



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: September 27, 2022

TO: Mayor and Councilmembers

FROM: Community Vitality Initiatives, Community Development Department

SUBJECT: Short-Term Rental Permitting Framework

RECOMMENDATION: That Council:

- A. Provide direction on a future short-term rental permitting program; and
- B. Direct staff to draft a short-term rental permitting Ordinance for review by the Planning Commission, Ordinance Committee, Finance Committee, and City Council.

EXECUTIVE SUMMARY:

Short-term rentals are dwelling units rented for a period of 30 days or less. With the advent of online rental platforms like AirBNB, VRBO, and Homeaway, the popularity and prevalence of short-term rentals has dramatically grown in Santa Barbara over the last decade, bringing with it concerns about the loss of long-term housing, nuisance and neighborhood impacts, land use compatibility, real estate speculation, and environmental impacts.

Short-term rentals are currently regulated as hotels and allowed in zones where hotel uses are allowed. The process to convert a residential property to a short-term rental is challenging for many property owners. Enforcement of existing short-term rental regulations is staff-intensive, time-consuming, and especially challenging in the Coastal Zone portion of the city, where they are only regulated based on nuisance related activity. As a result, many short-term rentals operate illegally.

Staff recommends developing a ministerial short-term rental permitting program that minimizes the change in intensity of use, limits nuisance impacts, preserves long-term housing, and improves staff's ability to enforce adopted regulations, while limiting administrative costs to the City.

DISCUSSION:

Why Develop a Short-Term Rental Program

Short-term rentals are dwelling units rented for a period of 30 days or less. With the advent of online rental platforms like AirBNB, VRBO, and Homeaway, the popularity and prevalence of short-term rentals has dramatically grown in Santa Barbara over the last decade, bringing with it code compliance challenges and a variety of concerns that are not comprehensively addressed with existing regulation..

It is estimated that there are currently 1,560 listings on web based rental platforms, which represents 1,119 unique short-term rental units citywide. This represents a 27 percent increase in the number of short-term rentals from the previous year¹. Of those, 19 legal establishments and 82 unpermitted establishments are paying transient occupancy tax (TOT) currently.

Short-Term Rental Concerns

In many areas of the City, unregulated short-term rentals operating as quasi-hotels are inherently incompatible with the surrounding land uses and neighborhood due to the intensity of use and potential nuisance impacts related to noise, parking, littering, traffic congestion, public safety, “party houses,” loss of community, and the displacement of long-term residents.

Operating a residential unit as a short-term rental is typically far more lucrative than renting the unit on a long-term basis, which can encourage the loss of long-term housing, increase real estate speculation, and inflate housing costs. Short-term rentals also increase the demand for services and low-income housing because of the associated support network of cleaning and maintenance staff. There is a perception that all visitors, including those using short-term rentals, use more resources and are less concerned with local environmental measures like water conservation.

High demand for short-term rentals, a difficult permitting process given the City’s current hotel-related regulations, and code compliance challenges have resulted in a high number of illegal short-term rentals and uncaptured TOT. Many of the illegal short-term rentals operate as quasi-hotels in areas of the City where hotels are not allowed, which creates inherent equity issues with hotel operators.

Existing Regulations

Short-term rentals are currently considered a hotel use and subject to the standards and laws that dictate where and how a hotel may operate. These regulations were developed

¹ Granicus Host Compliance Proprietary Data

prior to the popularity of short-term rentals and are challenging for many residential property owners to meet.

Short-term rentals are only allowed in zones where hotels are allowed. In the inland portion of the City, this includes the Residential Multi-Unit and Hotel (R-MH), Commercial Restricted (C-R), Commercial General (C-G), and Manufacturing Commercial (M-C) zones. In the Coastal Zone portion of the City, this includes the Hotel-Motel-Multiple Residence (R-4), Restricted Commercial (C-L, C-P, and C-1), Commercial (C-2), Commercial Manufacturing (C-M), Hotel and Related Commerce I (HRC-1), Hotel and Related Commerce II (HRC-2), Hotel and Related Commerce II / Ocean-Oriented Commercial (HRC-2/OC), and Light Manufacturing (M-1) zones. A map of these locations is included in Attachment 3.

