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ALUC-22-04 (Short Term Rental Ordinance)

Determine that Application No. ALUC-22-04, (Benicia Short Term Rental Ordinance) is consistent with the Travis Air Force Base (AFB) Land Use Compatibility Plan (LUCP) (City of Benicia).

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RECOMMENDATION:

Determine that Application No. ALUC 22-04 (Benicia Short Term Rental Ordinance), is consistent with the Travis AFB Land Use Compatibility Plan (LUCP).

DISCUSSION:

Background

Section 21676 (d) of the State Aeronautics Act requires Airport Land Use Commission (ALUC) review of any zoning ordinance change within an Airport Influence Area. The City of Benicia has referred one application containing two zoning ordinance text amendments that would either regulate or prohibit Short Term Rentals (STR) in Benicia, for City Council consideration and approval. The proposed ordinances are attached to this report and the adopted ordinances would be effective City-wide. The purpose of the ordinances is to either allow and regulate use of dwellings for temporary lodging by visitors; or ban STR as an allowed use in the residential and mixed-use zones.

A majority of the City is located within Zone D and small portion lies within Zone E of the Travis AFB Land Use Compatibility Plan. The compatibility zones do not restrict residential densities or uses. Based on review, staff recommends the ALUC find that the proposed ordinances comply with the requirements of these zones to protect flight, meet guidance criteria of the California Airport Land Use Planning Handbook, and are consistent with the Travis AFB Land Use Compatibility Plan (LUCP).

Project Description

The proposed STR zoning amendments would amend Title 17 (Zoning) of the Benicia Municipal Code. Short Term Rental is the rental of a dwelling unit in whole or in part for lodging purposes and has potential to provide supplemental income for homeowners, alternate lodging accommodation for visitors and increase transient occupancy tax revenue for the City. In 2020, City staff was directed by City Council to prepare two ordinances:

- A draft ordinance that regulates hosted and/or non-hosted short-term rental which establishes rules for licensing, occupancy, operations and enforcement (Attachment B).
- A draft ordinance that bans short-term rentals completely (Attachment C)

If adopted, the ordinance would apply to residential, mixed use and Downtown Mixed-Use Master Plan area of Benicia.

AIRPORT PLANNING CONTEXT & ANALYSIS

Zoning code amendments must undergo review by the ALUC for consistency with the applicable LUCPs (State Aeronautics Act section 21676). The proposed amendments would apply City wide, which is located in Compatibility Zones D and E of the Travis AFB LUCP (see Figure 1, Attachment E). In general, Compatibility Zones D and E criteria require review of structural heights of objects and/or hazards related to bird attraction, electrical inference, glare and other flight hazards.

The California Department of Transportation (Caltrans) Division of Aeronautics has published the California Airport Land Use Planning Handbook (Caltrans Handbook) as a guide for Airport Land Use Commissions (ALUCs) in the preparation and implementation of Land Use Compatibility Planning and Procedure Documents. Section 6.4.2 of the Caltrans Handbook establishes the guidance appropriate for reviewing zoning ordinances and building regulations. This section references Table 5A of the Caltrans Handbook which presents the consistency requirements for "Zoning or Other Policy Documents."

Staff evaluated the City's project using the Zone Compatibility criteria for Zone D and E of the Travis AFB LUCP, and the zoning consistency test criteria contained in the California Airport Land Use Planning Handbook. Staff analysis of the project based on this evaluation is summarized in Attachment A.

Analysis Finding

Based on review, staff finds that the proposed ordinances comply with the requirements of the zones to protect flight, meet guidance criteria of the California Airport Land Use Planning Handbook, and are consistent with the Travis AFB Land Use Compatibility Plan (LUCP).

Based upon the consistency tests, staff recommends that the Commission find that the proposed short term rental ordinances and associated amendment to the Benicia Municipal Code is consistent with the policies and criteria of Travis AFB LUCP.

Attachments:

[Attachment A: Airport Compatibility Zones and Airport Land Use Planning Guidance Criteria](#)

[Attachment B: Draft Ordinance Regulating STRs](#)

[Attachment C: Draft Ordinance Prohibit STRs](#)

[Attachment D: City of Benicia Application](#)

[Attachment E: Figure 1](#)

Attachment F: Resolution (To Be Distributed by Separate Cover)

Travis AFB Land Use Compatibility Zone Criteria

Zone D & E Criteria	Consistent	Not Consistent	Comment
All proposed wind turbines must meet line-of-sight criteria in Policy 3.4.4	X		No wind turbines proposed
All new or expanded commercial-scale solar facilities must conduct an [Solar Glare Hazard Analysis Tool (SGHAT)] glint and glare study for ALUC review	X		No commercial solar facilities proposed
All new or expanded meteorological towers > 200 feet AGL, whether temporary or permanent, require ALUC review	X		No meteorological towers proposed
For areas outside of the Bird Strike Hazard Zone but within the Outer Perimeter, any new or expanded land use involving discretionary review that has the potential to attract the movement of wildlife that could cause bird strikes are required to prepare a WHA.	X		Not within Outer Perimeter
No hazards to flight, including physical (e.g., tall objects), visual, and electronic forms of interference with the safety of aircraft operations, and land uses that may attract birds to increase in the area shall be permitted.”	X		Use as or prohibition of a short-term rental compared to a residence will not create any of the listed hazards.
Buyer awareness measure in place which states, “a notice regarding aircraft operational impacts on the property shall be attached to the property deed.”	X		The ordinances regulate the use or prohibits use of a residence as a short-term rental. It does not result in purchase of property. Buyer awareness notifications would already be in place under other processes.
Additional Zone D criteria			
For areas within the Bird Strike Hazard Zone, reviewing agencies shall prepare a [wildlife hazard analysis (WHA)] for discretionary projects that have the potential to attract wildlife that could cause bird strikes. Based on the findings of the WHA, all reasonably feasible mitigation measures must be incorporated into the planned land use.	X		Not within Bird Strike Hazard zone

