



Agenda Report

Fullerton City Council

MEETING DATE: SEPTEMBER 15, 2020

TO: CITY COUNCIL / SUCCESSOR AGENCY

SUBMITTED BY: KENNETH A. DOMER, CITY MANAGER

PREPARED BY: MATT FOULKES, DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

SUBJECT: FULLERTON MUNICIPAL CODE AMENDMENTS
PERTAINING TO REGULATION OF SHORT-TERM
RENTALS (CONTINUED FROM JULY 21, 2020)

SUMMARY

Proposed amendments to Fullerton Municipal Code Titles 4 and 15 to regulate short-term rental uses in residential zones or applicable Specific Plans citywide.

RECOMMENDATION

1. Make finding that project is statutorily exempt from CEQA review pursuant to CEQA Guidelines Section 15061(B)(3).
2. Introduce Ordinance No. XXXX for first reading by title only and waive further reading of the Ordinance.

ORDINANCE NO. XXXX – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING AMENDMENTS TO THE FULLERTON MUNICIPAL CODE TITLES 4 AND 15 TO REGULATE SHORT-TERM RENTAL USES CITYWIDE

3. If City Council introduces Ordinance Option 2:

Adopt Resolution No. 2020-XX.

RESOLUTION NO. 2020-XX – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, SETTING THE MAXIMUM NUMBER OF WHOLE-HOUSE SHORT-TERM RENTAL PERMITS WHICH MAY BE ISSUED CITYWIDE

FISCAL IMPACT

There is no fiscal impact directly resulting from this action. Based on estimates from Host Compliance, a consulting firm specializing in tracking short-term rentals, in June 2020 there were 424 listings at 305 properties in Fullerton with an average nightly rate of \$110. Assuming an occupancy of 30 nights per year, per property, at the average nightly rate, the Transient Occupancy Tax revenue to the City would equal \$100,650. Fees for administering the short-term rental program would be paid by the short-term rental operators through an initial permit fee and renewal fee.

PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statements:

- Fiscal and Organizational Stability
- Public Safety.

DISCUSSION

Background

The short-term rental market has experienced substantial growth over the last twelve years due in part to the continued popularity of online hosting platforms such as AirBnB, Homeaway, VRBO and others. AirBnB for example, which started with a single listing in 2007, now has over 4.8 million listings worldwide. While the short-term rental industry has long been a fixture in coastal and resort towns, its growth as an alternative lodging option for travelers in all cities has been primarily since 2014.

While the growth in short-term rentals has further diversified lodging options and created a revenue opportunity for residents looking to rent extra rooms, this use has been known to result in negative impacts, particularly in single family residential neighborhoods. Cities large and small have employed a variety of approaches to regulating this use with varying success. In Fullerton, the number of short-term rentals has grown substantially in the last twelve months to an estimated 400+ listings on 305 properties according to analysis performed by Host Compliance, a short-term rental compliance vendor. These rentals range from individual bedrooms to entire homes with an average nightly rate of \$110. Locations are dispersed throughout the city in various residential zones but are predominantly in the Single-Family Residential (R-1) zones with whole-house rentals accounting for 79 percent of the rentals in the City.

Current Municipal Code Regulations

Title 15 (Zoning) of the Municipal Code contains regulations for overnight occupancy of residential properties for compensation in the form of Boarding Houses and Bed and Breakfast Inns. Neither of these uses are permitted in Single-Family (R-1) zones and the definitions for these uses do not sufficiently encompass the short-term rental use. The FMC allows the renting of rooms in R-1 and R-2 zones, provided it is not more than three bedrooms and a total of three persons per dwelling unit. Room rental regulations specified in Title 15 were not intended to apply to rooms rented for transient occupancy (stays less than 30 consecutive days).

Although primarily for residential uses, the Municipal Code also allows a number of semi-residential and non-residential uses in the R-1 zones, including: small group homes, childcare facilities, residential care facilities for the elderly, commercial stables, private schools and home-based businesses. Each of these uses have additional development and operational standards identified in the Municipal Code which are intended to preserve the residential character of the neighborhood in which they are located to minimize impacts on surrounding properties.

