



Legislation Text

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TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Anne McIntosh, Community Development Director
Andy Sywak, Community Development Project Manager

SUBJECT:

Discussion Regarding Short-Term Rentals (Continued from the February 6, 2018 City Council Regular Meeting) (Community Development Director McIntosh).

DISCUSS AND PROVIDE DIRECTION

RECOMMENDATION:

Staff recommends that the City Council:

- 1) discuss goals and concerns of a short-term rental policy;
- 2) review and discuss policy/program options for short-term rentals, including adopting the last Planning Commission recommendation; and
- 3) provide direction for Zoning Code and Local Coastal Program (LCP) Amendments. Based on the results of the discussion, staff can return with an ordinance based on City Council input and suggestions.

EXECUTIVE SUMMARY:

In June 2015, the City Council approved amendments to the City's Municipal Code reinforcing the City's Zoning Code prohibition of short-term vacation rentals in Residential Zones. (Short-term rentals are permitted in the commercial zones.) In a strategic planning session in May 2017, the City Council directed staff to revisit this policy.

Although short-term rentals have revenue potential through Transient Occupancy Tax (TOT) collection, there remain many questions about the most effective ways to enforce regulations. To prepare for this discussion, the City Council requested that staff look at options for possibly allowing limited short-term rentals, while minimizing impacts to residential neighbors and enhancing revenues.

FISCAL IMPLICATIONS:

With the current prohibition, the City currently receives no Transient Occupancy Tax (TOT) from short-term rentals.

If permitted, the City would receive TOT. Any increase in revenue would depend on the number of

registered property owners who would be allowed to host short-term rentals, and under what circumstances. Staff has been actively involved with the South Bay Cities Council of Governments (SBCCOG) Short-Term Rental Taskforce and has also met with representatives from hosting platforms to discuss the evolving best practices for local short-term rentals.

If short-term rentals are permitted and regulated, additional resources would be needed to administer the program, primarily in the Community Development Department. Code Enforcement officers would be responsible for ensuring compliance with any regulations adopted by the City. By way of example, the City of Santa Monica (albeit a larger City) hired two additional full-time Code Enforcement officers to handle enforcement of short-term rentals. Other cities have outsourced some enforcement and administrative functions. Staff would recommend that a registration fee be charged to operators to offset the cost of one full-time staff position to run the program, as well as any administrative and support costs.

BACKGROUND:

In May 2015, the Planning Commission considered a number of Zoning, Municipal Code and Local Coastal Program amendments, including regulations for short-term and vacation rentals. Transient uses, including short-term rentals, are uses of property for less than 30 days. They are considered commercial uses and therefore not permitted in residential zones. The Planning Commission recommended that the Code be amended to allow a set number of short-term rentals, limited to once within a three-month period, for a total of four short-term rental uses per property within a 12-month period.

The City Council reviewed the Commission recommendation in June 2015. Residents expressed concerns with allowing short-term rentals due to loss of neighborhood character, difficulty with enforcement, and adverse impacts including noise, trash, crime, traffic and parking. Operators of short-term rentals also provided public input, stating that they had strict background checks and contracts that they felt had successfully controlled any adverse impacts. The City Council discussed potential impacts to quality of life; health and safety issues; the importance of protecting the character of the City's residential neighborhoods; and enforcement concerns. So, instead of allowing transient uses on a limited basis, the City Council reinforced the prohibition on transient uses in residential zones.

A coordinated enforcement effort to address short-term rental impacts in residential neighborhoods was then initiated based on City Council direction. Staff also submitted the Code Amendments to the California Coastal Commission (CCC) for certification. Then, they met with the CCC staff to discuss the amendments. The CCC staff recommended that some level of short-term rentals be allowed to enhance visitor-serving uses in the coastal zone, and they provided information on different options that other cities had successfully used, as discussed below. They emphasized that the program should be tailored to the specific needs of the community. Staff has also been attending monthly SBCCOG Short-Term Rental Task Force meetings, participating in webinars and other trainings, and worked with the City Attorney's office to understand how other cities are addressing short-term rentals and current best practices for how they are regulated.

DISCUSSION:

The City Council should consider a number of factors when determining which short-term rental policies to adopt.

Models use by other Cities

Cities across the world have reacted to regulating short-term rentals in different ways.

Cities may adopt more than one type or class of licenses for different areas of the city. For example, the City of Pacific Grove has two different types of licenses, Type A and Type B. Both types allow for rental up to 90 days per year, but Type A has a cap of 250 licenses throughout the City and a maximum density of 15% of the parcels on a given block, while Type B has no cap or density limits. Signage is required to identify the short-term rental from the street, and the City has a hotline number to field all complaints.

