



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive Report and Provide Direction on Residential Short-Term Rental Regulation Options
Category:	Community Development
Meeting Date:	2/26/2019
Staff Contact:	Daniel Degu, 408-586-3054
Recommendation:	Discuss and provide direction regarding potential regulation for residential short-term rentals.

BACKGROUND:

Short-term rentals (STRs) allow partial to entire-home rental to lodgers seeking short-term accommodations, often through online rental marketplaces, for a period of 30 or fewer days. Several online marketplaces like Airbnb (Air-bed and breakfast), HomeAway, and VRBO (Vacation Rentals by Owner), have enjoyed a rapid rise to relevancy as a global branded peer-to-peer home-sharing industry. STR use is growing, causing local municipalities to address transitory lodging in residential neighborhoods more than ever before. Many Bay Area local municipalities in Santa Clara County (as outlined below), have faced, and are beginning to address the regulation of short-term rentals.

STRs bring numerous benefits to those who operate them, and their guests. At the same time, the intensive use of STRs in residential zoning districts has the potential to change the character of a residential neighborhood if left unregulated. The Milpitas Municipal Code currently defines STRs as hotels generally and does not allow them in any residential zoning district.

ANALYSIS:

The City Council has the authority to regulate or prohibit STRs within City limits. STRs typically provide guests with social benefits and a local experience differing from a traditional hotel or motel. STRs can also provide ancillary income to residential property owners, help expand the City's tourism and transient occupancy opportunities during peak hotel or motel occupancy times, such as major sporting events, and help stimulate commercial activity throughout the city.

As highlighted in the Background section above, the City's municipal code currently defines STRs as hotels. Broadly defined in terms of individual sleeping or living units for paying temporary guests, this definition for hotels covers inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, dormitory, public or private club, and mobilehomes. Furthermore, STRs are currently prohibited from operating in all five of the City's residential zoning districts, but may operate, via conditional use or by-right, in all three mixed-use zoning districts, and are conditionally allowed in three out of the five commercial zoning districts and in all three industrial zoning districts.

The City's current code also requires STRs to obtain a business license and regulates STRs by requiring the operators to collect and remit transient occupancy tax (TOT). To proactively enforce the current code requirements for STRs or to move forward with a new regulatory program could require additional staff effort, primarily because STR services do not provide basic information like an operator's full name, exact address, or occupancy rates for their listings.

Regulations for STRs can be tailored to fit the unique needs of the community. Thus far, there is no standard practice amongst municipalities, although the variables are relatively consistent. Municipalities in Santa Clara County have followed suit by taking different stances on the regulation of STRs. The cities of Cupertino, Los Altos Hills, Los Gatos, Mountain View, San Jose, and Sunnyvale are either actively regulating STRs or considering the regulation of STRs, while the cities of Campbell, Gilroy, Monte Sereno, Morgan Hill, Palo Alto, Santa Clara, and Saratoga have no regulation in place for STRs or prohibit the use of STRs entirely. **Exhibit A** (attached) provides a comprehensive overview of how municipalities in Santa Clara County have responded to STRs. Staff has identified the following 8 regulations that have been consistently addressed by those local municipalities that regulate STRs.

These and others may be considered by the City Council for implementation:

1) Impose TOT registration and compliance on STRs.

Staff Comment: Already a code requirement, but not actively enforcing for STRs. The City could contract with a third-party vendor to monitor STR listings, operate a hotline for residential complaints, and provide initial compliance communications with STR operators.

2) Require an STR business license and annual license fee.

Staff Comment: Already a code requirement. Calculated to cover all the City's costs of administering an STR program.

3) Require an STR special-use permit.

Staff Comment: Would require a zoning amendment. Permit would provide the City with basic information like an operator's full name, exact address, or occupancy rates for their listings needed to identify and cite violators.

4) Require a local contact person.

Staff Comment: The local contact person shall be available during the term of any stay for the purpose of responding to complaints or emergencies.

5) Limit the number of days allowed per year.

