



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: March 1, 2016

TO: Mayor and Councilmembers

FROM: City Attorney's Office
Community Development Department
Finance Department

SUBJECT: Vacation Rental Enforcement Update

RECOMMENDATION:

That Council review and receive a report from staff on the status of the City's enforcement efforts on vacation rentals.

DISCUSSION:

Background

On June 23, 2015, the City Council held a public hearing and discussed the growth in the number of short-term vacation rentals in the City. The City Council 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 its 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.

Staff returned with this information on August 11, 2015. At that time, Council approved funding for additional vacation rental enforcement staff and proposed enforcement priorities to govern the expenditure of these funds. Council also directed preparation of a six-month enforcement status report.

On December 8, 2015, Community Development staff returned with the results of its work program looking into home sharing rentals. Council chose not to initiate a zoning change to facilitate so-called "home sharing." However, Council directed staff to report back to Council in the form of a memo on the process to convert existing residential units to vacation rentals in the R-4 and applicable commercial zones.

Legislative Subpoena Effort

Beginning in August 2015, the City Attorney's Office has facilitated issuance of 19 legislative subpoenas to website hosts and managers of vacation rentals. The subpoenas make two broad requests for information:

Request #1: Documents sufficient to identify all persons that through any website owned or controlled by [Website or Property Manager] who advertised, have rented, or offered to rent any hotel [defined to include vacation rentals] for a period of 30 consecutive days or less for dwelling, use, lodging or sleeping purposes in the City of Santa Barbara, California during the period from January 1, 2012, through the present.

Request #2: Documents sufficient to provide the following information for each person identified in response to Request #1:

- a. The name, physical address, email address, and any other contact information for each person
- b. The URL for each website which the person used to list a hotel
- c. The address of the person's hotel that has been rented, or offered to rent, for dwelling, use, lodging or sleeping purposes in the City of Santa Barbara through any website or property owned or controlled by [Website or Property Manager] during the period from January 1, 2012, through the present
- d. The dates and duration of stay for each time the property was rented since January 1, 2012, to present
- e. The rate charged and funds collected for each time the property was rented since January 1, 2012, to present
- f. The method of payment, including name of institution and type of account, for each time the property was rented since January 1, 2012, to present.
- g. The name of any person who rented any property from a person identified in Request #1, since January 1, 2012, to present, as well as the renter's physical address, email address and other contact information.

- h. The total gross revenue generated by the person renting the property as a result of that renting since January 1, 2012, to present.

The websites and property managers who have received subpoenas have been generally cooperative and responsive to the information requested. One property manager refused to comply with the legislative subpoena. The City Attorney's Office is preparing to seek a court order enforcing the subpoena.

The City Attorney's Office expects to issue the remaining 30 legislative subpoenas in one large batch in March 2016.

Settlement Agreements

Early last Fall, the City Attorney's Office drafted a standard settlement agreement to be used by the City Attorney's Office, Zoning Enforcement and Finance Department staff when resolving vacation rental cases. The settlement agreement requires the vacation rental property owner to:

- Acknowledge their violation of the Santa Barbara Municipal Code
- Permanently discontinue the short term vacation rental use
- Remove any references to short term vacation rentals from any advertising or website promotional material
- Submit to the Finance Director an accounting of the last three years transient occupancy and business license taxes
- Remit those taxes within 30 days
- Permit future City inspection of the property between 8:00 a.m. and 9:00 p.m. on 48 hours' notice

Ten settlement agreements of the 39 issued have been executed.

City Attorney's Office Staffing

The City Attorney's Office has not yet needed to fill the hourly staffing funded by the Council's \$80,000 appropriation in August 2015. We anticipate that staffing will be needed for the remainder of this fiscal year as zoning enforcement efforts ramp up. We also anticipate seeking a similar funding level for Fiscal Year 2017.

Property Owner Informational Letter

We have delayed sending the property owner informational letter – designed to inform vacation rental owners about their legal status and the City's enforcement plans – pending completion of the legislative subpoena process. A draft of the letter is attached for reference.

