



## COMMUNITY DEVELOPMENT DEPARTMENT

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### PLANNING COMMISSION STAFF REPORT

Meeting: January 14, 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 Planning Commission recommend that the City Council adopt the proposed draft ordinance (Attachment 1) to:

1. Find that the proposed actions are exempt from CEQA; and,
2. Amend the Municipal Code by adding Chapter 5.08 and amending Chapters 3.12 (Transient Occupancy Tax), Chapter 19.08 (Definitions), Chapter 19.12 (Administration) and Chapter 19.120 (Home Occupations).

#### 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 30 days or less. Rentals lasting more than 30 days are not considered STRs. Based on reports on the STR platforms, there are roughly 400 STRs operating within Cupertino.

Under current regulation, STRs are allowed as a Home Occupation per Chapter 19.120 (Home Occupation) of the Municipal Code, upon obtaining a business license, if the following regulations are met:

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

Under current Transient Occupancy Tax regulations, STR operators are required to pay the City's TOT, which is currently 12%. Currently, the City has an agreement with Airbnb, one of the more prominent STR platforms, to automatically collect TOT via their platform and remit the tax to the City through a Voluntary Collection Agreement.

As part of the FY 2018-19 Work Program, Council requested that a regulatory framework for STRs be developed. At its June 19, 2018 meeting, City Council reiterated its interest in creating a regulatory program for STRs with review by Planning Commission. At a July 24, 2018 study session, the Planning Commission provided guidance on potential STR regulations. The general direction was to allow STRs while protecting long-term housing stock and preserving the quality of life for residents. Planning Commission also suggested additional community outreach. Staff created a project specific website ([www.cupertino.org/str](http://www.cupertino.org/str)), prepared an online community survey regarding STRs that was made available from August 8-26, 2018 (results attached as Attachment 2), and held a community meeting on October 4, 2018. These were presented to Planning Commission on November 27, 2018, at which the Planning Commission recommended adoption of the draft ordinance on a 4-0-1 vote (Paulsen abstained).

Further research on STR regulations in other jurisdictions was conducted (see Attachment 3 for a comparison) and additional feedback was sought from the City Council at a study session on April 2, 2019 (Staff Report attached as Attachment 4).

At the study session Council provided direction which resulted in updates to the proposed ordinance as follows:

- Maximum number of guests based on number of bedrooms in the STR: The proposed ordinance restricts the maximum number of guests to two guests per bedroom and a maximum of two guests in an STR with no bedrooms (e.g. studio unit or a family room/living room rental).
- STR activity in condominiums and townhomes: The proposed ordinance allows STR activities to occur in condominiums and townhomes, subject to approval by any Homeowner's Association.
- STR activity within owner occupied units in duplex, triplexes and four-plexes: The ordinance allows STR activity within one of the units as long as it is used as primary residence by the owner or lessee and the lessee has owner approval to conduct the STR activity.
- Restricting guest activity: The ordinance includes restrictions on the number of guests, incorporates quiet hours (9 p.m. to 7 a.m.), and prohibits commercial activities (most parties, weddings, events).

- Car license plate registry or a hanging placard/parking permit system: The ordinance requires that the property owner have the minimum required parking, provide one on-site parking space, and maintain a record of license plates for all STR guests.
- Objective standards for revocation of registration: The proposed ordinance includes reasons for revocation (registration obtained by false means, two willful violations within the preceding six months, etc.).
- Regulations for hosting platforms: The proposed ordinance regulates hosting platforms, including by requiring the collection of transient occupancy taxes (TOT) and verification of a valid registration number prior to booking.

## Discussion

### *Short-term Rental Regulations*

The new Short-term Rental regulations are proposed to be located within Title 5: Business License and Regulations in a new Chapter 5.08. In addition, amendments have been proposed to Chapter 3.12, 19.08 and 19.120 for consistency and clarification of the STR regulations. Redlines are indicated in Attachment 5.

### *Definitions*

Several new definitions have been proposed within the new chapter regulating STR activity to allow implementation and enforcement of the new regulations. These include “host”, “hosting platform”, “hosted stay”, “local contact”, “short-term rental”, “transient”, and “un-hosted stay”. To ensure consistent interpretation of these terms, definitions in Chapters 3.12 and 19.12 have been amended and/or added. For e.g. “transient” and “hosting platform” in Chapter 3.12 and “dwelling unit”, “hotel”, “short-term rental”, among others in Chapter 19.12.

### *Short-Term Rental Activity*

With the proposed amendments, STR activity would be allowed as a home occupation within a primary residence (the property at which a person resides a majority of time, carries on basic living activities, and the place he or she usually returns to, in the event of travel.) An STR is prohibited if the dwelling unit is not used as a primary residence. STR activity would not be permitted within an Accessory Dwelling Unit (ADU), in compliance with new state ADU legislation.

STR activity is limited to one rental agreement or hosting platform booking per night per parcel. Hosted stays, when the host is present, may occur throughout the calendar year without a limitation on the cumulative number of short-term rentals. Un-hosted stays, when the host is not present, are limited to 60 days per calendar year. Guests are limited to a total of two times the number of bedrooms in the dwelling unit or portion rented per the rental agreement, or a maximum of two (2) for a studio or single room rental (such as a family room/living room rental).

