

City Council Report

City Council Meeting: April 28, 2015

Agenda Item: 7-A

To: Mayor and City Council
From: David Martin, Director of Planning and Community Development
Subject: Vacation Rentals and Home-Sharing

Recommended Action

Staff recommends that the City Council introduce for first reading the attached ordinance amending the Santa Monica Municipal Code adding Chapter 6.20 Home-Sharing, in order to establish regulations for short-term rental of a portion of a dwelling unit by the owner or tenant occupant.

Executive Summary

At its April 15, 2015 meeting, Council directed staff to draft an ordinance reaffirming the City's prohibition against vacation rentals while legalizing home-sharing and imposing regulations on home-sharing uses. Vacation rentals and home-sharing are both forms of short-term rentals, as are hotels, motels and bed and breakfasts. Unlike traditional visitor serving uses, vacation rentals and home-sharing involve the rental of residential dwelling units for periods of 30 days or less. Such rentals typically occur in privately owned residential properties, including apartments, condominiums, and single-family homes and are sometimes considered as being part of the new "sharing economy". The main distinction between the two is that while home-sharing contemplates the primary resident actively hosting their guests during their visit, vacation rentals are unhosted. The unhosted nature of vacation rentals makes their negative impacts on the community particularly acute.

Hosting Platforms, such as AirBnB or VRBO, enable individuals to rent living spaces to travelers, ranging anywhere from an entire home, to a couch or spare bedroom. Short-term rentals have proliferated in Santa Monica and the total number of units is now estimated at 1700. Short-term rentals involving residential dwelling units are considered controversial, with advocates arguing that such short-term rentals provide individuals with the ability to earn extra income to support their basic cost of living expenses, enables travelers to find less expensive alternative to hotels, and that guests of vacation rentals stay longer and spend more money in the communities in which they stay. Critics of such short-term rentals argue that this type of activity changes the character of residential neighborhoods, reduces long-term residential housing from the

market, increases rents, skirts regulations (e.g. health and safety inspections), and potentially harms hospitality industry jobs and wages.

In response to Council direction, the proposed ordinance would:

- Establish a regulatory framework to legalize and regulate home-sharing
- Restate the requirement on hosts and Hosting Platforms to collect and remit Transient Occupancy Tax
- Reiterate and explicitly make vacation rentals unlawful
- Prohibit any person from advertising a vacation rental or Home-Sharing that is not licensed, and
- Require Hosting Platforms to disclose to the City on a regular basis the name of the host, the address of each listing, length of stay for each listing, and the price paid for each stay.

Background

At its April 15, 2015 meeting, Council directed staff to draft an ordinance reaffirming the City's prohibition against vacation rentals while legalizing home-sharing. Vacation rentals and home-sharing are both forms of short-term rentals, generally understood to be the renting of a dwelling unit for periods of 31 days or less. In the case of home-sharing, the permanent resident or host remains on site during the rental period to guide and supervise their guests/renters. On the other hand, vacation rental describes situations whereby the permanent resident or host does not remain on site during the rental period.

Home-sharing, vacation rentals, and even house swapping have been around for decades. Historically these activities have taken place on message boards or in advertising in magazines and newspapers. The proliferation of Internet use has allowed for connections to be made through web sites such as Craigslist, Vacation Rentals by Owner (VRBO), and Airbnb.

According to Wikipedia, the "term 'sharing economy' began to appear in the mid-2000s, as new business structures emerged inspired by enabling social technologies and an increasing sense of urgency around global population growth and resource depletion" and that the "sharing economy business models

emerge from our oldest instincts as humans — cooperation, sharing, generosity, individual choice and flexibility. Models include renting, bartering, loaning, gifting, swapping and forms of shared ownership such as cooperative structures.”

The most talked about form of the sharing economy is the peer-to-peer (“P2P”) marketplaces. In this model, individuals transact directly with other individuals typically through a technology platform, such as Airbnb, Uber, PetVaca, JustShareIt, and Liquid. To assist with this discussion, additional information on the short-term rental market trends and impacts are provided as attachments:

- Cities, The Sharing Economy and What’s Next, A report issued by the National League of Cities Center for City Solutions and Applied Research, March 2015, Attachment A
- Airbnb, Rising Rent, and the Housing Crisis in Los Angeles, LAANE, March 2015, Attachment B
- Airbnb in the City, Office of the New York State Attorney General, October 2014, Attachment C
- Overview of Sharing Economy and Short-Term Rentals, California Legislative Office’s Committee on Local Government and the Assembly Revenue and Taxation Committee, March 18, 2015, Attachment D
- What the Sharing Economy Means to the Future of Travel, Skift, 2013, Attachment E

Short-term rental websites, sometimes referred to as Hosting Platforms, enable property owners, tenants and occupants to rent their living space to travelers — ranging anywhere from an entire home to a couch or spare bedroom. Typically, these are short-term rentals consisting of several days, week, or in some cases months.

Short-term rental advocates argue that short-term rentals provide individuals with the ability to earn extra income to support their basic cost of living expenses,

enables travelers to find less expensive alternative to hotels, and that guests of vacation rentals stay longer and spend more money in the communities in which they stay.

Critics of short-term rentals argue that this type of activity changes the character of residential neighborhoods, reduces long-term residential housing from the market, increases rents, skirts regulations (e.g. health and safety inspections), and potentially harms hospitality industry jobs and wages.

Although there are a variety of short-term rental websites or Hosting Platforms, Airbnb has been the primary driver in transforming the vacation rental market; particularly because of the marketplace platform it has created which provides for a decentralized supply of short-term lodging positioned to compete directly with hotels instead of only providing an alternative when hotel rooms are scarce. Airbnb provides property owners, and other investors, with an efficient means to convert residential units into short-term lodging (i.e. hotel type units).

In an article in the magazine Inc., naming Airbnb as the magazine's 2014 company of the year, Duke University economics professor Michael Munger, who is also considered an expert on the "sharing economy", is quoted saying that early improvements in Airbnb's web site and payment process helped Airbnb do something previous sharing companies hadn't managed - to acquire an aura of style, respectability, safety, and trustworthiness.

