



STAFF REPORT

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

MEETING DATE: FEBRUARY 2, 2026

FROM: ERIN VENTURA, CONTRACT PLANNER

SUBJECT: SHORT-TERM RENTAL ORDINANCE UPDATE

RECOMMENDATION

This item is for discussion and direction only.

BACKGROUND

In November 2019, the City began updating its Short-Term Rental (STR) Ordinance. At that time, the Ordinance was not adopted. Since then the staff has been tracking permits and keeping the City Council up to date on short term rental activity. In October 2025, staff presented an update to the City Council. To date the City has 21 active short term rentals:

- **16 active short-term rentals, 5 lapsed:**
290 Gopher Flat; 70 Broad; 90 Boston Alley; 44 Badger Street; 85 Broad Street; 70 Gopher Flat Rd.; 31 Badger; ~~70 Greenstone Terrace~~; 225 Patricia Ln; 193 Badger; 60 Randolph; 86 Barney Lane; 64 Eureka Street; 171 China Gulch Rd; 335 Sutter Crest E; ~~80 Greenstone Terrace~~; 40 Mountain View Dr.; ~~39 Elm Street~~; ~~44 Opal Street~~; ~~70 Hayden Alley~~; 30 Bryson Drive

In addition to STR permits, the City also had six hotel/inn establishments.

- **8 hotel/inn establishments:** Hotel Sutter; Inn at 161; Hanford House Inn; Sutter Creek Inn; Old Hotel Antiques; Brinnwood Bed & Breakfast; Kiota Inn; Eureka Street Inn.

After the October 2025 council discussion, a 45 day moratorium was adopted on Jan 20, 2026. This moratorium can be extended for up to two years with further action by the Council. The purpose of this is to allow the City Council time to review, revise and adopt an updated ordinance.

DISCUSSION

In evaluating a new ordinance, we encourage the council to be clear about the problem they are trying to solve. Sutter Creek has had short term rentals for a number of years with very few problems - a lot of concerns have so far been unfounded. We have not had a lot of complaints

from the existing short term rentals in town.

Staff proposes that during discussion, we use the EASE framework to evaluate options. EASE consists of four pillars used to evaluate the viability and impact of a proposed ordinance:

- E - Equity: Evaluation of fairness in a proposed process, balancing home owner property rights with impacts to surrounding properties. Equity would also include fairness in getting and maintaining a permit, if the total number is capped.
- A - Administrability: Analysis of the complexity of implementing, collecting, and enforcing the ordinance, including compliance costs and the capability to manage the system.
- S - Stability: Assessment of the reliability and consistency of the process year-to-year, specifically looking for low volatility.
- E - Economic Benefits: Evaluation of the impact on City, including TOT revenue, preservation of historic resources, and support of local businesses.

Staff has identified six (6) areas for discussion.

1) Location/Density

The City Council should consider whether to establish density limits for short-term rentals in specific areas of the City. Currently, 15 of the City's 21 short-term rentals are located within the Historic District. See attachments for Historical District boundaries and existing short term rental locations.

There are both benefits and drawbacks to this concentration. Advantages include the Historic District's walkability to downtown businesses, which reduces demand for limited downtown parking, and the existing mix of residential and commercial uses, which may lessen the perceived impact of short-term rentals. Additionally, short-term rentals provide visitors with the opportunity to stay in homes that reflect the historic character of Sutter Creek.

Potential drawbacks include the close proximity of homes, which may increase impacts on neighboring residents, a reduction in available long-term rental housing within the Historic District, and the risk of damage to historic structures due to frequent tenant turnover.

Staff recommend that the City Council discuss whether a density restriction should be established. One option would be to allow a certain percentage of units within the Historic District to operate as short-term rentals, with a separate percentage permitted outside of the Historic District.

Staff further recommend using a percentage of total housing units rather than a fixed numerical cap, as this approach would adjust over time with changes in the City's housing stock.

Decision Points / Options:

1. Whether to establish different density limits for short-term rentals within the Historic District versus areas outside the Historic District

2. Whether to establish density limits in 4 - 5 areas of town (instead of just 2 in #1 above)
3. How to handle a waitlist if and when density limits are reached

2) Owner Occupied vs. No onsite owner

The City Council may also wish to consider whether to distinguish between owner-occupied and non-owner-occupied short-term rentals. Owner-occupied short-term rentals include situations where the property owner resides on-site, either within the primary dwelling or an accessory dwelling unit (ADU), or rents out individual rooms within their home. In these cases, the owner's presence may help mitigate potential impacts related to noise, parking, and property maintenance, as the owner has a direct interest in preserving neighborhood compatibility. It may also enable residents on a fixed income to enjoy a higher quality of life and have some companionship.

In contrast, short-term rentals where no owner resides on-site may have greater potential to impact surrounding residents. These properties often function more like commercial lodging, with higher guest turnover and less day-to-day oversight, which may increase concerns related to noise, parking, and neighborhood character.

The City Council may consider whether different regulations, performance standards, or allowance thresholds should apply to owner-occupied versus non-owner-occupied short-term rentals, including whether one category should be more limited or prioritized over the other. Currently, owner-occupied STR is a very small part of the existing STR units.

