


# TOWN OF FAIRFAX

## STAFF REPORT

### April 5, 2017

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager 

**SUBJECT:** Approval of Planning Commission recommendations regarding short-term rentals

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CONTINUED from October, November, January, February, and March Council Meetings

#### RECOMMENDATION

Approve the Planning Commission's (PC) recommendations regarding short-term rentals and direct staff to prepare the required zoning amendments for PC consideration.

#### BACKGROUND

At the May 2015 Council meeting, a resident indicated she could not obtain a business license for the short-term rental (e.g., Airbnb) of a room in her house. The Council directed staff to research the issue and report back at a meeting. At the July 2015 Council meeting, staff reported that the Town's zoning code does not allow short-term rentals as a principal use in residential zones, but such uses may be allowed with a conditional use permit. The Council discussed the issue and indicated it would schedule a special study session to discuss the issue more in depth.

The Council discussed this matter at its November 2015 meeting and referred it to the Planning Commission for consideration. The PC discussed this matter at its September 2016 meeting. The attached PC staff report provides background, as well as the results from the Town's on-line community forum on the matter. The on-line forum was conducted from January 22 to April 11, 2016.

#### DISCUSSION

The data available for short-term rentals is limited without the cooperation of the entity sponsoring such services (e.g. VRBO, HomeAway, Airbnb). Specifically, it is difficult to determine from the websites the number of units actually within the Town limits. However, Airbnb was willing to provide its data for Fairfax. Staff believes the Airbnb data is probably representative of the short-term rental market in Fairfax.

Attached is an overview of Airbnb rentals in the area for the 12-month period preceding September 1, 2016. The data is only available by zip code, which could mean that many of the units listed may be outside of the town limits (see map). The data indicates the annual earnings for a typical host is \$5,300, the average stay is 3.7 nights, and the average nights per year rented is 47. The inbound guest number of 3,000 means the total number of guests that stayed and not the number of nights (e.g., 3 people stay one night at a house). Anecdotally, Airbnb states that since there is no lodging in the area many people are staying

here for local events (e.g., family gatherings). Additionally, hosts rent to supplemental their income and/or as a method for meeting new people. Airbnb also indicates that a host may have multiple listings for the same property (e.g., entire house and private space). The data does indicate that 67% of the active listings are for entire homes.

Airbnb reports the total number of rented nights is 4,600 nights for the past 12 months (September 2015-2016), an average rental rate of \$125/night, and an estimated total of \$50,000 in Transient Occupancy Tax (TOT) revenue that could have been collected over the 12-month period. This information was unavailable for the Planning Commission meeting.

Based on the limited data and their discussions, the Planning Commission determined that short term rentals did not seem to be a problem for the community and should be allowed. Staff reported that since January 2016, 3 complaints were received regarding short term rentals of entire houses.

The Planning Commission suggested the following requirements for the Council to consider:

- Allow the short term rental of entire houses including second units.
- Require the properties to be the primary residence of the host (i.e., renters could not rent out their unit).
- Limit the total number of days an entire house may be rented during year; the PC discussed a 6-month limit which should be sufficient for those households that travel a lot during the year.
- Require hosts to obtain business licenses on an annual basis.
- Require hosts to obtain a one-time "administrative use permit" from the Town; administrative use permits are much more streamlined than the typical use permit process and would require only staff approval; in essence, the permit would allow the Town to track the number of units and offer recourse to residents who believe a specific short-term rental is causing problems in their neighborhoods.
- The short-term rentals would be subject to the Town's TOT of 10% (Note: The Town may need to amend its municipal code to maximize the collection of TOT).
- The Town should enter into agreements with the on-line entities such as Airbnb to collect TOT. Airbnb has an agreement it provides municipalities.
- The PC also wanted staff to review the agreement between the hosts and Airbnb; staff is not recommending the Town try to impose requirements between private parties.

With the Council's approval tonight, staff would return to the PC with the recommended code revisions including the guidelines for the administrative use permit approval process. All code amendments including the administrative use permit process will require Council approval. The Council will also be required to set the fee for the administrative use permit.

### **FISCAL IMPACT**

Allowing short term rentals could generate a significant amount of TOT revenue to the Town.