Short-term rentals are currently considered a non-residential use, and applicants must go through a Change of Use process that varies in complexity based on the number of existing residential units, the amount of square footage converted from residential to non-residential use, and whether the property is in the Coastal Zone portion of the City. Projects with more than one unit are subject to the Hotel Conversion Ordinance, which can be a time-consuming and expensive process. Short-term rentals must have a business license, are subject to the square footage limits in the City's Nonresidential Growth Management Program, must have at least one parking space per bedroom, are not eligible for the residential permit parking program, must comply with zoning setbacks, are subject to the Tenant Displacement Assistance Ordinance, may need to have a separate water meter and pay commercial rates, and may need to go through a discretionary review permitting process. Attachment 4 includes more general information of the existing short-term rental permitting process.

Current Enforcement

Enforcement of short-term rental regulations is currently a staff-intensive and time-consuming process complicated by low incentives to comply and short-term rental listings that intentionally obfuscate their location and length of stay.

The current enforcement process is primarily complaint-driven and begins in the Community Development Department, where short-term rental cases are a high priority. Code Compliance Officers (~2.0 FTE) investigate the complaint, conduct online and in-person research, work with property owners to comply with municipal code regulations, and coordinate with the Finance Department and City Attorney's Office.

Cases that are unable to be resolved by code compliance staff are referred to the City Attorney's Office. The City Attorney will work with staff to gain compliance. When necessary and supported by the evidence, the City Attorney will file criminal charges for violating the City's Zoning Ordinance and subpoena the online platform used. When appropriate, the City Attorney will agree to the property owner being placed on Court diversion to ensure compliance with the Municipal Code, which will require the ceasing of the unpermitted use or the seeking of the requisite land use approvals and licenses. In

most cases, the property owner will be required to pay all back taxes and fees owed, including interest, as part of the court diversion. There have been 35 cases referred to the City Attorney's Office.

Enforcement of short-term rental regulations in the Coastal Zone is complicated by a recent court case² that only allows the City to enforce on nuisance-based complaints, until a new short-term rental program is certified by the California Coastal Commission.

The maximum penalty for violations of the City's zoning ordinance and for failure to remit transient occupancy taxes are 6 months in jail and/or a fine of \$1,000 for each violation. The maximum administrative fines for unpermitted short-term rentals currently mirror the administrative citation fines for all municipal code violations, which are generally \$100 for each violation, \$200 for the second violation of the same code section, and \$250 for additional violations of the same code section. While these fines may be assessed daily, they are comparatively low to the revenues generated by many short-term rentals.

The time it takes to close a short-term rental enforcement case varies widely, based on the availability of evidence and willingness of property owners to comply with the municipal code. So far this year, 31 cases have been closed. There are 28 active cases under investigation and an additional 25 cases pending investigation. On average, it takes four to nine months for a short-term rental case to be resolved by code compliance staff. Cases that are referred to the City Attorney's Office often take at least three additional months. Cases are generally investigated in the order received, and the bulk of current code compliance staff caseload is from 2020 and 2021. Given the existing number of illegal short-term rentals and current enforcement challenges, bringing all unpermitted operators into compliance with the current municipal code will take considerable time.

Recommended Short-Term Rental Permit Program

Staff recommends developing a ministerial short-term rental permitting program that minimizes the change in intensity of use, limits nuisance impacts, preserves long-term housing, and improves staff's ability to enforce adopted regulations, while limiting administrative costs to the City.

Program Goals

The following are recommended goals for a future short-term rental permit program, which were developed using applicable policy direction and current best practices.

- *Neighborhood and Community.* Ensure that the character of residential neighborhoods and sense of community is maintained while accommodating a reasonable amount of transient use within existing housing units.

