



## CITY MANAGER'S OFFICE

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366  
CUPERTINO.ORG

## PLANNING COMMISSION STAFF REPORT

Meeting: July 24, 2018

### Subject

Short-term rental regulation options.

### Recommended Action

That the Planning Commission receive this report and provide comments for the development of a short-term rental regulation program.

### Discussion

#### Background:

Short-term rentals (STRs), made popular by websites like Airbnb and Homeaway, allow operators to rent out a room or an entire residence to a visitor (“transients”) for a period of less than 30 days. These website based businesses market the availability of such rentals and in some cases act as collection agents. Many visitors prefer renting local homes because they are less expensive than hotels. These rentals also provide opportunities for homeowners to generate income. At the February 5, 2018 study session, Council requested that staff explore Transient Occupancy Tax (TOT) collection from STRs and the development of a regulatory framework for STR compliance, which were included as part of the FY 2018-19 Work Program.

Based on reports on the STR platforms, there are roughly 300 STRs available within City limits. Currently, the City does not have a program to regulate STRs. Enforcement of STRs has been complaint-based and focused on zoning requirements described further below.

The City’s municipal code allows for limited home occupations (Chapter 19.120 – Home Occupations) that are considered to be an incidental and secondary to the use of a residence for dwelling purposes and do not change the character of the neighborhood. Specifically, Section 19.120.050 of the Municipal Code lists boarding and/or rooming homes for more than two guests as an excluded home occupation since it is neither incidental nor secondary to the use of a residence as a home.

Therefore, those who are interested in running an STR business in Cupertino must comply with the following:

1. The property owner or property leaseholder must be the primary resident at the property and be on-site during the lease period.
2. The number of transient guests must be limited to two (2) or fewer.
3. All transient rentals must be an incidental use.
4. All building alterations must comply with R1 regulations and building code requirements including occupancy regulations.
5. The property owner, main property leaseholder, or person otherwise conducting any short-term rentals, must comply with the requirement of Chapter 3.12 of the Municipal Code prior to the commencement of any short-term rental leases.

Chapter 3.12 of the Cupertino Municipal Code identifies requirements for the payment and collection of TOT. STRs meet the definition of “hotel” in Section 3.12.020 under Cupertino’s TOT regulations. People or “transients” occupying these STRs are subject to a 12% TOT on the rent charged during the first 30 days of occupancy. Proprietors or “operators” of these STRs are required to register and obtain a Business License and a Transient Occupancy Registration Certificate from the City within 30 days of commencing business as well as collect TOT from renters. To date, the City has not received any TOT remittances from short-term rental operators in the City. If the City moves forward with a regulatory program for STRs, a process for TOT collections from STRs would need to be established.

At the June 19, 2018 Council meeting, Council approved changes to the City’s TOT ordinance to allow for a voluntary collection agreement (VCA) with the STR platform Airbnb, which will generate roughly \$350,000 in TOT revenue annually from STR operators in Cupertino using the Airbnb platform. Airbnb will begin collection in August 2018. At that meeting, Council reiterated its interest in creating a regulatory program for STRs with review by the Planning Commission.

Analysis:

In order to better understand the regulatory issues in the development of a regulatory program, research was conducted on how other cities have responded to STRs. Cities in the Bay Area have taken varied stances on the regulation of STRs. Some cities allow STRs with limitations, such as requiring STRs to be located at the operator’s primary residence and limiting the number of rental days per year. Other cities prohibit STRs entirely and some have not adopted any STR regulations to date.

The following table provides an overview of how other cities have responded to STRs.

## STR Regulations in Other Cities Survey

Regulates STRs	STRs not allowed	No regulations	Considering regulations
Berkeley	Campbell	Gilroy	Mountain View (Oct. 2018)
Los Altos Hills	Los Altos (May 2018)	Morgan Hill	Cupertino (Fall 2018)
Pacific Grove	Los Gatos	Santa Clara	
Pasadena	Milpitas		
San Francisco	Newark		
San Jose	Palo Alto		
Sunnyvale	Saratoga		

Since STRs are a relatively new concept, the City of Cupertino has minimal regulations on boarding and/or rooming houses, which were not designed with STRs in mind. Without explicit regulations designed for STRs, the City has limited ability to address potential impacts of STRs in the City. Potential impacts include effects on neighborhood character, housing availability, revenue generation, and more. An overview of a potential regulatory framework and the key policy issues are set forth in this report.

The main policy issues surrounding the regulation of STRs include identification of STRs, impacts on housing availability for long-term renters, impacts to neighborhood character, and enforcement mechanisms. The following sections outline these issues along with best practices for addressing them based on regulations from cities currently regulating STRs.

### *Identifying and Managing STRs*

Currently, STR listings do not typically include the address of the rental, making it difficult to locate STRs based on public listing information. It is possible to use available photos in combination with Google Maps and Street View to determine an address, but this is not always successful or efficient. As a result, even if a noncompliant listing is identified, it is very difficult to follow up and enforce. In order to effectively manage STRs, most cities with STR regulations require some form of STR registration. Currently, STR operators must obtain a Business License Certification, which also serves as the Transient Occupancy Registration Certificate, prior to operation. Therefore, in Cupertino, STR registration can be accomplished through the business license application process.

