

DEPARTMENT OF
CITY PLANNING

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ROCKY WILES
COMMISSION OFFICE MANAGER
(213) 978-1300

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

VINCENT P. BERTONI, AICP
DIRECTOR
(213) 978-1271

KEVIN J. KELLER, AICP
EXECUTIVE OFFICER
(213) 978-1272

LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274

<http://planning.lacity.org>

January 11, 2018

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

SECOND SUPPLEMENTAL REPORT BACK RELATIVE TO PROPOSED HOME-SHARING ORDINANCE (COUNCIL FILES 14-1635-S2, 14-1635-S3)

On October 24, 2017, the Committee considered the proposed Home-Sharing Ordinance (HSO) for the second time. During the discussion, the PLUM Committee continued the matter and instructed the Department of City Planning (DCP), in consultation with the Office of the City Attorney and the City Administrative Officer, to report back on the following additional policy considerations:

- 1) Options or mechanisms to allow short-term rentals in properties beyond the proposed cap in either the current ordinance; or, a companion ordinance which may deal with vacation rentals and/or corporate housing;
- 2) The maximum legally justified fines for non-compliance or violations of a short-term rental ordinance by platforms or hosts;
- 3) Options for splitting the revenues from TOT collected for short-term rentals to be deposited in the General Fund and/or the Affordable Housing Trust Fund;
- 4) Options for a cap on the number of days that short-term rentals are allowed based on the break-even point for when short-term rentals are more lucrative than long-term rentals, including analysis of best practices from other jurisdictions;
- 5) Options for a companion ordinance that would expand and update the process which allows for corporate housing in non-primary residences;
- 6) Options for establishing a Standardized Platform Agreement for those who provide the service of connecting guests with hosts including:
 - a) mechanism to memorialize the agreement with platforms;
 - b) the legal authority; and
 - c) allowing for recovery for administrative and enforcement costs through fees.

- 7) Establishing an opt-out provision for landlords to exclude their properties from participating in home-sharing;
- 8) The implications of removing the proposed annual cap on home-sharing activity in a primary residence;
- 9) The possibility of requiring applicants to self-certify primary residency under penalty of perjury, with consideration of:
 - a) Easing the burden of upfront administration staffing and costs;
 - b) For investigation or verification, whether the City could require that supporting documentation be furnished upon demand at any time; and
 - c) Attaching large and escalating penalties and fines;
- 10) To conduct or carry out a Fee Study for a \$4 per day surcharge (pass-through to guests) for listings on all platforms, with the intent of reducing the per square foot amount of the proposed Linkage Fee.

The Department's response to each of the ten items is detailed below.

1. Options or mechanisms to allow short-term rentals in properties beyond the proposed cap in either the current ordinance; or, a companion ordinance which may deal with vacation rentals and/or corporate housing;

There are a number of policy options if the City Council is interested in modifying the proposed 180-day per year cap on short-term rentals. Please see response to question five for suggestions about vacation and/or corporate housing.

Option A. Retain or lower the cap but allow qualified hosts to exceed the cap through a discretionary review process

If the City Council wanted to allow hosts to exceed the cap, a discretionary process could be established for this purpose. This would allow for a more detailed case-by-case approach to ensure properties with intensified short-term rental activity are operated by responsible hosts in safe and habitable spaces.

One potential approach could allow short-term rentals beyond the cap through a Conditional Use Permit (CUP) if certain conditions are met, including:

- a) A neighbor notification/input process;
- b) Increased accountability for any nuisance behavior (e.g. two "strikes" (code violations) to lose registration, versus three for everyone else); and
- c) Standard CUP findings on compatibility and adverse impact.

This discretionary option would allow for a more careful case-by-case approach but would also result in a significant administrative burden for staff and applicants. There are 3,900 Airbnb listings that exceeded 180 days of short-term rental activity last year alone. Even if a minority of these current listings chose to apply for a CUP under these potential rules, it would create a significant burden on Planning staff and require additional staff positions and/or resources to process the applications. In addition, this option allows for significant financial incentives for short-term rental hosts without any additional protections for existing housing stock. For these reasons, the Department had not recommended this approach.

Option B. Retain or lower the cap but allow for exceptions based on policy priorities

A second option could allow for select hosts to exceed the cap based on type of listing.

