City of Long Beach
Working Together to Serve

Memorandum

Date: June 14, 2019

To: Patrick H. West, City Manager

From: Linda F. Tatum, Director of Development Services

For: Mayor and Members of the City Council

Subject: **Short-Term Rental Ordinance Update**

Following a series of studies and public participation events in March 2017, completed at the City Council's request, staff presented three options for regulating Short-Term Rentals (STRs) to the City Council at its December 4, 2018 meeting. At that time, the City Council directed the City Attorney to prepare an Ordinance to implement the regulation of STRs with specified limitations; and, to enter into voluntary tax collection agreements with hosting platforms for the collection and remittance of transient occupancy tax (TOT).

This memorandum provides additional information and a summary of staff's findings on areas of research requested by the City Council, including staff recommendations, where appropriate. The proposed Ordinance would allow limited STRs with the following conditions:

1. A STR host would be required to register with the City and obtain a unique STR registration identification number valid for one year.
2. A STR host may operate up to two non-primary residence STRs, or three if one STR is a primary residence. A primary residence is defined as residential property where the STR host resides at least 275 nights per year.
3. Non-primary residence STRs in multi-family buildings will be limited based on a sliding scale of the total units within the development.
4. For a hosted stay (where the host is onsite during the rental activity), there will be no limit to the number of nights rented, but an un-hosted guest stay in a primary residence STR will be limited to 90 nights per year.
5. The number of guests will be limited to two guests per bedroom plus another two, for a maximum of ten guests per STR with outdoor quiet hours in effect between 10:00 p.m. and 7:00 a.m.
6. A local 24-hour contact person will have to be available to respond to complaints within one hour.
7. An occasional event permit will be required to host special events in STRs.
8. A citywide cap of one percent of total City housing units will be placed on the number of non-primary STR registrations issued (First come first served).
9. An optional ban on un-hosted STRs may be implemented by a vote of property owners within a geographic area.

STR program costs will be offset by annual STR registration fees. STRs will be subject to TOT per the City's tax on short-term stays less than 30 days. Airbnb is already collecting TOT from STR bookings in Long Beach. In the event of a violation, the STR will be subject to an administrative citation after the first violation, which will be a warning. Subsequent violations will result in a fine of $1,000 per day. Violations include, but are not limited to, any attempt to rent an unregistered STR, conduct or activities that constitute a public nuisance, or failure of the local contact to respond. The City may rescind a STR registration upon issuance of three violations resulting in fines.

Options to Address House Parties Including Permit Process for Limited Events

To address quality of life concerns caused by frequent large-scale events, sometimes referred to as "party houses," some municipalities have incorporated a permitting process for special or large events in their STR ordinances. This allows for occasional events to occur in STRs, while protecting the residential character of the neighborhood by limiting both the size and number of these events on an annual basis. The City of Long Beach Office of Special Events and Filming currently uses a Special Event Permit (SEP), which applies only to events on public property, and an Occasional Event Permit (OEP), which applies only to commercial properties. By establishing an OEP process for residential use, the City could allow a STR host to host a limited number of events per year for which the proposed ten-guest maximum capacity requirement is waived for a permitted event.

The Cities of Malibu and Palm Springs have adopted STR ordinances that provide for a limited number of special events on STR properties. Malibu allows up to four residential special events per year for each STR unit, and the special event permit allows an event for up to eight hours in duration. Palm Springs does not restrict the number of events, but a separate "Event House Permit" is required for each event. Staff recommends establishing an STR OEP to allow STR hosts/operators to accommodate guests holding special events for up to six 24-hour periods per year. This would allow a limited number of weddings, fundraisers, family reunions, and other similar occasions, while mitigating the effects of such events on the residential character of neighborhoods. Hosts would be required to notify all neighbors within 300 feet of the STR property ten days in advance of the event, and outdoor quiet hours from 10:00 p.m. to 7:00 a.m. would still apply.

Cap on the Number of Non-Primary Residence STRs Allowed in Multi-Family Developments

Placing a cap on the number of non-primary residence STRs in multi-family developments will reduce the impact on the City's housing stock and prevent entire multi-family buildings from becoming de facto hotels. To address building size disparity, particularly for large buildings and residential complexes with multiple buildings, staff proposes a sliding-scale cap on the number of non-primary STRs allowed in multi-family developments, as shown in the table below:

Number of dwelling units per development project	Number of non-primary residence STRs allowed per development project
2 to 10	1
11 to 50	10%
51 to 100	12%
101 or more	15%

Note: Rounded down to the nearest whole number from 0.49, and up to the nearest whole number from 0.5.

