



TOWN OF FAIRFAX

STAFF REPORT

January 19, 2022

TO: Mayor and Town Council

FROM: Michele Gardner, Town Clerk

SUBJECT: Discuss/consider short-term rental regulations and provide direction to staff.

RECOMMENDATION

Discuss recommendations regarding short-term rental regulations and provide direction to staff.

INTRODUCTION

The establishment of short term rental regulations is one of the Council's adopted goals for Fiscal Year 2021-22. Councilmember Barbara Coler asked that it be added to tonight's agenda and contributed to this report, which is intended to provide data and options for the Council's discussion, including program regulations, program costs and revenues.

Currently, 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 ("CUP"). The Town has not issued any CUPs for short term rentals ("STR"). Nonetheless, STRs are known to exist in Town (i.e., Host Compliance data and brief website searches depict STRs in the Town).

BACKGROUND

The Council began discussing STRs in 2015. After discussion and public input at meetings and through an online survey, the Council decided to establish an STR program in Fairfax with regulations and referred the matter to the Planning Commission ("PC"). The PC's recommendations came back to the Council on April 5, 2017. (A summary of the Planning Commission recommendations is attached to this report.) Following consideration and public feedback, the Council directed Staff to further explore the matter and bring back a draft ordinance. Unfortunately, the item was put on hold due to other priorities that arose.

DISCUSSION

Since the Council's last discussion in 2017, short-term vacation rentals have become commonplace. Platforms such as Airbnb and VRBO make it easy for both hosts and guests to rent and find rentals. A number of cities and towns have adopted regulations for STRs in their respective jurisdictions, often using a service to assist with key aspects of a successful STR program, such as registration of units and program compliance. Host Compliance developed its service on or about 2017 and is the most well-known of these programs.

There are benefits to establishing a short-term rental program. By regulating the conversion and use of residential units to tourist and transient use, the Town can minimize any potential adverse impacts on housing supply and on households of all income levels resulting from the loss of residential units to such uses. At the same time, the program would allow Town

residents with limited resources to remain in their homes by using the rental income from an STR. As well, a new revenue source may be created by collecting the Transient Occupancy Use Tax (“TOT”). The Town’s TOT rate is 10%. Finally, it is important to recognize that STRs already exist in Fairfax, and without a program, they will remain underground and unregulated.

Working with Councilmember Coler, staff looked at how nearby jurisdictions regulate STRs. San Rafael, Mill Valley, Novato, and the Larkspur all have STR programs and use Host Compliance to help support their programs. Staff and Councilmember Coler met with Host Compliance, a company that assists jurisdictions with implementation and enforcement of STR regulations. A representative from Host Compliance (“HC”) will make a brief presentation at the Council meeting to outline their services, including identifying properties offered for rent, educating hosts on how to become compliant, and ensuring collection of TOT revenue. Based on our review, Host compliance provides a cost-effective means of overseeing and regulating STRs for jurisdictions, thereby limiting the expenditure of staff resources.

In establishing a STR program, the Council may wish to consider the following aspects:

- Property Eligibility – criteria for a property to be eligible for short term rental use
- Occupancy limits – the annual maximum # of days the STR may be rented out
- Registration fee for STR program - annual fee for hosts
- Costs and revenues (e.g., submittal of quarterly TOT; annual costs for HC; estimate of annual TOT loss without STR program)
- Enforcement

Each of these aspects above is discussed in more detail below in the form of a proposed program for Fairfax, based on successful STR programs in Marin County and our evaluation of these programs in Marin County.

1. Property Eligibility

- a. Eligible Properties- A property must meet the following criteria to be eligible for short term rental use. Staff recommends the following criteria:
 - 1) All or a portion of the Residential Unit is offered for Tourist or Transient Use by the Permanent Resident of the Residential Unit
 - 2) The Residential Unit is the Primary Residence of the Permanent Resident
 - 3) The Permanent Resident is a natural person (not a business, corporation, etc.)
 - 4) The Permanent Resident has registered the Residential Unit and maintains good standing with the Town of Fairfax
 - 5) Off street parking requirements (suggested below)

The criteria are intended to prevent commercial short-term rental use, or individuals from renting second homes or investment properties for short-term use. The criteria in effect restrict short-term rentals to properties where the host is the owner and the property is their primary residence. As proof of primary residency, the host would need to provide at least three of the following: motor vehicle registration; driver's license; voter registration; tax documents showing the Residential Unit as the Permanent Resident's residence for the purposes of a homeowner's tax exemption; or a utility bill.

