



TOWN OF FAIRFAX

STAFF REPORT

March 24, 2022

TO: Fairfax Planning Commission

FROM: Linda Neal, Principal Planner
Janet Coleson, Town Attorney

SUBJECT: Review of draft ordinance incorporating Short Term Rental Units into the Zoning Ordinance by including a "Short Term Rental" definition, including short term rentals as permitted accessory uses in all the single-family residential zones and providing parking regulations

RECOMMENDATION

Recommend by adopting attached Resolution No. 2022-05 that the Town Council adopt the attached draft "Ordinance of the Town Council of the Town of Fairfax Amending Town Code Title 17, ('Zoning'), Chapters 17.008 ('Definitions'), 17.052 ('Off-street Parking and Loading Requirements'), 17.076 ('RS-7.5 Single-family Residential Zone, Medium Density'), 17.080 ('RS-6 Single-family Residential Zone, High Density'), 17.124 ('UR Upland Residential Zone'), Incorporating a Definition of "Short Term Housing", Providing Parking Regulations for Said Short Term Rental Use and Including Short Term Rentals as Permitted Uses in All Single-family Residential Zone Districts." (Attachment A – Resolution, Attachment B – Draft Ordinance)

BACKGROUND

At the January 19, 2022 Town Council meeting the Council discussed whether the Town would benefit from adopting a Short-Term Rental (STR) Ordinance (see Attachment C – 1/19/22 Council Staff report). The Council began discussing short term rentals in 2015 and they created an on-line survey to assess public opinion on short term rentals and took public input at meetings on the matter. After obtaining public input, the Council decided to establish a STR program in Fairfax with regulations and they referred the matter to the Planning Commission. The Commission discussed the matter at their September 15, 2016 meeting and forwarded a list of recommendations for what such an ordinance should consider/address. The results of the 2015 on-line survey and the Planning Commission list can be found at the end of Attachment D – Town Council Staff report dated 3/1/17. For various reasons (competing priorities) at that time the STR program was not established. However, since that time, STRs programs and services to assist jurisdictions to implement such have matured and rendered implementing STRs relatively “easy.”

At their January 19, 2022 meeting, the Town Council directed the Planning Commission to review and make a recommendation to the Council on a draft ordinance changing the Zoning

Code to allow short term rentals. Because rentals of less than thirty days are currently only permitted pursuant to a Conditional Use Permit in residential zones, it is important that the Commission make these recommended changes to the zoning.

Also, at their January 19, 2022 meeting, the Council clarified that the Commission will *not* be taking action on the business permit ordinance which will be contained in Town Code Title 15, Business Taxes, Licenses and Regulations. The business permit ordinance, regulating the Town's short-term rentals will be discussed further and acted on by the Town Council at a later date.

The Council intends to use a service to assist the Town with implementing and regulating STR's and to help ensure that STR's have minimal impacts on the Town's permanent housing supply and on households of all income levels resulting from the loss of residential uses to STR's, while also assisting residents with limited resources to remain in their homes by using the rental income from a STR's. The service is at a reasonable cost to the Town, has a 24/7 complaint line, assists with collecting transient occupancy taxes and permit fees, and generally performs most of the administrative functions to implement an STR program, thereby limiting staff resources to establishing and maintaining the program (and is used by several Marin jurisdictions as well as others in the State and across the County). Through this service we are aware that approximately 75 STRs are operating in Fairfax without Town regulation.

Legalization of STR's with regulations may also provide a new revenue source for the Town by collecting the Transient Occupancy Tax on such units and required annual business license fees.

The January Council meeting staff report and attachments can be found in Attachment C to this staff report.

DISCUSSION

After reviewing the Zoning Ordinance, staff determined that incorporating STR's into the Zoning Ordinance would require the inclusion of a definition of what constitutes a short-term rental, parking regulations for short term rentals and adding short term rentals as permitted accessory units in the Residential Single-family RS 7.5, RS-6 Single-family Residential Zone and the Upland Residential (Single-family) Zones.

Definition

Staff determined that the definition of STR should include the type of structures/portions of structures that can be considered for STR use and the number of consecutive days a STR can be rented for.

The most commonly used consecutive number of days used by other agencies and jurisdictions is thirty (30) consecutive days or less.

