><br><b>Web Information:</b><br><b>Continued From:</b> | <b>Regulation of Short Term Rental Housing</b><br>Provide feedback and direction to staff.<br>Attached.<br>Links attached to report.<br>None. |

**ADDITIONAL AGENDA ITEMS:** In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

***Communications in packet:***

- Anthony Bruzzone, President, Berkeley Design Advocates Re: 2015 BDA Design Awards;
- Kristin Lee, Staff, Re: Impediments to Fair Housing.

***Late Communications (received and distributed at the meeting on 2/18/15):***

- Jay Kelekian, Executive Director, City of Berkeley Rent Board, Item 9;
- Peter Eakland, Transportation Consultant, Item 9;
- Paul McDougall, Housing Policy Manager, State of California, Department of Housing and Community Development, Item 9;
- Charlene Woodcock, Document from the San Francisco Mayor's Office of Fair Housing and Community Development and 2014 Income and Rent Limits for HCD Programs, Item 9

**ADJOURNMENT**

**Meeting Procedures**

***Public Testimony Guidelines:***

Speakers are customarily allotted up to three minutes each. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. ***To speak during Public Comment or during a Public Hearing, please line up behind the microphone.*** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See "Procedures for Correspondence to the Commissioners" below.

***Consent Calendar Guidelines:***

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson,

and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

***Procedures for Correspondence to the Commissioners:***

To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight (8) days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than twenty (20) pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the meeting date just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning, of the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

***Communications are Public Records:*** Communications to Berkeley boards, commissions, or committees are public records and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission, or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service, or in person, to the Secretary of the relevant board, commission, or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the Secretary to the relevant board, commission, or committee for further information.

***Written material*** may be viewed in advance of the meeting at the Department of Planning & Development, 2118 Milvia Street, First Floor, during regular business hours, or at the Reference Desk, of the Main Branch Library, 2090 Kittredge St., or the West Berkeley Branch Library, 1125 University Ave., during regular library hours.

***Accommodations Provided Upon Request:*** To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at 981-6342(V), or 981-7075 (TDD), and/or the Commission Secretary at least three (3) business days before the meeting date. Five (5) business days are needed to request a sign language or oral interpreter.

***Note: If you object to a project or to any City action*** or procedure relating to the project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

***Please refrain from wearing scented products to public meetings.***





Planning Commission

1  
2                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
3                   **February 18, 2015**

4   **Time:** The meeting was called to order by Chair Novosel, at 7:01 p.m.

5   **Location:** North Berkeley Senior Center, 1901 Hearst Ave., Berkeley, CA.

6   **Commissioners Present:** Eric Panzer (substitute for Karen Chapple), Deborah Matthews,  
7                   Tracy Davis, Harry Pollack, Jim Novosel, Stephen Murphy, Patrick Sheahan (substitute  
8                   for Benjamin Bartlett), Elizabeth Lam & Gene Poschman.

9   **Commissioners Absent:** Karen Chapple (excused), Benjamin Bartlett (excused)

10   **Staff Present:** Alex Amoroso, Jordan Harrison, Nicole Montojo.

11   **ORDER OF AGENDA:** None.

12   **PUBLIC COMMENT PERIOD:** 2 speakers.

13   **PLANNING STAFF REPORT:**

14   Principal Planner Alex Amoroso expressed his thanks to Associate Planner Jordan Harrison  
15   for her service; staff and the Commission congratulated her on her new position.

16   **LATE COMMUNICATIONS (received after Agenda deadline):**

- 17   1. February 17, 2015: Letter from Paul McDougall, California Department of Housing and  
18   Community Development re: adoption of Draft Housing Element  
19   2. Written comments regarding the Housing Element:
- 20       • February 13, 2015: Email from Leah Hess
  - 21       • February 13, 2015: Email from Katherine Harr
  - 22       • February 14, 2015: Email from Phoebe Sorgen
  - 23       • February 14, 2015: Email from Eleanor Walden
  - 24       • February 14, 2015: Email from Peni Hall
  - 25       • February 16, 2015: Email from Pei Wu
  - 26       • February 16, 2015: Email from Arlene Merryman
  - 27       • February 16, 2015: Email from Charlene Woodcock
  - 28       • February 17, 2015: Email from William E. Woodcock
  - 29       • February 17, 2015: Email from Josh Pfeffer
  - 30       • February 17, 2015: Email from Rob Wrenn
  - 31       • February 17, 2015: Email from William Bogert
  - 32       • February 18, 2015: Email from Judy Ann Alberti

- 33           • February 18, 2015: Email from Donald Goldmacher  
34           • February 18, 2015: Email from Kate Harrison  
35           • February 18, 2015: Email from Margot Smith  
36           • February 18, 2015: Email from Ben Mahrer  
37           • February 18, 2015: Letter from Peter Eakland  
38   3. February 18, 2105: Staff report re: Response to Public and Commission Comments on the  
39   Housing Element  
40   4. February 18, 2015: Berkeley Rent Stabilization Board, edits to “Rent Stabilization and  
41   Tenant Protections” in Chapter 6 of the Housing Element

42   **CHAIR REPORT:**

43   Chair Novosel welcomed temporary appointees Patrick Sheahan and Eric Panzer to the  
44   Commission.

45   **COMMITTEE REPORT:** None.

46   **APPROVAL OF MINUTES:**

47   Motion/Second/Carried (GP/SM) to approve the Draft Minutes of the Regular Meeting of  
48   February 4, 2015. Ayes: Eric Panzer, Deborah Matthews, Tracy Davis, Stephen Murphy, Jim  
49   Novosel, Harry Pollack, Elizabeth Lam, Gene Poschman & Patrick Sheahan.  
50   Noes: None. Abstain: None. Absent: None. (9-0-0)

51   **CONSENT CALENDAR:** None.

52

53   **AGENDA ITEMS:** *All agenda items are for discussion and possible action. Public Hearing*  
54   *items require hearing prior to Commission action.*

55   **9. Public Hearing: Updated 2015-2023 Berkeley Housing Element.**

56

56   Public Speakers: 16

57

58   Speaker 1: Mary Rose Sebastian spoke about the lack of affordable units and long wait  
59   lists for Below Market Rate (BMR) housing in Berkeley.

60   Speaker 2: James Chang spoke on behalf of Berkeley Tenant’s Union regarding the  
61   demolition of Rent Controlled Units. He asked the Commission to explicitly state that it  
62   supports demolition only in extreme cases and only if demolish units are replaced with  
63   permanent affordable housing with for current tenants.

64   Speaker 3: Julia Cato spoke on behalf of the Berkeley Tenant’s Union regarding  
65   habitability issues in Berkeley such as, mold, mildew, shoddy aging, hazardous wiring,  
66   and lack of heat—all issues impacting both safety and health of tenants. She stated that  
67   75% of Berkeley Tenants have indicated their units are in need of repair, but many  
68   tenants often do not report these issues due to fear of retaliation from landlords. She  
69   stated that tenants should be able to make anonymous complaints and that proactive  
70   inspections must be dramatically increased.

71   Speaker 4: Kathy Harr spoke on behalf of the Berkeley Tenant’s Union regarding the  
72   Affordable Housing Mitigation Fee (AHMF). She stated the Commission should  
73   recommend to the Council that the AHMF should be set at \$34,000 per unit rather than  
74   the current \$20,000. She stated that the goal of maintaining 17 percent of Berkeley’s

75 units as affordable for extremely low or very low-income households should be higher,  
76 given that 68 percent of renters are extremely low or very low-income.  
77

78 Speaker 5: Igor Tregub, Chair of the Housing Advisory Commission, stated that the a  
79 majority of Housing Advisory Commissioners believe that the AHMF should be at least  
80 \$28,000. He also stated that several HAC members believe that the City of Berkeley  
81 should increase the minimum amount of affordable housing that developers must  
82 provide onsite to 15 percent of units at 50 percent AMI instead of 10 percent.

83 Speaker 6: Maryanne Sluis stated that the City must examine its density bonus standards  
84 in order to keep pace with the demand for affordable housing. She stated that entitled  
85 projects that were originally density bonus projects should not be allowed to later take  
86 an in-lieu fee instead of meeting density bonus requirements.

87 Speaker 7: Jude Shelton stated that Berkeley should not allow developers to pay an  
88 AHMF and rather require that developers build inclusionary housing. She also stated  
89 that building owners should not be allowed to allow their properties to fall into disrepair  
90 and later demolish them.

91 Speaker 8: Kelly Hammergrin stated that she found it difficult to find and track information  
92 on the Housing Element public review process, which presented a challenge to  
93 commenting within the designated comment period. She stated her support for  
94 inclusionary housing in order to maintain diversity and stop displacement.

95 Speaker 9: Peter Eakland stated that Priority Development Area (PDA) boundaries  
96 should be revised to include the MUR and R-2A zoning districts. He also submitted his  
97 comments in written form.

98 Speaker 10: (Name not stated) said that the use of formerly rent-controlled units as short  
99 term rentals through AirBnB has created unpredictable and intolerable living conditions,  
100 which is a growing problem in Berkeley.

101 Speaker 11: (Name not stated) shared that as market rate rents have increased, as a  
102 landlord, he has been forced to charge more for rent. He also stated that members of  
103 the public should not have to pay for hard copies of City documents like the Housing  
104 Element.

105 Speaker 12: Tim Frank stated that the city needs far more housing units than specified by  
106 the RHNA allocation in order to fully address the housing shortage and meet social,  
107 environmental and regional needs.

108 Speaker 13: Merrilie Mitchell stated that UC Berkeley dorms should be counted toward  
109 Berkeley's efforts to meet its RHNA allocation. She stated that Berkeley needs more  
110 open space, parking, and affordable housing for Berkeley taxpayers.

111 Speaker 14: Jay Kelekian, Executive Director of the Berkeley Rent Stabilization Board  
112 stated that the Rent Board has provided its input to staff on the Housing Element, which  
113 calls for very few changes from the last draft presented to the Commission.

114 Speaker 15: Charlene Woodcock stated that the university is relying on private developers  
115 to house students, and only one or two development companies are buying up the  
116 majority of properties in Berkeley. She stated that as a result, the city is changing  
117 rapidly and it will be difficult for children of Berkeley's residents to afford to live in the  
118 city.

119 Speaker 16: (Name not stated) expressed her support for the Berkeley Tenant's Union's  
120 recommendations to the Commission.