### **ATTACHMENTS**

1. Airbnb overview
2. Zip code map
3. September 2016 PC staff report

# Overview of the Airbnb Community in Fairfax, California, United States

The following page captures the Airbnb community in Fairfax, California, United States



## HOSTS

AVERAGE HOST AGE

45

ANNUAL EARNINGS FOR A TYPICAL HOST

\$5,300

## GUESTS

INBOUND GUEST ARRIVALS IN THE PAST YEAR

3,000

AVERAGE LENGTH OF STAY PER GUEST

3.7 nights

OUTBOUND GUEST ARRIVALS IN THE PAST YEAR

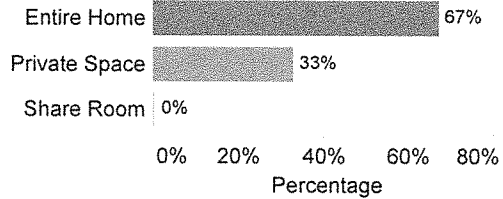
3,000

## LISTINGS

ACTIVE LISTINGS

91.00

CURRENTLY ACTIVE LISTINGS BY TYPE



NIGHTS HOSTED PER YEAR FOR A TYPICAL LISTING

47

Note: All data above is drawn from Airbnb proprietary bookings data. Data based on the one year period preceding September 1, 2016



ATTACHMENT 1

Key Zip or Address  Find Zipcode or click on the map.   Zip Layer

Go:gle

This page shows a Google Map with an overlay of Zip Codes for Fairfax, Marin County, California.  
 Users can easily view the boundaries of each Zip Code.  
[Index](#) [Instructions](#) [Privacy Policy](#) [The New Maps](#)  
 Fairfax, Marin County, California Zip Code Map Boundary Version 3.0 Copyright © 1996-2014 John Corvat - USNaviguide, All rights reserved.

Advertisement

ATTACHMENT 2

**TOWN OF FAIRFAX  
STAFF REPORT  
Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** September 15, 2016  
**FROM:** Jim Moore, Director of Planning and Building Services  
 Garrett Toy, Town Manager  
  
**ACTION:** Discussion/consideration of standards for short term/vacation rentals

*NOTE: This item was initially scheduled for Planning Commission discussion in April 2016. However, the item was continued. Below is the same staff report from April 2016.*

**BACKGROUND**

At the May 2015 Council meeting, a resident indicated she could not obtain a business license for the short-term rental (e.g., Airbnb) of a room in her house. The Council directed staff to research the issue and report back at a meeting. At the July 2015 Council meeting, staff reported that the Town’s zoning code does not allow short term rentals as a principal use in residential zones, but such uses may be allowed with a conditional use permit. The Council discussed the issue and indicated it would schedule a special study session to discuss the issue more in–depth.

However, given the difficulty finding a date for the special study session, the Council discussed this matter at its November 2015 meeting and referred matter to the Planning Commission for consideration.

This is a very complex issue that many communities are struggling with. Locally, many Marin communities have been actively discussing the issue at their Council meetings. The Table below shows the current position of the various Marin communities on the issue.

<u>Allowed with permit</u>	<u>Not Regulated</u>	<u>Prohibited</u>
Mill Valley	Novato	Sausalito
Marin County	San Rafael	Larkspur
Tiburon	Corte Madera	
Fairfax	Belvedere	
	Ross	
	San Anselmo	

Attached is a table summarizing the various community’s actions since April 2016.

## DISCUSSION

To help frame the discussion for the Planning Commission (PC), the Council is requesting the PC to consider the key policy questions identified below. Staff has attached the summary report of the results from the Town's on-line community forum on the matter to assist the PC in its discussions. The on-line forum was conducted from January 22 to April 11, 2016. Of the 76 responses received, 71 are from Fairfax residents.

### Is it a problem at this time? Should short-term/vacation rental of residential units be allowed?

A cursory search of websites such as Airbnb and VRBO indicate approximately 30-40 homes are listed in Fairfax at any one time. It is almost impossible to quantify the exact number since the locations are approximate and no addresses given on the websites. A majority of the rentals are for exclusive use of a house, but some are for the rental of private rooms.). However, staff is working with Airbnb representatives to better quantify their numbers.

Short term rentals provide an opportunity for Fairfax to attract and host tourists to support local businesses and generate Hotel Tax (TOT) to the Town. The short term rentals also provide residents with an opportunity to make extra income, which may make their homes more affordable. Short term rentals have the potential to cause parking, traffic, and noise issues in neighborhoods.

Recently, staff has begun receiving informal complaints for short-term rentals (2-3 over the last 2 months).

