



STAFF REPORT

AGENDA ITEM NO: 10a

MEETING DATE: July 6, 2020

To: Honorable Mayor and City Council

Date: July 6, 2020

From: Kevin Gardiner, Community Development Director – (650) 558-7253

Subject Discussion of Short-Term Rentals

RECOMMENDATION

Staff recommends that the City Council discuss options for regulating short-term rentals and provide direction to guide development of a future ordinance.

BACKGROUND

Residential short-term rentals are defined as dwelling units that are rented for periods lasting fewer than 30 days. Common examples include renting a room, house, or an apartment for a week or weekend for a short stay or for several weeks. Short-term rentals are most commonly offered and rented through online hosting platforms such as Airbnb, VRBO, Hostmaker, Sonder, Vacasa, and HomeAway. The City Council last discussed short-term rentals at a study session in December.

Current Burlingame Short-term Rental Regulations. The City's existing transient occupancy tax (TOT) applies to short-term rentals when they meet the municipal code's definition of "hotel," which is as follows:

"Hotel" means any structure, or any portion of any structure, 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, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

Therefore, a residential unit, or portion thereof, which is "occupied ... by transients for dwelling, lodging or sleeping purposes", is required to collect TOT on behalf of the City, but the City does not currently have a program for monitoring collection of TOT from short-term rentals.

Operators running short-term rentals are also required to secure a business license. Currently, there are seven registered short-term rentals in Burlingame, but the City does not have access to data regarding how many nights per year they are rented out, or whether owners are on the premises during such rentals. From reviewing online advertisements for short-term rentals (which do not provide addresses), it appears as though fewer than ten percent of short-term

rentals shown to be located in Burlingame are operating with a business license. However, it can be difficult to ascertain whether the rentals listed are in frequent or only occasional use.

Complaints and Code Enforcement. The City has received complaints for fewer than 10 short-term rental locations in the last three years. The majority of these were from neighbors complaining about a short-term rental in a nearby residence. The relevant property owners were referred to the Finance Department and secured business licenses. One complaint related to overflowing garbage bins. One location has generated several different complaints by neighbors, including guests coming and going at various times, ride share drivers blocking the street for drop off and pickup, the owner not being on site, and construction without permits.

Key Definitions. The following terms will be used in this report and are common in short-term rental regulations:

- **Host:** The owner or long-term lease holder of a residence, who offers a dwelling unit, or portion thereof, for short-term rental.
- **Hosted Rental:** Any short-term rental where the host is present on the premises, particularly during the nighttime hours.
- **Un-hosted Rental:** Any short-term rental where a host is not present.

Neighboring Jurisdictions and Short-term Rental Regulations. Neighboring jurisdictions have taken a variety of approaches to regulating short-term rentals. Of the 13 jurisdictions reviewed in the December 2, 2019 Council study session:

- Six jurisdictions (Atherton, Hillsborough, San Carlos, Los Altos, Monterey, and Sausalito) prohibit short-term rentals.
- Of the seven jurisdictions that allow short-term rentals, five jurisdictions require that the rental be hosted for all rentals or at least some portion of the year. Two allow unlimited un-hosted rentals.
- Almost all jurisdictions that allow short-term rentals require a business license, and all jurisdictions that allow short-term rentals collect TOT on behalf of the City.
- More details on policies of neighboring jurisdictions can be found in the staff report from the December 2, 2019 study session (Attachment 1). The minutes from the study session are also attached (Attachment 2).

December 2019 Study Session Summary. At the study session, Councilmembers raised a number of major themes, which are described below:

- **Policy Framework:** Creating an overall policy objective framework, including identifying the problem we are trying to solve, will allow the regulations to fall in place.
- **Regulation Versus Prohibition:** Councilmembers agreed that an outright ban on short-term rentals would not be desirable, but they do want an increase in regulation on short-term rentals and collection of TOT.
- **Property Rights:** Property rights are of critical importance. People have the right to rent out their homes and earn income from their homes. Short-term rentals can be used to supplement income, helping people make their mortgage payments and stay in their homes during challenging times. Such rentals can also provide options for homeowners

who may be relocating or away from home for an extended period, but who plan to return to their homes in the future.

