City of Long Beach
Working Together to Serve

Memorandum

Date: June 1, 2017

To: Mayor and Members of the City Council

From: Patrick H. West, City Manager

Subject: **Short-Term Rentals**

On March 21, 2017, the City Council requested the City Manager to review the regulation of short-term rentals (STRs) in other municipalities and to report back on next steps to create an ordinance. In this memorandum, City staff will summarize the status of STRs in Long Beach and provide information on how other cities address STRs. A preliminary timeline for the development of an ordinance is also provided, should the City Council wish to move forward.

Introduction

STR platforms like Airbnb and HomeAway have garnered both proponents and opponents throughout the country. Proponents cite the economic benefits of STRs, including increased tourism and spending. Opponents are concerned with residential units being removed from the housing stock, increased traffic and parking impacts, as well as noise and public safety issues.

The growth of STR platforms has prompted cities to respond, given that these platforms often conflict with existing policy. Cities have responded differently to STRs. Some cities have passed ordinances to legalize STRs, whereas others continue to ban them. In many cities, STRs exist but remain illegal.

STRs in Long Beach

The exact number of STRs available in Long Beach is difficult to ascertain due to multiple factors including: seasonal demand, hosting platforms allow multiple listings, properties are listed on multiple platforms, and specific addresses are not listed on the hosting platforms. While Airbnb shares general information about hosts and locations, they do not share addresses or other personally identifiable information. Consequently, it is difficult for cities to verify listings and have a concrete number of STRs within their boundaries.

Silicon Valley startup, Host Compliance, provided the City with an estimate of 1,130 STR listings in Long Beach as of September 2016. Airbnb estimated that there were 984 active listings in Long Beach. It is important to note that the number of available listings varies greatly during high-demand events. For example, the low number of available listings during the 2017 Grand Prix weekend (see following page) indicates that most listings were

reserved during this three-day period. Airbnb indicated that only 14 percent of listings were available during Grand Prix weekend. Therefore, seasonal demand plays a great factor in availability.

Short-Term Rental Service	Postings Grand Prix Weekend 2017
Vacation Rental By Owner (VRBO)	8
Airbnb	101
HomeAway	8
FlipKey	6

Across all STR platforms, the majority of Long Beach postings are for properties located within the downtown and coastal areas, as is the case for other coastal cities.

Long Beach Zoning Code

Within the Long Beach Municipal Code, the Zoning Code discusses long-term rental of residential units, but not the short-term rental of an entire unit. By omission, if a use is not called out or specified in the Zoning Code, the use/activity is prohibited by default. However, STRs are not exclusively full residential units. Some STRs also include private rooms or shared rooms. The Zoning Code indicates that a room rental must meet all of the following conditions or be considered a boardinghouse, lodging house hotel or motel, as applicable, and shall be subject to the requirement of that use:

- The owner of the dwelling unit must live in the unit.
- The rented room shall not contain more than three (3) plumbing facilities nor a kitchen. Such room shall not contain laundry facilities, a water heater or a wet bar-type sink.
- The rented room shall not contain an independent exterior entrance.
- The rented room may not be detached from the principal dwelling unit.
- Not more than two rooms shall be rented in a single dwelling unit.

It is likely that many listings available through STR platforms do not conform to these conditions and could be considered hotel and motel uses. If this is the case, the use should be treated as hotel/motel use subject to the applicable zoning regulations, as well as Transient Occupancy Tax (TOT).

California Coastal Commission

The California Coastal Commission (CCC) plays an important role in any regulation of STRs in the Coastal Zone. In a letter to the City of Laguna Beach, the CCC laid out a

position regarding STRs. They indicated that STRs represent a high-priority visitor-serving use (potentially available at a lower cost than traditional lodging) that should be promoted because STRs support the aims of the following sections of Coastal Act:

> *30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*
>
> *30222: The use of private land suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

The CCC has generally interpreted local zoning ordinances in a broad fashion and found that STRs are a form of residential use, permitted by right, in any residentially zoned area unless such uses are specifically prohibited or otherwise restricted. Recognizing that STRs can raise several neighborhood character and operational issues, the CCC has endorsed certain regulations such as occupancy limits and parking requirements. For example, in the City of Trinidad in northern California, the CCC required each STR to have at least one off-street parking space for every two occupants. Notwithstanding, the CCC does not want those regulations to serve as a disincentive for STRs.