The attached ordinance amends the Town Code to include the following definition of "Short Term Rental":

Short Term Rental An existing single-family residence, portion of an existing single-family residence or an Accessory Dwelling Unit (ADU) unit or Junior Accessory Dwelling Unit (JADU), established prior to January 1st, 2020, in which overnight accommodations are provided to guests for compensation that is rented for thirty (30) consecutive days or less. All short-term rentals must comply with the Short-Term Rental requirements contained in Town Code, Title 5, Division II ('Specific Business Regulations'), Chapter 5.57 ('Short Term Rental Regulations').

Parking

A conservative approach would be to only issue STR business permits to short term rentals located on properties that meet the minimum required parking requirements for all the uses on the site. A single-family residence with one or more bedrooms on a property with a legal accessory dwelling unit located more than ½ mile away from a bus stop would have to have three on-site parking spaces for the long-term residential use, one space for any accessory dwelling unit, and provide one additional parking space for each four guests that could be accommodated in the STR (a total of five on-site parking spaces). This would significantly decrease the number of properties eligible to operate an STR.

A more lenient approach would be to consider that existing residences and properties developed with residences and long standing legal non-conforming ADU's are operating without creating any significant parking problems and therefore, these properties should be able to accommodate a STR with the existing parking and the addition of only one parking space for each four persons the STR can accommodate.

Staff is recommending that an approach in the middle be used requiring the following:

STR type	Required parking
House/portion of house	One 9 ft. x 19 ft. space for every four guests in addition to two spaces required for the long-term residents (if only a portion of the house is used as a STR)
JADU/ADU	One 9 ft. x 19 ft. space for units with up to two bedrooms & for studio units; one space for every four guests in units with three or more bedrooms

Note: Prior to October 11, 1961, Fairfax had only two zoning districts, Commercial and Residential and the residential zones allowed up to two units on each residential property by right and apartments with Conditional Use Permits. Therefore, there are properties in Fairfax that have two houses, duplexes, detached cottages with various numbers of bedrooms, duplexes with detached cottages (third units), etc., in existing single-family zones that are legal non-conforming and were established prior to January 1st, 2020 (the date the State's first Accessory Dwelling Unit and Junior Accessory Dwelling Unit regulations went into effect). These

units would be available for use as STR's while the Zoning Regulations would retain ADU's and JADU's approved under the new state regulations, after January 1st, 2020, for long term housing.

Neighborhood Impacts

The staff has been dealing with complaints about STR's for some time now and we believe that permitting regulated STR's will actually decrease the number of complaints we receive. A good set of regulations, which will be incorporated into the Business Permit Ordinance for STR's adopted by the Town Council, should include regulations for quiet hours including acceptable noise levels since visitors using STR's are typically on vacation and looking to have a good time. Good times sometimes lead to excessive noise and noise complaints. Parking spaces for the STR's are typically required to be marked as such and we have received complaints about visitors staying in STR's using public spaces along the road and damaging improvements within the right-of-way trying to squeeze into public spaces and public spaces that are not of an adequate size (between two already parked cars or too close to roadway retaining walls). Regulations also can include required posting of evacuation routes and allowable hillside roadway speeds, installation of fire extinguishers and smoke alarms, instruction on how and where to dispose of refuse, etc. which will assist in the successful operation of STR's within the residential neighborhoods.

We believe that with a regulated system for the operation of STR's in place neighbors having issues with nearby STR's will feel more comfortable filing complaints and the Town will have the ability to revoke business licensed issued to hosts that do not enforce the regulations on their properties. We will also know where the legal ones are which will assist us in abating the ones that are operating illegally. Currently, we know they are out there, but we do not typically know where unless we visit the numerous platforms that make it easy for hosts and guests to rent and find rentals units (and it is difficult to determine the specific address of a STR unless one "rents" the STR), or we receive a complaint.

