



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: June 11, 2024

TO: Mayor and Councilmembers

FROM: Community Development Department

SUBJECT: Short-Term Vacation Rental Discussion

RECOMMENDATION:

That Council discuss the City's existing Short-Term Vacation Rental Laws and Regulations and direct staff to return to Council with specific proposals to implement Municipal Code revisions, including staffing, budget, and regulatory requirements necessary to implement those policy directions.

EXECUTIVE SUMMARY:

Short-term vacation rentals are dwelling units rented for a period of 30 days or less. With the advent of online rental platforms, the popularity and prevalence of short-term rentals has grown dramatically in Santa Barbara, 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. To address this problem, in April 2023, City Council created a one-year Short-Term Rental Enforcement Pilot Program that, launched in August 2023 and gathers data on the number and location of short-term rentals operating in the City. The Pilot Program also works to gain compliance with the City's zoning laws through investigation and, if necessary, prosecution of illegal short term vacation rentals in the inland areas of the City or in response to nuisance-based complaints in the Coastal Zone.

DISCUSSION:

On April 16, 2024, Council voted, following a request from Mayor Pro Tempore Mike Jordan and Councilmember Eric Friedman, to schedule an agenda item to discuss short-term vacation rental regulations in the City. The purpose of the discussion is to provide Council with information on existing regulations and for staff to obtain Council input and direction for a subsequent, more in-depth discussion regarding ordinance requirements, enforcement issues, staff requirements, regulatory requirements, and budget implications associated with possible municipal code revisions.

A short-term rental (STR), also known as a vacation rental, is the rental of any dwelling unit to any person for exclusive transient use of 30 consecutive days or less.¹

Short-term rentals are considered hotels per the City’s Zoning Ordinance, and are considered a commercial (or nonresidential) use of a property. As such, they can only be permitted in the following zones, where hotels are allowed:

Table 1: Zones Where Short-Term Rentals Are Allowed		
Zone		Notes
<i>Inland (Title 30)</i>		
R-M	Residential Multi-Unit	Only allowed in a Historic Structure, and only with a Conditional Use Permit (CUP)
R-MH	Residential Multi-Unit and Hotel	
O-R	Office Restricted	Only allowed in a Historic Structure, and only with a CUP
C-R	Commercial Restricted	
C-G	Commercial General	
M-C	Manufacturing Commercial	
<i>Coastal (Title 28)</i>		
R-3	Limited Multiple-Family Residence	Only bed and breakfast inns in a Historic Structure, and only with a CUP
R-4	Hotel-Motel-Multiple Residence	
HRC-1	Hotel and Related Commerce 1	
HRC-2	Hotel and Related Commerce 2	
R-H	Resort-Residential Hotel Zone	
R-O	Restricted Office	Only bed and breakfast inns in a Historic Structure, and only with a CUP
C-L	Limited Commercial	
C-P	Restricted Commercial	
C-1	Limited Commercial	
C-2	Commercial	
C-M	Commercial Manufacturing	

¹ 30 days or less inland (SBMC Title 30), less than 30 days in the coastal zone (SBMC Title 28).

O-C	Ocean-Oriented Commercial	Small hotels (6 guestrooms max.) with a CUP
M-1	Light Manufacturing	

In most of the zones identified above, residential is an allowed use in addition to hotel or STR. Only the HRC-1, HRC-2, OC, and M-1 zones prohibit residential use.

Most of the City’s existing STRs are operating in single-unit zones, where they cannot be legally permitted. It is estimated that there are approximately 1,147 unlawful STRs operating in the City.

In September 2022, the Community Development Department discussed a potential STR ordinance framework with Council. Essentially, the ordinance would maintain a primarily residential use of the property and provide a ministerial, annual approval process to allow STRs to operate for no more than 90 nights per year with required performance standards. Council directed staff to forward the framework to Planning Commission with Council comments. Further discussion on this proposal was postponed until more information was gathered as part of the Pilot Program.

The Kracke Case

In 2018, in response to the City’s increased enforcement efforts, in the litigation known as *Kracke v. City of Santa Barbara*, the Superior Court issued a peremptory writ of mandate ordering the City to allow Short-Term Vacation Rentals in the Coastal Zone on the same basis as the City had allowed them to operate prior to June 23, 2015, until such time as the City obtains a coastal development permit or alternative compliance with the Coastal Act of 1976. Based upon this order, enforcement actions against illegal Short-Term Vacation Rentals in the Coastal Zone is limited to situations where complaints are received due to tenant behavior, or other nuisance-like conditions. The City does not “proactively” initiate vacation rental-related enforcement actions against unlawful short-term vacation rentals in the Coastal Zone, except with respect to business tax certificate and transient occupancy tax violations.

STR Approval Process

The conversion of an existing residential unit to a STR is considered a change of use. In order to legally convert a residential unit to a STR, the property must be located in one of the zones that allows hotels (refer to Table 1 above), and the owner must formally convert from a residential use to a nonresidential use, a process which varies in complexity based on the number, size, and location (i.e., coastal zone) of existing residential units proposed to be converted.

All STRs must comply with the City’s Nonresidential Growth Management Ordinance (SBMC Ch. 28.85/ 30.170). Most lots can be allocated up to 1,000 square feet of nonresidential floor area from the Minor Addition category. Lots within the Downtown

Development Area can use the Small Addition category for an additional 2,000 square feet. Any project that converts more than 1,000 square feet from residential to nonresidential requires a Development Plan, which would typically be reviewed by the applicable design review body.

