



# MILPITAS PLANNING COMMISSION STAFF REPORT

June 26, 2019

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**APPLICATION:** **Zoning Text Amendment – Short-Term Rentals – Citywide (P-ZA19-0002):** A City-initiated Zoning Ordinance Text Amendment to regulate short-term rentals of residences within the City of Milpitas.

**RECOMMENDATION:** **Staff recommends that the Planning Commission: Adopt Resolution No. 19-020 approving Zoning Text Amendment (P-ZA19-0002)**

**LOCATION:**  
Address/APN: Citywide  
Area of City: Citywide

**PEOPLE:**  
Project Applicant: City of Milpitas  
Property Owner:  
Project Planner: Daniel Degu, Economic Development Coordinator

**LAND USE:**  
General Plan Designation: Citywide  
Zoning District:  
Overlay District:

**ENVIRONMENTAL:** The City-initiated Zoning Ordinance Text Amendment to regulate short-term rentals within the City of Milpitas is statutorily exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15183 (Project Consistent with a Community Plan, General Plan, or Zoning) and categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption), 15301 (Existing Facilities), and 15308 (Actions by Regulatory Agencies for Protection of the Environment)

## **Zoning Text Amendment – Short-Term Rentals**

### **EXECUTIVE SUMMARY**

On February 26, 2019, the City Council received a report from City staff on options for short-term rental (STR) regulations. Following staff's presentation, the City Council discussed regulations that allowed STRs under provisions that met the City's goals to maximize housing stock, preserve residential character, and ensure safety of residents. The City Council directed staff to return to the City Council with a recommendation to adopt an ordinance that would permit STRs under local regulations.

This proposed zoning ordinance requires an amendment to Section 2 "Definitions," Section 4 "Residential Zones and Standards," Section 6 "Mixed Use Zones and Standards, Section 13 "Special Uses", and Section 53 "Off-Street Parking Regulations" of the Zoning Code (Article XI of the Municipal Code). The proposed ordinance is consistent with the City's General Plan and all other applicable state and local laws.

City staff recommends that the Planning Commission recommend that the City Council adopt Zoning Text Amendment Resolution No. 19-020 and P-ZA19-0002, set forth as Exhibit A and B to the staff report to allow and regulate an STR pilot program based on the findings in this staff report and the attached resolution.

### **BACKGROUND**

STRs allow partial to entire-home rental to lodgers seeking short-term accommodations, often through online rental marketplaces, for a consecutive period of 30 or fewer days. The STR industry, including Airbnb (Air-bed and breakfast), HomeAway, and VRBO (Vacation Rentals by Owner), has grown over eight hundred percent (800%) since 2011, according to Host Compliance, a leading provider of short-term rental compliance monitoring and enforcement solutions for local governments, and totaled an unprecedented eight million rental listings worldwide in 2017.

According to Host Compliance, approximately 341 STRs were available within Milpitas as of November 2018. Of the 341 STRs available, roughly 235 STRs were single-family homes, 85 STRs were multi-family homes, and 21 STRs were unknown property types. Furthermore, 197 STRs of the 341 STRs available were partial home rentals while 126 STRs were entire-home rentals.

The Milpitas Municipal Code currently defines STRs as hotels generally and does not allow them in any residential zoning district according to an interpretation by the City Attorney's Office. The City Council has the authority to regulate or prohibit STRs within City limits, and consistent with the City Council's Economic Development and Job Growth priority, staff explored issues related to STR policies and options through community engagement and subsequent City Council direction.

### **Council Direction**

On February 26, 2019, City Council directed staff to return to the City Council with a recommendation to adopt an ordinance that would permit STRs under local regulations. Additional City Council feedback to staff included:

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1. “... amend the zoning code to make STRs an allowed or conditionally allowed use,” and “... choose to impose new transitory-lodging-specific licensing and permitting requirements, good-neighbor rules, and use restrictions and provide additional enforcement tools.”
2. “... 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.”

A Voluntary Collection Agreement with Airbnb simplifies the remittance process for hosts using the Airbnb hosting platform and enables compliance with the City’s current transient occupancy tax regulations.