Decision Point:

- Whether to differentiate regulations for owner-occupied short-term rentals versus non-owner-occupied short-term rentals
- Whether to establish a cap on non-owner-occupied short-term rentals
- Whether to allow unlimited owner-occupied short-term rentals
- If there is a cap, use a percentage-based limit or a fixed numerical cap

3) Permit Duration and Activity Requirements

The City Council may also wish to consider establishing time limits and activity requirements for short-term rental permits. One option is to issue permits for a defined term, such as three years, with annual renewals to confirm continued compliance with City regulations.

To ensure permits are held by active operators, the City may require ongoing evidence of activity, such as regular submission of Transient Occupancy Tax (TOT). If a permit holder does not demonstrate activity by submitting required TOT filings for a specified period, the permit could be deemed inactive and automatically voided.

These provisions would help prevent permits from being held indefinitely without use, allow the City to better track active short-term rentals, and ensure that permits are available to operators who are actively contributing to the local economy and complying with City requirements.

Decision Points:

- Length of the short-term rental permit term- 1 year, 3 years
- Annual renewal requirements
- Criteria for determining inactivity and voiding permits

4) Permit Process

The City Council may wish to review the current short-term rental permit process to determine whether it remains appropriate and efficient. At present, all short-term rental applications must obtain a City permit. Applications are reviewed by the Planning Commission at a public hearing when the short-term rental is located within a residential zoning district. In commercial zoning districts, short-term rentals are an allowed use and do not require Planning Commission approval.

The City Council may consider whether public hearings are still necessary for all residential short-term rental permits or whether permits could instead be reviewed and approved at the staff level, subject to objective standards and conditions of approval. A staff-level review process could reduce processing time and administrative burden while maintaining compliance and enforcement through clearly defined operational requirements.

Alternatively, the City Council may determine that public hearings continue to be appropriate in certain circumstances, such as for non-owner-occupied units or locations with a higher potential for neighborhood impacts.

Decision Points:

- Whether short-term rental permits should continue to require Planning Commission approval.
- If so, is there direction to the Planning Commission on what aspects to evaluate an application on to make it more objective?
- Whether public hearings should be required for all residential short-term rentals or limited to specific circumstances
- Whether staff-level approval is appropriate for some or all short-term rental permits
- Whether permit requirements should differ between residential and commercial zoning districts, or by area of the City such as the historic district vs non-historic district

5) Operating Rules and Conditions of Approval

The City Council may also wish to review the existing operating rules and conditions associated with short-term rental permits to determine whether any modifications are warranted. Currently, short-term rentals are subject to comprehensive conditions of approval intended to ensure neighborhood compatibility, public safety, and regulatory compliance.

These conditions address exterior property maintenance, off-street parking requirements, business licensing, payment of Transient Occupancy Tax (TOT), insurance coverage, and submission of site and floor plans. They also require compliance with fire, building, health, and safety codes, including installation and maintenance of required life-safety equipment.

Operational standards limit the number of overnight and daytime occupants, require compliance with the City's noise regulations, and mandate clear communication of rules to guests.

Property owners or operators must provide 24-hour contact information, respond to complaints within 60 minutes, and take immediate action to address noise, disturbances, or other violations. Additional requirements address trash management, guest accountability, reporting of violations, and enforcement procedures, including permit modification, suspension, or revocation. Permits are non-transferable and subject to City enforcement authority.

The City Council may consider whether these rules remain appropriate as written, whether certain conditions should be clarified, strengthened, or streamlined, or whether different standards should apply based on factors such as location, permit type, or owner occupancy.

Council may want to consider what conditions a property owner, a long term renter, or a hotel guest can be subjected to when evaluating some of these standards for reasonableness as well as how difficult / easy some standards are to enforce, using the EASE framework. .

Decision Points:

- Whether to amend existing operating standards or conditions of approval
- Whether certain requirements should be adjusted based on owner-occupied versus non-owner-occupied rentals
- Whether enforcement, response time, or penalty provisions should be modified
- Whether additional or fewer operational standards are necessary to address neighborhood impacts and compliance
- Whether a physical inspection should be required (adds cost)

6) City TOT Accounting

We currently use the “Hotel model with STRs - the hosts self-remit, exactly like a hotelier. They must register for a business license and a TOT certificate. They collect the tax personally from the guest (or separate it from their payout) and send the city payment monthly. This relies entirely on the host's honesty regarding occupancy and nightly rates.

A new ordinance should include clauses that help staff identify possible underpayment and enable City staff to conduct audits.

Identify Underpayment

- **Registration Number in Listings:** The single most effective tool for a city under the host remittance model is an ordinance that requires a city-issued license/registration number to be displayed in the headline or description of every online listing. This forces the "hidden" inventory into the light. If a host lists on Airbnb without a number, they are immediately flagging themselves as non-compliant. The City can use software (or an intern) to scan listings. Any listing missing a "City License #12345" gets an automatic "Notice of Violation" or "Cease and Desist" letter.
- **Platform Cooperation:** Even without a tax collection agreement, many platforms will honor a city's request to remove listings that violate local zoning or registration laws if you can point to a specific ordinance violation.
- **Nuisance Hotlines:** Cities set up complaint hotlines. A noise complaint from a neighbor on a Tuesday night is essentially proof of occupancy that can be cross-referenced against TOT payments.

