



TOWN OF FAIRFAX

STAFF REPORT

November 4, 2015

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*

SUBJECT: Discussion/consideration of policies regarding short term/vacation rentals of residential units

RECOMMENDATION

Discuss/consider policies regarding short term/vacation rentals of residential units and refer the matter to the Planning Commission for recommendations based on the Council's parameters.

DISCUSSION

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, since it has been difficult to find a date for the special study session and, given the November agenda is relatively light, staff placed it on the agenda for discussion this evening.

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 to date. We have also attached selected staff reports from these communities because of their extensive research on the subject matter.

Staff recommends the Council: 1) refer the matter to the Planning Commission for further discussion and consideration and 2) provide direction on the following key policy questions to frame the discussion for the Planning Commission:

- 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 40 homes are listed in the Fairfax area. It is almost impossible to quantify the exact number since the locations are approximate and no addresses given. A majority of the rentals are for exclusive use of a house, but some are for the rental of private rooms. Recently, staff has begun receiving informal complaints for short-term rentals (2-3 over the last 2 months).

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.

One option for the Council to consider is an incremental approach. The Council could decide to allow the rental of rooms in residences and not entire houses and try it for 12-24 month test period. This would allow time for the Town to monitor the situation to determine if it is a problem. In addition, should Senator McGuire's legislation (SB 593) regulating short-term/vacation rental of residential units be approved, staff would be able to evaluate its impacts on the various issues.

- 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, the Town would need to amend the current Zoning Code. The Town could amend the Zoning Code to allow the use in residential zones and require a business license or 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.

Staff would work with the Planning Commission to identify which sections of the Municipal Code including the Zoning Code would need to be revised.

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

While we haven't received complaints about "party houses" regarding noise, traffic, and parking, other communities state it can be a problem. The rental of private rooms in homes are perceived to have less concerns since the property owners are present to address any issues.

- Would this impact the legalization and/or use of second units?

Second units are considered a source of affordable rental housing. The Council 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 time limits on the number of rental days?

Some communities impose limits. Staff does not know if it is an issue or not.

- How would staff enforce a prohibition or monitor compliance?

While difficult to say at this time, enforcement would generally be based on complaints. However, it would be easier to monitor those units that were issued a business license. State legislation, as currently proposed, would also make it easier to track the units.

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

It would be straightforward for the Town to track TOT for those owners who apply for business licenses or permits. State legislation, as proposed, would also make it easier to track and collect TOT. 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.

The Council's direction on the above issues would establish the program parameters for the Planning Commission to consider. With an incremental approach to the issue, the Council would be taking a "wait and see" approach to the overall short-term rental policy. However, such an approach would allow time to evaluate the impact of any state legislation as well as ample time for the Planning Commission to discuss the issues. It should be noted that Council could always choose to maintain the status quo or not take a position on a specific issue and wait for the Planning Commission's recommendation before deciding.

FISCAL IMPACT

The potential exists to collect additional TOT revenues and business license fees.

ATTACHMENTS

Review of Marin Towns' regulations

Staff reports (excerpted) from San Anselmo, Tiburon, and Sausalito

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.	

**TOWN OF SAN ANSELMO
STAFF REPORT
October 8, 2015**

For the Meeting of October 13, 2015

TO: Town Council

FROM: Elise Semonian, Planning Director

SUBJECT: Potential Regulation of Short Term Rentals

RECOMMENDATION

That Council direct staff to hold a public meeting on short term rentals with the Planning Commission and return to Council with a recommendation on what actions should be taken, if any, regarding short term rentals.

BACKGROUND

The short term rental of houses is growing in San Anselmo with the gaining popularity of websites that facilitate the rentals, such as VRBO.com and AirBNB.com. The Council received correspondence recommending that it consider regulating and taxing the rentals in August. Many communities have decided to regulate or ban short term housing uses and the State is considering regulating the area. For many communities with transient occupancy (hotel) taxes, short term rentals provide an opportunity to generate additional revenue. Short term rentals also have the potential to create land use concerns.

There are at least 50 units advertised for short term rental in the Town on AirBNB.com and VRBO.com. These are nearly all for exclusive use of a house or studio/second unit (not rental of a bedroom in an occupied residence). Based on the advertisements, the residences appear to be occupied by San Anselmo residents most of the year. The second unit rentals appear to be on owner occupied sites. Judging by the availability calendars and number of reviews, many of the units are not actively rented. Only one appears to be a full time vacation rental with an absent owner. A few are rented very often. The San Anselmo Inn, the only hotel in Town, advertises on AirBNB.

The hosts set their own prices (see current rates on list attached). There is typically no charge to list a unit on these websites. The websites charge when the accommodations are booked (AirBNB charges hosts a 3% service fee and guests 6-12% service fee). On AirBNB, where most San Anselmo listings are located, hosts have the option to select their guests and both guests and hosts may receive reviews. Reviews may only be posted when a reservation is confirmed.

ATTACHMENT 2

Existing Regulations

The Town's zoning regulations permit residential uses in single family residential zoning districts and prohibit certain short term uses including Bed and Breakfast and Hotel use. The San Anselmo Municipal Code is ambiguous whether short term residential rentals are a residential use. "Residential use" and "short-term rental" are not defined in the Municipal Code. Occasionally renting a home to a single family or person could be considered residential use, an accessory use, or even a "home occupation." A frequent house rental could be more commercial in character and exceed "residential" use.