CCC staff outlined what they thought should be included in an analysis of potential regulatory controls:

- An assessment of the impact on lower cost visitor accommodations and the overall availability of overnight accommodations in the City's Coastal Zone.
- An updated inventory and mapping of existing visitor-serving accommodations by type, capacity, ownership and price range to gain an accurate assessment of available overnight accommodations.
- Utilization studies to gauge how various forms of vacation rentals operate.
- Demand projections for overnight visitor accommodations to evaluate whether the current supply is adequate to meet future needs.

Since an ordinance regulating STRs in Long Beach would apply citywide, including the Coastal Zone, the Department of Development Services would need to forward any ordinance regulating STRs to the CCC for a Local Coastal Program Amendment.

STR Compliance

The Code Enforcement Bureau in the Department of Development Services estimates that it receives an average of 36 to 48 complaints annually related to STRs, the bulk of which occur during the summer months. This number could increase with a STR program.

Development Services staff estimates that for every 100 to 150 nuisance complaints, an additional Combination Building Inspector (CBI) would be required to research, validate, and resolve these complaints. The estimated cost to add a CBI, including salary, benefits, vehicle, equipment and overhead, is $177,000.

It is difficult to determine and prove if the alleged locations of STRs are truly STRs. However, once a complaint has been received, Code Enforcement staff determines whether or not three conditions exist to validate the complaint:

1. Complaints have been received from two separate parties regarding the subject location.
2. The subject location is posted as a STR on one of four web sites: VRBO, Airbnb, HomeAway or FlipKey.
3. The Police Department has received calls for service at the subject location.

If these three conditions are substantiated, Code Enforcement forwards the matter to the City Attorney's Office for further review. The most onerous condition to substantiate is whether or not the unit is listed as a STR. Online listings do not provide addresses and, at times, do not provide exterior photographs — the means by which an inspector verifies that the address of the complaint is a STR. The City Attorney's Office has not yet sent any "cease and desist" letters for STR violations in 2017. Code Enforcement has started sending letters to owners of properties reported as potential STRs, advising them of the City's current policy.

Revenue Estimates and Use

During a conference call with Airbnb, their staff estimated that 2015 TOT collection for the City would have been $580,000. Assuming this amount is based on a 12 percent TOT rate, this means that Airbnb generated $4.8 million in revenue in Long Beach. An updated financial analysis is required to estimate how much TOT revenue is expected, not just from Airbnb, but from other STR platforms as well. This analysis will be completed by an outside consultant with expertise in this area. More information on the analysis to be completed by this consultant is found in the "Next Steps" section of this memorandum.

In the City of Long Beach, TOT is a 12 percent tax that is made up of two equal parts with different designations for the revenue. The first 6 percent is a special tax, which is earmarked for the special advertising and promotion (SAP) fund. The other 6 percent is a general tax, which can be used for any general fund purpose. Hotels with 30+ rooms located within the Long Beach Tourism & Business Improvement Area (LBTBIA) boundary are self-assessed an additional 3 percent tax of gross short-term room rental revenue to fund the Long Beach Convention and Visitors Bureau (LBCVB). If a STR host within these boundaries were to rent out 30 or more rooms, it is likely that they would have to pay the additional 3 percent tax.

Budgetary decisions, including how to spend TOT revenue, are recommended to follow the City's annual budget process. This process allows for City Council's priorities to be considered in light of the overall budget. The annual budget process is the general method used by the City to set priorities and determine the level and type of resources to fund services. To this end, City staff recommends that, should the City Council proceed with an ordinance that would regulate STRs and generate additional revenue, the additional revenue be reviewed within the entire context of the City's financial situation. This would include ensuring funding for ordinance enforcement costs, future deficits, Citywide budget priorities, as well as any new proposed initiatives such as funding for affordable housing, as mentioned in the City Council agenda item.

