



BURLINGAME CITY COUNCIL
Approved Minutes
Regular Meeting on December 2, 2019

STUDY SESSION

a. DISCUSSION OF SHORT-TERM RENTALS

CDD Gardiner began by stating that the purpose of the study session was for the Council to discuss residential short-term rentals and provide direction to staff regarding any future work on the issue.

CDD Gardiner stated that currently, the City requires short-term rental operations to have a business license. Additionally, the City's existing transient occupancy tax ("TOT") applies to short-term rentals when they meet the municipal code's definition of hotel. He noted that currently, the City doesn't have a program for monitoring or collecting TOT from short-term rentals and that only approximately 10% of rental operations have acquired business licenses.

CDD Gardiner reviewed the perceived community impacts of short-term rentals. He discussed a variety of elements that can affect the impact on the community including:

- Whether the short-term rental is a shared bedroom versus an entire unit
- Whether the owner is onsite
- Whether the unit is 100% dedicated to short-term rental

CDD Gardiner discussed neighboring communities' approaches to short-term rentals. He showed a table that listed the different jurisdictions and the requirements that were put on short-term rentals (this information can be found on page 5 of the staff report). He noted that there is no uniform approach.

City Attorney Kane discussed the issue of obtaining cooperation from the listing companies, such as Airbnb. She explained that if the listing company perceives the City as being cooperative, the City can obtain data from the company concerning how many listings there are in the city, where they are located, and how frequently they are rented. She noted that listing companies have sued cities for enacting total bans on short-term rentals.

City Attorney Kane discussed San Francisco's litigation with Airbnb that had cost the City a lot of money over the course of several years. She stated that San Francisco reached a settlement with Airbnb that included Airbnb giving the City access to their data in exchange for removing some of the limitations the City had imposed.

City Attorney Kane discussed the recent incident in Orinda in which a shooting occurred at an Airbnb during

a house party. She stated that in the wake of this incident, cities looked at restricting large party/retreat rentals by requiring the host to be onsite. She added that another option is to require that the unit be rented for more than one night.

City Attorney Kane stated that the City has received very few complaints about short-term rentals. She added that she believes the City has at least 100 listings, with only a few of the owners having business licenses.

Councilmember Brownrigg stated that the staff report implies that the fiscal impact of collecting TOT from the 100 listings in the City would be the equivalent of one of the City's modest-sized hotels. He explained that he believed this was incorrect, as he didn't believe the short-term rental listings would have the same occupancy rates as the City's hotels. City Attorney Kane replied that staff's calculations were an attempt to give Council a sense of the scale of the fiscal impact. She noted that the impact also depends on whether the City can collect.

Councilmember Brownrigg stated that as the Council discusses regulating short-term rentals, he didn't believe the Council should consider the fiscal impact.

Councilmember Brownrigg asked if the City received any input from the hotels. City Attorney Kane replied in the affirmative. She explained that the hotels want the short-term rentals to pay TOT.

Councilmember O'Brien Keighran asked about pod-shares (multiple bunkbeds in one room for young professionals) and where they would fall under the regulations. City Attorney Kane replied that short-term rentals are defined as rentals for 30 days or less. Therefore, if you are renting a bunk for less than 30 days, it would be a short-term rental.

Councilmember O'Brien Keighran asked if the City could put a limit on the number of bedrooms that are rented. City Attorney Kane replied that a lot of the legality around short-term rentals is not well-established. Therefore, it would come down to the issue of property rights and the definition of a family. However, she explained that if the City regulates with the purpose of preventing noise and traffic problems, it could steer the City towards a defensible policy on the number of rooms that can be rented.

Councilmember O'Brien Keighran asked if there is State law regarding how many people are allowed in a rental unit. City Attorney Kane replied in the affirmative. But she noted that under the building code, it is a surprisingly small amount of square footage that is required per person.

Vice Mayor Beach asked if the City received a clamoring of people wanting the City to allow short-term rentals. City Attorney Kane replied that most of the people that want to undertake a short-term rental just do it.

Vice Mayor Beach asked if staff had a sense of whether the short-term rental properties in Burlingame are single-family homes or ADUs. CDD Gardiner replied in the negative.

Vice Mayor Beach asked if towns like Atherton and Hillsborough that require short-term rentals to be for longer stays have been sued. City Attorney Kane replied that she would get back to Council with this

information.

