



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: June 23, 2015

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department
Administration Division, Finance Department

SUBJECT: Council Direction On Short-Term Vacation Rental Regulations

RECOMMENDATION:

That Council provide direction to staff regarding regulation and enforcement of short-term vacation rentals.

EXECUTIVE SUMMARY:

The trend of converting residential units into full- or part-time vacation rentals has become increasingly popular, especially in vacation destination communities such as Santa Barbara. The City Council and staff are aware that short-term vacation rentals exist throughout the City and that most are operating in residential areas where they are not currently allowed. To date, alleged violations have been investigated and code enforcement action taken only in response to neighborhood complaints.

At the same time, however, the City is collecting Transient Occupancy Tax (TOT) revenue from short-term vacation rental owners. In response to the growing concerns over the impacts of vacation rentals in neighborhoods and the potential for confusion created by the City's enforcement actions and simultaneous collection of TOT, the City Council recently directed staff to address this policy issue.

This report provides background and contextual information for the public and City Council discussion and includes options for the regulation and enforcement of vacation rentals in the City of Santa Barbara.

DISCUSSION

The rapid rise of short-term vacation rentals is posing unforeseen challenges and opportunities for cities across California and the country. The City Council and staff are aware that short-term vacation rentals exist throughout the City and that most are operating in residential areas where they are not allowed under the Zoning Ordinance.

Please see the attached map that illustrates the areas of the City where vacation rentals can be permitted through a discretionary review process and then operate legally under the City's Zoning Ordinance. Areas mapped in color show the zoning districts in which short-term vacation rentals are currently allowed, and the grey parts of the map illustrate areas of the City where short-term vacation rentals are not allowed. The yellow dots represent locations where short-term vacation rental operators that have registered with the Finance Department, have a business license and pay Transient Occupancy Tax (TOT). Not all short-term vacation rentals operating in the City have applied for a business license and pay TOT. Many more short-term rentals exist in the City than are represented on this map.

There is concern that short-term rentals negatively impact neighborhood character and contribute to other nuisances, including noise and on-street parking impacts. Further, the commercialization of rental housing contributes to an increase in rents by reducing the amount of housing stock available to longer-term tenants. The City's Housing Element has a long-standing policy to protect and preserve the City's rental housing stock.

On the other hand, some short-term rental owners earn income to supplement or cover housing costs. Short-term rentals also provide travelers and tourists with an alternative to traditional lodging and dining establishments and provide a unique view into life in Santa Barbara. Guests can select from a variety of housing options and have a unique experience of staying in a home in a neighborhood. Statements have been made that short-term rentals increase tourism and boost the local economy. In Fiscal Year 2015, TOT from vacation rentals is expected to generate an estimated \$1.19 million.

The purpose of this staff report is to provide some basic information to set the stage for Council's discussion of short-term vacation rentals. Establishing a clear definition of terms is important. A shared understanding of the City's Municipal Code, policies, registration and enforcement practices is important as well.

Definition of Terms Used in This Report

For the purposes of this Council Agenda Report and Council discussion, Staff recommends a common use of the following terms and definitions. These are not terms or definitions currently found in the City's Municipal Code.

"Home Sharing Rental" – A resident(s) hosts visitors in their home for short periods of time (less than 30 days) while at least one of the primary residents lives on-site throughout the stay. Guests pay a nightly fee and enjoy non-exclusive shared use of the unit with the person(s) who lives there. Typically, the primary resident actively hosts the guests during the visit.

"Vacation Rental" – The rental of any un-hosted dwelling unit to any person for exclusive transient use of less than 30 days. Guests pay a nightly fee and enjoy the exclusive private use of the unit.

“House Swapping” – The exchange of a house by one owner with another owner in a different city for short periods of time by agreement without compensation or fees. These are informal, non-commercial arrangements that are not subject to City Municipal Code regulations. As such, they are not referenced any further in this report.

Regulatory Approaches in Other Communities

In preparation for this Council discussion, Staff researched how other jurisdictions allow and regulate, or prohibit and enforce, vacation rentals and home sharing rentals.

In many jurisdictions, short-term rentals in residential neighborhoods are not allowed and considered illegal. Short-term rentals are usually viewed as a commercial activity and considered no different than a hotel. Some jurisdictions have moved to explicitly ban vacation rentals including West Hollywood, Aliso Viejo, Sonoma County and Saratoga. Other cities have recently developed a program or ordinance to register vacation rentals and collect the TOT, including Napa, Santa Cruz, Ventura, Malibu and Goleta.