Zoning Enforcement Update

The information received from the legislative subpoenas has so far generated 34 enforcement actions. As of February 17, 2016, zoning staff has a total of 157 pending enforcement cases for vacation rentals. Pursuant to Council direction in August 2015, staff is categorizing and prioritizing vacation rental enforcement efforts in the following five categories:

1. Existing and new nuisance-related complaints about Vacation Rentals, citywide.
2. Vacation Rentals operating without a City business license and not paying Transit Occupancy Tax (TOT), in single-family, R-2 and R-3 Zones.
3. Vacation 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 operating with a City business license and paying TOT, in single-family, R-2 and R-3 Zones.
5. Vacation 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).

Of the 157 pending cases, 39 have been subject to enforcement action, which consists of a warning letter and settlement agreement being sent to the property owner. The remaining 118 enforcement cases are pending enforcement action and will be addressed by enforcement staff as time permits.

The \$90,000 authorized by Council in August 2015 to hire additional staff has allowed the equivalent of 1.5 full-time zoning enforcement officers to work on vacation rental enforcement since the beginning of December 2015. Staff is in the process of hiring one additional enforcement officer and expects the equivalent of two full-time officers will work on vacation rental enforcement for the remainder of this fiscal year. Staff will be requesting commensurate funding for Fiscal Year 2017 to continue in this effort.

Enforcement Priorities Update – Illegal Dwelling Units

During the course of creating and researching enforcement cases, staff has identified several properties that are offering vacation rentals in illegal dwelling units. These cases have been elevated to a new, top-level enforcement priority and have become a joint enforcement effort involving Building and Safety staff, Zoning Enforcement staff and the City Attorney's Office.

Finance Department Update

In June 2015, Council directed Finance Department staff to cease issuing business licenses for short term vacation rentals. In addition, currently licensed short term rental

operators would only be permitted to renew business licenses through December 31, 2016. At the time of Council's direction in June 2015, there were 349 registered vacation rentals. As of February 22, 2016, there are 316 registered vacation rentals, representing a decline of 33 vacation rentals. This decline is likely attributable to owners ceasing operations on a voluntary basis in anticipation of the City's enforcement efforts. A letter to all known operators of vacation rentals, explaining the City's enforcement efforts and approach, is planned to be sent soon. In the meantime, Finance staff has been advising vacation rental operators who call with questions that Council's direction requires active enforcement of the City's existing Zoning Ordinance, which prohibits short term rental uses in most residential zoning districts. Staff also advises these registered operators of the enforcement priority placed on those operators that are not currently paying a business license tax or transient occupancy taxes.

To date, ten settlement agreements have been executed. Two of these agreements required payment of unpaid transient occupancy taxes, business license taxes, plus penalties, in the total amount of \$11,376.85 (\$7,294 TOT) for 2013 through 2015. The other eight settlement agreements were with registered operators and, therefore, were current in paying transient occupancy taxes.

BUDGET/FINANCIAL INFORMATION:

The City receives over \$1 million annually from short term vacation rentals. The City's enforcement efforts will ultimately result in a loss of those revenues. The cost of the enforcement in this fiscal year has been funded from previous Council action; therefore, no additional appropriations are needed.

ATTACHMENT: Draft Vacation Rental Informational Letter

PREPARED BY: Ariel Pierre Calonne, City Attorney

SUBMITTED BY: Ariel Pierre Calonne, City Attorney

APPROVED BY: City Administrator's Office



City of Santa Barbara

Office of the City Attorney

www.SantaBarbaraCA.gov

ATTACHMENT

Ariel Pierre Calonne
City Attorney

February 22, 2016

John S. Doimas
Sarah J. Knecht
Tava Ostrenger
Tom R. Shapiro
N. Scott Vincent

SAMPLE Property Owner
123 Santa Barbara Avenue
Santa Barbara, CA 93101

RE: Information on Short Term Vacation Rental Enforcement

Tel: 805.564.5326
Fax: 805.897.2532

Dear Property Owner:

Street Address:
740 State Street
Suite #201
Santa Barbara, CA
93101

This letter is intended to provide you with information about the City of Santa Barbara's short term vacation rental enforcement program. The City is beginning active enforcement of the Zoning Ordinance's prohibition against short term vacation rentals in most residential zoning districts. You are receiving this letter because your property has been identified as a probable short term vacation rental which may be operating unlawfully.

