



## CITY OF MILPITAS AGENDA REPORT (AR)

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| <b>Item Title:</b>      | Conduct a Public Hearing and Introduce Ordinance No. 38.835 Amending Milpitas Municipal Code Title XI, Chapter 10, Sections 2, 4, 6, 13, and 53 to establish regulations for Short-Term Rentals (Staff Contact: Daniel Degu, Sr. 408-586-3054)   |
| <b>Category:</b>        | Public Hearings-Community Development  |
| <b>Meeting Date:</b>    | 2/18/2020  |
| <b>Staff Contact:</b>   | Daniel Degu, Sr. 408-586-3054  |
| <b>Recommendations:</b> | <ol style="list-style-type: none"> <li>1) Conduct a public hearing and move to close the hearing following comments.</li> <li>2) Consider the Exemption in accordance with 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) and 15308 (Actions by Regulatory Agencies for Protection of the Environment).</li> <li>3) City Attorney shall read aloud title of Ordinance No. 38.835.</li> <li>4) Move to waive the first reading beyond the title and introduce Ordinance No. 38.835 Amending Milpitas Municipal Code Title XI, Chapter 10 for a zoning amendment in 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.”</li> </ol> |

### **BACKGROUND:**

Short-term rentals (STRs) allow partial to entire-home rentals 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. 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:

- 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."

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 TOT on residential STRs, with authority granted to the City Attorney to negotiate terms with Airbnb. 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 (TOT) regulations. Airbnb estimated that there were approximately 210 hosts in Milpitas utilizing their online rental marketplace platform as of January 2019. The annual average earning for a host was \$8,800 with an average length of stay of 4.8 nights. Based on the number of hosts and annual host earnings, the FY 2019-20 Adopted Budget as approved by Council includes an estimate of \$260,000 in annual TOT receipts from the Airbnb agreement.

On January 24, 2020, after several months of engagement, the City concluded negotiations with Airbnb toward execution of a Voluntary Collection Agreement. City staff concluded negotiation of an acceptable Voluntary Collection Agreement with Airbnb and has initiated the contract execution process at the time that this staff report was prepared. TOT collection by Airbnb is expected to begin on March 1, 2020. Due to the timing of finalizing the agreement, the estimated annual TOT revenue amount of \$260,000 will not be received. Therefore, as part of the FY 2019-20 Second Quarter Financial Status and Mid-Year Budget Amendments staff report scheduled for February 18, 2020, staff recommends adjusting the TOT revenue estimate downward.

### **Public Comment/Outreach**

Four community meetings on STRs were held on December 13, 2018, January 17, 2019, August 7, 2019, and August 15, 2019. 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;
- Questions about existing business license requirements and potential safety requirements such as smoke detectors and fire extinguishers;
- Concern regarding the rental restriction period for un-hosted stays and how a limit of 180 or 60 days per calendar year will reduce income generation for the operator; and
- Allowing Accessory Dwelling Units (ADUs) to be used as STRs.

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 E (attached) provides a summary of the survey results, summarized as follows:

- 86.7% of survey respondents believe STRs give an alternative to standard hotel and motels;
- 73.3% of survey respondents believe STRs provide additional income;
- 64.9% of survey respondents are generally supportive of STRs; and
- Survey respondents believe the top 3 potential issues surrounding STRs are parking, safety, and noise.

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 such as implementation of an STR pilot program and recommended supplemental regulations related to City oversight, use restrictions, and good-neighbor rules, all of which are integrated into Ordinance No. 38.835 for City Council consideration.

On June 26, 2019, the Planning Commission held a lawfully-noticed public hearing to solicit public comment and consider the proposed Short-Term Rental Ordinance, take public testimony, and make a recommendation to the City Council on the proposed Ordinance. The Planning Commission considered and adopted Resolution No. 19-020 recommending that the City Council adopt a Zoning Ordinance Amendment to regulate short-term rentals of residences within the boundaries of the city, plus, made the following four recommendations:

- To conduct additional public outreach between June 26, 2019 and August 20, 2019;
- To facilitate conversations between Airbnb (and other platforms) and neighbors who are reporting negative impacts from short-term guests of whom are being inconsiderate and causing problems for Milpitas residents;
- To change the maximum un-hosted amount of days from 180 days to 60 days; and
- To review the short-term rental pilot program after the first year of implementation.

