



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: August 11, 2015

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Vacation Rental Enforcement And Home Sharing Rental Ordinance

RECOMMENDATION: That Council:

- A. Allocate \$80,000 from the General Fund appropriated reserves to the City Attorney's Office Fiscal Year 2016 budget to cover the cost of legal services;
- B. Allocate \$90,000 from the General Fund appropriated reserves to the Community Development Department's Fiscal Year 2016 budget and incur as an ongoing cost to augment existing zoning enforcement staff and cover the cost of increased zoning enforcement related to Vacation Rentals;
- C. Allocate \$10,000 from the General Fund appropriated reserves to the Finance Department's Fiscal Year 2016 budget and incur as an ongoing cost for staffing overtime costs related to increased zoning enforcement of Vacation Rentals; and
- D. Initiate a Zoning Ordinance amendment to allow Home Sharing Rentals.

EXECUTIVE SUMMARY:

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.

On June 23, 2015, the City Council directed staff to enforce the City's existing Zoning Ordinance and develop an enhanced enforcement plan. The City Council also directed staff to return with a work plan to amend the Zoning Ordinance to allow Home Sharing Rentals. This Council Agenda Report provides information on Vacation Rental enforcement priorities and budget implications. It also provides information on the process and schedule for developing a Home Sharing Rental ordinance.

DISCUSSION

Background

The growing industry of online marketing sites is making short-term rentals more accessible to tourists than ever before. Currently, there are over 90 online web sites advertising short-term stays in the City. A quick glance at two of the larger sites (Airbnb and VRBO) revealed over 1,000 individual listings in the City. Based on the maps provided online, for the most part, these listings are in the City limits. There are currently 361 short-term rentals registered with the City and paying Transient Occupancy Tax (TOT).

Definitions

For the purposes of this Council Agenda Report and Council discussion, staff recommends a common use of the following definitions regarding short-term Vacation Rentals. These are not terms or definitions currently found in the City's Municipal Code or Zoning Ordinance.

"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.

Previous Council Meeting on Vacation Rentals

On June 23, 2015, the City Council held a public hearing and discussed the growth of short-term Vacation Rentals in the City. The City received 47 comment letters and heard over three hours of public testimony from 69 speakers representing 90 speaker cards. It is estimated that a total of 200 people attended the meeting.

At the conclusion of the public hearing, the Council was unanimous in their support for enforcement of the City's existing Zoning Ordinance, which prohibits hotel uses in most residential zoning districts. Noting concerns regarding neighborhood compatibility and the loss of urgently needed housing to a commercial enterprise, Council directed staff to:

- Proactively enforce existing Zoning Ordinance regulations that:
 - Prohibit Vacation Rentals in single-family, R-2 and R-3 Zones ; and

- Permit Vacation Rentals where hotel uses are allowed, subject to the applicable discretionary review and approval process
- Develop a work program to define, regulate and permit Home Sharing Rentals anywhere residential uses are allowed.

Need for Clarity in Existing Zoning Ordinance

The City's Zoning Ordinance contains distinct definitions for residential units and hotels, which have existed for decades. The length of stay, less than 30 days, determines the transient nature of room rentals. The sharing economy and use of the Internet to book commercial transactions (transportation, rooms or homes) did not exist when the City's zoning definitions and regulations were adopted. Applying existing regulations to this new and rapidly expanding phenomenon has proven challenging.

Initiating a Zoning Ordinance amendment to add relevant definitions and clarify regulations will be beneficial to both the public and staff. This will also provide staff and the Planning Commission authorization to explore ways to regulate and permit Home Sharing Rentals anywhere residential land uses are allowed.

Existing City Zoning Regulations

On June 23rd, Council also asked staff to develop a work program that would allow some form of home sharing of a person's primary residence. This direction prompted staff to request a City Attorney opinion on this type of use. The conclusion is that renting out rooms for less than 30 days is currently a zoning violation. The City Attorney's opinion is based upon the clear definition of hotel in the Zoning Ordinance, which can include any "portion of a building" as a hotel:

28.04.395 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."

Accordingly, a Zoning Ordinance amendment will be required to implement a home sharing program.

Hotels are currently allowed in the City's R-4 (Hotel-Motel-Multiple Residence) and commercial zones, subject to discretionary review. Discretionary review is review using reason and judgment based upon specific criteria defined in the Santa Barbara Municipal Code (SBMC) established to protect the health, safety and welfare of the community to assess impacts of a proposed use or development project. This review

includes a public notice, a comment period, and the ability to appeal the decision, In Santa Barbara, these types of decisions are made by the Community Development Director, Staff Hearing Officer, Design Review Boards, Planning Commission, City Council, or other decision making body.