Exempt Hosted Listings

Many cities with nightly short-term rental caps allow for unlimited stays when a host is present in the residence (i.e. "hosted" stays). Hosted activity protects the housing stock, ensures residential use is maintained and limits nuisance behavior by guests. This option would allow hosted stays to exceed the cap.

Unfortunately, it has proven difficult for any city to be able to verify whether each guest stay is hosted on a nightly basis. The City could require self-certification under the penalty of perjury and accept the use of complaints and proxy IT data to enforce violations, but enforcement would continue to be an issue of concern.

Exempt Shared Spaces or Private Rooms

Alternatively, the City could consider exemptions from the cap for shared spaces or private rooms only (not entire homes). This approach, however, also has its challenges from an enforcement perspective. While most platforms describe shared spaces separately (as self-reported by hosts), not all may make this information transparent. Another concern with this approach is that certain spaces may not neatly fit into the intended categories. For example, attached units are sometimes described as an entire home and many entire home listings are backyard detached spaces rather than separate units. For enforcement reasons, the Department had not recommended this approach.

While other policy options such as exemptions using a geographic-based approach or financial hardship were considered, ultimately the challenges with implementing these options would be considerable. Planning staff recommends that the cap remain at the Citywide level.

2. The maximum legally justified fines for non-compliance or violations of a short-term rental ordinance by platforms or hosts.

The proposed ordinance creates new fines for property owners, hosts and hosting platforms in LAMC 12.22 A.31 (g). The proposed fines on hosts and property owners are \$500, or two times the nightly rate (whichever is greater) for listing unregistered properties for rent, and \$2,000 per day for each day a unit is rented in excess of the 180 day cap. Platforms are subject to fines of \$1,000 per illegal listing, for refusal to provide information on property address and usage to the City.

Other cities have a range of fines for hosts and platforms. Miami Beach is believed to have the highest fines in the United States: \$20,000 against hosts with illegal short-term rentals. New York City has fines of up to \$7,500 against illegal hosts, but most cities have much lower fines ranging from \$250 to \$1,000.

3. Options for splitting the revenues from TOT collected for short term rentals to be deposited in the General Fund and/or the Affordable Housing Trust Fund (with CAO).

The proposed ordinance allocates 90 percent of the TOT collected from home-sharing to the Affordable Housing Trust Fund and ten percent for administration and enforcement. Alternatively, Council could decide to allocate all of the TOT revenue from short-term rentals to the General Fund and fund affordable housing and home-sharing registration and enforcement activities through separate budget allocations. Another option would be to retain all of the TOT from short

term rentals for either affordable housing and/or the general fund and establish an administrative fee on all hosts to cover the City's administrative and enforcement costs. This idea of an administrative fee or surcharge is discussed in more detail in item ten, below.

- Options for a cap on the number of days that short-term rentals are allowed based on the break-even point for when short-term rentals are more lucrative than long-term rentals, including analysis of best practices from other jurisdictions.

The October 19, 2017 DCP report discussed the "break-even point" for when short-term rentals become more lucrative than long-term rentals. It presented two studies by parties on either side of the issue (Los Angeles Alliance for a New Economy (LAANE) and Airbnb). The two studies used different methodologies to find a wide variation in the Citywide average break-even point - 83 to 177 days, while individual neighborhoods in Los Angeles ranged from 51 to 321 days (LAANE and Airbnb respectively).

The main difference in the studies is that the LAANE figures are based on median rent levels being paid by existing tenants, while the Airbnb study used asking rents for prospective tenants. Both have relevance in different situations, with the LAANE study addressing concerns about the pressure to evict existing tenants. The Airbnb methodology is based on the assumption that the decision to go short-term rental is only made once a unit is available. In reality, both instances occur; therefore, the appropriate break-even point depends on whether one wishes to take a more conservative approach to protect existing renters

Assuming the more permissive methodology in the Airbnb study the current 180-day cap is near the citywide average break-even point. The initial DCP recommendation of 90 days was a more conservative recommendation intended to minimize any impact on existing housing. A cap of 120 days would strike a midpoint, while a cap greater than 180 days would not be recommended.

Other cities with short-term rental regulations have developed various approaches to nightly caps.