Because of the direct role of Airbnb, this staff report will have a more specific focus on the impacts of this service, particularly since the legalization of home-sharing would be primarily fulfilled by Airbnb hosts.

Zoning

The draft Zoning Ordinance (DZO), defines "lodging" as "An establishment providing overnight accommodations to transient patrons who maintain a permanent place of residence elsewhere for payment for periods of 30 consecutive calendar days or less." It includes three types of lodging, "Bed and Breakfast", "Hotel and Motel", and "Vacation Rental". However, the DZO does not specifically address home-sharing as a form of short-term rental.

The DZO defines vacation rentals as "A property with a dwelling unit or guest house intended for permanent occupancy that is available for rent or hire for any person other than the primary owner for transient use less than 30 days or is otherwise occupied or utilized on a transient basis for less than 30 days." The DZO makes clear that a vacation rental is not a bed and breakfast or hotel, for which detailed conditions are set forth and where a Conditional Use Permit (CUP) are usually required for those other types of uses. Neither the current ZO nor the DZO allow vacation rentals or home-sharing as defined in this report in residential zones.

Under the current ZO and proposed DZO, house swapping, or the rental of a residential unit for more than 30 consecutive days, including when a person is on a sabbatical, is generally authorized by local law.

Taxes

Article 6 of the SMMC regulates business activity. Chapters 6.04 through 6.14 outline business license and tax requirements. Rental of residential property for any term (e.g. apartments, hotels, rooming houses), is assigned tax rate group I. Businesses in this tax group are required to pay the sum of \$75 on the first \$60,000 of gross receipts, plus the sum of \$1.25 for each \$1,000 or fraction thereof of gross receipts in excess of \$60,000. A small business exemption is provided for businesses with gross receipts of \$40,000 or less. Short-term

rentals in Santa Monica would qualify as a business activity and would as such be required to obtain a business license, with a zoning conformance review. In most cases, home-sharing rentals could likely qualify for a business license Small Business Exemption as provided for in Article 6 of the SMMC.

SMMC Chapter 6.68 imposes a Transient Occupancy Tax ("TOT") for short-term lodging including short-term rentals and hotel stays. The law defines a transient as "any person who, for any period of not more than one month either at his own expense or at the expense of another, obtains lodging or the use of any lodging space in any hotel as hereinafter defined, for which lodging or use of lodging space a charge is made". A hotel is currently defined as "any public or private hotel, inn, hostelry, tourist home or house motel, rooming house or other lodging place with the City of Santa Monica offering lodging, wherein the owner and operator thereof, for compensation, furnishes lodging to any transient..." The tax is paid by the person renting the vacation rental unit or hotel room and is collected by the person providing the lodging (e.g. hotel or bed and breakfast operator). These are collected similar to a sales tax. Hotels in Santa Monica currently collect and remit TOT to the City and are audited periodically by a third party contracted with by the Finance Department to ensure accurate remittance of the tax.

Short-term rentals are required to collect and remit TOT to the City, just as hotels do, whether or not they are operating legally with the proper business license and zoning approval. Existing local law obligates both the hosts and the Hosting Platforms to collect and remit TOTs to the City for Home-Sharing and for Vacation Rental uses. California cities are currently struggling with not only the question of whether to allow short-term rentals, but how best to ensure collection of TOT. Airbnb has argued that it was only a platform to facilitate the rental of short-term rental units and that the individuals providing the units were required

to comply with local laws. However, Airbnb collects and remits TOT for rentals in the following jurisdictions:

- Multnomah County and Portland, Oregon USA (as of July 2014)¹
- San Francisco, CA USA (as of October 1, 2014)²
- San Jose, CA USA (as of February 1, 2015)
- Chicago, IL USA (as of February 15, 2015)
- District of Columbia USA (as of February 15, 2015)
- Amsterdam, NL (as of February 1, 2015)
- Malibu, CA USA (as of April 20, 2015)

On March 18, 2015 California State Senator Mike McGuire (D-Healdsburg) sponsored amendments to Senate Bill 593 that would allow local jurisdictions to require Hosting Platforms, including online vacation rental companies to disclose the address of vacation rental listing, number of overnight stays, and revenue from rentals, to assist with the collection of TOT. Local jurisdictions could use the information to issue tax bills. The bill allows local jurisdictions to require Hosting Platforms to collect the tax when the guest pays for the rental and remits to the taxing authority, which is consistent with existing law in Santa Monica. The bill has been submitted to the Senate Transportation and Housing Committee.

Discussion

Home-sharing and vacation rentals are distinct from timeshares and house swapping. Although sometimes used as short-term rentals, timeshares are typically a fully furnished condominium or hotel type facility that is jointly shared

¹ Airbnb began collecting TOT for Portland vacation rentals as part of an agreement with the City that coincided with the City's legalization of vacation rentals in single-family homes, including duplexes and accessing buildings. Apartments and condos were not originally authorized for vacation rentals but were added in February 2015. In the agreement Airbnb does not provide any occupancy data to the City but has agreed to pay tax in accordance with Portland's TOT law as though it were a 1600 room hotel.

² Airbnb began collecting TOT for San Francisco vacation rentals in advance of the Board of Supervisors considering the legalization of some vacation rentals.

by multiple owners. House swapping is the exchange of a house by one owner with another owner in a different city. Services, such as HomeExchange.com, connect homeowners through a website listing service (i.e. Hosting Platform). There is no "rent" paid by either party. Instead there is an agreement between both parties to exchange homes for a specified period of time. Under existing local law, this activity would not constitute a business activity or a short-term rental, and would generally be authorized.

Additionally, there has been a long history of residents hosting out of town guests in their homes for little or no compensation. For instances, residents frequently host foreign exchange scholars, researchers or students and generally receive no compensation other than small gifts or other tokens of appreciation from their guests. These activities are also generally authorized under local law. Indeed, such activities generate positive effects, as guests often spread the good-will of Santa Monica to their home countries. Additionally, the guests' positive experiences in Santa Monica may motivate them to host Santa Monicans in their home countries. This cycle of sharing and exchange promotes cross cultural understanding and civic engagement.