The discretionary review process to convert existing residential units to a hotel use involves compliance with the City's Growth Management Program, the Condominium / Hotel Conversion Ordinance, Tenant Displacement Assistance Ordinance and Transient Occupancy Tax Ordinance, to name just a few of the applicable laws. Due to the complexity of the process, especially for conversion of more than one unit on a lot, staff has developed a brochure describing the steps involved to legally convert one or more residential units into a Vacation Rental.

General Plan

The General Plan places a high priority on housing development. The Average Unit-Size Density (AUD) Program (2013) provides significant incentives for the development of rental housing. There is considerable overlap in the areas where AUD incentives are allowed and where Vacation Rentals are currently operating illegally. Based on the Vacation Rentals that have been paying TOT (without planning permits and approval), the highest concentrations are in the East Beach, West Beach, and West Downtown neighborhoods. Whether the TOT is being paid for transient stays in a full-time Vacation Rental or in Home Sharing Rental is unknown. Therefore the effect on the City's housing supply cannot be quantified at this point in time.

Enforcement Approach and Priorities

Council directed staff to begin proactive enforcement of existing zoning regulations on unlawful Vacation Rentals.

Gathering the necessary evidence to support proactive enforcement will be time-consuming and relatively costly because of the sheer number of unlawful Vacation Rentals in the City. However, through web-based research, staff has compiled a list of approximately 90 short-term Vacation Rental websites, agents, property management companies and online rental services that appear to be doing business in Santa Barbara. These enforcement leads will be used to support issuance of "legislative subpoenas" that will result in the provision of information necessary for outreach and enforcement. The data provided by a subpoena will be essential to the enforcement process.

Enforcement Approach

Vacation Rental enforcement will have two goals: Achieving permanent compliance with the Zoning Ordinance and recovery of unpaid Business License and Transient

Occupancy Tax (TOT). These goals will be met by firm and clear enforcement practices. For example, in six Vacation Rental cases handled by the City Attorney's Office earlier this year, the business owners were provided compliance notices that included a copy of the enforcement complaint that would be filed in Superior Court should compliance not be accomplished voluntarily within a relatively short period of time (14 to 21 days). In order to be effective as an incentive and deterrent, Vacation Rental business owners must be presented with the threat of enforcement costs that are higher than the cost of compliance. This may require the use of more sophisticated business litigation strategies than typically used in code enforcement.

With contract lawyer support, the City Attorney estimates that about 300 cases per year can be competently and aggressively managed. The approach would be to work 30-40 cases in each 6 week enforcement wave.

Council discussed offering a temporary amnesty to some existing Vacation Rental owners. Staff believes this to be both unnecessary and unwise. As a practical matter, it will take at least two years of concerted effort to make a significant impact in the Vacation Rental market. And, as discussed below with respect to enforcement priorities, existing Vacation Rentals that are paying TOT are in the lowest enforcement priority category. This effectively provides amnesty to those owners who have made a reasonable effort to address the City's prior policy concerns.

Enforcement Priorities

Because of the criminal and public nuisance aspects of the City's code enforcement options, the City Attorney has an ethical obligation as an impartial prosecutor whose duty it is to seek justice on behalf of the People. Thus, Council cannot give case-by-case direction on code enforcement matters. Nor are closed sessions permitted. Council's policy control and priority setting power comes through the budget process, as the Council's control over spending public funds does not implicate the handling of any specific case. We seek Council's concurrence in our proposed enforcement priorities as part of the funding request, noting that because of the considerations listed above we may need to adopt different strategies from time-to-time and case-by-case.

The focus of the June 23, 2015 discussion was full-time short-term Vacation Rentals. For a fair and effective enforcement strategy, staff is recommending that all short-term Vacation Rentals and Home Sharing Rentals be subject to enforcement, with the following priorities:

1. Existing and new complaints about Vacation Rentals and Home Sharing Rentals, citywide.
2. Vacation Rentals and Home Sharing Rentals operating without a City business license and not paying TOT, in single-family, R-2 and R-3 Zones.