Of the 76 responses to the on-line forum, 8 residents reported they have rented out a room for short term rentals. Two indicated they have rented out their entire house. Approximately 55% of respondents indicated they would support renting out rooms as short term rentals. However, a much lower percentage (approx. 45%) supported the rental of the entire house. Most of the respondents were unaware that the Town Code prohibits such uses.

### If allowed, what should be the process to approve short-term rentals (e.g., use permit, amend zoning code)?

As current Town Code does not allow such uses without a use permit, the Town would need to amend the current Zoning Code. The Town could amend the Zoning Code to allow the use in residential zones with or without limitations (e.g., only allow renting rooms, but not entire homes). In terms of licensing, the Town would require a business license. However, the PC could also establish an administrative use permit process to allow such uses. An administrative use permit is a less costly and simplified version of a use permit.

Should only rooms, with the owner living on the premises, or the entire house/unit be allowed to be rented out?

As stated above, approximately 55% of respondents indicated they would support renting out rooms as short term rentals. However, the support for the rental of the entire house was, in essence, split evenly between respondents: 34 Yes votes and 37 no votes.

For those who did not support short term rentals, over 50% cited parking, "party house," and public safety as their main concerns. Some comments from those in support of short term rentals stated the ability of homeowners to offset their housing costs and/or supplement their household income. The comments of the individual respondents can be viewed by on the Town website by clicking on the community forum topic response line.

Should second units be allowed to be short term rentals?

Approximately 55% of respondents supported the short term rental of legal second units. Approximately 34% said no to the short term rental of legal second units.

Second units are considered a source of affordable rental housing. The PC may not want to allow second units to be used for short term rentals because it would adversely impact the Town's efforts of creating more affordable housing. On the flip side, permitting short term rentals of second units may encourage owners to legalize such units or allow the Town to discover illegal second units.

Should there be a minimum or maximum number of rental days for units within a year?

Some communities impose maximum or minimum limits. The on-line forum did not address this issue. We have asked Airbnb to report on the average number of days a unit in Fairfax is rented during a 12 month period.

How will the Town ensure that TOT (i.e., hotel tax) is collected on the rentals and remitted to the Town?

Short term rentals would be subject to hotel tax as well as require owners to obtain a business license. Airbnb has indicated it would collect and distribute the TOT to the Town if short term rentals were allowed.

It would be difficult to collect TOT for those units without a business license or permit or without a reporting or collection requirement by the short-term rental companies.

Approximately 51% (30 out of 59) of the on-line forum responses supported the business license requirement. Only 9 respondents opposed the requirement and 20 (approx. 34%) selected "don't know."

Similarly, approximately 54% (34 out of 63) of the on-line forum responses indicated they would be willing to collect TOT on rentals. Twelve (12) respondents opposed the requirement and 17 (27%) selected "don't know."

### **RECOMMENDATION**

Discuss/consider results of on-line forum and discuss/consider standards regarding short term/vacation rentals of residential units. Based on the Planning Commission's direction, staff would return with the required amendments to the Town's Municipal Code including the Zoning Code for the PC's consideration.

### **ATTACHMENTS**

Attachment A - Comparison tables of Marin cities

Attachment B - On-Line Forum Summary report



**Review of Marin Towns'  
Short Term Rental Regulations  
November 5, 2015**

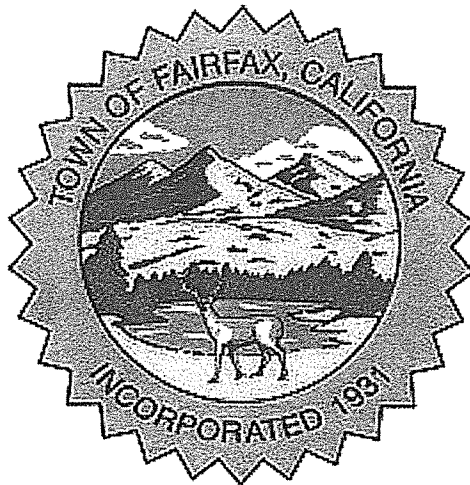
TOWN	REGULATION	NO REGULATION
Corte Madera	Prohibits short-term rentals	
Larkspur	Prohibits short-term rentals	Town position: no short-term rental permitted by code
Mill Valley	Requires business license (fee), and collection of TOT. Leaning away from prohibition and towards more regulation and enforcement	
Novato		
Ross		2/12/15: Council considered issue and decided not to regulate. Ross has no hotel users tax (aka TOT)
San Anselmo	Existing zoning regulations are ambiguous re short-term uses. Staff seeking direction.	10/13/15: Council considered issue and sent to Planning Commission for 11/16/15 meeting
San Rafael		No regulations
Sausalito	Prohibits short-term rentals (defined as less than 30 days). Seeking to enforce regs to collect the TOT and recover costs of enforcement	
Tiburon	Has a permit process in place; rejected ordinance prohibiting use.	