Short-term rentals typically occur in privately owned residential properties, including apartments, condominiums, and single-family homes. In Santa Monica short-term rentals can range from \$35 per night for a shared room to more than \$1000 per night for a home with 5 bedrooms. The most popular sites providing for vacation rentals and home-sharing are HomeAway (which includes VRBO.com, HomeAway.com, and VacationRentals.com) and Airbnb. Larger travel sites have begun to also enter the Vacation Rental marketplace, including Orbitz and Expedia.

For the purpose of this report the following terms will be defined as:

- “Home-Sharing Rental” – An activity whereby a resident hosts visitors in their home, for periods of less than 31 consecutive days, while at least one of the primary residents lives on-site throughout the visitor's stay. The guest enjoys the non-exclusive shared use of the unit with the person who is domiciled at the location.
- “Vacation Rental” – Rental of any dwelling unit, in whole or in part, to any persons for exclusive transient use of less than 30 consecutive days, whereby the unit is only approved for permanent residential occupancy and not approved for transient occupancy. The guest enjoys the exclusive private use of the unit.
- “Short-Term Rental” – Any rental of a residential dwelling unit that is 31 consecutive days or less, including home-sharing and vacation rentals.
- “House Swapping” - The exchange of a house by one owner with another owner in a different city for short periods of time by agreement between both parties to exchange homes for a specified period of time without compensation.

Short-Term Rental Hosting Platforms

Multiple Hosting Platforms exist for short-term rentals, including:

- Airbnb
- HomeAway
- VRBO (a HomeAway company)
- VacationRentals.com (a HomeAway Company)
- SabbaticalHomes
- Sublet.com
- Trip Advisor
- Flipkey (a Tripadvisor company)
- Craigslist
- Roomorama
- Globe Homes and Condos

The two most prominent companies are Airbnb and HomeAway. HomeAway maintains several sites that it has acquired over the last ten years. Below is a more detailed description of these two platforms.

HomeAway

HomeAway, Inc. was founded in 2004 as CEH Holdings. The company acquired several sites and consolidated them into a single vacation marketplace, launching HomeAway.com in June 2006. Vacation Rentals by Owner (VRBO), one of HomeAway's holdings was founded in 1995 by a married couple trying to rent their ski condo. The HomeAway sites represent over 1,000,000 paid listings of vacation rental homes in 190 countries. The HomeAway portfolio includes vacation rental websites HomeAway.com, VRBO.com and VacationRentals.com in the United States; HomeAway.co.uk and OwnersDirect.co.uk in the United Kingdom; HomeAway.de in Germany; Abritel.fr and Homelidays.com in France; HomeAway.es and Toprural.es in Spain; AlugueTemporada.com.br in Brazil; HomeAway.com.au and Stayz.com.au in Australia; and Bookabach.co.nz in New Zealand. HomeAway also owns Asia Pacific short-term rental site, travelmob.com. HomeAway also operates BedandBreakfast.com, which its website calls "the most comprehensive global site for finding bed-and-breakfast properties, providing travelers with another source for unique lodging alternatives to chain hotels". The HomeAway portfolio operates as a listing service. Hosts are charged to list their units; guests do not have fees charged to them by the HomeAway sites.

An example of a VRBO listing for a studio apartment near Idaho Avenue and 17th Street in Santa Monica states:

The Garden Casita is located just behind a breath taking garden on a quiet street in Santa Monica's safest, yet hip, upscale neighborhood. Find yourself a few steps away from Whole Foods organic grocery store, lively restaurants, cafes, bars, trendy boutiques, yoga studios, spas, gyms, antique shops, the local library and more on Montana Ave.

Perfect for a solo traveler or couple on extended vacation, beach holiday, or romantic getaway...Still contact me if booked during your time frame, have 2 other similar properties! Also open to stays less than 7 days if timing is right."

Airbnb

Airbnb was founded in 2008 and now claims to be in more than 34,000 cities with more than 25,000,000 guests in more than 190 countries. According to the founder's public statements, the idea for Airbnb developed when a large design conference was in San Francisco and, as a means to earn income, the founder rented out an air mattress in his San Francisco loft to conference attendees who could not find an affordable hotel room. The founder and his roommates hosted three guests and provided them with breakfast, which is where the name Airbed and Breakfast, now Airbnb, comes from. Airbnb refers to the person listing a space for rent as a "host" and the person renting the space as a "guest".

Airbnb's early marketing was geared to providing "airbeds" in areas with large conferences, where hotels were at capacity. The launch of the company was coordinated with the 2008 Democratic National Convention in Denver, to take advantage of the hotel room shortage.

Airbnb has transformed the short-term rental market, particularly because of the marketplace platform it has created that provides for a decentralized supply of short-term lodging positioned to compete directly with hotels instead of only providing an alternative when hotel rooms are scarce.

In a January 21, 2015 article in Quartz, the online news source states "Airbnb has already overtaken major hotel companies in terms of its valuation by investors, but its growth could have it outpacing them in more concrete terms—actual guest bookings—in a few years, according to a Barclays research report." The article goes on to report that the:

"Barclay's report, titled 'Hotels: Is Airbnb a game-changer?' predicts that Airbnb's growth in bookings could triple in size in the next year, putting the company on track to outpace the largest hotel companies within a few years. It projects that by the end of 2016, the room-sharing platform could boast 129 million room-nights per year. Airbnb currently represents as much as 17.2% of hotel room supply in New York, 11.9% in Paris, and 10.4% in London, according to Barclays' estimates, and those percentages are projected to increase. Airbnb also poses a greater threat to the midscale segment of the hotel industry than to luxury categories, and hotels have a leg up when it comes to business travel, the report said. Despite Airbnb's efforts to target more business travelers, the report says that just 10% of Airbnb bookings are currently used for business travel."

