



File #: 15-0585, Version: 1

REPORT TO PLANNING COMMISSION

SUBJECT

Introduce an Ordinance to add a new Chapter 19.76 entitled Short-term Rentals and Home Sharing to Title 19 of the Sunnyvale Municipal Code, and find that the project is exempt under CEQA pursuant to Guidelines 15061(b)(3) (Study Issue 2015-7147)

REPORT IN BRIEF

In recent years, the City has experienced a significant increase in the number of residents who rent all or part of their homes to guests staying thirty days or less. Pursuant to the zoning code (19.12.210), this activity is considered transient lodging similar to hotels and motels, and is therefore currently prohibited in residential zoning districts. However, enforcement of this prohibition is resource intensive and challenging. Many short-term rentals appear to co-exist peacefully with neighbors: there have been instances, however, where neighbors complained that short-term rental activities created a nuisance, especially when the rental generates a high turnover of strangers in the neighborhood. While not entirely reliable as an accurate count of activity, based on a review of advertising on websites such as Airbnb, there are currently more than 200 residences in the City being used for short-term rentals, making the task of enforcement a potentially significant work load. The task of enforcement is significant. Typically, the Department of Public Safety (DPS) responds on a complaint basis, and works towards resolving the issue with the occupant, owner and neighbors. However, DPS cannot lawfully enter a residence to conduct an investigation without a search warrant, consent, or exigent circumstances.

Many people use short-term rentals while on business trips, vacations, or while their home is under construction. Proponents argue that short-term rentals provide a more local experience, create opportunities to meet people, and are an alternative to traditional lodging. During large, area-wide events, short-term rentals can help augment the existing lodging units by providing people with more options in attending the event. Proponents also argue that many residents use short-term rentals as a way of augmenting their income, and may be needed for some residents to afford their homes.

Concerns about short-term rentals include allowing a commercial-type use in residential areas, and complaints from neighbors about safety due to the high turnover of residents, noise, incompatibility with the residential neighborhood, and parking. Another concern is that short-term rentals remove housing stock that could otherwise be available for long-term rental or sale, adding to Silicon Valley's critical housing shortage.

City Council ranked this study as a priority for the year (CDD 15-12, Attachment 1), asking staff to identify realistic regulations to more accurately respond to this growing business type. The goal of this study is to consider different options that both address the concerns surrounding this new type of business, as well as respond to its growing popularity.

Many cities nationwide are working to develop effective programs to address short-term rentals. After reviewing many approaches, staff is recommending allowing short-term rentals in Sunnyvale with defined zoning standards and enforcement tools to address neighborhood concerns and ensure compliance. The recommended zoning code amendments focus on simplicity and ease of administration to reduce the deterrents for hosts of short-term rentals to obtain the necessary approvals. Staff will also attempt to work with the businesses offering the service (such as Airbnb, Flipkey, Homestay) to collect the transient occupancy tax (TOT) of any host in the city. This would reduce the work necessary by the City to find the hosts and ensure that TOT is paid.

Staff recommends that Council introduce an ordinance that codifies general standards of short-term rental businesses, including permitting procedures for their use (Attachment 2). Staff will continue to work with the businesses to find ways to ensure maximum compliance with City regulations and to collect TOT.

The Housing and Human Services Commission will review this study on July 22, 2015, and the City Council hearing is scheduled for August 25, 2015.

BACKGROUND

The Sunnyvale Municipal Code prohibits hotels and motels from most residential areas. Hotels are defined as facilities that offer transient lodging accommodations to the general public for compensation, and transient is defined as any individual who exercises occupancy for a period of 30 consecutive calendar days or less.

While short-term rentals are not new, they have expanded in popularity due to Internet sites such as Airbnb, HomeAway and Flipkey. Users work directly with a homeowner or another individual with these internet companies serving as a middleman in the business transaction. These internet sites give individuals more options for advertising their rentals, but the transactions tend to be private and difficult for a regulating agency to track.

Many cities are grappling with how to handle the growing popularity of short-term rentals. Some cities have attempted to put wide-ranging regulations in place to control the use, while others have taken a more hands-off approach. A brief description of how some cities are reacting to this use is included in Attachment 3.