Vice Mayor Beach stated that her sense is that a shorter-term rental has more of an impact on a neighborhood than a longer rental. She noted that what she was hearing from staff is that the more restrictions the City puts on short-term rentals, the greater increase in the risk of litigation from listing companies. Additionally, she stated that if the City puts restrictions on short-term rentals, the listing companies may not share data with the City. City Attorney Kane stated that to get data from the listing companies, the City must be permissive. She noted that the City hasn't had any direct conversation with the listing companies.

Councilmember O'Brien Keighran discussed San Francisco's requirements that short-term rentals have business licenses, and hosts must be onsite for all but 90 days a year. City Attorney Kane replied that San Francisco's requirements were hard won, and that San Francisco has a team dedicated to the regulation of short-term rentals.

Councilmember O'Brien Keighran asked if the City was to receive several complaints about a short-term rental, could the City ban the owner from utilizing the property for short-term rentals. City Attorney Kane replied in the affirmative. She noted that if the City has the cooperation of the listing companies, the listing companies will then remove that property from their website.

Mayor Colson opened the item up for public comment. No one spoke.

Councilmember Ortiz stated that he doesn't believe that the City should ban short-term rentals. He explained that he believed that the City needed a more nuanced approach. He stated that the complaints he has received concern traffic and noise. Therefore, he explained that whatever regulations the City adopts, it should be with the focus on minimizing those issues for the neighbors.

Councilmember O'Brien Keighran stated the importance of regulating short-term rentals in a commonsense/empathetic way. She stated that she would like the owners to get a business license and pay TOT, and she would like to require the host to be onsite for most of the time. She voiced concern about owners utilizing their dining rooms, living rooms, and other rooms as bedrooms for short-term rentals. She noted that this usage would increase traffic and noise problems in small neighborhoods.

Vice Mayor Beach stated that two of the Council's infrastructure priorities are transportation and housing. She explained that she believed that short-term rentals might detract from achieving those goals. She stated that individuals in a single-family neighborhood didn't sign up to live next to short-term rentals. She noted that if the City approves short-term rentals, the owner must have a business license and pay TOT. Additionally, she requested that the host be onsite, the rental have a minimum stay requirement of a few days, and if the short-term rental receives two strikes, then it is no longer allowed to operate.

Councilmember Brownrigg stated the City needed to be careful not to capture HIP Housing and other similar programs when regulating short-term rentals. He stated that his concern focuses on a single-family home becoming a boarding house. Therefore, he wondered if the City should limit the number of renters allowed at a time. City Attorney Kane stated that she would need to further research this idea and how it would apply to the definition of family.

Mayor Colson stated that she reviewed how other cities have regulated short-term rentals. She explained that she agreed that owners should have a business license, the City should collect TOT, and the City should require a two-day rental minimum. She stated that she didn't want to ban short-term rentals.

Councilmember Brownrigg asked whether it is the City itself or the listing company that collects the TOT. City Attorney Kane stated that the companies don't directly collect the TOT, but some of their websites provide a mechanism for that payment.

Vice Mayor Beach asked if the City imposed a minimum stay requirement, would listing companies allow the City access to their data. City Attorney Kane replied that she would need to get back to Council with this information.

Councilmember O'Brien Keighran asked staff to send Council the San Francisco ordinance. City Attorney Kane replied in the affirmative and noted that Airbnb's general counsel has stated that Airbnb is not giving other cities the same deal that San Francisco was given.

Councilmember Ortiz asked if absent the cooperation from the listing companies, is the City relying on the individual owners to report and collect TOT. City Attorney Kane replied in the affirmative. She noted that there are third party data miners that the City could hire to obtain more information.

Councilmember O'Brien Keighran asked if the City could implement a fine if the City finds out that the property isn't registered as a short-term rental. City Attorney Kane replied in the affirmative.

Councilmember Ortiz stated that it sounded like there was a consensus amongst the Council for the host to be present for a portion of the year. The Council agreed.

City Attorney Kane noted that one of the risks of short-term rentals is that it removes units from the market for more permanent residents. She stated that it was her suggestion that any official BMR unit not be available for short-term rental. She explained that in January 2020, there are several new laws concerning ADUs that go into effect. Therefore, she will need to review how these affect short-term rentals.

Mayor Colson closed the study session and asked staff to further review Council's concerns.

1. CALL TO ORDER

A duly noticed meeting of the Burlingame City Council was held on the above date in the City Hall Council Chambers at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

The pledge of allegiance was led by Dina from Gatepath.