On April 30, 2019, City Council approved and authorized the City Manager to execute a Voluntary Collection Agreement with Airbnb for the collection of the city’s transient occupancy tax (TOT) on residential STRs, with authority granted to the City Attorney to negotiate terms with Airbnb. City staff estimates that the annual transient occupancy tax collected and remitted through Airbnb would be approximately \$260,000. The City and Airbnb are currently negotiating the terms of the Voluntary Collection Agreement.

### **ANALYSIS**

#### **Current Regulations**

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.

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 for lodging provided for 30 or fewer days according to an interpretation by the City Attorney’s Office. Only one STR operator complies with the City’s existing business license and tax regulations to date.

#### **Current Regulations Throughout Santa Clara County**

To date, there is no standard practice amongst municipalities in regulating STRs, although the variables are relatively consistent. Several municipalities in Santa Clara County have followed suit by adopting local policies regulating STRs.

The cities of Cupertino, Los Altos Hills, Los Gatos, Mountain View, San Jose, and Sunnyvale are either actively regulating STRs or considering regulations for STRs, while the cities of Campbell, Gilroy, Monte Sereno, Morgan Hill, Palo Alto, Santa Clara, and Saratoga either lack regulations for STRs or prohibit the use entirely. Exhibit C (attached) provides a comprehensive overview of how municipalities in Santa Clara County have responded to STRs.

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Staff has identified the following eight (8) regulations that are consistently addressed by the Santa Clara County municipalities with STR regulations. Staff has also provided an analysis that compares the City’s proposed regulations to the eight (8) regulations commonly applied by Santa Clara County municipalities to STRs.

- 1) Impose TOT registration and compliance on STRs.

*Staff Comment: Already a code requirement for hotel uses generally, but not actively enforced for STRs. The City is exploring contracting 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 a business license or annual license fee.

*Staff Comment: Already a code requirement for hotel uses generally, but not actively enforced for STRs. Most business licenses are valid for one year, and must be renewed annually.*

- 3) Require a Short-Term Rental Special Use Permit.

*Staff Comment: This permit would enable the City to obtain basic information, including operator’s full name, exact address, and location of the STR unit.*

- 4) Require a local contact person.

*Staff Comment: The local contact person shall be available during the term of any stay to respond 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). Typically, un-hosted rental days per year are significantly less than the number of days allowed for hosted rentals.*

- 6) Limit the number of guests at one time.

*Staff Comment: Municipalities in Santa Clara County have taken varied stances. (e.g., a maximum occupancy limit of two (2) persons per bedroom plus one (1) additional person).*

- 7) Limit the number of STRs allowed at one address or parcel.

*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), the primary dwelling is only allowed to operate as an STR.*

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

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*Staff Comment: Some municipalities require STR parking off-street or limit the number of vehicles.*

### **Proposed Ordinance Amendments**

Staff recognizes that STR uses are widespread and potentially operate illegally throughout Milpitas. Thus, while the proposed STR pilot program would allow STRs to continue operating in residential and mixed-use zoning districts, the program would also establish operating standards to address parking, noise, and other potential negative impacts.

The proposed ordinance seeks to achieve the following purposes and goals:

1. Allow STRs in residential and mixed use zoning districts while preventing the loss of housing stock.
2. Preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance, and safety impacts on adjacent neighbors.
3. Provide a registration mechanism for the City to track and enforce these requirements as needed and ensure appropriate collection of transient occupancy taxes.

### **Goal 1: Allow STRs While Preventing Loss of Housing Stock**

Proposed Regulation(s)

- Permitted Zoning Districts. STRs are permitted in dwelling units in the R1, R2, R3, R4, R5, MXD, MXD2, and MXD3.
- Nonconforming Dwelling Units. STRs are prohibited within nonconforming dwelling units.
- Permitted in Primary Dwelling Units Only. STRs are not permitted within accessory structures and buildings, accessory dwelling units (ADUs), guest house accessory buildings, recreational vehicles, supportive housing, and senior housing units.
- Rentals per Dwelling Unit. A maximum of one (1) STR rental is permitted per dwelling unit at any given time.
- Rental Period Restrictions. When the Operator is present, the STR unit may be rented for an unlimited number of days during the calendar year. When the Operator is not present, the STR unit may be rented for a maximum of 180 days per calendar year.
- Maximum Occupancy. Occupancy of the STR is limited to a maximum of two (2) persons per bedroom plus one (1) additional person.