121 Motion/Second/Carried (GP/SM) to close the public hearing. Ayes: Eric Panzer, Deborah  
122 Matthews, Tracy Davis, Stephen Murphy, Jim Novosel, Harry Pollack, Elizabeth Lam, Gene  
123 Poschman & Patrick Sheahan.  
124 Noes: None. Abstain: None. Absent: None. (9-0-0)

125  
126 Motion/Second (GP/TD) to recommend the draft Housing Element 2015-2023 and the draft  
127 Negative Declaration to the City Council for adoption. Further, the Commission acknowledges  
128 that any absence from the draft Housing Element of specific proposals submitted by the public  
129 to the Planning Commission shall not preclude these proposals from being addressed in the  
130 future by the appropriate City Commissions. Friendly Amendment/Carried (SM/GP) to  
131 recommend that the City Council review the City's procedures of making documents available  
132 for public review for future Housing Element review processes.  
133 Ayes: Eric Panzer, Deborah Matthews, Tracy Davis, Stephen Murphy, Jim Novosel, Harry  
134 Pollack, Elizabeth Lam, Gene Poschman & Patrick Sheahan.  
135 Noes: None. Abstain: None. Absent: None. (9-0-0)

136  
137

**10. Discussion: Regulation of Check Cashing Stores**  
**Recommendation/Action:**

138 Motion/Second/Carried (HP/DM) to approve staff's recommendation to exclude retail sellers  
139 who provide check cashing as a service that is incidental to its main business from the draft  
140 definition of "non-chartered financial institutions" that will be discussed at an upcoming public  
141 hearing. Ayes: Eric Panzer, Deborah Matthews, Tracy Davis, Stephen Murphy, Jim Novosel,  
142 Harry Pollack, Elizabeth Lam, Gene Poschman & Patrick Sheahan.  
143 Noes: None. Abstain: None. Absent: None. (9-0-0)

144

**11. Vote: Election of Officers**

145

The Commission elected Stephen Murphy as Chair and Deborah Matthews as Vice Chair of the Planning Commission. The Commission expressed their thanks to Chair Novosel for his leadership during his term.

146

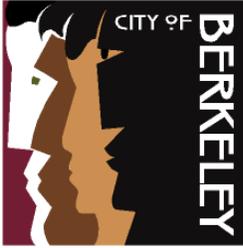
147 **The meeting was adjourned at 8:55 p.m.**

148

149 **Commissioners in attendance: 9 of 9**

150 **Members of the public in attendance: 20**

151 **Public Speakers: 18**



**Planning and Development Department**  
Land Use Planning Division

## **STAFF REPORT**

**DATE:** March 18, 2015  
**TO:** Members of the Planning Commission  
**FROM:** Alex Amoroso, Principal Planner  
Nicole Montojo, Planning Intern  
**SUBJECT:** Regulation of Short Term Rental Housing

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### **INTRODUCTION**

The issues of regulating short term rental housing are many and complex. This report and its attachments are intended to show the breadth of related issues, along with examples of several cities' plans to address short term rentals.

Addressing the full range of potential impacts and opportunities for the City will eventually entail a multi-departmental approach. Building and Safety, Finance, Code Enforcement, the City Attorney, the Rent Board and others will have to engage in various components of a complete response to short term rentals, which may include collection of Transient Occupancy Taxes, enforcement and abatement, and creation of rules of conduct.

The purview and focus of the Planning Commission is the Zoning Ordinance and proposal of useful regulations to address the potential land use impacts of short term rentals. This meeting is the first step in the process where the Commission will gain a broad understanding of the subject and start to focus on the task at hand.

### **BACKGROUND**

The impact of short term rentals through online hosting platforms has raised concern among some Berkeley residents. Among the leading companies in this rapidly-developing "shared economy" industry are Airbnb and VRBO (Vacation Rental by Owner). At the time of this writing, both of their websites feature listings for units available in Berkeley. Airbnb and VRBO are only two of several vacation/short term rental sites, which for the purpose of this project we will call "short term rentals businesses". These short term rental businesses (STRs) have different business models, from operating hosting sites that manage transactions and transfer fees, to hosting advertisements for free (Craigslist). This adds to the complexity of trying to manage such business types.

The City Manager received a referral from City Council (Attachment A) in April 2014 to create a policy requiring companies like Airbnb to pay the Transient Occupancy Tax (TOT), which is currently applied to other short-term stays of less than 30 days. In addition to this issue of taxation, other concerns include the following: a loss of affordable units available to permanent residents due to conversion of rent-controlled units into permanent short-term rental housing, disturbances to neighbors caused by short-term renters, and myriad health, safety, and legal concerns stemming from disparate regulations applied to these short-term rental units compared to long-term residential units on one hand, and traditional hotels and bed & breakfasts on another.

Currently, the City prohibits residential rentals of less than 14 days as shown in the following Zoning Ordinance excerpt. These types of residential rentals are not a defined use, but rather, are listed as Exemptions from General Provisions Applicable in All Districts in Section 23C.20.010 (Attachment B). These regulations would require modification if a legal pathway for STRs is to be considered. The Zoning Ordinance's definitions and regulations for other related business types, such as bed & breakfasts and tourist hotels, may also require consideration to distinguish them from short term residential rentals.

Aside from land use regulations within the Zoning Ordinance, operation of STRs in the City of Berkeley must adhere to Title 13 of the Berkeley Municipal Code, *Public Peace, Morals and Welfare, Division IX, Rent Stabilization*, which protects rent controlled rental units from being removed from the market except under limited circumstances. The Rent Board has expressed interest in the subject of STRs, with the staff having presented a report to their board regarding a range of concerns and potential impacts to rental housing and in particular rent controlled units (Attachment C). While it is not within the Planning Commission's purview, this ordinance section will affect STRs in Berkeley.

The League of California Cities (League) held a webinar on February 4, 2014 entitled "The Rise of Vacation/Short-Term Residential Rentals and What Cities are Doing about it". The webinar contains a list of issues, which can help guide discussion. The length and time commitment for the City of Napa process is instructive (pages 3 to 5), while the City of Petaluma ordinance graphic (page 6) shows a simplified layout of their commission's concerns. These pages have been provided as Attachment D and a web link to the full PowerPoint presentation is provided at the end of this report.

Several cities are attempting to regulate the impacts of and collect Transient Occupancy Taxes (TOT) from Airbnb type rentals. Methods vary, but generally the cities are recognizing that these rental systems are here to stay. Portland, OR (Attachment E) has implemented a program in the past year that may serve as an example for regulation in Berkeley. San Francisco's Short-Term Residential Rental ordinance took effect less than two months ago, requiring renters offering units through STRs to register with the SF Planning Department. Links to relevant SF Planning Department documents and web pages are provided at the end of this report.

## DISCUSSION

The Council referral identifies collecting Transient Occupancy Tax (TOT) as a high priority. While the referral does not provide specific direction on zoning, it does acknowledge the potential land use impacts of such an undertaking.

For the initial discussion at the March 18<sup>th</sup> Commission meeting, staff recommends focusing primarily on the task of determining the purpose and desired outcome of a land use policy regulating the operation of short term rentals in Berkeley. The Planning Commission's focus should be on regulations that protect the health and welfare of the community from short term rentals, as opposed to trying to regulate the businesses that advertise or host advertisements for these rentals.

Staff suggests that the Commission review the several examples of other cities' response to short term rental businesses (STRs). The examples provided in earlier noted attachments show that the city regulations vary in specifics, but typically fall into the following categories:

1. Financial regulation through collecting TOT and other fees.
2. Building Permit requirements including health and safety code upgrades for the rental spaces.
3. Zoning Ordinance/Code Enforcement regulations to control where in the City these businesses might be allowed, levels of discretion and other regulations.
4. Municipal Code rules of engagement and conduct

The Planning Commission is tasked with setting a regulatory framework that specifies a range of definitions and identifies districts where such uses might be applicable. Staff believes this is the appropriate starting point. Identified below are the typical components necessary to address the Zoning Ordinance questions for a subject. They are intended to guide the initial conversation.

### Definitions:

Short Term Rentals are defined generally as rentals of residential space (a room, or a unit). They may be rented by an on-site occupant, or an absentee renter/owner. The City has definitions for bed & breakfasts and residence hotels, but the definitions do not cover the new type of rentals. It may be that the existing definitions could be used in certain instances, but new definitions will be necessary.

### Applicability:

What districts should the City focus on to allow these types of rentals?  
Should all districts be included/allow for STRs, or are some better left out?

### Conditions of Use and levels of Discretion:

What regulations would be appropriate to limit short term rentals, above and beyond the questions of Applicability?

What areas of regulation are best to manage possible impacts from short term rentals: parking, proximity to other uses, other?

What level of discretion (ZC, AUP, UP) is appropriate to review an application for a STR? Is this review contingent on the size, location, or other factors related to the unit?

### CONCLUSION AND NEXT STEPS

Staff has provided introductory information to the Commission and requests general feedback. The process to develop such regulations is anticipated to take several months, with the particulars for zoning defined over that time period.

The next meeting will include a more focused discussion of zoning issues identified through Commission input. Staff anticipates updated information and results from jurisdictions already implementing similar regulations and this will inform staff recommendations as well.

#### Attachments:

- A. City Manager Referral: Policy for Companies Such as Airbnb to Pay Transient Occupancy Tax, as Currently Paid by Other Small Local Businesses
- B. City of Berkeley Zoning Ordinance Sections Relevant to Short Term Rentals
- C. City of Berkeley Rent Stabilization Board Report: Investigate the Legality of Airbnb and Traditional Rent Controlled Units
- D. League of California Cities Webinar Presentation (Excerpt): "The Rise of Vacation/Short-Term Residential Rentals and What Cities are Doing about it". Complete slide deck available online at <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Vacation-Rental-Webinar-Feb-2015.aspx>
- E. City of Portland Zoning Ordinance Chapter 33.207 Accessory Short-Term Rentals

#### Additional links:

San Francisco Short-Term Residential Rental Ordinance (No. 218-14):  
<http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0218-14.pdf>

San Francisco Planning Department Staff Report regarding Amendments Relating to Short-Term Rentals: <http://commissions.sfplanning.org/cpcpackets/2014.0707T.pdf>

San Francisco Planning Department Short-Term Residential Rental Registry Webpage: <http://www.sf-planning.org/index.aspx?page=4004>



Kriss Worthington  
Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170 FAX 510-981-7177  
[krworthington@ci.berkeley.ca.us](mailto:krworthington@ci.berkeley.ca.us)

CONSENT CALENDAR

April 29, 2014

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington  
Subject: City Manger Referral: Policy for Companies Such as Airbnb to Pay  
Transient Occupancy Tax, as Currently Paid by Other Small Local  
Businesses

RECOMMENDATION

Refer to the City Manager creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses.

BACKGROUND

Under the Transient Occupancy Tax (TOT), sometimes referred as “hotel tax,” the City is able to collect 12 percent on the room charge for rental of transient lodging when the period of occupancy is less than 30 days from Airbnb. Airbnb customers would be responsible for paying the 12 percent tax.

The City has published in the Adopted Biennial Budget for 2014-2015 a projected increase of 2 percent from Fiscal Year 2014 to Fiscal Year 2016 in Transient Occupancy Tax. However, Airbnb posts thousands of listings for Berkeley tourists to rent and an additional tax from their sales could greatly increase this projection.

This issue was brought to our attention by local Berkeley resident, Helen Christensen. An article in S.F. Gate entitled, “Airbnb to collect hotel taxes for San Francisco rentals,” discusses Airbnb’s plans to begin paying San Francisco’s 14 percent Transient Occupancy Tax by the summer. San Francisco and Oregon will be the first cities where this “hotel tax” would be collected from Airbnb.