Staff Comment: Municipalities in Santa Clara County have taken varied stances (e.g., unlimited, 60, 90, or 180 days per year). Un-hosted rental days per year are typically significantly less than the number allowed for hosted rentals.

6) Limit the number of guests at one time.

Staff Comment: The number of guests could be calculated based on two adults per room plus one additional person per STR unit.

7) Limit the number of STRs.

Staff Comment: Some cities only allow one unit per parcel to be used as an STR. For example, if a home has an accessory dwelling unit (ADU), only the primary dwelling or the ADU could be allowed for STR but not both.

8) Address on-site and off-site parking requirements.

Staff Comment: Some municipalities require that parking related to STR use be contained on-site or limit the number of vehicles.

STRs have grown over 800 percent since 2011, according to Host Compliance, and totaled an unprecedented eight million rental listings worldwide in 2017. According to Host Compliance, there were approximately 341 STRs available within our City limits as of November 2018. Of the 341 STRs available within Milpitas, roughly 235 STRs (69 percent) are single-family, 85 STRs (25 percent) are multi family, and 21 STRs (6 percent) are unknown property types. Furthermore, of the 341 STRs available about 197 STRs (58 percent) are considered a partial home rental while 126 STRs (37 percent) are listed as an entire home.

Moreover, of the 341 STRs available within Milpitas, roughly 220 STRs (64.5 percent) are listed with Airbnb as of July 2018, according to Airbnb officials. With the majority of STR operators in Milpitas utilizing Airbnb, City staff engaged Airbnb regarding entering into a voluntary tax collection agreement with the City that would result in Airbnb collecting TOT on behalf of its users and remitting the revenue directly to the City. Over 45 California municipalities have executed a tax collection agreement with Airbnb, including the cities of Cupertino, Morgan Hill, Palo Alto, San Jose, Santa Clara, and Sunnyvale.

With City Council direction, staff will begin exploring a voluntary tax collection agreement with Airbnb for the collection and remittance of the City's TOT. Staff estimates that the City could generate an additional \$237,000 in TOT revenue annually by executing a voluntary tax collection agreement with Airbnb. This estimate is based on activity from July 2018 showing 220 active rentals in Milpitas and annual host earnings totaling \$7,700. The funds from the tax would be deposited into the City's TOT account in the General Fund.

City staff has conducted community engagement through social media such as Nextdoor, Facebook, and the city website. Two community meetings on STRs, in conjunction with ADUs, were held on December 13, 2018 and January 17, 2019. Attendees received an oral presentation from Economic Development and Planning staff and answered questions. Community members at these meetings were in support of STRs with comments including that supplemental income from STRs are good for both the residential property owner and City, and questions were asked about business license requirements and safety requirements such as smoke detectors and fire extinguishers. A community survey on STRs was launched on December 28, 2018, and was disseminated through the City's website, social media, flyers and the City's local access government channel. **Exhibit B** (attached) provides a summary of the survey results.

The City Council may choose between one of several options.

1. The City may allow STRs, but limit their use. STRs are currently a prohibited use in every residential zone, but the City may amend the zoning code to make STRs an allowed or conditionally allowed use, in which case the City's current business-license and transient-occupancy tax regulations would continue to apply. Every STR operator would have to obtain a business license and collect and remit TOT unless the City were to amend its code to remove those requirements. Also, if the City were to make STRs an allowed use, it may choose to impose new transitory-lodging-specific licensing and permitting requirements, good-neighbor rules, and use restrictions and provide additional enforcement tools. Amending the zoning code requires recommendation by the Planning Commission and approval by the City Council. Staff anticipates that the Planning Commission will forward its recommendation to the City Council in April 2019 and the City Council will consider ordinance adoption in May 2019.
 - a. If City Council chooses option 1, consider directing the City Manager to explore a Voluntary Collection Agreement with Airbnb for collection of the City's transient-occupancy tax on behalf of Airbnb hosts who rent their residences to others using the Airbnb lodging platform.
2. Alternatively, the City may prohibit all transitory lodgings.
3. The last option is to exempt STRs from all local regulation except the City's existing business license and TOT requirements.

