

City of Piedmont
COUNCIL AGENDA REPORT

DATE: March 5, 2018

TO: Mayor and Council

FROM: Paul Benoit, City Administrator

SUBJECT: Consideration of Regulatory Parameters Related to the Permitting of Short-Term Rentals

RECOMMENDATION:

Provide staff direction regarding regulatory parameters for the governance of short-term rentals so that an ordinance may be drafted for consideration by the Planning Commission, which makes a recommendation to the City Council, the decision-making body.

EXECUTIVE SUMMARY:

On January 16, 2018, the City Council received a report from the Planning Commission recommending that all short-term rentals (STRs) be prohibited. Following receipt of testimony from the public, the City Council discussed the pros and cons of STRs and determined that it wanted to consider regulations that allowed them under provisions that met the City's goals to maximize housing stock, preserve residential character, and ensure safety of residents. To that end, the Councilmembers directed staff to return with an outline of regulatory parameters for Council's consideration at a future date. Abridged draft minutes of the January 16, 2018 City Council meeting are provided as Attachment A, pages 7-8.

By contacting Councilmembers individually, staff developed a list of regulatory parameters on which there was apparent consensus. However, there are three possible parameters that the Council may want to discuss in order to provide clear direction to staff for the purpose of drafting an ordinance governing short-term rentals. The parameters on which there appears to be consensus and the parameters in need of further discussion – rental maximums and minimums, and fines – are discussed below.

DISCUSSION:

In order to generate a list of regulatory parameters for the Council's consideration, staff provided each individual Councilmember a questionnaire of possible provisions gleaned from the regulations of other regional cities. The following parameters are based upon the responses to the questionnaire.

Parameters based upon a majority of the responses:

1. Hosted short-term rentals shall be permitted.
2. Unhosted short-term rentals shall be permitted.
3. In order to operate a short-term rental, a resident must seek and gain City approval for a permit to do so. The resident who has gained a permit from the City to operate a short-term rental is referred to henceforth as a short-term rental *permittee*.
4. The application for a short-term rental permit shall require a fee to cover the cost of administering the permit application and enforcement.
5. The dwelling unit being used as a short-term rental, whether hosted or unhosted, must be the primary residence of the owner or the long-term tenant.
6. A short-term rental permit applicant who is a tenant must demonstrate approval from the property owner to use of the dwelling unit as a short-term rental.
7. An accessory dwelling unit, both permitted and unintended, shall be prohibited from being used as a short-term rental.
8. Multi-family dwelling units (i.e. apartments) shall be prohibited from being used as a short-term rental.
9. The short-term rental permittee or hosting platform on behalf of the permittee shall be required to maintain general liability insurance in the amount of at least \$1,000,000 during the entire term of the short-term rental permit.
10. For both hosted and unhosted short-term rentals, the permittee must notify residents of all adjacent properties that their home will be serving as a short-term rental.
11. The short-term rental permittee must inform and update the City of the contact information for the local contact person responsible for the short-term rental.
12. The dwelling or rooms serving as a short-term rental must have a smoke detector, carbon monoxide detector, fire extinguisher, and adequate egress as determined by the Chief Building Official.
13. The short-term rental permittee must post or otherwise provide the guest the following information:
 - a. A diagram of exits, fire extinguisher locations, and Fire and Police phone numbers;
 - b. The short-term rental permittee's contact information;
 - c. The City's noise ordinance hours;
 - d. The City's smoking ordinance; and
 - e. The City's garbage and recycling guidelines.
14. A dwelling unit or rooms in a dwelling unit can only be rented as a short-term rental for a limited number of days in a calendar year.
15. A resident who operates a short-term rental without a permit from the City shall be subject to a fine.

Parameters that need further discussion:

- A. The number of days in a calendar year that a short-term rental permittee may rent their dwelling or rooms in their dwelling to short-term tenants (guests).