California Airport Land Use Planning Handbook Criteria

California Airport Land Use Planning Handbook Criteria	Consistent	Not Consistent	Comment
Intensity Limitations on Nonresidential Uses	X		No intensity limits on new uses in Compatibility Zone D or E; Development of large assembly uses are not anticipated
Identification of Prohibited Uses	X		Use as a Short Term Rental does not have potential for visual or electromagnetic interference or to attract wildlife hazardous to aircraft.
Open Land Requirements	X		Not required for Compatibility Zones D or E
Infill Development	X		Not anticipated to induce infill development
Height Limitations and Other Hazards to Flight	X		Does not involve construction of new facilities or structures.
Buyer Awareness Measures	X		Ordinances applies to the use of dwellings as rental units; no buyers
Non-conforming Uses and Reconstruction	X		No new incompatible uses, or reconstruction of incompatible uses are included in ordinances

**CITY OF BENICIA SHORT-TERM RENTAL REGULATIONS
DRAFT – JUNE 2022**

17.70.450 Short-Term Rentals

- A. **Purpose.** This section establishes regulations for short-term rentals when accessory to a dwelling unit. The purpose of these regulations is to:
1. Allow short-term rentals in Benicia while preventing the loss of housing stock, particularly rental units;
 2. Protect the character of residential neighborhoods and minimize adverse impacts on neighboring properties from short-term rentals;
 3. Allow for a range of lodging options for visitors to support a vibrant local economy; and
 4. Provide a short-term rental licensing process for the City to monitor compliance with these regulations and ensure collection of transient occupancy taxes.
- B. **Definitions.** See BMC 17.12.030 (Definitions) for definition of terms as used in this section.
- C. **Standards for Hosted Short-Term Rentals.**
1. **Where Allowed.** Hosted short-term rentals are permitted in all residential and mixed use districts and in all zones of the Downtown Mixed Use Master Plan, subject to the requirements of this section.
 2. **Eligible Dwellings.** A hosted short-term rental may occur in any dwelling unit or habitable room, subject to all other requirements of this section. A short-term rental may occur only within a legal dwelling unit. Parts of the property that are not habitable rooms and/or are not approved for residential habitation, such as a vehicle, storage shed, trailer, garage, or a tent, or similar facility, may not be used as a short-term rental.
 3. **Minimum Stay.** The minimum stay for a hosted short-term rental is one night.
 4. **Annual Limit.** There is no limit on the number of nights a dwelling unit may be occupied as a hosted short-term rental.
 5. **Parking.** A hosted short-term rental shall provide one off-street parking space in addition to the spaces required for the dwelling unit. The required off-street parking may be provided in a driveway and/or tandem configuration. Such parking shall remain open and available to occupants and guests at all times during the term of the rental.
 6. **Additional Standards.** A hosted short-term rental must also comply with standards in Subsection E (Additional Standards Applying to All Short-Term Rentals).
- D. **Standards for Un-Hosted Short-Term Rentals**
1. **Where Allowed.** Un-hosted short-term rentals are permitted only within the Downtown Mixed Use Master Plan area, subject to the requirements of this section.
 2. **Eligible Dwellings.** An un-hosted short-term rental may occur only within a detached single-family home. An un-hosted short-term rental is not permitted in a multifamily unit, attached condominium, townhome, or rowhouse as defined in the Downtown Mixed Use Master Plan.

Any deed restricted affordable unit, including inclusionary units as defined in 17.70.320 (Inclusionary housing), may not be used as un-hosted short-term rental.

3. **Minimum Stay.** The minimum stay for an un-hosted short-term rental is two consecutive nights.
4. **Annual Limit.** A dwelling unit may be occupied as an un-hosted short-term rental for no more than 120 nights per calendar year.
5. **Parking.**
 - a. An un-hosted short-term rental shall provide off-street parking as required by the Downtown Mixed Use Master Plan.
 - b. Required off-street parking may be provided on a driveway and/or tandem configuration, but shall in all cases be provided on an approved vehicle parking surface as approved by the city engineer and in accordance with the applicable requirements of the Downtown Mixed Use Master Plan.
 - c. Required parking shall remain open and available to occupants and guests at all times during the term of the rental.
6. **Additional Standards.** An un-hosted short-term rental must also comply with standards in Subsection E (Additional Standards Applying to All Short-Term Rentals).