In order to better understand the community's thoughts about the issue, an Open City Hall web page was created to provide information and a survey was also posted to receive feedback. In summary, 50 percent of the respondents are generally supportive of short-term rentals and another 24 percent would be supportive if only hosted rentals are allowed (see Attachment 4 for a summary of that survey). Hosted refers to rentals where the resident remains on the premises while the home or rooms are rented; unhosted refers to situations where the full house may be rented and the resident does not remain on the premises.

Enforcement

Since the short-term rental business model is a fairly new concept, the City only started addressing the issue in FY 2014/15, after staff determined that it is a municipal code violation. The City has not proactively enforced any short-term rentals but has received approximately ten complaints. Of those complaints, most were resolved quickly after informing the property owners that short-term rentals are a violation of the municipal code. Three property owners were informed of the violation and

stated that they would cease the practice; however, subsequent complaints from concerned neighbors prompted further investigation revealing that the practice had not ceased. The three property owners received administrative citations.

Short-term rentals present enforcement challenges for Sunnyvale and other jurisdictions. Numerous short-term rental platforms exist with new ones continually added, making it difficult to prove that a resident is renting their home for fewer than 30 days. This is further complicated by the fact that many of these rental platforms do not provide the specific addresses of the rental properties so they are difficult to locate (even the user may not know the exact location until the transaction is completed). Staff has also found that after warning people about the violation, some have simply changed the description on the website to state “30 days or longer” while still renting their rooms/homes on a per night basis. To pursue and effectively enforce short-term rental complaints, additional staffing would be needed since these cases can be complicated, time intensive, and difficult to prove. DPS staff cannot enter private residences to gather evidence without a search warrant or consent, and short-rental platforms are generally unwilling to share information without a subpoena.

During the joint Study Session on May 12, 2015, City Council and the Planning Commission members had questions about whether the City can identify short-term rental hosts and enforce City rules using tax data. According to Airbnb, they do collect taxpayer information from hosts, and those with income from house rentals must report that as taxable income. This is not sufficient data, however, for the City to determine which home owners and tenants are using the residence as a rental unit because the only information the City receives from the State Franchise Board is a list of individuals and property addresses for which a principal business activity (PBA) code is issued. The list the City receives does not list the type of business at that location, so there is no way to determine if the PBA was for a rental unit, home consulting business, or other use. As a result, use of tax data is not sufficient for enforcement of city regulations.

EXISTING POLICY

General Plan:

From Land Use and Transportation (LT):

GOAL LT-2 Attractive Community - Preserve and enhance an attractive community, with a positive image and a sense of place, that consists of distinctive neighborhoods, pockets of interest, and human-scale development.

Policy LT-2.1 Recognize that the City is composed of residential, industrial and commercial neighborhoods, each with its own individual character; and allow change consistent with reinforcing positive neighborhood values.

Policy LT-3.4 Determine appropriate density for housing based on site planning opportunities and proximity to services.

Policy LT-6.3 Consider the needs of businesses as well as residents when making land use and transportation decisions

Policy LT-7.4 Support land use policies that provide a diversified mix of commercial/industrial development.

From Community Character (CC):

Policy CC-1.7 Encourage neighborhood patterns that encourage social interaction and avoid isolation.

ENVIRONMENTAL REVIEW

Pursuant to California Environmental Quality Act (CEQA) Guidelines 15061(b)(3), CEQA does not apply to activities that are not a project. The code changes will not have the potential for causing a significant effect on the environment. Allowing homes to be used for short-term rentals does not change the nature of residential area in which they are located, it only changes the term of occupancy. This is not considered an environmental impact pursuant to CEQA.

DISCUSSION

Short-term rentals are enjoying immense popularity, with future growth expected. Although the use of personal residences for hotel-type lodging is popular, it comes with concerns and issues that are difficult to resolve. Listed below are areas of concern for this type of business in residential zones. The report identifies options to address these issues:

1. Lack of oversight of hosts
2. Difficulty in enforcement
3. Neighborhood compatibility
4. Safety
5. Noise
6. Parking

Overview

Enforcing short-term rentals is difficult whether the zoning remains the same (currently considered to be illegal) or if they are an allowed use. One key issue is that the Internet companies that post the rentals act as the middleperson in the transactions but do not ensure the hosts meet local regulations. Companies like Airbnb acknowledge that people using their service must do their own due diligence regarding local permitting, and in some cases offer brief summaries of what different jurisdictions require, but they do not take responsibility for the transactions. In contrast to a hotel business, which gets the necessary permits to build and operate a lodging facility (in addition to providing on-site personnel to secure and maintain the facility), the short-term rental companies act as go-betweens by listing available rentals while collecting a fee for each transaction. While these services benefit residents wishing to offer short-term rentals, surrounding residents may not be aware of such rentals until they occur.