3. Vacation Rentals and Home Sharing Rentals operating without required land use approvals, a City business license and not paying TOT, in areas where hotels can be allowed (R-4 and Commercial Zones).
4. Vacation Rentals and Home Sharing Rentals operating with a City business license and paying TOT, in single-family, R-2 and R-3 Zones.
5. Vacation Rentals and Home Sharing Rentals operating without required land use approvals, but with a City business license and paying TOT, in areas where hotels can be allowed (R-4 and Commercial Zones).

Collection of TOT

For Vacation Rentals and Home Sharing Rentals that are currently not paying TOT or a business license tax, the enforcement action will include requiring these operators to pay back taxes, including interest and penalties. This approach recognizes that, while out of compliance with zoning requirements, these operators are still subject to the TOT and Business License Ordinances. Certainly, we encourage these rental operators to cease operations in advance of being contacted by the City and to resolve their tax liabilities to avoid further penalties and interest being imposed.

All Vacation Rentals and Home Sharing Rentals that are currently licensed and paying TOT will be required to continue to pay those taxes until they are notified by the City Attorney's Office to cease operations. The timing of the notice will be determined by the enforcement priorities proposed and previously discussed in this report.

However, applications for new Vacation Rentals or Home Sharing Rentals will not be accepted by the City, except for any new, Vacation Rentals in the R-4 and commercial zones that have received all appropriate planning and land use approvals.

Proposed Home Sharing Rental Ordinance

Staff proposes to draft a Zoning Ordinance amendment that would define and regulate Home Sharing Rentals where residential uses are allowed. The ordinance would include regulations requiring a City Business License, TOT payments, and performance standards.

Ordinance Amendment Process and Schedule

Staff is proposing the following expedited approach to develop a Home Sharing Rental ordinance for Council consideration, with a goal of having the ordinance adopted prior to reaching enforcement tiers 4 and 5 (operators not currently paying TOT). This would ideally avoid the awkward situation where the City is shutting down a Home Sharing Rental arrangement that would shortly thereafter become allowable under the proposed change in the ordinance. To achieve an expedited change in the ordinance, the

proposed work program does not include a separate community outreach process other than the required public hearings before the Planning Commission, Council Ordinance Committee, and City Council.

1. Planning Commission workshop on the general scope of a Home Sharing Rental ordinance – Fall 2015
2. Draft Zoning Ordinance amendment prepared by staff – Winter 2015/16
3. CEQA Review & Planning Commission hearing on Draft Ordinance amendment, with recommendation to Council – Spring 2016
4. Planning Commission Recommendation to Council (if necessary) – Late Spring 2016
5. City Council Ordinance Committee review and recommendation to Council - Summer 2016
6. City Council consideration of Ordinance amendment - Fall 2016

Noticing

For the June 23, 2015 Council meeting, staff sent mailed notices as a courtesy to all Vacation Rental operators currently paying TOT to the Finance Department. Additional interested parties were also sent a notice of the meeting, primarily by email. Notices were also sent to all City neighborhood groups, business and community groups, and the email distribution list for General Plan implementation projects. A City press release was also issued. A similar broad noticing approach was used for this meeting.

BUDGET/FINANCIAL INFORMATION:

In Fiscal Year 2015, the City's General Fund received approximately \$1.2 million in TOT revenues from the 349 registered Vacation Rentals. This General Fund revenue stream will diminish over time with increased zoning enforcement. Further, staff is requesting that Council allocate \$170,000 from the General Fund appropriated reserves to cover the cost of increased enforcement by the City Attorney's Office and Community Development Department in Fiscal Year 2016.

Staff recommends that Council allocate \$80,000 to the City Attorney's Office Fiscal Year 2016 budget to cover the cost of increased legal services. This would include hiring contract staff to assist in the enforcement of the existing Zoning Ordinance with respect to non-compliant Vacation Rentals and Home Sharing Rental operations. Staff expects this level of enforcement will be needed through the end of Fiscal Year 2017. These figures are our best estimates, but they have been prepared without detailed programmatic

planning. Accordingly, we would fine-tune the figures in conjunction with the next fiscal year's budget.