E. **Additional Standards Applying to All Short-Term Rentals**

1. **Accessory Dwelling Units.** An accessory dwelling unit (ADU) may not be used as a short-term rental. A primary residence with an ADU on the lot may be used as a short-term rental.
2. **Primary Residence.** A short-term rental is permitted only in the host's primary residence.
3. **Maximum Occupancy.**
 - a. The maximum permitted occupancy for a short-term rental shall not be advertised nor exceed the equivalent of two adult guests per bedroom (excluding the host's bedroom for hosted short-term rentals).
 - b. All short-term rentals must comply with maximum occupancy limitations in the Benicia Municipal Code and/or California Fire Code as determined by the fire marshal or his or her designee.
4. **Life Safety.** The space used for a short-term rental must meet or exceed fire and life safety requirements in the building and fire codes, including installation of fire extinguishers, smoke and carbon monoxide detectors, and adequate means of egress.
5. **Contact Person.**
 - a. A short-term rental shall designate a contact person to be available to accept telephone calls during the term of a rental.
 - b. The designated contact person shall:
 - i. Respond within 30 minutes to complaints regarding the condition or operation of the dwelling unit or the conduct of guests; and

- ii. Take remedial action to resolve such complaints.
 - c. A host shall provide the contact person name and telephone number to all guests and occupants of adjacent properties.
 - d. A host shall keep on file with the City the name, telephone number, and mailing address of the contact person.
 - e. Contact person information must be current and up to date. A host shall inform the City and occupants of adjacent properties of changes to the designated contact person and/or their contact information.
6. **Performance Standards.** A short-term rental shall comply with all provisions of the Benicia Municipal Code, including, but not limited to BMC 17.70.240 (Performance Standards) and BMC 8.20 (Noise Regulations).
7. **Refuse and Property Maintenance.** A property with a short-term rental must be maintained free from weeds, debris, and trash as required by BMC 8.04 (Property Maintenance – Nuisance Abatement), BMC 8.08 (Weeds and Rubbish) and BMC 8.24 (Refuse Matter Disposal).
8. **Communication on Rules to Renters.** The host shall provide within the short-term rental printed materials with the following information:
- a. Method to contact the contact person as required by Subsection E.5 (Contact Person).
 - b. Events prohibited under Subsection E.9 (Commercial Events).
 - c. Occupancy limitation under Subsection E.3 (Maximum Occupancy).
 - d. The location of all fire extinguishers, carbon monoxide detectors, gas shut-off valves, emergency exit routes, and fire alarms.
 - e. Other policies and rules for guest behavior (“good neighbor policy”) as established by the host or required by the City as a condition of license approval.
9. **Commercial Events.** Commercial events such as weddings, banquets, and corporate retreats may not occur on the property as part of a short-term rental. A short-term rental may not be used as a conference and meeting facility as classified in BMC 17.16 (Use Classifications).
10. **Advertising.**
- a. A City-issued short-term rental license number must be depicted in a visible location on all short-term rental advertisements, including any listing on a hosting platform.
 - b. Signs advertising a short-term rental may not be posted on the exterior of a dwelling unit.
11. **Preservation of Records.** The host shall maintain records for three years demonstrating compliance with this section, including but not limited to the number of days per calendar year the dwelling unit has been used as a short-term rental, the number and length of each short-term rental stay, the number of guests for each booking, and the price paid for each stay. These records shall be made available to the City upon request.
- F. **Short-Term Rental License.**
- 1. **License Required.** Operating a short-term rental requires City issuance of a short-term rental license.

2. **No Property Rights Conferred.** Short-term rental licenses shall not be construed as providing property rights or vested interests and entitlements in continued operation of a short-term rental. Short-term rentals are revocable licenses which expire biannually. Short-term rental licenses do not run with the land.
3. **Review Authority.** The community development director or their designee shall review and approve, conditionally approve, or deny a short-term rental license application.
4. **License Application.**
 - a. An application for a short-term rental license must be submitted using a form provided by the City and must include, at a minimum, the following:
 - i. The address of the dwelling unit to be used for the short-term rental.
 - ii. The name and contact information of the short-term rental host.
 - iii. The name and contact information for the contact person if different from the host.
 - iv. An indemnification and hold harmless agreement, signed by the applicant, in a form approved by the City Attorney.
 - v. If the property is part of a common interest development, a letter of authorization from the homeowner's or condominium association indicating that the short-term rental is permitted under the association's covenants, conditions, and restrictions (CC&Rs).
 - vi. A statement, signed by the applicant, agreeing to comply with this section and any additional City requirements to operate a short-term rental in Benicia.
 - vii. A floor plan showing the bedrooms in the dwelling unit and a site plan showing off-street parking required for the short-term rental.
 - viii. Other information required by the City as needed to determine that the proposed short-term rental will comply with this section and other applicable regulations.
 - b. The host shall be the applicant named on the short-term license application. If the applicant is not the legal owner of the property, the application shall be signed by the property owner consenting to the use of the property as a short-term rental.
5. **Fee.** The license application shall be accompanied by a filing fee in an amount established by resolution of the city council.
6. **Application Review.**
 - a. The City will review the license application to determine if the proposed short-term rental complies with this section. The City may request additional information from the applicant as needed to determine compliance.
 - b. The City will act on the license application only after determining that the application is complete and accurate.
7. **Process to Act on Application – Hosted Short-term Rentals.**
 - a. **Criteria.** The City shall administratively approve a license application for a hosted short-term rental if all of the following requirements are met:

- i. The proposed short-term rental complies with the requirements of this section.
 - ii. The dwelling unit is not the subject of any active City enforcement proceedings, including a warning notice, notice of violation, compliance order, or administrative citation.
 - iii. A short-term rental license for the dwelling unit has not been denied or revoked in the prior 12-month period.
- b. **Public Hearing Not Required.** A noticed public hearing is not required prior to City action on a license application for a hosted short-term rental.
8. **Process to Act on Application – Un-hosted Short-term Rentals.**
- a. **Public Notice and Hearing.**
 - i. Notice of a pending decision by the community development director on an un-hosted short-term rental license application shall be given to owners of property located within 500 feet of the subject property and shall be posted on the project site.
 - ii. Notice shall be provided at least 10 days prior to the decision on a form set by the community development director.
 - iii. The notice shall state that the community development director is considering the application and will hold a public hearing only upon receiving written request for a hearing.
 - iv. The notice will identify:
 - (a) The date, time, and location of the public hearing if requested;
 - (b) The date by which a public hearing must be requested;
 - (c) A description of the proposed short-term rental;
 - (d) Directions on how to obtain further information about the application;
 - (e) Instructions to submit written comments on the application; and
 - (f) How to view the agenda if a public hearing occurs.
 - v. The date to request a public hearing specified in the notice shall be no less than 21 days prior to the anticipated decision date.
 - vi. If the City does not receive a request for a public hearing by the specified date, the community development director may act on the application without a public hearing.
 - vii. If the City receives a request for a public hearing by the specified date, the community development director shall hold a public hearing on the date identified in the notice. The City will not circulate a new notice if the public hearing will occur consistent with the date, time and location specified in the initial notice.
 - b. **Criteria.** The community development director may approve or conditionally approve the license application for an un-hosted short-term rental if:

- i. All of the requirements to approve a hosted short-term rental in Paragraph 7.a of this subsection are met; and
- ii. The community development director or their designee makes all of the following findings:
 - (a) The property location and site layout is suitable for an un-hosted short term rental.
 - (b) The un-hosted short-term rental will be compatible with existing and planned land uses in the vicinity of the property.
 - (c) The un-hosted short-term rental will not be detrimental to the public health, safety, and welfare.

9. **Conditions of Approval.**

- a. The City may attach conditions of approval to a short-term rental license to ensure compliance with this section and other applicable laws and regulations.
- b. The City may modify conditions of approval for a short-term rental license as needed to address repeated police calls for service or other use-related complaints. The City may modify conditions of approval with written agreement from the licensee or through the process specified in Subsection I (License Modification and Revocation).

10. **License Number.** The City shall assign a license number to each short-term license approved in accordance with this section.

11. **Non-Transferable.** An approved short-term rental license is personal to the host, does not run with the land, and is valid only at the original short-term rental site. A short-term rental license automatically expires upon sale or transfer of the property. A short-term rental license may not be assigned, transferred, or loaned to any other person.

12. **Biannual Renewal.**

- a. A short-term rental license must be renewed biannually on or before a City-specified date. If a short-term rental license is not renewed, the license will lapse and become void.
- b. A host must request a license renewal using a form provided by the City. The renewal request must be submitted with all required fees, information, and materials. The host shall submit information as needed for the City to verify that transient occupancy taxes have been paid as required by BMC 3.24 (Transient Occupancy Tax).
- c. The City shall issue a renewed license if the short-term rental has complied with the requirements of this section and other applicable City regulations over the prior year.

13. **Appeals.** Community development director decisions on a short-term rental license may be appealed to the planning commission, and decisions of the planning commission may be appealed to the city council in accordance with BMC 1.44 (Appeals).

G. **Business License and Taxes.**

1. **Business License.** A host shall obtain and maintain at all times a current City business license.

2. **Transient Occupancy Tax.** Transient occupancy taxes must be collected for short-term rentals and timely remitted pursuant to BMC 3.24 (Transient Occupancy Tax). Collection and payment of transient occupancy taxes for short-term rentals is the responsibility of the host.

H. **Enforcement and Penalties**

1. **Violations.**

- a. Any activity that conflicts with this section is unlawful, a public nuisance, and is subject to the remedies and penalties provided for in this subsection.
- b. The host, and the property owner if the host is a tenant, is responsible for any nuisance violations arising at a property during short-term rental activities.

2. **Enforcement Authority.** The enforcement officer has the primary responsibility to enforce this section as provided in BMC 1.10 (Administrative Citations) and BMC 8.04 (Property Maintenance – Nuisance Abatement).

3. **Inspections, Access, and Entry.** To carry into effect the provisions of this section, City enforcement officers are empowered to enter:

- a. The premises of a licensed short-term rental; or
- b. Any premises where there is reason to believe that a short term rentals is taking place.

4. **Remedies.** Any person who violates any provision of this section shall be subject to the penalties and administrative fines pursuant to BMC 1.08 (General Penalty), 1.10 (Administrative Citations), and BMC 8.04 (Property Maintenance – Nuisance Abatement).

5. **Enforcement Cost Recovery.** City costs to enforce this section is the responsibility of the licensee. The costs may be recovered pursuant to BMC 1.10.140 (Recovery of fines and administrative charges), Government Code Section 38773 et seq. and any other legal method.

6. **Attorney Fees.** The City may seek reasonable attorney fees incurred for an abatement action and related proceedings in those individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney fees. If the City elects to seek recovery of its own attorney fees, attorney fees may be recovered by the prevailing party in said action or proceeding. Pursuant to Government Code Section 38773.5(b), an award of attorneys' fees to the prevailing party shall not exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

- I. **License Modification and Revocation.** A short-term rental license may be modified or revoked as provided for in this section.

1. **Review Authority.**

- a. The community development director is authorized to review and take action on proceedings to modify or revoke a short-term rental license.
- b. The community development director may refer an action to modify or revoke a short-term rental license to the planning commission for review and decision.

