



**TOWN OF LOS GATOS  
TOWN COUNCIL POLICY COMMITTEE SPECIAL MEETING  
DECEMBER 20, 2018  
TOWN COUNCIL CHAMBERS – 110 EAST MAIN STREET  
LOS GATOS, CA  
8:30 A.M.**

*Marcia Jensen, Vice Mayor  
Rob Rennie, Council Member*

**MEETING CALLED TO ORDER**

**ROLL CALL**

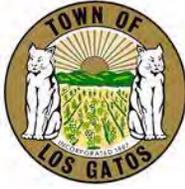
**VERBAL COMMUNICATIONS** *(Members of the public may address the Committee on any matter that is not listed on the agenda. Unless additional time is authorized by the Committee, remarks shall be limited to three minutes.)*

**OTHER BUSINESS** *(Up to three minutes may be allotted to each speaker on any of the following items.)*

1. Approve the November 15, 2018 Council Policy Committee Draft Minutes.
2. Review and provide direction on a potential short-term rental (STR) ordinance.
3. Continue to discuss parameters for a Town parklet pilot program.
4. Discuss and provide direction for potential amendments to the Town Code regarding fences, hedges and walls in the Hillside Residential zone.
5. Continue to discuss modifications to the land use appeal process.

**ADJOURNMENT**

**IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN THIS MEETING, PLEASE CONTACT THE CLERK DEPARTMENT AT (408) 354-6834. NOTIFICATION 48 HOURS BEFORE THE MEETING WILL ENABLE THE TOWN TO MAKE REASONABLE ARRANGEMENTS TO ENSURE ACCESSIBILITY TO THIS MEETING [28 CFR §35.102-35.104]**



**MINUTES OF THE TOWN COUNCIL SPECIAL POLICY COMMITTEE MEETING  
NOVEMBER 15, 2018**

The Town Council Policy Committee of the Town of Los Gatos conducted a Special Meeting on Thursday, November 15, 2018, at 1:30 p.m.

**MEETING CALLED TO ORDER AT 1:30 p.m.**

**ROLL CALL**

Members Present: Rob Rennie, Marcia Jensen

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Arn Andrews, Assistant Town Manager; Joel Paulson, Community Development Director; Matt Morley, Parks and Public Works Director; Sally Zarnowitz, Planning Manager; Sean Mullin, Associate Planner; Holly Zappala, Management Analyst.

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

**1. Approval of October 18, 2018 Council Policy Committee Draft Minutes.**

Approved.

**2. Review and provide direction on potential short-term rental regulations.**

Holly Zappala, Management Analyst, presented the staff report.

Chris Wiley

-Commented that she is concerned about parties and garbage at un-hosted short-term rentals. She believes homeowners need to monitor their rentals and is also concerned about houses being purchased for the sole purpose of use as a short-term rental.

Ruth Mathewson

-Commented that she is concerned about barking dogs, drug use, extra cars, garbage cans being left on the streets, lack of yard maintenance, noise, and lack of communication with the property owners associated with short-term rentals.

After discussion, the Committee's direction was to return to the Committee with options for a potential ordinance allowing and regulating short-term rentals in Los Gatos more similar to the Hood River, Oregon model presented than the Los Altos Hills model, including the following regulations:

- Allow both hosted and un-hosted rentals with a limit on the number of days for each.
- Provide options for limiting the use of accessory dwelling units as short-term rentals to maintain the Town's housing stock.
- Require parking to remain on-site in areas where on-street parking is not permitted and require parking to be limited to using the two guest parking passes purchased per house/property through the Police Department in areas where on-street parking is permitted.
- Allow the Community Development Director the ability to revoke short-term rental permits and also for permits to be revoked after a certain number of violations.
- Create a penalty for failing to register a short-term rental within 90 days of operation.
- Implement various other regulations in order to conserve housing stock and mitigate neighborhood impact.

**3. Continue to discuss parameters for a Town parklet program.**

Matt Morley, Parks and Public Works Director, presented the staff report.

David Fox

-Commented that parklets work well in Willow Glen.

After discussion, the Committee's direction was to return to the Committee with options for a parklet ordinance similar to the West Hollywood model presented in the staff report with the following direction:

- Parklets could be part of a public/private relationship with the Town and the space should not be reserved for a certain business and should be open to the public.
- Parklets should include creative design elements but not full structures that would limit visibility from a safety perspective or enclose the space.

- Parklets should take up no more than two parking spaces.
- Police Department and Parks and Public Works staff should determine appropriate parklet locations and speed limits from a safety perspective.
- Restaurant table service should not be allowed unless it can be done in a way that will not discourage public use of the parklets.
- Notification of neighboring businesses should be required.
- Parklet permit term should initially be two years.

**4. Discuss and provide direction for potential amendments to the Town Code regarding fences, hedges, and walls.**

Dashiell Leeds

-Commented on the need for wildlife-friendly fencing in Town and the importance of banning transparent fencing material for migratory bird populations and believes the ordinance should be implemented.

Bill Hirschman

-Commented that transparency and community engagement is important and suggested bulk mailing to all hillside residents regarding the proposed ordinance. He said the proposed ordinance is not well-defined and leaves many issues open to discretion.

Maria Ristow

-Commented that hillsides are wildlife habitats and homeowners share those areas with animals that need lots of space in order to survive. She believes that large areas of hillside space should not be fenced off.

David Klinger

-Commented that the hillside fencing ordinance should be separated from the flatland fencing ordinance.

Alice Kaufman

-Commented that hillside fences force animals into the road and are hazardous for both animals and motorists. She would like a solution that both protects wildlife and works for the community.

Cheryl Wimberly

-Commented that she signed a petition that was against the ordinance and believes hillside residents should be notified of the proposed ordinance.

Lee Quintana

-Commented that a balance between development and wildlife is important as well as regulations that establish an animal movement corridor and protect wildlife habitats. She does not want fencing to push animals away from the hillside and towards Town and believes the ordinance should reference other Code provisions and Town policy that provide fencing regulations.

David Fox

-Commented that the main issue is the limit of fencing within 30 feet of houses which hinders the ability to protect pool areas and other landscaping. He suggested to look at an offset from development area instead of a standard of 30 feet.

Rabbi Philip Ohriner

-Commented that the proposed ordinance precludes agricultural land management. He supports the wildlife protection and would like agricultural usage excluded from the requirements.

Dave Poeschel

-Commented that he would like to see the ordinance move forward. He said it is reasonable to have a fence ordinance, especially for hillside properties. He is concerned about the loss of animal species and restricted habitat for wildlife.

David Weissman

-Commented that he is discouraged to hear speakers reference an old version of the draft fence ordinance. He said that the Hillside Guidelines reference the importance of wildlife corridors and the ordinance is intended to codify the principles in the Hillside Guidelines.

After discussion, the Committee recommended to bifurcate the hillside fencing and flatland fencing regulations. The Committee also recommended to return to the Committee with additional options for the hillside fencing regulations, taking into account the following considerations:

- Animal corridor locations should be more flexible.
- Regulations should be more basic and easier to understand.
- The principles in the Hillside Guidelines should be converted into an ordinance and perhaps incorporated into the Planned Development Code provisions.

## **ADJOURNMENT**

The meeting adjourned at 4:12 p.m.

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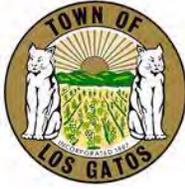
SUBJECT: MINUTES OF THE TOWN COUNCIL SPECIAL POLICY COMMITTEE MEETING OF  
NOVEMBER 15, 2018

DATE: DECEMBER 20, 2018

This is to certify that the foregoing is a true  
and correct copy of the minutes of the  
November 15, 2018 meeting as approved by the  
Town Council Policy Committee.

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/s/Holly Zappala, Management Analyst



**TOWN OF LOS GATOS**  
**TOWN COUNCIL POLICY COMMITTEE**

MEETING DATE: 12/20/2018

ITEM NO: 2

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DATE: NOVEMBER 30, 2018  
TO: COUNCIL POLICY COMMITTEE  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: REVIEW AND PROVIDE DIRECTION ON A POTENTIAL SHORT-TERM RENTAL (STR) ORDINANCE.

RECOMMENDATION:

Review and provide direction on a potential short-term rental (STR) ordinance.

BACKGROUND:

On October 2, 2018, a staff report regarding short-term rentals (STRs) was brought to the Town Council for initial discussion and direction. Council voted unanimously to refer the item to the Policy Committee for further discussion with input from Council members. A copy of the Council Staff Report is available as Attachment 1.

STRs were initially discussed at the October 18, 2018 Town Council Policy Committee meeting and more specific options were narrowed down by the Committee at the November 15, 2018 meeting. A copy of the October 18, 2018 Policy Committee Staff Report is available as Attachment 2 and the November 15, 2018 Policy Committee Staff Report is Attachment 3 to this report.

After the November discussion, the Policy Committee asked staff to return to the Committee with a draft ordinance allowing and regulating short-term rentals in Los Gatos. The Committee's direction was for the draft ordinance to be akin to the more regulated Hood River, Oregon model as opposed to the less regulated Los Altos Hills model. The Committee asked that staff consider incorporating the following regulations to ensure the preservation of the residential character of neighborhoods and the housing stock of the Town:

PREPARED BY: HOLLY ZAPPALA  
Management Analyst

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Reviewed by: Town Manager, Assistant Town Manager, and Community Development Director

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- Limit short-term rentals to one per parcel and one per owner only within legal conforming and legal non-conforming residential dwelling units.
- Limit short-term rentals to the primary residence of the applicant.
- Allow both hosted and un-hosted rentals with differing limitations on the number of allowable days for each.
- Provide options for limiting the use of accessory dwelling units (ADUs) as short-term rentals to maintain the Town's housing stock.
- Require parking to remain on-site in areas where on-street parking is not permitted and require parking to be limited to using the two guest passes purchased per house/property through the Police Department in areas where on-street parking is permitted.
- Allow the Community Development Director the ability to revoke short-term rental licenses at his/her discretion and also for licenses to be automatically revoked after a certain number of violations.
- Create a penalty for failing to register a short-term rental.
- Implement various other regulations in order to conserve housing stock and mitigate neighborhood impact.

Staff has drafted an ordinance taking into consideration the above direction from the Policy Committee. A copy of the draft ordinance is available as Attachment 4 to this report.

#### DISCUSSION:

##### *Hosted versus Un-Hosted Rentals*

The Committee's direction was to allow both hosted and un-hosted STRs with a limit on the number of days for each (while allowing a greater number of days for hosted rentals). The attached draft ordinance caps hosted rentals at 180 days and un-hosted rentals at 30 days.

##### *Regulation by Zone*

The direction of the Policy Committee was to focus the regulation on the number of days allowed for hosted and un-hosted rentals instead of regulating and capping STR licenses by residential zone. The draft STR ordinance does not contain language regulating STRs by zone.

##### *Accessory Dwelling Units*

The Committee expressed a desire to limit the number of accessory dwelling units (ADUs) used as STRs in an effort to conserve housing stock. Existing Town Code Section 29.10.320 (b) (14) prohibits rentals for durations of less than 30 days in new ADUs approved after February 6, 2018, when the ordinance went into effect. The attached draft ordinance allows STRs in

accessory dwelling units approved before February 6, 2018 only. The current prohibition on STRs in ADUs approved after February 6, 2018 is maintained.

In a further effort to conserve housing stock in Los Gatos, the attached ordinance caps STR licenses at five percent of the Town's overall housing stock.

#### *Parking*

The direction of the Committee was to require all STR parking to remain on-site in areas where on-street parking is not permitted and to require parking to be limited to using the two guest parking passes purchased per house/property through the Police Department in areas where on-street parking is permitted. The language in the attached ordinance reflects this direction.

#### *Licensing Process*

The Policy Committee agreed that the STR licensing process should be as simple as possible to encourage compliance and that the steps should include: obtaining a business license, submitting a STR registration form (fee to be determined), submitting a Transient Occupancy Tax (TOT) form, self-reporting/remitting TOT, and providing a Certificate of Occupancy for the property to ensure the space is habitable. The attached draft ordinance details the STR license application including all of these steps. The draft also requires that the STR license be renewed at the end of each calendar year, with a pro-rated fee each quarter, similar to the process for maintaining a Town business license.

#### *Revocation of STR Licenses*

The Committee expressed interest in both the Community Development Director having the ability to revoke an STR license at his/her discretion (which requires an appeal process) and the automatic revocation of STR permits after three confirmed violations in a twelve-month period. The attached draft ordinance reflects this direction, provides examples of STR violations, and details penalties, revocation and an appeal process for revoked STR licenses. The appeal process listed is similar to processes the Town already has in place for other types of appeals.

The Committee was divided on whether revocation of STR licenses should last for a defined period of time or should be permanent for the specific host at the identified property. The attached ordinance provides a long duration (five years) for a revoked license before a host can re-apply at the same property or other property.

#### *Enforcement*

The Committee agreed with staff's recommendation to continue enforcement on a complaint-driven basis at first. Should the need arise, there are third party firms that provide services

such as identifying all STR rentals in Town for registration and providing a 24/7 rental hotline for complaints.

The Committee supported creating a penalty for failing to register an STR, and did not support the creation of an online directory of registered STRs in Town by address with the ability to click on a property and file an online complaint. The attached draft ordinance penalizes operating an STR without a license with both monetary fines and the ability to revoke or deny an STR license.

#### *Miscellaneous Regulations to Conserve Housing Stock*

The Committee supported a number of additional regulations to help conserve housing stock in Los Gatos.

STRs are currently prohibited in Below Market Price units, which is reaffirmed in the attached draft ordinance. The Committee was undecided on whether to allow STRs in senior housing units (i.e., to allow seniors to rent to other seniors). The attached draft prohibits STRs in senior housing units in an effort to conserve long-term housing for senior residents, but can be altered based on further direction.

The Committee expressed interest in limiting STR registration to one per owner and one per parcel at a time, which is reflected in the draft language. In addition, the ordinance restricts STRs to the primary residence of the applicant.

Per the Committee's direction, the attached draft ordinance also prohibits STRs in all apartment complexes and multi-unit housing defined as more than three units per building.

#### *Miscellaneous Regulations to Mitigate Neighborhood Impact*

The Committee supported various regulations aimed at mitigating STR neighborhood impact.

Regarding prohibiting commercial or assembly uses in STRs (i.e. weddings and special events), the Committee was divided. The attached ordinance prohibits these uses in an effort to limit potential nuisance situations for neighbors, but can be altered based on further direction.

The Committee was in agreement that the homeowners' association (HOA) should provide a letter of approval for any potential STR that is part of an HOA.

The Committee also supported the idea that hosts should be required to provide guests with local rules to follow during their stay and to limit the number of overnight lodgers. The attached draft reflects the regulations referenced above and limits occupancy to two overnight guests per bedroom, plus one additional person per unit.

Per the Committee's direction, the attached draft ordinance prohibits renting to unaccompanied minors and requires STR hosts (or an appointed un-hosted site representative) to be on call 24/7 to manage the STR unit and respond to reported issues, contact the tenants, and/or be physically present at the unit within 60 minutes from the time of notification.

#### *Amnesty Period*

STRs are widespread and have been operating throughout the Town for several years. Staff recognizes that it will take time for hosts to bring their STRs into compliance with the proposed ordinance. However, a shorter time frame for compliance may reduce impacts on the neighborhoods and housing stock, and increase the accuracy of TOT collection. Staff recommends a six-month amnesty period for hosts to bring their STRs into compliance with the new ordinance, and this period has been incorporated into the draft ordinance. The Committee may recommend an alternative amnesty period.

#### CONCLUSION:

Staff looks forward to the review of the draft ordinance by the Committee and further direction.

#### ENVIRONMENTAL REVIEW:

The proposed ordinance is not considered a project under CEQA Guidelines Section 15378 because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. Alternatively, the ordinance is exempt from CEQA as it can be seen with certainty that there is no possibility for causing a significant effect on the environment (Section 15061 (b) (3)). The action will not cause a direct or reasonably foreseeable indirect change in the environment, as the use of STRs would be limited to existing primary residences and no additional structures or construction is required in order to comply with the regulations. The ordinance provides for regulations to limit traffic, parking and noise impacts throughout Town.

#### FISCAL IMPACT:

Based on preliminary data received from Airbnb, the Town may receive estimated annual transient occupancy tax revenue of \$226,800 if the Town were to enter into a voluntary TOT collection agreement with Airbnb.

#### Attachments:

1. October 2, 2018 Los Gatos Council Report
2. October 18, 2018 Policy Committee Report
3. November 15, 2018 Policy Committee Report

4. Draft Ordinance



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/02/2018

ITEM NO: 8

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DATE: SEPTEMBER 27, 2018  
TO: MAYOR AND TOWN COUNCIL  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: DISCUSS AND PROVIDE DIRECTION REGARDING POTENTIAL REGULATIONS FOR SHORT-TERM RENTALS.

**RECOMMENDATION:**

Discuss and provide direction regarding potential regulations for short-term rentals (STRs).

**BACKGROUND:**

Short-term rental (STR) is the practice of renting a portion of or an entire home to a person or group of people for periods of less than 30 nights. In recent years, there has been exponential growth of STRs offered through “sharing economy” websites, such as Airbnb (by far the leader of the group), VRBO, Flipkey, and Homeaway. To illustrate the growth in STR platforms, seven million guests used Airbnb to rent out rooms or homes in California in 2017, according to Matt Middlebrook, Airbnb’s Public Policy Lead for California. The growing popularity of STRs is forcing municipalities across the country and the world to develop strategies in response.

A review of Airbnb’s website shows between 50 and 100 STR properties currently in Los Gatos. The majority (about 45 percent) are guesthouses/cottages, followed by about 30 percent room rentals and approximately 20 percent entire houses for rent. There were also a couple local hotel rooms listed and even a camper/recreational vehicle (RV). Currently, STR listings do not include the address of the rental, making them difficult to locate based on public listing information; however, based on information from one popular STR information aggregator, the picture below illustrates the units currently available in Los Gatos. Another STR information aggregator places the STR inventory at approximately 104 units in the 95030 and 95032 zip codes.

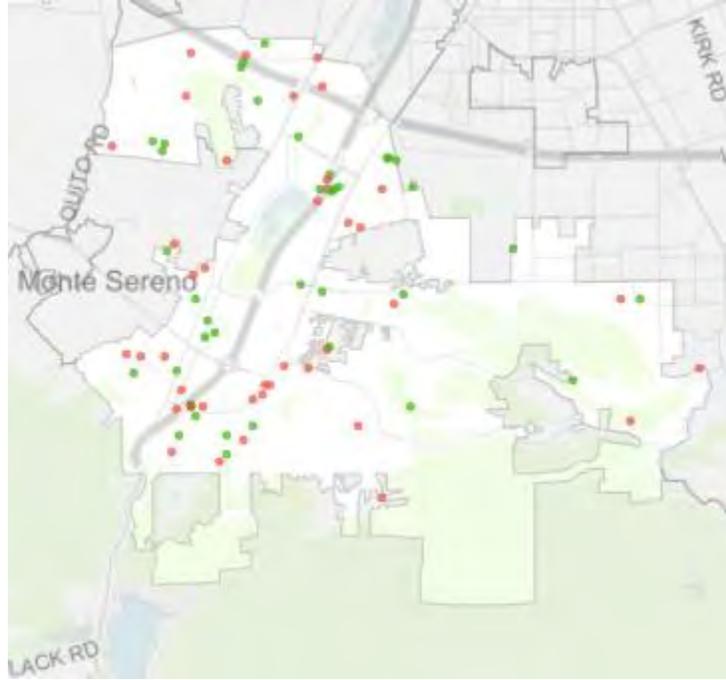
PREPARED BY: ARN ANDREWS, Assistant Town Manager  
HOLLY ZAPPALA, Management Analyst

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Reviewed by: Town Manager, Assistant Town Manager, Finance Director, and Town Attorney

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BACKGROUND (Cont'd):



Source: Inside Airbnb (red entire homes/apartments, green private/shared room)

Given the wide adoption of STR platforms and the subsequent proliferation of STRs within Los Gatos, it is timely for the Town Council to discuss the Town's current STR approach, review policy options, and provide direction on potential STR regulations.

DISCUSSION:

*Existing Town STR Approach*

The current Town of Los Gatos Zoning Ordinance is silent on the subject of short-term rentals as a permitted use in any of the Town's zones, which by default prohibits them from occurring within the Town's jurisdiction. Town Code Sec. 25.30.010 defines a hotel as any structure occupied by transients for dwelling, lodging, or sleeping purpose. Town Code Sec. 29.10.020 further defines a hotel/motel as a building where lodging, with or without meals, is provided for compensation and where occupancy is generally limited to no more than thirty (30) days. A hotel is not a permitted use in the residential zones, therefore prohibiting homeowners from renting out a house for 30 days or less. A transient is defined as any person who exercises occupancy for a period of thirty (30) consecutive calendar days or less. In addition, Code Sec. 29.10.320 (b) (14) also specifically prohibits rentals for durations of less than thirty (30) days, including short-term rentals, in accessory dwelling units. The Town enforces these Code

SUBJECT: DISCUSS AND PROVIDE DIRECTION REGARDING POTENTIAL REGULATIONS FOR SHORT-TERM RENTALS (STR)  
 SEPTEMBER 27, 2018

DISCUSSION (Cont'd):

sections and the prohibition on a complaint-driven basis. The Town received two STR complaints in 2015, one in 2016, three in 2017, and three in 2018 so far.

The current Transient Occupancy Tax (TOT) rate in Los Gatos is 12% and it applies to rentals that do not exceed 30 consecutive days. These rentals have historically been hotel stays, until the recent popularity of the sharing economy rentals. The Town currently collects this tax from hotels. The tax is paid by the hotel guest and collected and remitted by the hotel owners. No TOT is collected for STRs currently.

*Alternative STR Policy Approaches*

There are many STR policy approaches being adopted by regional and national peer municipalities. In Santa Clara County, jurisdictions have taken a variety of approaches to the topic of STRs. The City of Saratoga has banned them while the Cities of San Jose and Sunnyvale have regulated them. The Cities of Santa Clara and Morgan Hill have no ordinances or regulations in place but have agreements with Airbnb to collect Transient Occupancy Tax through its reservation platform. Other municipalities, including the Town of Los Gatos, do not have an ordinance regulating STRs.

Regulates STRs	STRs not allowed	No Regulations	Regulations under consideration
San Jose	Campbell	Gilroy	Mountain View
Sunnyvale	Milpitas	Santa Clara	Cupertino
Los Altos Hills	Saratoga	Morgan Hill	
San Francisco	Palo Alto		

While the policy approaches may vary in adoption, the variables addressed during policy formation are fairly consistent. In municipalities that have chosen to regulate STRs, there are a variety of best practices emerging as a way to manage them, including establishing a geographic zone specifically for STRs, requiring the STR host to be present, limiting the number of rental days per year (difficult to enforce), and limiting the number of guests at one time (difficult to enforce).

Following are the primary policy considerations if the Council would like to consider regulating and allowing STRs.

DISCUSSION (Cont'd):

- **Type:** There are two primary types of residency options in practice to consider:
  1. **Hosted Rentals:** In a hosted rental, a permanent resident must live at the home while it is being rented. Hosted STRs could present fewer compliance issues since the host would reside on the premises to oversee the rental. Having a resident host living at the house could also increase the comfort of neighbors who may otherwise be unsure about the guests.
  2. **Un-Hosted Rentals:** Un-hosted rentals are normally for the entire house/property as opposed to a room or accessory dwelling unit. Un-hosted rentals could have more neighborhood compatibility and enforcement issues, such as noise complaints. Un-hosted rentals may also have a greater impact on the affordability of the rental housing market, as owners may seek to rent multiple properties concurrently.
- **Geographic Zone(s):** STRs could be confined to certain zones within the Town. The number of STRs within those zones within the Town could also be limited. A minimum distance could also be established between properties that have been permitted for STRs.
- **Limiting the number of days allowed per year:** Many jurisdictions have regulated the number of days per year an STR can be rented. Jurisdictions further codify a distinct number of days per year for hosted units versus un-hosted units, with un-hosted rental days per year being significantly less than the number allowed for hosted rentals.
- **Maximum number of guests at one time—Hosted:** In order to control the number of people using an STR and the effects on neighbors (parking and noise), a limitation on the number of STR guests allowed in a 24-hour period can be included in the regulations. Children under a certain age can be excluded from the count. The number of guests can be calculated based on the number of rooms in the house. However, having one standard regardless of the number of bedrooms makes enforcement easier (e.g. four guests per property).
- **Maximum number of guests at one time—Un-Hosted:** If the entire home is available for use, some jurisdictions increase the maximum number of guests beyond the limit imposed upon hosted rentals.
- **Parking:** Vehicle parking for STRs could be required to remain on-site, or the number of vehicles per STR could be limited.

DISCUSSION (Cont'd):

- **Commercial Uses:** Assembly or commercial uses, such as weddings or other special events, could be prohibited at STRs. This would reduce noise, vehicles, and the overall impacts to a neighborhood.

*Additional STR Policy Considerations*

Potential Impact on Housing

While research regarding the potential impact of the STR market on housing availability is still in its infancy, early research indicates that it could have a negative impact in certain markets. Given the current relatively small number of STRs in Los Gatos, they likely have a minimal impact on current housing availability; however, if more homeowners begin renting their entire homes for longer durations, this could become a more prominent issue.

To discourage the conversion of units from long-term housing to STRs, municipalities have taken approaches such as: requiring STRs be only at the owner's primary residence, allowing only one unit per parcel to be used as an STR, requiring the host to be present during rental periods, and prohibiting STRs in Below Market Rate and senior units.

Neighborhood Character and Impacts

Transient tenants associated with STRs may impact parking, noise, and neighborhood character. There are a number of regulations that can be used to mitigate most of these concerns including: limiting the number of guests at one time, requiring parking to be on-site, limiting the number of vehicles, prohibiting assembly/commercial uses (such as weddings), requiring hosts to provide guests with local rules regarding noise, etc., and requiring the host to live at and be present at the property during any rentals.

Enforcement

In order to assist in effective enforcement either a continued ban on STRs or some form of a regulated model, violation penalties for both should be made clear and significant enough to encourage compliance. Some jurisdictions have created high penalties for failing to register an STR within 90 days of operation. This encourages STRs to register, making enforcement of any other violations much easier. In addition, many cities also include the ability to revoke the operator's STR-related business license or registration after two or three violations.

Staff will need to evaluate if additional Code Enforcement staff would be needed to assist in STR regulation. Given the history of very few STR-related complaints each year and the

DISCUSSION (Cont'd):

relatively low number of STRs currently in Town, additional staff may not be required right away.

Revenue Collection

Most municipalities that allow STRs require hosts to maintain a current business license and all hosts must report/remit TOT to the municipality. If the Town were to move forward with a regulatory program for STRs, a process for TOT collections from STRs would need to be established.

Airbnb has recently started entering into agreements with municipalities to collect and remit TOT on behalf of hosts/property owners. This allows municipalities to interact with one organization, rather than collecting funds from hundreds of individual property owners. Locally, San Jose, Santa Clara, Palo Alto, San Francisco, and Oakland have established agreements with Airbnb to collect and remit TOT on behalf of short-term rental hosts. Hosts using platforms other than Airbnb must self-report and remit TOT.

The other option is to refrain from contracting with Airbnb and use the honor system where owners remit taxes directly to the Town for all platforms. This approach has been less effective in other municipalities.

CONCLUSION AND NEXT STEPS:

Council should determine if the status quo approach to short-term rentals in Los Gatos should be maintained or if regulations should be drafted to allow STRs.

Among the options for Council consideration:

- Make no changes to the current Town ordinances and create enforcement tools to encourage compliance;
- Create an ordinance regulating STRs in the Town of Los Gatos and rely on owners/hosts to report and remit TOT directly to the Town;
- Create an ordinance regulating STRs in the Town of Los Gatos and enter into an agreement with Airbnb (and similar platforms) wherein Airbnb collects the TOT on behalf of the Town and remits directly to the Town; and
- Enter into an agreement with Airbnb wherein Airbnb collects the TOT on behalf of the Town and remits directly to the Town, while not changing the current Town ordinances.

Staff looks forward to the direction of the Town Council.

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SUBJECT: DISCUSS AND PROVIDE DIRECTION REGARDING POTENTIAL REGULATIONS  
FOR SHORT-TERM RENTALS (STR)  
SEPTEMBER 27, 2018

COORDINATION:

This report was coordinated with the Town Attorney, Director of Community Development, and Director of Finance.

FISCAL IMPACT:

No fiscal impact at this time.



**TOWN OF LOS GATOS**  
**TOWN COUNCIL POLICY COMMITTEE**

MEETING DATE: 10/18/2018

ITEM NO: 4

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DATE: OCTOBER 12, 2018  
TO: COUNCIL POLICY COMMITTEE  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: DISCUSS POTENTIAL REGULATIONS FOR SHORT-TERM RENTALS (STRs)

RECOMMENDATION:

Discuss potential regulations for short-term rentals (STRs).

BACKGROUND:

On October 2, 2018, a staff report regarding short-term rentals (STRs) was brought to the Town Council for initial discussion and direction. Council voted unanimously to refer the item to the Policy Committee for further discussion with input from Council members. A copy of the Council Staff Report is available as Attachment 1.

Council requested additional research regarding how neighboring municipalities have responded to this issue and considerations that those jurisdictions took into account when formulating their approaches. Council also sought an estimate of the anticipated revenue from transient occupancy tax (TOT) associated with STRs if the Town were to allow and regulate STRs.

DISCUSSION:

The policy responses of municipalities comparable to Los Gatos generally fall into one of three categories: (1) outright prohibition of STRs, (2) TOT voluntary collection agreements with Airbnb without specific policy allowing/regulating STRs, and (3) policy adoption to allow and regulate STRs. Following is a summary of findings from staff's review of neighboring jurisdiction staff reports and/or discussions with neighboring jurisdiction staff.

PREPARED BY: HOLLY ZAPPALA  
Management Analyst

Attachment 2

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Reviewed by: Town Manager, Assistant Town Manager, and Community Development Director

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DISCUSSION (Continued):

1. Outright prohibition of STRs

Some local municipalities have chosen not to allow STRs within their jurisdictions. STRs are banned in both Campbell and Saratoga.

*Campbell*

Campbell's position on STRs is nearly identical to the status-quo position of the Town of Los Gatos. STRs are not a permitted use in the Campbell Zoning Ordinance, which by default prohibits them from occurring in Campbell. Hotel-type uses are not permitted in residential zones, which prohibits homeowners from renting out their houses for periods of less than 30 nights. Campbell Code Enforcement enforces this ban on a complaint-driven basis. They receive relatively few complaints concerning STRs. There has been no interest within the City of Campbell in addressing the topic of STRs further, so their ordinance continues to remain silent on the subject. Campbell does not collect any TOT revenue from STRs.