- New York City and Santa Monica - Zero days on unhosted stays (where the host is not present)
 - Washington, D.C. - 15 days in entire home listings
 - New Orleans - 90 day cap on unhosted stays
 - San Francisco - 90 day cap on unhosted stays
 - Sacramento - 90 days if not a primary residence
 - Portland - 95 days on unhosted stays
 - San Jose - 180 days if an entire home listing
 - Philadelphia - 180 days, or up to 90 days without permit
- Options for a companion ordinance that would expand and update the process which allows for corporate housing in non-primary residences.

In order to consider potential options to allow for short-term corporate housing rentals in non-primary residences it is important to first acknowledge the extent to which the current zoning code allows for this activity. In multi-unit buildings, the *Transient Occupancy Residential Structure* (TORS) designation allows for partial or total short-term rental use in high-density zones (R4, R5 and C) through a Conditional Use Permit (CUP) approved by a Zoning Administrator.

The TORS designation was established in the early 1990s to allow for extended-stay hotels to include kitchens in the guest rooms, something otherwise not allowed. It is used today for corporate rental buildings providing a mix of short- and medium/long-term rentals (in high density zones through a CUP). The concern is that the TORS definition is broad enough to permit the

whole or partial conversion of existing apartment buildings currently providing important long-term housing to short-term rentals, which was not the original intent in creating the TORS use. In line with the direction in the original City Council Motion to preserve rental housing stock, the proposed ordinance would disallow the conversion of existing residential buildings to a TORS while preserving the opportunity for new buildings to request a TORS designation.

There are several options should the City Council choose to allow for short-term corporate rentals.

Option A - Require Conditions and Standards to Allow Transient Occupancy Residential Structure (TORS) Conversions

Instead of preventing TORS conversions altogether, as currently proposed, one option would be to require additional standards and conditions in order to limit the potential negative impacts. This option would allow certain apartments in high-density areas to continue to convert to extended-stay hotels and corporate rentals, but would not allow TORS in new construction. Applicants for TORS conversions must obtain a Certificate of Occupancy, Business Tax Registration Certificate (as needed) and Transient Occupancy Registration Certificate, as well as meet the following requirements:

- a) Transient leases may not be offered or leased for fewer than a set number of consecutive days;
- b) No more than 180 days of short-term rental may be provided per year in each unit;
- c) To the extent possible, long-term and short-term tenants should be grouped together on the same floor or section of a building;
- d) No changes may be made which would alter the residential character or appearance of the dwelling unit or property in any manner which precludes its residential use; and
- e) Building is not subject to the Rent Stabilization Ordinance (RSO).

Option B - Add Conditions and Standards to New Construction TORS Projects

Maintain the proposed amendments to LAMC 12.24 W.24 that would not allow TORS conversions, but add some or all of the first three additional conditions and standards described in Option A above to the TORS CUP process for new construction to the existing TORS ordinance.

Option C - Continue to Allow Existing TORS Conversion Process

Reversing the proposed amendments to LAMC 12.24 W.24 would continue to allow TORS conversions in the same method as today. This would essentially allow any apartment building in the R4, R5 or C zones to convert either some or all of the units to short-term rentals.

Due to the degree that the topic of allowing non-primary residences to be used as vacation rentals ventures outside of the currently proposed home-sharing ordinance, a separate vacation rental ordinance may be warranted. Consideration of vacation home policies may benefit from additional outreach and staff development, including any required environmental analysis.

6. Options for establishing a Standardized Platform Agreement for those who provide the service of connecting guests with hosts including:
 - a) A mechanism to memorialize agreement with platforms;
 - b) The legal authority; and
 - c) Allowing for recovery for administrative and enforcement costs through fees.

The proposed ordinance establishes responsibilities for hosts and hosting platforms to legally partake in home-sharing activity. If the City were to require agreements with platforms to

memorialize these responsibilities, it could have the benefit of allowing for some customization depending on the capabilities of the individual platform. Such an agreement could also allow for an incentive-based approach whereby, in exchange for remitting TOT and potentially paying a per-night booking administration fee, the platform could:

- Shield hosts from needing to register and file monthly reports Business Tax Registration Certificates (BTRCs) with the Office of Finance;
- Allow hosts to operate on the platform with a pending registration; and
- Provide the ability to implement a “pass through registration” process with hosting platforms.