Airbnb's Short-Term Rental Model

According to Airbnb they provide "a trusted community marketplace for people to list, discover, and book unique accommodations around the world...." Airbnb hosts list their properties - which can be single rooms, a suite of rooms, apartments, moored yachts, houseboats, entire houses or even a castle. It's free to create a listing, and hosts decide how much to charge per night, per week or per month. Each listing allows hosts to promote properties through titles, descriptions, photographs with captions and a user profile where potential guests can get to know a bit about the hosts. The company charges guests a percentage fee for each listing. Airbnb hosts in the United States are provided coverage for their legal liability for property damage and bodily injury to third parties, arising during a stay at the Host's Airbnb accommodation³

³ For rentals in California the limit is \$1,000,000 per occurrence per policy year subject to a per location limit of \$2,000,000 and a policy aggregate limit of \$10,000,000. The Host Protection Insurance Program went into effect on January 15, 2015. The coverage is excess over any other applicable insurance that will respond to an occurrence. If there is no other applicable primary policy, the policy underlying the Host Protection Insurance program will act as primary.

There are three types of rentals on Airbnb:

1. "Entire Place" – Guests have full access to the unit, which may be a house, apartment, or condo
2. "Private Room" – Guests rent a private bedroom but share the unit, which may be a house, apartment, or condo with another person. The guest might share the unit with the full time occupant of the unit or with another Airbnb guest.
3. "Shared Room" – Guests rent a bed or couch in a unit with limited expectation of privacy. The guest may share a bedroom or other common room such as a living room. The guest might share the space with the full time occupant of the unit, or with another Airbnb guest (these types of shared rentals are commonly referred to as "hacker hostels" or "communal spaces").

The Airbnb service provides property owners, and other investors, with an efficient means to convert residential units into short-term lodging. Airbnb serves as both a listing service, but also maintains a degree of centralized control over the inventory listed on its site. Although originally the Airbnb concept was for an individual to provide lodging in their own home, whether in an apartment, condo, or single-family residence, the success of the model in terms of revenue has relied on the renting of entire homes as vacation rentals⁴.

Commercial leasing companies have begun to operate in this space, converting long-term rental units into vacation rentals. One vacation and corporate rental listing agent, Globe Homes and Condos, which is located in Venice and goes under the host name Chic on the Airbnb site, has offered 92 Airbnb listings in the Los Angeles and Palm Springs areas, with the largest number of listings in

⁴ Airbnb, Rising Rent, and the Housing Crisis in Los Angeles, LAANE, Roy Samman, March 2015

Venice and 8 in Santa Monica⁵. Global Homes and Condos describes itself on its website as “a full-service vacation rental management company”. In addition to the units it listed on Airbnb, it also lists Santa Monica vacation rentals on its own website www.globehomesandcondos.com. On April 3, 2015, the Los Angeles Times reported that Airbnb, in response to a March 2015 LAANE report, dropped 50 Globe Homes and Condos listings from its site. The article also noted that “a number of other large hosts in the region have also disappeared from the site”⁶.

Real estate agents have also highlighted offering short-term rentals as an attractive revenue source in multi-family dwellings, ultimately contributing to the justifications on sales price. The recent sale of a home located at 14 Westminster Avenue in Venice touted the revenue potential from converting the units to Vacation Rentals. The Exclusive Offering Memorandum pages 14-18 (see Attachment F) on the building states:

The building's character, architectural details, location and history make it a prime candidate for conversion to short-term housing (check with city.) Current average asking rates for Airbnb single units in the area are approximately \$138/night and \$144/night for one-bedroom units. The Morrison Apartments is in an above average location so it is likely that it will over-perform the market as a hole.

One host with four listings in Santa Monica actually provides units that Airbnb guests can share with each other. In the listings, the host specifically notes that the room is to “share with other Airbnb guests”.

⁵ The listing agent Globe Homes and Condos (aka Ghc) is reported in the March 2015 laane report and verified by staff

⁶ This action by Airbnb was unprecedented and included other listing companies. It is not precisely clear on the criteria it used to make this decision. In an April 5, 2015 Los Angeles Times article, one of the affected company's representative indicated that Airbnb said that they were told by Airbnb that the company conflicted with Airbnb's growth plans.

In this type of rental, although it appears to be a shared unit, it is not the type of shared unit originally envisioned when Airbnb was founded or promoted in its marketing and promotional materials. These types of shared rentals are entire units where the host does not actually live in the unit.



Regulatory Approaches

Generally speaking short-term rentals in residential neighborhoods are typically illegal or severely restricted under most zoning laws. As noted on page 5 of this report, vacation rentals and home-sharing, as defined in this report, is not allowed in residential districts by either the ZO or DZO. It is normally viewed as a commercial activity and usually considered no different than a hotel. In addition to local zoning regulations, tenant leases may restrict or prohibit the subletting of a unit⁷, as well as Rent Control laws may also restrict how a tenant in a rent controlled unit may be able to carry out a short-term rental. Recently, some

⁷ California Senator Isadore Hall (D-Compton) is sponsoring Senate Bill 761, which the Senator says in press reports would require online short-term rental companies to inform its users that a tenant who sublets their apartment as a vacation rental may be violating their lease and create a cause for eviction.

jurisdictions have proactively moved to ban or maintain bans on the activity after studying the issue, including West Hollywood, Aliso Viejo, Sonoma County, and Saratoga. Seal Beach, after having allowed vacation rentals, banned the issuing of permits for any vacation rentals after October 22, 2012. Only those that had been issued or that were already in process are allowed.

Courts have generally upheld local prohibitions of vacation rentals in residential neighborhoods. Most notably, in *Ewing v. City of Carmel-By-The-Sea*, 234 Cal.App.3d 1579 (1991), owners of single family homes in the City of Carmel brought suit against Carmel challenging the constitutionality of a city zoning ordinance which prohibited vacation rentals from operating within residential properties. The owners alleged that the Carmel ordinance constituted a “taking” in violation of the Fifth Amendment of the U.S. Constitution and that the ordinance was arbitrary, irrational, overbroad and unconstitutionally vague in violation of the equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution.

