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CITY COUNCIL STAFF REPORT

Meeting: February 5, 2018

Subject

Study Session regarding short-term rental compliance.

Recommended Action

Provide direction on regulation and enforcement of short-term rentals in Cupertino.

Background

Short-term rentals made popular by websites like Airbnb and Homeaway allow operators to rent out a room of an entire residence to a visitor 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.

Currently, the City does not have a program to regulate short-term rentals, however, the City's municipal code does allow for limited home occupations. Specifically, the code excludes boarding and/or rooming homes for more than two guests (Section 19.120.050 of Chapter 19.20, Home Occupations). Those who are interested in running a short-term rental 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 onsite 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.

In addition, the resident of the property must obtain a Business License Certification, a Transient Occupancy Tax (TOT) Certification, and remit TOT to the City on a monthly basis. Short-term rentals fall under the definition of "hotel" under Cupertino's TOT regulations (Section 3.12.020 of Chapter 3.12, Transient Occupancy Tax). Proprietors or "operators" of these short-term rentals are required to register and obtain a Transient

Occupancy Registration Certificate from the City within 30 days of commencing business as well as collect TOT from renters. People or “transients” occupying these short-term rentals are subject to a 12% TOT on the rent charged during the first 30 days of occupancy.

Discussion

Given Council’s interest in short-term rental sites operating in the City, staff contacted vendors that assist municipalities with short-term rental compliance. Based on their queries, in early December, about 300 short-term rentals in Cupertino were being advertised online (see Attachment A). The information listed in ads indicate that many operators are currently out of compliance with the City’s home occupation regulations. For example, over half of the listings advertised in Cupertino offer the entire residence, which is prohibited under our code. More importantly, to date no short-term rental operator has remitted the 12% TOT owed to the City. The median nightly rate for short-term rentals in the City was \$96, with a range of \$33-\$365 per night. Unfortunately, we cannot estimate the uncollected TOT as short-term rental services do not provide occupancy information.

The City may impose penalties for noncompliance, however, the City has not pro-actively enforced these regulations and it is unclear if operators are aware of existing requirements. The City’s code enforcement staff’s workload is generally complaint-based. Since 2016, the City has received six complaints involving short-term rental, mostly reporting a potential code violation (Attachment B). When these issues arise, staff is diligent about investigating and addressing any code violations.

To go a step further and pro-actively enforcing the City’s home occupancy and TOT regulations would require significant staff effort to identify, notify, and cite violators. Short-term rental services do not provide basic information like an operator’s full name, exact address, or occupancy rates for their listings needed to identify and cite violators. Given that over half of current operators appear to be in violation of our home occupancy code and all are in violation of our TOT code, the City would need to invest significantly in enforcement resources. The City could reduce costs by outsourcing some duties, such as identifying and notifying hosts and processing voluntary compliance. However, the City’s code enforcement staff would need to be involved if any operators refuse to comply and citations need to be issued and followed up on.

Other cities have generally regulated short-term rentals to capture revenue, preserve tranquil residential neighborhoods, and/or preserve the stock of long-term rentals. In communities with a robust tourist industry, cities have created short-term rental compliance programs to capture TOT revenue. Some communities ban or limit short-term rentals to address neighbor complaints about noise, traffic, parking, garbage or

other public nuisances. Given the housing crisis, some cities chose to limit short-term rentals to prevent crowding out long-term rentals. All approaches require investments in technology, services, and staffing to monitor and enforce the program. It is unclear if the cost of enforcement has been fully offset by the increase in TOT revenue.

Keeping this in mind, there are two paths that Council could consider: enforcing the existing code or establishing a new regulatory program for short-term rentals.

Enforcing Existing Code

If Council's goal is to limit short-term rentals to reduce adverse impacts and/or increase the stock of long-term rentals, a next step would be to pro-actively enforce the existing code. This would require the Council to allocate additional staff time and resources to identify and notify operators about requirements and request compliance. Given that over half of the listings offer the entire residence, which is prohibited, shutting down these operators will likely require a significant investment in resources with no offsetting revenue. Council may want to consider increasing penalties for noncompliance to aide enforcement efforts.

Establishing a Regulatory Program for Short-Term Rentals

If Council's goal is to maximize TOT while minimizing neighborhood impacts, the Council could establishing a regulatory program for short-term rentals that provides some additional flexibility to current operators. This could allow current operators to more easily come into compliance and begin remitting TOT to the City. It would also provide them with clear guidelines to avoid negative neighborhood impacts like parking availability or excessive garbage at rental sites. Staff would research best practices in developing a regulatory program based on Council's strategic objectives, perform stakeholder outreach, develop a funding and staffing strategy for the program, and draft changes to the City's Municipal Code for Council consideration.

Both options will require significant staff time and resources. While few neighboring cities have tackled this issue, several California cities have established programs that can serve as models or provide lessons learned. There are also several vendors that can assist with monitoring and compliance, including the City's revenue consultant HDL.

Sustainability Impact

No impact.

Fiscal Impact

No additional funding is requested at this time. Staff will propose additional allocation of resources based on Council's preference for a specific program. To the extent that the

City is successful in achieving voluntary TOT compliance from short-term rental operators, general fund revenues could increase. However, it is possible that costs related to monitoring and enforcement services will be higher than revenue gains from TOT.

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Attachments:

A – Sample STR Reports

B – STR Complaints