The City should follow suit in asking Airbnb to pay its fair share of taxes in Berkeley.

<http://m.sfgate.com/news/article/Airbnb-to-collect-hotel-taxes-for-San-Francisco-5365352.php>

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Complies with the Environmental Sustainability Goals and has no negative environmental impacts.

CONTACT PERSON

Councilmember Kriss Worthington 510-981-7170  
Audrey Oh, intern, [audreyoh1234@berkeley.edu](mailto:audreyoh1234@berkeley.edu)  
Mimi Tam, intern, 510-981-7170



## Attachment B

### City of Berkeley Zoning Ordinance Sections Relevant to Short Term Rentals

#### Section 23C.20.010 Exempted Accessory Uses

- A. The renting of rooms and/or the providing of board in a dwelling unit to four (4) or fewer persons not living as a household is permitted by right as an accessory use in all residential districts, provided that:
1. The rental of rooms is for periods of at least fourteen (14) days; and
  2. The rooms which are rented:
    - a. Are fully integrated within the dwelling unit such that they have interior access to the rest of the dwelling unit;
    - b. Do not have separate kitchen(s); and
    - c. Do not have separate street addresses assigned to such room(s).
  3. All requirements for off-street parking are met.

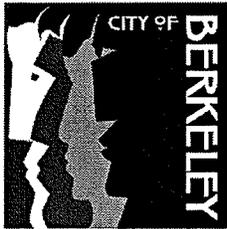
#### Section 23F.04.010 Definitions

**Bed and Breakfast Establishment:** A single residential property containing no more than a total of three sleeping rooms or dwelling units that are offered for rent at any given time, which is the primary residence of the owner and in which rooms or units are rented out to persons who occupy them for periods not exceeding 14 days in any month. For purposes of this ordinance, bed and breakfast establishments shall be regulated in the same manner as Tourist Hotels. Bed and breakfast establishments may be referred to in this title as "B&Bs".

**Hotel, Tourist:** A building composed of Tourist Hotel Rooms. Buildings containing Residential Hotel Rooms shall be deemed as Residential Hotels.

**Hotel, Residential:** A building which provides rooms for rent for residential purposes, including Single Residential Occupancy (SRO) Hotels. Residential Hotels are a type of Group Living Accommodation.





Rent Stabilization Board

**Date:** February 23, 2015

**To:** Rent Stabilization Board Commissioners

**From:** Commissioner Jesse Townley, Chair  
Commissioner Alejandro Soto-Vigil, Vice-Chair  
Commissioner Asa Dodsworth  
Commissioner James Chang

**Subject:** Investigate the legality of Airbnb and Traditional Rent Controlled Units

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**Recommendation:**

The Board requests the Rent Board legal staff to investigate whether current and future rent controlled units marketed on the Airbnb.com website violate Berkeley Municipal Code 13.76 and subsequent regulations.

**Jurisdictional Statement:**

The Rent Board has jurisdiction on this matter because in June of 1980 Berkeley residents passed the City's comprehensive rent stabilization law, known as the Rent Stabilization and Eviction for Good Cause Ordinance. (Berkeley Municipal Code Chapter 13.76.) The Ordinance regulates most residential rents in Berkeley, provides tenants with increased protection against unwarranted evictions and is intended to maintain affordable housing and preserve community diversity.

**Background:**

In 2008, Air Bed and Breakfast (Airbnb) was created to offer "short-term living quarters, breakfast and a unique business networking opportunity for attendees who were unable to book a hotel in the saturated market."<sup>1</sup> In 2009, airbnb.com "expanded from air beds and shared spaces to a variety of properties including entire homes and apartments, private rooms...properties"<sup>2</sup> to allow for internet rentals.

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<sup>1</sup> wikipedia see <http://en.wikipedia.org/wiki/Airbnb>

<sup>2</sup> Id. pg. 1

Several tenants have indicated that traditional rent controlled units have been placed on the airbnb.com website. The most recent notice came from Daniel and Yenli Moore who wrote a letter to Commissioners Dodsworth and Soto-Vigil indicating that the landlord at 3100 College Avenue have listed and rented several rent controlled units on the airbnb.com website. Berkeley Municipal Code 23C.060.020 and 23C.060.030 requires that bed and breakfast businesses comport to a variety of regulations including: owners must live in the building and pay all transient occupant and business license tax. On April 29, 2014, Berkeley City Councilmember Kriss Worthington sponsored a council item that "Refer to the City Manager creation of a policy for companies such as Airbnb to pay the Transient Occupancy Tax, as currently paid by other small local businesses." This item passed unanimously by the Berkeley City Council. To date, the City has not produced an analysis on this item.

The Rent Board is aware that the rental housing stock in Berkeley has skyrocketed. If it is true that the airbnb.com website reduces the number of rental units available to tenants, then rents will continue to rise at an alarming rate. It is imperative for the Rent Board to investigate how airbnb.com effects tenant housing.

The Rent Board has a duty and obligation to review and determine whether or not the traditional rent controlled units are adversely affected by short term rentals under services provided by airbnb.com. Further, the Rent Board legal staff must determine whether traditional rent controlled units listed on the airbnb.com website violate the Rent Stabilization Ordinance (BMC 13.76) and its progeny regulations.

### **Conclusion:**

The Rent Board must request the Rent Board legal staff to determine whether the current and future rent controlled units marketed on the Airbnb.com website violate Berkeley Municipal Code 13.76 and subsequent regulations.

### **Attachments:**

1. Wikipedia website <http://en.wikipedia.org/wiki/Airbnb>
2. Letter from Daniel and Yenli Moore
3. Margaret Phillips Airbnb profile page
4. 9 rental units by Jack and Margaret Phillips in Berkeley

# Airbnb

From Wikipedia, the free encyclopedia

**Airbnb** is a website for people to rent out lodging.<sup>[1]</sup> It has over 800,000 listings in 33,000 cities and 192 countries.<sup>[2][3]</sup> Founded in August 2008 and headquartered in San Francisco, California, the company is privately owned and operated by Airbnb, Inc.<sup>[4]</sup>

Users of the site must register and create a personal online profile before using the site. Every property is associated with a host whose profile includes recommendations by other users, reviews by previous guests, as well as a response rating and private messaging system.<sup>[5]</sup>

As of July 2011, the company had raised \$119.8 million in venture funding from Y Combinator, Greylock Partners, Sequoia Capital, Andreessen

Horowitz, DST Global Solutions, General Catalyst Partners<sup>[6]</sup> and undisclosed amounts from Youniversity Ventures' partners, Jawed Karim, Keith Rabois, and Kevin Hartz,<sup>[7]</sup> and from A Grade Investments' partners, Ashton Kutcher and Guy Oseary.

In April 2014, the company closed on an investment of \$450 million by TPG Capital at a valuation of approximately \$10 billion.<sup>[8]</sup>

## Airbnb



|                     |   |
|---------------------|---|
| <b>Type</b>         | Private   |
| <b>Industry</b>     | Social networking service   |
| <b>Founded</b>      | 2008  |
| <b>Headquarters</b> | San Francisco, California, U.S.   |
| <b>Key people</b>   | Brian Chesky, CEO<br>Joe Gebbia, CPO<br>Nathan Blecharczyk, CTO   |
| <b>Website</b>      | <a href="http://www.airbnb.com">www.airbnb.com</a><br>( <a href="https://www.airbnb.com">https://www.airbnb.com</a> ) |

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## History

Shortly after moving to San Francisco in October 2007, Brian Chesky and Joe Gebbia created the initial concept for AirBed & Breakfast during the Industrial Design Conference held by Industrial Designers Society of America.<sup>[9]</sup> The original site offered short-term living quarters, breakfast and a unique business networking opportunity for attendees who were unable to book a hotel in the saturated market.<sup>[10]</sup>

At the time, roommates Chesky and Gebbia could not afford the rent for their loft in San Francisco. They made their living room into a bed and breakfast, accommodating three guests on air mattresses and providing homemade breakfast.<sup>[11]</sup>

In February 2008, Harvard graduate and technical architect Nathan Blecharczyk joined as the third co-founder of AirBed & Breakfast.<sup>[12]</sup> During the company's initial stages, the founders focused on high-profile events where alternative lodging was scarce.<sup>[13]</sup> The site Airbedandbreakfast.com officially launched on August 11, 2008.<sup>[14]</sup>

To help fund the site, the founders created special edition breakfast cereals, with presidential candidates Barack Obama and John McCain as the inspiration for “Obama O’s” and “Cap’n McCains”.<sup>[15]</sup> In two months, 800 boxes of cereal were sold at \$40 each, which generated more than \$30,000 for the company’s incubation<sup>[16]</sup> and attracted Y Combinator’s Paul Graham.<sup>[17]</sup>

After its inauguration, the site expanded to include properties in the market between hotels and CouchSurfing.<sup>[18]</sup> In January 2009, Y Combinator invited Chesky, Gebbia and Blecharczyk to join the incubator’s winter session for three months of training.<sup>[19]</sup> With the website already built, they used the \$20,000 Y-Combinator investment to fly to New York to meet users and promote the site.<sup>[20]</sup> They returned to San Francisco with a profitable business model to present to West Coast investors.

In March 2009, the name Airbedandbreakfast.com was shortened to Airbnb.com, and the site’s content had expanded from air beds and shared spaces to a variety of properties including entire homes and apartments, private rooms, castles, boats, manors, tree houses, tipis, igloos, private islands and other properties.<sup>[21]</sup>

One year later, there were 15 people working from Chesky and Gebbia’s loft apartment on Rausch Street in San Francisco. To make room for employees, Brian Chesky gave up his bedroom and lived through the Airbnb service until the company moved into its first office space.<sup>[22]</sup>

The company continued to experience rapid growth through the year and in November 2010 raised \$7.2 million in Series A funding from Greylock Partners and Sequoia Capital, and announced that out of 700,000 nights booked, 80% had occurred in the past six months.<sup>[23]</sup>

On May 25, 2011, actor and partner at A-Grade Investments, Ashton Kutcher, announced a significant investment in the company and his role as a strategic brand advisor for the company.<sup>[24]</sup>

In July 2014, Airbnb revealed design revisions to their site and mobile app, and introduced a new logo.<sup>[25]</sup> Some considered the new icon to be visually similar to genitalia,<sup>[26]</sup> but a consumer survey by Survata showed only a minority of respondents thought this was the case.<sup>[27]</sup>

## International expansion

In May 2011, Airbnb acquired a German competitor, Accoleo. This acquisition launched the first international Airbnb office in Hamburg.<sup>[28]</sup> Then, in October 2011, Airbnb established its second international office in London.<sup>[29]</sup>

Given the growth of international users, Airbnb opened 6 additional international offices in early 2012. These cities include Paris, Milan, Barcelona, Copenhagen, Moscow, and São Paulo.<sup>[30]</sup> These are in addition to existing offices in San Francisco, London, Hamburg, and Berlin where Airbnb maintains its international presence for the EMEA markets within a German incubator space.<sup>[31]</sup> Airbnb announced in September 2013 that its European headquarters would be located in Dublin.<sup>[32]</sup>