*Saratoga*

Saratoga bans STRs outright within its city. The Saratoga Municipal Code is similar to those of Los Gatos and Campbell in that it does not allow STRs by-right as a permitted use in any residential zoning district. Saratoga staff examined the issue and brought it to the City Council in April, 2015 (see Attachment 2). Ultimately, the City chose to uphold the ban on STRs in order to avoid increased traffic, noise, and the high turnover of renters. Residents preferred to maintain their relatively quiet streets and valued neighborhood stability and privacy. Saratoga enforcement efforts include the creation of a flyer and a page on their website dedicated to providing information to the community regarding the ban on STRs (see Attachment 3). They currently receive approximately one or two STR-related complaints per year and do not collect any TOT revenue from STRs.

2. TOT voluntary collection agreement with Airbnb with no ordinance amendment to allow/regulate STRs

There are several neighboring jurisdictions that have chosen to enter into agreements with Airbnb wherein Airbnb collects TOT on behalf of its hosts and remits directly to the municipality, while not amending their Municipal Ordinances to allow or regulate STRs. Both Santa Clara and Morgan Hill have chosen this approach.

DISCUSSION (Continued):

*Santa Clara*

The City of Santa Clara does not regulate STRs. In 2015, the City Council authorized the City Manager to execute a voluntary tax collection agreement with Airbnb for the collection of the City's TOT on short term rentals (see Attachment 4). While the City has an agreement with Airbnb, there are other sharing economy rental sites that operate within the City of Santa Clara which do not have a TOT agreement with the City. Santa Clara has also not conducted any due diligence to ensure receipt of TOT from Airbnb, although the City has acknowledged that an upcoming review is warranted and planned (see Attachment 5).

Santa Clara's Zoning Code does not call out any restrictions and the relevant Zoning Code sections do not include provisions disallowing uses not mentioned, unlike other parts of their Code. The City's TOT definitions are broad enough to apply to STRs. Given the number of rentals in Santa Clara (approximately 130 at the time of the report), the anticipated revenue, and Airbnb's willingness to enter into a voluntary tax collection agreement, staff recommended the City enter into the agreement with Airbnb and Council approved it. One year into the agreement, Santa Clara's TOT revenue was \$291,789.26 (see Attachment 6). This was significantly higher than the initial projected annual TOT revenue of \$60,000.

*Morgan Hill*

Morgan Hill also chose a passive approach to the issue of STRs. Although they are not allowed in Morgan Hill, the City is aware that they are still occurring. There are approximately less than 50 listings on Airbnb. The City chose to enter into an agreement with Airbnb wherein Airbnb collects the TOT on behalf of its hosts and remits directly to the City (see Attachment 7). This was a strategy to collect the TOT revenue since the STRs, though not allowed, are still occurring within the City. Morgan Hill also created a system for hosts using platforms other than Airbnb to register and pay TOT independently (see Attachment 8). To date, no one has registered. If no STR-related complaints are received, the City does not get involved in the operation of the STRs; however, if complaints are received, the City will enforce the ban on STRs.

*Palo Alto*

Palo Alto has a similar strategy to Morgan Hill, noting that the TOT applies to homeowners or companies who may be renting bedrooms or dwelling units on a short-term basis, even if this activity violates the City's Zoning Ordinance.

DISCUSSION (Continued):

3. Policy adoption to allow/regulate STRs

In addition to the aforementioned policy choices, other local municipalities have chosen to allow and regulate STRs in their jurisdictions. When STRs are allowed, there are a number of policy considerations to be taken into account when establishing rules to regulate them. Some of the major considerations include: the type of rental (hosted vs. un-hosted), geographic location (confining them to certain zones), limiting the number of rental days allowed per year, limiting the number of renters allowed at one time, regulating parking, and limiting commercial/assembly uses. Sunnyvale and Los Altos Hills have both chosen to allow and regulate STRs within their jurisdictions.

*Sunnyvale*

Sunnyvale allowed and regulated STRs in 2015 (see Attachment 9). The City entered into a voluntary TOT collection agreement with Airbnb in 2018 (see Attachment 10). Sunnyvale staff also created a webpage with STR information, including an STR rental application and TOT registration form for hosts (see Attachment 11).

The City of Sunnyvale considered the impact on the housing stock and chose to not permit un-hosted rentals as a way to protect housing stock in the City. Un-hosted rentals can have a greater impact on the rental housing market, as owners may seek to purchase and rent multiple properties concurrently. A requirement for the host to reside on-site limits hosts to only rent a portion of their primary dwelling or an accessory dwelling unit on the property. Sunnyvale also considered neighborhood compatibility concerns when formulating STR regulations. They chose to limit the number of renters at one time and reserved the ability to revoke an approved STR. In addition to addressing housing stock concerns the city also required the host to reside on-site to handle nuisance concerns as a way to address the potential neighborhood compatibility issues. The highlights of Sunnyvale's Ordinance are as follows:

- STRs must be permitted through the City
- Maximum of four overnight lodgers (not including minor children)
- Renting to unaccompanied minors is prohibited
- Host shall reside on-site
- Host shall comply with all permit conditions, laws, and codes
- Rental space must be suitable for occupancy (sleeping space in tents, sheds, vehicles, etc. is not permitted)
- Host shall obtain a business license

DISCUSSION (Continued):

- Host shall be responsible for collecting/remitting TOT
- Host shall be responsible for ensuring the property does not become a nuisance
- STR approval may be revoked by the Director

The full ordinance may be found in Attachment 12 and minutes from the Council meeting are in Attachment 13.

*Los Altos Hills*

The Los Altos Hills Town Council also voted to allow and regulate STRs in early 2018 (see Attachment 14). The Council considered several concerns including preserving neighborhood integrity and not allowing developers to use residential properties for commercial enterprises. The Council discussed the goal of allowing responsible rentals but also providing protection for neighbors from nuisance situations. The importance of STRs being effectively controlled in neighborhoods was noted. Council expressed interest in not denying homeowners the right to do what they wish with their homes, but to deny landowners the ability to misuse their property to the detriment of neighbors.

Los Altos Hills approved a number of regulations to preserve neighborhood compatibility, including requiring the rental property to contain the owner's primary residence, prohibiting commercial uses, and requiring parking to remain on-site.

The highlights of the approved Los Altos Hills Ordinance regulating STRs is as follows:

- One STR per property is allowed
- The STR property shall contain the owner's primary residence
- Host shall comply with all permit conditions, laws, and codes
- Rental space must be suitable for occupancy (sleeping space in tents, sheds, vehicles, etc. is not permitted)
- Events and commercial uses are prohibited
- All parking must be on-site
- Host shall be responsible for ensuring the property does not become a nuisance
- STR license will be revoked after three validated nuisance violations

The complete ordinance may be found in Attachment 15 and Council meeting minutes in Attachment 16. Los Altos Hills does not have a TOT and is not planning on instituting one for STRs at this time. However, they are currently researching and interested in contracting with a third-party firm to identify all STRs in Town for online registration and to provide a 24/7 rental hotline for complaints.

DISCUSSION (Continued):

Town staff has been in contact with Airbnb and they have committed to send pro forma data for the past year regarding STRs in Los Gatos. The estimated potential TOT numbers for Los Gatos are forthcoming and will be shared once received.

CONCLUSION AND NEXT STEPS:

The Policy Committee should discuss and determine if the status-quo approach to banning short-term rentals in Los Gatos should be maintained or if regulations should be drafted to allow STRs.

Among the options for consideration are:

- Make no changes to the current Town ordinances and create enforcement tools to encourage compliance;
- Create an ordinance regulating STRs in the Town of Los Gatos and rely on owners/hosts to report and remit TOT directly to the Town;
- Create an ordinance regulating STRs in the Town of Los Gatos and enter into a voluntary TOT collection agreement with Airbnb wherein Airbnb collects and remits TOT directly to the Town on behalf of its hosts; and
- Enter into a voluntary TOT collection agreement with Airbnb wherein Airbnb collects and remits TOT directly to the Town on behalf of its hosts, while not changing the current Town ordinances.

Staff looks forward to the direction of the Policy Committee.

FISCAL IMPACT:

No fiscal impact at this time.

Attachments:

1. September 27, 2018 Los Gatos Council Report
2. April 1, 2015 Saratoga Council Report
3. Saratoga Short-Term Rental Flyer
4. September 29, 2015 Santa Clara Council Report
5. Santa Clara Response to Council Inquiries
6. Santa Clara One Year Review of Airbnb TOT
7. May 16, 2018 Morgan Hill Council Report
8. How to Guide for Short-Term Rentals in Morgan Hill
9. September 15, 2015 Sunnyvale Council Report

PAGE 7 OF 7

SUBJECT: SHORT-TERM RENTAL DISCUSSION

OCTOBER 18, 2018

10. June 12, 2018 Sunnyvale Council Report
11. Sunnyvale Short-Term Rental Webpage and Forms
12. Sunnyvale Municipal Code Chapter 19.76
13. September 15, 2015 Sunnyvale Council Meeting Minutes
14. March 22, 2018 Los Altos Hills Council Report
15. Los Altos Hills Ordinance 575
16. April 20, 2017 Los Altos Hills Council Meeting Minutes

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**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/02/2018

ITEM NO: 8

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DATE: SEPTEMBER 27, 2018  
TO: MAYOR AND TOWN COUNCIL  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: DISCUSS AND PROVIDE DIRECTION REGARDING POTENTIAL REGULATIONS FOR SHORT-TERM RENTALS.

RECOMMENDATION:

Discuss and provide direction regarding potential regulations for short-term rentals (STRs).

BACKGROUND:

Short-term rental (STR) is the practice of renting a portion of or an entire home to a person or group of people for periods of less than 30 nights. In recent years, there has been exponential growth of STRs offered through "sharing economy" websites, such as Airbnb (by far the leader of the group), VRBO, Flipkey, and Homeaway. To illustrate the growth in STR platforms, seven million guests used Airbnb to rent out rooms or homes in California in 2017, according to Matt Middlebrook, Airbnb's Public Policy Lead for California. The growing popularity of STRs is forcing municipalities across the country and the world to develop strategies in response.

A review of Airbnb's website shows between 50 and 100 STR properties currently in Los Gatos. The majority (about 45 percent) are guesthouses/cottages, followed by about 30 percent room rentals and approximately 20 percent entire houses for rent. There were also a couple local hotel rooms listed and even a camper/recreational vehicle (RV). Currently, STR listings do not include the address of the rental, making them difficult to locate based on public listing information; however, based on information from one popular STR information aggregator, the picture below illustrates the units currently available in Los Gatos. Another STR information aggregator places the STR inventory at approximately 104 units in the 95030 and 95032 zip codes.

PREPARED BY: ARN ANDREWS, Assistant Town Manager  
HOLLY ZAPPALA, Management Analyst

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Reviewed by: Town Manager, Assistant Town Manager, Finance Director, and Town Attorney

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BACKGROUND (Cont'd):



Source: Inside Airbnb (red entire homes/apartments, green private/shared room)

Given the wide adoption of STR platforms and the subsequent proliferation of STRs within Los Gatos, it is timely for the Town Council to discuss the Town's current STR approach, review policy options, and provide direction on potential STR regulations.

DISCUSSION:

*Existing Town STR Approach*

The current Town of Los Gatos Zoning Ordinance is silent on the subject of short-term rentals as a permitted use in any of the Town's zones, which by default prohibits them from occurring within the Town's jurisdiction. Town Code Sec. 25.30.010 defines a hotel as any structure occupied by transients for dwelling, lodging, or sleeping purpose. Town Code Sec. 29.10.020 further defines a hotel/motel as a building where lodging, with or without meals, is provided for compensation and where occupancy is generally limited to no more than thirty (30) days. A hotel is not a permitted use in the residential zones, therefore prohibiting homeowners from renting out a house for 30 days or less. A transient is defined as any person who exercises occupancy for a period of thirty (30) consecutive calendar days or less. In addition, Code Sec. 29.10.320 (b) (14) also specifically prohibits rentals for durations of less than thirty (30) days, including short-term rentals, in accessory dwelling units. The Town enforces these Code

DISCUSSION (Cont'd):

sections and the prohibition on a complaint-driven basis. The Town received two STR complaints in 2015, one in 2016, three in 2017, and three in 2018 so far.

The current Transient Occupancy Tax (TOT) rate in Los Gatos is 12% and it applies to rentals that do not exceed 30 consecutive days. These rentals have historically been hotel stays, until the recent popularity of the sharing economy rentals. The Town currently collects this tax from hotels. The tax is paid by the hotel guest and collected and remitted by the hotel owners. No TOT is collected for STRs currently.

*Alternative STR Policy Approaches*

There are many STR policy approaches being adopted by regional and national peer municipalities. In Santa Clara County, jurisdictions have taken a variety of approaches to the topic of STRs. The City of Saratoga has banned them while the Cities of San Jose and Sunnyvale have regulated them. The Cities of Santa Clara and Morgan Hill have no ordinances or regulations in place but have agreements with Airbnb to collect Transient Occupancy Tax through its reservation platform. Other municipalities, including the Town of Los Gatos, do not have an ordinance regulating STRs.

Regulates STRs	STRs not allowed	No Regulations	Regulations under consideration
San Jose	Campbell	Gilroy	Mountain View
Sunnyvale	Milpitas	Santa Clara	Cupertino
Los Altos Hills	Saratoga	Morgan Hill	
San Francisco	Palo Alto		

While the policy approaches may vary in adoption, the variables addressed during policy formation are fairly consistent. In municipalities that have chosen to regulate STRs, there are a variety of best practices emerging as a way to manage them, including establishing a geographic zone specifically for STRs, requiring the STR host to be present, limiting the number of rental days per year (difficult to enforce), and limiting the number of guests at one time (difficult to enforce).

Following are the primary policy considerations if the Council would like to consider regulating and allowing STRs.

DISCUSSION (Cont'd):

- **Type:** There are two primary types of residency options in practice to consider:
  1. **Hosted Rentals:** In a hosted rental, a permanent resident must live at the home while it is being rented. Hosted STRs could present fewer compliance issues since the host would reside on the premises to oversee the rental. Having a resident host living at the house could also increase the comfort of neighbors who may otherwise be unsure about the guests.
  2. **Un-Hosted Rentals:** Un-hosted rentals are normally for the entire house/property as opposed to a room or accessory dwelling unit. Un-hosted rentals could have more neighborhood compatibility and enforcement issues, such as noise complaints. Un-hosted rentals may also have a greater impact on the affordability of the rental housing market, as owners may seek to rent multiple properties concurrently.
- **Geographic Zone(s):** STRs could be confined to certain zones within the Town. The number of STRs within those zones within the Town could also be limited. A minimum distance could also be established between properties that have been permitted for STRs.
- **Limiting the number of days allowed per year:** Many jurisdictions have regulated the number of days per year an STR can be rented. Jurisdictions further codify a distinct number of days per year for hosted units versus un-hosted units, with un-hosted rental days per year being significantly less than the number allowed for hosted rentals.
- **Maximum number of guests at one time—Hosted:** In order to control the number of people using an STR and the effects on neighbors (parking and noise), a limitation on the number of STR guests allowed in a 24-hour period can be included in the regulations. Children under a certain age can be excluded from the count. The number of guests can be calculated based on the number of rooms in the house. However, having one standard regardless of the number of bedrooms makes enforcement easier (e.g. four guests per property).
- **Maximum number of guests at one time—Un-Hosted:** If the entire home is available for use, some jurisdictions increase the maximum number of guests beyond the limit imposed upon hosted rentals.
- **Parking:** Vehicle parking for STRs could be required to remain on-site, or the number of vehicles per STR could be limited.

DISCUSSION (Cont'd):

- **Commercial Uses:** Assembly or commercial uses, such as weddings or other special events, could be prohibited at STRs. This would reduce noise, vehicles, and the overall impacts to a neighborhood.

*Additional STR Policy Considerations*

Potential Impact on Housing

While research regarding the potential impact of the STR market on housing availability is still in its infancy, early research indicates that it could have a negative impact in certain markets. Given the current relatively small number of STRs in Los Gatos, they likely have a minimal impact on current housing availability; however, if more homeowners begin renting their entire homes for longer durations, this could become a more prominent issue.

To discourage the conversion of units from long-term housing to STRs, municipalities have taken approaches such as: requiring STRs be only at the owner's primary residence, allowing only one unit per parcel to be used as an STR, requiring the host to be present during rental periods, and prohibiting STRs in Below Market Rate and senior units.

Neighborhood Character and Impacts

Transient tenants associated with STRs may impact parking, noise, and neighborhood character. There are a number of regulations that can be used to mitigate most of these concerns including: limiting the number of guests at one time, requiring parking to be on-site, limiting the number of vehicles, prohibiting assembly/commercial uses (such as weddings), requiring hosts to provide guests with local rules regarding noise, etc., and requiring the host to live at and be present at the property during any rentals.

Enforcement

In order to assist in effective enforcement either a continued ban on STRs or some form of a regulated model, violation penalties for both should be made clear and significant enough to encourage compliance. Some jurisdictions have created high penalties for failing to register an STR within 90 days of operation. This encourages STRs to register, making enforcement of any other violations much easier. In addition, many cities also include the ability to revoke the operator's STR-related business license or registration after two or three violations.

Staff will need to evaluate if additional Code Enforcement staff would be needed to assist in STR regulation. Given the history of very few STR-related complaints each year and the

DISCUSSION (Cont'd):

relatively low number of STRs currently in Town, additional staff may not be required right away.

Revenue Collection

Most municipalities that allow STRs require hosts to maintain a current business license and all hosts must report/remit TOT to the municipality. If the Town were to move forward with a regulatory program for STRs, a process for TOT collections from STRs would need to be established.

Airbnb has recently started entering into agreements with municipalities to collect and remit TOT on behalf of hosts/property owners. This allows municipalities to interact with one organization, rather than collecting funds from hundreds of individual property owners. Locally, San Jose, Santa Clara, Palo Alto, San Francisco, and Oakland have established agreements with Airbnb to collect and remit TOT on behalf of short-term rental hosts. Hosts using platforms other than Airbnb must self-report and remit TOT.

The other option is to refrain from contracting with Airbnb and use the honor system where owners remit taxes directly to the Town for all platforms. This approach has been less effective in other municipalities.

CONCLUSION AND NEXT STEPS:

Council should determine if the status quo approach to short-term rentals in Los Gatos should be maintained or if regulations should be drafted to allow STRs.

Among the options for Council consideration:

- Make no changes to the current Town ordinances and create enforcement tools to encourage compliance;
- Create an ordinance regulating STRs in the Town of Los Gatos and rely on owners/hosts to report and remit TOT directly to the Town;
- Create an ordinance regulating STRs in the Town of Los Gatos and enter into an agreement with Airbnb (and similar platforms) wherein Airbnb collects the TOT on behalf of the Town and remits directly to the Town; and
- Enter into an agreement with Airbnb wherein Airbnb collects the TOT on behalf of the Town and remits directly to the Town, while not changing the current Town ordinances.

Staff looks forward to the direction of the Town Council.

PAGE 7 OF 7

SUBJECT: DISCUSS AND PROVIDE DIRECTION REGARDING POTENTIAL REGULATIONS  
FOR SHORT-TERM RENTALS (STR)  
SEPTEMBER 27, 2018

COORDINATION:

This report was coordinated with the Town Attorney, Director of Community Development, and Director of Finance.

FISCAL IMPACT:

No fiscal impact at this time.

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## SARATOGA CITY COUNCIL

**MEETING DATE:** April 1, 2015  
**DEPARTMENT:** Community Development  
**PREPARED BY:** Erwin Ordoñez, Community Development Director

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**SUBJECT:** Short-Term Rentals Regulation

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### **RECOMMENDED ACTION:**

Review staff research regarding Short-Term Rentals (STR's) and provide direction to the Planning Commission.

### **BACKGROUND:**

Local jurisdictions throughout the nation are grappling with the issue of Short-Term Rentals (STR's) and the potential impact raised with these types of "new sharing economy" commercial uses.

The advent of internet, wireless and web application-based platforms (e.g. AirBnb, HomeExchange, etc.) allow property owners to establish these commercial businesses in areas that are exclusively residential with relatively very-low or no investment costs and no notification requirement to the residents of local communities. While the threshold to establish these businesses is low, unregulated STR's have high potential to generate unwanted impacts to surrounding areas that can over-time erode the quality of life in a neighborhood (e.g. increased traffic, parking demand, noise disturbances, litter, and perceived neighborhood safety issues).

On February 4, 2015, at a Joint City Council/Planning Commission, Council directed staff to prepare an initial summary report of this issue for its review so it can provide guidance to the Planning Commission.

### Adopted City Code

The City of Saratoga Municipal Code does not allow Short-Term Rentals by-right as a Permitted Use in any residential zoning district.

Short -Term Rentals due to length of stay and operations (i.e. less than 30 days) would most closely approximate a hotel, motel, or bed and breakfast use. These uses are only allowed by City Code Section 15-19.020(b) as potential Conditional Uses in designated commercial zoning districts and require the application and approval of a Conditional Use Permit (CUP).

An initial review of the 71 listings available on a STR-related website that resulted from a "Saratoga, CA" keyword query determined that only 16 have the potential to be located within the City. The other listings are located in surrounding communities or the unincorporated areas.

In July 2014, the City received its first neighborhood complaints regarding a STR business operating unlawfully in a Single Family Residential Zoning District. The City issued a series of Code Enforcement letters and a formal citation in December 2014. The citation was recently upheld by the City's outside Administrative Hearing Officer.

#### Staff Research

To assist with the City Council and Planning Commission review of this study issue staff has researched other communities who have or are considering ordinances for the regulation of STR's.

Currently, the cities of San Jose, San Francisco and San Luis Obispo have recently adopted local ordinances to allow and regulate STR's with early mixed results. Copies of relevant media reports are included in Attachment D. The cities of San Mateo and Sunnyvale are initiating their own studies of the issue.

The City of San Jose ordinance allows both owner and non-owner occupied short-term rentals by by-right in all residential zoning districts as "incidental uses" but sets limits on maximum number of "transient users" and establishes a limit of 90 rental days per calendar year that the unit can be rented out. Additionally, the ordinance requires that operators pay a 10-percent transient occupancy tax on their rentals.

The San Luis Obispo ordinance allows only owner occupied short-term rentals and defines them as "homestays" which can be approved by the Community Development Director through an administrative permit. Non-owner occupied short-term rentals are classified as "vacation rentals" and are prohibited. Homestays are not permitted uses in secondary units. The Homestay ordinance also requires additional parking, compliance with building and fire codes, establishes a maximum of four guests, the provision of owner contact information, and the payment of transient occupancy taxes.

In addition to these efforts there are at least two bills which have been proposed in the State Legislature to regulate STR's and could pre-empt regulation by local cities. Staff will monitor these bills as this study issue proceeds.

#### **ISSUES TO CONSIDER:**

Staff has outlined below a list of issues that could be considered by the Planning Commission if the City Council is supportive of potential changes to the City Code to allow Short-Term Rentals in Saratoga:

- 1) Defining What is considered a Short Term Rental
  - a) Duration of lease (i.e. less than 30 days)
  - b) Primary Use of the home vs. Ancillary/Accessory Short Term Rental Use
    - i) Limit on maximum number rooms and/or percentage of square footage

- ii) Limit on maximum number renters (e.g. maximum of 4 persons)
  - iii) Use of Secondary Dwelling Units (e.g. possible loss of affordable units)
- c) Owner Occupancy Requirements
  - i) No employees
  - ii) Absentee Landlords Issue
- 2) Identifying specific zoning districts or properties for Short Term Rental use
  - a) All residential zones vs. specific residential zones
- 3) Identifying Specific Requirements for Short Term Rental Uses
  - a) Additional Off-Street Parking Requirement (per room)
  - b) Possible New Permit/License Type
  - c) City Issued Short Term Rental Guest Parking Placard
  - d) Signs prohibited
- 4) Establishing a Permit Approval Process
  - a) Ministerial Permit (No notice or appeal) vs. Conditional Use Permit (Administrative or Planning Commission)
- 5) Additional Considerations
  - a) Collection of Transient Occupancy Tax (TOT)
  - b) Additional Code Enforcement demand

**ATTACHMENTS:**

Attachment A – City Code Excerpts

Attachment B – Map of West Valley Short-Term Rentals

Attachment C – Copies San Francisco and San Luis Obispo Short-Term Rental Ordinances

Attachment D – Copies of Short-Term Rental Media Reports

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# City of Saratoga – Short Term Rentals



The City of Saratoga prohibits short-term rentals in the City's single-family residential districts. The City's regulations are intended to preserve Saratoga's residential environment.



Renting a private home in lieu of a hotel during a vacation or business trip has risen in popularity. Among other resources, online booking sites facilitate short term hotel type rentals between homeowners who can earn some extra income and travelers looking for an affordable and convenient place to stay.



However, like many other cities, the City of Saratoga's Municipal Code *prohibits* rental of a single-family home or room(s) within the home for a period of 30 consecutive calendar days or less.

The rules are put in place to avoid increased traffic, noise, and the high turnover of short-term renters on quiet streets where residents value stability and privacy.

For more information about the city's laws defining hotel type rentals:  
See City Code Section 15-06.360 and Section 5-25.020(f)

You can also give us a call at 408-868-1222 or email us at <mailto:planning@saratoga.ca.us>

## COMPLAINTS

Complaints are investigated on a case-by-case basis. Anonymous complaints will not be accepted. If you would like to file a formal complaint, contact: Code Enforcement: 408.868.1214

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**Date:** September 29, 2015

**To:** City Manager for Council Action

**From:** Assistant City Manager

**Subject:** Authorization for the City Manager to Execute a Voluntary Tax Collection Agreement with Airbnb, Inc., Inc. for the Collection of the City's Transient Occupancy Tax on Short Term Rentals

### **EXECUTIVE SUMMARY**

Over the summer staff evaluated opportunities to apply the City's transient occupancy tax (TOT) to owners of residential property that rent some or a portion of their properties to travelers seeking short term accommodations utilizing internet-transacted vacation rentals. The proliferation of internet use has allowed for connections to be made through sharing economy web sites such as Home Away, Vacation Rentals by Owner (VRBO), and Airbnb, Inc. After research and discussion, staff determined that the collection and remittance of taxes by hosted platforms that facilitate the financial transactions such as Airbinb, Inc. would provide efficiencies for the City to collect additional TOT tax revenue.

Staff engaged Airbnb, Inc. in discussions about their interest in entering into a tax collection agreement with the City that would result in Airbnb, Inc. collecting TOT from hosts that rent accommodations to guests in Santa Clara via the Airbnb, Inc. platform. Currently, Airbnb, Inc. is collecting and remitting taxes in seventeen locations. Attachment A provides a complete list of the jurisdictions in which Airbnb, Inc. is currently collecting occupancy-related taxes and remitting directly to respective taxing authorities on behalf of its Hosts. This simplifies and automates the process for TOT collection compared to other hosted platforms that primarily act as online classifieds.

Staff proposes to enter into a Tax Collection Agreement between Airbnb, Inc. and the City for the collection of the City's Transient Occupancy Tax pursuant to Chapter 3.25 of the Municipal Code. Airbnb, Inc. is a corporation which provides an Internet platform through which third parties desiring to rent out accommodations ("Hosts") and third parties desiring to book accommodations ("Guests") have the opportunity to locate each other, communicate, negotiate, and book a transaction pursuant to an agreement between the Hosts and Guests.

For the purposes of this Tax Collection Agreement, Airbnb, Inc. has agreed to act as a limited collection and remittance agent of the Hosts to the extent such Hosts offer to or rent accommodations to Guests in Santa Clara via the Airbnb, Inc. platform that are subject to the City's Transient Occupancy Tax. Airbnb, Inc. assumes all responsibilities for the collection and remittance of the Transient Occupancy Tax for applicable transactions on its platform in the City, starting on the effective date of the collection agreement.

Short-term rentals that do not exceed 30 consecutive days in duration are the type of transient occupancy that is already subject to the City's Transient Occupancy Tax, which is 9.5%. The City's larger CFD tax rate of 11.5% will not apply to these rentals; in order for additional properties to be included in the CFD rate, they need to affirmatively vote to annex into the CFD area and this will not happen here.

Below summarizes other key provisions of the agreement. Staff is seeking authority for the City Manager to review and execute the final agreement.

- Airbnb will register as an operator for the reporting, collection and remittance of TOT.
- Collection will begin not later than November 1, 2015, (contingent upon the City's execution of the agreement).
- Airbnb will notify hosts that TOT will be collected and remitted as of the effective date and notify guests of the amount of TOT collected and remitted on each booking transaction.
- The City will maintain audit rights with Airbnb, but not individual hosts.
- The Public Records Act will apply to the agreement.
- Airbnb will retain records documenting the payment of TOT for a minimum of three years.
- Either party will be able to terminate the agreement for convenience.

#### **ADVANTAGES AND DISADVANTAGES OF ISSUE**

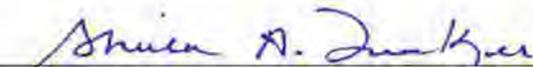
No known disadvantages. Staff will evaluate the tax collection agreement and Airbnb, Inc.'s performance over the next year and develop recommendations for future agreements and/or new agreements with other hosted platforms that facilitate the booking and payment transaction.

#### **ECONOMIC/FISCAL IMPACT**

At this time, Airbnb, Inc. estimates that there are approximately 130 hosts in Santa Clara using their internet-based, hosted platform. A typical Santa Clara host rents out their residence 65 nights per year with an average length of stay of 6.5 nights. Based on an average nightly rate of \$77 and average earnings per host of about \$5,000 annually, Airbnb estimates that the TOT that could be collected and remitted through Airbnb, Inc., Inc. would be approximately \$60,000 annually. Additional revenue is anticipated to be generated in Santa Clara during Super Bowl 50 as visitors seek local short term rental accommodations. The revenue will be deposited into the City's Transient Occupancy Tax account in the General Fund.

#### **RECOMMENDATION**

That the Council authorize the City Manager to review and execute a voluntary tax collection agreement with Airbnb, Inc. for the collection of the City's transient occupancy tax on short term rentals, subject to City Attorney approval.



Sheila A. Tucker  
Assistant City Manager

APPROVED:



Julio J. Fuentes  
City Manager

## **BACKGROUND**

"Sharing economy" websites such as Airbnb, VRBO, Home Away and others provide applications that allow owners of residential property to rent some or a portion of their properties to travelers seeking such accommodations. There are some key distinctions in business models. For example, Airbnb is a community marketplace for people to list and book space for any duration of time. Airbnb, Inc. facilitates the process of listing and booking a space by handling all financial transactions. It's also free to list space on Airbnb. A processing fee is charged only when a place is booked.