In order to impose regulations that will benefit the entire community, cities have tried with varying success to place land use requirements and restrictions on the hosts. Cities have enacted specific permitting requirements but the resulting success rate of people obtaining permits is less than 10 percent. The companies that act as middlemen do not monitor or require proof of a local permit to list a rental. Responsibility for enforcing permitting requirements presently rests entirely with the jurisdiction. However, the State legislature is currently working on a number of bills on this issue, which may resolve the issue at the state level.

Options

Various cities have adopted regulations to ensure short-term rentals are compatible with their

surrounding neighborhoods, but no single approach has proven to be an optimal solution. San Francisco has been cited as an example with a process in place that works well, but recent actions have shown otherwise. The Planning Department for San Francisco recently notified the Board of Supervisors of the difficulty of enforcing their regulations. Some of the aspects of the San Francisco regulations that are difficult to enforce include: the specified number of days units can be rented out; the number of days a permanent resident must live in the unit; and that tenants may not make more in short-term rental than their monthly rent. The Board of Supervisors recently has been discussing ways to change the process to ensure more participation by hosts with a resulting program that is enforceable. Recent statistics have shown that fewer than 10 percent of the Airbnb hosts have received permits for their businesses in San Francisco.

In choosing options for Sunnyvale, staff identified the best practices from different cities that could maximize the success rate of compliance and enforcement. Options are discussed below, followed by the staff recommended alternative.

Issues specific to short-term rentals:

- Regulating the use - type of license, registration or permit?
- Hosted versus unhosted rentals
- How many guests at one time
- Limit on number of days
- Limit the types of units
- Fees and taxes

There are two main issues to consider regarding short-term rentals: 1. Methods to regulate the use, and 2. Standard criteria to be used regardless of the permitting option. Shown below are different options for these concerns.

A. Regulating the Use. There are three main approaches to regulating short-term rentals:

1. Allow the use. There are different options to regulate short-term rentals. One approach would be to consider them to be allowed uses subject to performance criteria, but not require a permit. Another option is to require City approval to ensure compliance. The final option is to prohibit the uses in residential zones. The following is a discussion of those options:
 - a. *Allow by right.* This is the simplest approach for the hosts because it requires the least amount of action on their part. It is possible that requiring any type of permit could deter hosts from working with the City on meeting the goals of the program. The downside with this approach is the difficulty in knowing which hosts are meeting the performance criteria thereby making enforcement more difficult.

An example of a city that allows the uses by right, San Jose amended the zoning code to allow short-term rentals by right, provided they meet newly created performance standards. These include different occupancy standards based on type of unit and number of bedrooms; limits on the number of days per year rentals may be allowed; record keeping required by the hosts; and review by City, possible (see Attachment 5 for the San Jose criteria).

Although the approach used by San Jose removes the need for a permit, ensuring that

the performance standards are met could be burdensome. It would be difficult for the City to determine compliance with: the number of days a year units are rented; the number of people allowed based on the number of bedrooms; and allowing the City to review each host's lodging records. Although a permit or zoning clearance requirement may dissuade some people from working with the City, a simple process with consistent standards provides a relatively easy permit process. It would also make it easier for the City to determine those units that meet the criteria from those that do not based on who obtained a permit and who did not. Also, having a permit could provide the City with easier access into a residential unit to ensure compliance with City regulations.

Each short-term rental would need to register with the City to ensure the appropriate fees are collected.