The Council may wish to consider additional restrictions, such as limiting the maximum number of “unhosted stays” in a calendar year. An unhosted stay is when the Permanent Resident is not present at the unit during the stay. This would allow Permanent Residents to take an extended vacation or “trade houses” with others in another location and also incur rental income (yet would ensure that homes were not investment homes). This provision has included in other successful Marin jurisdictions in their STR program (e.g., San Rafael).

- b. Ineligible Properties- The following properties would be restricted from being used as a short-term rental:
 - 1) Income-restricted affordable housing, including Below-Market-Rate (BMR) units and public housing
 - 2) Student housing, dormitories, and Single-Room-Occupancy (SRO) buildings
 - 3) Commercial or industrial zoned lots
 - 4) Non-residential areas within buildings, such as storage areas, and living/sleeping quarters added in garages
 - 5) Motorized Recreation Vehicles (RVs), including non-motorized Travel Trailers
 - 6) Boats/House Boats
 - 7) Teepees, Yurts, Tents, and Treehouses
 - 8) Sleeping Quarters in Vans or Cars
 - 9) Accessory Dwelling Units approved after January 1, 2020 (per FMC and state law)

- c. Properties with Multiple Residential Units- Allow for short-term rentals in Multi-family properties as well as on lots with single family homes and an accessory structure, second unit, or junior second unit. These units must still meet the primary residency requirements under *Eligible Properties* (see above, Section 1).

OPTION: The Town could restrict the permanent resident from offering as a short-term rental an entire single home or residential unit and the accessory structure at the same time. However, if the Town limits the number of unhosted stays, this option may not be needed.

2. Program Requirements

- a. Occupancy Limits- Limit the occupancy of any short term rental to two individuals per bedroom plus two additional individuals if the rental provides additional living space. For instance, a studio could accommodate two individuals and a one-bedroom apartment could accommodate four individuals.

In addition, limit occupancy to the number of people who could be accommodated by the availability of designated off-street parking on the property. The short-term rental's occupancy may not be greater than the number of vehicles the property could accommodate through the designated off-street parking requirements described below.

- b. Off-Street Parking Requirements- Require short-term rentals to provide sufficient designated off-street parking to accommodate their occupants. For example, stipulate that one designated off-street parking space must be provided for every four guests. For properties with multiple residential units used as short-term rentals, each rental listing could have its own designated off-street parking.

- c. Registration- Require short-term rentals to be registered with the Town and the registration renewed annually. As part of the registration and renewal, the permanent resident would need to provide the following:
 - 1) Property Information including documentation of the above requirements, property details, and a 24-hour local contact
 - 2) Proof of a self-certified property inspection, and from properties in a Wildland-Urban Interface, the registration must also include a vegetation inspection
 - 3) Documentation of interior signage providing local 24-hour contact information, parking and occupancy requirements, garbage/recycling disposal requirements, Noise Ordinance requirements, and Emergency Information (including wildfire evacuation, emergency alert sign up)
- d. Fee- As described in the Fiscal Impact section, registrants will be charged an initial fee of \$100 and an annual renewal fee of \$50. The amounts are suggested based upon the fiscal impact, yet to ensure that the costs are not excessive and thus create an incentive to remain “underground.”
- e. TOT Collection & Remittance- Require Hosts to collect and remit Transient Occupancy Taxes (“TOT”) to the Town. Host Compliance offers jurisdictions automated collection and remittance service of TOT. HC also provides monitoring to ensure that the TOT submitted by an STR is adequate based on the rentals. The Town Attorney’s Office will need to review procedures for the modification of the TOT ordinance which is likely to require a municipal election.
- f. Reporting- To maintain good standing, a host would be required to submit an annual report to the Planning Department by January 10 of each year, regarding the number of days listings have been rented, the average amount charged/day, and the rental income generated for the period.
- g. Audit- While Staff is not recommending an audit at this time, the Council may wish to know that San Rafael’s program regulations include an annual audit of five percent of registrations for program compliance. This audit includes a registration review, property inspection, and TOT payment review.

