



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: August 18, 2020

#### **Subject**

Municipal Code Amendments to regulate Short-Term Rental activity in the City. A new Chapter 5.08 (Short Term Rental Activity) is proposed and amendments are proposed to Chapter 3.12 (Transient Occupancy Tax), Chapter 19.08 (Definitions) and Chapter 19.120 (Home Occupations), of the Cupertino Municipal Code. Minor process related clarifications are also proposed in Chapter 19.12. (Application No(s): MCA-2018-02; Applicant (s): City of Cupertino; Location: Citywide)

#### **Recommended Action**

That the City Council:

1. Conduct the first reading and adopt the draft ordinance (Attachment A) to:
  - a. Find the proposed actions exempt from CEQA; and,
  - b. Amend the Municipal Code by adding Chapter 5.08 (Short Term Rental Activity) and amending Chapter 3.12 (Transient Occupancy Tax), Chapter 19.08 (Definitions), Chapter 19.12 (Administration) and Chapter 19.120 (Home Occupations).
2. Approve a budget appropriation (BMN 2021-088) of either \$408,689, \$283,889, or \$159,089 depending on the selected level of enforcement; and
3. Provide direction on the registration fee in regards to setting the fee for full cost recovery or lower.

#### **Discussion**

On July 7, 2020, City Council introduced and conducted the first reading of Ordinance No. 20-2200 to regulate short-term rentals (STRs). The staff report and attachments related to this agenda item from that Council meeting have been included as Attachment C. The City Council unanimously approved the Ordinance with a change to the operative date. The Council changed the date the Ordinance becomes operative to January 1, 2021, instead of staff's recommendation that the effective date be tied to the date the current COVID-19 Shelter-in-Place is lifted or related travel restrictions are lifted.

While a second reading was anticipated to occur on August 18, 2020, due to the change in the operative date, staff is recommending additional changes to the proposed draft

Ordinance. These changes are proposed to ensure continuity of regulations for compliance, and to allow seamless enforcement of existing and proposed regulations between adoption and the operative date. The following modifications are proposed:

- ***Registration Application Submittal Requirements:*** Modified to require that all adults for whom the property is a permanent residence must be listed as a host and provide official identification documentation for verification. This would prevent a host from registering, receiving violations or revocation, not being allowed to re-register/renew their registration, but then re-registering with another adult in the house as the host.
- ***Multiple STRs:*** While the primary residence requirement prevents an individual from operating multiple STRs in the City, it is possible that a primary resident may move within the City. The ordinance has been revised such that if a host has engaged in multiple STRs in the City, the host must provide a list of former locations and proof of compliance with City requirements, including payment of Transient Occupancy Tax, at those properties. This helps to prevent hosts with a history of non-compliance from operating multiple STRs that have been out of compliance, even if they change primary residences. This information also helps to ensure hosts are not operating multiple STRs and incorrectly claiming multiple primary residences. The update also ensures that before registering, a host would be required to pay TOT associated with all former STR properties.
- ***Registration:***
  - The timeframe for when STR violations will prevent an individual from being allowed to register an STR has been expanded from six (6) months to twelve (12) months. Additionally, hosts that had their registration revoked at any time will not be allowed to register for a new STR.
  - The term “violation” has been defined for purposes of this section for clarity. This has been defined to mean “any violation of the Cupertino Municipal Code, as evidenced by a City-issued citation, unresolved notice of violation, unresolved cease-and-desist order, or other appropriate documentation. Each unique violation of the Cupertino Municipal Code shall constitute one (1) violation.”
- ***Revocation:***
  - The revocation section has been updated to allow revocation when two (2) violations of the Cupertino Municipal Code have occurred within the preceding twelve (12) months instead of the previously proposed six (6) months.
  - The term “violation” has been defined for purposes of clarity to match the definition in the Registration subsection.

- **Home Occupation Standards:** Language has been added to ensure the current limitations on short-term rentals remain in effective until the new ordinance becomes operative on January 1, 2021.
- **Effective Date:** The ordinance will take effect thirty days after adoption with proposed amendments to Chapter 19.08 (Definitions), Chapter 19.12 (Administration) and Chapter 19.120 (Home Occupations) becoming operative at that time. However, amendments to Sections 3.12.050, 3.12.070, 19.20.020, and Chapter 5.08 shall not become operative until January 1, 2021. The effective date has been updated to ensure continuity of regulations for compliance purposes and to allow enforcement of existing regulations between adoption and the operative date.

The proposed modifications require a new first reading of the ordinance.

Public Notice and Outreach

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none"> <li>▪ Legal ad placed in newspaper <i>(at least 10 days prior to hearing)</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City's official notice bulletin board <i>(four days prior to hearing)</i></li> <li>▪ Posted on the City of Cupertino's Web site <i>(four days prior to hearing)</i></li> </ul>

***Enforcement Expectations and Options***

In order to ensure adequate and effective compliance with the proposed STR program, and to address any associated public nuisances, it is important to evaluate existing staff resources and consider whether additional resources are necessary to meet community and City Council expectations.

Enforcement of all STRs is currently managed by one (1) full-time Code Enforcement Officer within the Community Development Department, who also enforces other areas of the Municipal Code including zoning, building and housing standards, fire prevention regulations, and protected private trees. STR code enforcement is currently conducted on a reactive basis as complaints are received from the public; only upon which, an investigation is initiated to determine whether STR activity is occurring, and if so, whether the activity is being conducted in compliance with the Municipal Code.

