



## CITY MANAGER'S OFFICE

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## CITY COUNCIL STAFF REPORT

Meeting: April 2, 2019

### Subject

Study Session regarding short-term rental (e.g. Airbnb) regulations

### Recommended Action

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

### 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 30 days or less. Rentals lasting more than 30 days are not considered short-term rentals. Based on reports on the STR platforms, there are roughly 300 STRs available within City limits.

Currently, STR activity is allowed as a Home Occupation per Chapter 19.120 (Home Occupations) of the Municipal Code, upon obtaining a business license, if the following regulations are met:

- The property owner or property leaseholder must be the primary resident at the property and be on-site 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 addition, STR Operators are required to pay the City's Transient Occupancy Tax (TOT) which is currently 12% in Cupertino.

In 2018, Airbnb, one of the more prominent STR platforms, offered to automatically collect TOT from short-term renters using their platform and remit the tax to the City through a Voluntary Collection Agreement. Since Cupertino was not receiving TOT from STR operators, whether knowingly or unknowingly, the City Council passed a resolution to enter into such an agreement with Airbnb in June 2018. In conjunction with this new agreement, and 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 8<sup>th</sup> through August 26<sup>th</sup>. Additionally, a community meeting was held on October 4<sup>th</sup>, 2018. Feedback from the public outreach is discussed further in this staff report.

On November 27, 2018, proposed draft regulations were presented to the Planning Commission and were recommended for Council's approval with amendments by a 4-0-1 vote (Paulsen abstained). The April 2, 2019 study session is intended to solicit feedback from the new City Council and the public prior to returning with draft regulations.

### Discussion

STRs provide opportunities for homeowners to generate income and many visitors prefer renting local homes because they are less expensive than hotels. Since the internet and STR platforms allow easy access to a database of STRs, this activity now offers a lucrative business opportunity, but without tailored regulations, could negatively impact existing residents. The current relevant regulations limit the city's ability to address potential impacts of STR activity. Potential impacts include neighborhood impacts, housing availability, revenue generation, and more.

The regulations in other jurisdictions were examined to determine best practices (Attachment 1). 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 do not regulate STR activity. The following table (Table 1) provides an overview of how other cities have responded to STRs.

**Table 1: STR Regulations in Other Cities Survey**

<b>Regulates STRs</b>	<b>STRs Prohibited</b>	<b>No Regulations</b>	<b>Regulations under consideration</b>
Sunnyvale	Saratoga	Palo Alto	Santa Clara
Mountain View	Campbell		
San Jose	Los Altos		
Los Gatos			
Los Altos Hills			
San Francisco			

In November 2018, the Planning Commission recommended adopting moderate regulations to address the primary impacts of STRs. The Planning Commission recommended adding limits to the allowed occupancy in an STR unit and accepted staff's recommendation to require operators to maintain adequate records (See Attachments 2 and 3). The Commission also discussed adding parking regulations for STR units at length. Ultimately, the Commission decided that the addition of parking regulations, particularly for STR guests, would not be practical and enforcement of such regulations would be resource intensive and difficult.

### Analysis:

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 impacts on neighborhoods, identification of STRs, impacts on housing availability for long-term renters, and enforcement mechanisms. The following sections outline these issues along with best practices for addressing them based on regulations from cities currently regulating STRs.

### ***Neighborhood Impacts***

STRs with transient tenants may cause impacts to 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 neighborhood impacts, some cities (*Los Gatos, San Jose, Sunnyvale*) limit the number of occupants allowed per STR. For example, Sunnyvale allows a maximum of four (4) while Los Gatos allows for two (2) persons per bedroom, plus one additional person.
  - **Recommendation:** Maximum occupancy of two people times the number of bedrooms in the structure in which the STR is occurring and two people for studios.
- **Rentals per night:** Limiting the number of rental agreements that can occur per night on a property may help in mitigating the impact of multiple groups coming to one location (*Los Altos Hills, San Francisco*).
  - **Recommendation:** Only allow one STR agreement per night for a location to ensure that impacts are minimized.
- **Parking:** Determining adequate parking requirements is difficult because of the transient nature of the use. The increased use of on-demand driving services (e.g. Uber and Lyft) makes determining parking requirements difficult as well. Most cities require that STRs provide parking consistent with their zoning designation.