Current Enforcement Efforts

Code Enforcement monitors listings on short-term rental websites such as AirBnB, Homeaway, VRBO and others, but due to the lack of specific regulations for this use, if a complaint is received, enforcement actions are limited to nuisance activities that may be occurring on the property that are related to the short-term rental use. The most common nuisance activities related to short-term rentals are: noise, property maintenance and parking. The lack of specific Municipal Code provisions pertaining to short-term rentals has made it difficult to determine the number of complaints received that are directly related to this use because complaints are tracked by violation type. It is also likely that many times when a violation occurs related to a short-term rental (ex. noise), either no official complaint is made to the City, or the complaint is received by Police dispatch which also do not track violations specific to short-term rental uses.

Previous Direction Provided by the City Council

In December, 2015 City Council approved a Resolution of Intention to amend Title 15 of the FMC pertaining to short-term rentals. The resolution and accompanying agenda report recognized the need to develop a proactive approach to regulating this use and identified potential ordinance components including: Identify appropriate zones, establish an application, review and permitting process, ensure that the City can collect Transient Occupancy Tax and develop a procedure for enforcement and revocation of short-term rental permits.

In addition to exploring regulatory options, a variety of public outreach strategies were used to engage the community during the regulations development process including a community outreach meeting, online survey, Planning Commission Study Session and City Council Study Session.

Proposed Regulations in 2016

In 2016, City Staff initially proposed a comprehensive regulatory approach to short-term rental uses which include the following regulations / requirements:

- Requirement that short-term rental properties be separated by a minimum of 500-feet as measured from property lines.
- Requiring Home Owner's Association, Property Owner or Property Manager approval in order to apply for a Short-term Rental Permit.
- Limit the number of bedrooms that can be utilized for short-term rentals in a home to no more than two.
- Limit the number of guests allowed per bedroom to no more than two adults.

- Restrictions on the use of speakers, musical instruments or other forms of amplified sound which is audible from the exterior of the home at all times.
- Development of Good Neighbor Guidelines which indicate neighborhood quiet hours and reinforce the noise restrictions included in the operational standards section.
- Covered parking in a garage or carport must be clear of stored items and available for parking at all times while the home is utilized as a short-term rental.
- Parking is allowed only on an approved driveway, garage and/or carport.
- The property must meet the current minimum parking standards for the zone in which it is located in order to be eligible to apply for a short-term rental permit.
- A property inspection is required prior to the issuance of a Short-term Rental Permit to verify the parking requirement is met.

2017 City Council Action

At its meeting on February 21, 2017, a presentation was made to City Council which summarized the proposed regulations for policy direction on this issue. At that time, the number of short-term rental properties in the City was estimated at 80 and there were less than ten documented code enforcement cases that were tied directly to a short-term rental use. Based on the relatively low number of short-term rentals, and the general perception that this use was not a source of a substantial number of calls for service or code enforcement complaints, the item was received and filed without further action.

2020 Proposed Regulations

While the exact number of calls for service and/or code enforcement complaints directly attributable to short-term rentals has not substantially changed, there has been a sizable growth in the number of properties that are being advertised for this use in Fullerton. As nearby cities, most notably Anaheim and Garden Grove, have voted to prohibit short-term rentals, there has been increased interest from investors, property owners and tenants in locating short-term rentals in Fullerton. Without specific definitions or regulations for short-term rental uses in the FMC, the City is not only unable to effectively regulate this business activity, but is also not able to collect Transient Occupancy Tax (TOT) from short-term rental operators. All hotel/motel businesses in the City are required to pay TOT at a rate of 10% of the nightly rate to the City.

Recognizing that the regulatory approach proposed in 2016 was perceived by the City Council and short-term rental community as “over-regulating,” Staff recommends a revised approach which focuses on three primary goals:

Goal #1 – Allow the use while protecting the residential character of neighborhoods.

Goal #2 – Create a mechanism for Code Enforcement to address bad operators.

Goal #3 – Ensure operators pay the proper taxes and licensing fees.

To achieve these goals, the following regulations are proposed:

Life / Safety Regulations:

- Requirement to have smoke and carbon monoxide detectors installed consistent with California Building Code requirements for residential properties
- Property cannot have an open Code Violation for unpermitted work, improper occupancy or other structural related violation
- Short-term rental operator shall provide an emergency exit plan for the property to all guests.

