



TOWN OF FAIRFAX

STAFF REPORT

July 6, 2022

TO: Mayor and Town Council

FROM: Janet Coleson, Town Attorney

SUBJECT: Adopt Ordinance 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; and Adopt an Ordinance of Town Council of the Town of Fairfax Adding New Chapter 5.57 Entitled "Short-Term Rental Program."

RECOMMENDATION

1) Waive second reading, read by title only and 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 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; and 2) Waive second reading, read by title only and adopt an Ordinance of Town Council of the Town of Fairfax Adding New Chapter 5.57 Entitled "Short-Term Rental Program."

BACKGROUND

The Council introduced the attached ordinances at the June 1, 2022 meeting, with two amendments to the ordinance amending Title 17. Tonight is the second reading and adoption. If adopted, the ordinances would take effect in 30 days.

The Resolution adopting policies and procedures for the administration of the Short-Term Rental Program was approved at the Town Council meeting on June 1, 2022.

The establishment of a Short-Term Rental ("STR") Program is one of the Council's adopted goals for Fiscal Year 2021-22. At the January 19, 2022 Town Council meeting, the Council discussed a STR program and directed staff to prepare the necessary ordinances and regulations in resolution form and return to a future Council meeting for consideration.

DISCUSSION

Since the Council's last discussion in 2017, STRs or 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 Hotel Users Tax (HUT) found in Chapter 3.32 of the Town Code. The Town's HUT 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.

Currently, the Town Code does not allow STRs as a principal use, but STRs may be allowed with a conditional use permit (CUP) in residential zones. Although the Town has not issued any CUPs for STRs, nonetheless, STRs are known to exist in Fairfax and the January presentation by Host Compliance included confirmation that roughly 75 STRs exist in Town. The attached Ordinance amends the Town Code to permit STRs in single family residential zones and was heard by the Planning Commission on March 24, 2022. Multifamily zones are not included at this time, but may be addressed in future amendments to the Town Code. The Commission found that while they are not opposed to STRs, they could not recommend the proposed Ordinance be adopted without modifications that potentially implicate Council policy decisions. To the extent the modifications relate to policy decisions, it is important to note that the Council has retained the authority over those decisions.

The second attached Ordinance adds Chapter 5.57 to the Town Code and establishes the STR Program. The Program references the definitions of STR found in the Ordinance to be placed in Chapter 17 of the Code, and equates STR to a "tourist home" in the definition of hotel found in Chapter 3.32, Hotel Users Tax (HUT).

On June 1, 2022, the Council adopted Resolution 22-44, which provides for the policies and procedures necessary to implement and administer the STR Program. These regulations include registration of STR units, eligible properties, occupancy limits, and requirements for hosting platforms and enforcement procedures.

FISCAL IMPACT

At the January 19, 2022 Council meeting, Host Compliance made a presentation to the Town Council regarding their services, which would be at an annual cost to the Town of approximately \$14,000 (this amount includes a \$5,000 discount to the Town by Host Compliance). 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 HUT based on a "low-end" occupancy rate of 30 days per unit per year.

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

In addition to collecting the HUT, the Town would also collect business license and registration fees. These amounts would offset the costs of administering the Program. A

resolution adopting the fee schedule for the program will be brought to the Council before the ordinances take effect.

ATTACHMENTS

- A. Ordinance Related to Zoning Code changes
- B. Ordinance to Establish Program in Chapter 5.57

ORDINANCE NO. ____

**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 assuring that their existence is regulated in a safe and effective manner; 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, (limited to ADUs/JADUs created 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 Categorically 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 1st day of June, 2022, and thereafter adopted at a regular meeting of the Town Council, held in said Town on the 6th day of July 2022 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADDING
NEW CHAPTER 5.57 ENTITLED “SHORT-TERM RENTAL PROGRAM”**

The Town Council of the Town of Fairfax hereby finds that:

WHEREAS, the Town Council finds that the growth of short-term rentals may lead to neighborhood conflicts unless appropriate rules are established and understood by property owners, community members, and decision makers; and

WHEREAS, the Town Council desires to regulate the renting of residential dwelling units for periods of 30 consecutive days or less; establish a procedure for reviewing and approving short-term rental permit applications; and establish location, parking, occupancy, and other standards for short-term rentals to limit the potential impact on neighbors; and

WHEREAS, numerous short-term rentals have already been operating in the Town of Fairfax without payment of Hotel Users taxes to the Town and without appropriate regulations in place; and

WHEREAS, the Town Council has determined that it is necessary to regulate the short-term rentals 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 desires to provide a short-term rental program that will allow residents to mitigate housing costs by supplementing their income from their primary residences, while minimizing adverse impacts on the housing supply and on persons and households of all income levels that could result from the loss of residential units through their conversion to tourist home use; and

WHEREAS, on June 1, 2022, the Town Council held a duly noticed public hearing to introduce and consider the proposed amendments and public comments thereon.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES
ORDAIN AS FOLLOWS:**

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Title 5 (Business Taxes, Licenses and Regulations) of the Fairfax Town Code is hereby amended by adding new Chapter 5.57 entitled “Short-Term Rental Program” to read in its entirety as follows:

CHAPTER 5.57: SHORT-TERM RENTAL PROGRAM

Section	5.57.010	Purpose and intent
	5.57.020	Violations a public nuisance; penalties, nuisance abatement, and other remedies

§ 5.57.010 PURPOSE AND INTENT.

Notwithstanding any other provision of this title, all short-term rentals as defined in Section 17.008.020 of this code, and also known as “tourist home” as included in the definition of “hotel” in Section 3.32.010 of this code, as may be amended or superseded, are subject to the policies and procedures specified in the Town Council's "policies and procedures for the administration of the 'short term rental program' as set forth in Fairfax Town Code Chapter 5.57" ("Program"), as adopted and amended from time to time by Town Council resolution, and all short-term rentals shall comply with such policies and procedures.

§ 5.57.020 VIOLATIONS A PUBLIC NUISANCE; PENALTIES, NUISANCE ABATEMENT, AND OTHER REMEDIES.

Any short-term rental operated, conducted, or maintained contrary to the provisions of this chapter and/or the Program shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the Town Attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law. Such remedies shall be in addition to any other judicial and administrative penalties and remedies available to the Town under Chapters 1.08, 1.10, or 1.12 of this code, or under state law.

Section 3. Compliance with California Environmental Quality Act. This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA) and the State CEQA Guidelines and it has been determined that approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions without any physical project being approved, it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment. The Town Council concurs in these findings and adopts them as its own.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The Town Council hereby declares that it would have

passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

Section 5. Effective Date and Posting. This Ordinance shall be effective thirty (30) days after the date of its passage and adoption. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 1st day of June 2022, and duly adopted at the next regular meeting of the Town Council on the 6th day of July 2022, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Stephanie Hellman, Mayor

ATTEST:

Michele Gardner, Town Clerk