3. Enforcement

- a. Violations & Appeals- The program regulations would utilize the existing administrative enforcement procedures for handling complaints, violations, and appeals. Note: Host Compliance offers a 24/7 Complaint Hotline to the public to aid in handling complaints.
- b. Revocation of Registration- The Town (Planning Director or designee) can revoke a program registration at any time for the following reasons:
 - 1) The property has not collected or remitted their TOT (or has not been adequate based on its rental history)
 - 2) The property has received three verified violations over a two-year period
 - 3) The property registration included misrepresented or omitted information
 - 4) The registration was transferred or attempted to be transferred to another individual

FISCAL IMPACT

Host Compliance will be making a presentation at the Council meeting regarding their services, which would be at a cost to the Town of approximately \$13,800. They provided an initial report to the Town to identify the number of existing STRs and the average daily rental rate, and then calculated a low-end estimate of the annual TOT based on an occupancy rate of 30 days per unit per year.

Number of existing STRs: **75**
Average nightly rate: **\$150**
Low-end occupancy: **30 days**
Annual TOT: **\$33,750**

In addition to collecting the TOT, the Town would also collect business license and registration fees. These amounts would offset any costs to administer the program.

Next Steps

Based on the Council's direction after receiving public feedback tonight, Staff would develop an STR program and regulations to bring back in February and/or March for the Council to review and for the public to provide more feedback.

As noted earlier in this report, under current Town Code, STRs are only permitted with a conditional use permit ("CUP"). Therefore, should the Council wish to proceed with an STR program, their first direction would be to the Planning Commission (PC) to revise the Town Zoning Code at their February meeting to allow STRs as a permitted use. The PC's action would be limited to revising the zoning code solely. The Town Attorney would draft the zoning code revisions for the PC's February meeting. The second direction would be to the Town Attorney to draft an ordinance to establish an STR program based on the Council's direction tonight.

Both the zoning ordinance and the STR program ordinance could come back to the Council for introduction as early as mid-March. Adoption of the ordinances could take place at the Council's April regular meeting, together with the adoption of a resolution adopting policies and procedures for the administration of the STR program.

While the STR program could go forward, imposition and collection of TOT may need to await the results of a municipal election, which could be held in November of 2022.

ATTACHMENTS

- A. 2016 Planning Commission Recommendations
- B. Table of Marin Cities' and Towns' STR Regulations

ATTACHMENT A

2016 Planning Commission Recommendations Summary

When the Council last discussed regulating STRs in 2017, it considered the Planning Commission's recommendations, summarized below:

- a) Allow the short term rental of entire houses including second units.
- b) Require the properties to be the primary residence of the host (i.e., renters could not rent out their unit).
- c) Limit the total number of days an entire house may be rented during year; the PC discussed a 6-month limit which would be sufficient for those households that travel a lot during the year.
- d) Require hosts to obtain business licenses on an annual basis.
- e) 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. Staff recommended amending Town Code to include STR as a permitted use.
- f) The short-term rentals would be subject to the Town's TOT of 10%.
- g) The Town should enter into agreements with the on-line entities such as Airbnb to collect TOT. Airbnb has an agreement it provides municipalities. Staff did not recommend this. (Note: HC currently it has agreements with more than 30 STR companies.)
- h) The PC also wanted staff to review the agreement between the hosts and Airbnb. Staff did not recommend this.

Please note that the above recommendations are out of date and provided for the Council's information only.

ATTACHMENT B

Review of Marin Cities' and Towns' Short Term Rental Regulations January 2022

TOWN	REGULATION	NO REGULATION
Corte Madera	Based on permissive zoning ordinance, short-term rentals are prohibited. Regulations will be considered in 2022.	
Larkspur	Prohibits short term rentals	Town position: no short-term rental permitted by code.
Mill Valley	Has STR Program Uses Host Compliance	
Novato	Has STR Program Uses Host Compliance	
Ross	ADUs must be rented for a period of 30 days or more.	Council considered issue in 2015 and decided not to regulate. Ross has no TOT.
San Anselmo	Considers short term rentals a residential use. A business license is required. Prohibited in illegally converted structures (garages, sheds) and new ADUs (since 2020). Staff enforces as new units appear on Airbnb.	SA has no TOT.
San Rafael	Has STR Program Uses Host Compliance	
Sausalito	Prohibits short-term rentals (defined as less than 30 days).	
Tiburon	Prohibits short term rentals now. (Prior to 2016, had permitting in place.)	