ATTACHMENTS

Attachment A - Resolution # 2022-05, A Resolution Of The Fairfax Planning Commission recommending that the Town Council adopt " An Ordinance Of The Town Council Of The Town Of Fairfax Amending Town Code Title 17 (Zoning), Chapters 17.008 ('definitions'), 17.052 (Off-Street Parking And Loading Requirements'), Chapters 17.076 ('rs-7.5 Single-Family Residential Zone, Medium Density'), 17.080 ('RS-6 Single-Family Residential Zone, High Density'), 17.124 ('UR Upland Residential Zone'), Incorporating A Definition Of "Short Term Housing", Providing Parking Regulations For Said Short Term Rental Use And Including Short Term Rentals As Permitted Uses In All Single-Family Residential Zone Districts"

Attachment B – Draft of “An Ordinance Of The Town Council Of The Town Of Fairfax Amending Town Code Title 17 (Zoning), Chapters 17.008 ('definitions'), 17.052 ('Off-Street Parking And Loading Requirements'), Chapters 17.076 ('RS-7.5 Single-Family Residential Zone, Medium Density'), 17.080 ('rs-6 Single-Family Residential Zone, High Density'), 17.124 ('UR Upland Residential Zone'), Incorporating A Definition Of "Short-Term Rental", Providing Parking Regulations For Said Short-Term Rental Use And Including Short-Term Rentals As Permitted Uses In All Single-Family Residential Zone Districts”

Attachment C – Town Council staff report dated 1/19/22

Attachment D – Town Council staff report dated 3/1/17 including STR survey results

RESOLUTION NO. 2022-05

A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION RECOMMENDING THAT THE TOWN COUNCIL ADOPT " AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENING TOWN CODE TITLE 17 (ZONING), CHAPTERS 17.008 ('DEFINITIONS'), 17.052 ('OFF-STREET PARKING AND LOADING REQUIREMENTS'), CHAPTERS 17.076 ('RS-7.5 SINGLE-FAMILY RESIDENTIAL ZONE, MEDIUM DENSITY'), 17.080 ('RS-6 SINGLE-FAMILY RESIDENTIAL ZONE, HIGH DENSITY'), 17.124 ('UR UPLAND RESIDENTIAL ZONE'), INCORPORATING A DEFINITION OF "SHORT TERM HOUSING", PROVIDING PARKING REGULATIONS FOR SAID SHORT TERM RENTAL USE AND INCLUDING SHORT TERM RENTALS AS PERMITTED USES IN ALL SINGLE-FAMILY RESIDENTIAL ZONE DISTRICTS

WHEREAS, on January 19, 2022, the Fairfax Town Council directed the staff to prepare an Ordinance for Planning Commission consideration amending the Town Code Zoning Ordinance, Title 17, to make short term rentals within the Town of Fairfax a permitted use in the various Town single-family zones; and

WHEREAS, the recommendation was made as the Town Council was also considering adopting a business permitting process regulating short term units by adopting operating limitations and requirements for issuance of short-term rental business licenses; and

WHEREAS, the Council determined that it is necessary to regulate the short-term rentals, which are already operating unpermitted within the Town to ensure that the short-term rental activities do not become a nuisance or threaten the public health safety or welfare of neighboring properties while also assuring that their existence is regulated in a manner that allows the Town to maintain its long-term rental housing stock in Fairfax; and

WHEREAS, the Town Council has found that short term rentals provide an added financial benefit to owners of residential properties and can help individuals meet their financial responsibilities and has documented with this resolution the intention of the Town to issue short term rental business permits to widest population base of permanent residents that are natural persons and not a business, corporation, etc.; and

WHEREAS, the zone change making short term rentals a permitted use will be adopted concurrent with the Short-Term Rental Business Permit program regulating the operation of short-term rentals in Fairfax has been adopted as Town Code Chapter 5.57, Short Term Rental Regulations.

WHEREAS, the Planning Commission held a public hearing on March 24, 2022, at which time they took testimony from the public and discussed the proposed ordinance to include short-term rentals as permitted accessory uses in the Town single-family residential zones;

WHEREAS, after discussion, the Planning Commission determined including regulated and licensed short-term rentals as permitted accessory uses in the single-family residential zones would not negatively impact the single-family nature of these zones or change the small Town nature or feel of the Town.

WHEREAS, the Planning Commission also determined that permitting regulated Short-term Rentals will support the following 2010-2030 Fairfax General Plan Goal:

ATTACHMENT A

GOAL LU-7: Preserve a human-centered scale, mixed use, and sense of community.