2. **Grounds for Modification or Revocation.** The City may modify or revoke a short-term rental license for one or more of the following reasons:

- a. The license was issued based on false or misleading information in the application.
 - b. The licensee has failed or refused to allow inspections for compliance.
 - c. One or more conditions of license approval have been violated, or have not been complied with, or fulfilled.
 - d. The licensee has violated a requirement in this section.
 - e. The licensee has violated the Benicia Municipal Code, any City regulation, or State or Federal law.
 - f. The licensee has conducted the short-term rental in a manner that constitutes a public nuisance.
3. **Property Owner Notification.** Prior to scheduling an administrative hearing to modify or revoke a license, the City must notify the licensee of the violations, identify necessary corrections, and establish a reasonable period within which the licensee must correct the violations. The notice must be personally served or sent via first class mail and must contain the information specified in BMC 1.10.040.B. If the licensee has not corrected the violation within the specified period of time, the City may proceed with the process to modify or revoke the license.
4. **Notice of Administrative Hearing.**
- a. The City must provide written notice of the license revocation proceedings to the licensee 10 days prior to the hearing. The notice must state the nature of the violation and the date and place of the administrative hearing.
 - b. For un-hosted short-term rentals, the City shall also post notice on the subject property and provide public notice to owners of property located within 500 feet of the subject property.
5. **Administrative Hearing.** The community development director shall hold an administrative hearing in the same manner as required for administrative citations in in BMC 1.10.110 (Administrative hearing procedure).
6. **Decision.** The community development director shall make a decision on the license modification or revocation within 15 calendar days of the conclusion of the hearing. The community development director may modify or revoke the license upon finding that one or more of the grounds for revocation in 17.70.450.G.2 (Grounds for Revocation) applies. Alternatively, the community development director may at his or her discretion:
- a. Allow the licensee additional time to correct the violation or non-compliance;
 - b. Modify the license conditions of approval;
 - c. Determine that the violation has been corrected and end abatement proceedings; or
 - d. Refer the matter to the planning commission for review and final decision.
7. **Notice of Decision.** The City shall mail a written notice of the decision to the licensee within 15 calendar days of the date of the decision.

8. **Appeals.** A decision by the community development director or planning commission concerning the modification or revocation of a short-term rental license may be appealed in accordance with BMC 1.44 (Appeals).
9. **Effective Date.**
 - a. If a modification or revocation decision is not appealed, the decision becomes final and effective 10 business days after the date of the decision.
 - b. For decisions appealed to the city council, the decision is final when the city council makes a final decision on the appeal.
10. **Effect of Revocation.**
 - a. The revocation of a license has the effect of terminating the approval and denying the privileges granted by the license.
 - b. The prior holder of a revoked license may not apply for a new short-term rental license on the property or in any other location in the city within 24 months of the license revocation.

OTHER BMC AMENDMENTS

17.12.030 Definitions

“Short-Term Rental” means the overnight rental of a dwelling unit, in whole or in part, for residing, sleeping, or lodging purposes for a period of 29 consecutive calendar days or less. Terms used in BMC 17.70.450, Short-term rentals, are defined as follows:

“Host” means the person who offers their dwelling unit as a short-term rental under this section. A host may be an owner, lessee, or sub-lessee. “Host” has the same meaning as “operator” in BMC Chapter 3.24 (Transient Occupancy Tax).

“Hosted Short-Term Rental” means a short-term rental where the dwelling unit is the host’s primary residence and the host remains on-site during the guest’s stay.

“On-site” means the host is present within the dwelling unit for at least five hours within every 24-hour period during which the dwelling unit is being used as a short-term rental.

“Primary residence” means a dwelling unit that is a host’s permanent residence or usual place of return for housing as documented by at least two of the following and in the host’s name: motor vehicle registration; driver’s license; voter registration; tax documents showing the dwelling unit as the host’s primary residence; or a utility or phone bill dated within the last 30 days. A host shall have only one primary residence and must reside there no fewer than 245 days per calendar year in which the dwelling unit is used as a short-term rental.

“Rent” means payment or other form of consideration in exchange for use of a short-term rental. As used in this section, “rent” does not include:

- a. The owner or long-term lessee of the property, without consideration, allowing family or friends to use the property; and
- b. Short-term trades between property owners where the sole consideration is each concurrently using the other’s property.

“Short-Term Rental” means the rental of a dwelling unit, in whole or in part, for residing, sleeping, or lodging purposes for a period of 29 consecutive calendar days or fewer.

“Un-Hosted Short-Term Rental” means a short-term rental where the host is off-site during the guest’s stay.

17.16.050 Commercial Use Classifications

EE. Visitor Accommodations.

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis typically in a converted single-family or multifamily dwelling, with incidental eating and drinking service (not including cannabis or cannabis products) for lodgers only, provided from a single kitchen. This classification excludes short-term rentals, as defined in BMC 17.12.030 (Definitions), when accessory to a dwelling unit.

2. Hotels and Motels. Establishments offering lodging on a less than weekly basis, and having kitchens in no more than 60 percent of guest units. This classification includes eating, drinking, and banquet service, not including cannabis or cannabis products. This classification excludes short-term rentals, as defined in BMC 17.12.030 (Definitions), when accessory to a dwelling unit.

17.24 Residential Districts

17.24.020 RS, RM, and RH districts – Land use regulations

- P – Permitted
- U – Use Permit
- L – Limited (See “Additional Use Regulations”)
- – Not Permitted

	RS	RM	RH	Additional Regulations
Residential				
Single-Family Residential	P	P	P	(E) (L)
Public and Semipublic				
Visitor Accommodation				(Q)
Bed and Breakfast Inns	L3	L3	L3	

~~(E) Rooms in a dwelling unit may be rented for occupancy by not more than three persons who are not members of a single housekeeping unit; provided, that not more than two bedrooms shall be rented in each unit~~

(Q) For visitor accommodations accessory to a dwelling unit, see BMC 17.70.450, Short-term rentals.

