




Office of the City Manager

ACTION CALENDAR

July 7, 2016

(Continued from June 28, 2016)

To: Honorable Mayor and Members of the City Council

From:  Dee Williams-Ridley, City Manager

Submitted by: Carol Johnson, Acting Director, Planning and Development

Subject: Short-Term Rental Regulations Ordinance, Adding BMC Chapter 23C.22 and Amending Titles 23D and 23E

RECOMMENDATION

Adopt first reading of an Ordinance regulating Short-Term Rentals, adding BMC Chapter 23C.22 and amending Titles 23D and 23E to make related changes.

FISCAL IMPACTS OF RECOMMENDATION

Adoption of an Ordinance governing Short-Term Rentals in Berkeley would generate additional revenues to the City, and would also require additional Code Enforcement resources to enforce the new regulations. The end result of adoption would likely be a positive net fiscal impact to the City, but a full analysis required to quantify that outcome has not yet been conducted.

CURRENT SITUATION AND ITS EFFECTS

On May 31, 2016, the Council adopted the first reading of an ordinance regulating short term rentals. On June 14, 2016, the Council continued the item to June 28, 2016 and directed staff to return with amendments or information on the items below.

1. Posting of business license on the host platform.
2. Clarity on the specific differences between the two versions of the ordinance (staff and Planning Commission).
3. A clearer definition of dwelling unit.
4. Establishing the enforcement fee at 2%, and reevaluate after 1 year.
5. Information regarding the penalties for non-compliance and how enforcement will occur.
6. Develop a Q & A to address confusion by the public.

Given the extremely limited time available, this report does not include a Q & A as requested by item #6, especially since there is currently no final version of the ordinance on which to prepare a Q & A.

BACKGROUND

Staff has prepared a revised version of the ordinance adopted by Council on May 31, 2016. The first attachment is a redlined version showing the differences between the current proposal and the ordinance adopted on May 31st. The second attachment is a clean version of the revised ordinance.

1. Posting of business license on the host platform.

The revised ordinance omits this requirement.

2. Clarity on the specific differences between the two versions of the ordinance (staff and Planning Commission).

The attached table (see Attachment 3) shows the differences between the Planning Commission and staff drafts, and states how they were addressed by the Council in its first reading.

3. A clearer definition of dwelling unit.

The proposed ordinance prohibits short term rental (STR) of Accessory Dwelling Units (ADUs). Thus it becomes important to have clear standards as to what is an ADU and what is not.

There has been some confusion as to the definition of when habitable space constitutes an ADU. The Zoning Ordinance defines a “dwelling unit” as “A building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household.” Consistent with everyday experience, the City has always understood this to encompass cooking facilities.

However, cooking facilities can easily be installed in habitable space without triggering the need for building permits. This has enabled some property owners to create illegal dwelling units by installing cooking facilities. Accordingly, the City has for at least 20 years also considered habitable space with toilet and bathing facilities to be “dwelling units” as a preventative measure *for the purposes of triggering Zoning Ordinance requirements that control the creation of new dwelling units*. However this regulation, which was adopted in 1996, was not adopted to address STR of ADUs or non-ADU habitable space, and the City has never considered such habitable spaces to be “dwelling units” for all purposes, and specifically has not considered them to be ADUs. Moreover, a specific provision of the Zoning Ordinance addresses rental of non-ADU habitable space.

We review below the typical scenarios where this issue might arise.

- A property owner has obtained a Zoning Certificate to create an ADU. In such cases there is no question as to whether the habitable space is an ADU. Whether or not it may be used for STR is a policy question before the City Council. If the Council wishes to permit STR of ADUs, it should adopt the proposed ordinance but without Section 23C.22.020.D.
 - A habitable space where cooking facilities and toilet and bathing facilities already (legally) exist. There is also no question that the space is a dwelling unit (either ADU or primary). If such space is an ADU, the Council may choose to permit or prohibit its use for STR, as described in the preceding point.
 - A habitable space contains toilet and bathing facilities but no kitchen. Under BMC Section 23D.08.005 (“Permitted Uses in Accessory Buildings and Structures”), such habitable space may not be rented. Thus STRs would be prohibited. If the Council wishes to allow STR of such space, it should refer this issue to the Planning Commission for consideration and recommendation.
4. Establishing the enforcement fee at 2%, and reevaluate after 1 year.

The revised ordinance adopts a regulatory fee for the first enforcement period equal to 2% of the rentals charged by the host. This fee will be charged to each host but may be paid by the hosting platform, and will be adjusted in order to ensure that the fees collected do not exceed the cost of the program, like other City regulatory fees. The proposed ordinance provides that, while the initial amount of the fee is stated in the ordinance, it may be adjusted in the future by resolution of the City Council.

5. Information regarding the penalties for non-compliance and how enforcement will occur.

“Enforcement” of the STR ordinance encompasses a number of distinct efforts.

The first phase involves identifying all STR hosts in the City and determining whether STR at a given location is permissible. If it is, the host will be registered and informed of his or her responsibilities under the STR ordinance and other City laws. The goal is that upon completion of registration, the City will issue Zoning Certificates and establish business license tax and transient occupancy tax (TOT) accounts for each STR. The City issued an RFP in mid-June seeking vendors who will be able to undertake these tasks; details of implementation will depend on the selected vendor’s capabilities.

The vendor will also be responsible, once hosts are registered and tax accounts are set up, for collecting TOT and auditing compliance with the TOT, as well as collecting the enforcement fee. As stated in the ordinance hosting platforms will be permitted to pay the TOT and enforcement fee on behalf of their hosts.

Staff anticipates that the vendor will also be able to provide community outreach and a complaint hotline; in any event, community outreach will have to be conducted. Thereafter, enforcement will be on a complaint basis, as with enforcement of other municipal ordinances.

Penalties for violation include all remedies the City currently has for code violations, including criminal, administrative citations, and abatement. Staff will be able to answer specific questions on June 28th.

6. Develop a Q & A to address confusion by the public.

As noted above, due to the limited time available and the lack of an adopted ordinance, this has not been done. Staff will prepare Qs & As or a FAQ once an ordinance is adopted.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

N/A

ALTERNATIVE ACTIONS CONSIDERED

N/A

CONTACT PERSON

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Attachments:

- 1: Ordinance (redlined)
- 2: Ordinance (clean)
- 3: Comparison Table of Staff and Planning Commission versions