



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: October 11, 2016

TO: Mayor and Councilmembers

FROM: City Attorney's Office
Planning Division, Community Development Department
Finance Department

SUBJECT: Vacation Rental Enforcement Update

RECOMMENDATION:

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

EXECUTIVE SUMMARY:

The purpose of this report is to provide an overview and background information on the status of short term rental (STR) enforcement, typically referred to as Vacation Rentals, over last six (6) months. STR refers to rental agreements for less than thirty (30) consecutive days. The operation of a STR clearly meets the definition of a hotel under Santa Barbara Municipal Code (SBMC) section 28.04.395. It is illegal to operate this type of commercial activity within many of the residential zoning districts in the City.

With the growth of online commerce and savvy technical platforms or internet host providers, the STR market has become much more mainstream and widespread over the last five years, with more entering the market each year. In response to this issue, Council approved funding for proactive STR enforcement. City staff has taken several STR enforcement actions, including issuing legislative subpoenas to internet host providers to gather information about the Santa Barbara STR market, opening up individual enforcement cases against STR operators, and establishing a complaint hotline for neighbors affected by nuisance activities resulting from STRs. This report provides an update on City enforcement activities, detailing what has been accomplished and discussing some of the unforeseen issues that have arisen.

The enforcement case statistics detailed in this report demonstrate that the number of STR cases opened, enforced on, and settled has steadily increased in the past six months as compared to the first six months. City staff anticipates enforcement cases to increase expeditiously over the course of the next year due to the hiring of additional staff.

Another factor in projecting an increasing number of enforcement cases over the next year is the allocation of more time and resources to each individual case versus time spent implementing the process to deal with the broad issues presented by STR enforcement. In this first year, a significant amount of time and resources have been allocated to identifying new unanticipated issues and developing strategies to handle enforcement. Now that staff has developed a program and operation dealing with the wide array of issues that STR enforcement presents, more time and resources can be focused on individual enforcement cases, thereby increasing the enforcement numbers (presented below) and reducing the number of illegally operated STRs in the City.

DISCUSSION:

On August 11, 2015, Council approved funding for proactive STR enforcement and proposed enforcement priorities to govern the expenditure of these funds. Council also directed the preparation of a six-month enforcement status report and presentation, which occurred on March 1, 2016. At that meeting, Council requested that staff return in another six months to provide Council with an updated status report.

This status report provides information on the following items: the number of enforcement cases opened; the number of enforcement cases that have been settled or closed; the dollar amount of Transient Occupancy Taxes (TOT) collected from enforcement cases against STRs; the results of the legislative subpoenas issued to internet host providers; an explanation of the shift in enforcement priorities starting on January 1, 2017; and the issues presented by legally converting residential units to STRs in zones where permitted.

Legislative Subpoenas

In the past year, the City Attorney's Office issued forty-four (44) legislative subpoenas to internet host providers that facilitate the bookings of STRs. Of the 44 subpoenas, thirty-five (35) host providers responded to the subpoena by either providing the documentation and information requested or attesting that they did not have any responsive records. Staff was unable to successfully deliver three (3) of the legislative subpoenas issued to out-of-state host providers and are investigating whether they are currently in operation or have new addresses.

Six (6) of the host providers responded to the subpoena by raising legal objections and refused to turn over the requested documents. Those six providers are Paradise Retreats World Class Vacation Rentals LLC, Airbnb, VRBO, Home Away Inc., FlipKey Inc., and TripAdvisor LLC. It should be pointed out that VRBO is a subsidiary of HomeAway, and FlipKey and TripAdvisor are owned by the same entity.

In May 2016, the City filed a motion in Santa Barbara Superior Court to compel compliance to the legislative subpoena against a local host provider, Paradise Retreats

World Class Vacation Rentals LLC (“Paradise”). The City’s motion requested that the Court order Paradise to turn over the responsive records asked for in the subpoena.

The Court granted the City’s motion, recognizing that legislative bodies possess broad subpoena powers, and Paradise provided the requested documents in July pursuant to the Court’s order. The Santa Barbara Superior Court’s ruling is in line with other California court decisions regarding legislative subpoenas, which have consistently held that the legislative power of inquiry, with the power to enforce it, is an essential and appropriate auxiliary to the legislative function.

In regard to the remaining internet host providers that have not complied with the subpoena, the City Attorney’s Office is in the process of pursuing compliance through the Santa Barbara Superior Court as it did with Paradise. In addition, the City Attorney’s Office is working with Airbnb on communicating the City’s zoning laws related to STRs to its clients, as well as obtaining responsive documents to the subpoena that was issued.

