



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL

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PLANNING COMMISSION STAFF REPORT

Meeting: November 27, 2018

Subject

Municipal Code Amendments to Title 19: Zoning of the Cupertino Municipal Code to regulate Short-Term Rental uses in single-family residential zoning districts; (Application No(s): MCA-2018-02; Applicant(s): City of Cupertino; Location: Citywide).

Recommended Action

That the Planning Commission adopt a Draft Resolution (Attachment 1) recommending that the City Council:

1. Find that the proposed actions are exempt from CEQA; and
2. Adopt an ordinance to regulate Short Term Rental Activity

Discussion

Background:

Short term rental (STR) activity is currently allowed as a Home Occupation per Chapter 19.120 (Home Occupations) of the Municipal Code, upon obtaining a business license, payment of Transient Occupancy Tax (TOT), and if the following regulations are met:

- The property owner or property leaseholder must be the primary resident at the property and be onsite during the lease period.
- The number of transient guests must be limited to two (2) or fewer.
- All transient rentals must be an incidental use.

In early 2018, the Council passed a resolution to enter into an agreement with AirBnb, one of the more prominent STR platforms, for collection of TOT. In conjunction with this, as part of the FY 2018-19 Work Program, the Council requested that a regulatory framework for STRs be developed. At its June 19, 2018 Council meeting, the Council reiterated its interest in creating a regulatory program for short term rentals with review by the Planning Commission.

The Planning Commission provided guidance to staff on potential STR regulations at a study session held on July 24, 2018. The general direction was to allow STRs while protecting the long-term housing stock and preserving the quality of life for residents. Planning Commission also suggested that an online community survey regarding short-term rental regulations be conducted. The survey was made available to the public from August 8th through August 26th. Additionally, a Public Outreach meeting was held on October 4th, 2018. Details from the public outreach is discussed further in this staff report.

The regulations in other jurisdictions that have implemented STR regulations were also examined (see Attachment 2). They include the following jurisdictions:

- | | | |
|-----------------|-------------------|-----------------|
| ▪ Berkeley | ▪ Campbell | ▪ Newark |
| ▪ Mountain View | ▪ Saratoga | ▪ Palo Alto |
| ▪ Santa Clara | ▪ Los Altos Hills | ▪ San Jose |
| ▪ Sunnyvale | ▪ Pacific Grove | ▪ Union City |
| ▪ Gilroy | ▪ Boulder Creek | ▪ San Francisco |
| ▪ Milpitas | ▪ Pasadena | ▪ Sonoma County |
| ▪ Los Gatos | ▪ Morgan Hill | |

The proposed draft regulations have been informed by input from the Planning Commission, the community, STR operators and the best practices from other jurisdictions (see Attachment 3).

Analysis:

Proposed Short Term Rental Regulations:

Short term rentals will continue to be allowed as a home occupation in residential single-family zones. These zones include A, A-1, R-1, RHS, R1C, and Planned Development Zones which allow single family uses (not multifamily uses).

Standards: In addition to complying with the home occupation standards of CMC Section 19.12.030, the proposed ordinance includes the following regulations. References to other jurisdictions with a similar regulation is indicated in *italics*. Staff also requests the Planning Commission's input for some of the areas of regulation highlighted in **bold**.

1. No commercial use and or special uses such as weddings, corporate events, and parties allowed to minimize impacts to the community (*Pasadena*).
2. Hosted stays, where the host is present, are proposed to be allowed to occur with no limitation on the number of days. Un-hosted stays, where the host is not present, are proposed to be limited to 60 days per calendar year (*Berkeley, Pasadena, and San Jose*). **Does the Planning Commission suggest different limitations?**