Many cities have a long history of permitting and regulating short-term vacation rentals including most cities in the Palm Springs region, many coastal cities in San Diego, Orange, and Los Angeles Counties including Carlsbad, Encinitas, Newport Beach, and Manhattan Beach. In the South and Central Coast region, the cities of Ventura, Morro Bay, and the counties of San Luis Obispo and Santa Cruz have a history of permitting and regulating short-term vacation rentals.

A recent trend is to make a distinction between vacation rentals and home sharing rentals and regulate them separately. San Francisco, Santa Monica and the City of San Luis Obispo have recently moved to prohibit vacation rentals but allow home-sharing rentals, provided that the owner meet specified requirements and then remits TOT to the City.

Communities that allow and regulate vacation rentals or home sharing rentals use some or all of the following techniques to manage their impacts in residential neighborhoods:

- Permit(s) and license(s) required and grounds for denial
- Transit Occupancy Tax payment
- Performance Standards such as:
 - Minimum length of stay, maximum number of stays per dwelling unit
 - Limits on occupancy (# guests per bedroom or house)
 - Advance notification (neighbors, landlord, city)
 - Owner occupancy requirement; non-owners prohibited from renting
 - Inspection requirements for Building and Fire Code compliance
 - Minimum separation between vacation rentals
 - Minimum insurance requirements
 - Trash/recycling collection and receptacle location requirements

- Noise Ordinance compliance
- Parking standards
- Sign Code compliance
- Preparation of Nuisance Response Plans
- Designated emergency contact within 30 miles, available 24 hours/day for complaints
- Posting of permit and conditions in unit
- Require that a City issued registration number be disclosed when listing online
- Annual limits on number of permits issued
- Surety Bond (an alternate form of deposit the City could access to collect administrative fines not paid)
- Violations, noticing, permit modification or revocation procedures
- Enforcement and Citation Provisions

Many cities include these regulations in the business, revenue and taxation sections of their Municipal Codes, rather than the Zoning Ordinance. Failure to comply with vacation rental or home sharing regulations, or failure to pay the required TOT is typically grounds for business license revocation and rental operation closure.

Municipal Code Regulations

The Municipal Code contains regulations that cover all aspects of the City organization. Titles 4, 5, and 28 of the Code are of particular interest for this report.

Title 4: Revenue, Finance and Purchasing

Title 4 contains regulations for how City taxes are established and collected. For the purposes of collecting Transient Occupancy Tax (TOT) for overnight stays of less than 30 days, it includes a definition of hotel as follows:

“Any structure, any portion of any structure, or any property or portion thereof which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or recreational vehicle park (as defined in Title 28 of this Code), or other similar structure or portion thereof.” (§4.08.020.B).

Title 5: Business Taxes and Permits

This title contains a chapter on Business Taxes and includes a disclaimer that:

“No payment of tax under the provisions of this chapter shall be construed as permission to conduct or carry on a business at any place within the City where

the conducting or carrying on of such business is prohibited by the Zoning Ordinance of the City” (§5.04.020). As such, although many of the vacation rental units operating in the City have obtained the required business license and are paying TOT, they are not considered to be legally permitted without proper zoning or further discretionary review and approval.

Title 28: The Zoning Ordinance

The Zoning Ordinance contains regulations related to planning, zoning and development review in the City. For the purposes of zoning regulation and land development, it includes a definition for “hotel” and “residential unit” as follows:

Hotel: “A building, group of buildings or a portion of a building which is designed for or occupied as the temporary abiding place of individuals for less than thirty (30) consecutive days including, but not limited to, establishments held out to the public as auto courts, bed and breakfast inns, hostels, inns, motels, motor lodges, time share projects, tourist courts, and other similar uses.” (§28.04.395)

Residential Unit: “A building or portion thereof designed or occupied for residential purposes, containing not more than one (1) kitchen per residential unit, but not including hotels or boarding houses” (§28.04.590.A).

Due to the intensity of land use caused by the frequent turnover of guests, hotels are only allowed in the City’s Commercial and R-4 (Hotel, Motel, and Multiple Residence) Zones. The City considers short-term vacation rentals and home sharing to be a commercial use and may only permit them with a change of use permit in any zone that allows hotel use.

City Enforcement Practices

The growing industry of online marketing sites such as Airbnb, VRBO, Homeaway, Vacasa and many others are making short-term rentals more accessible to vacationers and travelers than ever before. Currently, there are hundreds of short-term lodging listings within the City on these websites. For entire units or homes, the number of listings range from an estimated 500 to 600 units (May 2015). With the addition of listings for home shares (short-term rental of private and shared rooms), the total approaches 1,000.