At the beginning of November 2012, Chesky announced his focus on Australia, the second largest Airbnb market behind the United States, as well as Thailand and Indonesia. To support this effort, Airbnb opened its 11th office in Sydney.<sup>[33]</sup> The Australian consumer accounts for one-tenth of the Airbnb user base.<sup>[34]</sup>

Weeks after announcing the focus on Australia, Airbnb announced its strategy to move more aggressively into the Asian market with the launch of their newest headquarters in Singapore. The company's goal is to acquire an additional 2 million properties within the continent.<sup>[35]</sup>

## Company

### Location and revenue

The Airbnb founding team acts as the key managerial staff for Airbnb: Brian Chesky, Co-Founder and Chief Executive Officer; Joe Gebbia, Co-Founder and Chief Product Officer; and Nathan Blecharczyk, Co-Founder and Chief Technical Officer.<sup>[36]</sup>

Airbnb has its twelve offices in Barcelona (Spain), Berlin (Germany), Copenhagen (Denmark), Dublin (Ireland), London (UK), Milan, (Italy), Moscow (Russia), Paris (France), San Francisco (US), São Paulo (Brazil), Singapore, and Sydney (Australia).<sup>[37]</sup>

Airbnb's primary source of revenue comes from service fees from bookings.<sup>[38]</sup> Fees range between 6% and 12% depending on the price of the booking. Airbnb also charges the host 3% from each guest booking for credit card processing.<sup>[39]</sup>

In March 2014, the company announced plans to open a new "operational headquarters" for North America in Portland, Oregon, in summer 2014, but indicated that its main North American headquarters would remain in San Francisco.<sup>[40]</sup>

### Growth

In February 2011, Airbnb announced its 1 millionth booking since its inception in August 2008.<sup>[41][42]</sup> Then, in January 2012, Airbnb announced its 5 millionth night booked internationally through the service.<sup>[43]</sup> Of these bookings, 75% of the business came from markets outside of the continental United States. In June 2012, the company announced 10 million nights booked, doubling business in 5 months.<sup>[44]</sup>

By October 2013, Airbnb had served nine million guests since its founding in August 2008.<sup>[45]</sup> In December 2013, the company reported it had over six million new guests in 2013, and nearly 250,000 properties were added in 2013.<sup>[46]</sup>

## Mergers and acquisitions

Since mid-2011, Airbnb has acquired several of its competitors. The first of which was Accoleo based out of Hamburg. This became the company's first international office.<sup>[47]</sup>

Prior to the 2012 Summer Olympics, Airbnb acquired London-based rival CrashPadder, subsequently adding six thousand international listings to its existing inventory.<sup>[48]</sup> This acquisition made Airbnb the largest peer-to-peer accommodations website in the United Kingdom.<sup>[49]</sup>

Airbnb acquired NabeWise, a city guide that aggregates curated information for specified locations, in November 2012.<sup>[50]</sup> This acquisition shifted the company focus toward offering hyperlocal recommendations to travelers.<sup>[51]</sup>

In December 2012, Airbnb announced the acquisition of Localmind.<sup>[52]</sup> Localmind is a location-based question and answer platform that allows users to post questions about specific locations online. These questions are then answered in real-time by experts on the specified territories.<sup>[53]</sup>

## Business model and disruption

Airbnb runs on a marketplace platform model where it connects hosts and travelers and enables transactions without owning any rooms itself.<sup>[54]</sup> Such platforms disrupt traditional industries by creating new sources of supply and relying on curation for developing quality.<sup>[55]</sup> Unlike traditional hotels, Airbnb scales not by scaling inventory but by increasing the hosts and travelers and matching them with each other.<sup>[56]</sup>

## Operation

Airbnb is an online marketplace for vacation rentals that connects users with property to rent with users looking to rent the space. Users are categorized as “Hosts” and “Guests;” both of which must register with Airbnb using a variety of means. A valid email address and valid telephone were initially the only requirements to build a unique user profile on the website, however as of April 2013, a scan of a government issued ID is now required.<sup>[57]</sup>

Profiles include details such as user reviews and shared social connections to build a reputation and trust among users of the marketplace.<sup>[58]</sup> Other elements of the Airbnb profile include user recommendations and a private messaging system.<sup>[59]</sup>

In addition to providing personal information, hosts display listing details including price, amenities, house rules, imagery, and detailed information about their neighborhood. Due to the nature of the business, a merit system is in place to allow guests and hosts to leave references and ratings which are displayed to the public in order to provide an evaluation method.<sup>[60]</sup>

Since 2008, the website has developed to include social connections pulling data from social networking services such as Facebook. As of May 2011, the site uncovered over 300 million connections between Airbnb and the Facebook user groups.<sup>[61]</sup>

## Signup and reservations

It is free to create a listing using Airbnb. Users fill out form with initial details. Changes can be made at a later date. The listing will not go live until the user is ready to publish. Pricing can be determined by the user. User can charge different prices for nightly, weekly, and monthly stays as well as seasonal pricing. Users can use the Titles and Descriptions section to advertise their space. They can outline house rules or other descriptions regarding the residence. Airbnb allows users to publish up to 24 photographs of the place. Airbnb, on a limited basis, is offering free professional photography in most of the listed areas.<sup>[62]</sup> Profile is a place where the guests can research more about the users. This section is often used for users to display who they are as well as their philosophies on hosting.<sup>[63]</sup>

Guests are required to message the user directly through Airbnb to ask questions regarding the property. Users have 100% control over who books their place. When a potential guest puts in a reservation request, the host has at least 24 hours to accept or decline the request.<sup>[63]</sup>

After the user accepts a reservation, they can coordinate meeting times and contact information with guests. After the reservation is complete, users are encouraged to leave a review. Reviews help build validity and references both for the guests and the host.<sup>[63]</sup>

## Mobile

In addition to the Airbnb website, the company offers mobile applications for iOS and Android customers. As of September 2012, users had downloaded the mobile application over 1 million times which accounts for over 26% of the company's overall traffic.<sup>[64]</sup>

Through the mobile channel users have all functionality of the website which includes private messaging making communication three times faster between users.<sup>[65]</sup> The application also allows users to find listings based on what is available using geolocation.

In December 2012, Apple honored Airbnb with the Editor's Choice award for the Best Mobile Application of 2012 in the UK market.<sup>[66]</sup> Airbnb was also awarded Most Disruptive Service of 2012.<sup>[67]</sup>

In November 2013 Airbnb launched new versions of its iOS and Android apps,<sup>[68]</sup> adding the ability for hosts to communicate with guests and respond directly to guest messages.

## Security

Airbnb user profiles contain recommendations, reviews, and ratings to build credible online reputations within the platform. Additionally, the site provides a private messaging system as a channel for users to message one another privately before booking and accepting reservations.<sup>[69]</sup> Hosts are never required to accept a reservation.<sup>[70]</sup> After the guest has checked out, the parties review one another to build website credibility similar to online marketplaces like eBay.

Airbnb facilitates online payments from guest to host through its Security Payments feature which processes payment transactions 24 hours after check in.<sup>[71]</sup> This protocol offers a guarantee for guests and helps to uphold host cancellations policies before processing payments. Additionally, the Airbnb website facilitates security deposits and cleaning fees, the former of which is held until the property is vacated. The company's revenue comes from a 6% to 12% commission of the guest payment and 3% of what the host receives.<sup>[72]</sup>

Any Airbnb host can now require their prospective guests to obtain Verified IDs before booking. Initially trust was tit-for-tat so any host who requests this condition must also get verified. However this has been changed such that **all** guests must have a verified ID before booking.<sup>[73]</sup>

## Wish lists

In June 2012, Airbnb launched a wish list feature offering users the ability to create a curated catalog of desired listing they would like to visit.<sup>[74]</sup> Co-Founder and Chief Product Officer, Joe Gebbia and his team conceived the idea of changing the website from an online marketplace to a source for aspiration. Users can curate their favorite destinations into organized lists and share these with other users.<sup>[75]</sup> Since the launch of the Wish List functionality in June 2012, engagement with the Airbnb website increased by 30%. 45% of users engage with Wish Lists and had added over 1 million accommodations to personalized lists.<sup>[76]</sup>

In creating Wish Lists, the product team designed a proprietary "info scrolling system" which allows users to engage with these lists without the website slowing down the user experience. Additionally, Airbnb open sourced the code, Infinity.js to the software developer community.<sup>[77]</sup>

## Neighborhoods

In November 2012, Airbnb launched the Neighborhoods product.<sup>[78]</sup> This travel guide helps travelers choose to the ideal neighborhood match based on a series of collaborative filters and attributes such as Great Transit, Dining, Peace & Quiet, Nightlife, Touristy, and Shopping.<sup>[79]</sup> Currently, the Neighborhoods product is enabled for San Francisco, New York, London, Paris, Berlin, Washington, D.C., and Rio de Janeiro giving in-depth information for selected neighborhoods in these cities through photos, essays, maps, tags from locals, and assessments of public transportation.<sup>[80]</sup>

The Airbnb product team hand-mapped 300 neighborhoods within these seven cities and had local editors curate content for each neighborhood. Airbnb also added 70 street photographers who generated 40,000 photographs for the project.<sup>[81]</sup>

## Impact

### Critical reception

The founders of Airbnb have been praised for tenacity and creativity by Paul Graham (co-founder of Y-

Combinator, Airbnb's incubator)<sup>[82]</sup> and *The Wall Street Journal*.<sup>[83]</sup>

Airbnb has been compared to Craigslist, HomeAway, Flip Key, WorldEscape, Uproost, and Groupon, other sites that offer spur-of-the-moment rentals.<sup>[84]</sup> Airbnb won the "breakout app" award at the 2011 South by Southwest conference.<sup>[85]</sup> Along with Quora and Dropbox, *The New York Times* listed Airbnb among the next generation of multibillion dollar start-ups.<sup>[86]</sup> Following Airbnb, other services such as Getaround, Vayable, Guidehop, myTaskAngel and Task Rabbit launched with a similar model.<sup>[87]</sup>

New York's state legislature passed a law in July 2010 making it illegal to rent out Class A residential space for less than 30 days. However, the bill's sponsor, State Senator Liz Krueger said Airbnb and its competitors are not the law's target.<sup>[88]</sup> In Quebec, the government has specifically targeted individuals renting out their homes and apartments through Airbnb.<sup>[89]</sup>

## Cultural impact

In July 2010, the company received more than 300 emails from people who were on the brink of losing their homes through foreclosure due to financial hardship from the economic recession; these people said that they depended on their continued ability to sublet rooms in their residences.<sup>[90]</sup> Non homeowning users also frequently sublet their homes to renters for prolonged periods - often a breach of tenancy.<sup>[91]</sup> Yet a July 2014 ruling nixed a landlord's eviction plans after his New York City tenant sublet her unit through Airbnb. The judge found that local laws prohibiting short-term sublets only apply to landlords, potentially opening the doors to many more sublets through Airbnb in the coming months and years. Though this ruling sets a pro-sublet precedent, landlords who ask tenants to stop their practices will still expect compliance.<sup>[92]</sup>