As part of the STR activity, the host must prepare a guest manual that is required to be provided at the same time as the booking, and must also be located within a prominent place of the STR. The guest manual must include information on noise, quiet hours, trash collection, and vehicle parking. The property on which the STR is located must provide the minimum parking spaces required by zoning district, and designate at least one on-site parking space for the STR.

Since STR activity is allowed as a home occupation, it would continue to be regulated by Chapter 19.120: Home Occupations. The Home Occupation regulations ensure that the use of the property for an STR remains secondary to the use of the dwelling for residential purposes and does not damage the residential character of the neighborhood. However, to ensure that the residential character of the neighborhood is maintained, additional requirements are placed on STRs including:

- Prohibiting activities for commercial purposes and/or events that are likely to result in violation in traffic, parking, noise, or other standard regulating the residential use and character of the neighborhood.
- Complying with quiet hours from 9 p.m. to 7 a.m.
- The host providing a guest manual to the renter at the same time as the booking, and locating the manual in a prominent place within the STR. The guest manual must include information on noise, quiet hours, trash collection, vehicle parking and any relevant regulations from the Municipal Code.
- Identifying and making available one designated on-site parking space for the guest.
- The host maintaining a license plate registry for all transient tenant cars.

The host must also maintain records documenting compliance (records on reservation, payment of TOT, etc.) for a period of three years.

#### *Short-Term Rental Registration*

To operate an STR within Cupertino, STR registrants must submit an application that, in addition to an application fee, includes the following:

- Host Name and Contact Information
- Site plan and/or floor plan indicating location of STR(s)
- Consent to Inspections
- Proof of primary residence
- HOA or Property Owner approval (if applicable)
- Property Location
- Acknowledgement of compliance with city requirements
- Local Contact
- Identification of off-street parking
- Proof of remittance of TOT (renewals only)

STR registration is valid for one calendar year and must be renewed annually. Upon submission of the registration application and fee, the City will provide the applicant

with a unique STR registration number that must be displayed on any advertisement of the STR.

An STR may only be registered when all the required information has been provided, the STR has not had two or more willful violation within the last six months, and operation of the STR is not a public nuisance or a threat to public health, safety, or welfare.

#### *Revocation*

STR registrations may be revoked for any of the following reasons:

- That registration was obtained by misrepresentation, false statement, or fraud;
- That the short-term rental activity is being conducted in violation of local and/or state law;
- There have been two willful violations within the preceding six months;
- That the short-term rental activity has caused or is causing a serious threat to human health or public safety; or
- Consent to inspection has not been provided.

When evidence suggests that a violation has occurred, the revocation process is initiated. As a first step, the City will issue either a Notice of Pending Revocation or a Notice of Suspension Pending Revocation, of which the latter is effective immediately. The notice is provided to the host, property owner, and the local contact, and details the grounds for revocation. The notice allows for submission of a written statement and/or documentation disputing such grounds within 30 days of receipt of the notice. Upon receipt of this information, the City has 30 days to make a determination on the revocation.

If the decision to revoke an STR registration is made, the registrant may file an appeal within 14 days of the decision. A hearing held by an independent hearing officer will be scheduled within 30 days from the appeal. The decision of the independent hearing officer would be final.

#### *Regulation on Hosting Platforms*

The City has conducted outreach with two of the largest STR hosting platforms (Airbnb and Expedia) in developing the section regulating hosting platforms. Comments from Expedia have been included as Attachment 6. Their comments have been incorporated to the extent that they could be, given the City's concerns about preserving neighborhoods.

Under the proposed ordinance, Hosting platforms are responsible for collecting TOT, unless a valid voluntary collection agreement or other agreement for TOT remittance exists. Platforms operating within the City are required to retain records documenting compliance for a period of three (3) years. The retained records must include information such as history of the property on the hosting platform, recording indicating payment of

any and all transient occupancy taxes, type of stay (hosted or unhosted), length of stay per reservation, and the number of persons per reservation. Additionally, STR platforms are required to have a way of preventing the booking of any STR that does not have a valid registration number from the City.

#### Other Municipal Code Amendments

A few clarifications have been made to the Municipal Code in Chapter 19.12 to clarify the processing of permit applications and revocations of permits. These have been identified with redlines in Attachment 4. The proposed amendments do not change current business practices but simply clarify them.

#### Short-term Rental Enforcement Expectations and Options

In order to ensure adequate and effective compliance with the proposed Short-term Rental program, and to address any associated public nuisances, it is important to consider the capacity of current enforcement personnel and what additional resources will be needed to achieve the compliance expectation of the City and City Council.