Permits / Licensing:

- Required to obtain a Business License
- Required to pay TOT
- Required to obtain a Short-term Rental Permit from the City.

Protecting Neighborhood Character:

- Prohibit use of short-term rental for event space (weddings, film shoots, etc.)
- Posting of Good Neighbor Policies (Trash, noise, property maintenance)
- Separation (buffers) between short-term rentals on a given street for properties used as “whole-home” rentals
- Notification to adjacent properties with contact information for complaints / issues arising from the use of the property as part of renewal process
- Prohibit on-site advertising.

Addressing Bad Actors

- Define short-term rental use in the Fullerton Municipal Code to provide Code Enforcement with a code section to cite against if/when a violation occurs
- Nuisance abatement procedure and penalties
- Revocation process for Short-term Rental Permit.

Amendments to Title 4 of the FMC

Chapter 4.92 of the Fullerton Municipal Code (Transient Occupancy Tax) defines hotel and transient uses as well as specifies the Transient Occupancy Tax and how those fees are remitted to the City. The proposed amendments to this chapter will update definitions to include the short-term rental use and clarify its applicability to the remittance of TOT.

City Council Direction on July 21, 2020

At the City Council meeting on July 21, 2020, the City Council considered the above-referenced Code Amendments to Titles 4 and 15 of the FMC. Several Councilmembers expressed concerns regarding the potential impacts of a short-term rentals, specifically whole-house rentals, taking properties “off the market” from being available for long-term rentals and/or home ownership. The City of Fullerton has approximately 49,430 housing units, of which 29,465 are single-family homes. In June, 2020, there were 305 short-term rental properties in Fullerton, 241 of which were whole-house rentals or 0.48% of the City’s single-family housing stock. While the current number of homes being utilized for

whole-house short-term rental is miniscule compared to the total housing stock in the City, one method to ensure that the number of homes used for whole-house short-term rental does not continue to grow is to set a maximum number of whole-house short-term rental permits that may be issued in the City. Limiting the number of whole-house short-term rentals to no more than approximately 1% of the City's single-family housing stock would equal 500 whole-house Short-term Rental Permits. Attached for City Council consideration is an alternate version of the proposed Ordinance which includes a section which establishes, by Resolution, a maximum number of whole-house Short-term Rental Permits which may be issued (Attachment 3). The maximum amount may be determined by the Council at this time or at any time in the future based on monitoring of the number of whole-house permits issued and by majority action of the City Council to set a limit by resolution.

Other recommended amendments to the Ordinance presented on July 21, 2020 have also been incorporated, including:

1. Clarification in the Good Neighbor Guidelines definition that this document will be provided to applicants by the City to ensure standardization.
2. Additional language about any changes in the local contact shall be provided to the adjacent property owners within 72-hours or before the property is next rented, whichever is sooner.
3. Changed "should" to "shall" in the Good Neighbor Guidelines section related to the provision of on-site parking within a garage, carport or driveway.
4. Additional language added related to enforcement actions against a short-term rental host who violates the short-term rental regulations.
5. Clarification in Chapter 4.92.030 pertaining to Transient Occupancy Tax being applicable to short-term rentals.

Enforcement / Compliance Tools

There are several challenges that cities have faced when attempting to regulate short-term rentals from both the operational side and TOT collection side. Monitoring 60+ short-term rental websites manually on a daily or weekly basis to identify new operators is staff resource intensive. Most rental websites do not provide specific addresses in the listings and it is common for a property to list their location on multiple sites at the same time, which introduces the potential for duplication errors. Additionally, vacation rental websites are reluctant or refuse to release data regarding the number and rates of nightly rentals which makes accurate collection of TOT challenging.

Recognizing these challenges, the City would propose to contract with a third-party vendor who can perform many of these staff resource intensive components on the City's behalf. Host Compliance, as an example, provides short-term rental compliance services to 250 cities and counties nationwide including the cities of Buena Park, Garden Grove and Newport Beach. The costs associated with the use of third-party vendor could be recovered through the Short-term Rental Permit and renewal fees.

Attachments:

- Attachment 1 – PowerPoint Presentation
- Attachment 2 – Draft Ordinance No. XXXX - Option 1
- Attachment 3 – Draft Ordinance No. XXXX - Option 2
- Attachment 4 – Draft Resolution No. 2020-XX