



February 11, 2020

Sara A. Clark
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Erick Serrano
Senior Planner, Cupertino
Cupertino City Hall
10300 Torre Avenue
Cupertino, CA 95014

Dear Ms. Clark and Mr. Serrano,

On behalf of Airbnb, I would like to thank you for seeking input from stakeholders on the City's proposed ordinance relating to short-term residential rentals. We appreciate your willingness to hear our perspective and expertise on creating a short-term rental regulatory code, and we look forward to working with the City of Cupertino in implementing its new regulations.

Founded in 2008, Airbnb's mission is to create a world where people can belong through healthy travel that is local, authentic, diverse, inclusive and sustainable. Our accommodation marketplace provides access to 7 million unique places to stay in more than 100,000 cities and more than 220 countries and regions, including the City of Cupertino. Airbnb's people-to-people platform benefits entire communities in which we operate, including hosts, guests, businesses, and the public at large. In the past 12 months, Airbnb hosts in Cupertino have earned a cumulative total of approximately \$5.5 million, which in turn has helped support the local economy through transient occupancy tax, sales tax, and local business activity.

We appreciate that the City wants to balance short-term and long-term housing supply, and that the City also wants to protect neighborhood integrity. Airbnb supports reasonable regulations on short-term rentals, and we are proud to partner with local governments, such as the City of Cupertino, in their efforts to enforce regulations intended to protect public safety and preserve neighborhood integrity. Home sharing provides numerous benefits to a community, from generating additional tax revenue to a City to diversifying tourism experiences, and from alleviating tourism demands on overbooked hotels to helping families gain supplemental income that they can use in turn to pay their mortgage, save for their

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kids' college funds, or renovate their home. To that end, we are submitting these comments to address specific components of the proposed ordinance that we believe, with slight revisions, will improve the City's ability to implement reasonable short-term rental regulations.

5.08.030 Short-term Rental Activity

Unhosted Stays

The proposed ordinance caps unhosted stays to 60 nights per calendar year. We recommend increasing the cap to at least 90 nights per year to allow homeowners to engage in home sharing for an entire season, such as the summer. According to the City's online survey, 41% of respondents agreed that unhosted stays should have longer night caps, with more than 25% of respondents believing that there should not be any limits on unhosted stays. Given the close tie between those residents who seek greater restrictions on night caps and those who believe there should be less restriction, we urge the City to broaden the unhosted stay cap slightly so that homeowners can utilize their space during seasonal holidays without losing the supplemental income they rely on.

Accessory Dwelling Units

The proposed regulation seeks to disallow short-term rentals of all accessory dwelling units (ADUs). The Planning Commission directed staff to further amend the ordinance to ensure that ADUs and junior accessory dwelling units (JADUs) were treated equally. Currently, only about five percent of active Airbnb listings in Cupertino are for ADUs associated with a host's primary residence, which also increases the likelihood that guests are staying at a unit where the hosts are on-site during their stay.

We understand that the ordinance seeks to impose a blanket prohibition on ADUs for two reasons: 1) to enforce the new state law requirement that encourages ADU creation and bans short-term rentals in ADUs permitted and constructed after January 1, 2020, and 2) to preserve long-term housing. With respect to the first concern, California Government Code section 65852.2(e)(4) disallows the short-term rental of ADUs and JADUs permitted or constructed on or after January 1, 2020 in residential and mixed-use zones. However, Government Code section 65852.2(a)(6) allows local governments to legalize short-term rentals of ADUs in existence prior to 2020, as well as new ADUs and JADUs that are in other zones. The new state law intended to encourage the growth of new long-term housing — not force homeowners to convert their existing ADUs and JADUs for long-term rentals.

As for the second concern, it is very likely that ADUs and JADUs not already rented on a long-term basis will continue to be withheld from long-term housing stock. These ADUs and JADUs are typically utilized for short-term stays, such as to host relatives or friends from out of town. As a recent survey from Portland State University found, nearly as many ADU owners used their property as a temporary residence for family/friends (36%), as for long-term rentals

(39%), with short-term rental use cited by 28% of ADU owners.¹ Of those who used their ADU as a short-term rental, nearly half cited the need for flexibility for friends and family as the primary motivation.

Considering the low rate of ADU usage for short-term rental in Cupertino already and the unlikely conversion of existing ADUs/JADUs for long-term housing, we propose that the regulation be amended to “grandfather in” primary residence ADUs and JADUs that were built and constructed prior to January 1, 2020. Restricting the use of short-term rentals to primary residence ADUs and JADUs would complement the overarching regulatory scheme to limit short-term rentals to primary residences only. In addition, the City could verify that the ADU was permitted and constructed prior to January 1, 2020 by requiring hosts to self-attest to those facts and/or comparing the address provided on a short-term rental registration application to permit records.

We further ask that the ordinance allow a homeowner to receive a separate registration for their ADU/JADU so that they are able to open their primary dwelling as well as the ADU/JADU on their lot for short-term rental. This would enable existing hosts to continue to generate supplemental income by sharing their ADU/JADU with guests, while also ensuring that the City is compliant with California Government Code section 65852.2(e)(4).