Mailing Address:
P.O. Box 1990
Santa Barbara, CA
93102

Short term vacation rentals (stays of 30 consecutive days or less in residential dwelling units) are unlawful in Santa Barbara unless they are located in zoning districts which allow hotels, motels, or bed and breakfast inns, and are in receipt of all necessary City permits. This includes "hosted" stays where the property owner or representative co-resides in the dwelling unit that is being rented for short term periods. In addition, property owners that have operated short term rentals lawfully or unlawfully are subject to and liable for the City's transient occupancy and business license taxes. Paying these taxes does not, however, grant a legal right to violate the City's zoning ordinance. More information is available on the City's vacation rental web site at

http://www.santabarbaraca.gov/services/planning/mpe/vacation_rentals.asp.

The City's primary enforcement objective is not punitive. We are reaching out so that you may voluntarily cooperate with the City to stop unlawful short term vacation rentals. This means that you now have the opportunity to conclude any short term vacation rental use of your property and pay any unpaid transient occupancy and business license taxes without further legal action.

If you wish to address an unlawful short term vacation rental use voluntarily, the City will provide you with a standard settlement agreement. The settlement agreement will require you to take the following steps:

- Acknowledge the requirements of Santa Barbara Municipal Code
- Permanently discontinue the short term vacation rental use

SAMPLE Santa Barbara Property Owner

February 22, 2016

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- Remove any references to short term vacation rentals from any advertising or web site promotional material
- Submit an accounting of the last three years' transient occupancy and business license taxes to the City's Finance Director
- Remit those taxes and any late payment penalties within 30 days
- Permit future City inspection of the property between 8:00 a.m. and 9:00 p.m. on 48 hours' notice

Please contact us as soon as possible by email at VacationRentals@santabarbarca.gov or by phone at (805) 564-5326 if you wish to discuss entering into a voluntary settlement agreement.

If you do not wish to proceed with a voluntary settlement agreement at this time, you will be contacted by the City's Zoning Enforcement staff by mail when an enforcement case has been opened on your property. We have established several tiers of enforcement priorities. If you have been paying transient occupancy and business license taxes on your short term vacation rental in good faith, and there are no complaints against your property, you will probably not be contacted by the City's zoning enforcement staff until 2017. You will remain responsible for all taxes and penalties that accrue before you enter into a settlement agreement with the City.

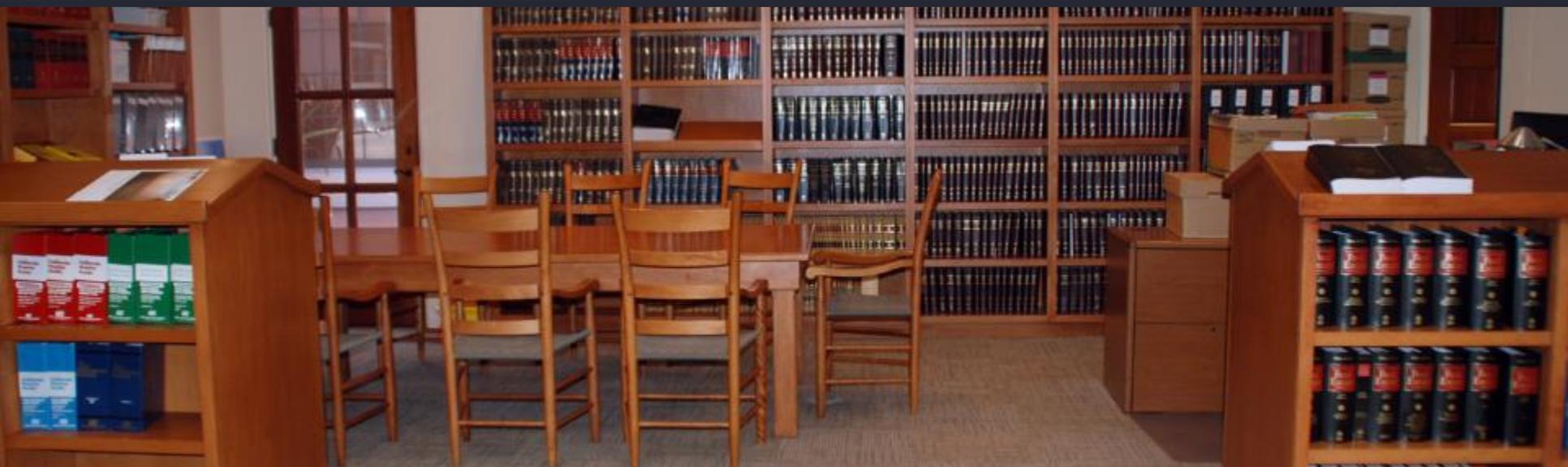
Should you have any questions about your situation, the City's enforcement and settlement process, or if you believe you have received this letter in error, please contact us at your earliest convenience. You can reach us by email at VacationRentals@santabarbarca.gov or by phone at (805) 564-5326.