The Court of Appeal resoundingly rejected each of the plaintiff’s claims and affirmed the constitutionality of Carmel’s vacation rental prohibition. The Court reasoned that maintenance of the character of residential neighborhoods is a proper purpose of local zoning laws. The Court recognized that residential character of a neighborhood is threatened when a significant number of residences are occupied not by permanent residents but by a stream of short-term visitors. “Such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community,” because such visitors “have little interest in the public agencies or in the welfare of the citizenry.” Carmel’s ordinance precisely sought to remedy such ill effects of vacation rentals, which was a proper exercise of the City’s police powers. Similarly, numerous other courts throughout the Country have similarly upheld local vacation rental prohibitions. See, e.g., *Aamodt v. City of Norfolk, Ark.*, 682 F.3d 735 (8th Cir.

2012) (upholding Norfolk, Arkansas's short-term rental ban); *Neumont v. Florida*, 610 F.3d 1249 (11th Cir. 2010) (upholding Monroe County, Florida's short-term rental restrictions); *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825 (Ind. 2011) (affirming Ogden Dunes, Indiana's prohibition against vacation rentals).

Of course not all cities have chosen to ban all short-term rentals. Several cities in California have recently enacted laws to legalize short-term rentals, including Napa, San Francisco, San Luis Obispo, Seal Beach, and Arroyo Grande. Attachment G provides a summary of some California vacation rental laws.

Enforcement / Permitting

Due to limited enforcement resources, illegal short-term rental activities have established a strong presence in the City and continues to flourish with little sign of abatement.

Short-term rental enforcement is currently handled on a complaint basis by the City's Code Enforcement Division due to resource limitations. From July 2014 to February 2015, 47 enforcement cases have been initiated and 10 administrative citations have been issued. Thirteen cases are currently in the active enforcement process. Vacation rental enforcement cases are extremely resource intensive because it can be very difficult to verify the violation. Unlike most other Code Enforcement cases, these violations are frequently not in plain-view.

A recent review of listings in Santa Monica appear to show approximately 1700 rentals listed between Airbnb (1000), HomeAway (350), and VRBO (340). Home-sharing represents a small percentage of this total number⁸. Of the

⁸ According to the LAANE report Airbnb, Rising Rent, and the Housing Crisis in Los Angeles, LAANE issued in March 2015 (see Attachment B), 30% of units are of a portion of a unit. However, this likely includes rentals that are shared between multiple guests where the owner or other primary resident is not living in the unit.

listings on Airbnb staff estimates that approximately 275 are advertised as home-sharing. Although as noted above, some listings of home-sharing rentals are in fact the sharing of a living unit where the owner is not present and instead the sharing is between multiple guests (i.e. "communal space"). It can also be difficult initially to know if the units are in fact in Santa Monica as sometimes they are advertised as being in Santa Monica but are in fact in Los Angeles/Venice.

Even with the legalization of home-sharing, regulating and bringing into compliance the legitimate home-sharing units would still require additional staffing to also take off the market the more than 1400 vacation rentals that currently exist.

Additionally, listing platforms, such as Airbnb, have not been helpful in the investigations by cities. Such platforms often refuse to disclose listing information (e.g. the landlord's contact and personal information) to enforcement personnel. There is currently some legal ambiguity as to the extent of the City's authority to compel the release or inspection of such data by the listing companies. In *Patel v. City of Los Angeles*, 738 F.3d 1058 (9th Cir. 2013), the Ninth Circuit Court of Appeals, sitting en banc, held that Los Angeles's Municipal code requirement that hotel guest records be made available to any police officer for inspection was facially invalid under the Fourth Amendment, insofar as it authorized inspections of those records without affording an opportunity for hotels to obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply. The Supreme Court granted review of this case on October 20, 2014 and a decision is expected later this summer. Staff hopes that the Supreme Court will provide further clarity and guidance on the scope of regulatory authority in this important area⁹.

⁹ As noted earlier in this report, as part of the discussion on TOT, Senate Bill 539 would authorize local jurisdictions to require Hosting Platform to disclose the address of vacation rental listing, number of overnight stays, and revenue from rentals, to assist with the collection of TOT.

As an example of the difficulties that Santa Monica may face without adequate regulations and resources, after being in effect for two months, San Francisco City Planning officials are calling their recently adopted short-term rental ordinance unworkable. Planning staff reports that 455 applications were received and 170 registrations were issued as of Tuesday, April 14, 2015 out of an estimated 5000 listing. In particular, Planning staff found that it was too hard to distinguish between or regulate "hosted" (i.e. home-sharing) units from "un-hosted" (i.e. vacation rental) units. In response, new legislation is being proposed to further limit short-term rentals.

An April 14, 2015 press release from the Office of San Francisco Mayor Edwin Lee, notes that the new legislation introduced "come on the heels of a hearing [Supervisor Farrell] hosted in March that focused on the Planning Department's capabilities of enforcing the current short-term rentals law, and the financial resources necessary for effective enforcement. The press release also states that the legislation will include:

- A 120-day annual "hard cap" on the number of days a year that permanent residents can rent out their home or a portion of their home for under 30 days¹⁰. Short-term rentals will continue to be prohibited for anyone who is not the permanent resident of a home or apartment in San Francisco.
- Treating all short-term rental hosts equally by striking the current difference in the law between "hosted" and "un-hosted" short-term rentals.
- The creation of the Office of Short-Term Rental Administration and Enforcement that will be staffed and resourced by the Planning Department, Department of Building Inspection, and the Treasurer/Tax

¹⁰ The current law allows a host could do 90 days of rentals when the primary occupant isn't living in the unit (i.e. vacation rental) or an unlimited number of days of rentals when the primary occupant is living in the unit (home-sharing rental).

Collector's office.

- This new office will provide a single-location for members of the public to apply for the City Registry and for City staff to coordinate in the administration and aggressive enforcement of the law.
- If the City fails to enforce following complaints, and after a certain period has expired, a private right of action to sue for attorney's fees and injunctive relief will be extended to residents of the building, neighbors within 100 feet, housing nonprofit organizations and neighborhood associations for hosts alleged to have violated the short-term rental laws.