Airbnb is also appealing to luxury homeowners. While most wealthy homeowners would have never considered renting out their properties over traditional bulletin boards, classified ads, or Internet sites like Craigslist, Airbnb offers a much more reliable service for affluent users to earn revenue from their second homes.<sup>[93]</sup> This phenomenon has caused much discourse for the American Hotel & Lodging Association as short-term private rentals continue to disrupt the hospitality industry.<sup>[94]</sup>

In November 2012, Airbnb commissioned HR&A Advisors to conduct a study which measured the market impact of collaborative consumption by users within urban populations. Specifically, the study measured the impact these companies had on the economy of San Francisco.<sup>[95]</sup> The study found that from April 2011 to May 2012, guests and hosts utilizing the service contributed \$56 million in spending within the San Francisco economy, \$43.1 million of which supported local businesses.<sup>[96]</sup> Over 90% of hosts surveyed rented their primary residences to visitors on an occasional basis, and spent nearly half the income they make on living expenses. The study also found the average guest stay was 5.5 days, compared to 3.5 days for hotel guests, and the average guest spent \$1,045 during their stay, compared to the \$840 spent by hotel guests.<sup>[97]</sup>

In the aftermath of Hurricane Sandy, Airbnb partnered with New York City Mayor Michael Bloomberg to offer free housing for persons displaced by the storm.<sup>[98]</sup> Airbnb built a microsite for this effort alone where victims register for housing and meet property owners with free housing.<sup>[99]</sup> Additionally, Airbnb waived all service fees associated with these listings while maintaining the Host Guarantee for all properties listed.<sup>[100]</sup>

## Criticism and controversies

### Use of spam

In June 2011, blogger and competitor Dave Gooden claimed that questionable sales practices including sending mass, automated emails to property owners on Craigslist led to Airbnb's success as an Internet startup company.<sup>[101]</sup> This user acquisition tactic was used along with several others when building the company business in 2009. However, the company found the practice largely ineffective.<sup>[102]</sup>

### Incidents and renters' security

In July 2011, there were first reports from a host, "EJ", who had her apartment burglarized and vandalized by an Airbnb guest.<sup>[103][104]</sup> After 14 hours of no response, Airbnb initially indicated that they would not compensate the host for damages.<sup>[103][105][106][107]</sup> They later reversed this decision amidst public backlash.<sup>[103]</sup> After three days of helping the victim, she claims Airbnb encouraged her to remove her complaint noting the "potentially negative impact" it could have on the company, and stopped contacting her completely.<sup>[103][106][107]</sup> Following the incident, more hosts came forward expressing similar experiences, including a man whose home had been rented through Airbnb to a meth addict who later stole the host's birth certificate, went through "everything he owned," and caused thousands of dollars in damage.<sup>[107][108]</sup> He expressed similar dissatisfaction with Airbnb's response to the situation.<sup>[108][109]</sup>

Airbnb recommends hosts obtain insurance which covers damages caused by guests.<sup>[110]</sup> Airbnb offers *secondary* insurance, calling it a host guarantee.<sup>[111]</sup>

In response to the property damages claims, Airbnb launched its "The Airbnb Host Guarantee" property protection program in August 2011 which covered property loss or damage due to vandalism and theft for up to \$50,000.<sup>[112]</sup> Additionally, the company initiated a 24-hour customer service hotline, established a taskforce to review suspicious activity, and implemented a suite of security features.<sup>[113]</sup>

In 2012, two prostitutes rented an apartment which the police raided.<sup>[114]</sup>

In March 2014, comedian and entrepreneur, Ari Teman, leased his New York apartment. Under the guise of using the space for relatives, it was rented for the purposes of an orgy. Teman said that \$87,000 in damages were caused and that the building is considering his eviction. The guests had references and verified their account.<sup>[115]</sup>

In New York, a number of cooperatives and condominiums now scan AirBnb seeking to determine if any apartments in their buildings are listed for rent.<sup>[116]</sup>

### **Financial, tax, and legal liabilities**

In January 2013, Airbnb user Nigel Warren faced the prospect of paying fines to New York City for renting his room on Airbnb. The case was made that certain language in New York's administrative code allowed temporary renters to lawfully stay for periods under 30 days. On 20 May 2013 a New York City administrative law judge, Clive Morricks, disagreed with this interpretation citing Mr. Warren a \$2,400 fine.<sup>[117]</sup> This new ruling does not make using the service "illegal", as long as stays are for more than 29 days. If not, users do stand the chance of facing fines per New York City.<sup>[118]</sup>

In January 2014 the Federal Court of Germany ruled that a transfer of residence to tourists is not covered by a permission to sublet. In this case the tenant was previously warned by the landlords. A pending new case centers around the question if even a termination without notice is possible if no explicit permission from the landlord is obtained.<sup>[119]</sup>

According to a study commissioned by Airbnb itself, in fiscal year 2011-2012, Airbnb should have collected and remitted \$1.9 million to the City of San Francisco, but they have yet to do so as of 2014.<sup>[120]</sup>

In San Francisco, Airbnb hosting is illegal under most circumstances whether you rent or own your property. Airbnb hosts have been fined by the city and received eviction notices from landlords.<sup>[121]</sup> Airbnb hosting is also illegal in New York City under many circumstances.<sup>[122]</sup>

### **Privacy and terms of use**

The new identity verification system "Verified ID" (initially announced in April 2013<sup>[123]</sup>) is perceived by customers as excessively intrusive and "creepy."<sup>[124][125][126][127][128]</sup> It requires three layers of customer identification: telephone, photo of ID (such as passport or driver's license), and verification of Facebook, LinkedIn or Google+ account. It is impossible to use the system if one of these data is not provided.

New users who do not have a suitable social media account or one that Airbnb consider unacceptable (such as a Facebook account with fewer than 100 friends) are required to submit a webcam video recording of themselves to Airbnb as an alternative form of id.<sup>[129] [130]</sup>

Linguist Mark Liberman has criticized the extreme length of the legal agreements that Airbnb members are required to accept, with the site's terms of service, privacy policy and other policies amounting to "55081 words, or about the size of a short novel, though much less readable", requiring several hours of reading time.<sup>[131]</sup>

Despite having no explicit ban on hosts filming guests, Airbnb updated its terms of use in November 2014 to require hosts to fully disclose the use to surveillance equipment and security cameras to guests.<sup>[132]</sup> Previously, no such disclosure was required.<sup>[133]</sup>

## Etiquette

The etiquette of Airbnb hosts has also come under criticism, citing unreasonable checkout duties, long wait times for hosts' keys and unkempt rental properties.<sup>[134]</sup>

## Customer Service

Airbnb scores bad on TrustPilot with a score of 2.9 out of 10<sup>[135]</sup> and has over 130 complaints listed on PissedConsumer.com.<sup>[136]</sup>

## Partial list of competitors

- 9flats
- Alterkeys
- BeWelcome
- CouchSurfing
- Flat-Club
- HomeAway
- Hospitality Club
- Hospitality service
- HouseTrip
- Pasporta Servo
- Roomorama
- Servas Open Doors
- SleepOut.com
- Travelmob
- Tripping
- Vacation Rentals By Owner
- Wimdu

## See also

- Online platforms for collaborative consumption

Daniel and Yenli Moore  
3100 College ave. #6  
Berkeley, CA 94705

To the members of the City Council:

I'm writing to request your attention to the growing threat from Airbnb and other short-term apartment rental businesses to the rental market in Berkeley.

My wife and I have lived in Berkeley for eleven years in the same building. Our landlords, Jack and Margaret Phillips, dba Trust Management Services, currently have nine Airbnb listings among several apartment buildings they own in Berkeley. As of today, three of the twelve units in our building are being offered as Airbnb rentals. These were once rent-controlled apartments and are no longer available to those seeking long-term tenancy.

Cities such as New York and San Francisco have recognized the serious threat that the loss of apartment rentals pose and have enacted strict new laws to ensure the availability of affordable rental housing to their residents.

I wish to add a more personal point as well. Our building at 3100 College Avenue was built in 1920 and has very poor sound insulation. It has been professionally tested and found not to meet modern standards. Only when all our building's occupants are aware of the challenges of living quietly together can it remain a place of quiet enjoyment, to which we are all entitled.

Airbnb has replaced our quiet environment with noise, anxiety and the nuisance of a steady flow of transients who have no investment in living here. The landlord has set the minimum stay on Airbnb units to only three days. That means that in as little as every three days we could be faced with the impact from yet another new set of transients with no stake in our home environment.

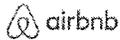
The introduction of Airbnb to the building has turned the home of a quiet and respectful group of professionals -- with the knowledge and understanding of what it takes to live comfortably with each other -- into an unpredictable, sometimes chaotic "anything goes" environment. As I write, there is a family of five flopping in the one-bedroom unit above us, and it's been, an unpleasant experience, to put it kindly. These intolerable new conditions are driving us out of the apartment we've enjoyed for so many years. We are looking for a new place to live, but that's getting harder every day due to the incentive of raking in much higher profits via such short-term guests, but if we're successful, it will leave one more vacant apartment to be filled with high-paying vagabonds.

The Berkeley Department of Planning & Development has informed us that under Berkeley Municipal Code Section 23C.06.020 and 23C.06.030, what our landlord is doing is illegal.

Please consider the damage this popular trend is doing to Berkeley's present and future residents and its shrinking rental market and adopt and enforce restrictive measures such as have been imposed by the cities of San Francisco and New York to reduce or eliminate this significant and growing threat.

Sincerely,

Daniel and Yenli Moore



Where are you going?

Browse

Sign Up Log In Help

List Your Space



# Hey, I'm Margaret!

San Carlos, California, United States · Member since August 2013

Born in England, now living in California for many years. Two (!!) graduate degrees from UC Berkeley. Frequent travel - tired of chain hotels. I have been an Airbnb guest in the US and several other countries and have appreciated the experience of staying in a real home, a place with warmth and character, in an interesting walkable neighborhood. That's what my co-host (my husband Jack) and I offer you, too, in Berkeley - a vibrant town with an internationally renowned university, distinctive architecture, innovative restaurants, serious coffee houses, bookstores, parks, museums, theater, a lively music scene - and conveniently close to San Francisco.

### Verified ID

- ✓ Email Address Verified
- ✓ Phone Number Verified
- ✓ Reviewed 79 Reviews
- ✓ Offline ID
- ✓ Personal intro



Reviews



Verified ID

## Reviews (75)

### Reviews From Guests



Nicole

Great studio space, not at all small-feeling, and really nicely furnished! I was the first guest to ever stay here and I hadn't even seen photos before I booked though I'm really glad I did. There were issues with the water heater that resulted in cold showers for a few days, but Margaret and her property manager, Binyam, did their best and the rest of my weekend stay went well!