The Zoning Ordinance definitions for "hotel" and "bed and breakfast" would not preclude the majority of the short term rentals currently advertised. The code defines "hotel" as "a business whose primary activity is the offering of transient lodging accommodations to the general public and providing additional related services such as restaurant, meeting room, and recreation facilities." "Bed and breakfast inn" means a facility offering transient lodging to the general public and conducted in a private single-family detached residential unit, or in a building designed specifically for the operation of such an inn, and providing sleeping rooms, private or semi-private bathroom facilities, and one (1) or more meals each day."

The Town collects an annual \$17 business license tax for "rental of living accommodations." The business license applications do not currently distinguish between short and long term housing rental.

Issues with Short Term Rentals

Short term rentals provide an opportunity for San Anselmo to attract and host tourists to support local businesses. The short term rentals also provide residents with an opportunity to make extra income, which may make their units more affordable. The Town has an interest in preserving affordable housing and a handful of the currently advertised units could be rental housing. Illegal housing units may be discovered and potentially legalized. Short term rentals have the potential to cause parking and noise issues in neighborhoods.

Regulation of short term rentals varies widely across the state and one example from Petaluma is attached. Some jurisdictions have elected to allow short-term residential rentals subject to some type of permit or registration process and regulations to address:

Advertising and signs	Noise
Building inspection	Occupancy limits
Business license and taxes	Parking
Complaint process and dispute resolution	Penalties and surety bonds
Host residency requirement	Rent control laws
Insurance	Rental day minimums
Limit on number of rental days	Reporting
Neighbor notice	Rules and manuals

The following Marin jurisdictions are regulating short term rentals:

<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	

Many jurisdictions require the hosts to pay a transient occupancy (hotel) tax. Transient occupancy tax is a tax the Town may levy on lodging up to 30 days pursuant to California Revenue and Taxation Code Section 7280. The tax is subject to majority voter approval. The Town Council put a 10% transient occupancy tax on the ballot in 2009. The voters did not approve the tax (2,258/60.33% No and 1,485/39.67% Yes). Opponents of the tax believed it singled out San Anselmo Inn, which was the only hotel in the Town at that time.

The Thriving Communities and Sharing Economy Act, Senate Bill 593 (2015-2016, Senator MacGuire), is pending in the Legislature. The League of California Cities passed a resolution to support SB 593 at their annual conference earlier this month. SB 593 would bolster local efforts to regulate and collect transient occupancy taxes from “Transient Residential Hosting Platforms” (“TRHP”) such as Air BNB and VRBO. If passed, San Anselmo could require TRHPs to report units that were occupied for tourist or transient use, including the number of nights occupied and the amount paid for the use. The Town could also use this report to enforce regulations related to the use (if the short term rentals are permitted or prohibited). If the Town had a transient occupancy tax, it could require the TRHP to collect the tax and remit it to the Town. If a jurisdiction does not permit short term rentals, the bill would allow the jurisdiction to impose penalties on any TRHP that facilitates the rentals.

CONCLUSION

Staff recommends soliciting public input on this issue at a Planning Commission meeting on November 16, 2014. Staff would provide notice stakeholders including short term unit renters, their neighbors, the business community, and housing advocates.

Respectfully submitted,



Elise Semonian
Planning Director

- Attachment 1 – List of current online rentals in San Anselmo
- Attachment 2 – Petaluma ordinance regulating short term rentals
- Attachment 3 – SB593 (MacGuire)



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Town Council Meeting
August 19, 2015
Agenda Item:

PH-2

STATE REPORT	
To:	Mayor and Members of Town Council
From:	Community Development Department
Subject:	Recommendation to Consider Amendments to Chapter 16 (Zoning) of the Tiburon Municipal Code to Prohibit Seasonal Rental Units; File MCA 2015-07; (Ordinance---Introduction and First Reading)
Reviewed By:	<i>Max</i>

SUMMARY

The Town has initiated amendments to the Tiburon Zoning Ordinance that would prohibit seasonal rental units in Tiburon. The amendments would amend Section 16-40.040 of the zoning ordinance to replace the current provisions for issuing seasonal rental unit permits with a prohibition of such uses. The ordinance has been considered by the Planning Commission, which has proposed recommendations for consideration by the Town Council. The matter now comes to the Town Council for public hearing and consideration of first reading of the ordinance.

BACKGROUND

On March 4, 2015, the Town Council considered an appeal regarding the Planning Commission's review of the seasonal rental unit permit at 110 Solano Street. At that appeal, as well as at the Town Council-Staff retreat earlier in 2015, the Council raised the issue of possible modifications to the Town's regulations regarding these uses.

On May 6, 2015, the Town Council revisited the issue of seasonal rental units. Staff prepared a report (**Exhibit 1**) which included possible amendments to the existing regulations of Section 16-40.040. After extended discussion, a majority of the Town Council directed staff to draft amendments to the municipal code that would prohibit seasonal rental units altogether and begin the public hearing process for consideration of adoption. Minutes of the May 6, 2015 Council meeting are attached as **Exhibit 2**.

Staff subsequently prepared an ordinance (**Exhibit 3**) that would replace existing seasonal rental unit permit provisions with a ban on "vacation rentals" (a more commonly-used term for such uses), and would also add the terms "vacation rental" and "short-term rental" to the zoning ordinance, as these terms are frequently used to identify this type of use and make it easier to locate the Town's prohibition through online searches. The proposed ordinance would replace the current ordinance provisions (**Exhibit 4**) and add a section on enforcement of this prohibition. All currently approved seasonal rental unit permits are set to expire on December 31, 2015.

PLANNING COMMISSION REVIEW AND RECOMMENDATION

On July 8, 2015, the Planning Commission held a public hearing on a proposed ordinance that would prohibit seasonal rental units. At that meeting, several Tiburon residents opposed prohibiting seasonal rentals and instead suggested possible amendments to the existing ordinance. Other residents expressed support for the proposed ban.