TOT Collection

If Council adopts the proposed regulations, outlined in more detail beginning on page 21, and legalizes home-sharing, the Finance Department will reach out to existing platforms, including Airbnb, to ensure collection of TOT on behalf of the City, consistent with existing law. In the March 2015 report issued by LAANE on the impacts of Airbnb in Los Angeles (see Attachment B), it estimates that there were 235 home-sharing type units listed in Santa Monica. According to the report, these units generated approximately \$1,237,664 in revenue in 2014 or an average of \$5,267 per unit. Santa Monica charges a 14% tax on the full amount paid for a room rental. If bona fide home-sharing units were legalized and paid TOT, the City could expect to receive approximately \$173,272 in tax revenue or an average of \$737 per unit based on the LAANE estimates of revenue generated.

However, it is important to note that even with the legalization of home-sharing as defined by the proposed ordinance, some individuals that currently offer their units as a home-share might not be entitled to do so under their lease, some "shared" rentals listed on Airbnb would not meet the definition of a home share as defined by the proposed ordinance, and some rent controlled units might not be legally able to charge as much as they do currently. Therefore, for the

purpose of the financial impacts portion of the report, staff assumes the final number of units that would pay TOT is 80% of the 235 estimated by the LAANE report.

If staff were successful in obtaining cooperation from Hosting Platforms to collect TOT on behalf of the City, revenues would be collected more quickly and would also include revenues from illegal units, creating an initial spike in revenue with a leveling off as unlawful units were removed from the market.

Proposed Regulations

At Council's direction, staff recommends the adoption of the attached Ordinance modified as recommended below. The Ordinance would establish the following minimal regulations¹¹:

- Reiterate and explicitly make vacation rentals unlawful.
- Define home-sharing as "An activity whereby the residents host visitors in their homes, for compensation, for periods of less than 30 consecutive days, while at least one of the primary residents lives on-site throughout the visitors' stay.
- License the activity of home-sharing rentals for compensation as a commercial activity, as such restates the requirement to obtain a business license in accordance with Section 6.08.130 of the SMMC.
- Restate the requirement to pay TOT in accordance with Chapter 6.68 of the SMMC.
- Restate existing law's requirement that the host and Hosting Platforms collect applicable TOTs and remit them to the City. Failure to comply would be grounds for the revocation of the business license.

¹¹ As noted on page 8 "house swapping" is not prohibited under existing law.

- Require individuals engaged in home-sharing to take responsibility for and actively prevent any nuisance activities.
- Require individuals engaged in home-sharing to comply with applicable health, safety, building, fire protection, and rent control laws.
- Prohibit any person from advertising a vacation rental or Home-Sharing that is not licensed.
- Require Hosting Platforms to disclose to the City on a regular basis as determined by regulations promulgated to enforce the Home-Sharing Ordinance, including the name of the host, the address of each listing, length of stay for each listing, and the price paid for each stay.
- Authorize the City Manager or designee to promulgate regulations to implement the provisions of the Home-Sharing Ordinance, which may cover but is not limited to permit conditions, reporting requirements, inspection frequencies, or insurance requirements.
- Authorize private legal actions to enforce the proposed ordinance. This provision, which reflects the Council's direction to Staff at its April 15, 2015 meeting, authorizes private legal actions to enforce the requirements of the proposed ordinance. Staff has not proposed any noticing requirements (to the City or to the alleged violator) prior to allowing the private law suit, though would be happy to include them if so direct by the Council.

Staff Recommendations on Home-Sharing Leasing Restrictions

The proposed ordinance does not seek to alter landlord tenant relationships, as established under existing law. Staff does not recommend any further intrusion into the landlord tenant relationship as it could expose the ordinance to legal challenge and because it is not necessary. Council's concern about protecting tenants from unwarranted evictions without being fully apprised of their rights is already addressed by City Charter Sections 1806 and 2304, which requires notice before the landlord may commence eviction proceedings for breach of any

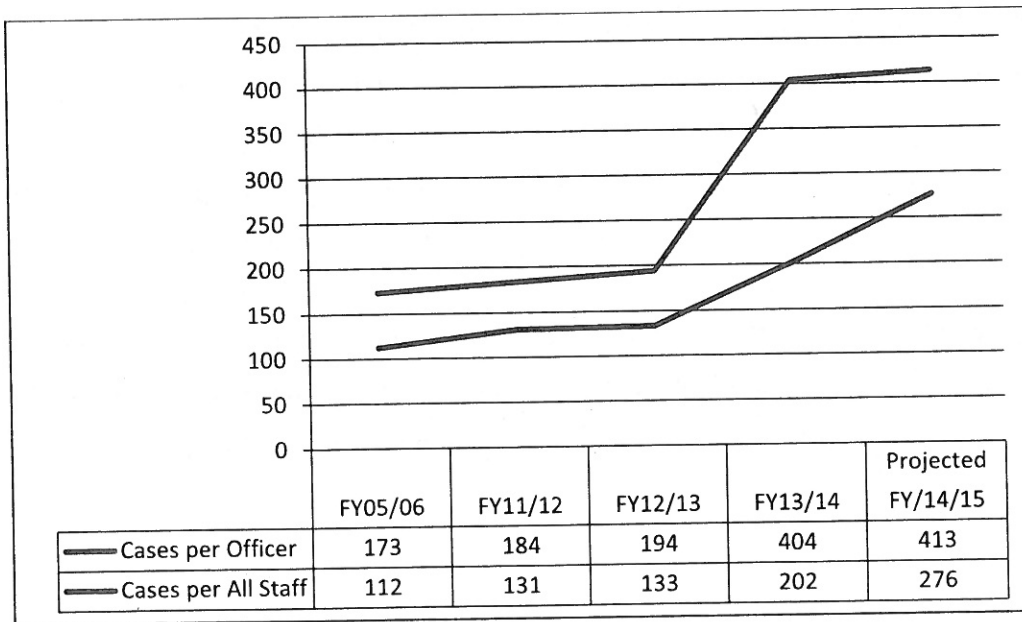
lease obligation. Additionally, compelling landlords to accept home-sharing would likely increase their property insurance obligations and potentially complicate their existing financing conditions. Requiring a property to allow for home-sharing would also reduce a property owner's ability to control the character and environment of their property by introducing transient uses.