Enforcement of all STRs is currently managed by one (1) full-time Code Enforcement Officer within the Community Development Department, who in addition, provides enforcement support to many other areas of the Municipal Code including zoning, building standards, housing standards, fire prevention regulations, and protected private trees. The enforcement of STRs is 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 current regulations. Between April 2016 and December 2019, the City received twelve (12) complaints related to STRs. These range from complaints 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. On average, it takes staff almost 90 days (and even longer in some cases) to resolve these complaints and obtain compliance. A change to the level of enforcement response for STR violations is dependent upon the expectations of the City Council and consideration of fund allocation and budgetary adjustments.

Depending on expected outcomes, enforcement can be done at three levels:

1. Proactive: A full proactive approach is conceptually the most intensive approach which intends to ensure the highest level of registration compliance (both initial and ongoing), proactive annual inspections of existing registrants, and provide ongoing reactive response to public nuisance complaints.
2. Semi-proactive: The semi-proactive approach would be a step down from the intensity of the full proactive approach. This approach aims to provide a satisfactory registration compliance rate of known STR operators while also

providing an ongoing reactive response to complaints. There are no proactive annual inspections as part of this approach.

3. Reactive: The reactive approach would maintain status quo on registration compliance and complaints by allowing staff to continue enforcement on a reactive basis.

Third-party compliance monitoring contract services could provide ongoing monitoring and capture of records and information which can be used to both verify compliance and as evidence in the enforcement of the STR program. This would be vital to the successful implementation and enforcement of the proposed short-term rental program. Current staffing levels do not allow delivery of this level of service for the anticipated volume of short-term rental registrants.

It is highly recommended that the City contract for additional code enforcement staffing and for third-party compliance monitoring with a service provider, regardless of the desired enforcement approach, in order to facilitate even a minimum level of success for the program.

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:

<b>Enforcement Level</b>	<b>Services Provided</b>	<b>Anticipated Rate of Compliance</b>	<b>Additional Contract Staffing Needs</b>	<b>Estimated Cost (including third-party monitoring)</b>
Proactive	<ul style="list-style-type: none"> <li>▪ Proactive registration enforcement</li> <li>▪ Proactive annual inspections</li> <li>▪ Reactive complaint response</li> </ul>	90% or better	3,120 annual hours	\$376,000
Semi- Proactive	<ul style="list-style-type: none"> <li>▪ Proactive registration enforcement</li> <li>▪ Reactive complaint response</li> </ul>	70% or better	2,080 annual hours	\$261,000
Reactive	<ul style="list-style-type: none"> <li>▪ Reactive Registration Enforcement</li> <li>▪ Reactive Complaint Response</li> </ul>	30% or better	1,040 annual hours	\$147,000

Public Notice and Outreach

The following noticing has been conducted for this project:

<b>Notice of Public Hearing, Site Notice &amp; Legal Ad</b>	<b>Agenda</b>
<ul style="list-style-type: none"> <li>▪ Legal ad placed in newspaper (<i>at least 10 days prior to hearing</i>)</li> <li>▪ Display 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>

Staff conducted an online community survey regarding STR regulations in August 2018. The results of the online community survey are presented in Attachment 2. In total, the survey received 140 responses, with 97.1% of the responses coming from Cupertino residents. Key takeaways from the survey included concerns regarding impacts to the long-term housing stock, support for allowing use of a person's primary residence as an STR, and concerns about parking impacts.

In addition to the community survey, staff held an outreach meeting on October 4, 2018 to receive input on proposed preliminary draft regulations. A postcard announcing the community meeting was sent to all addresses (approximately 25,000 postcards) in Cupertino. In addition, Airbnb also cooperated by sending their known operators notification about the outreach meeting. The outreach meeting was attended by 26 people. A majority of the people in attendance were STR operators. Attachment 7 includes a summary of the comments received from the outreach meeting. Key items of interest included concerns with "over regulation" in general and, as a reaction to a few bad actors in particular, maximum occupancy, parking regulations, and concerns with guest behavior that adversely impact nearby neighbors.

While the online survey responses (mainly from residents) indicated a desire to see more regulation for STR activity, the outreach meeting responses (mainly STR operators) indicated a preference for fewer regulations. STR operators cited that regulations are not needed because there have been very few complaints regarding this activity and that the activity is a self-regulating process since some of the hosting platforms allows guests an opportunity to rate the operator and the STR.

It should be noted that input from the online survey and the outreach meeting have been incorporated into the draft ordinance in several topic areas such as:

- Parking
- Length of stay(s)
- Outreach
- Enforcement
- Number of guests
- Regulations



### 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.

### Next Steps

The Planning Commission’s recommendation will be forwarded to the City Council for consideration. Upon final decision by the City Council, the ordinance will need a second reading at a subsequent hearing. To allow time for operator education and outreach, the ordinance will be effective on July 1, 2020, provided that there are at least 30 days after the second reading.

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Approved for Submission: Benjamin Fu, Director of Community Development

### Attachments:

1. Draft Resolution Adopting STR Regulations
2. Online Community Survey Summary
3. Comparison of Short-Term Rental regulations
4. April 2, 2019 City Council Study Session Staff Report
5. Redlines to Titles 3, 5 and 19 of the Municipal Code
6. Comments from Expedia Group
7. Public Outreach Summary