After extended discussion, the Planning Commission voted to recommend to the Town Council that a ban on seasonal rentals not be enacted, and instead offered specific suggestions for regulatory amendments to address problems and concerns raised by these uses. The Commission recommended that the Town Council remand the item to the Commission for fine-tuning of the revised regulations. Specific regulatory provisions suggested by the Commission to be considered for adoption were as follows:

1. Change the term "seasonal rental unit" to "vacation rental."
2. Require adequate on-site and/or off-site parking as a condition of approval.
3. Require a 7-day minimum for any vacation rental.
4. Do not allow permits to be issued for properties with commingled rights (common areas, pools, access, parking, etc.) with neighboring units, unless there is unanimous consent among property owners or there are written CC&Rs in the case of a condominium or townhouse complex.
5. Require permittees to submit an annual reporting statement to the Town.
6. Require courtesy notices to be sent by the Town to neighboring property owners prior to issuance of a vacation rental permit.
7. Increase fees and penalties to recover ongoing costs of enforcement.
8. Allow permits only for homes that are the "primary residence" of the property owner.

OPTIONS

Town staff sees two primary options available to the Town Council. These are discussed below:

Option 1: Proceed with Prohibition.

The Planning Commission has held a public hearing, considered the draft ordinance, and made its recommendations to the Town Council. The Town Council may choose to move forward with adoption of the ordinance.

Option 2: Remand to Planning Commission.

Alternatively, the Town Council could accept the Planning Commission's suggested approach and remand the item to the Commission for further study and recommendations with the intent of modifying the current regulatory provisions to address identified problems and concerns with seasonal rental uses. If so, the Council may desire to provide direction or preliminary feedback to the Commission regarding specific elements of future seasonal rental regulations.

ANALYSIS

In order to get a better understanding of the current extent of local seasonal rentals, staff reviewed the AirBnB and VRBO websites in July for listings in Tiburon (summarized in **Exhibit 5**). A total of 38 listings were found on AirBnB and 18 listings on VRBO, although some properties appeared to be listed on both sites. Analysis of the listings revealed the following:

- Most of the homes were available for short stays, with only 7 of the 56 listings requiring a 7 night minimum stay.
- Few of the homes were very large, with only 8 of the 56 listings showing more than 3 bedrooms.
- Similarly, most listings did not allow large groups, with only 10 of the 56 listings allowing more than 6 guests at a time.

Based on these listings, it appears that a 7 night minimum requirement for rentals would either eliminate the vast majority of these listings or force them to rent only for longer stays. The previously suggested limitation that would not allow rentals for units with more than 3 bedrooms would only affect a minority of these listings.

As noted in the May 6, 2015 Town Council staff report (**Exhibit 1**), enforcement of the current seasonal rental unit ordinance is often problematic and time-consuming, as it is difficult to accumulate definitive evidence of such rentals. Most vacation rental websites do not include addresses for listings and staff has only been able to identify listing locations from website photos. Of the 56 listings analyzed above, staff was able to identify 10 by address, which included several rentals that currently have seasonal rental unit permits. The remainder could not be positively identified and would require substantial additional staff time to track down for enforcement.

The Planning Commission has recommended that the Town increase fees and penalties to recover ongoing costs of enforcement, but increased fees alone will not remedy this situation. Planning Division staff has limited time to pursue code enforcement and generally conducts such actions based on complaints. The current administrative citation process has had limited effect in deterring violations, as the fines set by the Town for such violations (usually \$462 per day) have not been enough when compared to the relatively high daily rental rates for homes in Tiburon. Increased penalties might have more effect, but collection of these fines is also often problematic.

The Planning Commission acknowledged that adding regulations could potentially add to staff's enforcement burden and the difficulties in monitoring compliance with the Town's regulations. It is unclear whether prohibition would require substantially more staff enforcement time than creating additional regulations. Additional regulations would create more details to review for compliance for each rental. Although prohibition is a more definitive regulation that is easier to interpret, such an action would likely drive rentals underground, providing fewer property details on website listings or other deceptive actions to avoid enforcement.

In either case, the Town's limited staff availability would continue to be an impediment to thorough enforcement of these rentals. The City of San Francisco, which has adopted new vacation rental regulations in consultation with AirBnB, has had to create a new staff division just to handle permitting and enforcement of these regulations. Although the scale of this issue is much smaller in Tiburon, the ability of Town's small staff to actively enforce this ordinance will continue to be a limiting factor in effectively policing vacation rentals.

Comments from Tiburon residents have been effectively split between those who support a prohibition of vacation rentals and those who would like them to be regulated but allowed. Letters on the subject are attached as **Exhibits 7-16**.

ENVIRONMENTAL REVIEW

Staff has preliminarily determined that the proposed amendments are exempt from further review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305 (Minor Alterations to Land Use Limitations) and are also exempt pursuant to Section 15061(b)(3) (General Rule) of the CEQA Guidelines. The Town Council would finalize this determination if it adopts the ordinance.

RECOMMENDATION

Staff recommends that the Town Council:

1. Hold a public hearing on the item and hear all testimony from interested persons.
 2. Either:
 - A. Move to read by title only, waiving any additional reading, pass the motion and read only the title of the ordinance, then move to pass first reading, pass the motion, and hold a roll call vote
- Or:
- B. Remand the item to the Planning Commission for its further review and recommendations, providing any desired direction to assist the Commission with its future deliberations.