² Kracke v. City of Santa Barbara, 2021

- *Land Use Compatibility.* Regulate short-term rentals to be compatible with surrounding land uses.
- *Property Value and Housing Costs.* Regulate short-term rentals to minimize impacts to adjacent property values and City-wide housing costs.
- *Party House.* Ensure that homes are not turned into quasi-hotels or “party houses.”
- *Nuisance.* Minimize public safety risks and the noise, trash, and parking problems often associated with short-term rentals without creating additional work for the police department.
- *Housing.* Maximize the availability of housing by ensuring that long-term housing stock is not lost to short-term rentals.
- *Transient Occupancy and Business License Taxes.* Ensure that the City captures all potential transient occupancy and business license taxes and that short-term rentals are taxed similarly to traditional lodging providers to level the playing field and maintain local service jobs.
- *Environmental.* Ensure that short-term rentals are located outside of hazard areas and require “green” improvements.
- *Income Generation.* Give residents the ability to generate extra income from short-term rental of their primary residence, provided that all of the above goals are met.
- *Compliance.* Ensure high compliance with short-term rental regulations and minimize City expenses.

Program Components

Staff recommends regulating short-term rentals under one citywide standard to simplify program administration and enforcement³. Recommended program components are provided as Attachment 1, which is organized by category, includes actions with related goals and concerns addressed, and identifies ordinances from other jurisdictions with similar measures. Program highlights are summarized below.

The recommended program seeks to regulate short-term rentals down to a use that is primarily residential rather than quasi-hotel, and in doing so, allow short-term rentals in all zones that allow residential use. While this would expand the geographic area in which short-term rentals are allowed, the eligibility requirements, operational standards, improved enforcement mechanisms, and other components listed below should decrease the total number of short-term rentals in operation (when considering the high number of existing illegal short-term rentals that are already operating in these areas), reduce neighborhood impacts, increase the availability of long-term housing, and generate TOT for the City.

Residential units would only be eligible for short-term rental if the unit is otherwise occupied by the owner as their primary residence (all rental units would be ineligible), the

³ As discussed in greater detail below, the Coastal Commission will need to certify any future ordinance prior to becoming effective in the Coastal Zone.

unit is not deed-restricted affordable housing or a type of housing that prohibits short-term rental⁴, the unit is located outside of High Fire Hazard Areas, there were no no-fault evictions within the last five years, and there are no open or pending enforcement cases involving the property.

The short-term rental permitting program would operate on an annual basis with flat fees, performance standards, and on-site inspection. The permit would be issued to a specific person who must have a business license, sign an affidavit stating that they will follow all applicable regulations, retain records for auditing, share the nuisance response plan with neighbors, and post the permit number in all short-term rental listings. The permitting program would not include the Change of Use process that is currently required, which would simplify the process for property owners and the City.

Short-term rentals would be required to follow specific operational standards to limit nuisance impacts, such as:

- Operating no more than 90 nights per year (with a two-night minimum stay)
- Maintaining occupancy limits that are based on bedroom count
- Having sufficient off-street parking
- Maintaining a nuisance response plan with host-provided 24/7 response
- Not allowing special events and commercial activities, like weddings and corporate retreats
- Following quiet hours
- Providing a code-of-conduct to guests and posting an information packet
- Only renting out the entire unit to one group of guests at a time
- Having low-flow plumbing fixtures
- Having a Stormwater Management Plan Tier 1 improvement

Enforcement of short-term rental regulations would be improved and administrative costs to the City would be reduced by contracting with a web monitoring firm that would identify illegal listings, requiring that hosting platforms delist illegal rentals and provide listing information on a monthly basis, and establishing higher fines and penalties to discourage noncompliance.

Short-term rentals would be required to have a surety bond and pay the same TOT as hotel operators, which could be remitted to the City either from the host or directly from hosting platforms. Revenues generated from the permitting program are recommended to be set at a level to achieve cost recovery of the permitting program and associated code compliance efforts.

⁴ Examples include Accessory Dwelling Units and SB 9 / Urban Lot Split Housing

Applicable Policy Direction

The recommended short-term rental permit program was developed with the following policy direction in mind. A robust consistency analysis will be provided with any future short-term rental permit ordinance.