- b. *Community Development Director's Approval.* This type of review is a variation of the process used for Large Family Child Care Homes (LFCCH) greater than 300 feet from another LFCCH. The Director's Approval provides an opportunity to review the requirements with the resident/host. Rather than site specific conditions of approval, performance standards would be defined in the zoning code that would be applicable to all short-term rentals. These approvals are not appealable nor noticed. The intent is to ensure the use is issued a permit to be able to be tracked, and to try to ensure the requirements are understood by the hosts. The permit can be revoked by the Director for violation of performance standards.
 - c. *Planning permit.* The two options include a Miscellaneous Plan Permit (MPP) or Use Permit (UP). This would be a more thorough review than a Director's Approval, and would allow specific conditions of approval to be added, as well as allow the permit to be appealed (appeal may be limited to the applicant or may allow any concerned party to appeal). An MPP would take up to two weeks to review and may include notification to nearby property owners prior to taking an action (which increases the process time by another two weeks). A UP expands the review and requires a noticed public hearing with mailed notices to nearby property owners, advertising in the local newspaper and posting of the site. A UP requires significantly more staff time to process than an MPP and decisions would also be appealable to the Planning Commission. The minimum time frame to process is six to eight weeks (if there is no appeal). These types of permits help ensure conformity with property and the neighborhood and to provide options to apply conditions of approval unique to the site. When permits are issued for a use at a property, it provides the City with tools to enforce the use, including a record of which short-term rentals have permits, which makes it easier to inspect properties to ensure compliance with City requirements and conditions of approval.
2. Specifically prohibit. This option would include amending the code to explicitly disallow short-term rentals. It would take away any ambiguity or confusion about whether short-term rentals meet the definition of transient occupancy, and could assist in enforcement of the uses. This would be the most effective approach if the intent is to definitively prohibit the uses.
 3. Make no changes. This option would continue to prohibit short-term rentals since they are considered transient occupancy. This is not an ideal approach because the large number of hosts in the City would be difficult to enforce and it may be possible to only enforce the

extreme cases. This could result in selective enforcement, and given the temporary nature of the rental, the use may be discontinued by the time law enforcement arrives at the property.

Staff recommendation: Amend the code to allow short-term rentals, subject to obtaining a Director's Approval. A Director's Approval is an existing process, making it easier for staff to implement. Although some hosts may have hesitancy to take the time to get a City approval for their short-term rental unit, this process is the easiest to implement and provides the most effective tool to enforce the uses. Ultimately, having short-term rental applications available on-line would likely increase compliance and participation by the hosts.

B. Codify specific requirements. In order to make the requirements easier to enforce and understand, specific criteria regarding short-term rentals should be codified. The attached zoning code amendments include short-term rental standards and include minimum or maximum allowances. These criteria would only be used if the use is allowed, and wouldn't be necessary if the use is prohibited.

1. **Hosted or Unhosted Rentals.** Hosted short-term rentals could present fewer compliance issues since the host would remain on the premises to oversee the rental. Unhosted rentals (entire house rentals) could have more neighborhood compatibility and enforcement issues, and are more likely to be used as a true business than sharing a home. Staff is more supportive of allowing a short-term rental if the permanent resident lives in the home while it is being rented. This approach should help alleviate the concerns about not having the host present to ensure the safe rental of the unit and not meeting City requirements. Having a resident host living at the house could also increase the comfort of neighbors who may otherwise be unsure of whom the guests are.

Staff recommendation: Allow hosted-type uses only because it increases the likelihood of compliance with City regulations and promotes greater sensitivity and responsiveness to the potential concerns of neighbors.

2. **Maximum number of guests at one time.** In order to control the number of people using a short-term rental and the concomitant effects on neighbors (e.g. parking and noise), a limitation of the number of short-term rental guests allowed in a 24-hour period can be added (some regulations exclude children under five years old from the count). Some cities allow a three-bedroom unit to rent to more people than a two-bedroom, and so on, but staff expects that having one standard regardless of the number of bedrooms makes enforcement easier.

Staff recommendation: Limit to four guests per residential unit at one time.

3. **Limiting the number of days allowed per year.** As seen in other cities, setting a specific number of days a year a residence can be rented for short-term purposes is difficult and infeasible to enforce. Staff would need to closely monitor the number of days that guests stay at the residence, or rely on the good faith effort of hosts to provide such records when requested. Placing a limit on the number of days that short-term rentals are allowed is contrary to the program goal of creating standards that can be reasonably enforced.