### **Goal 2: Preserve Residential Character**

Proposed Regulation(s)

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- Exterior Alterations. The exterior of the dwelling unit must not be altered such that the structure may be recognized as serving a nonresidential use.
- Local Contact Person. A local contact person must be available 24-hours per day, 7 days per week, to respond to complaints. The local contact person must be able to respond in-person to complaints within 60 minutes.
- Trash and Refuse. Trash and refuse must be stored outside of public view, except in proper containers for the purpose of collection by the City’s authorized waste hauler on scheduled trash collection days.
- Signage. All signs that advertise the availability of the STR unit are prohibited.
- Commercial and Assembly Uses Prohibited. Use of the STR for any other commercial uses or assembly uses such as weddings, corporate events, or parties, is prohibited.
- Parking Requirements. One (1) off-street parking space must be provided for the STR. Any parking space in excess of the required number of parking spaces for the primary dwelling unit pursuant to Section 53 “Off-Street Parking Regulations” may be used for the STR. The parking space must comply with all development standards set forth in Section 53 “Off-Street Parking Regulations.”

### Goal 3: Provide a Registration Mechanism

#### Proposed Regulation(s)

- Required Permits. Prior to the operation of an STR, the operator must obtain a Short-Term Rental Special Use Permit.
- Compliance Review. The Planning Director or his or her designee will review the Short-Term Rental Special Use Permit within one year after issuance for compliance. The Planning Director or his or her designee will conduct a similar compliance review of Short-Term Rental Special Use Permits on an annual basis concurrent with renewal of the Business License for each use.

### *General Plan Conformance*

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The General Plan is the long-range planning document, providing the vision for the future development of the City. The proposed Zoning Text Amendment is in conformance with the policies and standards in the City’s General Plan, as outlined in the Table 1:

**Table 1: General Plan Consistency**

Policy	Conformance
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<p><i>Land Use Element 2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints.</i></p>	<p><b>Consistent.</b> The Zoning Text Amendment provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals.</p>
<p><i>Housing Element Goal B-1: Maintain High Quality Residential Environments.</i></p>	<p><b>Consistent.</b> The Zoning Text Amendment preserves the residential character of neighborhoods and establishes operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors.</p>
<p><i>Housing Element Goal B-2: Preserve Housing Resources.</i></p>	<p><b>Consistent.</b> The Zoning Text Amendment maintains and preserves existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. The Amendment also provides temporary housing resources for visitors to Milpitas.</p>

**FINDINGS FOR APPROVAL**

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action.

**Zoning Amendment (Section XI-10-57.02(G)(3))**

- 1. The proposed amendment is consistent with the General Plan.*

The proposed Zoning Amendment is consistent with General Plan Policies (Land Use Element 2.a-I-5; Housing Element Goal B-1; and Housing Element Goal B-2). The Zoning Text Amendment regulates short-term rentals of residences while preventing the loss of housing stock; and provides a registration mechanism for the City to track and enforce regulations as needed to ensure appropriate collection of transient occupancy taxes.

- 2. The proposed amendment will not adversely affect the public health, safety and welfare.*

The proposed Zoning Amendment will not adversely affect the public health, safety, and welfare due to regulations set forth that preserve residential character and establish operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors.

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### **ENVIRONMENTAL REVIEW**

Under California Environmental Quality Act (“CEQA”) Guidelines Section 15061(b)(3), the introduction and adoption of this Ordinance is not subject to review under CEQA. CEQA Guidelines Section 15061(b)(3), also known as the “common sense exemption,” states that CEQA only applies to projects that have the potential for causing a significant effect on the environment, and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. A “significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project. This Ordinance would create new zoning requirements for a use that is not currently regulated in Milpitas (short-term rentals) for the purpose of protecting environmental quality, public health, and public safety. Therefore, it can be seen with certainty that there is no possibility that the ordinance in question would have a significant effect on the environment. Accordingly, the ordinance is exempt from CEQA review under Guidelines section 15061(b)(3).