A discussion regarding potential administrative fees for recovery for administrative and enforcement costs is discussed in number ten below.

7. Establishing an opt-out provision for landlords to exclude their properties from participating in home-sharing;

The proposed ordinance includes a provision to require landlord/property owner approval before a tenant is registered for home-sharing. This is to ensure, among other things, that a tenant does not inadvertently violate their lease by home-sharing, which could lead to an eviction.

An administrative provision to allow landlords to proactively exclude their properties from participating in home sharing could work within this system. No change to the ordinance is required. Provisions for how property owners can add their properties to the list will be included in the forthcoming administrative guidelines.

8. The implications of removing the proposed annual cap on home-sharing activity in a primary residence

The October 19, 2017 DCP report summarized the rationale for a cap on the number of nights that may be rented per year. The response to question one above provides some options for removing the annual cap for certain types of users. Removing the cap altogether would likely require additional environmental analysis and could have significant implications, including:

- Allowing year-round short-term rentals in all neighborhoods in the City;
- Continued loss/conversion of about 1,500-2,500 units of housing per year to full time short-term rental activity;
- Proliferation of short-term rentals and potential nuisance impacts in areas popular with tourists such as Venice, Hollywood and Downtown.

9. The possibility of requiring applicants to self-certify primary residency under penalty of perjury, with consideration of:

- a) Easing the burden of upfront administration staffing and costs;
- b) For investigation or verification, if the City could require that supporting documentation be furnished upon demand at any time;
- c) Attaching large and escalating penalties and fines;

The proposed ordinance creates a process whereby hosts will need to register with the City for home-sharing. A major purpose of this process is to establish key requirements such as primary residency, landlord permission and RSO status. Documents proving that a host resides at the property to be used for home sharing would need to be submitted to the City. The goal of the proposed ordinance would be to allow for submissions of all required documents online or through a mobile application.

A self-certification system for establishing primary residency would ease the administrative burden of the verification process. Documents would not need to be submitted or verified, which could speed the registration process. However, this approach would possibly open the door for significant fraud and abuse, making it more difficult to prevent units from being converted to short-term rentals. The City would be largely reliant on public complaints. It could also do periodic audits to determine the extent of the fraud or use other indicators from an online listing to try to locate potential vacation rentals.

The city of Denver has instituted a self-certification process for establishing primary residency. It acknowledges that significant fraud occurs (a figure of 30-40% was mentioned) but believes the administrative benefits and cost savings outweigh the potential downsides. Denver relies largely on complaints but has also begun a process of proactively identifying potential violations. The City also requires that supporting documentation be furnished upon demand and enforces escalating penalties.

10. Conduct or carry out a Fee Study for a \$4 per day surcharge (pass-through to guests) for listings on all platforms, with the intent of reducing the per square foot amount of the proposed Linkage Fee.

The establishment of a surcharge on hosts of short term rentals, to offset the proposed Affordable Housing Linkage Fee, would be limited by Proposition 26 and the California Mitigation Fee Act. The surcharge could be established under Proposition 26, but must go to the specific costs of administering the home-sharing program, otherwise voter approval would be required to enact the fee. Under Proposition 26, jurisdictions establishing a fee must establish that a specific benefit (affordable housing in this case) is being conferred on the payer of the fee and that is exclusive to the payer. Unlike the recently adopted Affordable Housing Linkage Fee, the suggested surcharge would not be charged on new development so could not be considered a mitigation fee. However, as discussed in the October 19, 2017 DCP report and mentioned above under the response to question three, a surcharge could be placed on listings to help pay for reasonable administrative and enforcement costs. This surcharge could supplant some portion (or all) of the 10 percent TOT allocation. Should Council elect to direct some or all of the TOT revenues collected from short-term rentals to the General Fund, the increased revenue could be used to reduce the fees charged through the Linkage Fee or address other policy priorities. This would be a separate policy discussion of the City Council.


CONCLUSION

The Department will continue to provide policy details to help inform the City Council's consideration of short-term rental regulations.

If you have any questions, please contact Matthew Glesne of the Department of City Planning at (213) 978-2666 or at matthew.glesne@lacity.org.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



Kevin J. Keller, AICP
Executive Officer

VPB:KJK:AV:CB:MG:mn