POLICY ALTERNATIVES:

This item is presented for City Council information, discussion, and direction to staff regarding potential regulation for short-term rentals. No policy action is recommended at this time.

FISCAL IMPACT:

No funding is requested at this time. City staff could propose additional allocation of resources based on City Council preference for a specific short-term rental regulatory program. To the extent that the City is successful in achieving a Voluntary Collection Agreement with Airbnb for the collection of the City's Transient Occupancy Tax on short-term rentals, subject to City Council approval, general fund revenues could increase by approximately \$237,000 per year.

California Environmental Quality Act:

The proposed action — to hold a study session and direct staff to recommend new STR regulations if desired — does not itself constitute a "project" under CEQA because it would not itself affect the environment in any way. Therefore CEQA does not apply. Even if the proposed project were a project under CEQA, the proposed action would be statutorily exempt under 14 Cal. Code Regs. §15262 (exempting feasibility and planning studies). Any amendments that staff might recommend as a result of a study would be subject to a separate CEQA analysis when the amendments go before the appropriate legislative bodies (Commission and Council).

Attachments:

1. Short-Term Rental Comparison Chart
2. Short-Term Rental Survey Results

Councilmember Montano noted the newly adopted Transient Occupancy Tax (TOT) rate at 14%, with competition for hotels and more automobiles in the neighborhoods. Economic benefits were to be gained, considering short term rentals as potentially helpful but with some drawbacks.

Vice Mayor Dominguez asked who controlled the possible 60 days versus 30 days stay at a unit, and how would it be known to collect TOT or not. She mentioned converted garages being rented out as Air B'n'B units with no permit, and wanted to know about parking constraints at these short term rentals, too.

Councilmember Montano asked if regulations were passed, would money be put into a special fund and the City Manager replied: into the General Fund. Ms. Montano suggested that money could be put into a special fund to be used for affordable housing.

Councilmember Phan asked if there could be a Housing Impact Fee for hotels and rooms rented, so as not to dilute available housing. That could be explored, such as in Redwood City.

Councilmember Nuñez asked what direction staff sought. Mr. Degu displayed a slide with three policy options for Council's consideration regarding regulation: to amend the zoning code to allow short term rentals (direct City Manager to explore voluntary collection agreement with Air B'n'B), to amend zoning code to prohibit all transitory lodgings, or to exempt short term rentals from all local regulation except business license and hotel tax. Mr. Nuñez supported Option 1 as did the Mayor.

Motion: to direct staff to return to City Council with recommendation to adopt an ordinance that would permit short term residential rentals under local regulations

Motion/Second: Councilmember Montano/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

At this time, Deputy City Attorney Heather Lee asked the Mayor and Councilmembers for disclosure on any conflicts of interest or campaign contributions from any entity on the agenda and none were reported.

4. FY 2018-19 Mid Year Budget review & Resolution

Assistant City Manager Ashwini Kantak presented Recommended Ongoing funding requests at the MidYear for the Fiscal Year 2018-19's budget. She displayed staffing requests in four City departments: Human Resources, Fire, Police, and Recreation. Ms. Kantak listed the mid-year phase II summary of approximately \$1,000,000 in spending requests. Action on requested classification changes were sought at this meeting by Council Resolution.

Staff discussed FY 2018-19 General Fund Reserves which were healthy, along with a revised 5-year projection (which would come back to City Council soon). Urgent needs were requested for funding at this meeting, with non-urgent requests to be included in the future FY 2019-20 budget proposal.

Budget Manager Feliser Lee reviewed key upcoming dates for budget planning and development of the FY 2019-20 budget, with four recommendations.

Mayor Tran commented and was especially supportive of needs in Human Resources with regard to recruiting employees.

Regarding a request for Community Services Officers (CSO) in the Police Department, Councilmember Phan asked if it was a pilot program, and Police Chief Corpuz said no. It was a request of staff to support officers and the community, as the need was growing around the new BART station. The Chief explained further use of the CSOs, if approved and hired.