STR registrations for non-primary units in multi-family buildings would be approved on a first-come, first-served basis. No STR registration would be approved if the building's owner or homeowner's association prohibits STR activity.

As directed by the City Council, staff is including a cap of 1 percent of the City's housing stock being allowed as non-primary residence STRs (approximately 1,770 units) as a way to reduce the impact to the housing stock. This citywide cap would be inclusive of multi-family buildings and single-family residences.

Enforcement

At the direction of the City Council, staff reached out to hosting platforms and third-party compliance platforms to better understand the services and tools available to assist the City with enforcement and compliance with STR regulations. Staff has worked with hosting platforms Airbnb and HomeAway, and has been introduced to enforcement tools these platforms offer to assist jurisdictions with enforcement of regulations. These include adding a field on their listings for displaying approved City STR registration identification numbers, a "Neighborhood Tool" available to neighboring properties for submitting complaints directly to Airbnb, and a "Responsible Hosting" page for hosts providing information about Long Beach STR regulations with a link to the City's STR webpage. These platforms indicated it is not their practice to monitor the validity of registration numbers and would therefore not be responsible for removing unregistered hosts or listings for properties whose registration has been revoked by the City.

A ruling filed on March 13, 2019, by the United States Court of Appeals for the Ninth Circuit affirmed the district court's dismissal of a complaint brought by HomeAway.com and Airbnb Inc. against the City of Santa Monica for imposing various obligations on hosting platforms. This ruling upheld the lower court's decision that hosting platforms were required to provide certain information regarding hosts and were obligated to refrain from booking properties not licensed for STR use by the City of Santa Monica. Based on this ruling, staff anticipates increased participation from hosting platforms with both data-sharing and enforcement issues. It is unclear at this time if the issuance of an administrative subpoena would be necessary to obtain data for a specific host.

Staff also communicated with third-party compliance platforms specializing in assisting jurisdictions with enforcement of STR regulations. These platforms are available via service contract and use software created specifically to monitor compliance with STR regulations. Companies staff spoke with include Host Compliance, Veritil MVS, STR Helper, and Harmari STR. Services provided by these platforms include data discovery, online STR registration management, assistance with nuisance management including a staffed 24-hour hotline, and tax remittance management. Many jurisdictions that have regulated STRs use the services of third-party compliance platforms. Staff is recommending the City work with one of these platforms to assist with registration and enforcement issues upon adoption of a STR Ordinance and will conduct a procurement process to determine the most responsive platform.

Program Costs

Proposed costs for the STR program include two FTEs and a contract with a vendor to host registration, collect TOT from non-Airbnb hosts, and assist with a 24-hour hotline. These costs are estimated to be approximately $350,000. A proposed registration fee of $250 and an estimated 800 STR registrations would offset this cost by $200,000, requiring a projected $150,000 subsidy from the General Fund.

Business License Requirements

A business license will not be required because the proposed STR Ordinance would only allow an operator to host two non-primary residences (or three if also hosting in their primary residence). Currently, the Long Beach Municipal Code only requires a business license for residential rental properties with four or more units. As noted, staff will be able to track and monitor STRs through the registration process required to host any STR unit.

Parking

The STR program is established on the premise that units eligible to register for an STR permit must be legally established with a record of required permits pursuant to City codes and regulations, including compliance with Code-required parking, or be documented as legal nonconforming when they do not provide required Code-required parking. The current STR proposal does not include an additional parking requirement for STR units as it establishes limits on the number of individuals that may occupy these units. These occupancy limitations will generally limit potential parking impacts in a manner that is not currently available to regular owner or rental housing units. It is not legal for the City to establish occupancy limits for residential units.

If special event permits are allowed for STRs without the addition of a parking requirement, it would be similar to a renter or homeowner occasionally hosting a family or social event during which parking may be temporarily impacted in the area of the residence. If there is a concern regarding parking for STR special events, staff can determine a standard for parking to be provided by the host as a condition of the special event permit. Staff recommends that if a standard is established for additional parking for a special event, the applicable standard be applied citywide and not just in the Coastal Zone. Adding a requirement for additional parking in the Coastal Zone, if a similar standard is not applied citywide, is likely to be construed by the California Coastal Commission (CCC) as an impediment to coastal access and could result in rejection of the parking requirement.