In contrast, other sharing economy websites have primarily acted as online classifieds where vacation rental owners pay to advertise their space. The site puts guests in contact with owners or property managers. However, the transaction is typically not facilitated and thus tenants and owners are responsible for processing their own payments. In addition to these subscription models, some sharing economy sites have added new online payment options in which they also offer to facilitate the booking and payment transaction similar to Airbnb. Staff will continue to evaluate opportunities for new agreements with other hosted platforms that facilitate the booking and payment transaction.

The question about how and if these new types of business models should be regulated is one currently being tackled in several communities. Advocates argue 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. The City has not received any complaints related to Airbnb, Inc. or other similar platform rentals.

Several cities have amended their municipal code to expressly allow and regulate transient occupancy as an incidental use to primary residential uses. Research with the Planning Department and the City Attorney's Office determined that the City's Zoning Code currently does not call out any restrictions and the relevant zoning codes do not include provisions disallowing uses not mentioned (unlike other parts of the code). The City's TOT definitions in Chapter 3.25 are broad enough to apply to short term rentals. Given the number of rentals in Santa Clara, the anticipated revenue, and Airbnb, Inc.'s voluntary agreement to enter into a tax collection agreement, staff is recommending the City enter into this agreement.

## Attachment A

Currently, Airbnb, Inc. is collecting and remitting taxes in the following locations:

### 1. Amsterdam, NL

Guests who book Airbnb listings that are located in the City of Amsterdam, NL will pay the following taxes as part of their reservation:

- Amsterdam Tourist Tax: 5% of the listing price including any cleaning fee. For detailed information, visit [Amsterdam's government website](#).

### 2. Chicago, IL

Guests who book Airbnb listings that are located in Chicago, IL will pay the following taxes as part of their reservation:

- Chicago Hotel Accommodation Tax: 4.5% of the listing price including any cleaning fee for reservations 29 nights and shorter. For detailed information, visit [CityofChicago.org](#).

### 3. District of Columbia

Guests who book Airbnb listings that are located in the District of Columbia will pay the following taxes as part of their reservation:

- DC Sales Tax on Hotels (transient accommodations): 14.5% of the listing price including any cleaning fee for reservations 90 nights and shorter. For detailed information, visit [DC.gov](#).

### 4. Malibu, CA

Guests who book Airbnb listings that are located in Malibu, CA will pay the following taxes as part of their reservation:

- Malibu Transient Occupancy Tax: 12% of the listing price including any cleaning fee for reservations 30 nights and shorter. For detailed information, visit [MalibuCity.org](#).

### 5. Multnomah County and Portland, OR

Guests who book Airbnb listings that are located in the State of Oregon, Multnomah County and/or the City of Portland will pay the following taxes as part of their reservation:

- Oregon Transient Lodging Tax: 1% of the listing price including any cleaning fee for reservations 30 nights and shorter. 1% is the State imposed tax rate only. For detailed information, visit [Oregon.gov](#).
- Multnomah County Transient Lodging Tax: 11.5% of the listing price including any cleaning fee for reservations 30 nights and shorter. 11.5% is the maximum Transient Lodging Tax for listings in Multnomah County (excluding the State level tax). For example, for Portland listings that are also located in Multnomah County, the Portland Transient Lodging Tax is 6% and the Multnomah County Transient Lodging Tax is 5.5%. For detailed information, visit [PortlandOregon.gov](#).

- Portland Transient Lodging Tax: 6% of the listing price including any cleaning fee for reservations 30 nights and shorter

## **6. North Carolina**

Guests who book Airbnb listings that are located in the State of North Carolina will pay the following taxes as part of their reservation:

- North Carolina Sales Tax: 6.75-7.5% of the listing price including any cleaning and guest fees for reservations less than 90 nights. The State imposes both a statewide 4.75% tax and a local 2-2.75% tax, which varies by county. For detailed information, visit [North Carolina's website](#).
- City and/or County Occupancy Tax: All locally imposed occupancy taxes will be collected on reservations in North Carolina. The tax varies by city and county. It is typically 1-8% of the listing price including any cleaning and guest fees for reservations less than 90 nights.

## **7. Oakland, CA**

Guests who book Airbnb listings that are located in Oakland, CA will pay the following taxes as part of their reservation:

- Oakland Transient Occupancy Tax: 14% of the listing price including any cleaning fee for reservations 30 nights and shorter. For detailed information, visit [Oakland's FAQ page](#).

## **8. Palo Alto, CA**

Guests who book Airbnb listings that are located in Palo Alto, CA will pay the following taxes as part of their reservation:

- Palo Alto Transient Occupancy Tax: 14% of the listing price including any cleaning fee for reservations 30 nights and shorter. For detailed information, visit [CityofPaloAlto.org](#).

## **9. Philadelphia, PA**

Guests who book Airbnb listings that are located in Philadelphia, PA will pay the following taxes as part of their reservation:

- Philadelphia Hotel Room Rental Tax: 8.5% of the listing price including any cleaning fee for reservations 30 nights and shorter. 8.5% is the tax rate imposed by the City and County of Philadelphia (the tax jurisdictions are one and the same). For detailed information, visit [Phila.gov](#).

## **10. Phoenix, AZ**

Guests who book Airbnb listings that are located in Phoenix, AZ will pay the following taxes as part of their reservation:

- Phoenix Hotel/Motel Tax: 3% of the listing price including any cleaning fee for reservations 29 nights and shorter.
- Phoenix Transaction Privilege (Sales) Tax: 2% of the listing price including any cleaning fee for all reservations. For detailed information, visit [Phoenix.gov](http://Phoenix.gov).

### **11. San Diego, CA**

Starting July 15, 2015, guests who book Airbnb listings that are located in San Diego, CA will pay the following taxes as part of their reservation:

- San Diego Transient Occupancy Tax: 10.5% of the listing price including any cleaning fee for reservations 30 nights and shorter.
- San Diego Tourism Marketing District Assessment: 0.55% of the listing price including any cleaning fee for reservations 30 nights and shorter. For detailed information, visit [SanDiego.gov](http://SanDiego.gov).

### **12. San Francisco, CA**

Guests who book Airbnb listings that are located in San Francisco, CA will pay the following taxes as part of their reservation:

- San Francisco Transient Occupancy Tax: 14% of the listing price including any cleaning fee for reservations 29 nights and shorter. 14% is the tax rate imposed by the City and County of San Francisco (the tax jurisdictions are one and the same). For detailed information, visit [SFTreasurer.org](http://SFTreasurer.org).

### **13. San Jose, CA**

Guests who book Airbnb listings that are located in San Jose, CA will pay the following taxes as part of their reservation:

- San Jose Transient Occupancy Tax: 10% of the listing price including any cleaning fee for reservations 30 nights and shorter. For detailed information, visit [SanJoseCa.gov](http://SanJoseCa.gov).

### **14. India**

Starting August 1, 2015, guests who book Airbnb listings that are located in the Country of India will pay the following taxes as part of their reservation:

- India Service Tax: 14% of the listing price including any cleaning fee, less a 40% abatement. Airbnb is required, as an aggregator, to collect and remit service tax on behalf of Airbnb hosts. For detailed information, visit [India's government website](http://India's government website).

### **15. Chamonix- Mont-Blanc, France**

Starting August 1, 2015, guests who book Airbnb listings that are located in Chamonix-Mont-Blanc will pay the following taxes as part of their reservation:

- Tourist Tax: 0.75€ per person per night for the category "meublés touristiques non classés". Exemptions may apply to some guests. For detailed information, visit [your local city hall's website](#). If a guest believes they are subject to an exemption, they may reach out to the Municipality.

## **16. Rhode Island**

Starting August 15, 2015, guests who book Airbnb listings that are located in Rhode Island will pay the following taxes as part of their reservation:

- Rhode Island Sales Tax: 7% of the listing price including any cleaning fee for reservations 30 nights and shorter. For detailed information, visit [RI.gov](#).
- Rhode Island Local Hotel Tax: 1% of the listing price including any cleaning fee for reservations 30 nights and shorter.
- Rhode Island Statewide Hotel Tax: 5% of the listing price including any cleaning fee for reservations 30 nights and shorter on rentals of private rooms or shared rooms only. Rentals of an entire home or apartment are excluded from this tax.

## **17. City of Sunnyvale**

Starting in October, 2015, guests who book Airbnb listings that are located in Sunnyvale will pay the following taxes as part of their reservation:

- Host shall obtain a business license
- Sunnyvale's Transient Occupancy Tax: 10.5%
- Host required to reside on-site throughout the lodgers' stay

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City of Santa Clara

RESPONSE TO COUNCIL INQUIRIES

**City's Transient Occupancy Tax (TOT) Agreement:** At the May 29, 2018 Council meeting, the Council requested additional information concerning the City's Transient Occupancy Tax (TOT) agreement with Airbnb, Inc. On September 29, 2015, the City Council authorized the City Manager to execute a voluntary tax collection agreement with Airbnb, Inc. for the collection of the City's TOT on short term rentals. Airbnb, Inc. is a corporation which provides an Internet platform through which third parties desiring to rent out accommodations ("Hosts") and third parties desiring to book accommodations ("Guests") have the opportunity to locate each other, communicate, negotiate, and book a transaction pursuant to an agreement between the Hosts and Guests. For the purposes of the Tax Collection Agreement, Airbnb, Inc. agreed to act as a limited collection and remittance agent of the Hosts to the extent such Hosts offer to or rent accommodations to Guests in Santa Clara via the Airbnb, Inc. platform that are subject to the City's Transient Occupancy Tax. Airbnb, Inc. assumed all responsibilities for the collection and remittance of the Transient Occupancy Tax for applicable transactions on its platform in the City, starting on the effective date of the collection agreement which was October 15, 2015.

While the City does have an agreement with Airbnb, there are other internet-transacted vacation rental sites that operate within the City of Santa Clara, such as Vacation Rentals by Owner (VRBO) and Home Away, which do not have a TOT agreement with the City. The City has also not conducted any due diligence to ensure receipt of TOT from Airbnb, as stated that evening that a review was warranted and planned.

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**AGENDA REPORT**

**Date:** February 7, 2017

**To:** City Manager for Council Information

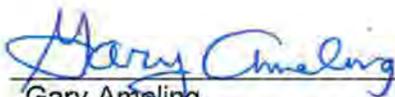
**From:** Director of Finance

**Subject:** One-Year Review of Airbnb Transient Occupancy Tax

On September 29, 2015, a Tax Collection Agreement was executed between Airbnb, Inc., and the City of Santa Clara for the collection of the City's 9.5% Transient Occupancy Tax (TOT) pursuant to Chapter 3.25 of the Municipal Code.

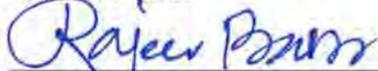
Airbnb began collecting TOT from its hosts during October 2015. Airbnb remits quarterly TOT payments to the City. For the initial partial quarter ending December 31, 2015, the City received \$38,982.30. In the first four full reporting quarters that followed through December 31, 2016, the City has received \$291,789.26 year-to-date in TOT collections.

Collection Period	Amount Collected
01-01-2016 thru 03-31-2016	\$65,265.66
04-01-2016 thru 06-30-2016	\$80,497.02
07-01-2016 thru 09-30-2016	\$73,885.58
10-01-2016 thru 12-31-2016	\$72,141.00
<b>Total</b>	<b>\$291,789.26</b>



Gary Ameling  
Director of Finance

APPROVED:



Rajeev Batra  
Interim City Manager

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CITY OF MORGAN HILL

## **CITY COUNCIL STAFF REPORT**

### **MEETING DATE: May 16, 2018**

PREPARED BY: Edith Ramirez, Economic Development Director  
APPROVED BY: City Manager

## **AIRBNB VOLUNTARY COLLECTION AGREEMENT**

### **RECOMMENDATION(S)**

Authorize the City Manager to negotiate and execute a Voluntary Collection Agreement with Airbnb Inc. for the collection of the City's Transient Occupancy Tax on behalf of Airbnb hosts who rent their residences to others using the Airbnb application and platform.

### **COUNCIL PRIORITIES, GOALS & STRATEGIES**

#### **Ongoing Priorities**

Maintaining Fiscal Responsibility

#### **2018 Strategic Priorities**

Economic Development and  
Telecommunications  
Regional Initiatives

### **GUIDING DOCUMENTS**

Economic Blueprint

### **REPORT NARRATIVE:**

Airbnb is the largest of several online internet-based applications which allows people to rent all or part of their homes to third parties in exchange for payment, also known as short-term rentals. Online platforms like Airbnb allow residents to advertise their homes on the internet. When a home is booked, the customers pay by credit card directly to the online platform. The online platform receives a fee, which is typically a percentage of the rental fee, and remits the remainder to the host. Typically, no Transient Occupancy Tax (TOT) is collected with these transactions.

To collect TOT, the online platform has requested that the City enter into a Voluntary Collection Agreement with Airbnb. Currently, the City does not have a mechanism to collect TOT from short term rentals in Morgan Hill. It is recommended that the City enter into a Voluntary Collection Agreement (attached) with Airbnb to act as a limited collection and remittance agent of the host of short term rentals using the Airbnb platform.

To facilitate collection from other non-Airbnb platforms or hosts, Finance and Economic Development staff have created a two-step self-reporting system. A user-friendly flyer created for this new effort is attached.

The use of short term rentals is a growing trend. Entering into an agreement with Airbnb to collect TOT will allow the City to capture revenue from this growing industry. Having a

clear reporting system will encourage residents who allow short-term rental of their property outside of the Airbnb platform to self-report. In addition to the financial benefits to the City, this effort will support the City's goals to grow the tourism industry in the City.

Tourism in general is a pillar of the General Plan 2035 priorities and is one of the four key industries identified in the Economic Blueprint. A key strategy for Tourism is to support lodging, specifically, action item #25 calls to "Ensure General Plan and Zoning Code, address Bed and Breakfast, Airbnb, and Hotel Development." Expanding, growing, and capturing new TOT revenue streams is essential to achieving the objectives laid out in both the Economic Blueprint and General Plan.

**COMMUNITY ENGAGEMENT: Involve**

The Council action supports the Economic Blueprint which had an extensive community and stakeholder outreach process.

**ALTERNATIVE ACTIONS:**

1. The Council may choose not to enter into a Voluntary Collection Agreement with Airbnb.
2. The Council may wish to provide additional direction on the short-term rental TOT collection efforts.

**PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

None.

**FISCAL AND RESOURCE IMPACT:**

The fiscal impact of entering into this Voluntary Collection Agreement is unknown. Currently, there are a couple of dozen short term rentals that are listed in Airbnb. Staff is not projecting significant revenue increases at this time, but as the industry grows the revenues will increase. If the City were to assume 50 hosts in Morgan Hill listing on Airbnb's site, and an average rent of \$80 per night, for 24 nights per year (only 2 nights per month), the projected revenue based on a 10% TOT, would be \$9,600 in TOT revenue on an annual basis.

**CEQA (California Environmental Quality Act):**

Not a Project.

The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

**LINKS/ATTACHMENTS:**

1. Airbnb - Morgan Hill Draft VCA (4.5.18)
2. Short Term Rental Guide Flyer

## **How to Guide for Short-Term Rentals in Morgan Hill**

This guide is to be used as a checklist, please speak with a City Staff Member if you have any additional questions.

**Step 1: Fill out the Transient Occupancy Tax Registration Form, which can be found online here: [bit.ly/TOTRegistration](http://bit.ly/TOTRegistration)**

**Step 2: If applicable\*, apply for a Business License with the City of Morgan Hill. The Business License application can be found online here: [bit.ly/BusinessLicenseMH](http://bit.ly/BusinessLicenseMH)  
For more information about Business Licenses go online here: [bit.ly/BusinessLicenseInfo](http://bit.ly/BusinessLicenseInfo)**

**Done: Yes, it's that easy.**

**\*Ask a City Staff Member if your short-term rental is subject to a Business License.**

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# City of Sunnyvale

## Agenda Item

15-0562

Agenda Date: 9/15/2015

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### REPORT TO COUNCIL

#### SUBJECT

Introduce an Ordinance to add a new Chapter 19.76 entitled "Short-term Rentals and Home Sharing" to Title 19 of the Sunnyvale Municipal Code, and find that the project is exempt under CEQA pursuant to Guidelines 15061(b)(3) (Study Issue 2015-7147) (Continued from August 25, 2015)

#### REPORT IN BRIEF

In recent years, the City has experienced a significant increase in the number of residents who rent all or part of their homes to guests staying thirty days or less. Pursuant to the zoning code (19.12.210), this activity is considered transient lodging similar to hotels and motels, and is therefore currently prohibited in residential zoning districts. However, enforcement of this prohibition is resource intensive and challenging. Many short-term rentals appear to co-exist peacefully with neighbors; there have been instances, however, where neighbors complained that short-term rental activities created a nuisance, especially when the rental generates a high turnover of strangers in the neighborhood. While not entirely reliable as an accurate count of activity, based on a review of advertising on websites such as Airbnb, there are currently more than 200 residences in the City being used for short-term rentals, making the task of enforcement a significant workload. Typically, the Department of Public Safety (DPS) responds on a complaint basis, and works towards resolving the issue with the occupant, owner and neighbors. However, DPS cannot lawfully enter a residence to conduct an investigation without a search warrant, consent, or exigent circumstances.

City Council ranked this study as a priority (CDD 15-12, Attachment 1), asking staff to identify realistic regulations to more effectively respond to this rapidly growing business. The goal of this study is to consider different options that address the concerns surrounding this new type of business, as well as respond to its growing use and popularity.

Many people use short-term rentals while on business trips, vacations, or while their home is under construction. Proponents argue that short-term rentals provide a more local experience, create opportunities to meet people, and are a more affordable alternative to traditional lodging. During large, area-wide events, short-term rentals can help augment the existing lodging units by providing people with more options in attending the event. Proponents also argue that many residents use short-term rentals as a way of augmenting their income, and may help some residents to afford their homes.

Concerns about short-term rentals include allowing a commercial-type use in residential areas, and complaints from neighbors about safety due to the high turnover of residents, noise, incompatibility with the residential neighborhood, and parking. Another concern is that short-term rentals remove housing stock that could otherwise be available for long-term rental or sale, adding to Silicon Valley's critical housing shortage.

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Many cities nationwide are working to develop effective programs to address short-term rentals. After reviewing many approaches, staff is recommending allowing short-term rentals in Sunnyvale with defined zoning standards and enforcement tools to address neighborhood concerns and ensure compliance. The recommended zoning code amendments focus on simplicity and ease of administration to reduce the deterrents for hosts of short-term rentals to obtain the necessary approvals. Staff will also attempt to work with businesses offering the service (such as Airbnb, Flipkey, Homestay) in Sunnyvale to collect transient occupancy tax (TOT) from hosts. This would reduce the work necessary by the City to find the hosts and ensure that TOT is paid.

The Housing and Human Services Commission (HHSC) reviewed the item on July 22, 2015, and the Planning Commission (PC) reviewed it on July 27, 2015. The HHSC voted unanimously to accept several of the staff recommendations, but suggested unhosted rentals also be allowed if property management is provided. The HHSC was split on whether the permits should be appealable. The draft HHSC minutes are attached, but the Commission has not met since to finalize them (Attachment 9).

The PC also accepted many of the staff recommendations (see Minutes, Attachment 10), and also recommended an unhosted option provided there is a local agent for management and contact in emergencies, and a higher maximum number of guests allowed than for hosted. The PC also recommended that approved accessory living units ("granny flats") be allowed as hosted short-term rentals, and further requested the short-term rental issue be returned in 12 months to determine the effectiveness of the program.

Staff recommends Alternative 1 to adopt an amendment to the Zoning Code (Title 1) to allow short-term rentals and home sharing (Attachment 2).

Staff continues to recommend limiting short-term rentals to hosted rentals only. Concerns with unhosted rentals include the impact on neighborhoods, the potential for corporate-type, short-term rentals, difficulty in ensuring a permanent resident or agent is available to manage the unit, and the potential impact to affordable housing. If the City Council supports allowing unhosted short-term rentals as recommended by the HHSC and PC, then they should also adopt Alternative 4 with the following additional provisions: 1) allow two guests per bedroom and a total of eight guests on site at one time; and 2) require an application for unhosted short-term rentals to include a floor plan of home indicating number of bedrooms, a list of all properties applicant is operating as a short-term rental in the City of Sunnyvale, and the name, address and phone number of a local contact person.

### **BACKGROUND**

The Sunnyvale Municipal Code prohibits hotels and motels from most residential areas. Hotels are defined as facilities that offer transient lodging accommodations to the general public for compensation, and transient is defined as any individual who exercises occupancy for a period of 30 consecutive calendar days or less.

While short-term rentals are not new, they have expanded in popularity due to the emergence of Internet sites that link prospective renters to available properties. Renters work with the homeowner or another individual with the Internet companies serving as a middleman in the business transaction. These Internet sites give individuals more options for advertising their rentals, but the transactions tend to be private and difficult for a regulating agency to track.

Many cities are grappling with how to handle the growing popularity of short-term rentals. Some cities have attempted to put wide-ranging regulations in place to control the use, while others have taken a more hands-off approach. A brief description of how some cities are reacting to this use is included in Attachment 3.

In order to better understand the community's thoughts about the issue, an Open City Hall web page was created to provide information and a survey to receive feedback. In summary, 50 percent of the respondents are generally supportive of short-term rentals and another 24 percent would be supportive if only hosted rentals are allowed (see Attachment 4 for a summary of that survey). Hosted refers to rentals where the resident lives on the premises while the home or rooms are rented; unhosted refers to situations where the full house may be rented and the resident does not reside on the premises.

### **Enforcement**

Since the short-term rental business model is a fairly new concept, the City only started addressing the issue in FY 2014/15, after staff determined that it is a municipal code violation. The City has not proactively enforced any short-term rentals but has received approximately ten complaints. Of those complaints, most were resolved quickly after informing the property owners that short-term rentals are a violation of the municipal code. Three property owners were informed of the violation and stated that they would cease the practice; however, subsequent complaints from concerned neighbors prompted further investigation revealing that the practice had not ceased. The three property owners received administrative citations.

Short-term rentals present enforcement challenges for Sunnyvale and other jurisdictions. Numerous short-term rental platforms exist with new ones continually added, making it difficult to prove that a resident is renting their home for fewer than 30 days. This is further complicated by the fact that many of these rental platforms do not provide the specific addresses of the rental properties so they are difficult to locate (even the user may not know the exact location until the transaction is completed). Staff has also found that after warning people about the violation, some have simply changed the description on the website to state "30 days or longer" while still renting their rooms/homes on a per night basis. To pursue and effectively enforce short-term rental complaints, additional staffing would be needed since these cases can be complicated, time intensive, and difficult to prove. DPS staff cannot enter private residences to gather evidence without a search warrant or consent, and short-rental platforms are generally unwilling to share information without a subpoena.

During the joint Study Session on May 12, 2015, City Council and Planning Commission members had questions about whether the City can identify short-term rental hosts and enforce City rules using tax data. According to Airbnb, they do collect taxpayer information from hosts, and those with income from house rentals must report that as taxable income. This is not sufficient data, however, for the City to determine which home owners and tenants are using the residence as a rental unit because the only information the City receives from the State Franchise Board is a list of individuals and property addresses for which a principal business activity (PBA) code is issued. The list the City receives does not specify the type of business at that location, so there is no way to determine if the PBA was for a rental unit, home consulting business, or other use. As a result, use of tax data is not sufficient for enforcement of city regulations.

### **EXISTING POLICY**

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**General Plan:**

*From Land Use and Transportation (LT):*

**GOAL LT-2 Attractive Community** - Preserve and enhance an attractive community, with a positive image and a sense of place, that consists of distinctive neighborhoods, pockets of interest, and human-scale development.

*Policy LT-2.1* Recognize that the City is composed of residential, industrial and commercial neighborhoods, each with its own individual character; and allow change consistent with reinforcing positive neighborhood values.

*Policy LT-3.4* Determine appropriate density for housing based on site planning opportunities and proximity to services.

*Policy LT-6.3* Consider the needs of businesses as well as residents when making land use and transportation decisions

*Policy LT-7.4* Support land use policies that provide a diversified mix of commercial/industrial development.

*From Community Character (CC):*

*Policy CC-1.7* Encourage neighborhood patterns that encourage social interaction and avoid isolation.

**ENVIRONMENTAL REVIEW**

Pursuant to California Environmental Quality Act (CEQA) Guidelines 15061(b)(3), CEQA does not apply to activities that are not a project. The code changes will not have the potential for causing a significant effect on the environment. Allowing homes to be used for short-term rentals does not change the nature of residential areas in which they are located, it only changes the term of occupancy. This is not considered an environmental impact pursuant to CEQA.

**DISCUSSION**

Short-term rentals are enjoying immense popularity, with future growth expected. Although the use of personal residences for hotel-type lodging is popular, it comes with concerns and issues that are difficult to resolve. Listed below are areas of concern for this type of business in residential zones.

The report identifies options to address these issues:

1. Lack of oversight of hosts
2. Difficulty in enforcement
3. Neighborhood compatibility
4. Safety
5. Noise
6. Parking

**Overview**

Enforcing short-term rentals is difficult whether the zoning remains the same (currently considered to be illegal) or if they are an allowed use. One key issue is that the Internet companies that post the rentals act as the middleperson in the transactions, but do not ensure that the host meets local regulations. Companies like Airbnb acknowledge that people using their service must do their own

due diligence regarding local permitting, and in some cases offer brief summaries of what different jurisdictions require, but they do not take responsibility for the transactions. In contrast to a hotel business, which gets the necessary permits to build and operate a lodging facility (in addition to providing on-site personnel to secure and maintain the facility), short-term rental companies act as go-between by listing available rentals and collecting a fee for each transaction. While these services benefit residents wishing to offer short-term rentals, surrounding residents may not be aware of such rentals until they occur.

In order to impose regulations that will benefit the entire community, cities have tried with varying success to place land use requirements and restrictions on the hosts. Cities have enacted specific permitting requirements but the resulting success rate of people obtaining permits is less than 10 percent. The companies that act as middlemen do not monitor or require proof of a local permit to list a rental. Responsibility for enforcing permitting requirements presently rests entirely with the jurisdiction. However, the State legislature is currently working on a number of bills on this issue, which may resolve the issue at the state level.

### Options

Various cities have adopted regulations to ensure short-term rentals are compatible with their surrounding neighborhoods, but no single approach has proven to be an optimal solution. San Francisco has been cited as an example with a process in place that works well, but recent actions have shown otherwise. The Planning Department for San Francisco recently notified the Board of Supervisors of the difficulty of enforcing their regulations. Some of the aspects of the San Francisco regulations that are difficult to enforce include: the specified number of days units can be rented out; the number of days a permanent resident must live in the unit; and that tenants may not make more in short-term rental than their monthly rent. The Board of Supervisors recently has been discussing ways to change the process to ensure more participation by hosts with a resulting program that is enforceable. Recent statistics have shown that fewer than 10 percent of the Airbnb hosts have received permits for their businesses in San Francisco.

In choosing options for Sunnyvale, staff identified the best practices from different cities that could maximize the success rate of compliance and enforcement. Options are discussed below, followed by the staff recommended alternative.

Issues specific to short-term rentals:

- Regulating the use - type of license, registration or permit?
- Hosted versus unhosted rentals
- How many guests at one time
- Limit on number of days
- Limit the types of units
- Fees and taxes

There are two main types of short-term rentals: Hosted and unhosted. Hosted are rentals where the permanent resident lives in the unit, while unhosted are rentals of the entire house. Approaches for each are shown below. Regardless of hosted or unhosted, the issues to consider regarding short-term rentals include: (1) Methods to regulate the use, and (2) Standard criteria to be used regardless of the permitting option. Shown below are different options for these issues.

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**A. Regulating the Use.** There are three main approaches to regulating short-term rentals:

1. Allow the use. There are different options to regulate short-term rentals. One approach would be to consider them to be allowed uses subject to performance criteria, but not require a permit. Another option is to require City approval to ensure compliance. The following is a discussion of those options:
  - a. *Allow by right.* This is the simplest approach for the hosts because it requires the least amount of action on their part. It is possible that requiring any type of permit could deter hosts from working with the City on meeting the goals of the program. The downside with this approach is the difficulty in knowing which hosts are meeting the performance criteria thereby making enforcement more difficult.

An example of a city that allows the uses by right, San Jose amended the zoning code to allow short-term rentals by right, provided they meet newly created performance standards. These include different occupancy standards based on type of unit and number of bedrooms; limits on the number of days per year rentals may be allowed; record keeping required by the hosts; and review by City, possible (see Attachment 5 for the San Jose criteria).

Although the approach used by San Jose removes the need for a permit, ensuring that the performance standards are met could be burdensome. It would be difficult for the City to determine compliance with the number of days a year units are rented; the number of people allowed based on the number of bedrooms; and allowing the City to review each host's lodging records. Although a permit or zoning clearance requirement may dissuade some people from working with the City, a simple process with consistent standards provides a relatively easy permit process. It would also make it easier for the City to determine those units that meet the criteria from those that do not based on who obtained a permit and who did not. Also, having a permit could provide the City with easier access into a residential unit to ensure compliance with City regulations.

Each short-term rental would need to register with the City to ensure the appropriate fees are collected.

- b. *Community Development Director's Approval.* This type of review is a variation of the process used for Large Family Child Care Homes (LFCCH) greater than 300 feet from another LFCCH. The Director's Approval provides an opportunity to review the requirements with the resident/host. Rather than site-specific conditions of approval, performance standards would be defined in the zoning code that would be applicable to all short-term rentals. These approvals are neither appealable nor noticed. The intent is to ensure the use is tracked and hosts understand the requirements. The approval can be revoked by the Director for violation of performance standards.
  - c. *Planning permit.* The two options include a Miscellaneous Plan Permit (MPP) or Use Permit (UP). This would be a more thorough review than a Director's Approval, and would allow specific conditions of approval to be added, as well as allow the permit to be appealed (appeal may be limited to the applicant or may allow any concerned party to appeal). An MPP would take up to two weeks to review and may include notification

to nearby property owners prior to taking an action (which increases the process time by another two weeks). A UP expands the review and requires a noticed public hearing with mailed notices to nearby property owners, advertising in the local newspaper and posting of the site. A UP requires significantly more staff time to process than an MPP and decisions would also be appealable to the Planning Commission. The minimum time frame to process is six to eight weeks (if there is no appeal). These types of permits help ensure conformity with the property and neighborhood and to provide options to apply conditions of approval unique to the site. When permits are issued for a use at a property, it provides the City with tools to enforce the use, including a record of which short-term rentals have permits, which makes it easier to inspect properties to ensure compliance with City requirements and conditions of approval.