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Short Term Vacation Rentals – Code Enforcement Program

RECOMMENDED MOTION:

Receive Report and Provide Direction to Staff re Next Steps

SUMMARY

The City Council at its March 17, 2015 meeting discussed the issue regarding Short Term Rentals - sharing economy businesses such as Airbnb, VRBO, and HomeAway. Through these on-line companies, people rent out their homes, apartments or rooms, in exchange for a nightly rate, and the companies take a cut of the price for their role in the transaction. Sausalito's regulations do not allow rental of residential property for less than 30 days.

The City Council directed staff to continue to enforce the regulations which prohibit short term rentals, and to devise a code enforcement program that identifies properties that are violating the regulations, collects the transient occupancy tax (TOT) for the period of time rented, and recovers the costs for a code enforcement officer.

This report describes a Short Term Rental Code Enforcement Program to enforce the regulations prohibiting short term rentals. This approach can be established as a trial period to test the enforcement capability, test the cost recovery via remittance of TOT, and to test the success rate of ceasing the operation of short term rental uses. Staff can return to the City Council in the Fall 2015 or end of the year with a report on the program and provide other recommendations and options for the City Council to consider. Staff seeks the Council direction to implement the Short Term Rental Code Enforcement Program.

BACKGROUND

The March 17, 2015 staff report is attached for background (Exhibit 2).

The City Council at the March 17 meeting received a presentation from California Senator Mike McGuire, who introduced a proposed bill (Senate Bill 593) that would require housing platforms (Airbnb, VRBO, etc.) to disclose a listing of short

term rentals that are operating in the City, the address and number of days rented and require that these housing platforms remit TOT to the City. This legislation would also assist staff in code enforcement efforts to regulate the prohibition of short term rentals. However, it is important to note that staff has been informed that this pending legislation has been tabled until year 2017.

Attached as Exhibit 1 is a recent article from the *North Bay Bohemian*, May 27, 2015, discussing recent issues on short term rentals. A link to the article is provided here:

<http://www.bohemian.com/northbay/short-term-solution/Content?oid=2718313>

The City Council, at its June 16, 2015 meeting, approved the 2015-16 Budget which included Short Term Rentals enforcement at a revenue-neutral cost of \$50,000. Staff recommends the following Short Term Rental Code Enforcement Program:

Short Term Rental Code Enforcement Program

- Contract for a part-time Code Enforcement Officer at a \$50,000 cost to manage the Short Term Rental Code Enforcement Program, per approved budget FY 2015-16. Cost-neutral position with cost recovery via TOT revenue.
- Provide an article in the Sausalito Currents and prepare handout brochures that describes that Short Term Rental uses are prohibited in the residential districts and a code enforcement program will be in effect to remove such uses and to collect the *back* TOT for the period of time the use was rented.
- Focus code enforcement activity primarily on single-family homes that are being used as short term rentals.
- Using existing contracted business license discovery services through the Finance Department, conduct passive business scans to discover short term rental uses in the City.
- Investigate complaints/claims on the operation of short term rental uses.
- Review Sausalito properties on websites like Airbnb and VRBO and compile a list where locations can be identified and investigate. Staff will research code enforcement programs that have been implemented in other cities addressing short term rental uses.
- Send a courtesy notice to property owners that have been identified as using their properties as short term rentals, inform them that short term

rentals are prohibited, and demand cease operation within 30 days, and to remit TOT for the period in operation as a short term rental.

- Code Enforcement Officer to work with the Finance Department for the collection of TOT.
- Implement the Administrative Penalties pursuant to the Sausalito Municipal Code (SMC Chapter 1.10) for violators who do not cease their short term rental operations and do not remit *back* TOT owed to the City. Penalties are \$100, \$200, \$500, and thereafter \$500 fines (cumulative) until compliance is achieved.

The premise of cost-neutral code enforcement is to actively enforce short term rental violations and receive *back* TOT revenue to recover the costs to contract for a code enforcement officer. It is important to understand that code enforcement activity on short term rentals will be pro-active, when the City has historically operated code enforcement as complaint-driven and reactive.

FISCAL IMPACT

The costs to contract for a part-time code enforcement officer will be \$50,000, a cost-neutral budget item approved for 2015-16, via cost recovery from TOT revenue.

RECOMMENDATION

The City Council has the following options:

1. Direct staff to implement the Short Term Rental Code Enforcement Program, and report to the City Council with an update and recommendations at the end of the year 2015;
2. Direct staff to implement the Short Term Rental Code Enforcement Program, with revisions, and report to the City Council with an update at the end of the year 2015;
3. Any other direction the Council wishes to provide.

PREPARED BY:

REVIEWED BY:

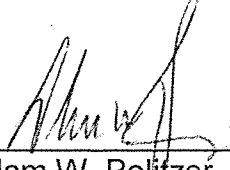
Danny Castro, Community
Development Director


Mary Wagner, City Attorney

REVIEWED BY:

Charlie Francis,
Administrative Services Director

SUBMITTED BY:



Adam W. Politzer
City Manager

ATTACHMENTS

- Exhibit 1 Article, "*Short Term Solution*", *North Bay Bohemian*, May 27, 2015.
- Exhibit 2 March 17, 2015 City Council Staff Report



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Short Term Vacation Rentals

RECOMMENDED MOTION:

Receive Report and Provide Direction to Staff re Next Steps

SUMMARY

In recent years, "sharing economy" businesses such as Airbnb and Vacation Rentals by Owner ("VRBO") have become increasingly popular, allowing people to rent their homes, or apartments as an alternative travel accommodation that provides homeowners or renters extra income. On Airbnb and VRBO websites, houses or rooms are listed for rent by location, and the companies take a cut of the price for their role in the transaction.