Since street parking is available to the general public, it is very difficult to enforce any restrictions on parking on the street except to restrict cars from parking for more than 72 hours in one spot. In most cases, cities default to requiring that, at a minimum, the minimum number of parking spaces required for that dwelling unit type be provided (*Sunnyvale, Mountain View, San Jose, Los Gatos, San Francisco*). In some cases, cities that do not allow overnight on-street parking require that all STR parking occur on site (*Los Altos Hills*).

- **Recommendation:** As previously mentioned, the Planning Commission discussed parking impacts at length and considered various different options which were either very difficult or resource intensive to enforce. Their final recommendation was as follows:
  - The site must have the minimum parking spaces as required by the zoning district in which it is located.
  - Require operator to designate an STR parking space onsite as part of the registration process.
- **Non-habitable spaces:** To further protect transient tenants and neighborhood character, some cities prohibit the short-term rental of vehicles, garages, and outdoor areas (*Sunnyvale, Los Gatos, San Francisco*). All Home Occupations in Cupertino, including short-term rentals, must occur in the main dwelling or an accessory dwelling building.
  - **Recommendation:** 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.
- **Commercial Activity:** Some cities also prohibit the commercial use of properties on which STRs are permitted for events such as weddings or corporate events and parties to prevent undesirable parking or other impacts (*Sunnyvale, Mountain View, Los Gatos, Los Altos Hills*).
  - **Recommendation:** No commercial use and or special uses such as weddings, corporate events, and parties allowed to minimize impacts to the community.
- **Guest Notification:** Since STR guests may come from outside of the area, they may be unfamiliar with the City's regulations on impact inducing activity. Requiring STR operators to provide notification to transient guests about the City's rules around noise, trash collection, and nuisance abatement may reduce issues (*Los Altos Hills*).
  - **Recommendation:** Hosts must prepare and provide a manual with details on regulations such as noise, trash collection, and vehicle parking to all guests.

- **Local Contact Information:** Some cities require that STRs have a local contact (*Mountain View, Sunnyvale, San Jose*) that can respond to any reported issues or complaints within 60 minutes and be available 24/7 (*San Jose, Los Altos Hills, Mountain View*).
  - **Recommendation:** As part of the registration process, a local contact must be identified who can respond within 60 minutes to complaints regarding STR activity.
- **Type of Unit:**
  - **Multi-family Units:** Many cities allow STRs in multifamily units (*Sunnyvale, San Jose, and Mountain View, San Francisco*). Multifamily units are typically more severely impacted by the addition of guests with existing parking limitations. While the type of residence did not come up as a major topic in the community outreach, one existing STR operator did express interest in renting out a unit in their triplex. However, this could also cause other impacts, such as to the availability of units to long-term renters – particularly units that may be considered “affordable.”
  - **Accessory Dwelling Units (ADUs):** Many cities allow the use of ADUs for STR activity (*Sunnyvale and Mountain View, San Francisco*). As a percentage of the total number of residential units in Cupertino, ADUs are a very small number.
    - **Recommendation:** Since the percentage of multi-family (duplex, triplex and apartments) is much higher than the percentage of ADUs in Cupertino, it is recommended that STRs not be allowed in multi-family zoning districts but be allowed in ADUs. Zoning districts where STRs would be allowed include A, A-1, R-1, RHS, R1C, and Planned Development Zones which allow single family uses (not multifamily uses).

These recommendations were included when the Planning Commission recommended the draft regulations for Council’s adoption.

**Question 1: Would Council suggest different regulations than those recommended above?**

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### ***Impacts on Long-Term Housing Inventory***

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 December 8, 2018, there were 287 Airbnb listings in Cupertino and 131 of those listings (46%) 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, based on data obtained from a third-party consultant, a typical listing on Airbnb in Cupertino is rented for 107 nights (about 3.5 months) a year.