Examples of Funding for Affordable Housing

In June 2016, the City of Chicago passed an STR ordinance that included a 4 percent tax to fund supportive services related to fighting homelessness. The following year, the city announced that it was using this STR tax to match $1 million in funds from the Chicago Low Income Housing Trust Fund, a City-funded nonprofit organization. Together, these funds will be used for a new initiative called the Housing Homeless Families program, which will connect 100 homeless families to permanent housing.

The City of New Orleans passed STR ordinances in December 2016. One of the ordinances levied a $1 per night tax for the Neighborhood Housing Improvement Fund, which is used for affordable housing and homeownership pathway programs. More information on New Orleans is found in the first case study, under the "Review of STR Regulation in Other Cities" section.

Additional research on how other cities have used revenue from STRs for specific purposes, such affordable housing, will be completed by an outside consultant. More information is found in the "Next Steps" section of this memorandum.

Review of STR Regulation in Other Cities

Below are four case studies of cities that illustrate different approaches to STR regulation. These cities experienced benefits after the adoption of their respective STR ordinances, notably TOT revenue generation. However, there were also challenges including Airbnb's reluctance to share property addresses and ongoing compliance issues after STR ordinances were adopted.

<u>New Orleans</u>
In December 2016, the City of New Orleans adopted a series of ordinances to define and permit STRs in zoning districts throughout the city. These STR ordinances took effect in April 2017. Under the ordinances, STR hosts are required to pay a 4 percent Hotel/Motel sales tax, a Hotel Occupancy Privilege tax of $0.50 per night, and a $1 per night fee for the city's Neighborhood Housing Improvement Fund. To streamline the process for Airbnb hosts, New Orleans entered into a Voluntary Collection Agreement (VCA) that offers tax

collection and "pass-through registration" for hosts — meaning hosts can register with the city through Airbnb.

There are three STR types that are permitted in New Orleans. The first is an "accessory short-term rental." Under this STR type, the host must live and remain present whenever people are hosted and a maximum of 30 consecutive rental nights are allowed. The second type is a "temporary short-term rental." These rentals do not require the presence of the host; however, an in-town property manager is required if the host is out of town during a rental. Furthermore, a maximum of 90 rental nights are allowed per year. Lastly, "commercial short-term rentals" are allowed in non-residential zoning districts with no limits on the number of rental nights per year. For commercial short-term rentals, the host does not need to be present during the rental period. New Orleans requires STR hosts to post license placards in their front façade and does not permit STRs in accessory structures, residential vehicles, or outdoors.

The type of STR that is allowed (accessory, temporary, or commercial) depends on the zoning of the property. To this end, the city developed a chart that shows each zoning designation and the corresponding STR types that are permitted, which is available online. New Orleans also developed informational brochures and online instructions on how to apply for STR permits. In addition to applicable taxes, STR hosts are also required to pay business licensing fees.

It is important to note that the New Orleans STR ordinances came as a result of lengthy negotiations with Airbnb, through which New Orleans gained concessions such as host registration and limited data sharing. Airbnb still does not share the property addresses of hosts with New Orleans — one of the biggest requests by New Orleans and other cities alike. Instead, Airbnb shares monthly reports about hosts via a unique identifier. While this provides limited information, the lack of addresses continues to be an impediment to corroborate STR complaints for unlicensed locations. However, New Orleans negotiated an "administrative subpoena process" that city staff may use to request specific host information for a listing that does not provide a valid business license number on the Airbnb website.

Soon after the New Orleans negotiations, Airbnb developed a "Policy Tool Chest" document that outlines commitments to cities and customers including: paying a fair share of hotel taxes, working with cities to develop rules that reflect specific policy needs, data sharing, and maintaining privacy. While Airbnb is open to share some information with cities, such as host information via a unique identifier in the case of New Orleans, the company still maintains a strong commitment to host privacy.