- **Housing Stock:** Protecting the overall supply of housing is equally important. Therefore, short-term rentals should only be allowed in a way that does not reduce the overall number of dwelling units in Burlingame.
- **Accessory Dwelling Units (ADUs):** Accessory Dwelling Units (ADUs) are also an important part of the housing supply. Therefore, the impact on ADUs should be limited. Furthermore, deed-restricted affordable units should have additional protections or not be allowed to be used as short-term rentals.
- **Quality of Life Issues:** Neighborhood quality of life issues are paramount. Generally, people do not move into their neighborhood with the expectation of living next to a residence where their neighbors change daily. Therefore, any regulations must keep the surrounding neighborhood in mind, including being aware of potential noise, traffic, and parking impacts.
- **Potential Limitations:** Staff should explore limits on the maximum number of people staying within each short-term rental, the number of concurrent listings in each unit, the number of days the home can be used as a short-term rental, and prohibit “party homes” and events from taking place in the units.
- **Hosted Versus Un-Hosted Rentals:** A “hosted rental” where the property owner lives in the home and stays onsite has less of an impact on the surrounding neighborhood than an un-hosted short-term rental.
- **Collecting Data:** Obtaining information from Airbnb and other hosting platforms is important. Decisions can be made based on this data, and the City can be certain short-term rentals are registered and in compliance with regulations.
- **Registration and Tax-Collection:** All short-term rentals should be registered via a business license and pay TOT. TOT is not the primary reason for the adoption of a short-term rental ordinance; however, hotels and short-term rentals must be on a level playing field.

DISCUSSION

Policy Objectives. Considering the Council’s comments from the December 2019 study session, staff has drafted the following policy objectives for consideration:

1. Allow limited short-term rental uses while preventing the loss of housing stock.
2. Preserve the residential character of neighborhoods and establish operating standards to reduce potential noise, parking, traffic, property maintenance, and safety impacts on adjacent neighbors.
3. Require a business license so the City can track and enforce these requirements as needed and ensure an appropriate collection of TOT.

Based on these objectives and the themes raised in the study session, the Council may wish to consider the following regulations in a short-term rental ordinance:

Housing Stock Related Regulations:

Primary Residency: Short-term rentals could be restricted to primary residences, where the homeowner or long-term renter lives a majority of the year and can provide evidence. This restriction would prevent people from buying apartments, single-family homes, and building/converting ADUs to serve exclusively as short-term rentals.

An ADU could only be rented as a short-term rental if the host was the primary resident who lived in the unit (not the main home) and could provide evidence. South San Francisco, Redwood City, and Santa Monica all have primary residence requirements. Santa Cruz has a primary residence requirement and also prohibits the use of properties with ADUs as short-term rentals (short-term rental of the primary and the accessory dwelling are both prohibited).

Limited Un-hosted Rental Days: The City could limit the number of “un-hosted” short-term rental days. As noted above, an un-hosted rental is when the host (primary resident) is not present. San Francisco places a 90-day limit, Redwood City a 120-day limit, and San Jose a 180-day limit. There are typically no limits on “hosted rentals,” since the primary resident is onsite.

Affordable Housing Units: Most cities prohibit using deed-restricted affordable housing as short-term rentals, as the visitors who rent the short-term rental do not typically meet income requirements. Furthermore, the increased income received from the short-term rental may jeopardize the primary resident’s affordable housing status.

Neighborhood Character Related Regulations:

Prohibition of Special Events: The City could prohibit special events such as weddings, parties, and commercial functions. Airbnb has already begun restricting these type of events.

Limiting Number of Concurrent Listings: The City could limit the number of concurrent listings for the same property. For example, the City could state only one or two listings can be rented at the same time. This regulation would prevent a “hacker house” scenario, where short-term rental bunk beds are listed and rented daily. Redwood City, for example, requires that short-term rentals not have more than two listings for the same primary residence on the same days. Santa Cruz requires that only one rental agreement may be in effect in a short-term rental at a time. Santa Monica does not allow booking or renting to more than two groups of visitors for any given date, whether the visitors within the groups are related to one another or not.

Limiting Total Occupants: The ordinance could limit the total number of people allowed to stay in a short-term rental at one time. For hosted rentals in San Jose, the City limits incidental transient occupancy to up to three transient users in a one-family dwelling or mobile home, and up to two transient users in each dwelling unit in a two-family dwelling or multiple family dwelling. For un-hosted rentals, San Jose’s occupant limitations are two people in a studio unit, three people in a one bedroom unit, and two people per bedroom for each bedroom in excess of one bedroom, but not to exceed 10 persons total.