WHEREAS, the Planning Commission finds that this ordinance is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to categorical exemption number 15301, Existing Facilities.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby recommends that the Town Council adopt the attached Ordinance XXX, "An Ordinance of The Town Council of The Town Of Fairfax Amending Town Code Title 17 (Zoning), Chapters 17.008 ('Definitions'), 17.052 ('Off-Street Parking And Loading Requirements'), Chapters 17.076 ('RS-7.5 Single-Family Residential Zone, Medium Density'), 17.080 ('RS-6 Single-Family Residential Zone, High Density'), 17.124 ('UR Upland Residential Zone'), Incorporating a Definition of "Short Term Housing," Providing Parking Regulations For Said Short Term Rental Use and Including Short Term Rentals as Permitted Uses In All Single-Family Residential Zone Districts."

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 24th, day of March, 2022 by the following vote:

AYES:

NOES:

Chair Norma Fragoso

Attest:

Linda Neal, Principal Planner

ORDINANCE NO. XXX

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING TOWN CODE TITLE 17 (ZONING), CHAPTERS 17.008 ('DEFINITIONS'), 17.052
('OFF-STREET PARKING AND LOADING REQUIREMENTS'), CHAPTERS 17.076 ('RS-7.5
SINGLE-FAMILY RESIDENTIAL ZONE, MEDIUM DENSITY'), 17.080 ('RS-6 SINGLE-
FAMILY RESIDENTIAL ZONE, HIGH DENSITY'), 17.124 ('UR UPLAND RESIDENTIAL
ZONE'), INCORPORATING A DEFINITION OF "SHORT-TERM RENTAL", PROVIDING
PARKING REGULATIONS FOR SAID SHORT-TERM RENTAL USE AND INCLUDING
SHORT-TERM RENTALS AS PERMITTED USES IN ALL SINGLE-FAMILY RESIDENTIAL
ZONE DISTRICTS**

WHEREAS, on January 19, 2022, the Fairfax Town Council directed the staff to prepare an Ordinance for Planning Commission consideration amending the code sections described above to make short-term rentals within the Town of Fairfax a permitted use in the various Town single-family zones; and

WHEREAS, the recommendation was made as the Town Council is also considering adopting a business permitting process regulating short-term units by adopting operating limitations and requirements for issuance of short-term rental business licenses; and

WHEREAS, the Council determined that it is necessary to regulate the short-term rentals once they are deemed a permitted use in the single-family residential zones to ensure that the short-term rental activities do not become a nuisance or threaten the public health safety or welfare of neighboring properties, while also assuring that their existence is regulated in a manner that allows the Town to maintain its long-term rental housing stock in Fairfax; and

WHEREAS, the Town Council has found that short-term rentals provide an added financial benefit to owners of residential properties and can help individuals meet their financial responsibilities and has documented with this resolution the intention of the Town to issue short-term rental business permits to the widest population base of permanent residents that are natural persons and not a business, corporation, et cetera; and

WHEREAS, the zone change making short-term rentals a permitted use will be adopted simultaneously with the Short-Term Rental Business Permit program regulating the operation of short-term rentals in Fairfax as Town Code Chapter 5.57, Short-Term Rental Regulations.

The Town Council of the Town of Fairfax Does ordain as follows:

Section 1: Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.008 ('Definitions'), Section 17.008.020 ('Definitions') is amended to include the following definition, which shall be placed in alphabetical order within said Section:

Short-Term Rental An existing single-family residence, portion of an existing single-family residence, or an Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling unit (JADU) established prior to January 1st, 2020, in which overnight accommodations are provided to guests for compensation that is rented for thirty (30) consecutive days or less. All short-term rentals must comply with the Short-Term Rental requirements contained in Town Code, Title 5, Division II ('Specific Business Regulations'), Chapter 5.57 ('Short-Term Rental Regulations').

Section 2: Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.052 ('Off-Street Parking and Loading Requirements'), Section 17.052.030 ('Required Parking Spaces') is amended to add a new Subsection (P) as follows:

"(P) Short-Term Rentals (STR's).