Moreover, the introduction and adoption of this Ordinance is not subject to CEQA pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Section 15183 of the CEQA Guidelines provides that projects that are consistent with a Community Plan, General Plan or Zoning for which an EIR has been certified “shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” The proposed Amendment to permit and regulate short-term rentals is consistent with the Milpitas General Plan because it provides clear provisions for residents in Milpitas to have opportunities for ancillary income generation from short-term rentals and ensures the appropriate collection of transient occupancy taxes. These outcomes are consistent with Land Use Element 2.a-I-5 ([m]aintain policies that promote a strong economy and provide economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints). Second, the Amendment is consistent with Housing Element Goal B-1 (Maintain High Quality Residential Environments) and Housing Element Goal B-2 (Preserve Housing Resources) because the Amendment aims to preserve the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance and safety impacts on adjacent neighbors. Further, the Amendment limits short-term rentals to single-family, two-family, and multi-family uses, thereby maintaining and preserving existing housing resources, including both senior housing units and below market units, while providing opportunities for additional income to property owners. Therefore, the proposed Amendment is consistent with the General Plan and is exempt from CEQA pursuant to Section 15183 of the CEQA Guidelines. There are no circumstances peculiar to the project or significant new or more severe impacts that were not analyzed in the General Plan CEQA analysis that require further environmental review.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15301 (Existing Facilities). Section 15301 of the State CEQA Guidelines provides an exemption for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” Short-term rentals are uses that allow sleeping, lodging, or living within a dwelling unit, or a portion thereof. Except for duration, short-



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term rental uses are similar to a residential use. Since the proposed ordinance permits and regulates a use that is similar in operation to the already-allowed long-term residential uses, the proposed ordinance is categorically exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines.

The introduction and adoption of this Ordinance is also exempt under CEQA Guideline 15308 (Actions by Regulatory Agencies for Protection of the Environment). The Ordinance does not authorize any new construction, nor does it relax any standard resulting in environmental degradation, but rather imposes standards on short-term rentals to assure the maintenance, enhancement, and protection of the environment in the City.

Finally, none of the exceptions under CEQA Guidelines Section 15300.2 apply to the exemptions because the proposed ordinance will not result in a cumulative impact from successive projects of the same type in the same place, over time; the proposed ordinance is not an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; the ordinance will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources; the proposed ordinance will not apply to sites located on a hazardous resources; and the proposed ordinance will not cause a substantial change in the significance of a historical resource.

Accordingly, this Ordinance is exempt from CEQA review pursuant to Sections 15061(b)(3), 15183, 15301, and 15308 of the CEQA Guidelines, each as a separate and independent basis.

### **PUBLIC COMMENT/OUTREACH**

On December 13, 2018, and January 17, 2019, two community meetings on STRs were held. City staff provided an oral presentation and answered questions from attendees. Some of the general comments received from community members included:

- Support for allowing STRs, noting that it provides opportunities for supplemental income, revenue and promotes tourism; and
- Questions about existing business license requirements and potential safety requirements such as smoke detectors and fire extinguishers.

On December 28, 2018, the City launched a community survey on STRs through various media platforms, including the City's website, Nextdoor and Facebook, flyers and the City's local access government channel. Exhibit D (attached) provides a summary of the survey results.

On January 14, 2019, staff engaged the Economic Development & Trade Commission to provide background information on STRs. Staff reviewed current and proposed regulations pertaining to STRs in Santa Clara County, including the City of Milpitas, and potential regulations that the City Council could consider for adoption.

On April 8, 2019, and June 10, 2019, staff re-engaged the Economic Development & Trade Commission to present recommended STR regulations and to solicit feedback from Commission members. Several Commissioners provided insightful feedback and supplemental regulations

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such as city oversight, use restrictions, and good-neighbor rules, and are integrated into the proposed Short-Term Rental Ordinance for Planning Commission consideration.

Staff provided public notice of the application in accordance with local and state public noticing requirements. At the time of writing this report, there was one inquiry from the public. On June 14, 2019, the City published a public notice in the Milpitas Post. The City provided the same public notice on the City's Website, [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) and posted it at City Hall.

### **RECOMMENDATION**

STAFF RECOMMENDS THAT the Planning Commission:

1. Open and Close Public Hearing;
2. Consider the exemption in accordance with CEQA; and
3. Adopt Resolution 19-020 recommending that the City Council adopt Zoning Text Amendment P-ZA19-0002, set forth as Exhibit B of this staff report.

### **ATTACHMENTS**

- A. Resolution No.19-020
- B. Ordinance No. xx.xxx
- C. Short-Term Rental Comparison Matrix
- D. Short-Term Rental Survey Results