Accordingly, significant enforcement resources are required to address unpermitted short-term rentals proactively. Staff is recommending the addition of two Code Enforcement Officers and one Administrative Analyst to staff enforcement of the program.

Staffing

In Santa Monica staff estimates that there are approximately 1700 short-term rentals listed between the three main listing sites. This does not include other less prominent sites. For perspective, Code Enforcement currently has approximately 1200 active cases open at any given time, with a total of approximately 500 new cases annually.

The average number of cases per officer has increased by 105% from FY11/12 to FY13/14 due to the additional programs added over the last two years, including leaf blowers, street performers on the Pier, vendors, trainers, surf instructors, pedicabs, and taxicabs. The chart below provides the number of cases handled per enforcement officer since and cases handled by the division per all staff since FY05/06:



The ratio of budgeted support staff to officers in FY05/06 was 41%; in FY14/15 is 31%. Staff is recommending 2 Code Enforcement Officers and 1 Administrative Analyst to support the enforcement of the Short Term Rental Enforcement program. With the addition of these three proposed new staff the ratio of support staff to officers would be 33%, in keeping with the historical ratios.

As noted above, other cities have had a very difficult time enforcing against short term rentals, as well as registering short term rentals where it has been legalized. Additionally, most cities in California that allow for short term rentals only allow property owners to conduct the activity. Not renters. As noted above, San Francisco Planning staff found that it was too hard to distinguish between or regulate "hosted" (i.e. home-sharing) units from "un-hosted" (i.e. vacation rental) units.

Because staff will be introducing a more proactive program, instead of relying on complaints, there would be an initial spike in short term rental cases that would likely be sustained for approximately 2 years or more. Cases would then most likely begin to level off.

Many short term rentals can be found on Hosting Platform listings, however, addresses are not usually provided. Although a map is provided, it only provides an approximation of where the unit is. Administrative staff would need to read through listing text and review pictures to identify the location of the house or building that the unit is located in. Single family homes would of course be easier to locate than apartment or condominium units. The following provides examples of the type of information available on a listing and a map that shows the location. In the example below, although the listing indicates 5th Street, no images of the building are included and the map provides a large area.

Listing Information

About This Listing

Modern airy, lots of sunshine apartment located 4 short blocks from the beach and just 3 blocks from 3rd Street Promenade.
Each bedroom has a queen size bed and a full sofa bed in the living room.
Enjoy cool evening ocean breezes in the garden.

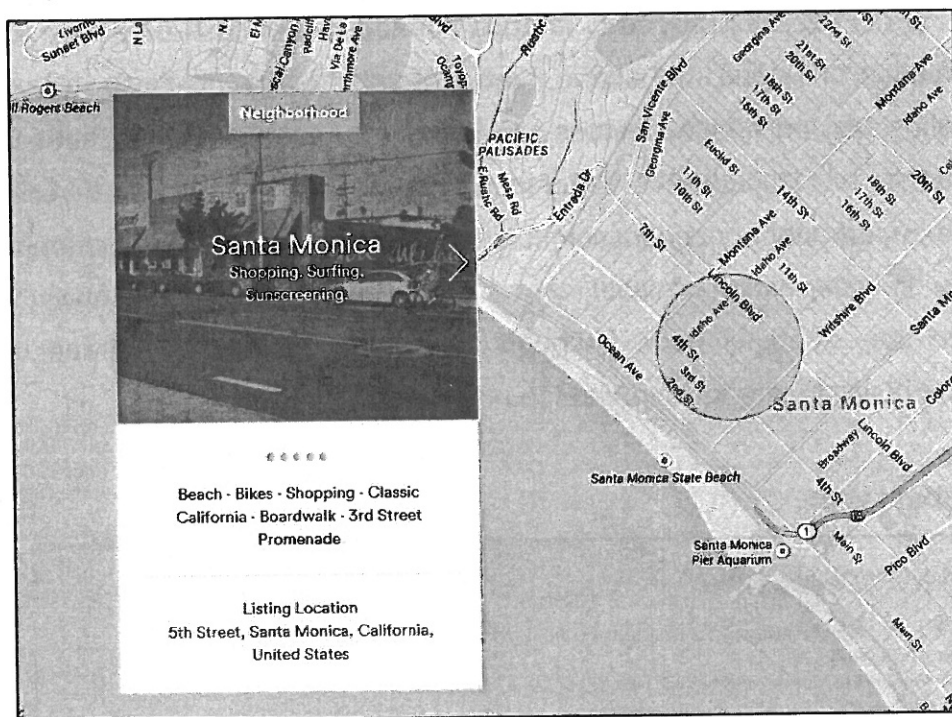
Contact Host

The Space

Property type: **Apartment**
Accommodates: **6**
Bedrooms: **2**
Bathrooms: **1**

Beds: **3**
Check In: **3:00 PM**
Check Out: **11:00 AM**

Map of Where Listing is Located



Although the operation of a short-term rental is fundamentally a zoning violation, to ensure an efficient enforcement process, staff will be addressing short-term rentals by utilizing Article 6-Business, Professions, Trade of the SMMC instead of Article 9-Planning and Zoning. In particular, staff could initiate cases by enforcing the lack of a business license. By using this approach, once the unit and owner or occupant is identified, staff may be able to issue a Notice of Violation or monetary citation based on the advertisement and/or any other information that they gather as part of their investigation, which will all serve as evidence of doing business.

As a matter of education, staff may initiate enforcement actions with a Notice of Violation (which does not include a monetary fine); educational materials on the Home Sharing Ordinance would also be provided with the notice. By requiring the person operating a home-share to obtain a business license, the City is able

to conduct the legal review necessary to determine if the rental meets the requirements of the Home Sharing Ordinance.