Staff recommendation: Do not define a limit on the number of days per year that is allowed for short-term rentals.

4. Regulate the types of residence allowed. Making regulations that ensure the highest rate of compliance depends on predictability and commonality. By having different standards for different housing types or conditions, it could create confusion and complications which could affect the success of compliance. Therefore, having the same requirements for any type of residence helps in permitting and enforcement.

Staff recommendation: Allow hosted rentals in any unit type (single-family detached, townhouse, apartment, etc.). Require property owner signature on leased residences and homeowners association approval for common interest developments (e.g. townhouses, condominium).

- C. Application Requirements. Regardless of the type of application necessary, certain information should be provided to the City to ensure the criteria are met, and to assist in enforcing the uses.

Staff recommendation:

1. Approval issued to individual. As opposed to other planning permits, the approval for short-term rentals should be issued to specific person at specific address. This would help assure that the host is aware of the City requirements and limitations.
2. Owner consent. Require property owner's consent to application if the host is not the property owner, including homeowner's associations in common interest developments. This is especially important for subleases and apartment units.
3. Best practices. In order to remind hosts of the community's interests in having compatible short-term rental units in residential neighborhoods, a "best practices" sheet will be prepared by the City to be signed by applicant at the time of approval acknowledging understanding and agreement of the items listed. Examples of what could be included in the list of best practices includes: ensuring that guests park on-site, maintain quiet hours during the night, limit outdoor activities, notifying neighbors of the activity, etc.

- D. Payment of fees and taxes. Three types of fees and taxes typically assessed on lodging uses are: permit application fees, business license tax and TOT (these do not include regular fees for new development such as building permit, sewer connections, etc.). This revenue would assist in covering the cost of implementing the program and in providing enforcement if needed. Listed below are the fees and their collection options.

1. Processing Fee. The fee established should cover the staff time in issuing the approval. In setting the fee amount, one option would be to create a modest fee to avoid a significant disincentive for hosts to obtain a City approval. If Director Approval is the selected process, the same approval for a LFCCH does not currently require a fee; however, staff suggests that a fee is reasonable to consider for short-term rentals. Another approach would be to require a higher fee to assist in enforcing these uses. Regardless of the process chosen, enforcement of short-term rentals can be costly and staff intensive.

Staff recommendation: Adopt a processing fee in the City's Fee Schedule that is reasonable to ensure maximum participation from the short-term rental hosts in the City.

2. Business License Tax. The Municipal Code limits collection of business licenses to rental of "any building or buildings (whether or not connected), in a single ownership, *within which three*

or more separate spaces or units are located which are available for rental and are intended to be used for office or *dwelling, lodging or sleeping purposes.*” Since short-term rentals typically do not involve the separate rental of three or more rooms, business license taxes would not apply in most cases. Since it is a tax, the method of changing this requirement would require a vote by residents.

Staff recommendation: Business license tax can be levied where subject to the tax under the Municipal Code. In most cases, short-term rentals can operate without a City business license.

3. Transient Occupancy Tax (TOT). Short-term rental units provide overnight and temporary lodging for business travelers and other visitors similar to hotels/motels. TOT is required for short-term rentals at the same rate as for hotels/motels. Some companies, such as Airbnb, have worked with cities so the company collects the TOT on behalf of the City and remits it on a quarterly basis.

Staff recommendation: Short-term rental hosts are required to pay the 10.5 percent Sunnyvale TOT. If short-term rentals are allowed, staff recommends working with the short-term rental companies to set up a remittance program. Any host that uses a platform that does not collect the TOT will be required to pay the tax in accordance to the TOT ordinance.

FISCAL IMPACT

Transit Occupancy Tax

Short-term rentals are treated the same as any other lodging uses and would be required to pay transient occupancy tax. The current TOT rate is 10.5 percent, and applies to the guest staying at a hotel, not the hotel itself. Therefore, the tax is not based on the hotel and number of units but the length of time a guest stays.

According to Airbnb, there are, on average, 120 Sunnyvale units on their platform at one time, though most are not rented each night. They estimate each host rents their unit seventy-five days a year at an average rate of \$90 per night for an annual income per year of \$6,750. The resulting TOT from Airbnb hosts would be approximately \$85,000 per year. Airbnb is the leader in the short-term rental market, and the same information was not available from other companies, but if all other platforms in total equal Airbnb’s market share, the total additional TOT for the City would be approximately \$170,000 per year.