3. Only allow one (1) short term rental agreement per night for a location to ensure that impacts are minimized (*Los Altos*).
4. Limit allowed number of guests to a maximum of two (2) times the number of bedrooms in the structure in which the short term rental is occurring (depending on whether principal dwelling unit or accessory dwelling unit is used) with an additional two (2) guests to allow a reasonable number of guests (*Berkeley, San Francisco, Sunnyvale, Pacific Grove, Pasadena, and San Jose*). **Does the Planning Commission suggest a different limitation on the total number of guests?**
5. The site must have the minimum parking spaces available as required by the zoning district in which it is located to ensure adequate parking is available to support the use (*Los Altos Hills, San Jose, Pasadena, and Pacific Grove*). **Does the Planning Commission suggest a different parking standard?**
6. All short term rental activity must occur in legally permitted habitable spaces, i.e., not in balconies, uninhabitable spaces or tents etc. to ensure guest safety (*Los Altos Hills Sunnyvale, and Pasadena*).
7. Hosts must prepare and provide a manual with details on regulations such as noise, trash collection, and vehicle parking to all guests (*Sonoma County*).
8. All listings must include the City's short term rental permit number to facilitate code enforcement efforts (*Berkeley, Pacific Grove, Boulder Creek, and San Francisco*).

Application and Review: An annual permit for all short term rental activity is proposed to allow documentation, review and permitting for such activity. An annual review also allows for effective prevention of short term rental activity not conducted in a manner compliant with the proposed regulations. The cities of Berkeley, Pacific Grove, Pasadena Sunnyvale, and San Francisco require short term rentals obtain a short term rental permit.

Among other application requirements, an applicant must provide:

1. Proof of residency to confirm that the residence is the host's primary residence (*Berkeley, Los Altos Hills, Pasadena, Sunnyvale, San Francisco, San Jose*.)
2. For tenants, authorization from the property owner or the property owner's authorized agent to conduct short term rental activity (*not specified*).
3. A local contact who may respond to complaints and other requests in a timely fashion. (*Berkeley, Sunnyvale, San Jose Pasadena and Pacific Grove*). The local contact is required to respond to complaints regarding the short term rental activity within sixty (60) minutes, and be able to take necessary steps/action to resolve complaints (*Berkeley, San Jose and Pacific Grove*).
4. Consent to inspection(s) to ensure compliance with the City's regulations (*N/A*).
5. Identification of a designated parking stall for the short term rental on a site plan (*Los Altos Hills, San Jose, Pasadena and Pacific Grove*).

A short-term rental permit may be approved if it is found that:

1. All required information has been provided
2. There are no existing violations of the Cupertino Municipal Code.
3. A determination has been made that the short term rental is not a public nuisance or threat to the public health, safety, or welfare.

Appeals of a decision to approve or deny a permit may be heard by the Planning Commission. An appeal of that decision may be heard by the City Council.

Revocation: In order to ensure prompt response from the City in the event of continued violations of the Municipal Code, or a public nuisance, a short term rental permit may be revoked with an opportunity to contest such a determination via written revocation written proceedings subject to the requirements of CMC Section 19.12.180 (D). The decision to revoke a permit may be appealed to the City Manager and then by the City Council. The cities of Berkeley, Los Altos Hills, Pacific Grove, Pasadena, San Francisco, and Sunnyvale include regulations to revoke short term rental permits.

Local Contact(s): The City shall maintain a list of permitted short term rentals that includes the “Local Contact” contact information to ensure availability of this information to allow prompt response in the event of complaints.

Other changes to Title 19: Among the other changes in Title 19, changes have been made to correct references, propose clarifying definitions, and correct grammar. In addition, an amendment is proposed to the definition of “Hotels” to simplify the definition.

Noticing and Community Outreach

The following noticing has been conducted for this meeting:

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

Staff conducted an online community survey regarding short term rental regulations from August 8th through August 26th. The results of the online community survey are presented in Attachment 4. In total, the survey received 140 responses, with 97.1% of the responses coming from Cupertino residents. Key takeaways from the survey included concerns using properties as short term rental rather than long-term rentals, willingness

to allow short term rental operators to use their primary residence for short-term rentals, and parking restrictions.