For instance, enforcement steps could include:

- Reviewing Hosting Platform listings, such as Airbnb and VRBO.
- Separating listings by vacation rentals and home-sharing, based on the information provided in the listing.
- Conducting research to narrow down the location of the listing.
- Conducting inspections to determine the actual address of the listing.
 - ◆ If listed as a home-share, the occupant of the unit would be identified by utilizing information provided in the listing, apartment management, and/or other public records.
 - ◆ If listed as a vacation rental, the building owner would be identified through public records information, Home Owners Associations (HOA), and/or condominium building management.
- Interviewing witnesses
- Issuing a Notice of Violation to the building owner or occupant for operating a business without a business license, with an order to comply within an established number of days. The notice may include information regarding the Home Sharing Ordinance to assist the person with knowing if their unit could be illegal or if it would qualify as a home-share. The information provided would also discuss taxes, including the Small Business exemption for business license tax.
- For a vacation rental listing, to cure the violation the owner may need to return a form (provided with the notice) informing the City that the short term rental activity has ceased and that the listing has been removed. The notice could also include information on the penalties for failure to comply, including payment of unpaid back-taxes for Business License tax and Transient Occupancy Tax.

- For a home-sharing listing, to cure the violation the occupant may need to initiate the business license process or return a form (provided with the notice) informing the City that the short term rental activity has ceased and that the listing has been removed. The notice may also include information on the penalties for failure to comply, including payment of unpaid back-taxes for Business License tax and Transient Occupancy Tax.
- If the operator of a vacation rental removes the listing, Enforcement Staff may need to verify that the listing had been removed and may submit the case for monitoring. If the same person began operating again additional enforcement steps would commence, which could include the issuance of a monetary citation and/or criminal prosecution.
- If a person opts to register and apply for a business license, they would need to complete a supplemental form (details of the form have not be established) and comply with the requirements of the Home Sharing Ordinance by providing proof of occupancy in the unit (similar to how they do now for a preferential parking permit). The person would also be required to register for Transient Occupancy Tax.
- Following up on Notices of Violation and citations for compliance. If a person who has received a Notice of Violation fails to comply, additional enforcement steps would commence, which could include the issuance of a monetary citation and/or criminal prosecution.

Staff may also initiate specific educational efforts to make the public aware of the Short-Term Rental Enforcement Program to seek voluntary compliance. Educational materials may also include the reasons why the program is being initiated.

Code Enforcement Officers would be responsible for conducting inspections, working with individuals that have received notices or citations, educating the

public about the Home Sharing Ordinance, attending citation appeal hearings, writing case reports for criminal prosecution referral, and testifying in court.

Administrative staff would be responsible for researching short term rental Hosting Platform listings, identifying or narrowing down the possible location of listings, organizing inspection routes, processing notices and citations, processing payments, coordinating hearings, sending out correspondence, and answering questions from the public about the Home Sharing Ordinance.

Environmental Analysis

The proposed ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3). This section provides that CEQA only applies to those projects that have the potential for causing a significant effect on the environment. The proposed ordinance does not have that possibility. As indicated in this staff report, regardless of legal status, short-term rentals, in the form of vacation rentals and home-sharing, have long existed in the City. See, e.g., *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 (actual environmental conditions existing at the time of CEQA analysis should be used as a baseline, even when such actual conditions are in violation of current regulatory provisions). Most short-term rentals are historically vacation rentals, with home-sharing making up a small percentage of the overall mix. The proposed ordinance reinforces the illegality of vacation rentals and adopts additional enforcement tools to mitigate their presence in the City. The proposed ordinance also adopts new regulations applicable to home-sharing. Thus, it appears that the end result could be a reduction in short term rentals in Santa Monica, which would be environmentally beneficial.

Next Steps

- Establish proactive enforcement program and hire staff, Q1-FY2015-16
- Begin education campaign regarding the ordinance with public and listing companies, Q2-FY2015-16
- Reach out to listing companies to set up arrangements for listing companies to collect TOT on behalf of the City
- Evaluate of the program and return to Council with any adjustments necessary to ensure the success of the program by February 2016.
- Provide Council with a status report by Q1-FY2016-17

Alternatives

Council could direct staff to draft an ordinance that would re-enforce existing prohibitions against home-sharing and vacation rentals in residential neighborhoods, provide additional clarity, tools, and approve the requested Code Enforcement staffing to proactively enforce the zoning requirements related to short-term rentals with the goal of removing all short-term rentals from the market in Santa Monica.

Financial Impacts & Budget Actions

The Short-Term Rental Regulatory Enforcement Program will require the addition of 3.0 FTE permanent positions and supplies and expenses for a total of \$410,029 in FY2015-16 and a cost of \$266,898 annually.

With 100% compliance the program will generate estimated annual revenues of approximately \$138,500 in Transient Occupancy Tax. However, due to the ramp up time to achieve compliance, staff estimates total revenue of approximately \$69,000 (50% compliance) for FY 2015-16 and \$110,800 (80% compliance) for FY 2016-17. Higher amounts would be realized sooner if Hosting Platforms begin collecting TOT on behalf of the City. Staff also estimates that in the first year of enforcement fines totaling approximately \$85,000 could also be collected;

however, fines are not easily predictable, since fines would likely only be issued after a period of time is provide to correct the violation.

Prepared by: Salvador M. Valles, Acting Chief Administrative Officer

Approved: _____

Forwarded to Council: _____

David Martin
Director of Planning and Community
Development

Elaine Polachek
Interim City Manager

Attachments:

- A. Cities, The Sharing Economy and What's Next, A report issued by the National League of Cities Center for City Solutions and Applied Research, March 2015
- B. Airbnb, Rising Rent, and the Housing Crisis in Los Angeles, LAANE, March 2014
- C. Airbnb in the City, Office of the New York State Attorney General, October 2014
- D. Overview of Sharing Economy and Short-Term Rentals, California Legislative Office's Committee on Local Government and the Assembly Revenue and Taxation Committee, March 18, 2015
- E. What the Sharing Economy Means to the Future of Travel, Skift, 2013
- F. Exclusive Offering Memorandum Pages 14-18, 14 Westminister Avenue
- G. Summary of California Vacation Rental Regulations
- H. **Ordinance**