Cities are also incorporating pages on their website to allow the public to look up which homes are legally permitted to host short-term rentals. The City of Pacific Grove lists available properties as does the City of Newport Beach. Both cities display this information on a map (Attachment 3).

Throughout the country, cities have tried various regulatory approaches to short-term rentals including limiting the area in which licenses may be issued. For example, the City of Newport Beach does not allow licenses to be issued to properties in single-family residential zones. Santa Cruz County allows licenses in all districts which permit stand-alone residential uses but requires signage identifying the structure as a vacation rental, which includes local contact information for responding to complaints.

Palm Desert and Palm Springs have good neighbor policies that are required to be incorporated into rental agreements, and Nashville requires that property owners have commercial liability insurance. San Francisco requires hosts to have property liability insurance in the amount of no less than \$500,000 or provide proof that they have property liability coverage in an equal or higher amount provided by the hosting platform through which they rent their unit. Seal Beach issued conditional use permits for a limited number of short-term rentals, provided that the property had adequate on-site parking to accommodate guests.

Pasadena

The City of Pasadena recently passed a short-term rental ordinance that went into effect in February of this year (Attachment 4). This ordinance allows for short-term rentals in a host's primary residence which is defined as a home where the host lives for a minimum of nine months per year. Short-term rentals are permitted in single-family residences, duplexes, condominiums, townhomes and multi-family rental units. Tenants have the right to lease out their units but only with the permission of their landlords.

In order to be able to lease their unit out for short-term rentals, hosts must obtain a short-term rental permit and obtain a Transient Occupancy Registration Certificate from the Finance Department. Hosts must also sign a notarized affidavit attesting that the short-term rental unit is his/her primary residence and that the local responsible contact person or property management company will be available 24 hours a day. The City of Pasadena is working with Host Compliance, a private vendor specializing in assisting municipalities with their short-term rental laws, to create an online portal and application process.

The ordinance does not allow for short-term rentals to occur in vacation rentals which is defined as a "dwelling unit that is not a primary residence and which is available for temporary lodging." It also does not allow for short-term rentals in accessory dwelling units (ADUs) permitted after January 1,

2017, although it does permit them in ADUs constructed or permitted prior to this date.

California Coastal Commission Resistance to Outright Bans

Cities that have bans on short-term rentals in residential zones have been met with resistance from the California Coastal Commission (CCC). The CCC has not approved LCP amendments that the CCC considers overly restrictive short-term rental bans in: Encinitas, Imperial Beach, Pismo Beach and, most recently, Laguna Beach.

Manhattan Beach Planning Commission Recommendation

In 2015, the Planning Commission recommended that transient uses be allowed no more than four times per twelve-month period. It did not have provisions related to occupancy in each unit, signage, cap or density limits, insurance or any of the other standards mentioned above. Any violations related to noise, trash, parking and other neighbor impacts would be handled through the existing Municipal Code criteria. The City Council did not approve the Planning Commission's recommendation.

Code Enforcement

Responsibility for enforcing the short-term rental regulations lies within the Community Development Department's Code Enforcement division. Code Enforcement officers principally enforce the standards on a complaint basis. The enforcement involves visiting the site, contacting the tenants and online research. Once confirmed, the owner of the short-term rental that is the subject of the violation receives a letter from the City Attorney and/or an administrative citation. Per administrative citation regulations, the City has been fining violators \$1,000 per violation. From September of 2016 to December 2017, there were a total of 58 reported cases with 26 currently open and 32 being closed.

Cities have employed different methods for dealing with short-term rentals. Some have hired consultants to discover and follow through on violations. For example, Hermosa Beach has hired the private vendor, Host Compliance, to help with monitoring of rentals and other compliance issues. This proprietary software allows them to identify an address from an advertisement. Host Compliance sends out the first two initial letters on City of Hermosa Beach letterhead to violators with the City doing the follow-up. Using this approach, Host Compliance soon mailed out 200 warning letters to violators when enforcement commenced on August 30, 2016. Charges are based on the number of units they identify. The service cost the City \$25,000 for the first year and \$10,000 for the second year.

A large part of the enforcement problem with short-term rentals is due to their widespread popularity and what many believe to be the inevitability of their continued use. With several home-sharing platforms in existence (Airbnb, Homeaway, VRBO, etc.), strict enforcement on home-sharing economic activity can result in the activity migrating to a different website or platform with homeowners continuing to advertise and host guests.

Continued advertisement of short-term rentals online in cities with a full ban demonstrates that enforcing a full ban is difficult. Based upon the experience of other cities, allowing limited short-term rentals with a registration requirement will be easier to enforce. However, additional code enforcement personnel may be needed to run the registration and monitoring. As is true with all enforcement of all Code restrictions, voluntary compliance and vigilant neighbors is essential.