In addition to the community survey, staff held an outreach meeting on October 4th to receive input on the proposed preliminary draft regulations. A post card was sent to all addresses (approximately 25,000 post cards) in Cupertino to notify of the outreach meeting. The outreach meeting was attended by 26 people. A majority of the people in attendance were short term rentals operators. Attachment 5 includes a summary of the comments received from the outreach meeting. Key items of interest concerns with “over regulation,” maximum occupancy, parking regulations and concerns with bad behavior.

The survey indicated that many of the respondents appeared to be community members that wished to see more regulation for short term rental activity. The attendees at the outreach meeting indicated a preference for fewer regulations by citing that there have been very few complaints regarding this activity and it is a self-regulating process since the guests have an opportunity on some of the platforms for rate the operator and the STR.

The preliminary draft regulations were refined with input from the online survey and the outreach meeting in several topic areas such as:

- | | | | |
|---------------------|--------------------|----------------|-----|
| ▪ Parking | ▪ Enforcement | ▪ Hosted | vs. |
| ▪ Length of stay(s) | ▪ Number of guests | Unhosted stays | |
| ▪ Outreach | ▪ Regulations | | |

Environmental Review

The Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act (“CEQA”) Guidelines because the Ordinance amending Title 19 of the Municipal Code imposes administrative regulations related to short term rentals that have no potential for resulting in a physical change in the environment, either directly or ultimately, and therefore pursuant to CEQA Guidelines section 15060(c)(3) no environmental review is required. Further in the event that this Ordinance is found to be a project under CEQA, it is exempt from environmental review under CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that the Ordinance’s administrative regulations of short term rentals will have no possibility of a significant effect on the environment, and under CEQA Guidelines section 15305, because the Ordinance involves minor alterations in land use limitations that do not alter permitted uses or density.

Other Municipal Code Amendments

The City encourages enforcement before revoking/disallowing any activity to allow a permittee or property owner the opportunity to comply with the City’s regulations. It is

anticipated that by relaxing regulations regarding short term rental activity and making it easier for operators to conduct such activity, issues related to Code Enforcement may arise. In order to ensure that a violation of the code or a public nuisance is addressed promptly for the welfare and safety of neighbors, concurrent modifications are proposed to Chapters 1.09, 1.10 and 1.12 in Title 1: General Provisions. These are intended to streamline implementation of the City's regulations and ensure prompt response to violations. The amendments would allow simplification of the language, streamlining implementation, elimination of duplicate language and improvement of internal consistency.

However, since the Planning Commission is not authorized review of changes in Title 1, these have not been presented at this time. These modifications will be presented to the City Council for its consideration, as a package with the Planning Commission's recommendation on the STR regulations.

Sustainability Impact

No sustainability impact.

Fiscal Impact

Implementation of the Short Term Rental Permit program will require a permit fee. A fee will be recommended to the City Council based on the actual cost of providing this service and the fee schedule will be amended accordingly.

In addition, to adequately enforce the 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. It should be noted that some attendees (STR operators) at the outreach meeting were skeptical about this approach. They indicated that it was their belief that third-party code enforcement might be motivated to find municipal code violations as a way to bolster revenues. However, any such an agreement would be negotiated to ensure that the City's goals are reflected and compensation would be appropriately structured pending direction from Council.

Next Steps

The recommendations made by the Planning Commission will be forwarded to the City Council for consideration. Upon a final decision by the City Council, the ordinance will need a second reading at a subsequent hearing. The ordinance will be effective 30 days after the second reading.

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Approved for Submission by: Benjamin Fu, Assistant Dir. of Community Development

Attachments:

1. Draft Resolution of the Planning Commission recommending adoption of the Draft Ordinance.
2. Comparison of Jurisdictions Short Term Rental Regulations
3. Redline document indicating changes to 19.08. 19.12., 19.20, and 19.120.
4. Online Community Survey Summary
5. Public Outreach Meeting Summary