+ More

February 2015

Cute 2nd Floor Elmwood Studio



Regina

Margaret's house was the key to my successful trip to Berkeley!!! On the 23 of Dec I ended up going to the ER, with consequences that I am still facing, yet, all this had been overcome by the wonderful house, exceptional location we were in, and how well we were taken care of. The house had everything we needed, beautiful house, clean, warm, cute and cozy. A great trip!

+ More

February 2015

Delightful Southside 1BR Cottage



Stephen

We stayed for three days, visiting our son who is studying at Berkeley. Lovely apartment, with wooden floors, high ceilings and tastefully decorated, as shown in the photos. 10 mins walk to the campus, and just a few minutes walk away from the neighbourhood area of Elmwood. We did not meet Margaret, but she was very attentive in her emails before we arrived and

+ More

January 2015

Stylish one bedroom, Elmwood area



Emile

Our stay at Margaret's place was perfect! We really felt at home. The apartment was spacious, clean and comfortable. The neighborhood is quiet and really beautiful, close to UC Berkeley campus. Margaret is an excellent host. She was available, replied to our messages quickly and showed support whenever we needed it. I highly recommend this place for a short or longer stay. Thanks Margaret!

January 2015

Stylish 2BR Mediterranean Townhome



Maria

Margaret's place was ideal. The apartment is as described in the post and it was perfect for me. I attended a training on the UC Berkeley campus and it was a short 15 minute walk. Margaret was so thoughtful to provide fresh fruit, juice, and milk. The space was clean and beautiful. The check-in process was a breeze, as I was met immediately by Binyam, Margaret's property manager. Should I make my way to Berkeley again, I would most definitely stay at one of Margaret's listings.

January 2015

Stylish one bedroom, Elmwood area



Virginia

Margaret is an excellent host. The apartment is comfortable and well located is you are commuting to Berkeley campus. I really enjoy my stay. Thanks Margaret

January 2015

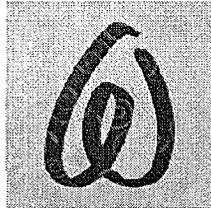
Charming & Spacious Elmwood Studio

### About Me

School  
UC Berkeley

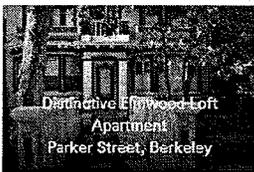
Work  
Freelance

### Margaret's Airbnb Symbol

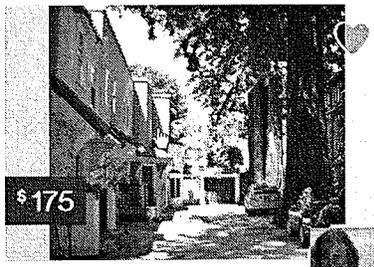


Visit create.airbnb.com

## Listings (9)



View all listings



\$175

Stylish 2BR Mediterranean T...  
Entire home/apt · 11 reviews · Berkeley



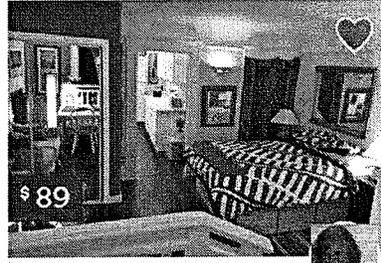
\$125

Classic & Spacious 1 BR - El...  
Entire home/apt · 5 reviews · Berkeley



\$110

Delightful Southside 1BR Cot...  
Entire home/apt · 12 reviews · Berkeley



\$89

Cute 2nd Floor Elmwood Stu...  
Entire home/apt · 1 review · Berkeley



\$125

Elegant & Spacious 1 BR in El...  
Entire home/apt · 21 reviews · Berkeley



\$115

Charming & Spacious Elmwo...  
Entire home/apt · 12 reviews · Berkeley



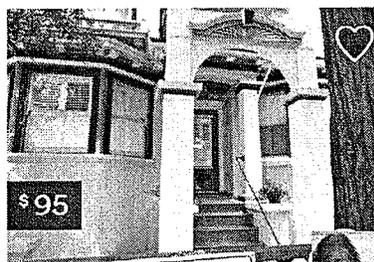
\$145

Distinctive Elmwood Loft Ap...  
Entire home/apt · 6 reviews · Berkeley



\$125

Colorful 1BR apartment in El...  
Entire home/apt · Berkeley



\$95

Stylish one bedroom, Elmwo...  
Entire home/apt · 3 reviews · Berkeley

# The Rise of Vacation/Short-Term Residential Rentals and What Cities Are Doing About It

February 4, 2015  
10:00 – 11:30 a.m.



## Issues

- Will short-term rental of residence be regulated as new land use?
- Will short-term rental of residence be regulated as a business?
- Will business license tax be imposed on owner/lessee?
- Will business license tax be imposed on “hosting platform” or other Internet advertising site?

# Issues - Continued

- Will transient occupancy tax be imposed on stay of less than 30 days?
- Who will be required to collect and remit T.O.T.?
- How will information about units for rent be gathered?
- Is an annual reporting requirement necessary?

## Regulation of Vacation Rentals in the City of Napa

Michael Barrett, City Attorney

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Ken MacNab, Planning Manager

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# Scope of Presentation

City of Napa's Efforts (2008 – 2010)

Balance:

“Transient” (30 days or less) Tourism Economy  
Preserve Tranquil Residential Neighborhoods  
(and Housing Stock)

Regulatory Stability

2014 – 2015 Demand for Additional Changes

## March 2008 Council Meeting

Strong and Conflicting Presentations:

VR Owners and Real Estate Brokers:

- Investments based on representations from City
- Value to the Community (tourist based economy)
- Well run businesses are good neighbors

Residential neighbors:

- Adverse impacts on peace and tranquility
- Shut down illegal uses

Council directed process for compromise solution

# Urgency Interim Permits

Many communications and meetings with community

7/1/2008: Urgency Interim Ordinance:

Establish regulations to permit continued operation if, as of January 9, 2008:

- Existing conditional license, or
- “Pipeline” project: provide documentation of reasonable reliance and investment in VR business based on representation from City

Potential licensees limited to 69:

50 existing conditional licenses

19 approved for “pipeline” status (of 33 applications)

Agreed to comply with new/undefined regulations

# Vacation Rental Ordinance

July 2008 – April 2009, many more community meetings

Ordinance adopted April 7, 2009 (NMC Section 17.52.515)

- Treat as quasi-legal nonconforming use (gradual elimination, non-transferable)
- Prove mitigation of adverse impacts on neighbors: (noise, traffic, parking, garbage, light, privacy, safety)
- Annual notices to neighbors with contact information
- Limit overnight guests (2 per bed rm, max 10)
- Limit daytime guests (2x overnight)
- Require owners to impose house “rules” on renters
- Annual inspections

# Vacation Rental Permits

49 Applications submitted (of 69 possible):

- 44 Vacation Rental Permits issued
- 2 applications approved as Bed & Breakfast Inn

3 challenges of City decision to deny VR permit

(all based on unmitigated impacts on neighbors)

- 3 appeals filed with Planning Commission
- 2 appeals filed with City Council
- 1 lawsuit successfully defended

# Vacation Rental Implementation

July – September 2010: Ordinance and fee structure amended:

- Minimal complaints from neighbors
- Reduced allocation of code enforcement staff
- Regulatory fee reduced from \$1,075 to \$197 per year

2014 – 2015: Interest in increasing number of VR permits

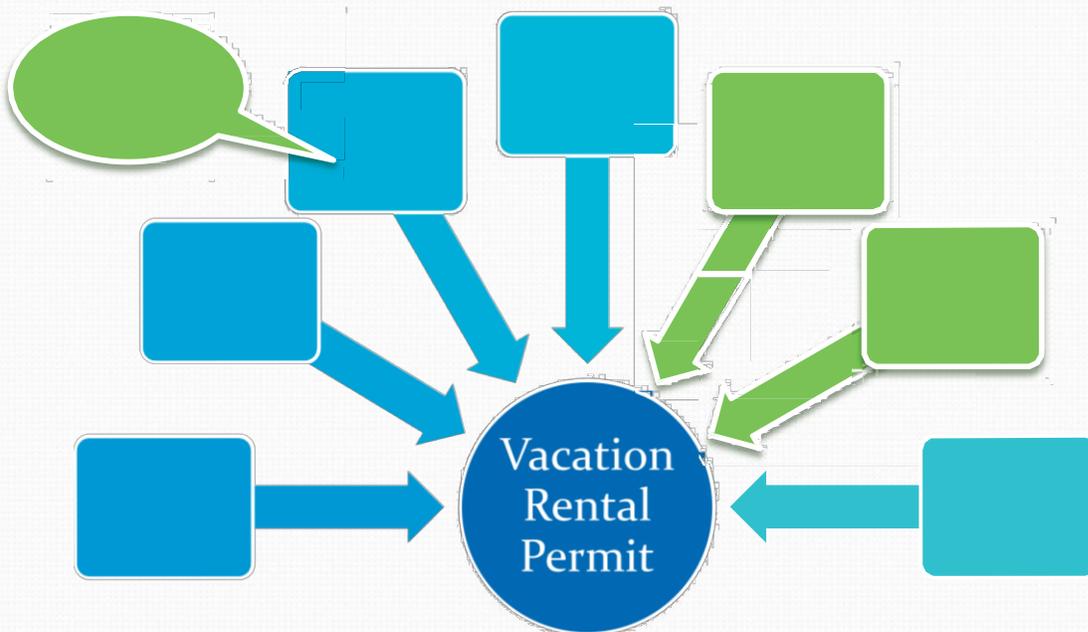
- January 2015: first community meeting
- Anticipated presentations to Planning Commission and City Council in 2015

# City of Petaluma

Ingrid Alverde, Economic Development Manager  
(707) 778-4549 [ialverde@ci.petaluma.ca.us](mailto:ialverde@ci.petaluma.ca.us)

Andrea Visveshwara, Assistant City Attorney  
[avisveshwara@ci.petaluma.ca.us](mailto:avisveshwara@ci.petaluma.ca.us)

## Recommended Ordinance from Petaluma's Planning Commission



# Issues Considered in Developing Petaluma's Recommended Ordinance

- Compliance with Business License and TOT Requirements
- CEQA Analysis
- Enforcement
- Annual Permit