Given the relatively small number of STRs and the fact that a typical STR is rented for less than four months in a year, STRs likely have a minimal impact on housing availability currently. In addition, according to Airbnb, the average STR in Cupertino earns \$15,000 a year, making it less profitable than if the unit were offered as a long-term rental. However, the STR industry has only become prominent in the last 10 years or so, and if more homeowners start using their entire homes for STRs for longer durations, this could become a larger 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 (*Sunnyvale, Mountain View, San Jose, Los Gatos, Los Altos Hills, San Francisco*).
  - **Recommendation:**
    - The STR operator must be the primary resident at the property (*current regulation*).
    - For long-term tenants that are the primary resident, authorization from the property owner or the property owner's authorized agent to conduct STR activity.
- **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 ADU, only the primary dwelling or the ADU could be authorized for STR activity but not both (*Los Gatos*).
  - **Recommendation:** Only one rental agreement per property is allowed per night.
- **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. Another option is to prohibit (*Sunnyvale*) or limit “un-hosted” stays where the STR operator is not present during the rental period (*Mountain View, San Jose, Los Gatos, Los Altos Hills, San Francisco*). While requiring operators to be present on-site during rentals may mitigate impacts to housing availability and the neighborhoods, it can be difficult to verify and enforce. This is why cities also require the identification of a local host who can respond to issues in a timely manner (*see above*).

- **Recommendation:** Hosted stays, where the STR operator is present, are proposed to be allowed to occur with no limitation on the number of days. Un-hosted stays, where the STR operator is not present, are proposed to be limited to 60 days per calendar year.
- **Affordable Housing or Special Housing:** Some cities prohibit STR operations in affordable housing or BMR units (*Los Gatos, San Francisco*). In Cupertino, sub-leasing/tenanting of affordable units as a source of supplemental income is prohibited.
  - **Recommendation:** Since the city’s standard BMR agreements prohibit the lease of space in the units to others, this has not been separately included in the regulations.

These recommendations were included when the Planning Commission recommended the draft regulations for Council’s adoption.

## **Question 2: Would Council suggest different regulations than those recommended above to maintain the inventory of long-term housing?**

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### ***Violation Penalties***

To assist in effective enforcement, penalties for violations should be made clear and significant enough to encourage compliance. While Cupertino’s customer service approach is to always encourage compliance first, in many situations, since the financial upside to continuing a non-complying activity is so high, an STR operator may not feel motivated to comply. Many cities, similar to Cupertino, defer to their general penalty as the fine schedule for violations. These penalties for violations 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 average STR earns about \$15,000 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 or

for other STR violations. This would encourage STRs to register and comply, making enforcement of other violations much easier.

In addition to higher fines, other regulations are proposed in order to facilitate enforcement.

- **Revocation:** Many cities include the ability to revoke an STR permit after 2 or 3 violations (*Sunnyvale, Mountain View, Los Gatos, Los Altos Hills, San Francisco*). This allows cities to revoke or disallow STR activity if the operator fails to comply with regulations on multiple occasions. Without the option to revoke, the City would need to rely on fines or pursue legal action, including filing criminal charges or seeking a civil injunction.
  - **Recommendation:** In order to ensure prompt response from the City in the event of continued violations of the Municipal Code, or a public nuisance, a STR permit may be revoked. The decision to revoke a permit may be appealed to the City Manager and then to the City Council.
- **Consent to inspection(s):** The City's ability to conduct inspections is important to ensure compliance with the City's regulations (*Los Gatos*).
  - **Recommendation:** Consent to inspection(s) at any time while STR activity is occurring is required as part of the application process.
- **Including authorization number in listings:** It is a best practice to require that the STR authorization number appear in all listings. This facilitates enforcement and can make it easier to determine which listings have STRs that are not registered.
  - **Recommendation:** All listings must include the City's short-term rental permit number to facilitate code enforcement efforts (*San Francisco*).

These recommendations were included when the Planning Commission recommended the draft regulations for Council's adoption.

**Question 3: Would Council suggest different regulations and/or higher penalty amounts than those recommended above for violations?**

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### *Enforcement*

To assist with enforcement, staff recommends contracting with a third-party vendor to monitor STR listings in the City, operate a 24/7 hotline for residents to call for complaints, and provide initial compliance communications with STR operators. This would result in the City's code enforcement officers to be involved only once an issue that requires in-person follow up has been flagged by the third-party vendor. Contracting with a third-party vendor would also assist in identifying properties that conduct STR activity on STR



platforms other than Airbnb to ensure appropriate collection of TOT owed to the City for such activity. In addition, it would also identify properties not authorized by the City to ensure that they are made aware of the City's regulations and comply with them.