2. Specifically prohibit. This option would include amending the code to explicitly disallow short-term rentals. It would take away any ambiguity or confusion about whether short-term rentals meet the definition of transient occupancy, and could assist in enforcement of the uses. This would be the most effective approach if the intent is to definitively prohibit the uses.
3. Make no changes. This option would continue to prohibit short-term rentals since they are considered transient occupancy. This is not an ideal approach because the large number of hosts in the City would be difficult to enforce and it may be possible to only enforce the extreme cases. This could result in selective enforcement, and given the temporary nature of the rental, the use may be discontinued by the time Neighborhood Preservation arrives at the property.

Staff recommendation: Amend the code to allow short-term rentals, subject to obtaining a Director's Approval. A Director's Approval is an existing process, making it easier for staff to implement. Although some hosts may have hesitancy to take the time to get City approval for their short-term rental unit, this process is the easiest to implement and provides the most effective tool to enforce the uses. Ultimately, having short-term rental applications available on-line would likely increase compliance and participation by the hosts.

## **B. Types of Short-term Rentals**

If it is decided to allow short-term rentals, it is necessary to determine which type is allowed. Listed below is a discussion of both types:

1. Hosted Rentals: A permanent resident must live at the home while it is being rented. Requiring the permanent resident to be residing at the home while rented can address concerns about the safe rental of the unit and in meeting City requirements. Having a resident host living at the house could also increase the comfort of neighbors who may otherwise be unsure of whom the guests are. Hosts will need to demonstrate that they are physically residing at the home during any period it is being rented.
2. Unhosted Short-term Rentals: Both the HHSC and PC supported unhosted rentals provided management of the property was nearby. There are examples where an unhosted unit is a good neighbor, but it can also become more of a hotel-type unit with higher turnover of renters. Options for regulating unhosted rentals are listed in Attachment 6.

Hosted short-term rentals could present fewer compliance issues since the host would reside on the premises to oversee the rental. Unhosted rentals (entire house rentals) could have more neighborhood compatibility and enforcement issues, and are more likely to be used as a true business than sharing a home. Staff supports allowing a short-term rental if the permanent resident lives in the home while it is being rented. This approach should help alleviate the concerns about not having a resident host to ensure the safe rental of the unit and not meeting City requirements. Having a resident host living at the house could also increase the comfort of neighbors who may otherwise be unsure of whom the guests are.

Staff recommendation: Although both the HHSC and PC supported unhosted rentals provided management of the property was nearby (e.g., available by phone and able to respond to the property in-person within a short time frame), staff recommends limiting short-term rentals to hosted rentals only due to:

- Neighborhood compatibility issues for unhosted rentals;
- The impact unhosted units could have on the affordability of the rental housing market;
- The lack of a permanent resident in the home;
- The potential of larger groups of people renting out homes without a resident to supervise; and,
- The potential for unhosted homes to be used as a hostel, quasi-hotel or corporate housing, which is not in keeping with the intent of residential zoning districts.

### **C. Application Process**

If the decision is to allow short-term rentals, certain information should be provided to the City to ensure the criteria are met, and to assist in enforcing the uses. The following criteria would apply to both hosted and unhosted rentals, while number four would apply only to unhosted rentals:

1. Approval issued to individual or property. As opposed to other planning permits, the approval for short-term rentals should be issued to a specific person at a specific address. This would help assure that the host is aware of the City requirements and limitations.
2. Owner consent. Require property owner's consent to the application if the host is not the property owner, including homeowner's associations in common interest developments. This is especially important for subleases and apartment units.
3. Best practices. In order to remind hosts of the community's interests in having compatible short-term rental units in residential neighborhoods, a "best practices" sheet will be prepared by the City to be signed by applicant at the time of approval acknowledging understanding and agreement of the items listed. Examples of what could be included in the list of best practices includes: ensuring that guests park on-site, maintain quiet hours during the night, limit outdoor activities, notifying neighbors of the activity, etc.
4. Unhosted rentals. In order to provide greater security and assurance that an unhosted rental unit wouldn't negatively impact a neighborhood, certain specific items could be required as part of the application:
  - a. Floor plan of home indicating number of bedrooms.
  - b. Name, address and phone number of a local contact person.
  - c. In addition to the requirements for hosted rentals, additional requirements for unhosted

rentals could be included, such as: identifying a local contact person or property manager for the property; or requiring a floor plan to determine the maximum number of allowed guests (if regulated by bedrooms).

Staff recommendation: Applications for short-term rentals should:

- Apply to an individual for specific properties;
- Require the property owner and homeowner association consent;
- Be provided with a best practices document if approved; and,
- If unhosted rentals are allowed, the applicant must also provide the floor plan of the home.

Staff does not recommend requiring a local contact person because that information cannot be easily verified during the permit process or may change over time.

**D. Codify specific requirements.** In order to make the requirements easier to enforce and understand, specific criteria regarding short-term rentals should be codified. The attached zoning code amendments include short-term rental standards and include minimum or maximum allowances. These criteria would only be used if the use is allowed, and wouldn't be necessary if the use is prohibited.

1. Maximum number of guests at one time- Hosted. In order to control the number of people using a short-term rental and the concomitant effects on neighbors (e.g. parking and noise), a limitation of the number of short-term rental guests allowed in a 24- hour period can be added (some regulations exclude children under five years old from the count). Some cities allow a three-bedroom unit to rent to more people than a two-bedroom, and so on, but staff expects that having one standard regardless of the number of bedrooms make enforcement easier.
2. Maximum number of guests at one time- Unhosted. Since the entire home is available for rental, increasing the maximum number of guests could be considered beyond the recommended limit of four for hosted rentals. Cities that allow unhosted rentals have adopted different approaches. Options include allowing a higher total number of guests regardless of the house size (e.g. six or eight), or setting a maximum occupancy base on number of bedrooms. Many cities use two guests per bedroom, with a maximum of eight or ten. Although both standards are clear and understandable, it will be more challenging to regulate based on the number of bedrooms.
3. Limiting the number of days allowed per year. As seen in other cities, setting a specific number of days a year a residence can be rented for short-term purposes is difficult and infeasible to enforce. Staff would need to closely monitor the number of days that guests stay at the residence, or rely on the good faith effort of hosts to provide such records when requested. Placing a limit on the number of days that short-term rentals are allowed is contrary to the program goal of creating standards that can be reasonably enforced.
4. Regulate the types of residence allowed (single-family detached, townhouse, apartment, etc.). Making regulations that ensure the highest rate of compliance depends on predictability and commonality. By having different standards for different housing types

or conditions, it could create confusion and complications that could affect the success of compliance. Therefore, having the same requirements for any type of residence helps in permitting and enforcement.

Staff recommendation: Adopt changes to the code to specifically address short-term rentals (see draft ordinance Attachment 2), including:

- Allow short-term rentals because it increases the likelihood of compliance with City regulations and promotes greater sensitivity and responsiveness to the potential concerns of neighbors;
- Limit short-term rentals to hosted;
- Limit to four guests per residential unit at one time;
- Do not define a limit on the number of days per year that is allowed for short-term rentals.
- Allow short-term rentals in any unit type. Require property owner signature on application forms for leased residences (e.g. apartments, duplexes) and homeowners' association approval for common interest developments (e.g. townhouses, condominiums).
- Require that all renters have facilities for sleeping, bathing, and toileting inside of a permanent dwelling that is suitable for human occupancy. Rental of sleeping space in or on balconies, porches, tents, sheds, vehicles or outdoor areas is prohibited.
- Unhosted rentals (not recommended by staff) - If Council allows unhosted rentals, consider a limit of six to eight guests on site at one time.

**E. Payment of fees and taxes.** Three types of fees and taxes typically assessed on lodging uses are: permit application fees, business license tax and TOT (these do not include regular fees for new development such as building permits, sewer connections, etc.). This revenue would assist in covering the cost of implementing the program and in providing enforcement. Listed below are the fees and their collection options.

1. Permit Application Fee. The fee established should cover the staff time in issuing the approval. In setting the fee amount, one option would be to create a modest fee to avoid a significant disincentive for hosts to obtain a City approval. If Director Approval is the selected process, the same approval for a LFCCH does not currently require a fee; however, staff suggests that a fee is reasonable to consider for short-term rentals. Another approach would be to require a higher fee to assist in enforcing these uses. Regardless of the process chosen, enforcement of short-term rentals can be costly and staff intensive.
2. Business License Tax. The Municipal Code limits collection of business licenses to rental of "any building or buildings (whether or not connected), in a single ownership, *within which three or more separate spaces or units* are located which are available for rental and are intended to be used for office or *dwelling, lodging or sleeping purposes.*" Since short-term rentals typically do not involve the separate rental of three or more spaces or units, business license taxes would not apply in most cases. Since it is a tax, the method of changing this requirement would require a vote by residents. A property owner would be required to pay a business license tax if their rental met the requirements of the Municipal Code.
3. Transient Occupancy Tax (TOT). Short-term rental units provide overnight and

temporary lodging for business travelers and other visitors similar to hotels/motels. TOT is required for short-term rentals at the same rate as for hotels/motels. Some companies, such as Airbnb, have worked with cities so the company collects the TOT on behalf of the City and remits it on a quarterly basis.

Staff recommendation: Staff recommends the following actions:

- Adopt a processing fee in the City's Fee Schedule that is reasonable to ensure maximum participation from the short-term rental hosts in the City;
- Collect business license tax where subject to the tax under the Municipal Code. Note, in most cases, short-term rentals can operate without a City business license;
- Short-term rental hosts are required to pay the 10.5 percent Sunnyvale TOT. If short-term rentals are allowed, staff recommends working with the short-term rental companies to set up a remittance program. Any host that uses a platform that does not collect the TOT will be required to pay the tax in accordance to the TOT ordinance.

### **FISCAL IMPACT**

#### *Transit Occupancy Tax (TOT)*

Short-term rentals are treated the same as any other lodging uses and would be required to pay TOT. The current rate is 10.5 percent, and applies to the guest staying at a hotel, not the hotel itself. Therefore, the tax is not based on the hotel and number of units but the length of time a guest stays.

According to Airbnb, there are, on average, 120 Sunnyvale units on their platform at one time, though most are not rented each night. They estimate each host rents their unit seventy-five days a year at an average rate of \$90 per night for an annual income per year of \$6,750. The resulting TOT from Airbnb hosts would be approximately \$85,000 per year. Airbnb is the leader in the short-term rental market, and the same information was not available from other companies, but if all other platforms in total equal Airbnb's market share, the total additional TOT for the City would be approximately \$170,000 per year.

TOT is paid by the lodging facility, in this case the hosts, but Airbnb has shown a willingness to work with the City in collecting the TOT. Staff has discussed with Airbnb the possibility of collecting the TOT on behalf of the City that, since all transactions go through their system, would greatly assist the City in assuring the TOT is paid by all hosts using the Airbnb platform. Staff will attempt to work with other platforms to have them collect the TOT and remit to the City, but the City cannot compel them to do so.

Any TOT collected goes into the General Fund. Penalties and interest would be charged for hosts that do not pay TOT.

#### *Business License Tax*

The City Municipal Code requires the rental of three or more separate spaces or units to pay a business license tax. Staff expects that most short-term rentals will be for fewer than three separate spaces or units, and therefore not be subject to the tax. As a result, no significant related fiscal impact is expected.

There will be additional costs and fee revenue that can be developed following further Council direction. If so directed, staff will return to Council with a resolution amending the Fee Schedule to

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reflect the appropriate processing fee for short-term rentals. That Report to Council will provide additional information regarding the fiscal impact.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website. Notice was sent to the neighborhood associations, interested parties, and was posted on the Open City Hall web page created for this study. Staff met with a representative from Airbnb, and communicated with members of the community on the issue.

At a joint study session with the City Council and Planning Commissioners, topics discussed included:

- Determining how neighboring cities address the issue.
- Enforcement concerns: Determine what actions DPS can do at this time, and what tools they need to be more effective going forward.
- Research whether federal tax information can be used to identify individuals claiming income from short-term rentals.
- Describe the expected revenue from collecting TOT and business license taxes for short-term rentals.
- Discuss with Airbnb how it would work with the City in coming up with program options.

Staff has received information from hosts of short-term rental properties explaining the value of the short-term rental service. Staff has also received information from residents concerned about short-term rentals in their neighborhoods, and the difficulty in the illegality of the uses. Finally, staff has received information from representatives of hotel workers about the negative effect short-term rentals have on the stock of affordable housing in the area. Correspondence can be found in Attachment 7. Staff also has had discussions with representatives of Airbnb; a summary of this discussion is captured in Attachment 8.

During both the HHSC and PC hearings, several people spoke in favor of allowing short-term rentals in Sunnyvale. Many of those people also advocated allowing unhosted short-term rentals. A representative of hotel workers spoke about the negative impact short-term rentals has on the affordability and availability of affordable housing for their workers in the area and suggested that if allowed, short-term rentals be hosted units only.

### **ALTERNATIVES**

1. Introduce an Ordinance to add a new Chapter 19.76 entitled Short-term Rentals and Home Sharing to Title 19 of the Sunnyvale Municipal Code.
2. Direct staff to return with a Resolution amending the Fee Schedule to reflect the appropriate processing fee for short-term rentals.
3. Find that the project is exempt from CEQA under Guideline 15061(b)(3).
4. Introduce an Ordinance with modifications to the staff recommendation, such as allowing unhosted short-term rentals as recommended by the Planning Commission and Housing and Human Services Commission.
5. Do not add Chapter 19.76 and make no changes at this time.

**STAFF RECOMMENDATION**

Alternatives 1, 2 and 3: (1) Introduce an Ordinance to add a new Chapter 19.76 entitled Short-term Rentals and Home Sharing to Title 19 of the Sunnyvale Municipal Code; (2) Direct staff to return with a Resolution amending the Fee Schedule to reflect the appropriate processing fee for short-term rentals; and (3) Find that the project is exempt from CEQA under Guideline 15061(b)(3).

Regulating short-term rentals will continue to be difficult whether the City takes a proactive approach or not. The nature of the business makes it difficult for the City to regulate and enforce the use. Staff finds, however, that the best chance at maximizing success with this business type is to create clear requirements, an easy approval process and reasonable fees. The recommendation considers different options that both address the concerns surrounding this new type of business, as well as respond to its growing popularity, and follows Council's direction to identify realistic regulations to more accurately respond to this growing business type.

Although both the HHSC and PC recommend allowing unhosted short-term rentals, staff recommends limiting short-term rentals to hosted situations only. The potential issues related to unhosted rentals raises additional concerns, including the impact it could have on the affordability of the rental housing market, the lack of permanent resident present at the home, and the potential of larger groups of people renting out homes without a resident present. Unhosted rentals also bring the potential for homes to be used as quasi-hotel, corporate housing, which is not in keeping with the intent of residential zoning districts.

If the Council would like to allow unhosted short-term rentals, staff recommends adopting Alternative 4 with the following additional provisions: 1) allow two guests per bedroom and a total of eight guests on site at one time; and 2) require an application for an unhosted short-term rentals to include a floor plan of home indicating number of bedrooms, a list of all properties applicant is operating as a short-term rental in the City of Sunnyvale, and the name, address and phone number of a local contact person.

Prepared by: Andrew Miner, Principal Planner

Reviewed by: Trudi Ryan, Planning Officer

Reviewed by: Hanson Hom, Director, Community Development

Reviewed by: Frank Grgurina, Director, Public Safety

Reviewed by: Grace K. Leung, Director, Finance

Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Study Issue Paper
2. Draft Ordinance
3. Other Cities' Approaches
4. Open City Hall Survey Results
5. San Jose Performance Criteria
6. Unhosted rental options
7. Correspondence
8. Summary of Airbnb Business
9. Draft Housing and Human Services Commission minutes of 7/22/15
10. Planning Commission minutes of 7/27/15

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# City of Sunnyvale

## Agenda Item

18-0400

Agenda Date: 6/12/2018

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### REPORT TO COUNCIL

#### **SUBJECT**

Approve Agreement between the City of Sunnyvale and Airbnb, Inc. for the Collection of the City's Transient Occupancy Tax on Short-Term Rentals

#### **BACKGROUND**

Like many cities across the country, the City of Sunnyvale continues to grapple with the popularity of short-term rentals. Sunnyvale Municipal Code (SMC) Chapter 19.76 provides that short-term rental hosts register with the City and remit Transient Occupancy Taxes, "in accordance with any hosting platform if utilized, pursuant to Chapter 3.16." Chapter 19.76 also requires the host to reside on-site throughout the lodger's stay (no "unhosted" rentals) and limits the number of adult overnight lodgers to four.

The proliferation of hosting platforms facilitating short-term rental transactions has made it difficult for cities to track and register rentals. A recent estimate identified more than 900 short-term rental listings in Sunnyvale across multiple hosting platforms. Online platforms generally do not make available the identity of hosts or addresses of rental listings, nor do they proactively facilitate collection of TOT. These limitations have made it difficult for cities to identify properties being used as short-term rentals and to collect applicable taxes.

Generally, lodgers booking accommodations pay electronically using the host platform website, with the host platform briefly holding the funds, deducting platform service fees from guests and hosts before passing the remainder of the funds to the host. Many public agencies have negotiated tax collection agreements with hosting platforms for the collection and remittance of TOT payments.

#### **EXISTING POLICY**

Council Policy, Chapter 7, *Planning and Management*, Policy B.1.1 - The City will maintain a diversified and stable revenue base, not overly dependent on any land use or external funding source.

Council Policy, Chapter 7, *Planning and Management*, Policy B.1.4 - When considering a new tax or revenue source or an increase in an existing tax or revenue source, the following criteria should be considered:

- Community/Voter acceptance
- Competitiveness with surrounding communities
- Efficiency of revenue collection and enforcement
- Effectiveness in generating sufficient revenues in the short and long-term to justify its establishment

- Enhancement of revenue diversity to promote stability and provide protection from downturns in business cycles
- Equity/Fairness in distribution of the revenue burden on various segments of the community

### **ENVIRONMENTAL REVIEW**

This action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment and section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

### **DISCUSSION**

The City currently has a total of 28 short-term rental hosts registered, with 20 actively remitting an average of \$3,200 in TOT monthly. Staff has received multiple complaints from registered hosts who are aware of and frustrated by the low citywide levels of compliance with SMC requirements, as they feel that this is unfair to the few hosts who do comply.

Since late 2015, when the short-term rental ordinance went into effect, the City has received complaints on approximately 20 properties from neighbors about lawful and unlawful short-term rental activity. The Department of Public Safety, Neighborhood Preservation Unit, responds to complaints and works to address violations of the short-term rental ordinance, while respecting the constitutional and legal rights of residents and guests in private homes.

City staff engaged Airbnb (currently the largest hosting platform for short-term rentals) regarding entering into a voluntary tax collection agreement on behalf of hosts using their service. After research and discussion, staff determined collection and remittance of taxes by the hosting platform is appropriate and would provide immediate benefits to the City.

Over 30 California public agencies have already entered into similar tax collection agreements with Airbnb. In Santa Clara County, Palo Alto, Santa Clara and San Jose have negotiated voluntary tax collection agreements with Airbnb.

Key provisions of the proposed agreement are summarized below:

- Airbnb is not a host, but will act on hosts’ behalf to collect and remit TOT.
- Airbnb will assume liability to report, collect and remit the correct amount of TOT.
- The agreement does not relieve short-term rental hosts from remitting TOT for bookings on other platforms, or registration requirements under the Short-Term Rental ordinance.
- Airbnb will not provide personal identifying information about hosts except in response to a warrant or court order.
- The City will maintain audit rights with Airbnb, but not individual hosts.
- The City agrees to waive the right to collect TOT payments owed by hosts for Airbnb bookings made prior to the effective date of the agreement.
- Airbnb agrees to notify guests and hosts of the TOT to be collected.

The proposed agreement does not require Airbnb to enforce other terms of the City's short-term rental ordinance, such as registration or host-occupancy requirements. Likewise, this agreement only covers bookings via the Airbnb platform, so staff will be initiating entering into agreements and collection processes with other hosting platforms.

Staff's recommendation is that enforcement be effected via other means, such as contracting with a compliance service equipped to identify and outreach to hosts across multiple hosting platforms. Staff is currently exploring this service with potential vendors. TOT payments for platforms not covered by a collection agreement could also be remitted through such a service.

### **FISCAL IMPACT**

The City will receive additional Transient Occupancy Tax revenue as a result of entering into this Agreement. Airbnb estimates that bookings would generate approximately \$500,000 in annual revenue. Revenue from TOT goes to the General Fund.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **RECOMMENDATION**

Authorize the City Manager to execute a Voluntary Collection Agreement, in substantially the same form as Attachment 1 to the report, with Airbnb, Inc. for the collection of Transient Occupancy Tax.

Prepared by: Beth Goodsell, Senior Management Analyst  
Reviewed by: Timothy J. Kirby, Director, Department of Finance  
Reviewed by: Teri Silva, Assistant City Manager  
Reviewed by: John Nagel, City Attorney  
Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Draft Airbnb, Inc. Voluntary Collection Agreement

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## Short-term Rentals

### What is a short-term rental?

A short-term rental (or vacation rental) is the renting out of your residence, rooms in your residence or an accessory unit (granny flat). Short-term rentals are for a period of 30 consecutive calendar days or less. Such rentals have become a popular option for visitors, and the City has regulations in place to ensure the needs of everyone in the community are balanced.

### Am I legally eligible to host a short-term rental?

To legally host a short-term rental, you must adhere to [Municipal code 19.76](#) which requires that you:

- Reside on-site throughout the guests' (lodgers') stay
- Limit guests to a maximum of four adult guests per night
- Register as a host with the City
- Collect and pay Transient Occupancy Tax (TOT)

### How do I register as a host?

1. Fill out the [short-term rental application](#)
2. Complete the [Transient Occupancy Tax \(TOT\) Registration form](#)
3. Bring your completed short-term rental application and TOT registration form to the One-Stop Permit Center for approval and pay a one-time registration fee.

**Note:** If you have separate listings for three or more spaces or rooms, you are required to obtain a business license.

#### [How to apply for a Business License](#)

### How do I pay the Transient Occupancy Tax?

The Transient Occupancy Tax, sometimes called a "hotel tax," requires that any person or business engaged in the renting of any number of rooms for lodging, dwelling, or sleeping purposes, must collect, report and remit this tax to the City on any guest rentals.

The Transient Occupancy Tax rate for the City of Sunnyvale is 10.5%.

Use the following form to submit the TOT payment each month:

#### [Monthly TOT Remittance Form](#)

**Notice:** Effective August 1, 2018, Airbnb will collect and remit TOT on behalf of hosts. Hosts must still remit TOT for non-Airbnb bookings.

[Website Feedback](#) X Close

### TOT Exemptions

Some guests may be exempt from paying Transit Occupancy Tax:

- Federal, California state or foreign government employees
- Guests who have stayed longer than 30 consecutive days

[TOT Exemption Claim Form](#)

Last Updated: Jul 26, 2018



Sunnyvale

# SHORT TERM RENTAL APPLICATION FORM

City of Sunnyvale  
Community Development Department  
Planning Division - 456 Olive Avenue - Sunnyvale, CA 94087 - Phone (408) 730-7444

Property Address: \_\_\_\_\_ APN: \_\_\_\_\_

### Applicant Information

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

### Property Owner Information

If the property is an apartment complex or common interest development, the application shall include the name, address, contact information and signature of the apartment manager or HOA

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

**General Requirements.** The City Code requires that all short-term rentals comply with the following regulations:

1. Short-term rental activity must be approved by the Director pursuant to Section 19.76.050 of the Sunnyvale Municipal Code.
2. A maximum of four overnight adult lodgers are allowed per night in any residential unit. Rental to unaccompanied minors under the age of 18 is prohibited.
3. The Host must reside on-site throughout the lodgers' stay.
4. The host must provide all lodgers with facilities for sleeping, bathing, and toileting inside of a permanent dwelling that is suitable for human occupancy.
5. Register with Finance to pay the transient occupancy tax.
6. Submit current application fee - See Planning Fees Sheet or ask staff.

**Declaration.** I certify that I have read and will comply with the Short-Term Rental of Residential Property Ordinance as listed above and hereby state Short-Term Home Rental will conform to all the provisions set forth therein. I also understand and agree that non-compliance with the above is grounds for revocation of the Short-Term Rental Permit as outlined above. Further, I certify that the information supplied on this form is true and correct to the best of my knowledge.

\_\_\_\_\_  
*Signature - Applicant*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature - Property Owner or agent (if applicable)*

\_\_\_\_\_  
*Date*

### OFFICE USE ONLY

Project Number: _____		Type of Payment Fee total: _____ <input type="checkbox"/> Check _____ <input type="checkbox"/> Credit _____ <input type="checkbox"/> Cash
Accepted By	Filing Date	Receipt #
<input type="checkbox"/> Approval	<input type="checkbox"/> Denial	By
		For the Director of Community Development      Date



Sunnyvale

# TRANSIENT OCCUPANCY TAX

## Registration Form

Please return completed form to: City of Sunnyvale • Department of Finance • 650 W. Olive Avenue, Sunnyvale, CA 94086 • Office Hours: Monday – Friday, 8 a.m. to 5 p.m. • 408-730-7670

- Request Type     New Registration     Update to Existing Registration
- Type of Property     Hotel/Motel     Corporate Housing     Short-Term Rental

### PROPERTY DETAILS

Property Name \_\_\_\_\_

Property Address \_\_\_\_\_  
*(Physical Address)*

Number of Rooms at this Property \_\_\_\_\_ Operation Start Date \_\_\_\_\_

### PROPERTY OWNER INFORMATION

Send all correspondence (including legal correspondence) to this address

Owner Name(s) \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone Number \_\_\_\_\_ Email \_\_\_\_\_

- Ownership Type     Corporation     Ltd Liability     Sole Proprietor
- Partnership     Trust     Other: \_\_\_\_\_

### OPERATOR/MANAGER INFORMATION - if different from Property Owner

Send all correspondence (including legal correspondence) to this address

Operator Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone Number \_\_\_\_\_ Email \_\_\_\_\_

### SIGNATURE

I declare under penalty of perjury that all the above information is true and correct to the best of my knowledge.

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_



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## City of Sunnyvale Municipal Code

### Chapter 19.76 SHORT-TERM RENTAL OF RESIDENTIAL PROPERTY

<http://qcode.us/codes/>  
~~http://qcode.us/codes/~~ **and intent.**

The purpose of this chapter is to establish regulations governing the short-term rental of residential property within the city of Sunnyvale. The establishment of these regulations will help maintain adequate housing stock for permanent residents while ensuring that short-term rental activities do not become a nuisance or threaten the public health, safety, or welfare due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects related to short-term rentals. (Ord. 3059-15 § 1).

<http://qcode.us/codes/>  
~~http://qcode.us/codes/~~

For purposes of this chapter, the following definitions apply:

- (a) “Host” means the person who is responsible for conducting the short-term rental activity and who is identified as the host in the application for approval submitted pursuant to this chapter.
- (b) “Hosted short-term rental” means to provide transient lodging in a dwelling unit, for compensation, for a period of thirty consecutive calendar days or less, while the host resides on-site throughout the lodger’s stay. “Hosted short-term rentals” do not include transient lodging in city-approved hotels and motels.
- (c) “Hosting platform” means a marketplace in whatever form or format which facilitates short-term rentals through advertising, match-making or any other means, using any medium of facilitation, and from which the operator of the hosting platform derives revenues, including booking fees or advertising revenues, from providing or maintaining the marketplace.
- (d) “Short-term rental” means to provide transient lodging in a dwelling unit, for compensation, for a period of thirty consecutive calendar days or less. “Short-term rental” does not include transient lodging in city-approved hotels and motels. (Ord. 3059-15 § 1).

<http://qcode.us/codes/sunnyvale/>  
~~http://qcode.us/codes/sunnyvale/~~ **prohibited.**

The short-term rental of residential property is a prohibited use in every zoning district in the city, with the exception of approved hosted rentals permitted pursuant to this chapter. (Ord. 3059-15 § 1).

<http://qcode.us/codes/sunnyvale/view.php?>  
~~http://qcode.us/codes/sunnyvale/view.php?~~ **general requirements.**

(a) Hosted short-term rentals are allowed in any zoning district where residential uses are permitted subject to the following requirements:

- (1) The short-term rental activity must be approved by the director pursuant to Section

<http://050.qcode.u>

(2) A maximum of four overnight lodgers are allowed per night in any single-family dwelling or any single dwelling unit in a multi-family dwelling. The limit of four overnight lodgers does not include minor children who are accompanied by an adult.

(3) Rental to unaccompanied minors under the age of eighteen is prohibited.

(4) The host shall reside on-site throughout the lodgers' stay. To reside on-site means that the property being used for short-term rentals is the host's primary residence and the host uses the property for purposes of eating, sleeping, and other activities of daily living during the time periods that lodgers are present. Lodgers may stay in an accessory dwelling unit if the host resides in the primary dwelling. Lodgers may also stay in one dwelling unit of a two-family dwelling if the host resides in the other dwelling unit.

(5) The host shall comply with all permit conditions and applicable local, state, and federal laws including but not limited to health, safety, fire, and building codes.

(6) The host must provide all lodgers with facilities for sleeping, bathing, and toileting inside of a permanent dwelling that is suitable for human occupancy. Rental of sleeping space in or on balconies, porches, tents, sheds, vehicles or outdoor areas is prohibited.

(7) The host shall obtain a business license if required by Chapter [http](http://) of this code.  
://

(8) The host shall collect and remit transient occupancy tax, in coordination with any hosting platform if utilized, pursuant to Chapter [http](http://) of this code.  
://

(9) The host is responsible for ensuring the property does not become a nuisance due to the short-term rental activity. (Ord. 3059-15 § 1).

<http://codehosted.com/sunnyvale/view.php?code=3059-15> approval required.

(a) No person shall undertake, maintain, authorize, aid, facilitate or advertise any hosted or short-term rental activity that does not comply with the provisions of this code.

(b) The application for approval of short-term rental shall include the following:

(1) Name, address and contact information of the host.

(2) Name, address and contact information of the owner of the property where the short-term rental activity will occur. In the event that the applicant is not the legal owner of the property, the application shall be signed by the property owner consenting to the use of the property for short-term rentals.

(3) If the property is part of a common interest development, the application shall include a letter of authorization from the homeowner's association indicating that use of the property for short-term rentals meets the property's requirements.

(4) Any additional information or supporting materials to describe existing property conditions and the proposed operations as required by the director.

(c) The director shall not approve the short-term rental application unless he or she finds that the use will comply with the requirements of this code and other applicable law. The decision of the director shall be final. (Ord. 3059-15 § 1).