(1) Short-Term rentals must comply with the following:

STR type	Required parking
House/portion of house	One 9 ft. x 19 ft. space for every four guests in addition to two spaces required for the long-term residents (if only a portion of the house is used as a STR)
JADU/ADU	One 9 ft. x 19 ft. space for units with up to two bedrooms & for studio units; one space for every four guests in units with three or more bedrooms

(2) Preferential Parking Spaces and parking spaces located within the public right-of-way may not be used to meet the short-term rental parking requirements unless the preferential parking was created for the main house and the entire main house is being used as a short-term rental unit.

Section 3: All the Single-family Zone Districts lists of permitted uses are amended to include Short-Term Rentals as follows:

Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.076 (RS 7.5 Single-family Residential, Medium Density), Section 17.076.040 ('Accessory Uses and Structures') is amended to include subsection (D) Short-Term Rental uses that include only one short-term rental unit per single-family zoned property contained within an existing structure permitted for residential use as long as that structure is not an ADU/JADU created after January 1, 2020.

Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.080 (RS-6 Single-family Residential Zone, High Density), Section 17.080.040 ('Accessory Use and Structures') is amended to include subsection (E) Short-Term Rental uses that include only one short-term rental unit per single-family zoned property contained within an existing structure permitted for residential use as long as that structure is not an ADU/JADU created after January 1, 2020.

Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.124 ('UR Upland Residential Zone'), Section 17.124.040 ('Accessory Uses and Structures'), is amended to include subsection (E) Short-Term Rental uses that include only one short-term rental unit per single-family zoned property contained within an existing structure permitted for residential use as long as that structure is not an ADU/JADU created after January 1, 2020.

Section 4: The Town Council finds that this ordinance is Categorical Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to categorical exemption number 15301, Existing Facilities.

Section 5: This Ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

Section 6: Copies of the forgoing ordinance shall, within fifteen days after its final passage and adoption, be posted in three public places in the Town of Fairfax which places are designated for that purpose:

1. Bulletin Board, Town Hall offices, located at 142 Bolinas Road, Fairfax;
2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard, Fairfax; and
3. Bulletin Board, Fairfax Women's Club building, located at 46 Park Road, Fairfax.

The foregoing ordinance was duly and regularly introduced at a special meeting of the Fairfax Town Council held in said Town on the XX day of XX, 2022, and thereafter adopted at a regular meeting of the Town Council, held in said Town on the XXX day of XX, 2022 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

Date



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 signup)

- 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.)	



TOWN OF FAIRFAX

STAFF REPORT

March 1, 2017

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Discussion/consideration of Planning Commission recommendations regarding short-term rentals

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

RECOMMENDATION

Discuss/consider the Planning Commission's recommendations regarding short-term rentals and direct staff as appropriate.

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 ("PC") for consideration. The PC discussed this matter at its September 2016 meeting. For background, attached is the PC staff report on short-term rentals which includes 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

Attached is an overview of Airbnb rentals in the area for the past 12 months. 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 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 contract with Airbnb to collect TOT.
- 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 concurrence, 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