While this business may benefit homeowners, some neighbors are concerned about the potential change in neighborhood character, increased noise, and parking difficulties. Many cities are concerned about lost revenue because such rentals often avoid payment of Transient Occupancy Taxes ("TOTs") that otherwise apply to hotels and bed and breakfasts. Short-term rentals (consisting of rentals for less than 30 days) frequently occur despite local prohibitions. Sausalito's regulations do not allow rental of residential property for less than 30 days.

This has been an emerging issue for many cities. In response, there are a number of California cities that have adopted regulations that place limits and standards on short term rentals and provide for the collection of TOTs, and there other cities that utilize their code enforcement to identify short term rental uses and collect TOT. Airbnb has also recently changed its stance, and is now showing a willingness to be subject to TOTs.

BACKGROUND

Sausalito Zoning Ordinance Section 10.22.030 (Allowable Land Use) and Table 10.22-1 (Land Uses Allowed in Residential Districts) list the allowable land uses in all of the Residential Zoning Districts. Renting is allowed as an accessory use for long term occupancy (more than 30 days). Transient Occupancy (which is defined in Section 10.88 as "Occupancy of residential structures, hotel rooms, or dwelling units on a temporary period of less than thirty (30) days") is not listed as an allowed use in Section 10.22.030 or Table 10.22-1 - and therefore is not permitted.

Despite this prohibition, staff has received a number of complaints from neighbors alleging that residential properties are being rented on a short term basis. Neighbors have complained about negative effects related to such use including the transiency of

people coming and going, noise, and parking impacts. It has been past practice that the Assistant Planner in the Community Development Department responds to code enforcement complaints. The Assistant Planner spends approximately 50% of the time and duties on code enforcement and the remaining time on day-to-day tasks to assist at the public counter, respond to telephone inquiries, and to process permit and development applications. When warranted staff will follow the procedures set forth in Sausalito Municipal Code Chapter 1.10 for administrative code enforcement.

It should be noted that while there is frequently anecdotal evidence that short term rentals are occurring it can be difficult for staff to gather sufficient evidence proving that residential properties are being rented out on a short term basis. Research would include verifying that the alleged rental is being advertised on a website such as Airbnb or VRBO and contacting the homeowner or renter to cooperate with city staff, which has been proven difficult. This makes it difficult to verify if the house or room rental is being rented for less than 30 days.

It should be noted that the City allowed short term rental uses only during a limited time period when the America's Cup Events occurred in the San Francisco Bay Area in 2012-13, to accommodate increased visitors and the need for lodging. Vacation rentals were permitted from July 2012 to October 2012, and from May 2013 to October 2013. TOT was collected for this time period (**Exhibit 1**).

Sausalito isn't alone in struggling with the issue of short term vacation rentals. Other cities have adopted short-term rental permitting programs to address this issue. Permitting programs impose certain restrictions, such as limiting the number of persons in a home, limited the number of days per year for rental, requiring on-site parking, and imposing safety standards. Permit holders are also required to collect and remit TOTs.

Other Cities' Short Term Vacation Rental Permitting Programs

Detailed description of St. Helena's Program. In 2012, the City of St. Helena amended its zoning code to allow short-term rentals. The stated purpose of St. Helena's short-term rental ordinance is to provide an alternative to hotel, motels, and bed and breakfasts, to ensure the collection of TOTs, to minimize negative effects on surrounding neighborhoods, and to retain the existing character in the neighborhoods where short-term rentals exist. (St. Helena Mun. Code, § 17.134.010(B)). Prior to adoption of its short-term permitting program, St. Helena prohibited renting single-family dwellings for fewer than 30 consecutive days. However, after receiving evidence that many short-term rentals were occurring despite the prohibition, St. Helena decided to adopt regulations to impose certain standards and collect TOTs.

St. Helena opened up the application process in 2012 for an available 25 permits. As of February 2014, 25 permits were issued, with 24 receiving administrative staff approval in February 2014, and only 1 requiring Planning Commission review. Permits are valid for 2 years, after which time the property owner is required to apply for a new permit.

To be eligible to receive a short term rental permit: 1) the applicant must own the property; 2) the lot must be located in a residential zone or the agriculture district; 3) the rental is for a single family dwelling; 4) the property must provide 2 on-site parking spaces; and 5) the applicant must provide a local contact person physically available to

Item 6B - Attach 2

06-30-15 Item 6B

Page 2 of 12 03-17-15

Page 2 of 6

respond within 30 minutes when the unit is occupied. Additionally, an application fee is collected including costs for the public noticing to property owners within 300 feet of the property. The applicant must receive an updated fire inspection and approval with the Fire Department. The applicant must also obtain a city business license.

After the application is submitted and notice is posted and mailed to neighbors, planning staff conducts a site visit. Neighbors have 30 days to file a written objection. If less than 30% of neighbors within 300 feet object to the application, the planning director reviews the application and may administratively approve or deny the permit. Any denial may be appealed to the Planning Commission and City Council. Conversely, if more than 30% of the neighbors protest, or if the property is owned by a corporate entity, the full Planning Commission reviews the application at a public hearing.

Once granted, the permit imposes several restrictions to preserve the quality of the surrounding neighborhood, ensure the safety of the property, and allow neighbors to contact the owner with any concerns.

For example, overnight occupancy is limited to two times the number of bedrooms plus 2 people, with a maximum of 5 bedrooms and 12 people. The owner must include "house policies" in the rental agreement and post these policies within each bedroom. House policies must include several provisions including quiet hours from 10:00 p.m. to 7:00 a.m., a requirement that all parking occur on-site, a prohibition of amplified sound, a limit to group gatherings and parties to a maximum of twice the allowable guests (with a maximum of 20 people), and a prohibition against auctions or commercial activity at the rental. Additionally, the Fire Department must complete an annual fire inspection of the property. The owner is responsible for ensuring that guests do not create unreasonable noise or violate laws regarding alcohol or illegal drug use.