Following the public hearing on June 26, 2019, City staff continued to monitor and track short-term rental activities in response to the Planning Commission's input and concerns. City staff from several departments, in conjunction with the Planning Department and City Attorney's Office, met regularly to develop a revised regulatory program that enhanced the overall public health, safety, and general welfare of the citizens of Milpitas.

On January 29, 2020, the Planning Commission held a second lawfully-noticed public hearing to solicit public comment and consider a revised proposed Short-Term Rental Ordinance, take public testimony, and make a recommendation to the City Council on the proposed Ordinance. The Planning Commission considered and adopted Resolution No. 20-002 recommending that the City Council adopt a revised Zoning Ordinance Amendment to regulate short-term rentals of residences within the boundaries of the city.

## **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 mobile homes.

The City's current code also requires businesses to obtain a business license and regulates STRs by requiring the operators to collect and remit TOT for lodging provided for 30 or fewer days.

### **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 D (attached) provides a comprehensive overview of how municipalities in Santa Clara County have responded to STRs.

Staff has identified the following eight (8) regulations that are consistently addressed by 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 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. It would also specify the City's regulations for operating a STR business.*

- 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.

*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 continue to operate without a permit throughout Milpitas. While the proposed STR ordinance 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.

Ordinance No. 38.835 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; and
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.
- **Hosted Rentals Only.** An Operator may only conduct a Hosted Rental. A “Hosted Rental” means a Short-Term Rental Unit where an owner or operator is occupying the dwelling unit during the short-term rental period.
- **Nonconforming Dwelling Units.** STRs are prohibited within all 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 STR rental is permitted per dwelling unit at any given time.

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

#### **Proposed Regulation(s)**

- **Maximum Occupancy.** The daytime and overnight occupancy of the STR is limited to a maximum of two persons per bedroom plus one additional person. The operator shall not allow the STR to be used for any gathering where the number of persons will exceed the permitted maximum occupancy limits.
- **Exterior Alterations.** The exterior of the dwelling unit must not be altered such that the structure may be recognized as serving a nonresidential use.
- **Alternative Contact Person.** The alternative contact person must be available 24-hours per day, 7 days per week, to respond to complaints. The alternative 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.** 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 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 Permit. Currently, the FY 2019-20 Adopted Master Fee Schedule does not include a short-term rental permit fee. Therefore, staff intends to use the staff research fee of \$232/hour listed in the fee schedule, with a minimum fee of \$116 for the issuance of the one-time permit. A business license must also be obtained by STR operators.
- Compliance Review. The Planning Director or designee will review the Short-Term Rental Permit within one year after issuance for compliance. The Planning Director or designee will conduct a similar compliance review of Short-Term Rental Permits on an annual basis, or as needed, concurrent with renewal of the Business License for each use.
- Liability Insurance. Liability insurance is required of the Operator, or Hosting Platform on behalf of the Operator, in the amount of no less than \$500,000. Proof of liability insurance is not required if hosting activity is only handled by a hosting platform that already extends similar liability coverage.
- Good Neighbor Manual Required. The Operator must sign a manual provided by the City that summarizes general rules of conduct and all rules and regulations applicable to the use of the STR. The Operator must post the manual on the inside of the front door and door to the backyard or at conspicuous location near each door.

### **POLICY ALTERNATIVES:**

Alternative 1: Do not approve Ordinance No. 38.835.

Pros: Not approving Ordinance No. 38.835 would allow staff to continue researching best practices in policy development and program implementation.

Cons: The use already exists and the current prohibition on STRs would require additional enforcement. Established residential neighborhoods may become more transient if the current prohibition is left unenforced.