<http://qcode.us/codes/sunnyvale/>

The approval of short-term rental may be revoked or modified by the director as follows:

(a) Notice and Hearing. Notice shall be mailed to the host at the address specified in the approval application. The notice shall specify the reasons for the revocation and shall designate a time and place of an administrative hearing with the director of community development no sooner than the sixth business day following the mailing date of the notice. The host shall be given the opportunity to present written and oral evidence at the hearing. Failure to appear at the hearing shall constitute a waiver of any objections to the proposed revocation.

(b) Revocation. Following the hearing, the director may revoke the approval if the director makes one or more of the following findings:

(1) The approval was obtained by fraud;

(2) The short-term rental activity has been or is being conducted in violation of any provision of this code or other applicable law;

(3) The conditions of approval have been or are being violated;

(4) The short-term rental activity constitutes a public nuisance.

(c) Notice of Decision. A written notice of the director's decision shall be prepared and mailed to the host at the address specified in the application for approval. If the approval is revoked, the notice shall contain a statement directing the host to immediately cease using the property for short-term rental, and that failure to cease such use may be subject to further legal action or enforcement.

(d) Appeal. The decision of the director is final. The decision may be appealed to the Superior Court. (Ord. 3059-15 § 1).

<http://qcode.us/>

The city council may establish and set by resolution all fees and charges as may be necessary to effectuate the purpose of this chapter. (Ord. 3059-15 § 1).

<http://qcode.us/codes/sunnyvale/view.php?topic=19-5-19-76-19-76-080&frames-on>

Any short-term rental operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance which the city attorney may seek to abate, remove, and enjoin in any manner provided by law. Such remedies shall be in addition to any other remedies available to the city under this code or under state law. (Ord. 3059-15 § 1).

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# City of Sunnyvale

## Meeting Minutes City Council

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Tuesday, September 15, 2015

7:00 PM

Council Chambers, City Hall, 456 W. Olive  
Ave., Sunnyvale, CA 94086

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### Regular Meeting-7 PM

#### CALL TO ORDER

Mayor Griffith called the meeting to order in Council Chambers.

#### SALUTE TO THE FLAG

Mayor Griffith led the salute to the flag.

#### ROLL CALL

**Present:** 7 - Mayor Jim Griffith  
Vice Mayor Tara Martin-Milius  
Councilmember David Whittum  
Councilmember Pat Meyering  
Councilmember Jim Davis  
Councilmember Glenn Hendricks  
Councilmember Gustav Larsson

#### SPECIAL ORDER OF THE DAY



#### SPECIAL ORDER OF THE DAY - Falls Prevention Day

Mayor Griffith presented a proclamation to Dr. Tamar Semerjian of Silicon Valley Healthy Aging Partnership and Sunnyvale Community Services Manager Gerard Manuel in recognition of Falls Prevention Awareness Day.

#### PUBLIC ANNOUNCEMENTS

Mayor Griffith announced an upcoming "Small Business Ignite" program.

Councilmember Whittum announced board and commission vacancies and an application deadline.

Michael Goldman announced an upcoming event to provide information about the Sunnyvale Public Lands Act and presented a PowerPoint presentation.

#### CONSENT CALENDAR

Councilmember Meyering pulled Items 1.A through 1.E and 1.G through 1.J.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Larsson seconded the motion to approve Consent Calendar Item 1.F.

The motion carried by the following vote:

- Yes: 7 -** Mayor Griffith
- Vice Mayor Martin-Milius
- Councilmember Whittum
- Councilmember Meyering
- Councilmember Davis
- Councilmember Hendricks
- Councilmember Larsson

**No: 0**

**1.A**  Approve City Council Meeting Minutes of August 25, 2015

Public Hearing opened at 12:05 a.m.

No speakers.

Public Hearing closed at 12:05 a.m.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Larsson seconded the motion to approve the City Council Meeting Minutes of August 25, 2015 as submitted.

The motion carried by the following vote:

- Yes: 6 -** Mayor Griffith
- Vice Mayor Martin-Milius
- Councilmember Whittum
- Councilmember Davis
- Councilmember Hendricks
- Councilmember Larsson

**No: 1 -** Councilmember Meyering

**1.B**  Approve City Council Special Meeting Minutes of September 1, 2015

Public Hearing opened at 12:05 a.m.

No speakers.

Public Hearing closed at 12:05 a.m.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Larsson seconded the motion to approve the City Council Special Meeting Minutes of September 1, 2015 as submitted.

The motion carried by the following vote:

- Yes: 6 -** Mayor Griffith
- Vice Mayor Martin-Milius
- Councilmember Whittum
- Councilmember Davis
- Councilmember Hendricks
- Councilmember Larsson

- No: 1 -** Councilmember Meyering

1.C  15-0193 Approve the List(s) of Claims and Bills Approved for Payment by the City Manager

Public Hearing opened at 12:06 a.m.

No speakers.

Public Hearing closed at 12:06 a.m.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Larsson seconded the motion to approve the list(s) of claims and bills.

The motion carried by the following vote:

- Yes: 6 -** Mayor Griffith
- Vice Mayor Martin-Milius
- Councilmember Whittum
- Councilmember Davis
- Councilmember Hendricks
- Councilmember Larsson

- No: 1 -** Councilmember Meyering

1.D  15-0194 Authorize Amending an Existing Contract for Cellular Wireless Phone Services (F16-24)

Public Hearing opened at 12:07 a.m.

No speakers.

Public Hearing closed at 12:07 a.m.

MOTION: Councilmember Meyering moved and Vice Mayor Martin-Milius seconded the motion to 1) Approve an amendment to an existing contract with Verizon Wireless to increase the contract value by \$20,000, from \$96,000 to

\$116,000; and 2) delegate authority to the City Manager to renew the contract for up to four additional one year periods, subject to available funding, acceptable pricing and service.

The motion carried by the following vote:

- Yes: 7 -** Mayor Griffith
- Vice Mayor Martin-Milius
- Councilmember Whittum
- Councilmember Meyering
- Councilmember Davis
- Councilmember Hendricks
- Councilmember Larsson

**No: 0**

- 1.E  Approve Budget Modification No. 5 to Modify Funding for Two-Phase Feasibility Study of Structural Stormwater Best Management Practices for the SMaRT Station® and the Concrete Recycling Facility and Modify Contract with Geosyntec Accordingly

Public Hearing opened at 12:09 a.m.  
 No speakers.  
 Public Hearing closed at 12:09 a.m.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Hendricks seconded the motion to approve 1) Approve Budget Modification No. 5 and 2) Modify the Geosyntec contract scope of work to delete the concrete recycling facility study and add the supplement to the SMaRT Station feasibility study.

The motion carried by the following vote:

- Yes: 6 -** Mayor Griffith
- Vice Mayor Martin-Milius
- Councilmember Whittum
- Councilmember Davis
- Councilmember Hendricks
- Councilmember Larsson

**No: 1 -** Councilmember Meyering

- 1.F  Reject Bid for Vehicle Exhaust Removal Systems at Three Fire Stations (F15-86)

Reject the one bid received from Air Exchange Inc. in the amount of \$231,153.

- 1.G**  Approve Final Map (Tract No. 10294) - 67-unit Condominiums at 680 and 698 East Taylor Avenue by Taylor Morrison of California, LLC, a California Limited Liability Company

Public Hearing opened at 12:11 a.m.  
No speakers.  
Public Hearing closed at 12:11 a.m.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Davis seconded the motion to approve the final map for Tract No. 10294; authorize the Mayor to sign the subdivision agreement upon submittal of other documents deemed necessary by the Director of Public Works; direct the City Clerk to sign the City Clerk's Statement and forward the final map for recordation.

The motion carried by the following vote:

- Yes:** 6 - Mayor Griffith  
Vice Mayor Martin-Milius  
Councilmember Whittum  
Councilmember Davis  
Councilmember Hendricks  
Councilmember Larsson
- No:** 1 - Councilmember Meyering

- 1.H**  Approve Final Map (Tract No. 10299) - 184-unit Condominiums at 701 East Evelyn Avenue by DR Horton Bay, Inc., a Delaware Corporation

Public Hearing opened at 12:11 a.m.  
No speakers.  
Public Hearing closed at 12:11 a.m.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Davis seconded the motion to approve the final map for Tract No. 10299; authorize the Mayor to sign the subdivision agreement upon submittal of other documents deemed necessary by the Director of Public Works; direct the City Clerk to sign the City Clerk's Statement and forward the final map for recordation.

The motion carried by the following vote:

**Yes: 6 -** Mayor Griffith  
 Vice Mayor Martin-Milius  
 Councilmember Whittum  
 Councilmember Davis  
 Councilmember Hendricks  
 Councilmember Larsson

**No: 1 -** Councilmember Meyering

- 1.I  15-0927 Approve Final Map (Tract No. 10285) - Seven Single-family Homes at 523 E. Homestead Road by Madison Terrace, LLC, a California Limited Liability Company

Public Hearing opened at 12:11 a.m.  
 No speakers.  
 Public Hearing closed at 12:11 a.m.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Davis seconded the motion to approve the final map for Tract No. 10285; authorize the Mayor to sign the subdivision agreement upon submittal of other documents deemed necessary by the Director of Public Works; direct the City Clerk to sign the City Clerk's Statement and forward the final map for recordation.

The motion carried by the following vote:

**Yes: 6 -** Mayor Griffith  
 Vice Mayor Martin-Milius  
 Councilmember Whittum  
 Councilmember Davis  
 Councilmember Hendricks  
 Councilmember Larsson

**No: 1 -** Councilmember Meyering

- 1.J  15-0897 Adopt Resolutions Approving Amendments to the City's Contribution for CalPERS Medical Insurance for Management, SEA/Confidential and SEIU Annuitants (Retirees)

Public Hearing opened at 12:17 a.m.  
 No speakers.  
 Public Hearing closed at 12:17 a.m.

MOTION: Vice Mayor Martin-Milius moved and Councilmember Larsson seconded the motion to adopt two resolutions (1) fixing the employer's contribution under the Public Employee's Medical and Hospital Care Act ("PEMHCA") for 2016, and (2)

amending Salary Resolution No. 190 05 to modify the City's contribution for medical insurance for Management, SEA/Confidential and SEIU employees and annuitants.

The motion carried by the following vote:

- Yes:** 6 - Mayor Griffith  
 Vice Mayor Martin-Milius  
 Councilmember Whittum  
 Councilmember Davis  
 Councilmember Hendricks  
 Councilmember Larsson
- No:** 1 - Councilmember Meyering

**PUBLIC COMMENTS**

Michael Goldman spoke regarding costs of public libraries and provided a PowerPoint presentation.

Andy Frazer spoke regarding the Sunnyvale Public Lands for Public Use Act and provided a PowerPoint presentation.

Peter Cirigliano spoke regarding a recent article in The Metro.

Maria Pan spoke regarding freedom of speech.

Steve Scandalis spoke regarding the Sunnyvale Public Lands for Public Use Act.

**PUBLIC HEARINGS/GENERAL BUSINESS**

- 2  REQUEST FOR CONTINUATION to October 27, 2015 to Introduce an Ordinance to Amend various sections of the Sunnyvale Municipal Code Title 19 (Zoning) Related to Child Care Facilities (CDD 15-11); Approve Guidelines for Commercial Child Care; and Finding of CEQA Exemption Pursuant to CEQA Guideline 15061(b)(3). (Planning File: 2015-7149)

Director of Community Development Hanson Hom provided the recommendation to continue this item to October 27.

Public Hearing opened at 7:39 p.m.

No speakers.

Public Hearing closed at 7:39 p.m.

MOTION: Councilmember Hendricks moved and Vice Mayor Martin-Milius seconded the motion to continue this item to October 27, 2015.

The motion carried by the following vote:

- Yes: 7 -** Mayor Griffith
- Vice Mayor Martin-Milius
- Councilmember Whittum
- Councilmember Meyering
- Councilmember Davis
- Councilmember Hendricks
- Councilmember Larsson

**No: 0**

- 3  Council Update and Possible Direction on Establishing a Temporary County Cold Weather Shelter for the 2015-16 Winter Season at the City's Onizuka Site

Community Development Director Hanson Hom provided the staff report. City Manager Deanna Santana, City Attorney Joan Borger and Neighborhood Preservation Manager Christy Gunvalson provided additional information.

Public Hearing opened at 7:52 p.m.

David Wessel, Democratic Club of Sunnyvale, spoke in support of the Onizuka site for the emergency cold weather shelter and clarified his comments from a previous Council meeting regarding the effect of the Sunnyvale Public Lands for Public Use Act.

Diana Nguyen spoke regarding enforcement of shuttle service for the shelter to prevent loitering and the need to address security concerns.

Marie Bernard, Sunnyvale Community Services, spoke in support of the Onizuka site for a temporary cold weather shelter and regarding services that will be provided by community service groups.

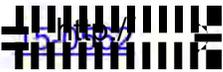
Public Hearing closed at 7:58 p.m.

MOTION: Councilmember Davis moved and Councilmember Whittum seconded the motion to receive the report.

The motion carried by the following vote:

**Yes: 7 -** Mayor Griffith  
Vice Mayor Martin-Milius  
Councilmember Whittum  
Councilmember Meyering  
Councilmember Davis  
Councilmember Hendricks  
Councilmember Larsson

**No: 0**

- 4  150592 Introduce an Ordinance to add a new Chapter 19.76 entitled "Short-term Rentals and Home Sharing" to Title 19 of the Sunnyvale Municipal Code, and find that the project is exempt under CEQA pursuant to Guidelines 15061(b)(3) (Study Issue 2015-7147) (Continued from August 25, 2015)

Principal Planner Andrew Miner provided the staff report and noted a correction to the report on page 13 in the last paragraph, that the list of provisions for unhosted rentals should not have been included. Director of Community Development Hanson Hom and Director of Finance Grace Leung provided additional information.

Public Hearing opened at 8:53 p.m.

Linda McGahen spoke in support of short-term rentals and home sharing and provided information regarding personal verification procedures she uses.

Diana Ngyuen requested consideration of changing the ordinance for the occupancy limits to two people per room.

Charisse Ma Lebron, Director of Community Development and Health Policy, Working Partnerships USA, spoke in support of allowing hosted short-term rentals, and requested amendments such as a permanent City of Sunnyvale residency requirement, that Council not permit unhosted rentals and provide close monitoring of the potential impact on the affordable housing stock.

Majid Bargh expressed concerns regarding potential negative impacts of short-term rentals on long-term rentals and neighborhoods and recommended strict limitations on short-term rentals including a permanent residency requirement.

Sarah McDermott, Unite Local 19, stated they have been working with Working Partnerships to ensure short-term rentals are not impacting affordable housing and hospitality workers. McDermott spoke in support of the staff recommendation of hosted only, and recommended strict limitations on unhosted if approved, including

a 90-day limit for unhosted and 180 days for hosted rentals. McDermott recommended the owner of the property be a Sunnyvale resident.

Dan Paustian spoke in support of allowing unhosted short-term rentals and provided information on the careful review of potential clients.

Jackie Nicoli spoke in support of allowing short-term rentals and regarding the reviews available on both sides.

David Wessel spoke in opposition to the ordinance altogether, citing problems with enforcement and lack of notice to the public.

Nancy Smith expressed concerns regarding loss of rentals in Sunnyvale, accountability of owners or tenants, the potential for coercion of tenants by raising rental rates, and including restrictions for hosts in the ordinance.

John Cordes, SNAIL Neighborhood Association Chair speaking for himself, spoke in support of allowing short-term rentals including the unhosted option. Cordes also provided information regarding the short-term rental of RVs.

Ray Crump expressed concerns regarding safety of children and spoke in opposition to unhosted rentals.

Ed Gocka spoke in support of the staff recommendation of restricting short term rentals to hosted.

Simone Yan spoke in support of short-term rentals for the opportunities it provides to people who otherwise cannot afford long-term rent in Sunnyvale. Yan also spoke in support of the benefits to the economy.

Chris Oliva spoke regarding the opportunity to defray long-term costs of a mother-in-law unit and in support of the ordinance.

Public Hearing closed at 9:36 p.m.

MOTION: Councilmember Davis moved and Councilmember Larsson seconded the motion to approve Alternatives 1, 2 and 3: (1) Introduce an Ordinance to add a new Chapter 19.76 entitled Short term Rentals and Home Sharing to Title 19 of the Sunnyvale Municipal Code; (2) Direct staff to return with a Resolution amending the Fee Schedule to reflect the appropriate processing fee for short term rentals; and (3) Find that the project is exempt from CEQA under Guideline 15061(b)(3).

FRIENDLY AMENDMENT: Councilmember Larsson offered a friendly amendment to add the language “as amended from time to time” as suggested by staff in the response to Council comments.

Councilmember Davis accepted the friendly amendment.

FRIENDLY AMENDMENT: Councilmember Larsson offered a friendly amendment to allow a host to stay in an accessory dwelling unit if they are renting the primary unit.

Councilmember Davis accepted the friendly amendment.

FRIENDLY AMENDMENT: Councilmember Larsson offered a friendly amendment to return to Council in two years with an update on how it has gone and a chance to revisit the ordinance.

Councilmember Davis stated this is already covered by the first friendly amendment.

FRIENDLY AMENDMENT: Councilmember Hendricks offered a friendly amendment to add a requirement that any lister must include the City permit number in their listing.

Councilmember Davis accepted the friendly amendment.

FRIENDLY AMENDMENT: Councilmember Hendricks offered a friendly amendment to exclude mobile home parks.

Councilmember Davis declined to accept the friendly amendment.

AMENDMENT: Councilmember Whittum moved to amend the motion to exclude mobile home parks from the ordinance.

Councilmember Hendricks seconded the motion to amend.

Following discussion, Councilmember Whittum withdrew the motion to amend and Councilmember Davis accepted the exclusion of mobile home parks as a friendly amendment, with direction to staff to prepare the appropriate language when the ordinance comes back to Council for adoption.

City Clerk Kathleen Franco Simmons read the ordinance title.

The motion carried by the following vote:

- Yes:** 6 - Mayor Griffith  
Vice Mayor Martin-Milius  
Councilmember Whittum  
Councilmember Davis  
Councilmember Hendricks  
Councilmember Larsson
- No:** 1 - Councilmember Meyering

Council recessed at 10:42 p.m.

Council reconvened at 11 p.m. with all Councilmembers present.

- 5  Introduce an Ordinance to Amend Sunnyvale Municipal Code Chapter 8.16 (Solid Waste Management and Recycling), Chapter 10.04 (General Provisions), and Title 12 (Water & Sewers).

Director of Environmental Services John Stufflebean provided the staff report.

Director of Finance Grace Leung provided additional information.

Public Hearing opened at 11:09 p.m.

No speakers.

Public Hearing closed at 11:09 p.m.

MOTION: Councilmember Davis moved and Vice Mayor Martin-Milius seconded the motion to approve Alternative 1: Introduce the proposed Ordinance to Amend Sunnyvale Municipal Code Chapter 8.16 (Solid Waste Management and Recycling), Chapter 10.04 (General Provisions), and Title 12 (Water & Sewers).

AMENDMENT: Councilmember Meyering moved to amend the motion to, at the moment, delete the resetting in section 12.24.230 and postpone a determination about changing the meter resetting charge until we have more concrete information as to what the new charge will be.

The motion to amend died due to lack of a second.

City Clerk Kathleen Franco Simmons read the three ordinance titles.

The motion carried by the following vote:

**Yes: 6 -** Mayor Griffith  
 Vice Mayor Martin-Milius  
 Councilmember Whittum  
 Councilmember Davis  
 Councilmember Hendricks  
 Councilmember Larsson

**No: 1 -** Councilmember Meyering

- 6  Adopt Memorandum of Understanding between the City of Sunnyvale and the Communication Officers Association and the Corresponding Resolution to Amend the City's Salary Resolution and the Resolution for Paying and Reporting the Value of Employer Paid Member Contributions for CalPERS Retirement

Director of Human Resources Teri Silva provided the staff report.

Public Hearing opened at 11:15 p.m.

No speakers.

Public Hearing closed at 11:15 p.m.

MOTION: Councilmember Davis moved and Councilmember Larsson seconded the motion to approve Alternative 1: Adopt the Memorandum of Understanding between the City of Sunnyvale and the Communication Officers Association, and the corresponding Resolution amending the City's Salary Resolution and the Resolution for Paying and Reporting the Value of CalPERS Employer Paid Member Contributions.

The motion carried by the following vote:

**Yes: 5 -** Mayor Griffith  
 Vice Mayor Martin-Milius  
 Councilmember Davis  
 Councilmember Hendricks  
 Councilmember Larsson

**No: 2 -** Councilmember Whittum  
 Councilmember Meyering

- 7  Consider a Request for Funding from Urban Systems Laboratories for an Automated Transit Network Development Partnership and Approval of Budget Modification No. 6

Assistant City Manager Kent Steffens provided the staff report.

Public Hearing opened at 11:22 p.m.

No speakers.

Public Hearing closed at 11:22 p.m.

MOTION: Councilmember Davis moved and Councilmember Hendricks seconded the motion that the City of Sunnyvale, contingent upon other communities joining in the partnership with additional funds, and that any partnership agreement that is drafted, it is understood that we are interested in pursuing the concept, not buying in to the development or building of the structure.

The motion failed by the following vote:

- Yes:** 3 - Councilmember Whittum  
 Councilmember Davis  
 Councilmember Hendricks
- No:** 4 - Mayor Griffith  
 Vice Mayor Martin-Milius  
 Councilmember Meyering  
 Councilmember Larsson

MOTION: Councilmember Hendricks moved and Councilmember Whittum seconded the motion to proceed with the remaining agenda items.

- Yes:** 7 - Mayor Griffith  
 Vice Mayor Martin-Milius  
 Councilmember Whittum  
 Councilmember Meyering  
 Councilmember Davis  
 Councilmember Hendricks  
 Councilmember Larsson

**No:** 0

8  Cast Vote as Member City for the League of California Cities Peninsula Division 2016 Election of Officers

Assistant City Manager Kent Steffens provided the staff report.

Public Hearing opened at 11:56 p.m.

No speakers.

Public Hearing closed at 11:56 p.m.

MOTION: Councilmember Hendricks moved and Vice Mayor Martin-Milius seconded the motion to ratify the list in the report:

President: Liz Kniss, Councilmember, Palo Alto

Vice President: Alicia Aguirre, Council Member, Redwood City

Secretary-Treasurer: Marilyn Librers, Councilmember, Morgan Hill

Board Director (Two-Year Term): Kirsten Keith, Council Member, Menlo Park

San Mateo County: Larry Moody, Councilmember, East Palo Alto

Santa Clara County: Jim Davis, Councilmember, Sunnyvale

The motion carried by the following vote:

- Yes: 7 -** Mayor Griffith
- Vice Mayor Martin-Milius
- Councilmember Whittum
- Councilmember Meyering
- Councilmember Davis
- Councilmember Hendricks
- Councilmember Larsson

**No: 0**

- 9  Approve City Position on Proposed League of California Cities' 2015 Annual Resolutions

Assistant City Manager Kent Steffens provided the staff report.

Public Hearing opened at 11:59 p.m.

No speakers.

Public Hearing closed at 11:59 p.m.

MOTION: Councilmember Hendricks moved and Councilmember Davis seconded the motion to approve resolution positions:

1. League Bylaw Amendment - Support
2. Overconcentration of Alcohol & Drug Treatment Facilities - Support
3. Residential Rentals, Support for SB 593 (McGuire) - Support
4. Compensation for Prolonged Electrical Power Outages - Take No Position

AMENDMENT: Councilmember Meyering moved to amend the motion to take no action on Resolution #2.

The motion to amend died due to lack of a second.

FRIENDLY AMENDMENT: Councilmember Whittum offered a friendly amendment to take no position on Resolution #2 pending clarification on the item.

Councilmember Hendricks declined to accept the friendly amendment.

The motion carried by the following vote:

**Yes: 5 -** Mayor Griffith  
 Vice Mayor Martin-Milius  
 Councilmember Davis  
 Councilmember Hendricks  
 Councilmember Larsson

**No: 2 -** Councilmember Whittum  
 Councilmember Meyering

**COUNCILMEMBERS REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

Councilmember Whittum reported his attendance at meetings of the El Camino Real Bus Rapid Transit Policy Advisory Committee and a VTA Board meeting.

Vice Mayor Martin-Milius reported her attendance at the CALAFCO conference.

**NON-AGENDA ITEMS & COMMENTS**

**-Council**

Councilmember Whittum reported the comments he made earlier on the water rates study are available on the dais or electronically.

Mayor Griffith reported on the State of the City Address and Community Awards event held on September 12.

**-City Manager**

Assistant City Manager Kent Steffens reported SB588 passed the legislature and is on Governor's desk for signature.

**INFORMATION ONLY REPORTS/ITEMS**

-  15-0189 Tentative Council Meeting Agenda Calendar
-  15-0197 Information/Action Items
-  15-0199 \$15 by 2018 Regional Minimum Wage Goal Update (Information Only)
-  15-0194 Study Session Summary of August 25, 2015 - Sunnyvale Clean Water Program - Master Plan Update



15101973

Board/Commission Meeting Minutes

**ADJOURNMENT**

Mayor Griffith adjourned the meeting at 12:22 a.m.

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TOWN OF LOS ALTOS HILLS  
Staff Report to the City Council

March 22, 2018

SUBJECT: INTRODUCTION OF AN AMENDMENT TO CHAPTER 10 OF THE MUNICIPAL CODE (ZONING) TO ADOPT SHORT-TERM RENTAL REGULATIONS. FILE # 117-17-MISC

FROM: Suzanne Avila, AICP, Planning Director SA

APPROVED: Carl Cahill, City Manager c.c.

RECOMMENDATION OF THE PLANNING COMMISSION:

That the City Council waive reading and introduce the ordinance amending Chapter 10 of the Los Altos Hills Municipal Code.

BACKGROUND:

The City Council began discussion of issues related to short-term rentals in 2016. A Town Hall/Special City Council meeting was held on March 23, 2017 to discuss and take comments from the public on the issue. At the April 20, 2017 City Council meeting the Council directed staff to draft an ordinance to regulate short-term rentals in Town. A draft ordinance was considered and recommended for approval by the Planning Commission on August 3, 2017. The Council considered the draft ordinance on September 21, 2017 and directed staff to work with the Planning Commission to revise the ordinance to simplify the permit process and establish regulations to address neighborhood impacts for short-term rentals that are not operating in compliance with Town Code.

DISCUSSION:

The specific direction by the City Council on September 21, 2017 was as follows:

- **Prohibit short-term rental properties as commercial enterprises:** The Council stipulated that short-term rental uses shall be limited to residents of the Town, and that the property should contain the owner's primary residence.
- **Only restrict problem rentals:** Many short-term rentals operate currently in Town without any issue or impact on neighborhoods. Those short-term rentals should be allowed to continue without undue burden or restriction. The commercial listings and problem rentals should be removed and/or addressed through application of appropriate conditions of approval or code enforcement action when needed.

Based on this direction, staff revised the draft ordinance as follows:

- **Short-term rental license:** Rather than require an in-depth permit application process, a simple short-term rental license (similar to a business license) would be

applied for, potentially online, which would determine compliance with the homeowner requirement along with agreement to the Short-Term Rental Policy.

- The Town could work with a vendor that would regularly search online and review all Los Altos Hills short-term rental listings and pursue compliance with the licensing and policy agreement. This would better establish the Town's ability to track and enforce nuisance violations and complaints.
- **Conditional Short-Term Rental Permit:** While the Town cannot adopt regulations that only apply to problem rentals, clear expectations can be set for applicants which would simplify the process for revocation. Applicants who wish to pursue a short-term rental after revocation would be subject to a more restricted permit process with appropriate conditions to address specific impacts. This would effectively allow the Town to apply more stringent regulations on problem sites while allowing those in good standing to operate with fewer restrictions. The process would also allow an applicant to pursue an exception to the general rules within the Ordinance. For example:
  - The Ordinance restricts short-term rental applicants to only registered property owners and requires the property to contain their primary residence. A local resident who does not reside on the property full time could request an exception through the conditional permit process; or
  - A property owner who is interested in renting out more than one space at the same time could document the appropriateness of their request through the conditional permit process.

The conditional permit process would allow the applicant to provide appropriate justification and documentation as to how the use will comply with the intent of the Short-term Rental Ordinance and Policy. Through a noticed public hearing process staff and neighbors would consider the intended use and could apply additional requirements or limitations to ensure the use does not become a nuisance for the neighborhood.

The Ordinance grants the Site Development Committee the authority to approve conditional short-term rental permits. The intention is to allow the Planning Director to approve justifiable exceptions when neighbor concerns have been adequately addressed, similar to the existing Fast Track process for new residences. If a consensus cannot be reached or the impacts are particularly egregious the matter would be forwarded to the Planning Commission.

- **Policy and Agreement:** Staff has drafted a Short-term Rental Policy and Applicant Agreement. This document will coincide with the license application and require the property owner to sign documenting their agreement to adhere to the Town's standards and what would be considered a violation.

The Planning Commission recommended approval of the draft ordinance as presented and requested two edits to the short-term rental policy and applicant agreement.

PUBLIC COMMENT:

No additional written comments have been received since the matter was last discussed by the City Council.

FISCAL IMPACT:

Staff will propose an annual license fee with adoption of the upcoming fee schedule that will cover permit issuance and code enforcement as well as a Conditional Permit process fee if it is to be different than the Site Development Permit process fee(s) currently in place (\$1,328 plus deposit to cover staff time). Pending approval of a permit fee applications can be processed based on staff time and materials.

Town staff will work in coordination with a vendor such as Host Compliance to identify and bring existing and new rental sites into compliance with the Town's short-term rental regulations. Ongoing enforcement and neighbor complaints will be handled by the Town's Code Enforcement Officer and will require additional code enforcement hours.

CONCLUSION:

Staff and the Planning Commission believe the proposed ordinance will be effective in addressing short-term rental operating issues previously reported by Town residents.

All prior reports and memos on this topic can be reviewed along with their attachments on the short-term rental page of the Los Altos Hills website. Staff will continue to do outreach to residents to inform them of the new regulations; including use of social media, the Town website, and an article in the Town newsletter.

Staff will report back to the Planning Commission and the City Council six months after the ordinance goes into effect to provide available data on the effectiveness of the regulations.