All vacation rentals or home shares that are not zoned and permitted as hotels, motels, or bed and breakfasts are in violation of the Municipal Code. Enforcement is currently done on a complaint basis, similar to most other alleged land use violations.

The City has seen a slight rise in complaints about vacation rentals, and the majority involves cases where the entire housing unit is being rented out as a vacation rental. The City has received very few complaints to date where a single room is rented out

and the primary occupant remains on the property. Vacation rental complaints are extremely challenging enforcement cases, as the activity is not necessarily easily observed from the street or visible to the public. Since 2004, over 60 complaints regarding vacation rentals have been received. Zoning staff has been able to verify non-compliance and successfully abate most of those cases. The remaining cases were closed due to lack of evidence to confirm a violation. Currently, there are seven vacation rental complaints under investigation by zoning enforcement staff.

Legal Issues

Regulating vacation rentals under the Zoning Ordinance falls under the City's police powers to protect the public health, safety and welfare of its residents. The Council would need to amend the Zoning Ordinance in order to legalize vacation rentals in most residential zones.

The City Attorney's approach has been to enforce both the TOT and zoning ordinance concurrently when complaints are forwarded to the City Attorney's office. In other words, the City Attorney's policy is to enforce all violations of the municipal code concurrently.

Collection of Transient Occupancy Tax

In 2010, the City had just 52 registered vacation rentals paying TOT in accordance with the City's TOT Ordinance. In that year, the City initiated an effort to identify and bring into compliance other vacation rentals that were not paying TOT. This effort was primarily in response to concerns from the lodging industry of the competitive advantage afforded vacation rental operators who were not paying the 12% TOT applicable to daily room rates. As part of its audit effort, the City offered an amnesty program whereby owners of vacation rentals that responded to letters sent by Finance staff would be exempt from three years of back taxes that would normally be due if they came forward within a specified time period, registered with the City, and began remitting TOT in accordance with the City's TOT Ordinance. A similar program was offered in 2014.

As a direct result of the two amnesty programs, a total of 93 number of vacation rental owners registered with the City. However, an additional 204 vacation rental owners came forward outside of the two amnesty program periods and are now also in compliance. In total, there currently 349 vacation rentals registered with the City paying TOT.

Options for the City of Santa Barbara

Following public input, staff will seek Council direction on what, if any, adjustments should be made to the City's current regulations or procedures regarding vacation rentals and home sharing rentals. For discussion purposes, staff is providing four

options, beginning with the most restrictive option to the least restrictive option. Other variations could be pursued.

1. Prohibit vacation rentals and home sharing rentals in the City (including R-4 and commercial zones) and forego collection of TOT. Vacation rentals and home sharing rentals are not defined in the Municipal Code and are currently being viewed as a commercial hotel use and regulated as such. Presently, if a property owner sought the proper land use approvals, one could legalize a vacation rental or home share rental in a commercial or zoning district where hotels are conditionally allowed, although few have chosen to do that to-date. If Council decides to prohibit short-term rentals throughout the city, regardless of zoning designation, staff would develop definitions and explicitly prohibit them within City limits.

In this case, Community Development and Finance Department staff would work together to notify property owners currently operating short-term rentals and provide a deadline to allow ample time for most existing reservations to be honored, but no new listings or bookings would be allowed.

2. Allow vacation rentals and home sharing rentals only in hotel/motel/multiple residential unit (R-4) and commercial zoning districts, and continue collecting TOT. Under this scenario, vacation rentals and home sharing rentals could continue to be treated as commercial operations, subject to the Nonresidential Growth Management Ordinance and related provisions of the Municipal Code, or an alternate permitting process could be developed. All short-term rentals would continue to be prohibited in residential zones.

Similar to Option 1, Staff would attempt to notify property owners that currently operate short-term rentals and provide a deadline by which existing reservations could be honored, but no new listings would be allowed.

Staff would then proactively enforce existing zoning regulations on unpermitted short-term rentals. In the R-4 and commercial zones, staff would explore the creation of new regulations and processes to encourage operators to legalize their operations.

3. Allow home-sharing rentals, but not vacation rentals, wherever residential uses are allowed, require registration and collect TOT. Under this scenario, vacation rentals would be prohibited throughout the City and home-sharing rentals would be allowed in all zones where residential uses are currently allowed. Hosts of home sharing rentals would need to register the unit, meet performance standards and pay TOT. Similar to Option 1, staff would notify property owners currently operating vacation rentals and provide a deadline by which most existing reservations could be honored, but no new listings or bookings would be allowed.