Between September 2014 and July 2020, the City has opened/investigated nineteen (19) enforcement cases related to STRs. Generally, the complaints were related to noise, disruptive guest traffic, parking, unpermitted construction, the improper rental and occupancy of accessory structures, and the improper rental and occupancy of garages as

STRs. On average, it takes staff almost 90 days (even longer, in some cases) to resolve these complaints and obtain compliance.

A change to the level of enforcement for STR violations is dependent upon the expectations for enforcement and commensurate adjustments to fund those adjustments. Depending on expected outcomes, STR enforcement can be done at three levels:

1. Proactive: A full proactive approach is conceptually the most intensive approach intended to ensure the highest level of registration compliance (both initial and ongoing), proactive annual inspections of existing registrants, while continuing to provide ongoing reactive response to public nuisance complaints.
2. Semi-proactive: This approach aims to provide a satisfactory registration compliance rate of known STR operators while continuing to provide an ongoing reactive response to complaints. There would be no annual inspections as part of this approach.
3. Reactive: The reactive approach would maintain status quo on registration compliance and nuisance complaints by continuing to provide a reactive response by complaint only. This would place the onus of compliance on STR hosts and would not include annual inspections either.

Other tools that would support successful implementation and enforcement of the proposed STR program include electronic registration and compliance monitoring. While developing a customized and exclusive registration and monitoring system for the City would be cost-prohibitive for the anticipated volume of STR registrants, there are already established providers that provide these services. For example, the Town of Los Altos Hills accepts STR registrations online through a third-party service provider (visit: <https://safe.hostcompliance.com/los-altos-hills-ca/permit-registration/welcome>). These service providers also provide ongoing compliance monitoring and capture of records and information which can be used to both verify registration compliance and serve as supporting evidence in the enforcement of the STR regulations.

It is highly recommended that the City contract services for additional code enforcement staffing and third-party compliance monitoring, regardless of the desired enforcement approach, in order to facilitate even a minimum level of success for the program. Contract code enforcement is recommended as a contractor will have more flexibility to adjust man-hours to match the need. This will be particularly valuable as it is anticipated that the initial months of implementation will require more enforcement time in order to obtain initial compliance such as registration compliance. Since this is a new program, it is also unknown what the enforcement need will truly be. Contracting code enforcement for this initial period will allow staff to evaluate the true ongoing needs of the program.

Upon that evaluation, staff will return to Council if an adjustment to resources is required.

The following table summarizes the three approaches discussed above and provides an estimate of additional contracted staffing needs and third-party monitoring costs to conceptually accomplish each approach:

Enforcement Level	Proactive	Semi-Proactive	Reactive
<b>Registration Enforcement</b>	Yes, with annual inspections	Yes, with <b>no</b> annual inspections	Only upon complaints and <b>no</b> annual inspections
<b>Complaint Response</b>	Reactive	Reactive	Reactive
<b>Estimated Rate of Compliance (of known STRs)</b>	>90%	>70%	>30%
<b>Additional Contract Staffing Needs</b>	3,120 annual hours (\$374,400)	2,080 annual hours (\$249,600)	1,040 annual hours (\$124,800)
<b>Third Party Monitoring</b>	\$34,289	\$34,289	\$34,289
<b>TOTAL ESTIMATED ENFORCEMENT COSTS</b>	<b>\$408,689</b>	<b>\$283,889</b>	<b>\$159,089</b>
<b>Estimated Registration Fee Assuming Full Cost Recovery</b> (Includes one hour of staff time at current FY rate (\$244) for processing registration)			
Assuming 200 STRs	\$ 2,287.45	\$ 1,663.45	\$ 1,039.45
Assuming 400 STRs	\$ 1,265.72	\$ 953.72	\$ 641.72

Other cities have STR registration and license fees between \$165 and \$274. Most cities also require a business license in addition to the STR registration. These estimates are based on a full cost recovery model. Council may choose to adopt a fee that does not fully recover costs of the program. In this case, the program would be subsidized by the general fund. Direction provided by the City Council at this hearing will be used to develop the Registration Fee, which will be presented at a later date.

### **Environmental Review**

The proposed ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential

for resulting in physical change in the environment, either directly or indirectly. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines sections 15061(b)(3) and 15304 because it can be seen with certainty to have no possibility of a significant effect on the environment and because the ordinance is a minor alteration to land use limitations.

### **Sustainability Impact**

There are no sustainability impacts identified with STR activity.

### **Fiscal Impact**

Prior to COVID-19, STR activity was generating about \$400,000 annually for the City in Transient Occupancy Taxes (TOT). Based on the recent data, STRs generated roughly \$2,000, \$5,000, and \$8,649 in TOT in March, April, and May, respectively. This shows a significant decrease in STR activity and related revenue. However, it also indicates an upward trend in STR activity.

Enforcement costs will depend on the level of enforcement Council desires. Proactive, semi-proactive, and reactive enforcement will cost an estimated \$408,689, \$283,889, or \$159,089 in the first year respectively. This cost can be fully or partially offset by an STR registration fee that will be presented for Council action in the fall once the impacts of COVID-19 have been analyzed.

### **Next Steps**

After the first reading for the ordinance, a second reading of the ordinance is tentatively scheduled for September 15, 2020.

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**Reviewed by:** Benjamin Fu, Director of Community Development

**Approved by Submission by:** Dianne Thompson, Assistant City Manager

### **Attachments:**

A – Ordinance No. 20-2200

B – Redline Version of Ordinance No. 20-2200

C – July 7, 2020 City Council Agenda Item #8