It is important to note that other STR platforms do not adhere to the terms negotiated between Airbnb and cities. For example, in a conference call with the City of New Orleans, their staff indicated that other STR platforms only serve as a place for hosts to advertise their properties and do not collect any earnings, so they do not currently have the capability for collecting TOT. This means that it is incumbent on STR hosts to pay taxes to the city.

Sacramento

In January 2016, the Sacramento City Council approved a series of ordinances to regulate STRs. Prior to the ordinances, STRs in Sacramento fell under the same definition of a bed and breakfast, meaning they were required to get a conditional use permit (CUP). After the ordinances, STRs are now divided into two categories: primary residence short-term rentals and secondary residence short-term rentals.

If a STR host rents out their primary residence, the host is required to apply for a short-term rental permit and pay an annual business tax of $50, in addition to 12 percent TOT. On the other hand, secondary residence short-term rentals are capped at 90 rental nights per year. If the 90-night limit is exceeded, the host can apply for a CUP. The business license tax and TOT tax amounts are the same as for primary residence short-term rentals.

Once the ordinances were approved, pass-through tax collection by Airbnb was set to start on June 1, 2016. However, Airbnb expressed privacy concerns about Sacramento's requirement for hosts to include a city-issued permit number on their Airbnb listings. Since Sacramento's ordinance did not include any language that required hosts to post city-issued permit numbers on their listings, Airbnb was not required to enforce this unless the city's Zoning Code was updated to require it. To resolve this issue, Sacramento staff plans to bring this Zoning Code change to City Council in the near future. As of May 19, 2017, Airbnb and Sacramento have not yet clarified the terms of their agreement but are in negotiations.

The entire ordinance process, ranging from reviewing the city's municipal code to getting approval from the Planning and Design Commission before final approval from City Council, lasted over one year. This excludes additional months of renegotiations with Airbnb once the STR ordinances were approved.

San Francisco

The City and County of San Francisco adopted an ordinance in February 2015 that defined STRs as a tourist or transient use and levied a 14 percent TOT on these listings. To rent out a STR in San Francisco, the host must be a permanent resident of the unit. This means the host must live in the unit rented out for at least 275 nights per year. Additionally, the host must obtain a Business Registration Certificate and become a certified host with the San Francisco Office of Short-Term Rentals. Under the 2015 ordinance, there was an original cap of renting out 90 nights per calendar year when the host is not present. However, in November 2016 the cap was changed to 60 nights due to growing community concerns about limited housing opportunities.

While STR regulations have been in place since 2015, noncompliance remained a large problem in San Francisco. For example, less than half of all STRs are estimated to be registered. To this end, the City and County of San Francisco Board of Supervisors approved criminal penalties for noncompliance. STR hosts and STR platforms that do not comply with STR regulations in San Francisco can face up to a $1,000 fine, if they do not correct and remedy the violation.

Due to remaining noncompliance issues, and after a year-long legal dispute with San Francisco, Airbnb agreed to settle a lawsuit in April 2017. Airbnb hosts are now required to register with the city, or otherwise will be barred from the platform. San Francisco staff argue that universal registration is crucial to ensure that hosts follow the ordinance and illegal postings are removed. Illegal postings are a sensitive topic in San Francisco, particularly due to the city's increasing housing costs. This new registration system is expected to roll out in early 2018.

Santa Monica

In May 2015, Santa Monica passed an ordinance that made a distinction between two different types of STRs: "home-sharing" and "vacation rentals." Home-sharing is defined in the Santa Monica ordinance as a unit shared with someone for less than 30 consecutive days, during which time the resident lives in the unit. On the other hand, a vacation rental refers to a unit where the guest has exclusive private use of the unit. Home-sharing is allowed under the ordinance, whereas the ordinance continues the long-time ban on vacation rentals. Vacation rentals operating illegally can receive a $500 fine per day and even face criminal prosecution if they do not remove the unit from the STR platform.