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. San Francisco has an estimated 11,000 STR listings and has a dedicated Office of Short-Term Rentals with six staff to run the program. Without proper support, cities most often reactively enforce on a complaint basis and can be inundated with the volume of cases opened.

Two enforcement approaches can be taken: proactive or reactive. Historically, due to limited resources, Cupertino has taken a reactive enforcement approach to code enforcement of any kind which involves responding to complaints and issues as they are brought forward. Proactive enforcement for STR activity involves actively monitoring for noncompliance with regulations, which could involve routine and randomized site visits and thorough investigation. There are pros and cons to both passive and proactive enforcement which are outlined in Table 3 below.

**Table 3: Reactive vs. Proactive Code Enforcement**

	<b>Reactive Enforcement</b>	<b>Proactive Enforcement</b>
<b>Pros</b>	<ul style="list-style-type: none"><li>– Can likely be conducted with existing staff (dependent on the number of complaints received, additional staff may be needed).</li><li>– Maintains City's current code enforcement philosophy.</li></ul>	<ul style="list-style-type: none"><li>– Addresses complaints as well as actively works to discover noncompliant activities.</li><li>– Typically results in higher compliance rates throughout the City.</li></ul>
<b>Cons</b>	<ul style="list-style-type: none"><li>– Addresses complaints only.</li><li>– Does not ensure a high compliance rate in the City.</li></ul>	<ul style="list-style-type: none"><li>– More resource intensive and would require additional staff support. Staff estimates that at least one additional code enforcement officer would be needed to effectively enforce the STR program and regulations proactively.</li></ul>

**Question 4: Does the City Council wish to regulate STR activity proactively?**

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Community Outreach

Staff conducted an online community survey regarding STR regulations in August 2018. 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 regarding using properties as STRs rather than long-term rentals, willingness to allow 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<sup>th</sup> to receive input on proposed preliminary draft regulations. A postcard was sent to all addresses (approximately 25,000 postcards) in Cupertino. In addition, Airbnb agreed to send 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 5 includes a summary of the comments received from the outreach meeting. Key items of interest include concerns with "over regulation" in general and, as a reaction to a few bad actors in particular, maximum occupancy, parking regulations, and concerns with bad behavior.

The online survey indicated that many of the respondents appeared to be community members that wished to see more regulation for STR 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 guests have an opportunity on some of the platforms to rate the operator and the STR. To date, nine complaints related to STRs have been received between April 2016 and February 2019. 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.

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. Unhosted |
| ▪ Length of stay(s) | ▪ Number of guests | stays                 |
| ▪ Outreach          | ▪ Regulations      |                       |

#### Sustainability Impact

STRs may increase the number of 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, information on proper waste collection must 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 compliance vendor with access to data is required to monitor the program. Based on

quotes from vendors, a third-party compliance vendor would cost around \$35,000 annually. In addition, depending on the kind of enforcement related to STR activity desired by the Council, additional code enforcement staff may be required. A full-time additional code enforcement officer would cost \$132,533 annually.

The additional TOT revenue generated from STRs may cover some of these costs. However, the costs may also be incorporated into the fee schedule.

**Question 5: Would Council like to consider a proposed fee schedule update including a fee to cover additional STR monitoring and enforcement costs?**

The business license fee is an opportunity for revenue to offset the costs of the program. Currently, effective January 2019, STRs pay \$150 for a business license as a Home Occupation. Hotels, motels, auto courts, and lodging houses pay \$150 plus \$9.71 per room. The Council may wish to update the business license fee for STRs to be similar to that of hotels.

**Question 6: Would Council want STRs to pay a business license fee at the Home Occupation rate or at the hotel rate?**

Next Steps

Staff will continue to develop a regulatory program for STRs and identify required municipal code amendments including Council direction.

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Attachments:

1. Comparison of Jurisdictions Short Term Rental Regulations
2. Planning Commission Resolution No. 6866 Recommending Adoption STR 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