ORDINANCE NO. 20-XX**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA,
CALIFORNIA, ADDING SECTION 17.70.450 TO CHAPTER 17 OF THE
BENICIA MUNICIPAL CODE REGARDING SHORT-TERM RENTALS**

WHEREAS, a central and significant goal for the City of Benicia (“City”) is preservation of its housing stock and preserving the quality and character of residential neighborhoods; and

WHEREAS, operations of short-term rentals, where residents rent to visitors frequently disrupt the residential character of the neighborhoods and adversely impact the community; and

WHEREAS, the City Council now desires to prohibit short-term rentals to better assist in preserving the stock, quality, and character of residential neighborhoods.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 17.70.450 is hereby added to the Benicia Municipal Code as follows:

Section 17.70.450 Short-Term Rentals.

A. *Definitions.* For purposes of this Section, the following words or phrases shall have the following meanings:

1. “Person” means any natural person, individual, firm, joint venture, joint stock company, partnership, association, social club, estate, trust, receiver, trustee, syndicate, company, corporation, business trust or organization of any kind, or any other group or combination acting as a unit.

2. “Short-term rental” means renting for a period of less than thirty consecutive calendar days (i.e. 29 days or less) of any dwelling unit, in whole or in part, for transient use.

3. “Transient” means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 29 consecutive calendar days or less, counting portions of calendar days as full days.

4. “Dwelling Unit” means one or more rooms with a single kitchen, designed for occupancy by one family for living and sleeping purposes.

B. *Short-term rental prohibition.*

Short-term rentals are prohibited within the City of Benicia. No person shall undertake, maintain, authorize, aid, facilitate or advertise any short-term rental, as defined herein, within the City.

C. *Enforcement and Penalties; Public Nuisance.*

1. Violations; Public Nuisance

a. Any activity that conflicts with this section is unlawful, and is a public nuisance subject to the remedies and penalties provided by the municipal code.

b. The host, and the property owner if the host is a tenant, are responsible for any nuisance violations arising at a property as a result of a short term rental in violation of this code.

2. Penalties.

a. Any person violating any provision in this section shall be guilty of an infraction or a misdemeanor punishable in accordance with Section 1.08.030 of this Code.

b. Any person who violates any provision of this section may be subject to administrative fines pursuant to Chapter 1.10 of this Code.

c. Any person who violates any provision of this section may be subject to enforcement pursuant to Chapter 8.04 of this Code.

d. Each instance of short-term rental in violation with this section shall constitute a separate violation. Each day of a continuing violation of this section shall constitute a separate violation.

D. Injunctive or other relief

Any interested person may maintain an action in civil court to seek an injunction or other relief to prevent or remedy violations of this section. The prevailing party in such an action shall be entitled to recover reasonable costs and attorney's fees from the person determined to be in violation. Under no circumstances shall any person be entitled to maintain an action seeking an injunction or other relief or recover any reasonable costs and attorney's fees against the City to enforce the provisions of this section.

E. Administrative Subpoenas

The City may issue and serve administrative subpoenas necessary to obtain specific information regarding short-term rental listings located in the City, including, but not limited to, the names

of the persons responsible for each listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the short-term rental listing violate this section. The procedure for issuance of an administrative subpoena shall follow the process as outlined in Government Code section 37014 – 37109. Any subpoena issued pursuant to this subsection shall not require the production of information sooner than thirty days from the date of service. A person that has been served with an administrative subpoena may seek judicial review during that thirty day period.

F. Cost Recovery; Attorney's Fees

The city may seek reasonable attorney fees incurred for an abatement action and related proceedings in those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney fees. If the city elects to seek recovery of its own attorney fees, attorney fees may be recovered by the prevailing party in said action or proceeding. Pursuant to Government Code Section 38773.5(b), an award of attorneys' fees to the prevailing party shall not exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

G. Nonexclusive remedies.

The remedies listed in this chapter shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other ordinances or abating public nuisances by all other remedies, including by issuing administrative citations in Chapter [1.10](#) BMC, enforcement pursuant to Chapter 8.04 or other administrative, civil or criminal proceedings, or in any other manner provided by law. Nothing contained in this chapter shall be construed as limiting, prejudicing, or adversely affecting the city's ability to concurrently or consecutively use any of those proceedings as the city may deem are appropriate, efficient, effective, and/or practical.

Nothing in this chapter prevents the city council from authorizing the commencement of any other available civil or criminal proceeding to abate a public nuisance under applicable provisions of state or federal law.

SECTION 2. Section 17.24.020 of the Benicia Municipal Code is amended to remove additional regulation (E), as follows:

17.24 Residential Districts

17.24.020 RS, RM, and RH districts – Land use regulations

- P – Permitted
- U – Use Permit
- L – Limited (See “Additional Use Regulations”)
- – Not Permitted

	RS	RM	RH	Additional Regulations
Residential				
Single-Family Residential	P	P	P	(E) (L)

~~(E) Rooms in a dwelling unit may be rented for occupancy by not more than three persons who are not members of a single housekeeping unit; provided, that not more than two bedrooms shall be rented in each unit~~

SECTION 3. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall take effect thirty (30) days from its passage by the City Council.

SECTION 5. The City Clerk is authorized and directed to cause this Ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation and circulated within the City in accordance with Government Code Section 36933(a) or, to cause this Ordinance to be published in the manner required by law using the alternative summary and posting procedure authorized under Government Code Section 36933(c).