In determining the optimal regulatory parameters for this issue, the Council might entertain the following considerations:

- i. Whether the limit for hosted short-term rentals should be the same or different than the limit for un-hosted short-term rentals. Is the potential impact on the surrounding neighborhood different for the two types of short-term rentals and, if so, does that necessitate differing limits by type?
- ii. Is the primary intent behind the permitting of short-term rentals in Piedmont a factor in determining a limit on how many days per calendar year it can be rented? No limit or a generous limit would appear to align with an intent to provide a means for residents to generate revenue, but an intent to provide lodging that is not available in the City’s commercial zone or a means for residents to have their home occupied while they are out of town might be adequately met by a limited number of rental days per calendar year.
- iii. Is there a point beyond which the dwelling unit is less likely to be used for permanent housing than it is as a short-term rental to transients?
- iv. Of the two cities in Alameda County that explicitly permit short-term rentals, both Berkeley and Emeryville limit unhosted short-term rentals to 90 days per calendar year and place no limits on hosted short-term rentals.

Staff recommendation: As elaborated upon at the end of this report, it is staff’s recommendation that unhosted short-term rentals be limited to 90 days per calendar year and that no limit be placed on hosted short-term rentals.

- B. The minimum number of days (if any) a short-term rental must be rented to a guest.

In determining the optimal regulatory parameters for this issue, the Council might entertain the following considerations:

- i. Whether the minimum for hosted short-term rentals should be the same or different than the minimum for un-hosted short-term rentals.
- ii. If the use of a property as a short-term rental is potentially burdensome on neighboring property owners, is it more so if the turnover of guests is more frequent?
- iii. Is the primary intent behind the permitting of short-term rentals in Piedmont a factor in setting a minimum number of days a short-term rental may be rented? No limit would appear to align with an intent to provide a means for residents to generate revenue, but an intent to provide lodging that is not available in the City’s commercial zone or a means for residents to have their home occupied while they are out of town might be adequately met might appear to be met with a minimum stay requirement.

- iv. Of the two cities in Alameda County that explicitly permit short-term rentals, neither Berkeley nor Emeryville have a minimum stay requirement for short-term rentals.

Staff recommendation: As elaborated upon at the end of this report, it is staff's recommendation that there be no minimum stay requirement for short-term rentals.

- C. The amount of the fine levied on a resident that operates a short-term rental without a permit issued by the City.

In determining the optimal regulatory parameters for this issue, the Commission might entertain the following considerations:

- i. The other two cities in Alameda County that explicitly permit short-term rentals, Berkeley and Emeryville, consider the operation of a short-term rental without a permit a nuisance and issue citations and fines in accordance with their nuisance ordinance. In Berkeley, nuisance violations within any twelve-month period are subject to a fine of \$10,000, with an additional fine of \$10,000 for each succeeding violation occurring within the same twelve-month period. In Emeryville, the first nuisance infraction is subject to a fine of not more than \$100, the second infraction within the year is subject to a fine of not more than \$200, and the third or any subsequent infraction is subject to a fine of not more than \$400. After the third infraction, any repeat violation within one year may be charged as a misdemeanor, which carries a minimum fine of \$1,000 or imprisonment.
- ii. Using a web-based search engine, staff found the following fines being levied in these "destination" cities: Portland, OR, up to \$5,000; Palm Desert, CA, up to \$5,000; and Anaheim, CA, up to \$2,500.
- iii. Detrimental effects to the City and its neighborhoods resulting from a short-term rental being operated without a permit include: uncollected business rental tax; the occupation of dwellings that are not equipped with the required health and safety provisions; and no contact information for the host should the guests disturb neighboring residents.

Staff recommendation: The City Attorney recommends including a provision providing that violation of the short term rental permit can be enforced through administrative citations, nuisance abatement, or any other legal avenue, and that Council may set a fine amount by resolution (as opposed to including the fine amount in the code). As elaborated upon at the end of this report, should Council support a fine set by resolution, it is staff's recommendation that the fine be substantial enough to dissuade residents from operating a short-term rental without a permit, something in the \$2,500 to \$5,000 range.

CONCLUSION AND RECOMMENDATION:

Staff recommends that the regulatory parameters on which the City Council has provided consensus and direction be incorporated into a draft ordinance governing short-term rentals.

Because Piedmont is not a destination that attracts multitudes of visitors, and unless there is a compelling reason to do otherwise, staff recommends following Emeryville's and Berkeley's lead on the remaining parameters:

- Limit unhosted short-term rentals to 90 days per calendar year and place no limits on hosted short-term rentals;
- Do not require a minimum stay requirement for short-term rentals; and
- Consider violations of a Piedmont short-term rental ordinance a nuisance, issue citations and fines in accordance with the City's nuisance ordinance, and setting a fine by resolution of up to \$5,000 per occurrence.