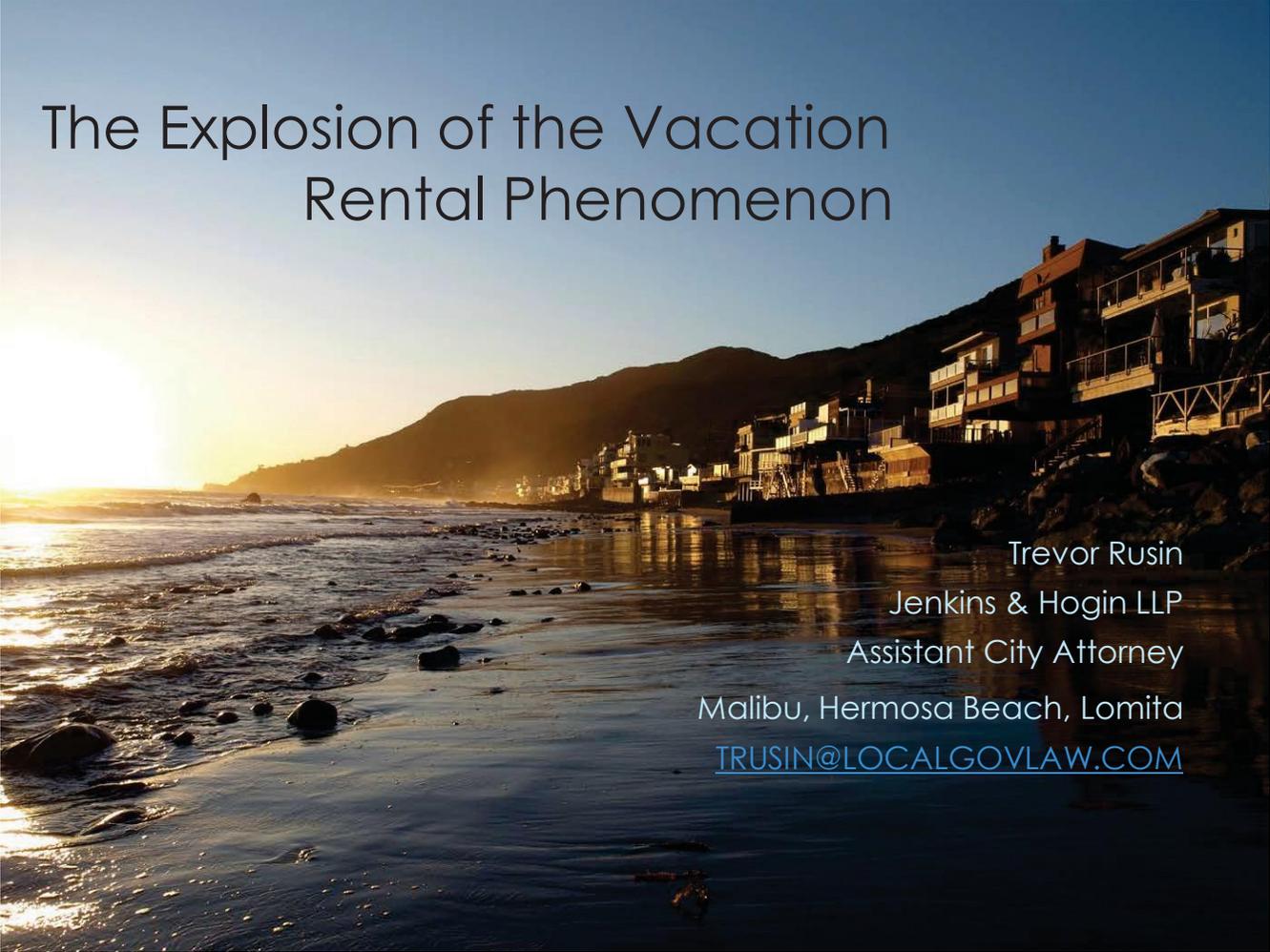
# Airbnb's Input on Petaluma's Recommended Ordinance

- Educated each other on constraints: technology vs. local regulations.
- Provided staff with examples from other jurisdictions.
- Provided helpful comments regarding need for clarification or unintended consequences.
- Agreed to disagree.

# Next Steps for Petaluma

- City Council will consider adoption of the proposed ordinance on February 23, 2015
- City Council staff report will be available on the City's website [www.cityofpetaluma.net](http://www.cityofpetaluma.net)
- Planning Commission's staff report for the November 18, 2014, meeting is available on the City's website

## The Explosion of the Vacation Rental Phenomenon



Trevor Rusin  
Jenkins & Hogin LLP  
Assistant City Attorney  
Malibu, Hermosa Beach, Lomita  
[TRUSIN@LOCALGOVLAW.COM](mailto:TRUSIN@LOCALGOVLAW.COM)

## **Obstacles to Enforcing a Vacation Rental Ordinance:**

- Privacy rights can hinder investigations
- Operators range from unsophisticated to highly savvy
- Evidence can be difficult to acquire
- Financial Temptation

## **Problems with Vacation Rental Bans**

- Pushes rentals underground
  - Financial penalties ineffective
- hybrid systems offer a compromise, but enforcing a limit is difficult.

# Malibu's Regulation of Vacation Rentals

**Malibu's Regulation Scheme has two key parts:**

- **Transient Occupancy Tax Ordinance**
  - Operators must register with the City
  - 12% Transient Occupancy Tax
  - Operators must maintain records for 3 years
  - Tax submitted to the City quarterly
- **Special Event Permit Ordinance**
  - Limited to 4 events per year
  - Permit required in advance

## **Enforcing a Vacation Rental Ordinance**

- Put the time into investigation
  - Everyone advertises; take advantage
  - Build a file for each property
- Education is the easiest, and cheapest, way to increase compliance
  - Results can be dramatic, especially if operators see that enforcement is a priority for the City.
- While education is the foundation of a good enforcement program, it needs to be paired with direct enforcement to be effective.

# Malibu's Enforcement Program



- Once violators are identified, request records
- If records are incomplete or not produced, issue subpoena for records to operator
  - It's harder to ignore a judge than a letter from the city
- Alternatively, the city can immediately assess tax and penalties based on known violations



## Accessory Short-Term Rentals

# 33.207

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### Sections:

- 33.207.010 Purpose
- 33.207.020 Description and Definitions
- 33.207.030 Where These Regulations Apply
- 33.207.040 Type A Accessory Short-Term Rentals
- 33.207.050 Type B Accessory Short-Term Rentals
- 33.207.060 Monitoring
- 33.207.070 Pre-Established Bed and Breakfast Facilities

### **33.207.010 Purpose**

This chapter provides standards for the establishment of accessory short-term rentals. The regulations are intended to allow for a more efficient use of residential structures, without detracting from neighborhood character, and ensuring that the primary use remains residential. In some situations, the operator can take advantage of the scale and architectural or historical significance of a residence. The regulations also provide an alternative form of lodging for visitors who prefer a residential setting.

### **33.207.020 Description and Definitions**

- A. Description.** An accessory short-term rental is where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for fewer than 30 consecutive days. There are two types of accessory short-term rental:
1. Type A. A Type A accessory short-term rental is where no more than 2 bedrooms are rented to overnight guests.
  2. Type B. A Type B accessory short-term rental is where 3 or more bedrooms are rented to overnight guests.
- B. Definitions.** For the purposes of this chapter, the following words have the following meanings:
1. Resident. The individual or family who resides in the dwelling unit. The resident can be the owner or a long-term renter.
  2. Operator. The resident or a person or entity that is designated by the resident to manage the accessory short-term rental.

### **33.207.030 Where These Regulations Apply**

The regulations of this chapter apply to accessory short-term rentals in all zones. In zones where Retail Sales And Service uses are allowed, limited or conditional uses, accessory short-term rentals may be regulated either as a Retail Sales And Service use, or as an accessory short-term rental under the regulations of this chapter. The decision is up to the applicant.

### 33.207.040 Type A Accessory Short-Term Rentals

#### A. Use-related regulations.

1. Accessory use. A Type A accessory short-term rental must be accessory to a Household Living use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year, and unless allowed by Paragraph .040.B.2 or .040.B.3, the bedrooms rented to overnight guests must be within the dwelling unit that the resident occupies.
2. Permit required. A Type A accessory short-term rental requires a Type A accessory short-term rental permit consistent with Subsection 040.C.
3. Allowed structure type. A Type A accessory short-term rental is allowed in all residential structure types when accessory to a Household Living use.
4. Cap. The number of dwelling units in a multi-dwelling structure or a triplex that can have an accessory short-term rental is limited to 1 unit or 25 percent of the total number of units in the structure, whichever is greater.
5. Prohibition. Accessory short term rentals are prohibited in a building subject to Chapter 13 of the Uniform Building Code (1970 edition) in effect on September 7, 1972, except when the Fire Marshal's Office has determined that the building has a fire sprinkler system that protects the exitways.

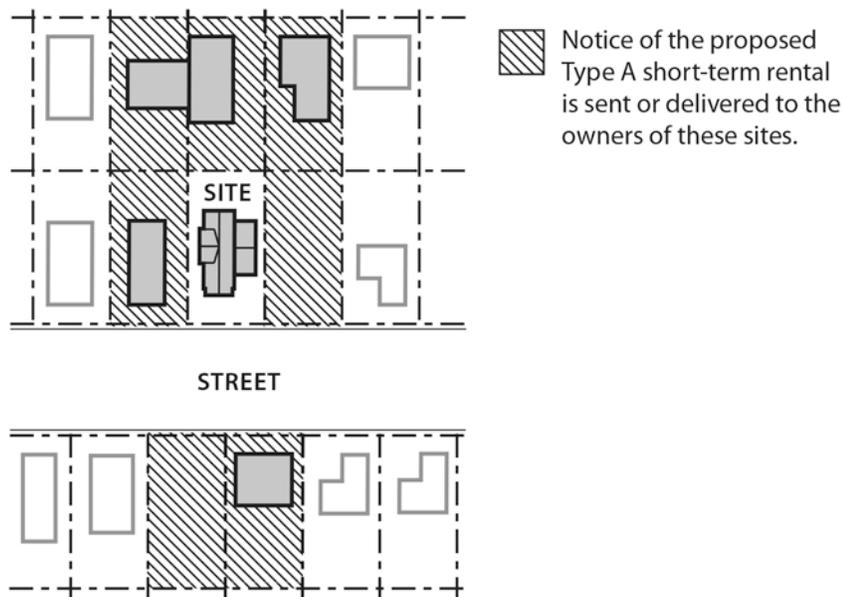
#### B. Standards. The following standards apply to Type A accessory short-term rentals. Adjustments are prohibited:

1. Maximum size. A Type A accessory short-term rental is limited to renting a maximum of 2 bedrooms to overnight guests.
2. Accessory dwelling units. On sites with an accessory dwelling unit, the resident can live in the primary or accessory dwelling unit and rent bedrooms in either dwelling unit, but the maximum number of bedrooms on the site that can be rented to overnight guests is 2.
3. Detached accessory structures. A bedroom in a detached accessory structure can be rented to overnight guests, and counts toward the maximum size limit.
4. Bedroom requirements. The Bureau of Development Services must verify that each bedroom to be rented to overnight guests:
  - a. Met the building code requirements for a sleeping room at the time it was created or converted. Bedrooms in multi-dwelling structures and in triplexes are exempt from this requirement;
  - b. Has a smoke detector that is interconnected with a smoke detector in an adjacent hallway that is in the dwelling unit; and
  - c. Is located on the floor of a dwelling unit equipped with a functioning carbon monoxide alarm. If the dwelling unit does not have a carbon monoxide source, then a carbon monoxide alarm is not required.