PASSED, APPROVED AND ORDAINED this XX day of Month, 2021.

 Steve Young
 Mayor

APPROVED AS TO FORM:

ATTEST:

Benjamin L. Stock
City Attorney

Lisa Wolfe
City Clerk



250 East L Street • Benicia, CA 94510 • (707) 746-4320

Community Development Department Planning Division

June 20, 2022

Nedzlene Ferrario
Solano County Department of Resource Management
Planning Services Division
675 Texas Street, Suite 5500
Fairfield, CA 94533-6341

RE: Referral of Zoning Text Amendment to Airport Land Use Commission

Dear Ms. Ferrario,

Enclosed please find an application to the Airport Land Use Commission, requesting the Commission's review of two proposed Zoning Text Amendments within the City of Benicia for compatibility with the Travis Air Force Land Use Compatibility Plan (ALUCP). The proposed Zoning Text Amendments would either regulate or prohibit short term rentals in Benicia depending on which one is chosen for approval by Benicia's City Council. The ordinances would be effective City-wide. A majority of the City is in Zone D of the Travis ALUCP, but a portion of the city appears to also be in Zone D.

The proposed project includes the following:

- Two proposed Zoning amendments to either regulate and allow short term rentals or to prohibit them entirely in Benicia.

The City of Benicia hopes that you will review the enclosed application and documentation to advise us of the application's completeness and any comments you may have.

Thank you for your assistance and consideration.

Respectfully,

Evan Gorman
Associate Planner

Solano County Airport Land Use Commission

675 Texas Street Suite 5500
Fairfield, California 94533
Tel 707.784.6765 / Fax 707.784.4805
SolanoALUC@SolanoCounty.com

LAND USE COMPATIBILITY DETERMINATION: APPLICATION FORM

TO BE COMPLETED BY STAFF		
APPLICATION NUMBER:	FILING FEE:	
DATE FILED:	RECEIPT NUMBER:	
JURISDICTION:	RECEIVED BY:	
PROJECT APN(S):		
TO BE COMPLETED BY THE APPLICANT		
I. GENERAL INFORMATION		
NAME OF AGENCY: City of Benicia	DATE: 06/20/2022	
ADDRESS: 250 East L Street, Benicia, CA		
E-MAIL ADDRESS: EGorman@ci.benicia.ca.us	DAYTIME PHONE: 707-746-4276	FAX:
NAME OF PROPERTY OWNER: N/A - Citywide Ordinance	DATE: 06/20/2022	
ADDRESS: N/A - Citywide Ordinance	DAYTIME PHONE:	
NAME OF DOCUMENT PREPARER: Evan Gorman, Associate Planner	DATE:	
ADDRESS: 250 East L Street, Benicia, CA	DAYTIME PHONE: 707-746-4276	FAX:
NAME OF PROJECT: Short-Term Rental Ordinance		
PROJECT LOCATION: Citywide Ordinance		
STREET ADDRESS: N/A - Citywide Ordinance		

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.

TO BE COMPLETED BY THE APPLICANT

II. DESCRIPTION OF PROJECT

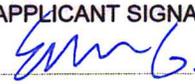
The proposed project would amend Title 17 (Zoning) of the Benicia Municipal Code (BMC) to establish regulations for Short Term Rentals (STRs). Two potential ordinances will be considered during the Planning Commission's upcoming hearing and then the expected subsequent City Council Hearings: one ordinance which prohibits short-term rental businesses and one that allows them subject to licensing requirements. The Planning Commission will be asked to recommend one ordinance to the City Council, and then the City Council will be asked to review the two ordinances and choose one for approval.

The proposed amendments would establish a new section in the General Regulations (BMC Chapter 17.70) and make associated amendments to Definitions (BMC section 17.12.030), Use Classifications (BMC section 17.16.050) and Residential Districts (BMC section 17.24.020). Short Term Rental is defined in these amendments as the rental of a dwelling unit, in whole or in part, for residing, sleeping, or lodging purposes for a period of 29 consecutive calendar days or fewer. The proposed amendment allowing STRs would provide regulations for short term rentals, and may result in new location, occupancy, and licensing procedures for short term rental operations. The amendments would also provide procedures for enforcement.