Report prepared by: Marni Moseley AICP, Senior Planner

ATTACHMENTS:

1. Draft short-term rental ordinance
2. Short-term rental policy and application agreement
3. August 3, 2017 Planning Commission report
4. September 21, 2017 City Council report
5. February 1, 2018 Planning Commission report

**ORDINANCE \_\_\_\_\_**

AN ORDINANCE OF THE TOWN OF LOS ALTOS HILLS AMENDING SECTION 10-1.702 AND ADDING SECTIONS 10-1.1202 THROUGH 10-1.1208 TO THE LOS ALTOS HILLS MUNICIPAL CODE PERTAINING TO SHORT-TERM RENTAL REGULATIONS WITHIN RESIDENTIAL ZONES

**WHEREAS**, the City Council of the Town of Los Altos Hills (“Town”) wishes to amend the Municipal Code with regard to regulation of short-term rentals in Town and establish regulatory and enforcement guidelines.

**NOW, THEREFORE**, the City Council of the Town of Los Altos Hills does **ORDAIN** as follows:

**Section 1. AMENDMENTS**

The following sections are hereby added to Title 10, Chapter 1 (“Zoning”) of the Los Altos Hills Municipal Code to read as follows. Sections and subsections that are not amended by this ordinance are not included below, and shall remain in full force and effect.

**Article 7. Accessory uses and structures permitted (R-A).** is hereby amended:

**10-1.702 Accessory uses and structures permitted (R-A).**

.....

(r) One short-term rental unit operated pursuant to the requirements of Article 12 of this chapter.

.....

**Article 12. Short-term Rental of Residential Property** is hereby added:

**10-1.1201 Purpose and intent.**

The purpose of this chapter is to establish regulations governing the short-term rental of residential property within the Town of Los Altos Hills. The establishment of these regulations will provide for additional residential options while ensuring that short-term rental activities do not become a nuisance or a threat to public health, safety, or welfare due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, refuse accumulation, and other effects related to short-term rentals.

**10-1.1202 Definitions.**

For purposes of this chapter, the following definitions apply:

(a) "Primary residence" means the residence must be used as the owner/applicant's primary residence for a minimum of 270 days per year and must be listed as the mailing address with the Santa Clara County Assessor.

(b) "Short-term rental" means to provide transient lodging use in exchange for compensation in any dwelling unit, in whole or in part, on residential property for a period of thirty (30) consecutive calendar days or less.

(c) "Validated nuisance" means a prohibited use or impact associated with a short-term rental including those listed within the Short-term Rental Policy and which sufficient documentation is provided to confirm the occurrence and extent of the violation.

**10-1.1203 Short-term rentals prohibited.**

No person shall use or maintain, nor shall any person authorize, aid, facilitate or advertise the use of, any residential property on any parcel for short-term rental without registering and obtaining a short-term rental license from the Town of Los Altos Hills.

**10-1.1204 General requirements.**

Short-term rentals permitted on residential property shall be subject to following restrictions and requirements:

(a) A maximum of one (1) short term rental unit is permitted per residential property.

(b) The short-term rental property shall contain the property owner's primary residence.

(c) The short-term rental shall comply with all applicable local, state, and federal laws, including but not limited to state and local health, safety, fire, and building codes.

(d) The host must provide all renters with facilities for sleeping, bathing, and toileting within a permanent dwelling that is suitable for human occupancy. Rental of sleeping space in or on balconies, porches, tents, sheds, vehicles, garages or outdoor areas is prohibited.

(e) Short-term rental uses are permitted solely for residential purposes only. No events or commercial uses are permitted. This includes site rentals for weddings, corporate meetings/events/trainings, photo or video shoots, birthday parties, etc.

(f) All short-term rental parking must be provided on-site in approved parking areas. No overnight street parking is permitted pursuant to Municipal Code section 4-3.1006.

(g) The host is responsible for ensuring the property does not become a nuisance due to any short-term rental occupant activities. Any short-term rental with three (3) validated nuisance violations will result in revocation of the short-term rental license.

**10-1.1205 Conditional Short-Term Rental Permit Approval required.**

An applicant may apply for a Conditional Short-Term Rental Permit if an exception to the general requirements is requested or if a previously approved short-term rental license has been revoked. A noticed public hearing before the Site Development Committee is required for consideration of a Conditional Short-Term Rental permit.

(a) Additional limitations and restrictions may be imposed to ensure any nuisance concerns or site-specific limitations are adequately addressed to ensure that the short-term rental use would be compatible with the general intent of this Ordinance and the policies of the Town of Los Altos Hills. Additional limitations or restriction may include but are not limited to:

- i. limitation on number of rental rooms or occupants
- ii. additional off-street parking provisions
- iii. modification of quiet hours for occupants
- iv. neighborhood notification and or ongoing communication requirements

(b) Pursuant to 10-1.1002 of the Municipal Code, the decision of the Site Development Committee may be appealed to the Planning Commission.

**10-1.1206 Fees.**

The City Council may establish and set by resolution all fees and charges as may be necessary to effectuate the purpose of this chapter.

**10-1.1207 Violations a public nuisance—Penalties, nuisance abatement, and other remedies.**

Any short-term rental operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance which the City may seek to abate, remove, and enjoin in any manner provided by law. Such remedies shall be in addition to any other remedies available to the City under this chapter or applicable local or state law.

**SECTION II. SEVERABILITY.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the Town of Los Altos Hills hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION III. EFFECTIVE DATE AND PUBLICATION.**

This ordinance shall take effect thirty (30) days after adoption. Within fifteen days after the passage of this ordinance the City Clerk shall cause this ordinance or a summary thereof to be published once, with the names of those City Councilmembers voting for or against it in a newspaper of general circulation in the Town of Los Altos Hills, as required by law.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

2840788.1

**TOWN OF LOS ALTOS HILLS**

26379 Fremont Road  
Los Altos Hills, CA 94022  
Phone: (650) 941-7222  
www.losaltoshills.ca.gov



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**Short-Term Rental Policy and Applicant Agreement**

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Approved by City Council – X/X/XXXX

**Intent:**

The purpose of this policy is to inform applicants of the Town's expectations of the standard operating practices of short-term rentals within the Town. The Town is a rural residential community with expectations of peace and privacy for its residents. Short-term rentals are limited to property owners and permitted with the expectation that their use would not impact neighbors or the character of the community. All property owners are responsible for ensuring their renters are informed of and comply with this policy.

The property owner must in addition comply with all provisions of the Short-term Rental Ordinance and ensure the property does not become a nuisance, as listed below, due to any short-term rental occupant activities. Any short-term rental with three (3) validated nuisance violations will result in revocation of the short-term rental license.

**Prohibited Nuisance Activities**

***Parking:*** All renters and residents must park on-site. The Town prohibits parking on pathways at any time and does not permit on-street parking overnight, including private streets. The Property Owner/host/applicant are responsible for ensuring that sufficient parking is available for themselves and their renter(s), resident(s) and visitor(s) throughout their stay.

***Noise:*** Outdoor amplified sound systems are prohibited. All short-term rentals must comply with the Town's noise limitations as described in Section 5-2.02 of the Municipal Code: 50 decibels during daytime and 40 decibels at nighttime. Daytime shall be the period from 8:00 a.m. to 7:00 p.m. on weekdays, and 9:00 a.m. to 7:00 p.m. on weekends and Town Holidays, Pacific Standard Time or Daylight-Saving Time.

***Events:*** Short-term rental uses are permitted solely for residential purposes only. No events or uses that are commercial in nature are permitted. Such prohibited uses include site rentals for weddings, corporate meetings/events/trainings, photo or video shoots, birthday parties, and other non-residential events and commercial gatherings.

***Visitors:*** Renters are permitted to have visitors as long as all visitors abide by the short-term rental policy. The host/applicant is responsible for ensuring the visitors' compliance.

**Minors:** Adult (21 years of age or older) supervision is required throughout the rental period for all renting minors.

**PROPERTY OWNER SIGNATURE REQUIRED:**

I hereby acknowledge that I have read, understand and accept the Short-Term Rental Policy and agree to abide by these restrictions and ensure all renters of my property understand and comply. I understand that any documented violations of this policy may be used to revoke my short-term rental license and that I will be held financially responsible for Town time and materials associated with any nuisance violation documentation and/or abatement.

Property Owner Signature	Date     /     /

TOWN OF LOS ALTOS HILLS  
Staff Report to the Planning Commission

AUGUST 3, 2017

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SUBJECT: INTRODUCTION OF AN AMENDMENT TO CHAPTER 10 OF THE MUNICIPAL CODE (ZONING) TO ADOPT SHORT TERM RENTAL REGULATIONS WITHIN RESIDENTIAL ZONES. FILE # 117-17-MISC

FROM: Marni Moseley, AICP, Senior Planner

APPROVED: Suzanne Avila, Planning Director

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RECOMMENDATION: That the Planning Commission:

Review the draft short-term rental ordinance (Attachment 1), accept public comment, and forward a recommendation to the City Council.

BACKGROUND:

The City Council discussed concerns regarding short term rentals and whether to pursue collection of Transient Oriented Tax (TOT) on July 20, 2016 and October 20, 2016. A Town Hall/Special City Council meeting was held on March 23, 2017 to discuss and take comments from the public on the issue. A follow up to this meeting was provided at the April 20, 2017 City Council meeting where the Council directed staff to draft an ordinance to regulate short term rentals in Town. Example ordinances and staff feedback has been provided to both the Planning Commission and the City Council in recent months. Staff has drafted an ordinance to best encompass the feedback received so far.

DISCUSSION:

Based on the limited feedback that staff has received on this matter, the draft ordinance was prepared with consideration for how staff would regulate and enforce the ordinance. Some areas that the Commission may want to discuss are:

- **Length of permit term and renewal requirements:** the ordinance includes a one-time permit application and the requirement for an annual business license to maintain current contact information. Any change to the permit conditions would require a new permit review.
- **Maximum number of rental nights:** the draft ordinance does not currently include a maximum number of nights. The enforcement of a restriction like this could be problematic due to the difficulty of verifying where short term rentals exist and how many nights they are being rented. Most rentals are listed on multiple rental sites and when a unit is listed as unavailable it does not necessarily mean the unit is rented. The requirement of the owner/host to reside on-site throughout the rental period is expected to discourage the commercial motel type uses.

- **Director approval:** the draft ordinance appoints the Planning Director as the approving body. This would make the decision of the Planning Director appealable to the Planning Commission. The Commission should provide direction on the approval process and whether that should include a noticed public hearing or a courtesy notice to adjacent neighbors. The more complicated the review process the higher the application fees would need to be to cover the associated costs of review.
- **Penalties and/or fines for non-compliance:** If additional fines or enforcement measures for repetitive nuisance violations are necessary they should be included in the ordinance.

ATTACHMENTS:

1. Draft short-term rental ordinance
2. Matrix of other communities regulations

TOWN OF LOS ALTOS HILLS  
Staff Report to the City Council

September 21, 2017

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SUBJECT: INTRODUCTION OF AN AMENDMENT TO CHAPTER 10 OF THE MUNICIPAL CODE (ZONING) TO ADOPT SHORT-TERM RENTAL REGULATIONS. FILE # 117-17-MISC

FROM: Suzanne Avila, AICP, Planning Director

APPROVED: Carl Cahill, City Manager

---

RECOMMENDATION OF THE PLANNING COMMISSION:

That the City Council waive reading and introduce the ordinance amending Chapter 10 of the Los Altos Hills Municipal Code.

BACKGROUND:

The City Council discussed concerns regarding short-term rentals and whether to pursue collection of Transient Oriented Tax (TOT) on July 20, 2016 and October 20, 2016. A Town Hall/Special City Council meeting was held on March 23, 2017 to discuss and take comments from the public on the issue. A follow up to this meeting was provided at the April 20, 2017 City Council meeting where the Council directed staff to draft an ordinance to regulate short-term rentals in Town. Example ordinances and staff feedback has been provided to both the Planning Commission and the City Council in recent months. The draft ordinance was considered by the Planning Commission on August 3, 2017 and the Commission recommended approval of the draft with minor edits.

A Town-wide notice was sent to inform residents and property owners of the Town Hall meeting on March 23, 2017 and to engage the community of the topic. A short-term rental page was created on the Town's website to keep the community informed regarding information and meetings, and information was circulated on Next Door and Facebook. An additional Town-wide notice was sent at the end of August to notify the community regarding the September 21<sup>st</sup> Council meeting and to encourage those interested to review the past and upcoming documents on the topic. In addition, all required legal ads were placed in the Town Crier.

DISCUSSION:

On April 20, 2017, the Council provided staff with the direction to permit short-term rentals within the Town while establishing regulations to help limit and remove "problem rentals". Staff continues to receive comments both in support and in opposition of short-term rentals. An ordinance was drafted based on feedback from the Council as well as the types of complaints and issues that have arisen over the last year.

The Planning Commission considered the draft ordinance on August 3, 2017 and provided minor edits along with a recommendation of approval. The modifications requested by the Planning Commission are as follows:

- Short-term rentals should require at least one renter that is at least 21 years of age
- The applicant/host must be a minimum of 25 years of age
- Increase of the quiet hours until 8 a.m. rather than 7 a.m.
- Clarification on restriction regarding non-renting visitors

These edits have been incorporated into the draft ordinance (see Attachment 1). Additionally, staff found an error in the draft ordinance considered by the Planning Commission that includes a permit renewal requirement. That section was added by the attorney's office and was not an intended requirement. Staff believes that either an annual business license or permit renewal should be required, but not both. The permit renewal section has been removed from the ordinance since this is how the topic was presented by staff to the Planning Commission.

Staff has received additional public comments on the topic and draft ordinance since the August 3 Planning Commission meeting (see Attachment 3). Many of the public comments/concerns were already incorporated in the draft ordinance. The topics which were not included are:

- Excluding any participants in the International Student Placement (ISP) program through Foothill College
- Limiting the number of children or minors permitted
- On-site Signage/Identification for each short-term rental
- Limitation on number of rentals/year
- Less regulation and paperwork

PUBLIC COMMENT:

All public comments received since the August 3, 2017 Planning Commission meeting are included in Attachment 3.

FISCAL IMPACT:

The Town will need to establish a permit review fee and annual renewal or business license fee to cover staff permit review and enforcement.

CONCLUSION:

The City Council should consider the comments from the public and the discussion by the Planning Commission and provide feedback for modification to the draft ordinance. Revisions will be made and proceeded by a second reading of the ordinance. Ordinances are effectuated 30 days after the second reading.

All prior reports and memos on this topic can be reviewed along with their attachments on the short-term rental page of the Los Altos Hills website.

Report prepared by: Marni Moseley AICP, Senior Planner

ATTACHMENTS:

1. Draft Ordinance
2. August 3, 2017 Planning Commission report
3. Public comments

TOWN OF LOS ALTOS HILLS  
Staff Report to the Planning Commission

February 1, 2018

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SUBJECT: INTRODUCTION OF AN AMENDMENT TO CHAPTER 10 OF THE MUNICIPAL CODE (ZONING) TO ADOPT SHORT TERM RENTAL REGULATIONS WITHIN RESIDENTIAL ZONES. FILE # 117-17-MISC

FROM: Marni Moseley, AICP, Senior Planner

APPROVED: Suzanne Avila, AICP, Planning Director

---

RECOMMENDATION: That the Planning Commission:

Review the draft short-term rental ordinance (Attachment 1) and Short-term Rental Policy and Applicant Agreement (Attachment 2), accept public comment, and forward a recommendation to the City Council.

BACKGROUND:

The Planning Commission considered a draft short-term rental ordinance on August 3, 2017 and recommended approval of the ordinance with several edits, to the City Council. The Council considered the amended ordinance on September 21, 2017 and directed staff to work with the Planning Commission to revise the ordinance to simplify the permit process and establish regulations to address neighborhood impacts for short-term rentals that are not operating in compliance with Town Code.

DISCUSSION:

The specific direction by the City Council on September 21, 2017 was as follows:

- **Prohibit short-term rental properties as commercial enterprises:** The Council was firm that short-term rental uses shall be limited to residents of the Town, and that the property should contain the owner's primary residence.
- **Only restrict problem rentals:** There are 30 to 75 short-term rentals advertised in and around Los Altos Hills. Many operate without any issue or impact on neighborhoods. Those short-term rentals should be allowed to continue without undue burden or restriction. The commercial listings and problem rentals should be removed and/or addressed through application of appropriate conditions of approval or code enforcement action when needed.

Based on this direction, staff revised the draft ordinance as follows:

- **Short-term rental license:** Rather than require an in-depth permit application process, a simple short-term rental license (similar to a business license) would be

applied for, potentially online, which would determine compliance with the homeowner requirement along with agreement to the Short-Term Rental Policy.

- The Town could work with a vendor that would regularly review all Los Altos Hills short-term rental listings and pursue compliance with the licensing and policy agreement. This would better establish the Town's ability to track and enforce nuisance violations and complaints.
- **Conditional Short-Term Rental Permit:** While the Town cannot adopt regulations that only apply to problem rentals, clear expectations can be set for applicants which would simplify the process for revocation. Applicants who wish to pursue a short-term rental after revocation would be subject to a more restricted permit process with appropriate conditions to address specific impacts. This would effectively allow the Town to apply more stringent regulations on problem sites while allowing those in good standing to operate with fewer restrictions. The process would also allow an applicant to pursue an exception to the general rules within the Ordinance. For example:
  - The Ordinance restricts short-term rental applicants to only registered property owners and requires the property to contain their primary residence. A local resident, who does not reside on the property full time could request an exception through the conditional permit process; or
  - A property owner who is interested in renting out more than one space at the same time could document the appropriateness of their request through the conditional permit process.

The conditional permit process would allow the applicant to provide appropriate justification and documentation as to how the use will comply with the intent of the Short-term Rental Ordinance and Policy. Through a noticed public hearing process staff and neighbors would consider the intended use and apply additional requirements or limitations to ensure the use does not become a nuisance for the neighborhood.

While the Ordinance grants the Site Development Committee the authority to approve conditional short-term rental permits, staff anticipates that most applications would be forwarded to the Planning Commission for review. The intention is to allow the Planning Director to approve justifiable exceptions when neighbor concerns have been adequately addressed, similar to the existing Fast Track process for new residences. If a consensus cannot be reached or the impacts are particularly egregious the matter would be forwarded to the Planning Commission.

- **Policy and Agreement:** Staff has drafted a Short-term Rental Policy and Applicant Agreement. This document will coincide with the license application and require the property owner to sign documenting their agreement to adhere to the Town's standards and what would be considered a violation.

ATTACHMENTS:

1. Draft short-term rental ordinance
2. Draft short-term rental policy and applicant agreement
3. September 21, 2017 City Council minutes

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**ORDINANCE 575**

AN ORDINANCE OF THE TOWN OF LOS ALTOS HILLS AMENDING SECTION 10-1.702 AND ADDING SECTIONS 10-1.1202 THROUGH 10-1.1208 TO THE LOS ALTOS HILLS MUNICIPAL CODE PERTAINING TO SHORT-TERM RENTAL REGULATIONS WITHIN RESIDENTIAL ZONES

**WHEREAS**, the City Council of the Town of Los Altos Hills (“Town”) wishes to amend the Municipal Code with regard to regulation of short-term rentals in Town and establish regulatory and enforcement guidelines.

**NOW, THEREFORE**, the City Council of the Town of Los Altos Hills does **ORDAIN** as follows:

**Section 1. AMENDMENTS**

The following sections are hereby added to Title 10, Chapter 1 (“Zoning”) of the Los Altos Hills Municipal Code to read as follows. Sections and subsections that are not amended by this ordinance are not included below, and shall remain in full force and effect.

**Article 7. Accessory uses and structures permitted (R-A).** is hereby amended:

**10-1.702 Accessory uses and structures permitted (R-A).**

.....

(r) One short-term rental unit operated pursuant to the requirements of Article 12 of this chapter.

.....

**Article 12. Short-term Rental of Residential Property** is hereby added:

**10-1.1201 Purpose and intent.**

The purpose of this chapter is to establish regulations governing the short-term rental of residential property within the Town of Los Altos Hills. The establishment of these regulations will provide for additional residential options while ensuring that short-term rental activities do not become a nuisance or a threat to public health, safety, or welfare due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, refuse accumulation, and other effects related to short-term rentals.

#### **10-1.1202 Definitions.**

For purposes of this chapter, the following definitions apply:

(a) “Primary residence” means the residence must be used as the owner/applicant’s primary residence for a minimum of 270 days per year and must be listed as the mailing address with the Santa Clara County Assessor.

(b) “Short-term rental” means to provide transient lodging use in exchange for compensation in any dwelling unit, in whole or in part, on residential property for a period of thirty (30) consecutive calendar days or less.

(c) “Validated nuisance” means a prohibited use or impact associated with a short-term rental including those listed within the Short-term Rental Policy and which sufficient documentation is provided to confirm the occurrence and extent of the violation.

#### **10-1.1203 Short-term rentals prohibited.**

No person shall use or maintain, nor shall any person authorize, aid, facilitate or advertise the use of, any residential property on any parcel for short-term rental without registering and obtaining a short-term rental license from the Town of Los Altos Hills.

#### **10-1.1204 General requirements.**

Short-term rentals permitted on residential property shall be subject to following restrictions and requirements:

(a) A maximum of one (1) short term rental unit is permitted per residential property.

(b) The short-term rental property shall contain the property owner’s primary residence.

(c) The short-term rental shall comply with all applicable local, state, and federal laws, including but not limited to state and local health, safety, fire, and building codes.

(d) The host must provide all renters with facilities for sleeping, bathing, and toileting within a permanent dwelling that is suitable for human occupancy. Rental of sleeping space in or on balconies, porches, tents, sheds, vehicles, garages or outdoor areas is prohibited.

(e) Short-term rental uses are permitted solely for residential purposes only. No events or commercial uses are permitted. This includes site rentals for weddings, corporate meetings/events/trainings, photo or video shoots, birthday parties, etc.

(f) All short-term rental parking must be provided on-site in approved parking areas. No overnight street parking is permitted pursuant to Municipal Code section 4-3.1006.

(g) The host is responsible for ensuring the property does not become a nuisance due to any short-term rental occupant activities. Any short-term rental with three (3) validated nuisance violations will result in revocation of the short-term rental license.

#### **10-1.1205 Conditional Short-Term Rental Permit Approval required.**

An applicant may apply for a Conditional Short-Term Rental Permit if an exception to the general requirements is requested or if a previously approved short-term rental license has been revoked. A noticed public hearing before the Site Development Committee is required for consideration of a Conditional Short-Term Rental permit.

(a) Additional limitations and restrictions may be imposed to ensure any nuisance concerns or site-specific limitations are adequately addressed to ensure that the short-term rental use would be compatible with the general intent of this Ordinance and the policies of the Town of Los Altos Hills. Additional limitations or restriction may include but are not limited to:

- i. limitation on number of rental rooms or occupants
- ii. additional off-street parking provisions
- iii. modification of quiet hours for occupants
- iv. neighborhood notification and or ongoing communication requirements

(b) Pursuant to 10-1.1002 of the Municipal Code, the decision of the Site Development Committee may be appealed to the Planning Commission.

#### **10-1.1206 Fees.**

The City Council may establish and set by resolution all fees and charges as may be necessary to effectuate the purpose of this chapter.

#### **10-1.1207 Violations a public nuisance—Penalties, nuisance abatement, and other remedies.**

Any short-term rental operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance which the City may seek to abate, remove, and enjoin in any manner provided by law. Such remedies shall be in addition to any other remedies available to the City under this chapter or applicable local or state law.

### **SECTION II. SEVERABILITY.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the Town of Los Altos Hills hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

### **SECTION III. EFFECTIVE DATE AND PUBLICATION.**

This ordinance shall take effect thirty (30) days after adoption. Within fifteen days after the passage of this ordinance the City Clerk shall cause this ordinance or a summary thereof to be published once, with the names of those City Councilmembers voting for or against it in a newspaper of general circulation in the Town of Los Altos Hills, as required by law.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

2840788.1

# Town of Los Altos Hills

## City Council Regular Meeting Minutes

Thursday, April 20, 2017

Council Chambers, 26379 Fremont Road, Los Altos Hills, California

**Mayor Waldeck** called the meeting to order at 6:02 p.m.

### CALL TO ORDER (6:00 P.M.)

#### A. Roll Call

Present: Mayor Waldeck, Vice Mayor Radford, Councilmember Corrigan, Councilmember Spreen, Councilmember Wu  
Absent: None  
Staff: City Manager Carl Cahill, City Attorney Steve Mattas, Planning Director Suzanne Avila, Senior Engineer Tina Tseng, Administrative Services Director Pak Lin, Senior Planner Marni Moseley, City Clerk Deborah Padovan

#### B. Pledge of Allegiance

### 1. AGENDA REVIEW

There were no changes to the agenda.

### 2. PRESENTATIONS AND APPOINTMENTS

#### A. Introduction by George Hurst of the Newest CERT Members and the Administration of Oath to the CERT Volunteers

Los Altos Hills County Fire District Emergency Preparedness Coordinator **George Hurst** introduced the newest Los Altos Hills CERT members.

**City Clerk Deborah Padovan** administered the oath of office to the CERT members.

#### B. Invitation by Marc Sidel to Attend Hidden Villa's Behind the Scenes Event on Sunday, May 7, 2017

**Marc Sidel, Hidden Villa**, thanked the Council for continuing to invest in Hidden Villa, as the annual community grants received by the Town is truly appreciated. He invited the Council for a Behind the Scenes tour of Hidden Villa and Japanese Cultural Day on Sunday, May 7, 2017.

C. [Annual Report of the Pathways Committee](#)

**Ann Duwe, Chair of the Los Altos Hills Pathways Committee**, presented the annual report of the committee. Council asked questions of **Ms. Duwe**. No action was taken.

D. [Annual Report of the Environmental Initiatives Committee](#)

**Raj Reddy, Chair of the Los Altos Hills Environmental Initiatives Committee**, presented the annual report of the committee. Council asked questions of **Mr. Reddy**. No action was taken.

E. [Westwind Community Barn Report Presented by Victoria Dye Equestrian](#)

**Victoria Dye** presented a report on the financials of Westwind Community Barn.

Council asked questions of **Ms. Dye** and received her responses. No action was taken.

F. [Reappointment to the Environmental Initiatives Committee](#)

**City Clerk Padovan** presented the reappointment request of **Aileen Lee** to the Environmental Initiatives Committee.

**Peter Evans, Los Altos Hills**, said that **Aileen** is a worldwide recognized thought leader in environmental policy and the committee is lucky to have her.

**MOTION MADE AND SECONDED: Councilmember Spreen moved to reappoint Aileen Lee to the Environmental Initiatives Committee for a second, four-year term. The motion was seconded by Vice Mayor Radford.**

Motion Carried 5 to 0:

AYES: Mayor Waldeck, Vice Mayor Radford, Councilmember Corrigan, Councilmember Spreen, Councilmember Wu

NOES: None

ABSENT: None

ABSTAIN: None

G. Reappointment to the Community Relations Committee

**City Clerk Padovan** presented the reappointment request of **Nena Price** to the Community Relations Committee.

**MOTION MADE AND SECONDED:** Councilmember **Corrigan** moved to reappoint **Nena Price** to the Community Relations Committee for a second, four-year term. The motion was seconded by Vice Mayor **Radford**.

Motion Carried 5 to 0:

AYES: Mayor Waldeck, Vice Mayor Radford, Councilmember Corrigan, Councilmember Spreen, Councilmember Wu

NOES: None

ABSENT: None

ABSTAIN: None

**3. PRESENTATIONS FROM THE FLOOR** Persons wishing to address the Council on any subject not on the agenda may do so now. Please complete a Speaker Card located on the back table of the Council Chambers and submit it to the City Clerk. Comments are limited to two (2) minutes per speaker. California law prohibits the Council from acting on items that do not appear on the agenda. Under a Resolution previously adopted by the Council, such items can be referred to staff for appropriate action, which may include placement on the next available agenda.

**Kjell Karlsson, Los Altos Hills**, thanked the Los Altos Hills maintenance crew for the fantastic job they did cleaning up after the storm of April 6, 2017.

**Councilmember Corrigan** pointed out that Building Technician Austin Hancock also worked alongside the maintenance crew on a Saturday to assist in the cleanup.

**Captain Rich Urena, Santa Clara County Sheriff's Office**, explained that all of the sheriff officers are now wearing body cams and demonstrated the use.

**Apurva Chandra, Los Altos Hills**, spoke about auxiliary dwelling units, also known as in-law units. **Mayor Waldeck** asked the City Manager if staff was aware of the topic and if any action was needed. The City Manager responded and said the Town is aware of the law. **Planning Director Suzanne Avila** said she believes the Town ordinances are in agreement.

**Pat Ley, Los Altos Hills**, said she has received an email informing her of focus groups organized to express views on the working habits of town staff. She asked, "have you

given any consideration whatsoever to the anger and frustration and indignation that people so commented on, are going to wreak havoc in what you consider a happy family staff?"

#### 4. CONSENT CALENDAR

**MOTION MADE AND SECONDED:** Vice Mayor **Radford** moved to approve the CONSENT CALENDAR, with the exception of item 4.G, specifically. The motion was seconded by Councilmember **Spreen**.

Motion Carried 5 to 0:

AYES: Mayor Waldeck, Vice Mayor Radford, Councilmember Corrigan, Councilmember Spreen, Councilmember Wu

NOES: None

ABSENT: None

ABSTAIN: None

- A. Approval of Special Meeting Minutes: City Council Meeting - March 8, 2017
- B. Approval of Special Meeting Minutes: City Council Meeting - March 23, 2017
- C. Review of Disbursements: February 1, 2017 - February 28, 2017 \$462,499.00
- D. Review of Disbursements: March 1, 2017 - March 31, 2017 \$897,791.00
- E. Resolution 14-17 Approving the Purchase of Three Art Pieces for \$27,690 and Increasing the Special Donation Expenditure Budget by \$30,000 to Purchase and Install Art Pieces (Staff: P. Lin)
- F. Adoption of Ordinance 569 (Second Reading) Amending Title 10, Chapter 2, Article 4, of the Los Altos Hills Municipal Code, Restrictions During Rainy (Wet Season) (Staff: A Chen)
- H. Resolution 15-17 Accepting the Grant of an Open Space Easement on the Lands of Gera; 12345 Gigli Court; File #51-15-TM-IS-ND (Staff: S. Avila)
- G. Resolution Awarding of Contract for the 2017 Sanitary Sewer Repair and Replacement Project to C2R Engineering, Inc. (Staff: T. Tseng)

**Councilmember Corrigan** questioned the budget allocation.

Senior Engineer Tina Tseng provided an explanation on the budget allocation for the project.

Council discussion ensued.

**MOTION MADE AND SECONDED:** Vice Mayor **Radford** moved to adopt Resolution 16-17 awarding the contract for the 2017 sanitary sewer repair and replacement project to C2R Engineering in the amount of \$792,820.50; approve a contingency fund of \$79,280, authorize the Public Works Director to approve potential contract change orders within said fund and authorize the City Manager to execute contracts with consulting/inspection firms in an amount not to exceed \$131,200. The motion was seconded by Councilmember **Spreen**.