Buildings and structures proposed for use as a STR must comply with the required setbacks of the zone for nonresidential uses. Nonconforming buildings located within the required setback may require a setback modification.

Parking for STRs is the same as for a hotel (typically one space per “sleeping unit” or guestroom). One significant difference between residential parking and hotel parking is that hotel (commercial) parking spaces are not allowed to back out onto the street unless a waiver is granted by the Public Works Director. Additionally, STRs do not benefit from the parking reductions associated with AB-2097².

The conversion of an existing residential unit to a STR must comply with the City’s Tenant Displacement Assistance Ordinance (SBMC Ch. 28.89/30.190), which requires advance notice and monetary assistance³ to eligible tenants. Additionally, any project that proposes to convert more than one residential unit into a STR requires a Hotel Conversion Permit (SBMC Ch. 28.88/ 30.155) from the Planning Commission.

Any required or proposed exterior alterations require approval by the Architectural Board of Review or Historic Landmarks Commission.

Within the coastal zone, conversion of a residential unit to a STR requires a Coastal Development Permit.

History of Short-Term Rentals and Enforcement in Santa Barbara

STRs have become a popular form of visitor lodging in the City within the past decade. While an informal market may have existed in years past, hosts can now make a spare room or an entire apartment or house available to potential visitors through websites such as Airbnb, VRBO, HomeToGo, and others. Guests can select from a variety of housing options and have the experience of staying in a home in a neighborhood not traditionally geared to tourism.

In many areas of the City, unregulated short-term rentals are inherently incompatible with the surrounding land uses and neighborhoods 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.

² Assembly Bill 2097 (AB-2097) went into effect in January 2023 and eliminates parking requirements for most development projects located within one-half mile of specified public transit.; however, hotels do not qualify for the reduction.

³ Typically four times the median advertised rental rate.

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 take away already scarce housing for long-term rentals in Santa Barbara and may encourage tenant evictions if a landlord concludes that they can earn more from short-term rentals than from a long-term tenant.

High demand for short-term rentals, a sometimes 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 transient occupancy tax. Many of the illegal short-term rentals operate in areas of the City where hotels are not allowed, which creates inherent equity issues with hotel operators.

In 2015, due to the start of a significant increase of STRs in Santa Barbara, City Council directed staff to begin proactive enforcement of existing zoning regulations on unlawful STRs. Gathering the necessary evidence to support proactive enforcement was time-consuming and costly because of the number of unlawful vacation rentals then existing in the City.

Starting in 2018, the focus and resources dedicated to enforcement shifted to defend the City's ability to prohibit STRs in multiple legal cases. One case in particular, *Kracke v. City of Santa Barbara*, changed how STRs are enforced in the Coastal Zone. The Second District Court of Appeal determined that enforcement actions against coastal zone STRs are limited to situations where complaints are received due to tenant behavior, or other nuisance-like conditions. Therefore, the City is unable to "proactively" initiate STR enforcement actions against unlawful rentals in the coastal zone as compared to the inland areas where the City is free to enforce zoning laws whether or not a complaint is received.

To address this problem, on April 25, 2023, City Council approved a one-year Short-Term Rental Enforcement Pilot Program to be funded and run from the City Attorney's Office. This program officially launched on August 1, 2023. As directed by City Council, the Pilot Program gathers data on the number and location of short-term rentals operating in the City. The Pilot Program continues to find a large number of unlawful short-term rentals operating throughout the City. The Pilot Program also works to gain compliance with the City's zoning laws through investigation and, if necessary, prosecution of illegal STRs in the inland areas of the City or in response to nuisance-based complaints in the Coastal Zone. As of April 2024, the Pilot Program has enforced 151 cases, 57 of which are still in progress. Of these, 106 cases are based on complaints received. Additionally, compliance efforts have resulted in the collection of \$759,497 in past-due taxes, interest, penalties, and fees. On April 16, 2024, Council directed that the Pilot Program be made into a permanent enforcement program in Fiscal Year 2025.

BUDGET/FINANCIAL INFORMATION:

All permitted STRs must obtain a Business License Tax Certificate and pay transient occupancy taxes (TOT). Operators of STRs in the Coastal Zone are required to obtain

Business License Tax Certificates and remit TOTs in order to continue to operate, so long as there are no nuisance-based complaints filed.

To be clear, the issuance of a Business License Tax Certificate and remittance of TOTs does not legalize operating STRs in any way. Santa Barbara Municipal Code (SBMC) Section 5.04.040 provides obtaining a tax certificate and the remittance of tax owed are solely intended to raise revenue for municipal purposes, and is not intended for regulation. Moreover, SBMC Section 5.04.030 provides that “[N]o payment of tax under the provisions of this chapter shall be construed as permission to conduct or carry on a business in such a manner so as to create or *maintain a nuisance*.” That particular language correlates with the *Kracke* decision. Finally, SBMC Section 5.04.020 is related to the discussion of illegal STRs in that it provides “[N]o payment of tax under the provisions of this chapter shall be construed as permission to conduct or carry on a business at any place within the City where the conducting or carrying on of such business is prohibited by the Zoning Ordinance of the City.”

ATTACHMENT: Memorandum

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