

Date of Hearing: August 11, 2020

**ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT**

Cecilia Aguiar-Curry, Chair

SB 1049 (Glazer) – As Amended August 3, 2020

**SENATE VOTE:** 32-8

**SUBJECT:** Cities and counties: ordinances: short-term rentals.

**SUMMARY:** Establishes enhanced fines for violations of short-term rental ordinances.

Specifically, **this bill:**

- 1) Provides that the violation of a short-term rental ordinance that is an infraction is punishable by the following:
  - a) A fine not exceeding \$1,500 for a first violation;
  - b) A fine not exceeding \$3,000 for a second violation of the same ordinance within one year; and,
  - c) A fine not exceeding \$5,000 for each additional violation of the same ordinance within one year of the first violation.
- 2) Specifies that the penalty limits set by this bill apply only to infractions that pose a threat to public health and safety, and shall not apply to a first time offense of failure to register or pay a business license fee.
- 3) Clarifies that nothing in this bill limits the authority of a county, city, or city and county to establish lower penalties for specific violations by ordinance.
- 4) Requires a county or city levying a fine pursuant to this bill to establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by a responsible party that the responsible party has made a bona fide effort to comply after the first violation, and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.
- 5) Provides the following definitions for the purposes of this bill:
  - a) “Short-term rental” means a residential dwelling, or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less; and,
  - b) “Residential dwelling” means a private structure designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals. “Residential dwelling” does not include a commercially operated hotel, motel, bed and breakfast inn, or time share property as defined pursuant to existing law, as specified.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Background.** A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. This "police power" provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws.

Current law allows counties and cities to establish ordinances, and makes violations of ordinances misdemeanors, unless by ordinance the county or city makes them infractions. The violation of an ordinance may be prosecuted by county or city authorities in the name of the people of the State of California, or redressed by civil action. Current law outlines the following fine structure for ordinance violations, and for building and safety code violations, that are determined to be infractions:

<b>Number of violations within specified time periods</b>	<b>Amount of fine for ordinance violations that are infractions</b>	<b>Amount of fine for building and safety code violations that are infractions</b>
First violation	Fine does not exceed \$100	Fine does not exceed \$130
Second violation within one year of first violation	Fine does not exceed \$200	Fine does not exceed \$700
Third violation within one year of first violation	Fine does not exceed \$500	Fine does not exceed \$1,300

For building and safety code violations that are infractions, there is an enhanced fine of \$2,500 for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

In addition to the fines outlined above, counties (not cities) may assess fines specifically for a violation of an event permit requirement that is an infraction. These fines are capped at \$150 for a first violation, \$700 for a second occurrence of the same violation by the same owner or operator within three years of the first violation, and \$2,500 for each additional occurrence of the same violation by the same owner or operator within three years of the first violation.

- 2) **Short-term Rentals.** California has seen a rise in the home sharing industry with companies such as Airbnb, Expedia, and Vacation Rentals by Owner (VRBO) gaining popularity due to their short-term rental practice. Short-term rentals, also known as vacation-rentals, are usually an individual's residential property, such as a home, room, apartment, or condominium that is rented out to a visitor for fewer than 30 consecutive days. Generally, the home sharing industry involves three primary participants: (1) the home sharing platforms, such as Airbnb, that advertise residential property offered for temporary rental and facilitates connecting renters with hosts for a fee, (2) the consumer who is often referred to as the "renter," "guest," or "visitor" of the residential property, and (3) the supplier, owner, operator, or "host" of the residential property. Short-term rentals are not a new practice, but

the development of online hosting platforms, bookings, advertisements, and payments has increased the level and popularity of short-term rentals usage.

By some reports, there were 1.8 million short-term rental listings in the United States in 2018. California's 235,000 short-term rental listings are second in the nation (Florida being first). The popularity of short-term rentals could be attributed to its tourist and economic benefits. Homeowners utilizing online home sharing platforms, like Airbnb, can provide an opportunity to earn additional income to offset the cost of maintaining their residential property. For travelers, online rental platforms provides an online streamlined approach to obtaining booking as opposed to traditional booking of motels or hotels.

However, short-term rentals also present local elected officials with a new set of challenges with short-term renters creating parking, trash, and safety concerns. As local agencies struggle with the impacts from the growing popularity of short-term rentals, cities and counties are adopting ordinances to regulate or to prohibit short-term rentals.

- 3) **Short-term Rental Ordinances.** Generally, most of the current short-term rental ordinances include regulations on permitting, tax compliance, noise, parking, and occupancy, as well as host and platform obligations and responsibilities. For instance, most short-term rental ordinances require short-term rentals to limit the number of occupants per bedroom in the residential property and require the host to be physically present to monitor and regulate activity during the short-term rental for a specified number of days. However, short-term rental ordinances' regulations and requirements vary from jurisdiction to jurisdiction.