Funding for Affordable Housing

A potential negative impact of STRs is the removal of housing units from the long-term market, thereby reducing supply and contributing to increased housing costs. To minimize potential effects on the housing market, the proposed STR Ordinance would limit the following:

1. The number of STRs allowed in the City to 1 percent of the City's housing stock;
2. The number of STRs per host; and,
3. The number of STRs per multi-family development.

The proposed STR Ordinance does not allow deed-restricted affordable housing units to be used as STRs and provides a means for apartment owners and home owner associations to register on a list of STR-prohibited properties.

Staff looked at the ability to fund new affordable housing units by including STRs in an inclusionary housing program. However, past court cases and current legislation limit the application of an inclusionary housing program to the production of new housing units. As a result, such a program cannot be applied to the City's STR Ordinance.

Another alternative to funding affordable housing production is the imposition of a mitigation fee. A nexus study is required to adopt a mitigation or impact fee. The nexus study would evaluate to what degree STRs impact the affordable housing market and monetize that impact. While the most obvious approach to this analysis is to attempt to evaluate the number of housing units removed from the market, another approach was taken in the City of San Diego. This approach evaluated the increased demand for housing by workers, like housekeepers and gardeners, who provide services to the STR industry. San Diego does not currently have STR regulations, so the impact fee has not been used. Staff checked with other California cities and did not find any that had adopted and implemented an impact fee.

Neighborhood Opt-Out Without Unduly Restricting STR Activity in Coastal Zone

During the public outreach phase, many residents, particularly in the Naples Island and Peninsula neighborhoods, which lie within the Coastal Zone, advocated for the ability to prohibit STRs in their neighborhoods by obtaining signatures of two-thirds of the property owners. The CCC considers STRs a high-priority visitor-serving use and considers a total ban of STRs to be a violation of the Coastal Act. However, the CCC has approved STR regulations that put some constraints on STR operations, but do not ban them, such as only allowing STRs in a primary residence as in the City of Pismo Beach, or only allowing hosted stays as in the City of Santa Monica (after initially rejecting Santa Monica's previous total-ban ordinance).

An opt-out by property owners to prohibit STRs, although not common, is not unprecedented. The City of Chicago uses an opt-out option to restrict STRs in selected precincts, in which a legal voter submits a notice of intent form to the City Clerk, who provides the petitioner with the petition form, which must be circulated and returned to the City Clerk within 90 days. Staff is recommending an opt-out petition process for prohibiting un-hosted STRs, which would be administered in the Development Services Department.

To establish a fair, reasonable, and formally established boundary model for both petitioners and City staff to manage, staff considered the size, shape, and static nature of possible boundaries. Potential options included the following:

- The City's list of 82 established Neighborhood Associations published annually by the Neighborhood Resource Center;
- Voting precincts and sub precincts;
- Police reporting districts; and,
- 2010 census tracts.

The population estimates of the City's Neighborhood Associations vary significantly from 76 to more than 19,000 residents and is, therefore, not considered to be a viable option. Precincts and sub-precincts have fluctuating and irregular boundaries that are not conducive to a neighborhood-based opt-out petition. Due to the relative ease of identifying a homeowner's census tract, reasonable consistency in the number of residents, and static nature of the boundaries, staff is recommending use of 2010 census tracts as the basis for the neighborhood opt-out petition boundary.

To allow property owners to prohibit un-hosted STRs, while not unduly restricting the ability for un-hosted STRs in and around the Coastal Zone, the City Council has recommended petitioners obtain two-thirds of the property owners' signatures in favor of the prohibition within the boundary.

To qualify, an opt-out petition would have to be submitted to the City within six months of the proposed STR Ordinance taking effect, and the ban would be effective for three years. At the end of the three years, a new petition would be required to maintain the ban. Once a neighborhood ban takes effect, it could be reversed by a similar two-thirds signed petition of property owners to remove the prohibition after the first year the ban goes into effect.

The process to prohibit un-hosted STRs would begin with the petitioning party requesting the petition form from the City. The City would provide the petition form listing all property addresses within the Census Tract of the petitioning party for collection of signatures. A petition form returned to the City, which includes names and signatures of at least two-thirds of the property owners listed on the petition, would be verified by City staff based on property owner records. A cost-recovery fee for processing the petition(s) would be the responsibility of the petitioning party.