Currently, zoning enforcement is conducted through the Planning Division with two part-time employees and about 50% of one full-time employee who also works on other assignments (for a total of 1.5 FTE). Based on the experience of other communities currently engaged in enforcing vacation rental regulations, staff anticipates that a significant short-term effort will be required, and there will likely be need for additional staff over the long-term. In order to meet these staffing needs, staff recommends that Council allocate \$90,000 to the Community Development Department's Fiscal Year 2016 budget. These funds will be used to create one new full-time position and add two part-time staff (for a total of 3.0 FTE) for zoning enforcement purposes. Following the initial two-year effort, it is anticipated that staffing would be reduced to a total of 2.0 FTE, and the ongoing annual cost increase of creating and retaining .5 FTE is estimated at \$70,000. The creation of this full-time position is recommended to better ensure recruitment and retention of quality staff and to provide on-going continuity and leadership within the zoning enforcement team. Similar to the City Attorney's Office, if additional staff support is required, this would be addressed in the next fiscal year's budget.

As a component of enforcing Vacation Rental regulations, the Treasury Division of the Finance Department will be required to calculate unpaid Business License and Transient Occupancy Tax for each enforcement case. The Finance Department has sufficient staffing to perform these required functions; however, staff anticipates that overtime costs will be incurred to meet the demands of the proposed enforcement approach of 300 cases per year. Staff recommends that Council allocate \$10,000 to the Finance Department's Fiscal Year 2016 budget to cover these overtime costs. Staff anticipates the additional staffing costs to be ongoing through Fiscal Year 2018.

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Vacation Rentals & Home Sharing



Community Development Department
August 11, 2015



Background

- ◆ June 2015 – Council Discussion:
 - Existing City Policies & Regulations
 - Vacation Rental & Home Sharing Regulations in Other Communities
 - Pros & Cons of Short-Term Rentals
 - Options for Santa Barbara



Council Direction - June 2015

- ◆ Enforce Existing Zoning Regulations for Short-Term Rentals
- ◆ Develop Approach for Proactive Enforcement
- ◆ Develop Work Program for Zoning Ordinance Amendment to Allow Home Sharing



Overview

- ◆ Definition of Terms
- ◆ Enforcement Approach & Priorities
- ◆ Home Sharing Ordinance Process & Schedule
- ◆ Funding Request

The background of the slide features a blue-tinted image. On the left, two cyclists are riding a road bike. In the center and right, there is a large, historic mission building with multiple bell towers and arched windows. The word "MISSION" is visible on a sign in the upper left, and "LOBERO TRUST" is visible on the building's facade on the right.

Definitions

- ◆ Short-term Rentals are a Transient Use
- ◆ Vacation Rental
 - Rental of an entire dwelling unit
 - Host does not live in the dwelling unit
- ◆ Home Sharing Rental
 - 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



Enforce Existing Regulations

- ◆ Research Revealed 90+ Websites
- ◆ Issue Legislative Subpoenas
- ◆ Handle Approx. 300 cases / year for 2-3 years to:
 - Achieve Compliance with Zoning Regulations
 - Recover Unpaid Taxes



Enforcement Priorities

1. Existing and New Complaints
2. Rentals in Single Family, R-2 and R-3 Zones
 - No Business License, Not Paying TOT
3. Rentals in R-4 and Commercial Zones
 - No Business License, Not paying TOT
4. Rentals in Single Family, R-2 and R-3 Zones
 - Business License and paying TOT
5. Rentals in R-4 and Commercial Zones
 - Business License and paying TOT



Home Sharing Ordinance

- ◆ Define, Allow, Regulate and Tax Home Share Operations
- ◆ Expedited Schedule – Approx. 1 year
 - Planning Commission Workshop - Fall 2015
 - Draft Ordinance Amendment - Winter 2015
 - Planning Commission Hearing(s) - Spring 2016
 - Ordinance Committee – Summer 2016
 - City Council – Fall 2016



TOT Collection

- ◆ Continue to Collect TOT From Existing Rental Operators Until Enforcement
- ◆ No New Vacation Rental Applications Accepted
- ◆ \$1.2 million in TOT from Rentals in FY 2015
 - Will Diminish Over Time With Increased Enforcement



Budget Request

- ◆ Additional FY16 Funding Needed for Enforcement Strategy
 - \$80,000 - City Attorney's Office
 - \$90,000 – Community Development
 - \$10,000 – Finance Department
- ◆ Staffing Needs to be Reassessed in FY 2017 budget



Recommendation

- ◆ Initiate a Zoning Ordinance Amendment to Allow Home Sharing Rentals
- ◆ Allocate \$80,000 to the City Attorney's Office FY16 Budget
- ◆ Allocate \$90,000 to the Community Development Department FY16 Budget
- ◆ Allocate \$10,000 to the Finance Department FY16 Budget