4. Allow vacation rentals and home sharing rentals where residential uses are allowed and continue collecting TOT. This scenario would allow vacation rentals and

home sharing rentals throughout the City, subject to performance standards to minimize neighborhood impacts. In this scenario, staff resources would likely be redirected from complaint-based enforcement to a more proactive role in registering and monitoring short-term rentals for performance standard compliance.

BUDGET/FINANCIAL INFORMATION:

Transit Occupancy Tax

In Fiscal Year 2015, the City's General Fund expects to receive approximately \$1.19 million in TOT revenues from the 349 registered vacation rentals. This revenue source is forecast to grow to \$1.27 million in Fiscal Year 2016. These amounts exclude any back taxes paid in Fiscal Year 2015. This contrasts with the total TOT expected in Fiscal Year 2015 of \$19.5 million from all properties, including hotels, motels, and other lodging establishments. It is important to note that the City's Creek Restoration and Water Quality Improvement Fund receives 2% of the total 12% TOT collected pursuant to the Measure B approved by City voters in November of 2000. In Fiscal Year 2015, the amount of TOT expected from vacation rentals pursuant to Measure B is approximately \$204,000 and is in addition to the \$1.19 million expected in the General Fund.

Depending on Council's direction regarding the regulation of vacation rentals, the financial impact could range from no impact to a projected loss of nearly \$1.3 million in projected and ongoing TOT revenues. If Council decides to allow short-term rentals, it is difficult to predict the number of property owners, currently not registered with the City, that would elect to properly permit and operate their rental and pay the required TOT.

Staffing

Responding to requests to investigate short-term vacation rental complaints is time consuming, because zoning violations of this nature are often difficult to prove. Depending on direction from Council, additional staff resources may be necessary, either to proactively enforce a prohibition against short-term rentals or to administer a rental registration program and conduct a permit compliance program.

NEXT STEPS

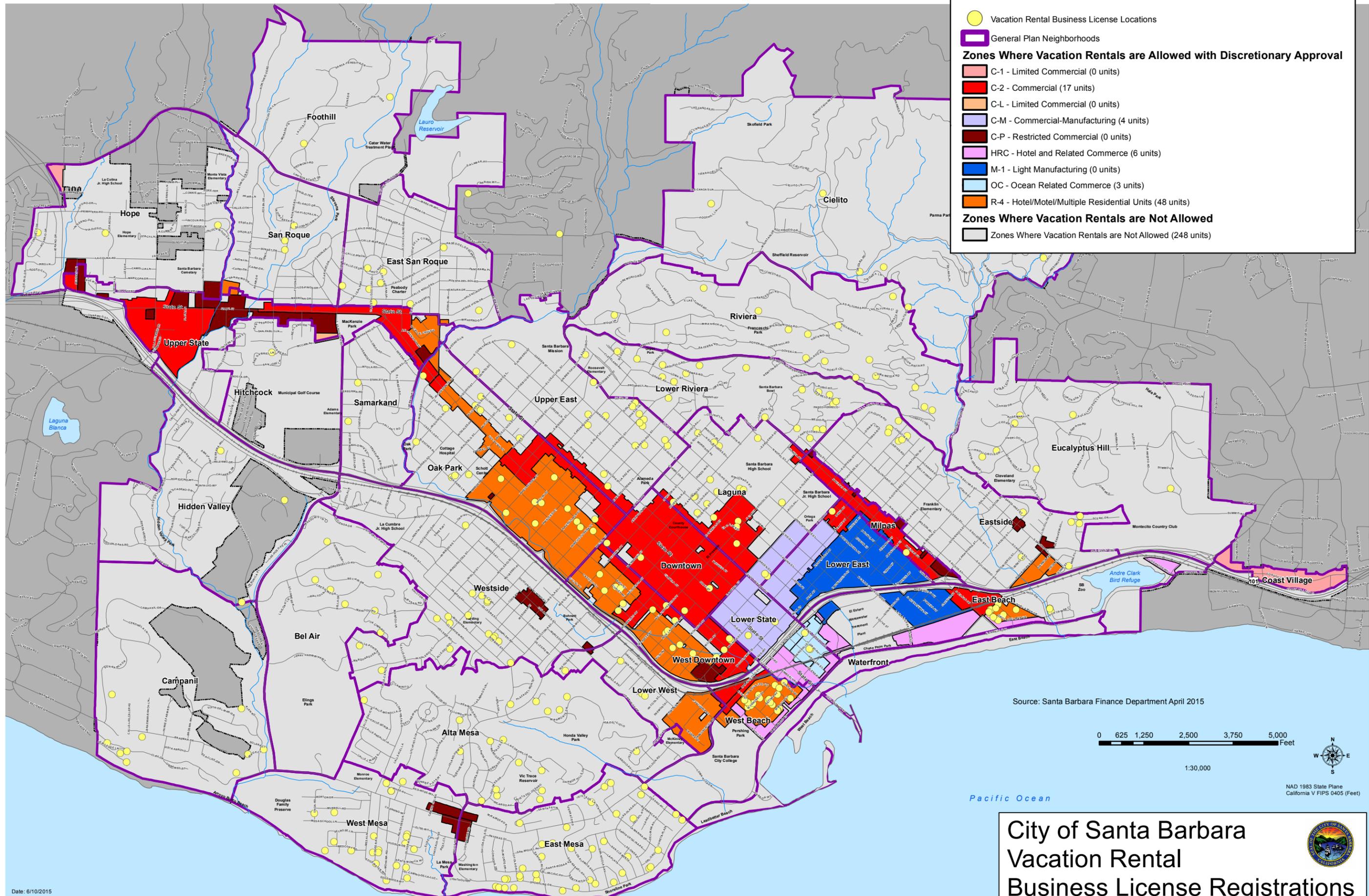
After receiving initial direction from Council, staff anticipates additional research, public outreach and work sessions with the Planning Commission over the next three to four months. If amendments to the Municipal Code are required, the Planning Commission would make a recommendation to the Council. Applicable implementation measures, if any, will likely be subject to review by the Ordinance and/or Finance Committees prior to Council consideration