The Settlement and Closure of Enforcement Cases

In the fall of 2015, the City Attorney’s Office drafted a standard settlement agreement to be used to resolve enforcement cases amicably prior to the City Attorney’s Office initiating litigation against property owners operating STRs. The settlement agreement requires the STR operator to do the following:

- Acknowledge violation of the applicable Santa Barbara Municipal Code section in operating an unpermitted STR.
- Permanently discontinue the STR.
- Remove any references to the STR from any advertising or website promotional material.
- Submit to the Finance Director an accounting of the last three (3) years of transient occupancy and business license taxes as required under the Municipal Code.
- Remit any taxes owed within (30) days of executing the settlement agreement.
- Permit a future City inspection of the property with forty-eight (48) hours advance notice provided to the property owner. The City is required to provide to the property owner the probable cause that demonstrates that STR activity is still occurring and in violation of the settlement agreement.

In March 2016, six (6) settlement agreements were executed by property owners engaged in STRs. As of September 2016, that number has increased to thirty-two (32) settlement agreements, with another ten (10) in the process of being finalized. The agreements executed have been accompanied by the remittance of TOT and business license tax (if owed), which has totaled \$175,115.

In addition, another nineteen (19) enforcement cases have been closed for several reasons, which include the sale of the property or the determination from the records obtained through legislative subpoenas that short-term rentals have not occurred within the past three years. Also, another seventeen (17) additional properties have voluntarily ceased (without the threat of enforcement) operating STRs and surrendered their business licenses.

Zoning Enforcement Update

The information received from the documents turned over by the internet host providers pursuant to the legislative subpoenas has generated one hundred and thirty three (133) enforcement cases. As of September 19, 2016, there are 1,011 pending STR enforcement cases.

It should be noted that five hundred and sixty-three (563) of these cases originated from documents received from Craigslist.org. However, because Craigslist only advertises and does not engage in the business of actually booking STRs, there is a greater chance that some of the listings may be fraudulent because a third party listed the property as a STR without the property owner's knowledge or consent. Staff has resolved this issue by closing the enforcement case upon the receipt of a signed affidavit from the property owner stating that he or she has not engaged in the business of operating a STR.

As staff has engaged in proactive enforcement of STRs in the past year, they have also become aware of the issue of STRs operating in recently constructed projects developed under the Average Unit-Size Density (AUD) Incentive Program. As a result of this additional violation, staff is now prioritizing STR enforcement efforts in the following five categories:

1. Existing and new nuisance-related complaints about STRs.
2. STRs ***operating in any AUD Incentive Program development***, or operating without a City business license and not paying Transit Occupancy Tax (TOT) in single-family, R-2, and R-3 Zones.
3. STRs 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. STRs operating with a City business license and paying TOT in single-family, R-2, and R-3 Zones.
5. STRs 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).

In August 2015, Council authorized \$90,000 in funds to hire a full-time permanent employee and one half-time hourly employee who would focus solely on STR enforcement. The Planning Division was unable to hire a permanent full-time

enforcement officer in Fiscal Year 2016 but is currently in the process of filling that position. However, \$32,000 of the funding provided by Council was expended in FY16 for hourly staff committed to this project. The remaining \$55,324 that was funded but not expended in FY16 will be carried over to FY17. The Planning Division has also had current staff assist with STR enforcement, which has been equivalent in hours to a full-time enforcement officer working on STRs.

Finance Department Update

As previously mentioned, in March 2016 there were six (6) settlement agreements that were executed. As of September 2016, there have been thirty-two (32) settlement agreements executed with the accompanying remittance of TOT, including penalties, interest, and business license taxes, which has totaled \$175,115 (\$117,820 TOT).

In June 2015, Council directed Finance Department staff to cease issuing business licenses for STRs. However, currently licensed STR operators will be permitted to renew their existing business licenses through December 31, 2016.

At the time of Council's direction in June 2015, there were three hundred and forty-nine (349) registered STRs. As of September 23, 2016, there are two hundred and fifteen (215) registered STRs, representing a total decline of one hundred and thirty four (134). This decline is attributable to owners ceasing operations on a voluntary basis in anticipation of the City's enforcement efforts.

In May 2016, a letter from the City was issued to all known operators of STRs. This letter detailed the City's enforcement efforts and approach to STR operators, including the offer of settlement and remittance of TOT and business license taxes to close an enforcement case.

Enforcement Priorities Starting in 2017

The highest enforcement priority for STRs since August 2015 has been those properties with operators who have failed to remit TOT owed to the City, failed to obtain a business license, or have had nuisance complaints made by neighbors impacted by the unsupervised operation of a STR. Examples of what constitutes a nuisance complaint are noisy or unruly guests, or STR guests impacting neighborhood parking.

The STRs that remitted TOT, registered for a business license, and had no nuisance complaints reported were placed at the lowest enforcement level.