Should these provisions be found to be inadequate after an ordinance becomes effective, staff will bring proposed revisions for the Council's consideration to correct the problem.

NEXT STEPS:

City Code Chapter 17, Planning and Land Use, requires that any changes to it be reviewed by the Planning Commission, which makes a recommendation to the City Council, the decision-making body. Upon receipt of clear direction from the City Council regarding regulatory parameters, staff will draft an ordinance governing short-term rentals, inform the Planning Commission of the City Council's directions, and request that the Commission review the ordinance and make its recommendation. Should this work proceed in an expeditious manner, the Planning Commission could consider the matter at their regular meeting in either April or May, and the draft ordinance could be considered by the City Council in May or June.

Prepared by Kevin Jackson, Planning Director

ATTACHMENTS:

A Pages 7-8 City Council minutes of January 16, 2018 (abridged)

This page was intentionally left blank.

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Tuesday, January 16, 2018 - ABRIDGED

A Regular Session of the Piedmont City Council was held January 16, 2018, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54957(b), the agenda for this meeting was posted for public inspection on January 11, 2018.

- CALL TO ORDER** Mayor McBain called the meeting to order at 6:30 p.m.
- PUBLIC COMMENT ON CLOSED SESSION** Todd Walberg, Cutter Law, representing Elizabeth Jordan pro bono, explained the tree trimming incident and requested the Council show mercy on Mrs. Jordan by reducing the \$19,000 fine.
- ADJOURNED TO CLOSED SESSION** Mayor McBain adjourned the meeting to Closed Session at 6:36 p.m.
- RECONVENE** The Council met in Closed Session for (a) Conference with Labor Negotiators (Gov. Code §54957.6)–Agency Designated Representative(s): Janae Novotny; All Represented Labor Groups: (Piedmont Firefighters Assn; Piedmont Police Officers Assn; SEIU Local (General and Public Works Units). Unrepresented Employees: City Administrator; City Clerk; Finance Director; Confidential Employees; Public Works Director; Professional, Technical & Supervisory Employees; Planning Director, Parks & Project Manager; Building Official; Police Chief; Police Captain; Police Support Services Commander; Fire Chief, Fire Captains; Recreation Director; Recreation/Childcare Employees); and (b) Conference with Legal Counsel – Anticipated Litigation – Significant exposure to litigation pursuant to Government Code §54956.9(d)(2). Following the 6:30 p.m. Closed Session, Mayor McBain called the meeting to order at 7:33 p.m. with the Pledge of Allegiance.
- ROLL CALL** Present: Mayor Bob McBain, Vice Mayor Teddy Gray King, and Councilmembers Betsy Smegal Andersen, Jennifer Cavanaugh, and Tim Rood
- Staff: City Administrator Paul Benoit, City Attorney Michelle Marchetta Kenyon, Planning Director Kevin Jackson, Recreation Director Sara Lillevand, Public Works Director Chester Nakahara, Planning Technician Benjamin Davenport, Parks and Project Manager Nancy Kent, Aquatics Coordinator Victor Rivas, and City Clerk John Tulloch
- REGULAR AGENDA** The Council considered the following items of regular business:
- Short Term Rentals** City Administrator Paul Benoit explained short-term rentals. He provided an overview of Planning Commission and Council consideration of how to treat rentals under 30-days and Planning Commission recommendation to prohibit all short-term rentals.
- Planning Director Kevin Jackson discussed City regulations and Planning Commission deliberations and its repeated recommendation of prohibition of short term rentals. He explained the Governor’s Housing Package. Mr. Jackson discussed State laws regarding parking for accessory dwelling units.
- Public Testimony** was received from:

Gadi Meir, Alder Yarrow, Julie Nevis, Jeanne Solnordal, Venus French, Paul Taylor, Rick Schiller, Reid Steiner, and Daniel Alderman spoke in opposition to the proposed ban on short term rentals. Speakers suggested that allowing short term rentals with reasonable regulation would maintain the residential character of Piedmont and provide a community benefit. Speakers also indicated their opinion that allowing Short Term Rentals would allow residents to participate in the sharing economy and allow residents a source of income in this high-priced housing market.

Eric Berhens, Alicia Kalamas, and Bill Howard spoke in support of the proposed ban on short term rentals, citing the possible detrimental effect on Piedmont's residential character. Speakers also suggested that allowing short term rentals might negatively impact public safety through increased crime.