ATTACHMENT: City of Santa Barbara Vacation Rental Business License Registrations Map

PREPARED BY: Elizabeth Limón, Project Planner

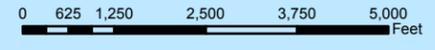
SUBMITTED BY: George Buell, Community Development Director
Robert Samario, Finance Director/Acting Assistant City
Administrator

APPROVED BY: City Administrator's Office



● Vacation Rental Business License Locations
 General Plan Neighborhoods
Zones Where Vacation Rentals are Allowed with Discretionary Approval
 C-1 - Limited Commercial (0 units)
 C-2 - Commercial (17 units)
 C-L - Limited Commercial (0 units)
 C-M - Commercial-Manufacturing (4 units)
 C-P - Restricted Commercial (0 units)
 HRC - Hotel and Related Commerce (6 units)
 M-1 - Light Manufacturing (0 units)
 OC - Ocean Related Commerce (3 units)
 R-4 - Hotel/Motel/Multiple Residential Units (48 units)
Zones Where Vacation Rentals are Not Allowed
 Zones Where Vacation Rentals are Not Allowed (248 units)

Source: Santa Barbara Finance Department April 2015



1:30,000



NAD 1983 State Plane
California V FIPS 0405 (Feet)

Pacific Ocean

City of Santa Barbara Vacation Rental Business License Registrations



Map prepared by City of Santa Barbara, Planning Division, AJN, June, 2015



Short-Term Vacation Rentals



Community Development Department
June 23, 2015



Overview

- ◆ Definition of terms
- ◆ Regulatory Approaches in Other Communities
- ◆ Existing City Policy & Regulations
- ◆ Options for Santa Barbara



Short-Term Vacation Rentals

- ◆ 30 days or less = transient, not residential
- ◆ Vacation Rentals (VR)
 - Rental of an entire dwelling unit
 - Host does not live in the dwelling unit
- ◆ Home Sharing
 - Rental of a portion of a dwelling unit
 - Host lives in the dwelling unit (primary residence)
 - Host is on-site during the visitor's stay



Other Communities

- ◆ Many cities have a long history with vacation rentals:
 - Palm Springs Region
 - San Diego, Orange County Coastal Areas
 - Ventura, Morro Bay, County of SLO
- ◆ Santa Barbara does not



Other Communities

- ◆ Many license, regulate and tax
- ◆ Some prohibit city-wide
- ◆ Some prohibit in residential areas
- ◆ Recent trend is to distinguish between:
 - Full-time Vacation Rentals
 - Home Sharing



Benefits of Short-Term Rentals

- ◆ Ability for owners to earn extra income
- ◆ Gives visitors a unique experience, sometimes at lower cost
- ◆ Visitors may stay longer, spend more
- ◆ Increased Transient Occupancy Tax (TOT) revenue for City