Enforcement of permit requirements occurs on a complaint basis, which is facilitated by the requirement that the property owners must send a notice to all neighbors within 300 feet of the property containing: 1) the contact information someone who is available to physically respond to the unit within 30 minutes of a concern whenever the unit is occupied; 2) information regarding the number of permitted guests and parking restrictions; 3) a copy of the fire inspection; and 4) the contact information for the city should any neighbors need to report violations.

The owner is also responsible to collect transient occupancy taxes of 12% of the rent charged and remit this amount to St. Helena.

Anaheim initiated a short-term rental permitting program in 2012 when it adopted Chapter 4.05 of the Anaheim Municipal Code. Anaheim's permitting program includes similar standards to St. Helena. A notable feature is a 24-hour telephone hotline for neighbors to report any incidences related to the short-term rental program. The city also has a series of progressive fines for any violation that mirrors its existing code enforcement scheme, and provides that the city may revoke the short-term rental permit.

Palm Desert also adopted a short-term rental permit program in 2012, which includes an after-hours hotline for neighbors to report any violations or complaints.

Dana Point. After first attempting to collect taxes via its existing TOT ordinance that defined "hotel" sufficiently broadly to include Airbnb-style rentals, the City of Dana Point also adopted a short-term rental permitting program in 2014.

San Jose. Rather than establish a separate permitting program, the City of San Jose amended its Zoning Code in 2014 to allow incidental transient occupancy (short-term rentals) as a permitted use by right, incidental to primary residential uses. Incidental transient occupancy is allowed by right for homes that conforms to all applicable zoning code provisions. Short-term rentals are also subject to the city's 10% transient occupancy tax.

San Jose limits the duration of short-term rentals to 180 days per year when no host is present, and 365 days per year with a host present.

This method of regulation is less staff-intensive and therefore less costly in regulating short-term rentals, while still imposing short-term rental standards. At the time its code was amended, San Jose did not opt for a short-term rental registry, but rather decided to use its current code enforcement mechanisms.

Cities That Allow Short Term Vacation Rentals without Establishing Permitting Programs

Other municipalities are utilizing their existing Transient Occupancy Tax ordinances to collect taxes and enforce standards. This method does not involve any code amendments. However, staff must take an active role of community outreach and education about short term vacation rental uses, research to identify existing rentals throughout the City, including active code enforcement to follow-up.

Santa Monica covers Airbnb-type rentals under its current hotel and TOT regulations, and as such, a short-term rental must apply for a hotel permit and is subject to the TOT. Santa Monica's existing code is sufficiently broad to cover this situation. The city imposes a tax on the "total amount paid for room rental by or for any such transient to any hotel," and defines "hotel" as "[a] public or private hotel, inn, hostelry, tourist home or house motel, rooming house or other lodging place". (Santa Monica Mun. Code, §§ 6.68.010(c), 6.68.020.)

Malibu also allows short-term rentals via its preexisting Transient Occupancy Tax Ordinance, Malibu Municipal Code Chapter 3.24. Homeowners are allowed to rent rooms if they register as a hotel or bed and breakfast and pay the 12% TOT. However, actual rentals far exceed registered properties. For example in 2014 while 50 properties were registered as short-term rentals, Malibu officials discovered over 400 short-term rental ads online. (*Los Angeles Times*, "Malibu To Crack Down on Short Term Rentals", May 27, 2014.) Malibu actively prosecutes short-term rentals that are not registered and do not pay TOT.

These examples above entail intensive staff involvement to identify short term rental uses, and following up with code enforcement action, imposition of fines, and possible prosecution against unlawful short-term rentals. It may also be difficult to determine the true number of short-term rentals. As in Malibu, without a specific short-term rental ordinance, it may be easier for some lodgings to avoid detection and not pay TOTs.

Another drawback is the inability to impose specific regulations to protect the quality of life in the surrounding neighborhood.

FISCAL IMPACT

Staff time to conduct code enforcement and process permits, with or without establishing a permitting program for short term vacation rentals can be costly and staff-intensive. Application fees would need to be collected to cover costs to process applications. If a case is disputed it would go through the administrative hearing process up to and including the use of a Hearing Officer and the cost to the City can be in the thousands of dollars while the fines are in the hundreds of dollars.

If Code regulations (a permitting program) were in place to allow short term rentals, a fiscal benefit would be the collection of TOT revenue. As an example, if 100 homes in Sausalito operated short term vacation rentals, 2 nights/week, at an average cost of \$150/night, the program would generate 1.5 million in gross receipts to property owners. With the collection of 12% TOT, the program would produce \$187,000 in TOT revenue per year to the City. The cost of a part-time Code Enforcement Officer at \$50,000 to \$70,000 to enforce and implement the regulations would be absorbed by the TOT revenue.

If the City prohibits short term rentals as we do currently, fines and the TOT can be collected for the non-compliant operations, however, there is still a cost for a Code Enforcement Officer to actively enforce the regulations and to outreach to the community on the rules that prohibit short term rental uses. The cost for a Code Enforcement Officer to enforce the rules would have to be paid for by the collection of fines and the TOT for the time period the short term rental operated, but the short term rental operations would have to cease immediately.


RECOMMENDATION

The City Council has the following options:

1. Direct staff to prepare a draft ordinance that establishes a permitting program for short term vacation rentals, with direction on any permitting standards (i.e., homeowner must reside in home, on-site parking, maximum number of days per year, other safety and operating standards, etc.), and that the draft ordinance first be reviewed by the Planning Commission before consideration by the City Council;
2. Do nothing and direct staff to respond to complaints, conduct the necessary code enforcement, and impose fines as necessary and collect TOT for the time period the short term rental has operated;
3. Continue the matter and provide staff with direction to research further information.