Capping permits

Planning Commissioner Chair Kitty Moore and Planning Commissioner Vikram Saxena questioned whether or not the ordinance should be amended to cap short-term rental permits to five percent of housing stock. As City staff continue to explore this question, we urge the City against capping the number of short-term rental permits that can be issued within a year. Reducing the number of short-term rental permits in such a drastic way risks many consequences. First, the sharp reduction could arbitrarily cut off existing short-term rental hosts from engaging in home sharing. Second, capping the number of permits could disincentivize compliance, leading to an underground market of unregulated rentals, which will only hurt the City’s goal of preserving housing stock and regulating short-term rentals. Third, capping permits could result in a sizable loss in transient occupancy tax revenue; a funding source that is essential for the City’s plan to monitor and enforce short-term regulatory code compliance. Finally, limiting the number of permits creates a dynamic where one person who may only rent out their house for a couple weeks during the summer gets a permit, while someone who rents a portion of their house more frequently and is more dependent on the income may be locked out.

¹ Gebhardt, Gilden, and Kidron, “Descriptive statistics of a survey of ADU owners, residents, and owners who live in an ADU,” 2018, available: <https://www.pdx.edu/sustainability/sites/www.pdx.edu.sustainability/files/iss/Portland%20ADU%20Survey%20Report%20June%202018.pdf>.

5.08.040 Short-term Rental Registration - Process and Term

The proposed regulation requires a lengthy short-term rental registration application process. We recommend creating a registration system that is as streamlined as possible so that it can be completed online. Residents will be more likely to register their properties and lawfully operate short-term rentals when it is easy for them to comply with the law. City staff can also expedite the approval process via online registration systems. We have frequently seen in jurisdictions where cities require onerous documentation for an STR permit that it is the city that gets bogged down in paperwork reviewing complicated applications. In Hawaii County, for example, the backlog of permits caused delays in the issues of unrelated building permits, and the backlog of permit applications in San Francisco has run to more than a year at times.

In addition, we recommend that the registration fee be a reasonable amount that does not exceed \$450. Hosts in violation of the short-term rental code could face a fine up to \$1,000, as outlined in Section 5.08.070(C). Ensuring that the registration fee is less than half of maximum fines will provide hosts a strong economic incentive to proceed with the registration process than risk receiving a fine. Many hosts in Cupertino may also look to San Francisco as a guide post given the cities proximity to one another; San Francisco's registration fee is \$450, while many cities' registration fees are much lower than that.

We understand that the City intends to provide a registration period so that individuals and City staff have the opportunity to complete and process short-term rental permit applications before enforcing compliance. We recommend that the City build in a registration period of at least three months to allow for a smooth rollout of this new law. In previous experiences with cities that have had to create a registration system, we have found that a three-month period is necessary to engage residents, provide sufficient timing for staff to process applications, and allow timing for any appeals prior to enforcement.

Furthermore, we suggest the following changes to the application itself:

- **Strike the requirement that the applicant obtain HOA approval.** Requiring HOA approval before issuing a permit effectively provides the HOA — which are unelected organizations and not accountable to any city official, agency, or the general public — veto power over City-issued permits and licenses. This would be a broad force of power bestowed upon HOAs — one that Cupertino does not otherwise provide HOAs. For example, HOA approval is not necessary to approve business licenses or construction permits in a neighborhood.

Moreover, requiring HOA written approval risks creating tension where it may not have existed, and it could potentially pit neighbors against each other, especially if covenants, conditions, and restrictions (CC&Rs) are silent on short-term rentals. HOA approval is also unnecessary. Section 5.08.070 allows the City to impose penalties on any violations of the short-term rental code, such as short-term rental activity not complying with quiet hours. If a HOA raises concerns, the City can take action

accordingly. Airbnb is also proud to offer communities a [neighbor hotline and online tool](#), which allows HOAs, neighbors, and government officials to raise any complaints about a specific short-term rental listing directly with us. Violations of our guest or hosting standards may result in account suspension or removal.

- **Require an applicant to agree to supply the site plan and/or floor plan as part of an inspection rather than require an applicant to attach the site plan to their application.** Site plans and floor plans are often difficult to acquire or create; in addition, the files are sometimes oddly shaped and can be difficult to scan and upload. Having to attach the floor plans and/or site plan will be extremely burdensome for an applicant — not to mention, potentially duplicative for the City if site plans and/or floor plans for the primary residence have been filed with the City or Santa Clara County already.

We assume the intent behind this requirement is to provide the City additional insight into whether short-term rentals will occur within one or more bedrooms or other living spaces in a dwelling. The City can meet its needs by simply incorporating a drop down menu on its online form (or a checkbox on a paper form) so that an applicant can indicate whether the space being made available for short-term rental is a bedroom, another living space, or an ADU/JADU (see earlier comments). Should the City require additional information or have concerns about a registration, staff can request the site plan and/or floor plan as part of its inspection. Moreover, as stated above, the City has enforcement mechanisms it can use if the City has cause to believe that a short-term rental registration is being used improperly.

5.08.060 Regulations for Hosting Platforms

Subsection B requires hosting platforms to retain records about short-term rentals, including “type of stay per reservation (hosted or unhosted).” Airbnb hosts self-report in their listings whether they are renting an entire home/apartment or a private or shared room. We can approximate that an entire home/apartment is an unhosted stay and that private or shared rooms are hosted stays, but the terms “hosted” and “unhosted” stays are not embedded into our platform. We ask the City amend its ordinance so that our existing categorization of listings would suffice for this record retention requirement. For example, subsection B could include a new sentence at the end that reads, “A hosting platform that does not categorize their listings as hosted or unhosted stays must retain records that provide good faith approximations of hosted or unhosted stays.”

Thank you for the opportunity to submit comments on the proposed ordinance. We look forward to continuing to work with the City to bring healthy and sustainable tourism to your city and foster economic opportunity of home sharing for your City’s households.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Middlebrook', with a long horizontal flourish extending to the right.

Matt Middlebrook
Head of Policy, California

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