Home-sharing is permitted, provided the STR owner adheres to the definition of home-sharing and obtains a business license. There is no fee to obtain a business license for home-sharing purposes. However, business license tax is required ($75 on the first $60,000 made in rental income, followed by 0.3 percent on every $1,000 after $60,000). STR owners who make less than $40,000 per year in home-sharing income can apply for a Small Business Exemption, which allows them to not pay any business license tax. Separate from business license taxes, Santa Monica also levies a 14 percent TOT.

It is important to note that Airbnb sued the City of Santa Monica for banning vacation rentals in September 2016, citing First and Fourth Amendment violations. Not backing down, the Santa Monica City Council approved publishing home-sharing host information on a special registry in January 2017. This home-sharing registry is posted on the City's Open Data Portal.

Next Steps

There are benefits to developing a STR ordinance, including receiving additional TOT revenue for the City, income for hosts, and increased accommodations for visitors. At the same time, staffing needs for STR oversight and other matters need to be further analyzed. City staff recommends moving ahead with additional research and taking steps toward regulating STRs in the City.

Should the City Council wish to move forward with the regulation of STRs, City staff recommends the hiring of a consultant to complete additional research. This is necessary to ensure that this project keeps moving ahead, without impacting other priority work currently being heard by the Planning Commission or conducted by staff, such as the continuing roll out of medical marijuana businesses.

Tasks to be completed by the consultant include, but are not limited to:

- Updated count of STRs in the City that can be disaggregated by various factors such as general location, room type, and cost.
- Additional financial analysis, including TOT revenue potential and a cost-recovery fee structure.
- Assessment of staffing needs for administration and enforcement of an STR program.
- Analysis of the Zoning Code and recommendations for possible zoning changes.
- Recommendations for a cap on the number of rental nights in a calendar year.
- Additional research on other cities, including how revenue from STRs can be used for specific purposes, such as affordable housing.
- Other items requested by the City Council on March 21, 2017.

A preliminary timeline (subject to change) for the STR ordinance development process is found below. Based on the experience of other cities, staff estimates it will take close to one year to develop an STR ordinance.

1. *Data collection and analysis* (July-October 2017).

2. *Public outreach period* (September-October 2017).
   - Additionally, the public can provide comments regarding this item at City Council, the Planning Commission, and the California Coastal Commission (CCC).

3. *City staff presents recommendations to the City Council to receive direction, should the City move forward with an ordinance* (November 2017).

4. *City Attorney develops a draft ordinance regulating STRs (*December 2017).

5. *Planning Commission holds a public hearing for the draft ordinance (*January 2018).

6. *A) First reading of the revised ordinance occurs at City Council* (February 2018).
   - City Council may approve the ordinance as is, or request more changes.

   B) Concurrently, the City Attorney develops a Resolution directing the Director of Development Services to submit a Local Coastal Program Amendment to the CCC.
   - Note: the portions of the City within the Coastal Zone cannot be regulated under the new ordinance until the CCC acts on the Local Coastal Program Amendment. If the CCC has changes to the ordinance, CCC staff will work with the City to complete these changes.

7. *Second reading of the draft ordinance occurs at City Council, if the ordinance has not already been adopted (*March 2018).

8. *The ordinance takes effect 30 days after the ordinance is adopted (*April 2018).

Staff will begin the process of bringing on a consultant to assist with this effort and will include appropriation in an upcoming FY 17 Budget Adjustment. The fiscal impact of a consultant is estimated to be in the range of $100,000 and will be funded by a combination of General Fund and Development Services Fund resources.

If you have any questions regarding this matter, please call Tom Modica at (562) 570-5091.

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CC: CHARLES PARKIN, CITY ATTORNEY
LAURA L. DOUD, CITY AUDITOR
DOUGLAS HAUBERT, CITY PROSECUTOR
TOM MODICA, ASSISTANT CITY MANAGER
ANITRA DEMPSEY, INTERIM DEPUTY CITY MANAGER
REBECCA JIMENEZ, ASSISTANT TO THE CITY MANAGER
AMY BODEK, DIRECTOR OF DEVELOPMENT SERVICES
JOHN GROSS, DIRECTOR OF FINANCIAL MANAGEMENT
CITY CLERK (REF. FILE # 17-0213)