South San Francisco limits the number of transient occupants to two or fewer for hosted rentals and to two persons/bedroom plus two additional persons for un-hosted rentals. Millbrae limits

nighttime hours' occupancy to two persons per bedroom, plus two additional persons per short-term residential rental unit (a studio is considered to have zero bedrooms). Daytime occupancy is limited to twice the nighttime occupancy of the short-term residential rental. Santa Cruz limits overnight occupancy for short-term rentals to a maximum of two persons per bedroom, plus two additional persons regardless of the age of the occupant.

Onsite Parking: The ordinance can require that any onsite parking, including garage and driveway, be made available to short-term renters, and hosts would park on the street. The requirement could minimize neighborhood parking conflicts as hosts better understand parking in their neighborhoods. For example, Millbrae and Redwood City require that existing onsite parking spaces are made available to renters and guests. Santa Cruz limits the number of vehicles allowed at the short-term rental to one vehicle per one bedroom unit, two vehicles per two or three bedroom unit, and one additional vehicle per additional bedroom for units in excess of three bedrooms.

Require Local Contact Person: Many ordinances require a local contact person for "un-hosted rentals". This designated local contact person would respond when there are complaints. For example, San Jose requires that the host provide written notice of the name and telephone number of the local contact person to all transient users and to all occupants of all adjacent properties for "un-hosted rentals." Redwood City requires identification of a local contact person to all guests and all occupants of adjacent properties for "un-hosted rentals." The local contact person must be available 24 hours per day, 7 days per week during the term of any un-hosted stay; must respond within 60 minutes to complaints regarding the condition or operation of the dwelling unit or the conduct of guests; and must take remedial action to resolve such complaints.

Registration, TOT Collection, and Enforcement:

Registration: The City could require hosts to register their units via a modified business license process. The business license registration for short-term rentals could also include a primary residence confirmation, "local contact person" form, etc. as noted above. Alternatively, many cities have a separate permitting and annual registration process for short-term rentals since they are a unique business with specific restrictions. For example:

- Santa Monica requires a Home Sharing Permit with a separate application process from building license registration. The term for the permit is effective for the same duration as the building permit license.
- Redwood City requires hosts to register their primary residence as a short-term rental with the City on a form prepared by the City with additional information and acknowledgements. Registration may be renewed annually upon payment of registration renewal fees and all required transient occupancy tax remittance, and the host must submit information on short-term rental activity to verify the amount of tax paid.
- In Santa Cruz, all owners of short-term rental units are required to obtain a short-term rental permit and TOT Certificate to use their property for short-term rental purposes. A total of 250 owner-occupied/hosted short-term rental permits are available on a first-come, first-served basis.

- Millbrae requires that residents interested in operating a short-term rental at their residence apply to the Community Development Department for a short-term rental permit. As designed, the program requires a business license, short-term rental permit, and completion of a transient occupancy tax certification form along with health and safety inspections to ensure compliance with applicable codes.

TOT Collection: Staff proposes entering into a collection agreement with Airbnb (and possibly other platforms), which would require that Airbnb collect TOT from all hosts and remit it to the City. Staff will also review the TOT ordinance in case any changes must be made to capture TOT associated with short-term rentals.

Enforcement: Staff will explore enforcement alternatives with the hosting platforms. Staff will also consider third-party platforms that track the locations of short-term rentals to ensure they are consistent with the registered unit. Registration fees and TOT collection should offset the cost of tracking and enforcement of short-term rentals.

Next Steps. After receiving direction from Council, staff will develop an ordinance for consideration by the Planning Commission, possibly in August 2020 (tentative date). The Planning Commission will make a recommendation to Council on the adoption of the ordinance. In the interim, staff will conduct outreach to Airbnb, VRBO, and other hosting platforms, as well as Burlingame-based “hosts.”

FISCAL IMPACT

There is limited fiscal impact associated with preparing a short-term rentals ordinance for Planning Commission review and City Council review and approval. The total amount of TOT collected from short-term rentals will depend on occupancy rates and average nightly revenue.

Exhibits:

- December 2019 City Council Study Session Staff Report
- December 2019 City Council Study Session Minutes
- Example Ordinances (Redwood City and Millbrae)