The Council thanked residents for their comments on and interest in the issue of short term rentals.

The Council considered the issue of short term rentals at length, discussing the pros and cons of short term rentals as well as the proposed ban. The Council agreed that the number one objective was to maximize housing stock, preserve residential character, and ensure safety of residents. Councilmembers questioned whether Piedmont would see a large demand for short term rentals, given our geography. A majority of Councilmembers indicated they didn't support an outright ban on short term rentals, but did support allowing them in a regulated manner.

Mr. Benoit indicated that given the majority of the Council's desire to allow regulated short term rentals, staff would put together a survey of what Council would be willing to allow and what they would not with regard to short term rentals. Staff could use this information and bring the topic back for Council consideration at a future date.

ADJOURNMENT

There being no further business, Mayor McBain adjourned the meeting at 10:54 p.m.

**Item #6 – Consideration of Regulation Related to the Permitting of Short-Term Rentals
Correspondence Received Before Monday, March 5th at 3:30 p.m.**

Hello City Council,

I would like to thank you for your careful consideration of the concerns and ideas that I and other citizens brought forward as you considered the recommendation to ban all short term rentals in Piedmont.

The resulting set of recommendations made in the Staff Report on this issue, in my personal opinion, represent a wonderfully rational and considered approach to this issue that will address many of the concerns on both sides of the issue.

Furthermore, the specific recommendations of staff regarding the undecided aspects of this issue are appropriate and reasonable. I'm sure some people may want a longer rental period, which is really the only change I could see making to the recommendations. Some people have suggested 180 days, and my personal opinion is that a number somewhere in between would be ideal, but in terms of my own anticipated personal needs, 90 days would suffice.

Thanks again for listening to your constituents!

Alder Yarrow

I appreciate the time that the Council and Planning Dept. have put into exploring an equitable solution to this issue. After sitting through several meetings on this topic, I want to briefly address concerns that residents have expressed about hosted rentals.

1. Short term rentals are not the same as a Hotel. The rental platforms such as AirBNB and VRBO offer the homeowner a safe way to know more about the potential guest because the systems have a peer review process where a host can easily learn from the experiences of other hosts. They are not under any obligation to accept any inquiry that they feel is inappropriate.
2. The City will not be overrun with rentals. Based on surveys of the rental platforms presented to the Council it appears that less than 1% of Piedmont households offer rental options. Being a host is not for everyone. It involves organizational and people skills as well as a willingness to make yourself available to the arrival guests.
3. Public Safety --hosted short-term rentals have the advantage of having a host on site in the event of any surprises or disruptions. Rental services such as AirBNB also have hotlines for hosts or their neighbors for emergency assistance.

Hosted rentals are an asset to our neighborhoods. They provide a place for guests of residents to stay when they come in for events both joyous and sad. In addition they help our residents stay in their homes and in some instances feel more secure because there is more people-activity around the house.

Yours truly,
Jane Klein

Dear Council,

The staff report has some key recommendations that take into consideration my concerns to protect:

- a) the residential (non-commercial) nature of the city and
- b) the steady flow of new parents moving into the city as required for a functioning school district

Specifically the staff recommendation to restrict STR permits to primary residences addresses my second concern:

*"5. The dwelling unit being used as a short-term rental, whether hosted or unhosted, must be the **primary residence** of the owner or the long-term tenant."*

I think 90-days in total STR-days seems like a reasonable upper bound. However counting the total number of STR-days doesn't regulate the number of visitors. One 90-day visitor is quite different from 90 overnight visitors.

To somewhat address the risk of the number of visitors, you might want to require the permittee to designate a "property manager" (who could be the owner or long-term renter themselves) who personally handles check-ins for each visitor. This would prevent a combination key lock-box approach to renting out homes.

Additionally the property manager should be required to take a picture of the visitor's (renter's) drivers license and credit card used to book the home and email the picture(s) with a cell phone contact number to an unmonitored police email address at every check-in. That way the police have the information they need and know whom to contact right away in case of a problem.

I am still concerned about a permittee's neighbors. Are there any circumstances where the City would require neighbor sign-off on an STR permit? Alternatively, would there be a mechanism for neighbors to protest or appeal a permit?

Given the high rents being charged for living in Piedmont, I would recommend a higher nuisance violation (e.g. Berkeley's \$10,000) for meaningful regulation.

Sincerely,

Hari Titan