### *Impacts on Housing Availability*

It is a common concern that the potential income from STRs may incentivize property owners to use units for STRs instead of long-term rentals. Within Cupertino, there are over 13,000 single-family parcels and about 300 STR listings. Under the current zoning requirements, renting an entire home as an STR is not allowed as the operator must be on-site. Despite this, as of July 7, 2018, there were 203 Airbnb listings in Cupertino and 76 of those listings (37%) were for entire homes as opposed to a portion of a home. Based on this data, the number of entire homes being used for STRs is relatively small compared to the total number of single-family homes in Cupertino. Furthermore, a typical listing in Cupertino is rented for 131 nights (about four months) a year. Given the relatively small number of STRs and the fact that a typical STR is rented for less than five months in a year, STRs likely have a minimal impact on housing availability currently. In addition, according to Airbnb, the typical STR in Cupertino earns \$12,000 a year, making it less profitable than if the unit were offered as a long-term rental. However, if more homeowners start using their entire homes for STRs for longer durations, this could become a more prominent issue.

Operators listing multiple STRs may have a greater impact on housing availability. Multiple listings suggest that the operator is not solely renting their primary home as a means of supplemental income, but may be using other units in the City's housing inventory as STRs that may have otherwise provided long-term housing. To discourage the conversion of units from long-term housing to STRs, cities have taken several approaches as follows.

- **Primary Residence:** Most cities require that the STRs may only be located at the operator's primary residence.
- **Limit number of STRs:** Some cities only allow one unit per parcel to be used as an STR. For example, if a home has an accessory dwelling unit, only the primary dwelling or the accessory could be allowed for short-term rental but not both.
- **Limit number of rental days:** Cities also limit the number of days per year that a property may be used as an STR. However, day limits can be difficult to verify and enforce.
- **Un-hosted stays:** Another option is to prohibit or limit "un-hosted" stays where the primary resident or operator is not present during the rental period. While operators being present during rentals may mitigate impacts to housing availability and the neighborhoods, it can be difficult to verify and enforce.
- **Affordable Housing or Special Housing:** It is also a best practice to prohibit STR operations in affordable housing or BMR units. Along those lines, it may also be relevant to consider whether STRs in senior housing should be allowed.

### *Neighborhood Character and Impacts*

Transient tenants rotating through an STR may impact parking, noise, and neighborhood character. Regulating all or some of the following may mitigate the impacts to neighborhood character.

- **Number of guests:** To mitigate these impacts, some cities limit the number of occupants allowed per STR based on the Housing Code while others list specific occupancy rules. For example, the City of Pacific Grove specifically limits overnight occupancy in STRs to two people per room plus one additional person per STR unit.
- **Parking:** To address parking concerns, some cities require that parking related to STR use be contained on-site or limit the number of vehicles. However, other cities either do not specifically reference parking or refer to the Residential Building Code and Housing Code.
- **Insurance:** It may also be of interest to require operators to obtain liability insurance to cover damages caused by tenants.
- **Non-habitable spaces:** To further protect tenants and neighborhood character, some cities prohibit the short-term rental of vehicles, garages, and outdoor areas, as well as prohibit events or commercial uses, such as weddings.
- **Guest Notification:** Since STR guests may come from outside of the area, they may be unfamiliar with the rules of the City. Requiring STR operators to provide a letter notifying guests about the City's rules around noise, trash collection, and nuisance abatement may reduce issues.
- **Local Contact Information:** Some cities require that STRs have a local contact that can respond to any reported issues or complaints with 30-60 minutes. In some cases, this local contact's information is provided to adjacent properties informing them of the STR certification.

### *Violation Penalties and Enforcement*

In order to assist in effective enforcement, violation penalties should be made clear and significant enough to encourage compliance. Many cities defer to their general penalty as the fine schedule for violations. In Cupertino, the general penalties for infractions are up to \$100 for the first violation, up to \$200 for the second, and up to \$500 for the third violation within one year. Since the typical STR earns about \$12,000 annually, the existing general penalty may not be enough to discourage violations. In San Francisco, STR violations are subject to penalties of \$484 per day and penalties in Pacific Grove can reach up to \$2,500 per day after 90 days of outstanding fines. Staff recommends a high penalty for failing to register an STR within 90 days of notification. This would encourage STRs to register, making enforcement of any other violations much easier. In addition, many cities also include the ability to revoke the operators STR related Transient Occupancy Registration Certificate or permit after 2 or 3 violations.

To assist with enforcement, staff recommends contracting with a third-party to monitor STR listings in the City, operate a hotline for residents to call for complaints, and provide initial compliance communications with the STR operators. This would result in the City's code enforcement officers to be involved only once an issue has been flagged by the third-party and requires in-person follow up. Even with this support, it is likely that the City will need additional code enforcement staff for the new regulatory program as the follow up and compliance can be a long and protracted process. Currently, San Francisco has a dedicated Office of Short-Term Rentals with six staff to run the program. Without proper support, cities often enforce on a complaint basis and can be inundated with the volume of cases opened.

### Sustainability Impact

STRs may increase the number visitors from out of the area that are unfamiliar with Cupertino's policies regarding waste collection and the containment of litter. To mitigate improper waste sorting and overflowing receptacles, it may be beneficial to require that information on proper waste collection be included in the notification to all STR guests discussed above.

### Fiscal Impact

To adequately enforce a new regulatory program, an annual contract with a third-party to monitor the program and additional code enforcement staff may be required. The additional TOT revenue generated from STRs may cover some of these costs. This will be presented to the City Council for its decision.

### Next Steps

Staff will proceed to develop a regulatory program for STRs and identify required municipal code amendments. It is expected that the recommended program and associated amendments will be presented to the Planning Commission for its review and recommendation to Council in Fall 2018.

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Prepared by: Katy Nomura, Senior Management Analyst

Reviewed by: Jaqui Guzmán, Deputy City Manager

Piu Ghosh, Principal Planner

Benjamin Fu, Assistant Director of Community Development

Approved by: Aarti Shrivastava, Assistant City Manager