Complaints about short term vacation rentals can be reported confidentially by calling Zoning Enforcement's "Request for Investigation" hotline at (805) 897-2676 or by visiting the building and zoning code violation web site at http://www.santabarbaraca.gov/services/construction/code_violations.asp?utm_source=Report&utm_medium=BuildingAndZoningCodeViolation&utm_campaign=HowDol.

Sincerely,

Ariel Pierre Calonne
City Attorney

APC/apc



OFFICE OF THE CITY ATTORNEY

VACATION RENTAL ENFORCEMENT UPDATE

March 1, 2016



Overview

- **Legislative Subpoenas**
- **Settlement Agreements**
- **Enforcement Ordinance Research**
- **Staffing**
- **Informational Letter**
- **Zoning Enforcement Update**
- **Finance Update**



Legislative Subpoenas

- **Authorized by Council in August 2015**
- **19 issued to listing platforms**
 - 34 enforcement actions from subpoenas
- **30 more subpoenas to be issued in March 2016**



Legislative Subpoenas

- **Subpoenas seek, back to 2012:**
 - Identity of vacation rental platform users
 - Address of property rented
 - Dates and duration of stays
 - Rates charged
 - Total gross revenue collected



Settlement Agreements

- **Acknowledge violations**
- **Agree to discontinue vacation rental use permanently**
- **Remove any advertising**
- **Submit TOT and Business License tax accounting**
- **Permit future City inspection**



Settlement Agreements

- **Ten settlement agreements have been completed of the 39 issued**
- **As expected, many requests for changes**
- **We are considering all requests for changes**
- **After “learning period,” SA will not be changeable**



Settlement Agreements

- **Unfettered City future inspection rights have raised the most concern**
- **Some want written acknowledgment of payment of TOT and Business License taxes**



Enforcement Ordinance Research

- **City Attorney's Office is examining ordinance changes that would allow direct enforcement against hosting platforms**



Staffing

- **1.5 FTE Zoning Enforcement Officers since December**
- **1 FTE additional ZEO in process**
- **City Attorney has not yet needed to hire additional attorney staff**



Informational Letter

- **Will be issued upon completion of legislative subpoena process**
- **Drafting objective was to be firm, but fair in tone**



Informational Letter

“This letter is intended to provide you with information about the City of Santa Barbara’s short term vacation rental enforcement program. The City is beginning active enforcement of the Zoning Ordinance’s prohibition against short term vacation rentals in most residential zoning districts. You are receiving this letter because your property has been identified as a probable short term vacation rental which may be operating unlawfully.”



Informational Letter

“The City’s primary enforcement objective is not punitive. We are reaching out so that you may voluntarily cooperate with the City to stop unlawful short term vacation rentals. This means that you now have the opportunity to conclude any short term vacation rental use of your property and pay any unpaid transient occupancy and business license taxes without further legal action.”



Zoning Enforcement Update

- **In August 2015, Staff projected a 2 to 3 year enforcement effort**
- **157 Pending Enforcement Cases**
- **That represents more than 10% of the estimated total number of cases**



Zoning Enforcement Update

Enforcement priorities

1. Nuisance complaints
2. No Business License or TOT payment in single-family, R-2 and R-3
3. Unpermitted R-4 or commercial and no Business License or TOT payment



Zoning Enforcement Update

Enforcement priorities

4. City Business license and TOT payment in single-family, R-2 and R-3
5. City Business license and TOT payment in unpermitted R-4 or commercial



Zoning Enforcement Update

- **Illegal dwelling units offered as vacation rentals**
- **New top-level enforcement priority**
- **Joint effort with Building & Safety staff and City Attorney**



Finance Update

- **June 2015: Council directs no issuance of new vacation rental Business Licenses**
- **Existing licensees may renew until December 31, 2016**



Finance Update

- **June 2015: 349 registered vacation rentals**
- **February 2016: 316 – decline of 33**
- **Ten settlement agreements**
 - Two owed back taxes and penalties amounting to \$11,377



Questions?