5. Number of residents and guests. The total number of residents and guests occupying a dwelling unit with a Type A accessory short-term rental may not exceed the number allowed for a household. For sites with an accessory dwelling unit, the total number of residents and guests occupying both dwelling units may not exceed the number allowed for a household.
  6. Employees. Nonresident employees are prohibited. Hired service for normal maintenance, repair and care of the residence or site, such as yard maintenance or house cleaning, is allowed.
  7. Services to overnight guests and visitors. Serving alcohol and food to overnight guests and visitors is allowed and may be subject to other county or state requirements.
  8. Commercial meetings. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation. Commercial meetings are prohibited with a Type A accessory short-term rental. A historic landmark that receives special assessment from the State, may be open to the public for 4 hours one day each year. This is not considered a commercial meeting.
  9. A Type B accessory home occupation is prohibited with a Type A accessory short-term rental.
- C. Type A accessory short-term rental permit.** The resident of a dwelling unit with a Type A accessory short-term rental must obtain a permit from the Bureau of Development Services. It is the responsibility of the resident to obtain the permit every two years. The permit requires the resident, and operator if the operator is not the resident, to agree to abide by the requirements of this section, and document that the required notification requirements have been met:
1. Notification. The resident must:
    - a. Prepare a notification letter that:
      - (1) Describes the operation and the number of bedrooms that will be rented to overnight guests;
      - (2) Includes information on how to contact the resident, and the operator if the operator is not the resident, by phone; and
      - (3) Describes how the standards in Subsection .040.A and B are met.
    - b. Mail or deliver the notification letter as follows:
      - (1) All residential structure types except multi-dwelling structures. If the Type A accessory short-term rental is in a dwelling unit in a residential structure other than a multi-dwelling structure, then the notification letter must be mailed or delivered to all recognized organizations whose boundaries include the accessory short-term rental, and all residents and owners of property abutting or across the street from the accessory short-term rental. See Figure 207-1.

- (2) Multi-dwelling structures. If the Type A accessory short-term rental is in a dwelling unit in a multi-dwelling structure, then the notification letter must be mailed or delivered to all recognized organizations whose boundaries include the accessory short-term rental, the property manager if there is one, and all residents and owners of dwelling units abutting, across the hall from, above, and below the accessory short-term rental.
2. Required information for permit. In order to apply for a Type A accessory short-term rental permit, the resident or operator must submit to the Bureau of Development Services:
    - a. Two copies of the completed application form bearing the address of the property, and the name, notarized signature, address, and telephone number of the following:
      - (1) Resident;
      - (2) Operator; and
      - (3) Property owner or their authorized agent.
    - b. A copy of the notification letter and a list with the names and addresses of all the property owners, residents, and recognized organizations that received the notification.

**Figure 207-1**  
**Type A Accessory Short-Term Rental Permit Notice Area**  
**for All Dwelling Units Except Those in Multi-Dwelling Structures**



- D. Revoking a Type A accessory short-term rental permit.** A Type A accessory short-term rental permit can be revoked according to the procedures in City Code Section 3.30.040 for failure to comply with the regulations of this Chapter. When a Type A accessory short-term rental permit has been revoked, a new Type A accessory short-term rental permit will not be issued to that resident at that site for 2 years.

### **33.207.050 Type B Accessory Short-Term Rentals**

#### **A. Use-related regulations.**

1. Accessory use. A Type B accessory short-term rental must be accessory to a Household Living use on a site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year, and unless allowed by Paragraph .050.B.2 or .050.B.3, the bedrooms rented to guests must be within the dwelling unit that the resident occupies.
2. Conditional use review. A Type B accessory short-term rental requires a conditional use review. A Type B accessory short-term rental that proposes commercial meetings is processed through a Type III procedure. All other Type B accessory short-term rentals are processed through a Type II procedure. The approval criteria are stated in 33.815.105, Institutional and Other Uses in R Zones.
3. Allowed structure type. A Type B accessory short-term rental is allowed in all residential structure types when accessory to a Household Living use.
4. Cap. The number of dwelling units in a multi-dwelling structure or a triplex that can have an accessory short-term rental is limited to 1 unit or 25 percent of the total number of units in the structure, whichever is greater.
5. Prohibition. Accessory short term rentals are prohibited in a building subject to Chapter 13 of the Uniform Building Code (1970 edition) in effect on September 7, 1972, except when the Fire Marshal's Office has determined that the building has a fire sprinkler system that protects the exitways.

#### **B. Standards.**

1. Maximum size. Type B accessory short-term rental is limited to renting a maximum of 5 bedrooms to overnight guests. In the single-dwelling zones, a Type B accessory short-term rental over this size limit is prohibited.
2. Accessory dwelling units. On sites with an accessory dwelling unit, the resident can live in the primary or accessory dwelling unit and rent bedrooms in either dwelling unit.
3. Detached accessory structures. A bedroom in a detached accessory structure can be rented to overnight guests, and counts toward the maximum size limit.
4. Bedroom requirements. The Bureau of Development Services must verify that each bedroom to be rented to overnight guests:

- a. Met the building code requirements for a sleeping room at the time it was created or converted. Bedrooms in multi-dwelling structures and in triplexes are exempt from this requirement;
  - b. Has a smoke detector that is interconnected with a smoke detector in an adjacent hallway that is in the dwelling unit; and
  - c. Is located on the floor of a dwelling unit equipped with a functioning carbon monoxide alarm. If the dwelling unit does not have a carbon monoxide source, then a carbon monoxide alarm is not required.
5. Number of residents and overnight guests. The total number of residents and overnight guests occupying a dwelling unit with a Type B accessory short-term rental may be limited as part of a conditional use approval.
6. Employees. Nonresident employees for activities such as booking rooms and food preparation may be approved as part of the conditional use review. Hired service for normal maintenance, repair and care of the residence or site, such as yard maintenance or house cleaning, is allowed. The number of employees and the frequency of employee auto trips to the facility may be limited or monitored as part of a conditional use approval.
7. Services to guests and visitors. Serving alcohol and food to guests and visitors is allowed and may be subject to other county or state requirements.
8. Commercial meetings.
- a. Commercial meetings. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation. Commercial meetings are regulated as follows:
    - (1) In the single-dwelling zones, commercial meetings are prohibited;
    - (2) In all other zones, up to 24 commercial meetings per year may be approved as part of a conditional use review. The maximum number of visitors or guests per event will be determined through the conditional use review. Adjustments to the maximum number of meetings per year are prohibited.
  - b. Historic landmarks. A historic landmark that receives special assessment from the State, may be open to the public for 4 hours one day each year. This does not count as a commercial meeting.
  - c. Meeting log. The operator must log the dates of all commercial meetings held, and the number of visitors or guests at each event. The log must be available for inspection by City staff upon request.
9. Appearance. Residential structures may be remodeled for the development of an accessory short-term rental. However, structural alterations may not be made that prevent the structure being used as a residence in the future. Internal or external changes that will make the dwelling appear less residential in nature or function are

not allowed. Examples of such alterations include installation of more than three parking spaces, paving of required setbacks, and commercial-type exterior lighting.

10. A Type B accessory home occupation is prohibited with a Type B accessory short-term rental.

### **33.207.060 Monitoring**

All accessory short-term rentals must maintain a guest log book. It must include the names and home addresses of guests, guest's license plate numbers if traveling by car, dates of stay, and the room assigned to each guest. The log must be available for inspection by City staff upon request.

### **33.207.070 Pre-Established Bed and Breakfast Facilities**

- A. Facilities without a revocable permit.** Bed and breakfast facilities that were operating before May 24, 1988, and which did not receive a revocable permit, may continue to operate as an approved conditional use if the operator can show proof that the operation was established through City licensing. The requirements for verification are listed below.
  1. The facility was operating with a City business license or was granted exemption from the business license requirement;
  2. City transient lodging taxes were paid part or all of the tax period preceding May 24, 1988; and
  3. The owner or operator can document that the Portland Bureaus of Planning or Buildings approved the site for a bed and breakfast facility prior to purchase, construction, or remodeling of the facility.
- B. Alterations and Expansions.** The approved conditional use status provided for in Subsection 070.A applies only to the number of bedrooms and size of facility that existed on January 1, 1991. Any expansions of building area or alterations that increase the intensity of the facility are not allowed unless approved through a conditional use review as provided in Section 33.207.050.A.2.
- C. Facilities with a revocable permit.** Bed and breakfast facilities operating under approved revocable permits are subject to the regulations for revocable permits in 33.700.120, Status of Prior Revocable Permits.

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*(Amended by: Ord. No. 164264, effective 7/5/91; Ord. No. 169324, effective 10/12/95; Ord. No. 174263, effective 4/15/00; Ord. No. 175204, effective 3/1/01; Ord. No. 178657, effective 9/3/04; Ord. No. 186736, effective 8/29/14; Ord. No. 186976, effective 2/13/15.)*



**Berkeley Design Advocates**

**Communications  
Planning Commission  
March 18, 2015**



5 March 2015

The Honorable Tom Bates  
Mayor  
City of Berkeley  
2180 Milvia Street  
Berkeley, California 94704

RECEIVED

MAR 05 2015

LAND USE PLANNING

To the Honorable Mayor Bates  
and Members of the Berkeley City Council

Re: 2015 BDA Design Awards

Please accept our invitation to attend the 11th biennial Berkeley Design Advocates Design Awards ceremony. The ceremony will be held on Wednesday March 18, starting at 630pm, at the Aurora Theater, 2081 Addison Street, downtown Berkeley (adjacent to the Berkeley Rep).

Berkeley Design Advocates is dedicated to improving the built environment and has worked for good planning and design in Berkeley since 1973. Our biennial design awards are the opportunity for the Berkeley community to celebrate great design in the built environment. This year we will honor 12 outstanding projects that were completed between January 2013 and December 2014.

We hope that you can join us for this fun and often inspirational event. We look forward to seeing you.

Sincerely,

Anthony Bruzzone, President  
Berkeley Design Advocates

cc: City Manager Daniel  
Planning Commission Secretary  
Zoning Adjustments Board Secretary  
Planning Director Angstadt and Planning Staff





Health, Housing & Community Services Department

**Date:** Friday, March 06, 2015 10:41 AM

**From:** Lee, Kristen S.

**To:** Planning Commissioners and Interested Parties

**Subject:** Impediments to Fair Housing

Dear Commissioners and Interested Parties:

The City of Berkeley's Housing Advisory Commission will hold a special public meeting on **March 11, 2015, at 7:00 PM, at the South Berkeley Senior Center** (2939 Ellis Street), to discuss an update to the City's Analysis of Impediments to Fair Housing Choice (AI).

The purpose of the AI is to identify barriers to residents' ability to choose housing in an environment free from discrimination, present recommendations that may be adopted to overcome these barriers, and monitor progress in achieving the adopted recommendations. As a recipient of U.S. Department of Housing and Urban Development (HUD) Community Planning and Development funds, the City of Berkeley is required prepare regular updates to the AI. Information presented in the AI will inform future City of Berkeley planning efforts such as the City's Housing Element and Consolidated Plan.

Please contact me if you have any questions.

Kristen

**Kristen Lee**

Manager, Housing & Community Services  
City of Berkeley Health, Housing & Community Services Department  
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