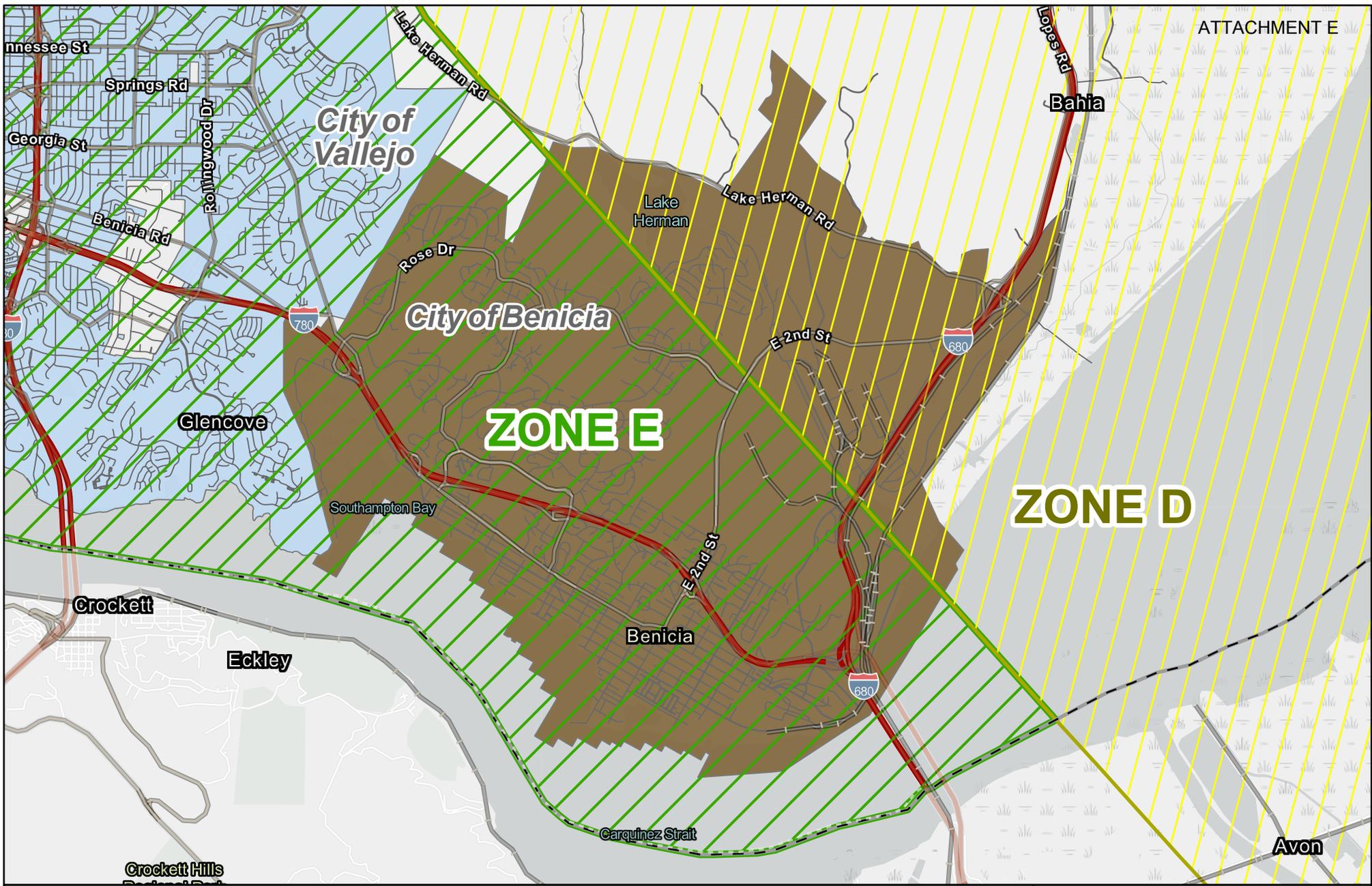
Short-Term Rental is the rental of a dwelling unit, in whole or in part, for residing, sleeping, or lodging purposes for a period of 29 consecutive calendar days or fewer. These spaces are typically rented to guests using online platforms such as AirBNB and VRBO.

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.

LAND USE COMPATIBILITY DETERMINATION APPLICATION

TO BE COMPLETED BY THE APPLICANT	
II. DESCRIPTION OF PROJECT (CONT'D)	
POTENTIAL PROJECT EMISSIONS: (i.e. smoke, steam, glare, radio, signals): None.	
PROJECT AIRPORT LAND USE COMPATIBILITY PLAN: Travis Airport Land Use Compatibility Pln	COMPATIBILITY ZONE: <i>E and D</i>
PERCENTAGE OF LAND COVERAGE: N/A	MAXIMUM PERSONS PER ACRE: N/A
THE FOLLOWING INFORMATION MUST BE SUBMITTED AS A MINIMUM REQUIREMENT:	
<input checked="" type="checkbox"/> JURISDICTION REFERRAL LETTER: <input type="checkbox"/> ENVIRONMENTAL DOCUMENTATION: <input type="checkbox"/> LOCATION MAP: <input type="checkbox"/> ASSESSOR'S PARCEL MAP, with subject property marked in red: <input type="checkbox"/> SITE PLAN, drawn to scale and fully dimensioned including topographical information, and 8 1/2 x 11 inch reduction(s): <input type="checkbox"/> ELEVATIONS, if located in APZ, clear zones and A,B,C compatibility zones or over 200' in height, plus 8 1/2 x 11 inch reduction(s) : <input type="checkbox"/> WIND TURBINE STUDY, including cumulative impact studies. Such studies shall include an analysis of (1) the individual effects of the proposed project, and (2) as required by law, an analysis of the cumulative effects of the proposed project considered in connection with the effects of past projects, the effects of other current projects and proposed projects, and the effects of probable future projects, including (i) the probable build out for wind energy development of the remaining vacant parcels within the wind resource areas described in the Solano County General Plan and (ii) any probable replacement of existing turbines or meteorological towers with structures having different dimensions.	
<input checked="" type="checkbox"/> SUPPLEMENTAL INFORMATION: Draft ordinances and draft staff report <input checked="" type="checkbox"/> FEES: \$200 <input type="checkbox"/> ELECTRONIC COPIES OF ALL APPLICATION MATERIALS ON A CD:	
APPLICANT SIGNATURE: X 	DATE: 06.20.2022
DOES THE PROJECT PROPOSE THE DEMOLITION OR ALTERATION OF ANY EXISTING STRUCTURES ON THE PROJECT SITE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, describe below:	

PLEASE CALL THE APPOINTMENT DESK AT (707) 784-6765 FOR AN APPLICATION APPOINTMENT.



Travis AFB Compatibility Zones in City of Benicia

-  Zone D
-  Zone E
-  City of Benicia
-  City of Vallejo
-  Solano County Boundary



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