Motion Carried 5 to 0:

AYES: Mayor Waldeck, Vice Mayor Radford, Councilmember Corrigan, Councilmember Spreen, Councilmember Wu

NOES: None

ABSENT: None

ABSTAIN: None

## **5. ONGOING BUSINESS**

- A.** Consider Adoption of a Resolution Initiating a Reorganization (Annexation) of an Inhabited Area Designated as Mora Glen Drive No. 2, Approximately 106 Acres Located on Eastbrook Avenue, Eastbrook Court, Mora Drive, Mora Glen Drive, Mora Heights Way, Partridge Lane and Terry Way; File #86-17-MISC (Staff: S. Avila)

**Planning Director Suzanne Avila** presented the staff report.

Council discussion ensued.

**Shetal Divatia, Los Altos Hills**, asked that the Council address existing roadways before spending more for annexation.

**Carey Trost, Unincorporated Santa Clara County**, spoke in opposition to the annexation.

Council discussion ensued. No action was taken.

- B.** Consideration of Regulations for Short Term Rentals and Provide Direction to

[Staff \(Staff: M. Moseley\)](#)

**Senior Planner Marni Moseley** presented the staff report.

**Peter Evans, Los Altos Hills**, spoke about owner occupied properties and believed owners should be able to do what they want with their property.

**Scott Vanderlip, Los Altos Hills**, recommended that the Town approach this slowly and understand issues from all sides.

**Angela Sanders, Los Altos Hills**, questioned the liability on a private street if someone gets hurt due to a short-term rental.

**Wendie Ward, Los Altos Hills**, suggested the Town move as quickly as possible as these short-term rentals are exploding.

**Bill Happ, Los Altos Hills**, spoke about an unpleasant experience of a short-term rental near him.

**Bonnie Badertscher, Los Altos Hills**, spoke against short-term rentals.

**Roxann Happ, Los Altos Hills**, stated her opposition to short-term rentals.

**Pat Lang, Los Altos Hills**, said she likes living here because it is nice, quiet and rural. She was not in support of short term rentals.

**Mansour Moussavian, Los Altos Hills**, shared a negative experience of a short-term rental near him.

**Nils Anguist, Los Altos Hills**, suggested enforcement of short-term rentals based on days and how many times a year.

Council discussion ensued.

**Councilmember Wu** said her goal is to keep Los Altos Hills as the number one place to live and to keep the integrity of the neighborhood. We do not want to disrupt the peace and ambiance. Short-term rentals are disruptive and said we need have a way to effectively control them.

**City Manager Cahill** said that the Town does have regulations on the books that can address some of the symptoms of the rentals. Since this is a land use matter, he requested the Council provide direction to staff and the Planning Commission to suggest rules that can be enforced.

**Vice Mayor Radford** said that if a developer is in town and never takes residence and simply uses the property as a rental, he believes it should be shut down as it is a commercial enterprise. He recognized that owners rent out second units and if an

owner is going to travel for three months and they want to put it up on Airbnb to offset travel costs, that is appropriate. He was mostly concerned about developers using properties as a commercial enterprise and said "that needs to stop immediately."

**Councilmember Corrigan** concurs that the problem it is snowballing. She was in support of sending it the Planning Commission with very specific guidelines. There should be clear understanding of owner occupied vs. non-owner occupied permissions; the number of nights, the number of people as well as number of times per year. Furthermore, it is the intention of the Town to enforce no parties, no events, complying with all parking, noise ordinances and no shuttle rentals to obfuscate what may be occurring at an evening event. She said it was not her intention to deny individual homeowners the right to do what they wish with their own home, but it is her intention to deny a land owner to misuse their property to the detriment of neighbors. She later added that there needs to be a notification component to address neighbor concerns.

**Councilmember Wu** stated that neighborhood complaints should weigh heavily for investigation.

**Councilmember Spreen** said that he sees a few things; we have to protect individuals from nuisance situations; whatever is done, it has to be administrable. Meaning, what is the minimum number of rules that would allow the program to run itself. He wanted to allow responsible rentals. Having an onsite owner is key and onsite should be defined legally, but he envisions that the owner either has to be onsite or if renting the entire property, owner contact information needs to be made available to neighbors. Anyone the Town finds who is not registered, we have to come up with some "teeth for enforcement".

DIRECTION: Return this item to the Planning Commission to review the issue and bring it back as soon as possible with a recommendation and proposal of regulations for the Council to review. **Councilmember Corrigan** added that the Planning Commission should be given sufficient time, perhaps 90 days, for them to make a recommendation to craft an ordinance for the Council to discuss.

Meeting went into Recess at 8:47 p.m.

Meeting Reconvened at 8:52 p.m.

C. [Discussion of Potentially Updating the Private to Public Road Policy \(Added at the Request of Mayor Waldeck\)](#)

**Mayor Waldeck** presented the item.

**Thomas Brunner, Los Altos Hills**, presented a proposal on behalf of the residents of Byrne Park Lane and Deer Springs Way. He requested that the council add an agenda item at a future meeting to accept Deer Springs Way and Byrne Park Lane into the public road system of Los Altos Hills.

Council discussion ensued.

**Walt Wood, Los Altos Hills**, said the Town has a vested interest in this road due to the water storage at the end of Byrne Park Road.

DIRECTION: The City Manager shall draft a broad policy amendment to allow the Council to make exceptions. In addition, staff shall return with resolutions accepting these two roads, Byrne Park Lane and Deer Springs Way, into the Town's public road system.

**Allan Epstein, Los Altos Hills**, provided an explanation about the private roads in Town.

## 6. NEW BUSINESS

- A. Resolution Awarding a Contract to a Vendor to Provide a Scope of Service and Project Management to Update the Audio/Video System in the Council Chambers (Staff: D. Padovan)

**Councilmember Spreen** said he discussed this item with the City Clerk and he has a number of questions relating to the needs of the audio/video system in the chambers. He suggested a short term subcommittee be formed to craft a request for proposals of what audio/video tasks need to occur in the Council Chambers.

**Councilmember Wu** said she has ideas and would be happy to serve on the subcommittee.

DIRECTION: Form an ad hoc committee consisting of **Councilmembers Spreen and Wu** to review the audio/video system in the Council Chambers.

## 7. REPORTS FROM COMMITTEES, SUB-COMMITTEES, AND COUNCILMEMBERS ON OUTSIDE AGENCIES

- A. Recommendation by the Environmental Design and Protection Committee to Extend the Criteria for the Removal of Heritage Oaks to other Tree Species and Consolidate the Town's Current Tree Regulations into a Comprehensive Tree Protection Ordinance

**Carol Gottlieb** presented the recommendation of the Environmental Design and Protection Committee. She requested approval from the Council for funds for the services of an arborist.

Council discussion ensued.

At this point, the Council considered a motion to extend the meeting past 10:00 p.m.

**MOTION MADE AND SECONDED:** Councilmember **Corrigan** moved to extend the meeting past 10 p.m. The motion was seconded by Councilmember **Spreen**.

Motion Carried 5 to 0:

AYES: Mayor Waldeck, Vice Mayor Radford, Councilmember Corrigan, Councilmember Spreen, Councilmember Wu

NOES: None

ABSENT: None

ABSTAIN: None

Council discussion ensued regarding tree preservation.

**Nancy Couperus, Los Altos Hills**, said the committee fully supports this proposal. She pointed out that we are the only town in this area that doesn't protect trees other than oaks.

**Pat Lang, Los Altos Hills**, said one of her neighbor's clear cut cedar trees that were 60 feet tall and "it looks horrid."

**Jitze Couperus, Los Altos Hills**, said all surrounding towns have more stringent requirements for tree removal than we do and the word is out for developers.

**Planning Director Avila** stated an arborist would give staff advice on what trees should be protected.

**Councilmember Corrigan** stated her opposition to the motion.

**MOTION MADE AND SECONDED:** Vice Mayor **Radford** moved to authorize spending up to \$10,000 for an arborist to work with the staff and committee and provide recommendations regarding potentially updating the tree protection ordinance. The motion was seconded by Councilmember **Spreen**.

Motion Carried: 3-0-1

AYES: Mayor Waldeck, Vice Mayor Radford, Councilmember Spreen

NOES: Councilmember Corrigan

ABSENT: None

ABSTAIN: Councilmember Wu

- B. Public Art Committee Presentation Requesting Placement of the Three Sculptures Accepted by the City Council in November 2016 and an Update on the Completion of the Sculpture Known as "Blue"

**Councilmember Radford** presented the report on the placement of public art.

**MOTION MADE AND SECONDED:** Councilmember Corrigan moved to approve the sighting of the art sculptures, but remain committed to using our current standards for signage and naming art work. The motion was seconded by Vice Mayor Radford.

Motion Carried 5 to 0:

AYES: Mayor Waldeck, Vice Mayor Radford, Councilmember Corrigan, Councilmember Spreen, Councilmember Wu

NOES: None

ABSENT: None

ABSTAIN: None

**Vice Mayor Radford** stated that we will be proceeding with the art work placement and directed the City Manager provide the art committee with our standard bronze plaques for the proper wording.

## **8. STAFF REPORTS**

A. City Manager - No report.

B. City Attorney – No report.

C. City Clerk

**City Clerk Padovan** announced that the Coyote Forum was being held on Thursday, April 27, 2017 and Brown Act training for committee members was occurring on Thursday, May 11, 2017.

D. Planning Director

**Planning Director Avila** stated that a representative for TrakIt, the Town's new building permit software, will be here next week to start to the transition.

E. Administrative Services Director - No report.

F. Public Works Director – No report.

**9. COUNCIL INITIATED ITEMS**

A. Consideration and Possible Action to Remove the VTA Bicycle and Pedestrian Advisory Committee Appointment from the Charter of the Pathways Committee and Include, when Appropriate, in the Annual Council Appointments (Councilmember Spreen)

**Councilmember Spreen** presented the item and suggested amending the Pathways Committee charter to remove any reference to that appointee position and have it as part of the Council's annual appointment process.

**MOTION MADE AND SECONDED:** Councilmember **Spreen** moved to amend the standing committee resolution removing from the Pathways Committee charter any reference to that appointed position (VTA BPAC) and have the appointment to the VTA BPAC as part of the Council's annual appointment process when necessary. The motion was seconded by Vice Mayor **Radford**.

Motion Carried 5 to 0:

AYES: Mayor Waldeck, Vice Mayor Radford, Councilmember Corrigan, Councilmember Spreen, Councilmember Wu

NOES: None

ABSENT: None

ABSTAIN: None

B. Consideration and Possible Action to Form an Information Technology Committee to Review Technology Utilized by the Town (Councilmember Wu)

**Councilmember Wu** presented the item.

**MOTION MADE AND SECONDED:** Councilmember **Wu** moved to form a Technology Committee to Review Technology to improve the Town's technology. The motion was seconded by Mayor **Waldeck**.

The motion failed due to lack of a second.

Council discussion ensued and included discussion about the focus of the committee and suggested working with staff determine the needs of technology.

The Council requested that **Councilmember Wu** return with a more refined, targeted charter. **Vice Mayor Waldeck** withdrew his second on the motion on the floor.

**10. ADJOURN**

The meeting adjourned at 10:47 p.m.

Respectfully submitted,

*Deborah Padovan*

Deborah Padovan

City Clerk

The minutes of the April 20, 2017 regular City Council meeting were approved as presented at the May 18, 2017 regular City Council meeting.



**TOWN OF LOS GATOS**  
**TOWN COUNCIL POLICY COMMITTEE**

MEETING DATE: 11/15/2018

ITEM NO: 2

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**DATE:** November 7, 2018  
**TO:** COUNCIL POLICY COMMITTEE  
**FROM:** LAUREL PREVETTI, TOWN MANAGER  
**SUBJECT:** REVIEW AND PROVIDE DIRECTION ON POTENTIAL SHORT-TERM RENTAL (STR) REGULATIONS.

**RECOMMENDATION:**

Review and provide direction on potential short-term rental (STR) regulations.

**BACKGROUND:**

On October 2, 2018, a staff report regarding short-term rentals (STRs) was brought to the Town Council for initial discussion and direction. Council voted unanimously to refer the item to the Policy Committee for further discussion with input from Council members. A copy of the Council Staff Report is available as Attachment 1.

STRs were discussed at the October 18, 2018 Town Council Policy Committee meeting. A copy of the Policy Committee Staff Report is available as Attachment 2.

After discussion, the Policy Committee's direction was for staff to return to the Committee with options for allowing and regulating STRs. The Committee asked that staff consider a goal of not denying homeowners the right to do what they wish with their homes while protecting neighbors from nuisance situations. The Committee requested an over-the-counter permitting process that is not too complicated or expensive. The Committee asked staff to consider allowing the Community Development Director the ability to revoke an STR permit, look at options for limiting the number of nights in un-hosted rentals versus unlimited nights in hosted rentals, look at limiting STRs to one per owner and one per parcel, and also to address the concerns of investment properties being purchased for the sole purpose of use as an STR and losing affordable housing within the Town.

**PREPARED BY:** HOLLY ZAPPALA  
Management Analyst

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Reviewed by: Town Manager, Assistant Town Manager, and Community Development Director

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BACKGROUND (continued)

Current regulatory environments for STRs adopted by other municipalities run the gamut from highly regulated to lightly regulated. A good example of a highly regulated environment can be found in the “Short-Term Rental Operating License” section of the Hood River, Oregon Municipal Code (Attachment 3). In contrast to regulatory environment adopted by Hood River, the Town of Los Altos Hills has adopted less stringent requirements to their Municipal Code for STRs (Attachment 4).

The “DISCUSSION” section of the staff report lays out the primary areas of consideration for the regulation of STRs. The first issue is to consider is whether to allow hosted and/or un-hosted rentals. Additionally, there are a variety of options regarding issues of regulating zones, accessory dwelling units, parking, the permitting process, revocation of permits, enforcement, and miscellaneous regulations to conserve the Los Gatos housing stock and mitigate neighborhood impact. The report provides a range of options for each area of discussion reflective of the varying degrees of regulation which could be adopted.

DISCUSSION:

*Hosted vs Un-Hosted Rentals*

In a hosted rental, a permanent resident must reside at the property while it is being rented. Hosted STRs may present fewer code compliance issues since the host is present to oversee the rental. Having a resident host may also increase the comfort of neighbors who may otherwise be unsure about the guests. Un-hosted rentals are normally for an entire house/property as opposed to a room or accessory dwelling unit. Un-hosted rentals may have more neighborhood compatibility issues and enforcement issues, such as noise complaints.

Option 1: Allow hosted rentals and prohibit un-hosted rentals. Requiring the host to reside on-site would limit hosts to renting a portion of their primary dwelling or an accessory dwelling unit on the property and require them to be present to handle any code compliance violations that may arise.

Option 2: Allow un-hosted rentals with a limited number of rental days (i.e. 60 or 90 days per year), while allowing an unlimited number of days per year for hosted rentals.

Option 3: Allow a limited number of rental days per year for both hosted and un-hosted rentals. Hosted rentals could have a greater limit (i.e. 180 days) than un-hosted rentals.

Option 4: Do not regulate hosted vs. un-hosted rentals.

DISCUSSION (continued):

It is important to note that should the Town limit the number of rental days for hosted or un-hosted rentals, the Town would need to rely on hosts to self-report the number of rental days per year, as Airbnb does not provide specific data for each property when remitting transient occupancy tax (TOT) on behalf of its hosts. Enforcement of the number of rental days allowed per year is challenging to enforce for this reason.

*Regulation by Zone*

STRs may be confined to certain zones within the Town, or the number of STRs within these zones could be limited, as a way to mitigate neighborhood impact and conserve housing stock.

Option 1: Allow a maximum number of permits (with a lottery and/or first-come, first-serve wait list) in certain zones. For example, in the Residential Downtown zone (R-1D), a maximum of 15 STR permits could be allowed. In other zones, such as Hillside Residential (HR), permits could be unlimited.

Option 2: Allow a maximum number of permits (with a lottery and/or first-come, first-serve wait list) in each residential zone. For example, 15 permits could be allowed in the R-1D zone, 25 in the HR zone, etc.

Option 3: STRs could be prohibited in certain zones where there are a higher concentration of properties and residents, while allowed in other zones.

Option 4: No regulations on the number of STR permits allowed in each zone.

*Accessory Dwelling Units*

Per Town Code Sec. 29.10.320 (b) (14), shown in Attachment 3, currently rentals for durations of less than 30 days are prohibited in new accessory dwelling units, approved after February 6, 2018, when the ordinance went into effect.

Option 1: Allow STRs in accessory dwelling units approved before February 6, 2018 only. Maintain the current prohibition on STRs in accessory dwelling units approved after February 6, 2018.

Option 2: Amend the Town Code to remove Sec 29.10.320 (b) (14) and allow STRs in all accessory dwelling units provided they adhere to all other regulations.

Option 3: Prohibit STRs in all accessory dwelling units in Town.

DISCUSSION (continued):

To note: During staff review of Airbnb's website, the majority of listings in Los Gatos (almost half) were for accessory dwelling units.

*Parking*

In an effort to decrease neighborhood impact and mitigate existing parking concerns, parking for registered STRs can be regulated.

Option 1: Require all STR parking to remain on-site in areas where parking is not permitted. Require STR parking to be limited to using the two guest parking passes purchased per house/property through the Police Department in areas where parking is permitted.

Option 2: Limit the number of vehicles allowed per STR guest. For example, a maximum of one or two vehicles could be allowed per rental.

Option 3: Do not regulate parking for STRs.

*Permitting Process*

A potential process for registering an STR with the Town would include the following steps and could potentially be completed over-the-counter:

- Obtain a business license. This would be required as business is being conducted in Town. The current annual fee for a business license for a hotel is \$7.50 per room being rented plus the Senate Bill 1186 state-mandated fee, which is currently \$4.
- Submit a one-page STR registration form with the fee to be determined. A sample can be drafted as the regulations are developed. The current fee for a Home Occupation permit is around \$180.00.
- Submit a TOT registration form. All hosts should self-report their TOT data. Hosts using platforms other than Airbnb would also need to self-remit TOT directly to the Town, unless the Town were to enter into voluntary TOT collection agreements with other platforms in the future.
- Provide a copy of the Certificate of Occupancy for the property to ensure the space is habitable and in compliance with all permit conditions, laws and codes. If no Certificate of Occupancy can be produced, the host must obtain and pass a Health and Safety inspection from the Community Development Department. The current fee for this inspection is around \$300.00.

DISCUSSION (continued):

*Revocation of STR Permits*

In an effort to mitigate neighborhood impact, the Town can reserve the right to revoke STR permits.

Option 1: Allow the Community Development Director the ability to revoke STR permits at his/her discretion.

Option 2: Automatically revoke STR permits after a certain number of code compliance violations (i.e. three confirmed violations within a 12-month period) or failure to remit TOT after a certain period of time.

Option 1A. Revocation of an STR permit lasts for a defined period of time (i.e. one or two years)

Option 1B. Revocation of an STR permit is permanent for that host at that property.

*Enforcement*

At first, staff recommends that enforcement continue on a complaint-driven basis. The Town currently receives a small number (between one and three a year) of STR related complaints. Should the need arise, there are third party firms that provide services such as identifying all STR rentals in Town for registration and providing a 24/7 rental hotline for complaints. Additional enforcement options may also be considered such as:

Option 1: Creating a penalty for failing to register an STR within 90 days of operation in order to encourage compliance.

Option 2: Creating an online map/directory of registered STRs in Town by address with the ability click on a property and file an online complaint.

*Miscellaneous Regulations to Conserve Housing Stock*

A number of additional regulations may be adopted in order to help conserve the housing stock in Los Gatos:

Option 1: Prohibit STRs in Senior Housing units (the Town currently expressly prohibits them in Below Market Price units).

Option 2: Require a property owner approval letter for all STRs in which the host is not the owner.

DISCUSSION (continued):

Option 3: Limit STR registration to one per owner.

Option 4: Limit STR registration to one per parcel. Apartment complexes may require a lottery and/or a wait list on a first-come, first-serve basis.

*Miscellaneous Regulations to Mitigate Neighborhood Impact*

Additional regulations may be put in place in order to protect neighbors from nuisance situations:

Option 1: Prohibit commercial or assembly uses such as weddings and special events.

Option 2: Require a homeowners' association (HOA) approval letter for all STR properties that are part of an HOA.

Option 3: Require hosts to provide guests with local rules regarding occupancy, parking noise, trash collection schedules, etc. to follow during their stay.

Option 4: Limit the maximum number of overnight lodgers (not including minor children). Limits can be imposed per number of rooms (i.e. two guests for each room rented) or can be imposed as a standard number (i.e. maximum of four guests per rental). The limits can be different for hosted and un-hosted rentals.

Option 5: Prohibit renting to unaccompanied minors.

Option 6: Require STR hosts (or an appointed site manager) to be on call 24/7 to manage the STR unit and respond to reported issues, contact the tenants regarding complaints received, and/or be physically present at the STR unit to address reported concerns within a certain amount of time (i.e. 30 minutes) from the time of notification.

CONCLUSION AND NEXT STEPS:

Staff looks forward to the direction of the Committee regarding the best policy options for regulating STRs in Los Gatos. Depending on the level of policy regulation the Committee wishes to pursue, staff will then craft the appropriate administrative regime to effectuate the policy objectives.

PAGE 7 OF 7  
SUBJECT: SHORT-TERM RENTAL DISCUSSION  
NOVEMBER 15, 2018

FISCAL IMPACT:

Based on preliminary data received from Airbnb, the Town may receive estimated annual transient occupancy tax revenue of \$226,800 if the Town were to enter into a voluntary TOT collection agreement with Airbnb.

Attachments:

1. October 2, 2018 Los Gatos Council Report
2. October 18, 2018 Policy Committee Report
3. City of Hood River Short-Term Rental Policy
4. Town of Los Altos Hills Short-Term Rental Policy
5. Town Code Sec. 29.10.320
6. Public Comment Received November 2, 2018
7. Public Comment Received November 6, 2018



**CHAPTER 5.10 SHORT-TERM RENTAL OPERATING LICENSE**

Legislative History: *Ord. 2028 (2016)*

**SECTIONS:**

- 5.10.010 Title.
- 5.10.020 Purpose and Scope.
- 5.10.030 Definitions.
- 5.10.040 Annual Short-term Rental Operating License Required.
- 5.10.050 Application and Fee.
- 5.10.060 Term of Annual License and Transferability.
- 5.10.070 Operating License and License Renewal.
- 5.10.080 Criteria for Approval of an Operating License and Operating License Renewal.
- 5.10.090 Additional Operational Requirements.
- 5.10.100 Violations.
- 5.10.110 Penalties.
- 5.10.120 Appeals of Short-term Rental Operating License Determinations.
- 5.10.130 Discontinuance of Short-term Rental Occupancy.
- 5.10.140 Remedies Not Exclusive.

5.10.010 Title. The provisions of this chapter are intended to authorize and regulate the short-term rental of residential dwelling units on all property within the City of Hood River. To that purpose, there is added to the Hood River Municipal Code Chapter 5.10 entitled "Short-Term Rental Operating License," and those sections and subsections set forth below.

5.10.020 Purpose and Scope.

A. This ordinance provides reasonable and necessary regulations for the licensing of short-term rental of residential dwelling units in order to:

1. Ensure the safety, welfare and convenience of renters, owners and neighboring property owners throughout Hood River.
2. Balance the legitimate livability concerns with the rights of property owners to use their property as they choose.
3. Recognize the need to limit short-term rental options within the neighborhoods to ensure compatibility, while recognizing the benefits of short-term rentals in providing recreation and employment opportunities, as well as transitional housing and business or hospital related short stays.
4. Help maintain the City's needed housing supply for residential use.
5. Protect the character of the City's neighborhoods by limiting the number and concentration of full-time short-term rentals in residential zones. In the adoption of these regulations, the City finds that the transient rental of dwelling units has the potential to be incompatible with surrounding residential uses. Therefore, special regulation of dwellings listed for transient occupancy is necessary to ensure that these uses will be compatible with surrounding residential uses and will not materially alter the neighborhoods in which they are located.

B. A short-term rental license is a permission to operate a short-term rental in accordance with this chapter. An operating license may be terminated or revoked if the standards of this chapter are not met or the dwelling is sold or otherwise transferred as defined in this chapter. This chapter provides an administrative framework for licensing the annual operation of a short-term rental.

C. The regulations of this code are not intended to permit any violation of the provisions of any other law or regulation.

D. Exemption of a use from the provisions of this chapter shall not exempt the use from other applicable provisions of this Code.

#### 5.07.030 Definitions.

A. Applicant(s) means an owner(s) of a dwelling unit who applies to the City for a short-term rental operating license.

B. Authorized agent is a property management company or other entity or person who has been designated by the applicant or licensee, in writing, to act on their behalf. The authorized agent may or may not be the designated representative for purposes of contact for complaints.

C. City Manager means the City Manager or his or her designee.

D. Hosted homeshare means the transient rental of a portion of a dwelling while the homeowner is present. For the purposes of this Title, "present" means the homeowner is staying in the dwelling overnight.

E. Licensee means the owner(s) of a dwelling unit who holds a short-term rental operating license.

F. Non-transient rental means to rent a dwelling unit or room(s) for compensation on a month-to-month basis, or for a longer period.

G. Owner(s) means the natural person(s) or legal entity that owns and holds legal or equitable title to the property. If the owner is a business entity such as a partnership, corporation, limited liability company, limited partnership, limited liability partnership or similar entity, all persons who own an interest in that business entity may be considered an owner.

H. Short-term rental means a Hosted Homeshare or Vacation Home Rental.

I. Short-term rental operating license means the regulatory license required by HRMC 5.10.030 and described in this chapter. It will be referenced as an "operating license."

J. Transfer means the addition or substitution of owners not included on the original license application, whether or not there is consideration. If multiple owners exist on a license, individual owners may be removed from the license without constituting a transfer.

K. Transient rental means to rent a dwelling unit or room(s) for compensation on less than a month-to-month basis.

L. Vacation home rental means the transient rental of an entire dwelling unit.

M. Daytime means between the hours of 7:00am to 10:00pm

N. Overnight means between the hours of 10:00 pm to 7:00 am the following day

5.10.040 Annual Short-Term Rental Operating License Required. No owner of property within the Hood River City limits may advertise, offer, operate, rent, or otherwise make available or allow any other person to make available for occupancy or use a short-term rental without a short-term rental operating license. Advertise or offer includes through any media, whether written, electronic, web-based, digital, mobile or otherwise.

5.10.050 Application and Fee.

A. Application Required. Applications for an operating license shall be on forms provided by the City, demonstrating the application meets the standards required by this chapter. The applicant or authorized agent shall certify the following information to be true and correct:

1. Owner/Applicant Information. Applicant's name, permanent residence address, telephone number, and the short-term rental address and telephone number.

2. Proof of Residential Use (for conforming short-term rentals within the R-1, R-2 or R-3 zones only). The residential use of a dwelling unit shall be established through its continued use as the primary residence of the property owner. The applicant shall provide at least two of the following items as evidence that the dwelling is the primary residence of the owner:

- A copy of the voter registration.
- A copy of an Oregon Driver's License or Identification Card.
- A copy of federal income tax return from last tax year (page 1 only financial data should be redacted).

3. Representative Information. The applicant shall provide the name, telephone number, address and email of a local representative (which can be a person or company) who can be contacted concerning use of the property or complaints related to the short-term rental, as set forth in HRMC 5.10.080. For the purposes of this requirement, local means the representative's address is within a 30 minute travel time of the subject property.

4. Parking. Statement that required parking spaces are available, with a dated photo(s) submitted of interior and exterior parking spaces. A site plan including a parking diagram of these parking spaces shall also be submitted.

5. Occupancy. Occupancy limits and number of bedrooms.

6. Good Neighbor Guidelines. Acknowledgment of receipt and review of a copy of the City's good neighbor guidelines. In addition, evidence that the City's good neighbor guidelines has been effectively relayed to short-term rental tenants, by incorporating it into the rental contract, including it in the rental booklet, posting it online, providing it in a conspicuous place in the dwelling unit, or a similar method.

7. Listing Number. If they advertise, the listing numbers or website addresses of where the short-term rental advertises (such as the VRBO/Airbnb/rental website number, account number, URL, etc.).

8. A completed checklist for fire safety as required by HRMC 5.10.080.C.2.

9. Proof of garbage service as required by HRMC 5.10.080.C.3.

10. Such other information as the City Manager or designee deems reasonably necessary to administer this chapter.

B. Incomplete Application. If a license application does not include all required materials, the application will be considered incomplete and the City will notify the applicant, in writing, explaining the information required. If the applicant provides the missing required information within 30 calendar days of the date of the notice, the application will be reviewed. If the applicant does not provide the required information, the application will be deemed withdrawn and the City may refund all or a portion of the application fee.

C. License Fee. The fee for application for a short-term rental operating license or license renewal shall be as established by resolution of the City Council.

5.10.060 Term of Annual License and Transferability.

A. Term. A short-term rental operating license shall be renewable annually on or before January 15th, the license may be renewed annually for up to four years by the licensee or authorized agent provided all applicable standards of this chapter are met. If an authorized agent changes during the operating license period, the licensee shall timely notify the City in writing of the change.

B. Transferability. The operating license shall be issued in the name of the licensee(s) and is not transferable.

5.10.070 Operating License and License Renewal.

A. License Must Be Obtained.

1. An operating license shall be obtained and renewed as required in this section. The permission to operate a short-term rental in the City of Hood River shall be revoked for failure to obtain or renew a license to operate as provided in this chapter.

2. The maximum number of nights per year which a short-term rental may be operated shall be in accordance with HRMC 17.04.115 and as specified below. The license shall specify whether the short-term rental will be operated as a hosted homeshare or a vacation home rental; however, the number of nights allowed is the maximum number for all short-term rental use of the subject property. The maximum number of nights shall be indicated on the license and shall not be exceeded.

Short-term rentals in C-1 and C-2 zones:	365 nights /year
Conforming short-term rentals in R-1, R-2 and R-3 zones:	90 nights /year
Existing non-conforming short-term rentals in R-1, R-2 and R-3 zones:	See HRMC 5.10.070.A.3

3. Existing Nonconforming Short-term Rentals within the R-1, R-2 and R-3 zones. For the purposes of this section, an existing non-conforming short-term rental is one which meets all of the standards and criteria in HRMC 17.04.115.D. The extent of the non-conformity shall be limited to the maximum number of nights of transient rental which previously occurred in any one calendar year, 2013 through October 13<sup>th</sup>, 2016. The applicant has the burden of proving by a preponderance of credible evidence all of the elements of a nonconforming hosted homeshare or vacation home rental.