Platform Accountability

The City of San Francisco has signed agreements with both Airbnb and VRBO, two of the leading hosting platforms, to better regulate short-term rentals in their cities. For instance, Airbnb now will remove hosts on their platform that do not list an active business license and are not registered with the City. Staff in San Francisco have said that these agreements have created “platform accountability” whereby the platforms, and not the cities, are doing more work to enforce compliance with the municipality’s laws. Agreements with the hosting platforms allows the cities to cancel the bad behavior they are seeking to curtail at the gate, on the internet, as opposed to having to go out into the field to pursue and cite bad actors where citing offenders is much more difficult.

Economic Analysis

In October 2017, the Los Angeles County Economic Development Corporation (LAEDC) issued a report commissioned by Airbnb about the economic impact of short-term rentals on the regional economy. The Airbnb report concluded that many Airbnb guests spend more daily on other travel expenses, such as food or shopping, than guests who stay in other forms of accommodation, and that host revenues and visitor spending generate *new* economic output in Los Angeles County. The report “estimates that host revenues *net* of Airbnb revenues and visitor spending will generate economic output in Los Angeles County of \$905.5 million on an annual basis and support 7,440 jobs and will generate \$52.5 million in state and local taxes.”

Many Airbnb clients cite lower costs, additional amenities like a kitchen or extra bathrooms, convenient location and the desire to live like a local as the major reasons for using Airbnb locations as opposed to a conventional hotel. When asked by staff whether vacation rentals were a threat to their business, one local hotel professional stated, “We’re in the hospitality business, they’re in the lodging business.” Anecdotally, staff has heard sporadic feedback from residents that they have found the supplemental income from short-term rentals beneficial to their quality of life, and some have indicated that they rely on the income for day-to-day living expenses.

POLICY ALTERNATIVES:

ALTERNATIVE # 1: Direct staff to prepare an ordinance consistent with the original 2015 Planning Commission recommendation, allowing short-term rentals once within a three-month period for a total of four short-term rental uses per property within a 12-month period.

PROS:

Already been publically vetted and is likely to be acceptable to the CCC. Provisions reflect a balanced approach and allow for TOT collection. May reduce the amount of staff time for enforcement.

CONS:

Would be a limited number of short-term vacation rentals in residential areas which could potentially impact residential neighborhoods. The 2015 Resolution lacks a cap-and-density limit or other limitations.

ALTERNATIVE # 2: Give direction to draft a new ordinance based upon the Planning Commission recommendation, but with additional regulations to minimize the impacts within the residential community as discussed in the staff report (e.g., required on-site parking, etc.).

PROS:

Allows for further public input on a variety of potential regulations. Would allow staff the opportunity to consult with the CCC on potential standards.

CONS:

Would significantly delay adoption and implementation of city-wide short-term rental provisions. Would require significant staff time to set up and administer the initial program and on-going administration and enforcement.

ALTERNATIVE # 3: Keep current prohibition in place.

PROS:

Continues status quo which minimizes impacts to neighborhoods from short-term rentals.

CONS:

City foregoes revenue from collecting TOT on legalized short-term rentals. Does not allow for any flexibility. Significant staff time currently devoted to enforcing ban which has not proven to be effective in eliminating short-term rentals in the City.

Council Discussion: If City Council proceeds with Alternative #2, staff would like feedback on the following issues:

1. Does the Council want to revisit the city's policy (prohibition in residential zones) and allow short-term rentals in some form?
2. Would the Council like to limit by ownership types (owner-occupied residence, tenant occupied, corporate ownership, absentee individual owner (aka vacation rental))?
3. Would the Council like to add criteria to the ordinance (i.e., limits by geography, by zone district, area district, number of days per year)

(Staff continues to support the 2015 Planning Commission recommendation limiting the short-term rental of each property to no more than four times a year.)

4. Consideration of Operational Guidelines:
 - (1) Require parking spaces;
 - (2) Have a map on city website with all STRs listed;
 - (3) Require insurance,
 - (4) Signage, etc.
5. Discuss the use of outside vendors for administration and enforcement.

PUBLIC OUTREACH/INTEREST:

Upon City Council policy direction, a community outreach effort will be undertaken to inform the community of the City's goals and receive feedback on program features.

ENVIRONMENTAL REVIEW

The discussion item is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there will be no potential for any impacts on the environment.

LEGAL REVIEW

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

Attachment/Attachments:

1. Planning Commission Resolution - PC 15-03
2. Pacific Grove and Newport Beach Short-Term Rental Listings

3. Pasadena Short-Term Rental Ordinance