



Agenda Report

Fullerton City Council

MEETING DATE: OCTOBER 20, 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

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 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. 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 August 2020

there were 485 listings at 333 properties in Fullerton with an average nightly rate of \$115. Assuming an occupancy of 90 nights per year, per property, at the average nightly rate, the Transient Occupancy Tax revenue to the City would equal \$344,655. 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 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 nearly 500 listings on 333 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 \$115. 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 Fullerton Municipal Code (FMC) 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).

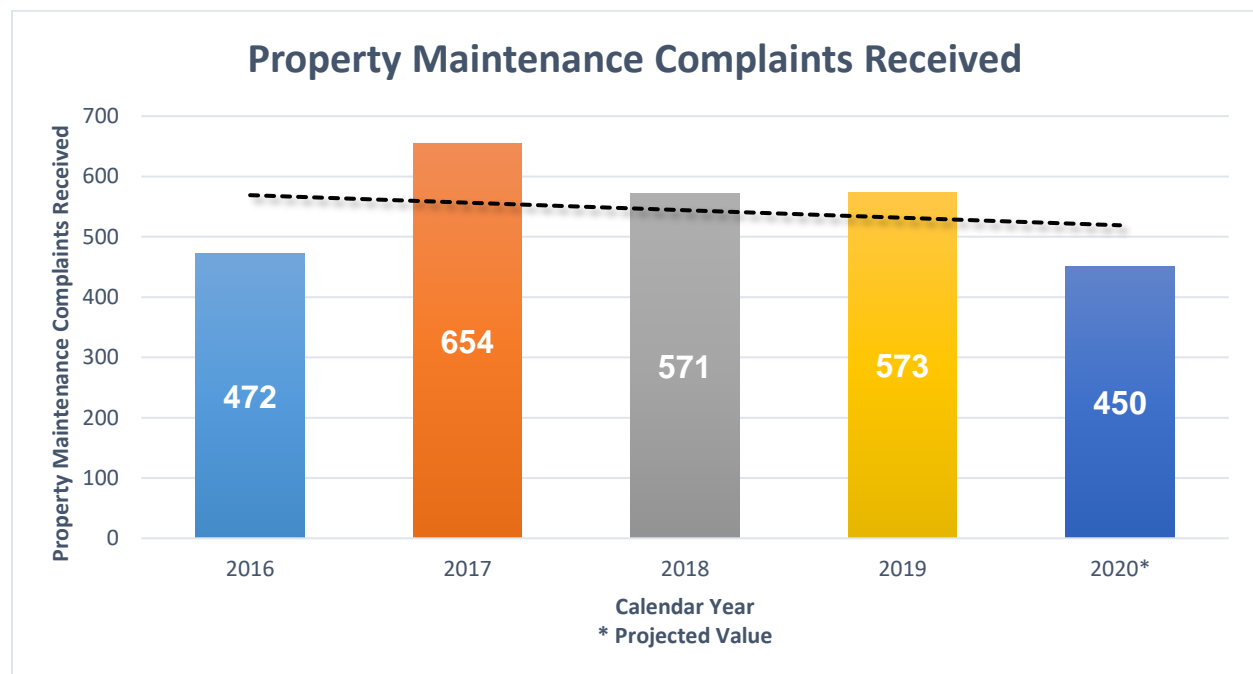
Although primarily for residential uses, the Municipal Code also allows a number of semi-residential and non-residential uses in the R-1 zones, including: small group homes, childcare facilities, residential care facilities for the elderly, commercial stables, private schools and home-based businesses. 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.

Code Enforcement complaints classified as “property maintenance” were analyzed over the last four years to see if there were any noticeable trends as it relates to an increase in these types of complaints as the number of short-term rental properties in the City increased. It is important to note that there are a number of confounding variables which impact the number of property maintenance complaints received, so no causal conclusions can be drawn, but generally there has not been a substantial increase in the number of property maintenance complaints received over the past four years.



Proposed Regulations

As nearby cities 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. 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.

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 Action on September 15, 2020

At the September 15, 2020 City Council meeting, the City Council considered the above-referenced Code Amendments to Titles 4 and 15 of the FMC. Prior to voting to continue this item to a date uncertain, several council members expressed concerns regarding the potential impacts of 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 50,000 housing units, of which approximately 32,000 are single-family homes or condominiums. In August, 2020, there were 333 short-term rental properties in Fullerton, approximately 260 of which were whole-house rentals.

While the current number of homes being utilized for whole-house short-term rental is small compared to the total housing stock in the City, one methodology to ensure that the number of dwelling units 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. Limiting the number of whole-house short-term rentals to no more than approximately 1% of the City’s single-family (including condominiums) housing stock would equal 325 whole-house Short-term Rental Permits. As part of the City Council action on the proposed ordinance amendment, the City Council would also establish, by resolution, a maximum number of whole-house Short-term Rental Permits which may be issued (Attachment 3). The maximum amount is currently recommended at 325, but may be amended at any time in the future by majority action of the City Council to set a new limit.

Other amendments to the Ordinance presented on September 15, 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 that whole-house rentals on a corner lot shall have the 300-foot lineal separation apply to both streets that the parcel has frontage on.
6. 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
- Attachment 3 – Draft Resolution No. 2020-XX