PREPARED BY:

REVIEWED BY:



Danny Castro, Community

Mary Wagner, City Attorney

Item 6B - Attach 2

06-30-15 Item 6B

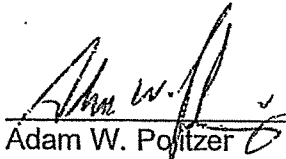
Page 5 of 12 03-17-15

Page 5 of 6

REVIEWED BY:

Charlie Francis,
Administrative Services Director

SUBMITTED BY:



Adam W. Pofitzer
City Manager

ATTACHMENTS

1. Ordinance No. 1206 – Allowing Vacation Rentals During 2012-2013 America's Cup Events.

ORDINANCE NO. 1206

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAUSALITO
ESTABLISHING REGULATIONS FOR THE TEMPORARY USE OF
RESIDENTIAL PROPERTIES AS VACATION RENTALS
DURING THE 2012-2013 AMERICA'S CUP EVENTS (ZOA 12-061)**

The City Council of the City of Sausalito does ordain as follows:

SECTION 1.

WHEREAS, the America's Cup World Series and the 34th America's Cup sporting event will occur on the San Francisco Bay in 2012-2013; and

WHEREAS, it is anticipated that the City of Sausalito will experience an increase in tourism and local hotels may not have the capacity to accommodate the visitors; and

WHEREAS, privately owned residential dwellings, such as, but not limited to, single-family and multi-family dwellings units, apartments, condominiums, and duplexes may be used as temporary vacation rentals during the America's Cup and related events; and

WHEREAS, temporary vacation rentals are subject to the transient occupancy tax regulations pursuant to Chapter 3.12 of the Municipal Code; and

WHEREAS, the use of residential dwellings as vacation rentals in residential neighborhoods may create secondary effects that need to be addressed via a temporary regulatory program as described herein; and

WHEREAS, the City Council finds and declares that the adoption of this Ordinance is necessary to allow vacation rentals during the 2012-2013 America's Cup events, to ensure neighborhood compatibility, to protect the general welfare of residents in the City, and to further the public necessity and convenience; and

WHEREAS, the adoption of the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15305 (Minor Alteration in Land Use Limitations) of the State CEQA Guidelines because allowing vacation rentals meeting the standards adopted herein to be located within existing residences will not involve an expansion of uses beyond that currently existing; and further, is exempt under Section 15061(b)(3) because it can be seen with certainty that adoption of the Ordinance does not result in a physical change in the environment. Implementation of the temporary regulations does not increase residential density or the intensity of use as the standards adopted herein are consistent with otherwise allowable residential use and any activities that may exceed residential character would be subject to further discretionary review; and

WHEREAS, the City Council hereby finds pursuant to Government Code section 65853 that the proposed Ordinance set forth in Section 2 below is consistent with the Sausalito General Plan objectives and policies.

SECTION 2.

- A. Purpose.** During the America's Cup events of 2012 and 2013 the number of visitors to Sausalito is expected to increase and local hotels may not have the capacity to accommodate the visitors' lodging needs. As a result, residential dwellings may be used as short-term vacation rentals during the America's Cup and related events. The following regulations provide procedures for issuance of permits which ensure that short-term vacation rentals are compatible with and do not adversely impact surrounding residential uses.
- B. Applicability.** The provisions of this Section apply to all vacation rentals. Vacation rentals are permitted in Residential Zoning Districts and subject to obtaining a Vacation Rental Permit and any other necessary permits. Vacation rental units are not permitted in non-habitable structures or within structures or dwellings with covenants or agreements restricting their use, including but not limited to affordable housing units and/or existing illegal accessory dwelling units (a.k.a., second dwelling units).
- C. Definitions.** For purposes of these regulations, the following phrases have the meaning respectively ascribed to them by this section:
1. "Local Contact Person" means the person designated by the owner or the owner's authorized agent or representative who shall be available twenty-four hours per day, seven days per week for the purpose of: (1) responding within one hour to concerns or complaints regarding the condition, operation, or conduct of occupants of the vacation rental unit; and (2) taking remedial action to resolve any such concerns or complaints.
 2. "Vacation Rental Unit" means a privately-owned dwelling unit, such as, but not limited to, a single-family or multiple-family unit, condominium, cooperative apartment, duplex, legal accessory dwelling unit, or any portion of such a dwelling, rented for occupancy for dwelling, lodging, or sleeping purposes for a period of thirty days or less, counting portions of calendar days as full days.
 3. "Vacation Rental Permit" means a permit that allows the use of a dwelling unit as a vacation rental unit pursuant to the regulations set forth herein.
- D. Vacation Rental Permit**
1. The owner is required to obtain a Vacation Rental Permit and a transient occupancy registration certificate (pursuant to Chapter 3.12 of the Sausalito Municipal Code).

2. A vacation rental permit shall only be valid from July 27, 2012 to October 15, 2012 and from May 15, 2013 to October 15, 2013.

E. Application

1. The owner of the dwelling unit shall submit a complete application on a form provided by the Community Development Department.
2. The vacation rental permit application shall be accompanied by an application fee established by resolution of the City Council.
3. The owner shall notify the Community Development Department in writing with updated information within seventy-two (72) hours of any of the following events:
 - a. Change of property ownership;
 - b. Change of property management company;
 - c. Change in Local Contact Person; or
 - d. Change in material facts pertaining to the information contained in the vacation rental permit application.