Criticisms of Short-Term Rentals

- ◆ Changes the character of residential neighborhoods
- ◆ Housing Impacts
 - ◆ Possible long-term rental housing stock reduction and contribution to increased rents
- ◆ Unlevel regulatory “playing field” with hospitality industry, unfair competition
 - ◆ Accessibility and Health & Safety Codes



Existing City Regulations

- ◆ Municipal Code Revenue & Finance
- ◆ Zoning Ordinance



Housing Element

- ◆ Defines Vacation Rental
- ◆ Acknowledges growing popularity of VR phenomenon
- ◆ Located in most areas of the City, with concentration in Residential areas
- ◆ Generally describes zoning and requirements to establish a VR



Housing Element

“The use of residential units as short-term vacation rentals and/or only occupied as second homes poses a housing challenge to the City because these uses decrease available long-term housing opportunities for local residents as well as contribute to the increase in housing costs.”

Housing Element, page 53



Municipal Code

- ◆ Revenue and Finance
 - Requires business license and collection of TOT for short-term stays
 - Currently ~350 vacation rentals registered
 - \$1.19 million in TOT expected FY 2015
 - \$1.27 million in FY 2016 (status quo)



Zoning Ordinance

- ◆ Short-Term stays prohibited in most residential zones
- ◆ Allowed with Discretionary Review in:
 - R4 zones (West Beach, East Beach)
 - Commercial Zones (Downtown, West Downtown)



Zones Where Allowed with Discretionary Approval



Locations of Short-Term Rentals Now Paying TOT Where Use Could Be Approved



Locations of Short-Term Rentals Now Paying TOT Where Use is Illegal per Zoning Ord.



Locations of All TOT-Paying
Short-Term Rentals



Option #1

- ◆ Prohibit Vacation Rentals & Home Sharing Citywide
 - Amend Zoning Ordinance to Clarify Prohibition
 - Notify and Enforce
 - Forego Future TOT Revenue



Option #2

- ◆ Allow Vacation Rentals Where Now Allowed with Discretionary Approval
 - Allow in R-4 & Commercial Zones
 - Prohibit in All Other Zones
 - Require Discretionary Permits and TOT Payment
 - Explore New Regulations To Encourage Compliance / Legalize

The background image shows a scene in Santa Barbara, California. In the foreground, two cyclists are riding on a path. In the background, there is a large, historic building with a prominent bell tower, likely the Santa Barbara Mission. The text "MISSION" is visible on a sign to the left, and "LOBERO THEATRE" is visible on a building to the right. The entire image is overlaid with a semi-transparent blue filter.

Option #3

- ◆ Allow Home Sharing, Prohibit Vacation Rentals
 - Amend Zoning Ordinance to Allow Home Sharing & Prohibit Vacation Rentals Citywide
 - Develop Process By Which Hosts:
 - Register
 - Meet Performance Standards
 - Pay TOT



Option #4

- ◆ Allow Vacation Rentals & Home Sharing
 - Amend Zoning Ordinance to Allow Vacation Rentals & Home Sharing In All Zones That Allow Residential Uses and Hotels
 - Develop Performance Standards & Require Compliance
 - Proactively Register & Monitor



Recommendation

- ◆ Provide Direction to Staff Regarding Regulation & Enforcement of Short-Term Vacation Rentals





All VRs Paying TOT by General Plan Neighborhoods



Examples of Performance Standards

- ◆ Noise control
- ◆ Parking standards
- ◆ Trash/Recycling/Litter requirements
- ◆ Min. length of stay
- ◆ Occupancy limits
- ◆ Neighborhood notification
- ◆ Building & Fire Inspections
- ◆ Minimum separation of VRs
- ◆ Insurance requirements

For more, see [Council Agenda Report, pp 3-4](#)

Discretionary Review Process

- ◆ Where allowed, to Convert a Single-Family Residential Use to VR Requires:
 - Growth Management Program allocation
 - Development Plan Findings over 1,000 SF
 - Design Review, if exterior changes
 - Zoning & Building Code Compliance
 - Coastal Development Permit (if in Coastal Zone)

Santa Barbara Listings Sample

- ◆ Wednesday, May 20, 2015
- ◆ AirBnb for City of Santa Barbara
- ◆ 986 total listings (Average Price \$286)
 - 660 Entire Place (67%)
 - 315 Private Room (32%)
 - 11 Shared Room (1%)