Partnering with Hosts and Platforms to Support Local Businesses

The City's Economic Development Commission created the Ten-Year Blueprint for Economic Development to establish priorities to create a culture of economic opportunity throughout the City. The Economic Inclusion Focus Area of the Blueprint includes objectives and recommendations that can be helpful in supporting local businesses in conjunction with the adoption of the proposed STR Ordinance. The City's Economic Development Department will be assisting staff from the Development Services Department to use the Blueprint to create opportunities to help under-represented entrepreneurs and increase access to economic opportunities in low-income communities as part of the STR registration process. For example, when STR operators register, they could be informed of local businesses providing tourist-related services. The Economic Development Department will also work with Development Services staff and the Long Beach Convention and Visitors Bureau (CVB) to partner together by advertising registered STR listings on the CVB website.

Treatment of Existing and New Accessory Dwelling Units (ADUs) as STRs

In December 2017, the City Council adopted an ADU Ordinance in response to new State regulations to facilitate the construction of new ADUs. New ADUs can help address housing supply and affordability, while preserving neighborhood character. The City's ADU Ordinance prohibits ADUs from being used as STRs and requires owners to execute a covenant to that effect. Since adoption of the ADU Ordinance approximately 81 covenants have been executed. The City anticipates approximately 100 homeowners will seek to construct ADUs on their property annually.

The City Council's December 4, 2018 direction to staff for regulating STRs was to treat ADUs as a "hosted" stay since the property owner would be on premises, reducing the likelihood that a STR guest in the unit would negatively impact the residential character of the neighborhood. The ADU and the primary dwelling unit would be considered one primary residence for the purpose of STR registration. This approach is consistent with the community and host input provided throughout the outreach process, which found the majority of participants were opposed to prohibiting STRs in ADUs or duplexes. While concerns were raised about the impact of using ADUs as STRs on the City's available housing stock, owners of ADUs consistently stated their ADUs would not become part of the long-term rental housing stock because they often use these units for traveling friends and family.

Additionally, the proposed citywide cap of 1 percent of housing stock as STRs further mitigates the detrimental effect on the housing market. Property owners with previously executed ADU covenants would be able to have these covenants rescinded to allow use of their ADUs as STRs.

Next Steps

The City Attorney's Office has been working on a draft STR Ordinance to implement an STR program with the components specified by the City Council. Pending a California Environmental Quality Act (CEQA) determination, the draft STR Ordinance will be presented to the City Council for adoption in fall 2019. It is anticipated an amnesty period of 180 days will be included in the proposed STR Ordinance to allow time for startup and implementation of the STR program, including a grace period for STR operators to apply for registration. Following adoption of the STR Ordinance, Development Services staff will take the following actions:

- Request funding for implementation of the program and propose registration fees to partially offset program costs as part of the FY 20 budget adoption.
- Procure a third-party consulting firm to assist with implementation.
- Recommend minor word changes to Title 21 of the Long Beach Municipal Code for Planning Commission and City Council approval.
- Changes to Title 21 will require Coastal Commission review.
- Return to the City Council one year after implementation of the program to provide data on the number of registrations, number of complaints, resolutions to complaints, and TOT tax collected to assess potential improvements and an annual review thereafter.

If you have questions regarding this matter, please contact Lisa Fall, Manager of Administrative and Financial Services, at (562) 570-6853 or Lisa.Fall@longbeach.gov.

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CC: CHARLES PARKIN, CITY ATTORNEY
LAURA L. DOUD, CITY AUDITOR
TOM MODICA, ASSISTANT CITY MANAGER
KEVIN JACKSON, DEPUTY CITY MANAGER
REBECCA GARNER, ADMINISTRATIVE DEPUTY TO THE CITY MANAGER
LISA FALL, ADMINISTRATIVE AND FINANCIAL SERVICES BUREAU MANAGER
JOHN GROSS, DIRECTOR OF FINANCIAL MANAGEMENT
GRACE YOON, BUDGET MANAGER
SANDY TSANG PALMER, PURCHASING AND BUSINESS SERVICES MANAGER
OSCAR ORCI, DEPUTY DIRECTOR OF DEVELOPMENT SERVICES
KARL WIEGELMAN, CODE ENFORCEMENT BUREAU MANAGER
MONIQUE DE LA GARZA, CITY CLERK (REF. FILE 17-0213, 18-1072)