TOT is paid by the lodging facility, in this case the hosts, but Airbnb has shown a willingness to work with the City in collecting the TOT. Staff has discussed with Airbnb the possibility of collecting the TOT on behalf of the City which, since all transactions go through their system, would greatly assist the City in assuring the TOT is paid by all hosts using the Airbnb platform. Staff will attempt to work with other platforms to have them collect the TOT and remit to the City, but the City cannot compel them to do so.

Any TOT collected goes into the General Fund. Penalties and interest would be charged for hosts that do not pay TOT.

Business License Tax

The City Municipal Code requires the rental of three or more separate spaces or units to pay a business license tax. Staff expects that most short-term rentals will be for fewer than three separate

spaces or units, and therefore not be subject to the tax. As a result, no significant related fiscal impact is expected.

There will be additional costs and fee revenue that can be developed following further Council direction. If so directed, staff will return to Council with a resolution amending the Fee Schedule to reflect the appropriate processing fee for short-term rentals. That Report to Council will provide additional information regarding the fiscal impact.

PUBLIC CONTACT

Public contact was made through posting of the Planning Commission agenda on the City's official notice bulletin board, on the City's website, and the availability of the agenda and report in the Planning Division and in the Reference Section of the City's Public Library. Notice was sent to the neighborhood associations, interested parties, and was posted on the Open City Hall web page created for this study. Staff met with a representative from Airbnb, and communicated with members of the community on the issue.

At a joint study session with the City Council and Planning Commissioners, topics discussed included:

- Determining how neighboring cities address the issue.
- Enforcement concerns: Determine what actions DPS can do at this time, and what tools they need to be more effective going forward.
- Research whether federal tax information can be used to identify individuals claiming income from short-term rentals.
- Describe the expected revenue from collecting TOT and business license taxes for short-term rentals.
- Discuss with Airbnb how it would work with the City in coming up with program options.

Staff has received information from hosts of short-term rental properties explaining the value of the short-term rental service. Staff has also received information from residents concerned about short-term rentals in their neighborhoods, and the difficulty in the illegality of the uses. Finally, staff has received information from representatives of hotel workers about the negative effect short-term rentals have on the stock of affordable housing in the area. Correspondence can be found in Attachment 6.

ALTERNATIVES

1. Introduce an Ordinance to add a new Chapter 19.76 entitled Short-term Rentals and Home Sharing to Title 19 of the Sunnyvale Municipal Code.
2. Direct staff to return with a Resolution amending the Fee Schedule to reflect the appropriate processing fee for short-term rentals.
3. Find that the project is exempt from CEQA under Guideline 15061(b)(3).
4. Introduce an ordinance with modifications to the staff recommendation.
5. Do not add Chapter 19.76 and make no changes at this time.

STAFF RECOMMENDATION

Recommend to City Council Alternatives: 1. Introduce an Ordinance to add a new Chapter 19.76 entitled Short-term Rentals and Home Sharing to Title 19 of the Sunnyvale Municipal Code; 2. Direct staff to return with a Resolution amending the Fee Schedule to reflect the appropriate processing fee

for short-term rentals; and, 3. Find that the project is exempt from CEQA under Guideline 15061(b) (3).

Regulating short-term rentals will continue to be difficult whether the City takes a proactive approach or not. The nature of the business makes it difficult for the City to regulate and enforce the use. Staff finds, however, that the best chance at maximizing success with this business type is to create clear requirements, an easy approval process and reasonable fees. The recommendation considers different options that both address the concerns surrounding this new type of business, as well as respond to its growing popularity, and follows Council's direction to identify realistic regulations to more accurately respond to this growing business type.

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Reviewed by: Frank Grgurina, Director, Public Safety

Reviewed by: Grace K. Leung, Director, Finance

Reviewed by: Jane Chambers, Interim Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Study Issue Paper
2. Draft Ordinance
3. Other Cities' Approaches
4. Open City Hall Survey Results
5. San Jose Performance Criteria
6. Correspondence
7. Summary of Airbnb Business