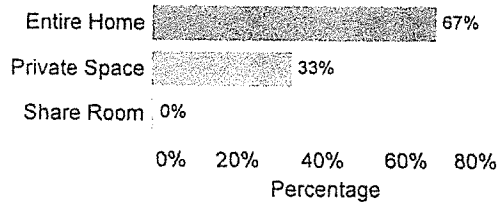
3,000

LISTINGS

ACTIVE LISTINGS

91.00

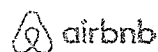
CURRENTLY ACTIVE LISTINGS BY TYPE



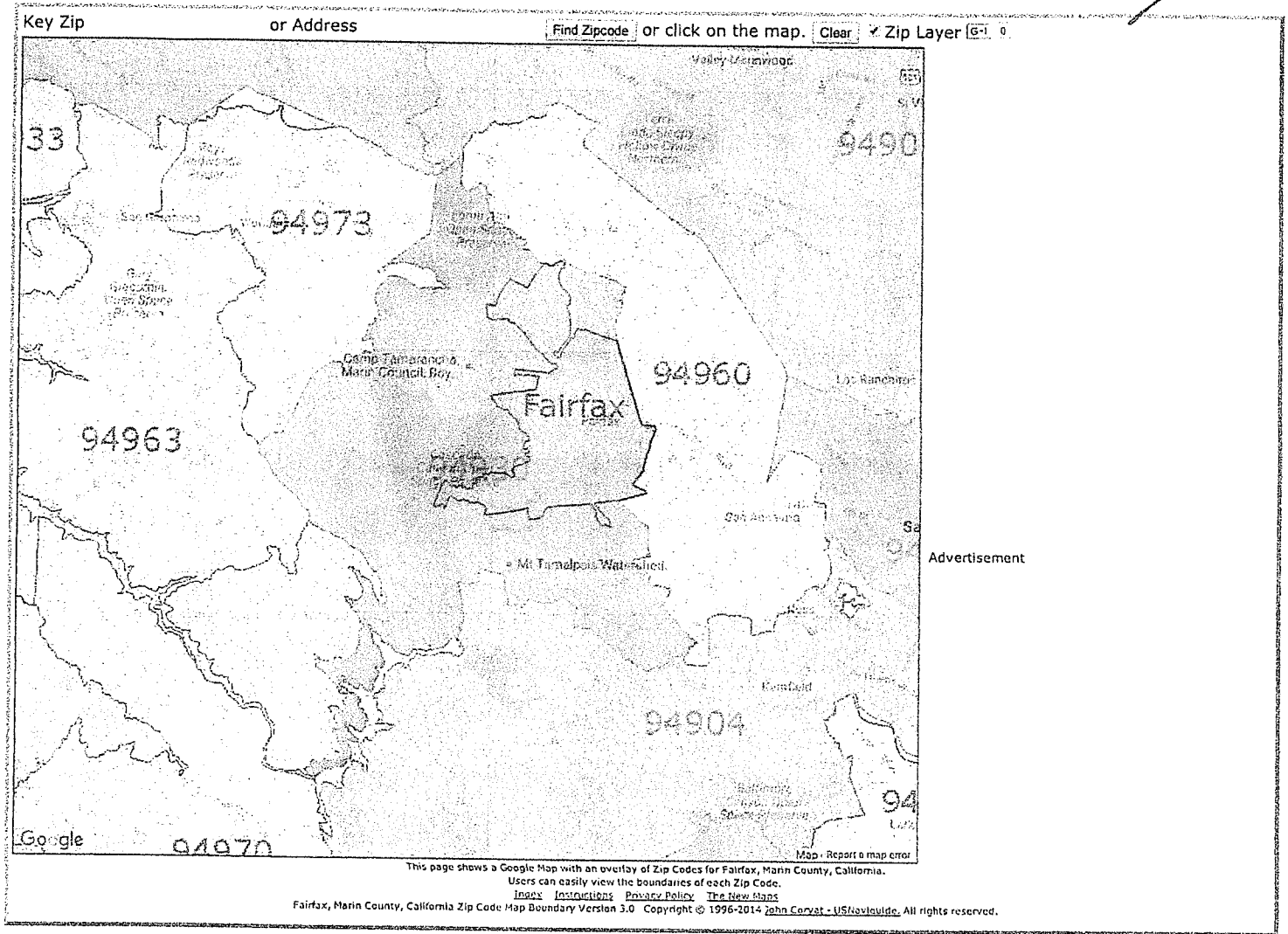
NIGHTS HOSTED PER YEAR FOR A TYPICAL LISTING

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



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**

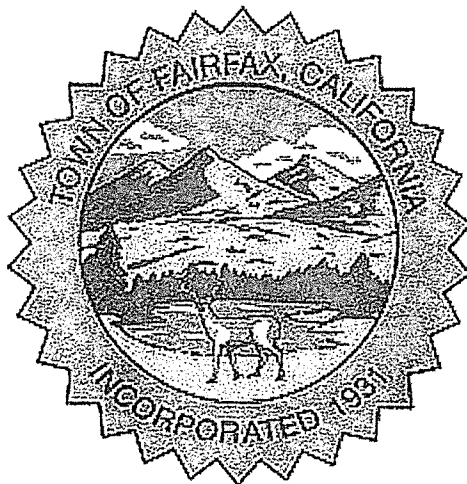
TOWN	REGULATION	NO REGULATION
Corte Madera	Prohibits short-term rentals	
Larkspur	Prohibits short-term rentals	Town position: no short-term rental permitted by code
Mill Valley	Requires business license (fee), and collection of TOT. Leaning away from prohibition and towards more regulation and enforcement	
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.

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 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