# Short Term and Vacation Rentals

*What do you think about short term and vacation rentals in Fairfax?*

All On Forum Responses sorted chronologically

As of April 18, 2016, 10:36 AM



*As with any public comment process, participation in Community Forum is voluntary. The responses in this record are not necessarily representative of the whole population, nor do they reflect the opinions of any government agency or elected officials.*

PC ATTACHMENT B

# Short Term and Vacation Rentals

*What do you think about short term and vacation rentals in Fairfax?*

## Introduction

Short-term residential rentals (less than 30 days) are growing in popularity, including in Fairfax. Services such as Airbnb and VRBO allow people to rent all or parts of their homes as alternative travel accommodations that provide homeowners or renters with extra income. These services may benefit homeowners, but there are concerns about the impacts on neighborhoods, including concerns about noise, safety, and traffic.

The Town's zoning code allows short term/vacation rentals (e.g., Airbnb and VRBO) with a conditional use permit (CUP). CUP's require approval by the Planning Commission and the process can be costly and very time consuming. In 2015, the Council discussed the issue of allowing short term rentals and referred the matter to the Planning Commission for recommendations. No date has been set yet for Planning Commission consideration.

Your response will aid the Town in the development of policies regarding short term/vacation rentals. For more info on the topic, please go to [www.townoffairfax.org](http://www.townoffairfax.org) and refer to the agenda packet for the November 4, 2015 Council meeting.

# Short Term and Vacation Rentals

*What do you think about short term and vacation rentals in Fairfax?*



As of April 18, 2016, 10:36 AM, this forum had:

Attendees:	214
On Forum Responses:	76
Hours of Public Comment:	7.0




This topic started on January 22, 2016, 11:48 AM.

## Short Term and Vacation Rentals




What do you think about short term and vacation rentals in Fairfax?

		%	Count
Yes		55.3%	42
Don't know		6.6%	5




Would you be in support of the Town allowing owners to rent their entire home as short term rentals?

		%	Count
No		48.7%	37
Yes		44.7%	34
Don't know		6.6%	5

If you do rent your home or room out as a short-term would you be willing to obtain a business license (base fee \$100)

		%	Count
No		15.3%	9
Yes		50.8%	30
Don't know		33.9%	20








Would you be willing to collect and submit to the Town the 10% "hotel tax" on such short-term rentals?

		%	Count
No		19.0%	12
Yes		54.0%	34
Don't know		27.0%	17




If you do not support short term rentals, please check the reasons why:

## Short Term and Vacation Rentals

What do you think about short term and vacation rentals in Fairfax?

		%	Count
Parking impact		58.7%	27
Traffic impact		43.5%	20
Possibility of the home being rented as a "party house" for the weekend		60.9%	28
Strangers in the neighborhood (public safety concern)		52.2%	24
Would support the renting of rooms since the owner still live there, but not entire houses.		21.7%	10
n/a or don't know		2.2%	1
Other		32.6%	15

Would you support the short term rental of legal second units (owners live in main home)?

		%	Count
No		33.8%	25
Yes		55.4%	41
Don't know		10.8%	8

Do you have any other comments about short term/vacation rentals in Fairfax?

Answered 52  
Skipped 24




- airbnb community do don **fairfax** from had home homes housing like **live** make more neighborhood neighbors one **out** parking people place property rent rental rentals residents s **short** short-term so t **term** they think town visitors want what **who**

## Short Term and Vacation Rentals




What do you think about short term and vacation rentals in Fairfax?

### Responses




Do you currently or have you in the past (12 months) rented a room out of your residence for short term rentals (less than 30 days)?

		%	Count
No		86.8%	66
Yes		10.5%	8
n/a		2.6%	2

Do you currently or have you in the past rented out your entire house out for short term rentals (less than 30 days)?

		%	Count
No		94.7%	72
Yes		2.6%	2
n/a		2.6%	2

Did you know that the Town code currently prohibits the short term rentals of property such as Airbnb or VRBO?

		%	Count
No		67.1%	51
Yes		17.1%	13
Don't know		15.8%	12

Would you be in support of the Town allowing owners to rent rooms out of the home as short term rentals?

		%	Count
No		38.2%	29