Reason not recommended: Existing provisions in the Zoning Code do not facilitate the implementation of Council direction for preserving the residential character of neighborhoods by establishing operating standards to reduce potential noise, parking, traffic, property maintenance, and safety impacts on adjacent neighbors.

### **FISCAL IMPACT:**

Implementation of the Short-Term Rental pilot program will require a permit fee and business license fee with an estimated combined revenue of \$10,000 based on Host Compliance data. In addition, to adequately enforce the new regulatory pilot program, an annual contract with a third-party vendor to monitor the program may be required.

The City successfully concluded negotiation of an acceptable Voluntary Collection Agreement with Airbnb and has initiated the contract execution process at the time that this staff report was prepared. Based on the number of hosts and annual host earnings, the FY 2019-20 Adopted Budget as approved by Council includes an estimate of \$260,000 in annual TOT receipts from the Airbnb agreement. TOT collection by Airbnb is expected to begin on March 1, 2020. Due to the timing of finalizing the agreement, the estimated annual TOT revenue amount of \$260,000 will not be received. Therefore, as part of the FY 2019-20 Second Quarter Financial Status and Mid-Year Budget Amendments staff report scheduled for February 18, 2020, staff recommends adjusting the TOT revenue estimate downward.

Depending on the regulatory framework regarding STRs that Council will adopt, staff will estimate TOT revenues related to STRs as part of the development of the FY 2020-21 budget.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

Based on its review of the entire record, including the staff report, public comments and testimony presented to the Planning Commission and City Council, and the facts outlined below, the City Council hereby finds and determines that the introduction and adoption of Ordinance No. 38.835 is categorically exempt from the California Environmental Quality Act ("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 Milpitas residents to generate ancillary income from short-term rentals and ensures the appropriate collection of transient occupancy taxes. Both of these outcomes are consistent with Land Use Element 2.a-I-5 ([m]aintain policies to promote a strong economy and provide economic opportunities for all Milpitas residents within existing environmental, social fiscal and land use constraints). The Amendment is also 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.

The introduction and adoption of Ordinance No. 38.835 is also exempt under CEQA Guideline 15308 (Actions by Regulatory Agencies for Protection of the Environmental). Ordinance No. 38.835 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.

None of the exceptions under CEQA Guidelines Section 15300.2 apply to the exemptions because Ordinance No. 38.835 will not result in a cumulative impact from successive projects of the same type in the same place, over time. Ordinance No. 38.835 is not an activity wherein there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances; Ordinance No. 38.835 will not result in damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources; Ordinance No. 38.835 will not apply to sites located on a hazardous resources; and Ordinance No. 38.835 will not cause a substantial change in the significance of a historical resource.

Finally, Ordinance No. 38.835 is exempt from CEQA under CEQA Guidelines, § 15061(b)(3), also known as the "common sense exemption," which exempts from CEQA any project 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. 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. Ordinance No. 38.835 would create new zoning

requirements for a use that is not currently allowed 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 Ordinance No. 38.835 would have a significant effect on the environment.

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

**RECOMMENDATIONS:**

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) Consider the Exemption in accordance with 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) and 15308 (Actions by Regulatory Agencies for Protection of the Environment).
- 3) City Attorney shall read aloud title of Ordinance No. 38.835.
- 4) Move to waive the first reading beyond the title and introduce Ordinance No. 38.835 Amending Milpitas Municipal Code Title XI, Chapter 10 for a zoning text amendment in 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.

**ATTACHMENTS:**

- A. Proposed City Council Ordinance No. 38.835 – for introduction
- B. Planning Commission Resolution No. 20-002
- C. Planning Commission Resolution No. 19-020
- D. Short-Term Rental Comparison Matrix
- E. Short-Term Rental Survey Results
- F. Smoke Alarm & Carbon Monoxide Alarm Self-Certification for Short-Term Rentals
- G. 01-29-2020 Planning Commission Memorandum
- H. 06-26-2019 Planning Commission Agenda Report
- I. 04-30-2019 Council Agenda Report + Meeting Minutes
- J. 02-26-2019 Council Agenda Report + Meeting Minutes