F. Performance Standards. A Vacation Rental Permit shall be approved only if the vacation rental permit application demonstrates compliance with all of the following standards:

1. **Limit on Number of Vacation Rental Permits Per Parcel.** Only one dwelling unit or a legally-established accessory dwelling unit meeting current standards shall be used as a vacation rental unit on any single parcel. Tents, yurts, recreational vehicles, campers, mobile homes, and comparable temporary dwellings are not allowed to be utilized in conjunction with a vacation rental permit.
2. **Minimum Duration of Rental.** Any dwelling unit used for a Vacation Rental Unit must be rented for a minimum of seven consecutive calendar days. Sub-leasing of the Vacation Rental Unit within any seven consecutive calendar days is not permitted.
3. **Parking.** Parking for Vacation Rental Units shall be provided in the following manner.
 - a. For properties which have two on-site parking spaces, the two parking spaces shall remain accessible for parking at all times.
 - b. For properties which have less than two on-site parking spaces and are located in areas subject to City Permit Parking regulations, the owner shall provide parking permits so the combination of on-site parking spaces and parking permits provides parking for two vehicles.
 - c. For properties which have less than two on-site parking spaces and are not located in areas subject to City Permit Parking regulations, any on-site parking

space shall remain accessible for parking at all times. The remaining requirement shall be met by on-street parking.

4. **Trash and Recycling.** The property shall be serviced by the City's refuse hauler.
 5. **Sewer Connections/Septic Systems.** The property shall be served by the sewer system or a septic system without any deficiencies, inadequacies, or failings according to the City and County's records, as applicable.
 6. **Transient Occupancy Tax.** The owner shall obtain a Transient Occupancy Tax Certificate consistent with Chapter 3.12 of the Municipal Code and remain current on all required reports and payments. The owner or authorized agent shall list the Certificate number on all contracts, rental agreements, advertising, and website postings.
 7. **Local Contact Person.** The owner shall provide the Community Development Department and the tenant with a current 24-hour working telephone number of the Local Contact Person.
 8. **Signs.** No signs shall be posted on or off-site indicating the presence of the vacation rental unit.
 9. **Renter Notification Requirements.** The owner shall affix the Vacation Rental Permit and the Local Contact Person information on or adjacent to the interior of the main entry door. The Vacation Rental Permit shall be attached to all contracts and rental agreements.
 10. **Current Code Enforcement Violations.** The property shall not be subject to any current code enforcement compliance orders or building permit correction notices related to health or safety issues.
- G. **Violations.** Any violation of these regulations is subject to enforcement action pursuant to Chapter 1.10 of the Municipal Code.

H. **Revocation or Modification of Permit.**

1. **Cause for Revocation or Modification.** The Zoning Administrator may revoke or modify a Vacation Rental Permit. Revocation or modification shall require a public hearing held in the manner prescribed by Chapter 10.82 of the Municipal Code. The following shall be grounds for revocation or modification:
 - a. The approval was based on false information submitted by the applicant.
 - b. The use for which such approval is granted is not being exercised.
 - c. The approved permit is being, or recently has been, exercised contrary to or in violation of any statute, ordinance, law, or regulation.
 - d. There has been a substantial change in the circumstances including, but not limited to, changes in the applicable law since approval.

2. **Revocation.** Permit shall be suspended automatically upon violation of any applicable provision of this Title as set forth in subsection 1 above. The Community Development Director shall notify the property owner of said suspension. The Community Development Director may order all operations or any portion thereof, authorized by the permit to cease during the time it is suspended when necessary and in order to protect health, safety or general welfare. The Zoning Administrator shall notice and hold a public hearing within thirty (30) days, in accordance with the procedure prescribed by Chapter 10.82 of the Municipal Code. Following public hearing, if the Zoning Administrator is not satisfied that the owner of the vacation rental unit is complying with the applicable regulations governing the permit, the Zoning Administrator shall revoke the permit or take such action necessary to ensure compliance.

SECTION 3.

This Ordinance shall become null and void on October 16, 2013.

SECTION 4.

The City Council hereby finds and declares that project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15305 of the State CEQA Guidelines because allowing vacation rentals meeting the standards adopted herein to be located within existing residences will not involve an expansion of uses beyond that currently existing; and further, is exempt under Section 15061(b)(3) because it can be seen with certainty that adoption of the Ordinance does not result in a physical change in the environment. Implementation of the temporary regulations does not increase residential density or the intensity of use as the standards adopted herein are consistent with otherwise allowable residential use and any activities that may exceed residential character would be subject to further discretionary review.

SECTION 5.

Effective date. This Ordinance shall be in full force and effect thirty (30) days after the date of its adoption.

SECTION 6.

Publication. This Ordinance shall be published once within fifteen (15) days after its passage and adoption in a newspaper of general circulation in the City of Sausalito.

THE FOREGOING ORDINANCE was read at a regular meeting of the Sausalito City Council on the 12th day of June 2012, and was adopted at a regular meeting of the City Council on the 26th day of June, 2012 by the following vote:

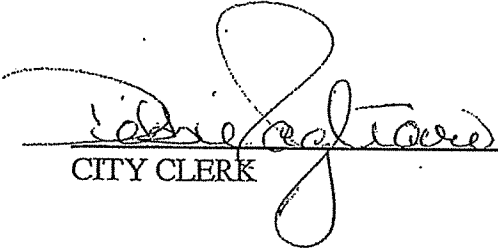
AYES: Councilmembers: Ford, Weiner, and Mayor Kelly
NOES: Councilmembers: Leone, Pfeifer

ABSENT: Councilmembers: None
ABSTAIN: Councilmembers: None



MAYOR OF THE CITY OF SAUSALITO

ATTEST:



CITY CLERK