With the exception of promptly responding to nuisance complaints and illegal STRs operating in AUD units, there will be no formal enforcement priority categories starting in 2017. Enforcement action will be immediately initiated against any unpermitted STR operating in 2017, regardless of whether or not the operator previously remitted TOT payment, obtained a business license, and had no previous nuisance complaints filed.

Proposals to Convert Existing Residential Units to STRs

Since the initiation of proactive enforcement efforts on STRs began in August 2015, Planning staff has seen an increase in requests to consult with applicants and property owners about the feasibility and eventual process of converting one or more residential units on a site to a STR. The extent of the increased workload for merely the consultation process is being absorbed by existing staff and expends approximately half of a full-time employee's workload, which is a significant cost.

Some sites involving the conversion of just one unit can be reviewed and approved with relative ease. However, applications involving conversion of more than one unit on a site require a Hotel Conversion Permit, which requires significant steps, including a Development Application Review Team (DART) review and decision by the Planning Commission. Based on initial contacts with property owners wanting to convert, we currently anticipate receiving two to three requests for such a Permit within the next several months that involve up to twelve (12) residential units. These requests will significantly increase the workload of the City's Land Development Team.

BUDGET/FINANCIAL INFORMATION:

The City receives over \$1 million annually from STRs. 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.

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VACATION RENTAL ENFORCEMENT

City Council, October 11, 2016

Overview

- Brief History of Council Action
- Legislative Subpoenas Issued
- Settlement Agreements
- Zoning Enforcement Update
- Finance Department Update
- Converting Residential Units to Vacation Rentals
- Next Six Months

Council Action – Brief History

- June 2015
 - Held hearings regarding vacation rentals
- August 2015
 - Directed staff to pro-actively enforce on vacation rentals
 - Council approved additional funds for enforcement
- March 2016-Enforcement Update heard

Legislative Subpoenas

- 44 Issued to Internet host providers
 - 3 Undeliverable to out-of-state internet host providers
- 35 Host providers responded
- 6 Refused to comply with subpoena
 - Court order to comply: Paradise Retreats
 - Superior Court action for the remaining host providers who failed to comply

Settlement Agreements

- Contents
 - Acknowledge municipal code violations
 - Permanently discontinue short term rentals
 - Remove references in advertising
 - 3-year accounting of taxes and fees
 - Remit outstanding taxes and fees
 - Permit future City inspection with probable cause of vacation rental use

Settlement Agreements

- As of 9/16/2016
 - 32 Agreements finalized
 - 10 Currently in process of being finalized
 - Taxes and late fees paid from enforcement cases: \$175,115.00

Zoning Enforcement Update

- Subpoenas resulted in 133 ENF cases
- As of 9/19/2016
 - *1,011 Pending cases*
 - *563 From Craigslist: high potential for fraud*
 - *32 Settlement Agreements finalized*
 - *10 Pending*
 - *19 Cases closed w/o Settlement Agrmts*
 - *17 Cases abated voluntarily*

Zoning Enforcement Update

- Priority for Enforcement
 1. Nuisance Complaints
 2. Operating in residential zones without paying taxes, or operating in AUD developments
 3. Operating in non-residential zones without paying taxes
 4. Operating on residential zones, paying taxes
 5. Operating in non-residential zones, paying taxes

Funds Authorized for Enforcement

- August 2015
 - Council authorized \$90,000 for
 - Full-time permanent Zoning Enforcement Officer (ZEO)
 - Half-time hourly ZEO
 - Hourly ZEOs hired, but not permanent
 - Recruitment for permanent ZEO in process
 - Carry-over funds used to hire additional hourly
 - As of 10/6/16, 1.25 FTEs working on vacation rental enforcement
 - Expect 2.5 to 3 FTEs by December 2016
 - Seeking additional support for VR site identification

Finance Department Update

- \$175,110 collected
- Business license issued through 12/31/16
 - 6/2015: 349 Business licenses
 - 9/23/16: 215 Business licenses
- May 16, 2016
 - Letter sent to known operators of vacation rentals, outlining enforcement approach

Enforcement Priorities in 2017

Change from Pre-2017 priority categories

1. Nuisance Complaints
2. Vacation Rentals in AUD projects
3. All others
 - No differentiation between those paying TOT and those who aren't
 - No differentiation between those in zones that allow and that don't

Convert Residential to Vacation Rentals

- Increase in requests to consult re: process of conversion
 - 0.5 FTE spent on consultations
- One unit: Less process
- 2+ units: Hotel Conversion Process, including Planning Commission review
- Anticipate 2-3 requests involving conversion of up to 12 units per request

Next Six Months

- Potential Challenges
 - *Shift in Technology*
 - *Continue to Seek Viable Enforcement Resources*
 - *Legal*
- Decrease in Revenue
- Increase in Enforcement Efficiency
 - *Internal Processes and Staffing Stabilized*



Questions & Answers