For example, in the City of Orinda, the maximum occupancy when a property is being used for a short-term rental is limited to two people per bedroom, plus three other people, and a requirement for the host to be physically present during a short-term rental usage, including meeting the guests upon arrival. This regulation slightly differs from the regulations of the City of Santa Monica. The City of Santa Monica's short-term rental ordinance limits the occupancy of short-term rental to (1) 10 people or less; (2) one person per 200 square feet of the dwelling unit; or, (3) two persons, excluding minor children, per bedroom. The host must be present in the short-term rental throughout the visitor's stay.

Violating a short-term rental ordinance usually results in a penalty. However, each city and county that has a short-term rental ordinance has different fine amounts and schedules and may or may not specify whether the penalty is imposed on the host, guest, or platform. For example, the City of Santa Monica's short-term rental ordinance describes that any host or any person other than a hosting platform who facilitates or attempts to facilitate a violation is subject to a fine. So, if the host or any other person were to violate the occupancy limit of short-term rentals, they would be subject to a fine. If a hosting platform, such as Airbnb or VRBO, violates its obligations described in the ordinance, such as furnishing required information to the city, they are also subject to a fine. The City of Orinda, on the other hand, imposes numerous requirements on hosts, including that the host be present at the home, that it is the host's primary residence, and that stays are no less than two nights. Violations of Orinda's short-term rental ordinance can result in a maximum fine of up to \$1,000 per day.

- 4) **Author's Statement.** According to the author, "According to vacation rental data by AirDNA, in the last three years, the short-term rental market in the U.S. has grown by more than 100%. Though short-term rentals offer a way to improve tourism and earn owners some

extra money, their recent proliferation has allowed bad actors to use the platform to advertise and secure homes for large parties, oftentimes in violation of local ordinances.

“These large gatherings have made some short-term rental properties the sites of underage drinking, brawls, noise complaints, and violence. In the last half of 2019, 42 people were shot inside or just outside a short-term rental property nationwide and 17 people died. In order to improve the safety of our citizens, this bill would increase fines that cities are allowed to impose on short-term rental hosts who violate local property rental laws. SB 1049 would authorize locals to impose fines up to \$5,000 for a violation of a short-term ordinance.”

5) **Bill Summary.** This bill establishes enhanced fines for violations of short-term rental ordinances that are determined to be infractions, as follows:

- a) A fine not exceeding \$1,500 for a first violation;
- b) A fine not exceeding \$3,000 for a second violation of the same ordinance within one year; and,
- c) A fine not exceeding \$5,000 for each additional violation of the same ordinance within one year of the first violation.

These fines apply only to infractions that pose a threat to public health and safety, and do not apply to a first time offense of failure to register or pay a business license fee.

A county or city levying a fine pursuant to this bill must establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by a responsible party that the responsible party has made a bona fide effort to comply after the first violation, and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

This bill is sponsored by the author.

6) **Previous Legislation.** AB 2598 (Quirk), Chapter 970, Statutes of 2018, increased the fine amounts that counties and cities may assess for violations of their building and safety codes, and created a new fine for specified violations of building and safety codes on commercial property.

AB 556 (Limón), Chapter 405, Statutes of 2017, allowed counties to assess increased fines for a violation of an event permit requirement that is an infraction as follows: a fine not exceeding \$150 for the first violation; a fine not exceeding \$700 for a second occurrence of the same violation by the same owner or operator within three years of the first violation; and, a fine not exceeding \$2,500 for each additional occurrence of the same violation by the same owner or operator within three years of the first violation.

7) **Arguments in Support.** The City of Orinda, in support, writes, “When short-term rental hosting platforms came into existence, many cities in California chose to ban them completely. In Orinda, we chose a more moderate approach to permit them and adopted an

ordinance that clearly outlined the rules. That included no rentals for large parties and the requirement that short-term rentals register their properties.

“Since the adoption of our ordinance, staff has worked with property owners and neighbors to address concerns and complaints. This requires extensive staff resources, but it also requires the administrative tools to do effective enforcement. However, the greatest challenge that we face is the ability to enforce the rules in the face of serious violations. The compliance of short-term rental properties with local zoning ordinances is the responsibility of both the property owner and the short-term rental platform. Having an adequate fine structure is the only way we will be able to effectively manage and enforce these reasonable ordinances.

“Orinda, like many cities in California, is a general law city, and the State Legislature sets the statutory limits for fines. This bill would provide a much-needed tool for cities in California to enforce their short-term rental ordinances.”

8) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Cities of Cupertino, Lafayette, Orinda, and Santa Monica  
Expedia  
Southern California Rental Housing Association  
California Hotel & Lodging Association

**Opposition**

None on file

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958