Tools to Support Audits

- **The "Calendar Evidence" Audit:**
 - Checking online platform occupancy (requires scraping software or staff monitoring)
 - If a host claims "0 occupancy" for January, but the software shows the calendar was "blocked" (booked) for 15 days in January, you have probable cause for an audit.
 - *Note:* Hosts often claim blocked dates were for "friends and family" (non-taxable). You can require them to sign an affidavit under penalty of perjury for those dates.
- **Water/Utility Usage Analysis:**
 - For suspicious properties (e.g., a host claiming vacancy for months while the listing has recent reviews), some cities cross-reference water usage data. A spike in water usage during "vacant" periods is strong evidence of unreported occupancy. This would require an agreement with AWA, may not be possible.
- **Require specific Reports if Audited** - The ordinance should grant the City the right to request specific reports.
 - **Platform "Gross Earnings" Reports (CSV or PDF format):**
 - **For Airbnb:** Provide the *Gross Earnings Report* (found under Insights > Reports > Reporting > Gross Earnings). This report must show the confirmation code, start date, nights booked, and gross amount paid by the guest.
 - **For Vrbo/HomeAway:** Provide the *Payout Summary* and the downloadable *Reservation Manager* export.
 - **For Other Platforms:** Equivalent reports showing gross booking revenue before platform fees are deducted.
 - **Federal Tax Returns (Redacted):**
 - Copy of **IRS Schedule E** (Supplemental Income and Loss) or **Schedule C** (Profit or Loss from Business) for the tax years in question. *Note: You may redact unrelated income, but rental revenue lines must be visible.*
 - **Bank Statements:**
 - Monthly bank statements for the account(s) where rental payouts are deposited for the audit period. Highlight or flag all deposits related to rental activity.
- **Proof of Exemptions (Long-Term Stays):**
 - For any stay claimed as exempt (over 30 days), provide a copy of the signed lease agreement or written contract with the tenant showing check-in and check-out dates.

In looking at other city ordinances, there were several other clauses to help close loopholes for hosts to avoid payment.

Clause A: The "Gross vs. Net" Clarification

Hosts often calculate tax based on what hit their bank account (Net Payout), not what the guest paid (Gross Rent). The guest pays the tax on the total receipt, not the host's take-home pay.

Definition of Taxable Rent: "Please note that Transient Occupancy Tax (TOT) is calculated on the **Gross Rent** charged to the guest, not the Net Payout received by the host. Gross Rent includes the nightly rate, cleaning fees, pet fees, and any other non-refundable charges mandated by the host. Please ensure your provided records reflect the total amount paid by the guest."

Clause B: The "Platform Liability" Disclaimer

This prevents the host from simply saying, "I thought Airbnb paid it."

Host Responsibility: "While some platforms may offer voluntary collection services, the legal burden of remitting TOT to the City of [City Name] remains with the operator/host. It is the host's responsibility to verify if the platform has remitted taxes on their behalf. If the platform did not remit the specific [City Name] TOT, the host is liable for all back taxes, penalties, and interest."

Clause C: The "Blocked Dates" Challenge

When your software sees a blocked calendar but the host claims "no guests," use this clause to force them to go on the record.

Verification of Personal Use: "If specific dates on your availability calendar were blocked for personal use, maintenance, or non-revenue generating family stays, you must submit a signed **Affidavit of Non-Rental Use** listing specific dates and reasons. Unexplained blocked dates on the calendar may be treated as taxable occupancy based on the average daily rate of the property."

Clause D: The "Burden of Proof" Warning

Finally, you need a clause that empowers you to make an estimate if they refuse to cooperate.

Failure to Provide Records: "In the absence of complete and verifiable records, the City Finance Department is authorized under Municipal Code [Section X] to estimate the tax due based on comparable properties, available calendar data, and external occupancy estimates. This estimate will be considered final and binding unless refuted by verifiable evidence."

CONCLUSION AND NEXT STEPS

The City Council's discussion of short-term rental policies will help guide potential updates to the City's ordinance to ensure it continues to balance neighborhood compatibility, housing availability, historic preservation, and economic benefits. Based on the direction provided, staff will proceed with drafting potential ordinance amendments that reflect the City Council's policy priorities.

As next steps, the City Council may consider forming an ad hoc City Council committee to further evaluate policy options and provide focused guidance to staff. Draft revisions may then be presented to the Planning Commission for review and recommendation through a public

hearing process. Following Planning Commission input, the revised ordinance will be brought forward to the City Council for final consideration and adoption.

Attachments:

1. Historic Districts Map
2. Sutter Creek Short Term Rentals Map
3. Sutter Creek Hotels & Inns Map
4. Sutter Creek Hotels and Short Term Rentals Map
5. Short Term Rental Conditional Use Permit Application
6. Example Short Term Rental Conditional Use Permit Resolution with conditions of approval