Previous Council Direction

City Council last considered changing short-term rental regulations in 2015. At the June 23, 2015 hearing, Council directed staff to develop a work program to define, regulate, and permit short-term home sharing rentals, which are “hosted” short-term rentals with at least one of the primary residents living on site throughout the stay. Council also directed staff to develop a work program to enforce existing short-term rental regulations.

At the August 11, 2015 hearing, City Council considered work programs for short-term rental enforcement and a short-term home sharing rental ordinance, allocated funding for enforcement, and initiated a Zoning Ordinance amendment to allow short-term home sharing rentals.

At an October 15, 2015 Planning Commission hearing, the Commissioners discussed the opportunities and challenges of regulating short-term home sharing rentals and generally supported pursuing a home-sharing ordinance, regulating the program with a planning permit and performance regulations, and requiring that the host be present in the home during the stay. The Commission was concerned about enforcement challenges and the associated administrative costs needed to successfully implement such an ordinance.

At the December 8, 2015 City Council hearing, the Council received an update on the potential short-term home sharing rental ordinance, considered the Planning Commission input, directed staff to provide a memo to Council (Attachment 5) about the process to convert a residential unit to a short-term rental, and ultimately decided not to pursue a home sharing rental ordinance.

General Plan Direction

The City’s General Plan serves as the blueprint for future growth in Santa Barbara. It places a high value on addressing the housing crisis, protecting neighborhoods, maintaining a strong economy with a stable revenue base, protecting the community from natural hazards, and maintaining Santa Barbara as a unique and desirable place to live, work, and visit. The Draft 2023 Housing Element also directs further regulating short-term rentals to increase multi-unit development and prioritize residential development over hotel development. More detailed General Plan direction is provided as Attachment 2.

Coastal Commission Direction

A new short-term rental permitting program will need to be certified by the California Coastal Commission to be effective in the Coastal Zone portion of the City. The Coastal Zone is subject to the California Coastal Act, which requires that public access be protected, provided, and maximized for all. The Coastal Commission considers all

overnight accommodations, including short-term rentals, as important visitor-facilities that allow the public to access and recreate at and along the coast. As a result, a blanket ban on short-term rentals is not typically supported by the Coastal Commission. However, the Coastal Commission has historically supported limiting short-term rentals, provided the approach balances local issues and Coastal Act goals. Examples include:

- Limiting the total number of short-term rentals in specific areas
- Limiting the type of housing used for short-term rental
- Limiting occupancy
- Limiting the number of nights a short-term rental may operate
- Requiring 24/7 management and nuisance response
- Requiring on-site parking, garbage, noise, and other operational requirements
- Requiring Transient Occupancy Tax (TOT) payment
- Establishing enforcement protocols

BUDGET/FINANCIAL IMPACT:

Development and processing of a short-term rental permit ordinance will require roughly 0.5 FTE for six months in the Community Development Department, with support from staff in the City Attorney's Office and Finance Department. Processing a Local Coastal Program amendment to make a future ordinance effective in the Coastal Zone will require an additional 0.5 FTE in the Community Development Department for at least six months to a year. Processing a short-term rental permit ordinance will likely require contract-support or reassigning Community Development staff from other work efforts and could possibly delay other high-priority projects.

A future short-term rental permit ordinance will likely generate additional Transient Occupancy and Business License Taxes. Permit fees are recommended to be set at a level to ensure cost recovery to administer any future program, which will likely require at least 1.0 FTE in the Community Development Department, with support from staff in the Finance Department and City Attorney's Office. Updated regulations that reflect modern short-term rental operations, with support from a web-monitoring platform and coordination with hosting platforms, will reduce administrative costs to the City and expand code-compliance staff capacity. Specific budget and financial impact figures will be provided with any future ordinance.

ENVIRONMENTAL REVIEW:

Any future short-term rental permit ordinance will be reviewed for compliance with the California Environmental Quality Act.

- ATTACHMENTS:**
1. Recommended Short-term Rental Permitting Program Components
 2. Applicable Short-term Rental General Plan Direction

3. Map
4. Short Term Vacation Rental Permitting Process
5. Memorandum to Council dated May 10, 2017

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