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Orinda council responds to resident concerns, amends urgency ordinance on short-term rentals

By Sora O'Doherty

The urgency ordinance banning non-hosted short-term rentals in Orinda was adopted by the city council on Nov. 19, but with some changes in response to issues raised by the public. The ordinance is effective immediately. One significant change in the ordinance imposes a two-night minimum rental requirement for short-term rentals.

After the Nov. 5 decision by the council to ban non-hosted short-term rentals provided by agencies such as Airbnb, the council received considerable email communications, and about a dozen residents attended the Nov. 19 meeting to voice their views. City attorney Osa Wolff was present and amended the wording of the ordinance on the spot in accordance with the wishes of the council.

In response to a mass shooting during a party at a non-hosted Airbnb in Orinda on Halloween that resulted in five deaths, the city council chose to ban non-hosted short-term rentals, defined as rentals of less than 30 days, but to allow hosted short-term rentals to continue. There was some confusion and disagreement, however, in what is required to qualify as a "hosted" STR. Staff presented two alternative drafts of the ordinance, with one that would have required STRs to be more like the European bed and breakfast model when the host lives in the home and rents out rooms. That draft did not find favor with speakers or with the council.

Instead the final urgency ordinance bans all short-term rentals, with an exception carved out if the STR meets the following criteria: STR registration requirements have been met; the property is owned by the host and contains the host's primary residence, although that residence may be in a separate structure from the STR; the host is physically present to greet guests and to monitor and regulate activities on the property, although the host need not be on the property continuously; that the host sleep at the property and any listings for the STR must specify that the host will be present. In addition, any listing or advertisements for the property must allow the city to identify the property.

A number of speakers objected to a requirement that the host remain in the same structure as the guests, and there was confusion about the host being required to prepare and share meals with the guests. Wolff explained that the meal requirement was only that the host prepare and eat meals on the property, and was just to show that the host lived on the property. The requirement was dropped.

Public comments ranged from fully supporting Airbnb to supporting a total ban on short-term rentals. In support of a total ban, Bob Weiss said, "Airbnb can't protect us. We can't protect ourselves." Sarah Funk found both drafts over-reaching and unfair. Christine Chalmers urged the council to take action without fear of legal repercussions. "How much of Airbnb's business comes from illegal rentals?" she wondered. Planning Director Drummond Buckley stated that regulation cannot prevent illegal activities, and that additional code enforcement activity would be required.

At least one speaker, Pam Whitman, opposed regulating STRs, but wondered why there was no discussion of regulating guns. Several speakers questioned the mutual aid agreement that resulted in Orinda police officers not being present at the time of the shootings on Halloween, and some called for greater police presence on high risk nights, such as Halloween, New Year's Eve, and prom night. Latika Malkani spoke about objectional discriminatory views in the wake of the shooting incident, and urged further community hearings before adopting the ordinance. She also suggested gun control.

A number of speakers referred to wonderful experiences with short-term rentals, while some neighbors complained about conditions living close to STRs.

The urgency ordinance went into effect immediately upon adoption and lasts for 45 days. The council has the option of extending the ordinance for a period of up to two years. A replacement ordinance would be required to go through the usual adoption procedures.

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