**B. Application and Renewal Application Process.**

1. Existing Short-term Rentals. Existing short-term rentals may continue to operate until such time as the City has approved or denied the application. If approved, the license may be renewed annually thereafter in accordance with subsection C, below. If denied, operation of the short-term rental must cease within 30 days. Failure to submit an application as required by this section shall result in the loss of all non-conforming use status.

2. New Short-term Rentals. A license shall be obtained before beginning operations. A completed operating license application and fee may be submitted and issued at any time. The license may be renewed annually thereafter in accordance with subsection C, below.

**C. Renewal Standards.**

1. Operating licenses may be renewed by the licensee annually for up to four years after the year of issuance.

2. The City will review an application for operating license renewal and issue a renewal provided all the standards in this chapter continue to be met. If not met, the City will not renew the operating license and the property shall not be used as a short-term rental.

D. A decision on an operating license application or renewal may be appealed as provided in HRMC 5.10.120.

**5.10.080 Criteria for Approval of an Operating License and Operating License Renewal.**

A. The applicant has the burden of proof to demonstrate compliance with each applicable criterion for approval or renewal of the operating license. The approval criteria also operate as continuing code compliance obligations of the owner. Staff may verify evidence submitted and the applicant shall cooperate fully in any investigation.

B. To receive approval, an applicant must demonstrate that all approval criteria listed below has been satisfied:

1. Zoning. The property is in compliance with requirements of HRMC Title 17 (Zoning).

2. Contact Information. The applicant or authorized agent has provided information sufficient to verify a qualified person will be available to be contacted about use of the short-term rental during and after business hours. The licensee or representative shall be available to be contacted by telephone to ensure a response to the short-term rental address at all hours (24 hours a day, seven days a week) while the dwelling unit is occupied for rent. Response must be within 30 minutes. The designated

representative may be changed from time to time throughout the term of the license. To do so, the license information shall be revised with the City at least 14 days prior to the date the change takes effect, except when the failure to do so is beyond the licensee's control. In an emergency or absence, contact forwarding information to a qualified person may be provided for the licensee or representative. In the case of Hosted Homeshares, the contact person shall be the permanent resident who will be hosting the transient accommodations.

3. Notice to Neighbors. For Vacation Home Rentals, the licensee or authorized agent shall either: (a) provide an annual mailing or otherwise distribute by hand, a flier to neighbors within a 250-foot radius of the short-term rental property address containing the operating license number and owner or representative contact information, or (b) post a small placard or sign as specified by the City on the property in proximity to the adjacent street advising neighbors and tenants of the same information where it can be seen from the public right-of-way.

The purpose of this notice is so that adjacent property owners and residents can contact a responsible person to report and request resolution of problems associated with the operation of the short-term rental. If the permanent contact information changes during the license period, the new information must be mailed or distributed again, or changed on the placard or sign.

#### C. Health and Safety.

1. Responsibility. It is the licensee's responsibility to assure that the short-term rental is and remains in substantial compliance with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws.

2. Fire and Emergency Safety. A completed checklist for fire safety (fire extinguishers, smoke alarms, carbon monoxide detectors, etc.) shall be required with each annual operating license application and renewal. The licensee shall be responsible for completing the fire safety checklist and ensuring continued compliance. Verification by the City shall be required prior to issuance of a license and may be required for each renewal at the City Manager's discretion.

3. Solid Waste Collection – minimum service requirements. During all months that the dwelling is available for transient accommodation, Vacation Home Rentals shall have weekly solid waste collection service with assisted pick-up provided by the solid waste provider, if available. For the purposes of this section, assisted pick-up means the collection driver retrieves the cart from the driveway, rolls it out for service, and then places it back in its original location.

D. Mandatory Postings. The short-term rental license issued by the City (or a copy thereof) shall be displayed in a prominent location within the interior of the dwelling adjacent to the front door. The license will contain the following information:

1. A number or other identifying mark unique to the short-term rental operating license which indicates the license is issued by the City of Hood River, with the date of expiration;
2. The name of the licensee or representative and a telephone number where the licensee or representative may be contacted;
3. The number of approved parking spaces;
4. The maximum occupancy permitted for the short-term rental;
5. Any required information and conditions specific to the operating license;
6. Day of week of trash pickup;
7. The property address; and

8. The City of Hood River official logo.

E. The licensee shall be in compliance with the Hotel Tax Code pursuant to HRMC Chapter 5.09, and subject to the Tax Administrator's authority under that chapter.

F. Parking.

1. One (1) hard surfaced off-street parking space shall be provided for every two bedrooms. In calculating the number of spaces required, the total shall be rounded up. Parking areas shall not be located in the front yard. If the garage is to be utilized to meet the parking requirement, a photo of the interior of the garage shall be submitted to show the garage is available for parking. Required parking may be permitted on another lot within 250 feet of the subject property with a shared parking agreement or proof of legal parking access.

2. A parking diagram of the approved parking spaces shall be provided to tenants and be available in a prominent location within the short-term rental dwelling.

5.10.090 Additional Operational Requirements.

A. Advertising and License Number. The licensee or authorized agent shall put the annual operating license number on all advertisements for the specific property, if legally possible.

B. Complaints.

1. Response to Complaints. The licensee or representative shall respond to neighborhood questions, concerns, or complaints in a reasonably timely manner depending on the circumstances.

2. Record of Response. The licensee or representative shall maintain a record of complaints and the actions taken in response to the complaint, if relevant, in an electronic or written manner deemed reasonable to document the interaction. If kept, this record can then be made available for City inspection upon request to investigate a complaint.

C. Inspection. Upon application for an operating license all short-term rentals shall be subject to inspection by the City for compliance with this section.

1. The City Manager may conduct a site visit upon an application for a short-term rental to confirm the number of bedrooms (as defined by the International Building Code) stated on the application and the number, location and availability of on-site parking spaces. The site visit will be coordinated with the applicant and be conducted during the City's normal business hours, and with reasonable notice.

2. The City Manager may visit and inspect the site of a short-term rental to ensure compliance with all applicable regulations, during the City's normal business hours, and with reasonable notice and other procedural safeguards as necessary. Code violations shall be processed in accordance with HRMC Title 1.

D. Specific Prohibitions. The following activities are prohibited on the premises of a Short-term Rental during periods of transient rental:

1. Events. Examples of events include, but are not limited to, company retreats, weddings, rehearsal dinners, etc.

2. Unattended barking dogs.

3. Activities that exceed noise limitations set by HRMC Title 8.09.

E. The maximum overnight occupancy for the dwelling shall be limited to two persons per bedroom (as defined by the International Building Code) and two additional persons (e.g., a two-bedroom dwelling is permitted a maximum overnight occupancy of six persons). The maximum daytime occupancy shall be limited to the overnight occupancy plus six additional persons (e.g., a two-bedroom dwelling is permitted a maximum daytime occupancy of twelve).

F. Administrative Rules. The City Manager shall have the authority to establish administrative rules and regulations consistent with the provisions of this chapter for the purpose of interpreting, clarifying, carrying out, furthering, and enforcing the provisions of this chapter. A copy of such administrative rules and regulations shall be on file in the Office of the City Recorder and be posted on the City website.

#### 5.10.100 Violations.

In addition to complaints related to nuisance and noise and other violations of the HRMC, the following conduct also constitutes a violation of this chapter and is a civil infraction:

A. The discovery of material misstatements or providing of false information in the application or renewal process.

B. Representing a dwelling as available for occupancy or rent as a short-term rental where the owner does not hold a valid operating license issued under this chapter, or making a short-term rental available for use, occupancy or rent without first obtaining a valid operating license.

C. Advertising or renting a short-term rental in a manner that does not comply with the standards of this chapter.

D. Failure to comply with the substantive standards of HRMC 5.10.080 and HRMC 5.10.090.

#### 5.10.110 Penalties.

A. In addition to the fines and revocation procedures described below, any person or owner who uses, or allows the use of, or advertises, property in violation of this chapter is subject to the enforcement authority of HRMC Title 1.

B. Each twenty-four hour period in which a dwelling is used, or advertised, in violation of this chapter or any other chapter of the HRMC shall be considered an occurrence for calculation of the following fines:

1. The first occurrence of one or more violation(s) will incur a warning or other fine amount otherwise specified in HRMC, whichever is greater.

2. A second occurrence of one or more violation(s) within a 12-month period is subject to a \$250 fine or other fine amount otherwise specified in HRMC, whichever is greater.

3. A third occurrence and all subsequent occurrences of violation(s) within a 12-month period is subject to a \$500 fine or other fine amount otherwise specified in HRMC, whichever is greater.

C. Revocation. The following actions are grounds for immediate revocation of an operating license:

1. Failure to renew an operating license as set forth in HRMC 5.10.070 while continuing to operate a short-term rental.

2. The occurrence of three or more violations within a 12-month period resulting in fines pursuant to 5.10.110.B3.

3. The discovery of material misstatements or providing of false information in the application or renewal process is grounds for immediate revocation of the operating license.

4. Such other violations of this chapter of sufficient severity in the reasonable judgment of the City Manager, so as to provide reasonable grounds for immediate revocation of the operating license.

D. Notice of Decision/Appeal/Stay. If the operating license is revoked as provided in this section, the City Manager shall send written notice of revocation to the licensee stating the basis for the decision. The notice shall include information about the right to appeal the decision and the procedure for filing an appeal. The licensee may appeal the City Manager's decision to revoke the operating license under the procedures set forth in HRMC 5.10.120. Upon receipt of an appeal, the City Manager shall stay the revocation decision until the appeal has been finally determined by the Hearing Officer.

#### 5.10.120 Appeals of Short-term Rental Operating License Determinations.

A. Filing Requirements – Notice. The licensee or authorized agent may appeal a short-term rental operating license decision to deny or revoke an operating license under HRMC 5.10.100.

B. Authority to Decide Appeal. The Hearings Officer shall be responsible for determining an appeal of a decision approving or denying an application or renewal application for an operating license, or revoking or suspending an operating license, in any zone.

C. Time for Filing. An appellant is required to file a written notice of appeal including the basis for the appeal within 14 calendar days of the license determination being appealed. This requirement is jurisdictional and late filings shall not be allowed.

D. Fee for Appeal. The City Council may establish by resolution a fee for filing an appeal, which shall be jurisdictional.

E. Procedures. The City Manager may establish administrative procedures to implement the appeal procedures provided in this section, including any required forms. The Council may adopt procedures for hearings not in conflict with this section, including but not limited to time limits on oral testimony and limitations on written argument.

F. Hearing. Within 35 days of receiving the notice of appeal, the City Manager shall schedule a hearing on the appeal before the Hearings Officer. At the hearing, the appellant shall have the opportunity to present evidence and arguments as may be relevant. The Hearings Officer may direct the City Attorney to draft findings of fact and interpretations of code or law to be considered at a later meeting.

G. Standard of Review and Decision. The Hearings Officer shall determine whether the City's decision was based on a preponderance of the evidence. A decision of the Hearings Officer shall be based on the evidence received, in writing and signed by the chair, no later than 30 days after the close of the hearing. The Hearings Officer may determine not to suspend or revoke the license, or to revoke or suspend the license. If the Hearings Officer upholds the decision to revoke the operating license, the Hearings Officer shall order the licensee to discontinue use as a short-term rental. If the Hearings Officer reverses the decision to revoke the operating license, the operating license shall be continued.

H. Finality. The Hearings Officer's decision shall be final on the date of mailing the decision to the appellant. The Hearings Officer's decision is the final decision of the City and is appealable only by writ of review to Circuit Court.

#### 5.10.130 Discontinuance of Short-term Rental Occupancy.

A. After Revocation. After a short-term rental operating license has been revoked, the dwelling unit may not be used or occupied as a short-term rental unless a subsequent license is granted, and the licensee whose license has been revoked shall not be eligible to reapply for a short-term rental license for short-term rental occupancy of the same property for a period of two years.

B. After Expiration. If a short-term rental operating license expires, the dwelling unit may not be used or occupied as a short-term rental until such time as a subsequent license has been granted for that property.

5.10.140 Remedies Not Exclusive.

The remedies provided in this chapter are in addition to, and not in lieu of, all other legal remedies, criminal and civil, which may be pursued by the City to address any violation of this code, the Development Code, or other public nuisance.



**ORDINANCE 575**

AN ORDINANCE OF THE TOWN OF LOS ALTOS HILLS AMENDING SECTION 10-1.702 AND ADDING SECTIONS 10-1.1202 THROUGH 10-1.1208 TO THE LOS ALTOS HILLS MUNICIPAL CODE PERTAINING TO SHORT-TERM RENTAL REGULATIONS WITHIN RESIDENTIAL ZONES

**WHEREAS**, the City Council of the Town of Los Altos Hills (“Town”) wishes to amend the Municipal Code with regard to regulation of short-term rentals in Town and establish regulatory and enforcement guidelines.

**NOW, THEREFORE**, the City Council of the Town of Los Altos Hills does **ORDAIN** as follows:

**Section 1. AMENDMENTS**

The following sections are hereby added to Title 10, Chapter 1 (“Zoning”) of the Los Altos Hills Municipal Code to read as follows. Sections and subsections that are not amended by this ordinance are not included below, and shall remain in full force and effect.

**Article 7. Accessory uses and structures permitted (R-A).** is hereby amended:

**10-1.702 Accessory uses and structures permitted (R-A).**

.....

(r) One short-term rental unit operated pursuant to the requirements of Article 12 of this chapter.

.....

**Article 12. Short-term Rental of Residential Property** is hereby added:

**10-1.1201 Purpose and intent.**

The purpose of this chapter is to establish regulations governing the short-term rental of residential property within the Town of Los Altos Hills. The establishment of these regulations will provide for additional residential options while ensuring that short-term rental activities do not become a nuisance or a threat to public health, safety, or welfare due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, refuse accumulation, and other effects related to short-term rentals.

**10-1.1202 Definitions.**

For purposes of this chapter, the following definitions apply:

(a) "Primary residence" means the residence must be used as the owner/applicant's primary residence for a minimum of 270 days per year and must be listed as the mailing address with the Santa Clara County Assessor.

(b) "Short-term rental" means to provide transient lodging use in exchange for compensation in any dwelling unit, in whole or in part, on residential property for a period of thirty (30) consecutive calendar days or less.

(c) "Validated nuisance" means a prohibited use or impact associated with a short-term rental including those listed within the Short-term Rental Policy and which sufficient documentation is provided to confirm the occurrence and extent of the violation.

**10-1.1203 Short-term rentals prohibited.**

No person shall use or maintain, nor shall any person authorize, aid, facilitate or advertise the use of, any residential property on any parcel for short-term rental without registering and obtaining a short-term rental license from the Town of Los Altos Hills.

**10-1.1204 General requirements.**

Short-term rentals permitted on residential property shall be subject to following restrictions and requirements:

(a) A maximum of one (1) short term rental unit is permitted per residential property.

(b) The short-term rental property shall contain the property owner's primary residence.

(c) The short-term rental shall comply with all applicable local, state, and federal laws, including but not limited to state and local health, safety, fire, and building codes.

(d) The host must provide all renters with facilities for sleeping, bathing, and toileting within a permanent dwelling that is suitable for human occupancy. Rental of sleeping space in or on balconies, porches, tents, sheds, vehicles, garages or outdoor areas is prohibited.

(e) Short-term rental uses are permitted solely for residential purposes only. No events or commercial uses are permitted. This includes site rentals for weddings, corporate meetings/events/trainings, photo or video shoots, birthday parties, etc.

(f) All short-term rental parking must be provided on-site in approved parking areas. No overnight street parking is permitted pursuant to Municipal Code section 4-3.1006.

(g) The host is responsible for ensuring the property does not become a nuisance due to any short-term rental occupant activities. Any short-term rental with three (3) validated nuisance violations will result in revocation of the short-term rental license.

**10-1.1205 Conditional Short-Term Rental Permit Approval required.**

An applicant may apply for a Conditional Short-Term Rental Permit if an exception to the general requirements is requested or if a previously approved short-term rental license has been revoked. A noticed public hearing before the Site Development Committee is required for consideration of a Conditional Short-Term Rental permit.

(a) Additional limitations and restrictions may be imposed to ensure any nuisance concerns or site-specific limitations are adequately addressed to ensure that the short-term rental use would be compatible with the general intent of this Ordinance and the policies of the Town of Los Altos Hills. Additional limitations or restriction may include but are not limited to:

- i. limitation on number of rental rooms or occupants
- ii. additional off-street parking provisions
- iii. modification of quiet hours for occupants
- iv. neighborhood notification and or ongoing communication requirements

(b) Pursuant to 10-1.1002 of the Municipal Code, the decision of the Site Development Committee may be appealed to the Planning Commission.

**10-1.1206 Fees.**

The City Council may establish and set by resolution all fees and charges as may be necessary to effectuate the purpose of this chapter.

**10-1.1207 Violations a public nuisance—Penalties, nuisance abatement, and other remedies.**

Any short-term rental operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance which the City may seek to abate, remove, and enjoin in any manner provided by law. Such remedies shall be in addition to any other remedies available to the City under this chapter or applicable local or state law.

**SECTION II. SEVERABILITY.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the Town of Los Altos Hills hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**SECTION III. EFFECTIVE DATE AND PUBLICATION.**

This ordinance shall take effect thirty (30) days after adoption. Within fifteen days after the passage of this ordinance the City Clerk shall cause this ordinance or a summary thereof to be published once, with the names of those City Councilmembers voting for or against it in a newspaper of general circulation in the Town of Los Altos Hills, as required by law.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

2840788.1

Sec. 29.10.320. - New accessory dwelling units.

(a) *Incentive program* . Any accessory dwelling unit developed under an Incentive Program which may be established by Resolution of the Town Council shall be made affordable to eligible applicants pursuant to the requirements of the Incentive Program. A deed restriction shall be recorded specifying that the accessory dwelling unit shall be offered at a reduced rent that is affordable to a lower income renter (less than 80 percent AMI) provided that the unit is occupied by someone other than a member of the household occupying the primary unit.

(b) *Design and development standards* .

(1) *Number* . Only one (1) accessory dwelling unit may be permitted on a lot. No additional accessory dwelling unit is allowed upon a lot with an existing accessory dwelling unit.

(2) *Permitted zones* . Accessory dwelling units are allowed on lots in the R-1, R-D, R-M, R-1D, HR, and RC zones.

(3) *Setbacks* . Attached accessory dwelling units shall comply with the setbacks of the zone for a primary dwelling unit.

No detached accessory dwelling unit may be placed in front of the primary dwelling unit in the R-1, R-D, R-M, and R-1D zones.

Detached accessory dwelling units shall comply with the following minimum setbacks:

- a. Front and side setbacks abutting a street of the zone for a primary dwelling unit.
- b. Rear and side setbacks of five (5) feet in the R-1, R-D, R-M, and R-1D zones.
- c. Setbacks from any other structure located on the same lot of five (5) feet.
- d. Setbacks for a primary dwelling unit, and located within the Least Restrictive Development Area (LRDA), in the HR and RC zones.

An accessory dwelling unit with existing side and rear setbacks sufficient for fire safety shall be permitted if the accessory dwelling unit is contained within the existing space of a primary dwelling unit or accessory structure.

(4) *Height* . Accessory dwelling units shall not exceed one (1) story in height, and shall not exceed fifteen (15) feet in height, unless the accessory dwelling unit is contained within the existing two-story space of a primary dwelling unit or accessory structure; added to an existing two-story primary dwelling unit; or added above an existing one-story accessory structure on a property with an existing two-story primary dwelling unit in the R-1, R-D, R-M, and R-1D zones.

(5) *Maximum unit size and maximum number of bedrooms* . The maximum floor area of an accessory dwelling unit is 1,200 square feet. The maximum number of bedrooms is two (2).

Detached accessory dwelling units exceeding a combined square footage of 450 square feet in the R-1, R-D, R-M and R-1D zones shall not be subject to the Administrative Procedure for Minor Residential Projects. Detached accessory dwelling units exceeding a combined square footage of 600 or 1,000 square feet in the HR and RC zones shall not be subject to Development Review Committee or Planning Commission approval.

(6) *Floor area ratio (FAR) standards* . All accessory dwelling units (attached or detached) are allowed a ten (10) percent increase in the floor area ratio standards for all structures, excluding garages.

(7) *Lot coverage* . Accessory dwelling units must comply with lot coverage maximums for the zone except with regard to the addition of a single efficiency unit.

(8) *Parking* . In addition to parking otherwise required for units as set forth in section 29.10.150 of the Town Code, the number of off-street parking spaces required by this chapter for the primary

dwelling unit shall be provided prior to the issuance of a building permit or final inspection, for a new accessory dwelling unit. When a garage is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, any lost off-street parking spaces required for the primary dwelling unit may be located in any configuration on the same lot as the accessory dwelling unit, including as tandem spaces, or by the use of mechanical automobile parking lifts.

- a. *Exceptions* . No parking spaces shall be required if the accessory dwelling unit meets any of the following criteria:
  1. The accessory dwelling unit is located within one-half mile of a public transit stop.
  2. The accessory dwelling unit is located within an architecturally and historically significant historic district.
  3. The accessory dwelling unit is within the existing space of a primary dwelling unit or an existing accessory structure.
  4. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
  5. When there is a car share vehicle (as defined by the California Vehicle Code) located within one block of the accessory dwelling unit.
  6. When the Director finds that the lot does not have adequate area to provide parking.
- (9) *Design, form, materials, and color* . The design, form, roof pitch, materials, and color of a new accessory dwelling unit shall be compatible with the primary dwelling unit and the neighborhood. Entrances serving the accessory dwelling unit shall not be constructed on any elevation facing a public street. Accessory dwelling units shall retain the single-family appearance of the property.
- (10) *Town codes and ordinances* . All accessory dwelling units shall comply with all the provisions of this chapter and other applicable Town codes.
- (11) *Building codes* . The accessory dwelling unit shall comply with applicable building, health and fire codes. The accessory dwelling unit shall not be required to provide fire sprinklers if they are not required for the primary dwelling unit.
- (12) *Denial* . An application may be denied if it does not meet the design and development standards. An application may also be denied if the following findings are made:
  - a. Adverse impacts on health, safety, and/or welfare of the public.
- (13) *Conversion of existing floor area* . An accessory dwelling unit shall be permitted if the accessory dwelling unit is contained within the existing space of a primary dwelling unit or accessory structure. The following provisions shall apply:
  - a. The accessory dwelling unit shall be located within a zone for a single-family use.
  - b. The accessory dwelling unit shall have separate entrance from the primary dwelling unit.
  - c. The accessory dwelling unit shall have existing side and rear setbacks sufficient for fire safety.
  - d. No parking spaces shall be required for the accessory dwelling unit.
- (14) *Rentals longer than 30 days* . Rentals for durations of less than thirty (30) days, including short-term rentals (as defined by the California Government Code), are prohibited.
- (15) *Maximum number of dogs, cats, or litters* . All accessory dwelling units shall comply with Section 4.40.010 of the Town code.

( Ord. No. 2270, § 1, 2-6-18 )

## Holly Zappala

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**From:** Kathy Kroesche <kathy.kroesche111@gmail.com>  
**Sent:** Friday, November 02, 2018 1:45 PM  
**To:** Holly Zappala  
**Subject:** short term rentals

Dear Holly,

Regarding the Town of Los Gatos plans to address short term rentals, I would like to share my story. My parents were both teachers in Portola Valley and we would rent out our home in Menlo Park during the summer starting in the 70s, decades before Airbnb. Now I am married to a Los Gatos High School teacher, and we, out of necessity, have rented out our home for the past 9 summers in order to pay for repairs, travel, and college for our daughters.

This next summer we are traveling to Uganda to work in an orphanage and teach teachers. We cannot afford this travel without renting out our home. Ideally, we'd like to rent it for more than 30 days, but due to the prevalence of Airbnb and other sites, we are finding longer terms longer than a week or two hard to achieve. I hope the Town will consider the great expense of housing in our area and the need for people to make ends meet using their own assets. Renting out one's own personal home is not easy. We would not do it if it wasn't necessary.

Thank you for your consideration. The Town meeting on this issue is on my birthday so it will be a challenge to slip away from family.

Take Care,

**Kathy Kroesche**

Cell 408-438-0103



## Holly Zappala

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**From:** Jennifer E Liebthal <jliebthal@gmail.com>  
**Sent:** Tuesday, November 06, 2018 4:39 PM  
**To:** Holly Zappala  
**Subject:** Short Term Vacation Rentals

Hi Holly,

I support vacation rentals in Los Gatos. I am unable to make the November 15th meeting regarding short term rental regulations as I will be out of town however I did want to provide some input for consideration. I think that having short term rentals in Los Gatos can help bring more vacationers into Los Gatos and help promote and increase much needed revenue for our local businesses. I think it may also help those in Los Gatos who have lived here for generations but are finding it hard to make ends meet to subsidize their income by renting out a room, etc.

It may be nice to impose a short term rental tax and some laws saying that if any rental has multiple infractions (noise, etc) then there is some consequence.. maybe being suspended from renting for some certain amount of time.

Thanks for your time,  
Jennifer

Attachment 7



**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE ADDING ARTICLE XIV TO CHAPTER 14 OF THE TOWN OF LOS GATOS TOWN CODE RELATED TO SHORT-TERM RENTAL OF RESIDENTIAL PROPERTY**

**WHEREAS, pursuant to the authority granted to the Town of Los Gatos ("Town") by Article XI, Section 7 of the California Constitution, the Town has the police power to regulate the use of land and property within the Town in a manner designed to promote public convenience and general prosperity, as well as public health, welfare, and safety; and**

**WHEREAS, adoption and enforcement of regulations and other land use regulations lies within the Town's police powers; and**

**WHEREAS, the Town Council Policy Committee held Public Meetings on \_\_\_\_\_ and reviewed existing practices and ordinances in order to make recommendations how the Town should regulate short-term rentals; and**

**WHEREAS, the Town Council of the Town of Los Gatos, California, did on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, hold a duly noticed public hearing to consider recommendations from the Town Policy Committee adding a Short-Term Rentals Ordinance to the Town Code in regards to enforcement, operational requirements, communication, and density of short- term rentals throughout the Town ; and**

**WHEREAS, the Town Council of the Town of Los Gatos, California, did on the \_\_\_\_\_ th day of \_\_\_\_\_ 2019, approve first reading of an Ordinance adding Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to Short term rentals ; and**

**WHEREAS, the Town Council of the Town of Los Gatos, California, did on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, approve second reading of an Ordinance adding Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to Short term rentals ; and**

**WHEREAS, the Town Council of the Town of Los Gatos , California has determined that the addition of Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to Short Term Rentals is consistent with the General Plan and applicable state law; and**

**WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, said Town Council did find the following facts and reasons to exist to approve said ordinance.**

**NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Los Gatos, California as follows:**

Attachment 4

**SECTION 1. INCORPORATION OF RECITALS.** The Town Council of the Town of Los Gatos finds that all Recitals are true and correct and incorporate them herein by this reference.

**SECTION 2. AMENDMENT OF MUNICIPAL CODE.** Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to Short Term Rentals is hereby added to read as follows:

#### **ARTICLE XIV – SHORT-TERM RENTALS**

##### **Sec. 14.140.010 - Purpose and intent.**

This article authorizes short-term rental use of a dwelling unit for remuneration for less than 30 consecutive days and establishes short-term rental license requirements and limitations. The intent of providing reasonable and necessary regulations for the licensing of short-term rental of residential dwelling units is to:

- (a) Ensure the safety, welfare and convenience of renters, owners, and neighboring property owners throughout Los Gatos.
- (b) Allow property owners the right to use their property as they choose while protecting neighbors from nuisance situations.
- (c) Help maintain the Town’s residential housing stock.
- (d) Protect neighborhood character and ensure short-term rental use is compatible with surrounding residential uses.
- (e) Ensure the collection of Transient Occupancy Tax (TOT) under Chapter 25 of the Los Gatos Municipal Code.

A short-term rental license is a permission to operate a short-term rental in accordance with this chapter. An operating license may be terminated or revoked if the standards of this chapter are not met or the dwelling is sold or otherwise transferred as defined in this chapter.

##### **Sec. 14.140.015 - Definitions.**

The words and terms in this chapter shall have the following meanings unless the context clearly indicates otherwise.

- (a) *Community Development Director* means the Town of Los Gatos Community Development Director or his/her designee.
- (b) *Host* means the person(s) who is the owner of record of residential property, and responsible for offering a dwelling unit, or portion thereof, for short-term rental either

through a hosting platform or individually, and holds the license to operate the short-term rental.

- (c) *Hosted Rental* means the host is a permanent resident of and resides at the property while it is being used as a short-term rental.
- (d) *Hosting Platform* means a marketplace, in whatever form or format, which facilitates short-term rentals through advertising, matchmaking, or any other means, using any medium of facilitation, and from which the operator of the hosting platform derives revenue, including booking fees or advertising revenue, from providing or maintaining the marketplace.
- (e) *Primary Residence* means a host's permanent residence or usual place of return for housing as documented by at least two of the following and in the host's name: motor vehicle registration, driver's license, voter registration, tax document showing the residential unit as the host's residence, or a utility or cellular phone bill from within the past 60 days. A person may only have one primary residence and must reside there for a minimum of nine (9) months per year.
- (f) *Short-Term Rental (STR)* means the practice of renting a portion of or an entire home to a person or group of people for periods of less than 30 nights.
- (g) *Un-Hosted Rental* means the short-term rental of a house or property without the host/owner residing at the property while it is being used as a short-term rental.

#### **Sec 14.140.020 - Annual Short-Term Rental License Required**

No owner of property within the jurisdiction of the Town of Los Gatos may advertise, offer, operate, rent or otherwise make available, or allow any other person to make available for occupancy or use a short-term rental without a short-term rental license. Advertise or offer includes through any media, whether written, electronic, web-based digital, mobile, or otherwise.

#### **Sec 14.140.025 - Short-Term Rental License Application Process**

A short-term rental license application provided by the Town is required to be completed and submitted in order to obtain a short-term rental license. A host may apply for both a hosted and un-hosted license at the subject property. The application shall comply with all terms, conditions, and requirements of this chapter including the following:

- (a) *Host/Address Information*: The application shall include the name, address, email address, and telephone number of the host as well as two pieces of attached documentation showing that the property is the host's primary residence. The address and phone number (if applicable) of the property to be used as the short-term rental

must also be included on the application. The short-term rental property must either have the same address or be located on the same parcel as that of the host's primary residence.

- (b) Representative information: The host shall provide the name, permanent address, email address, and telephone number (if different from his/her own), of a local representative (which can be a person or company) who can be contacted 24 hours a day regarding the use of the property or complaints related to the short-term rental. For the purposes of this requirement, local means the representative's address is within a 30-minute travel time of the subject property and the representative is able to manage the short-term rental, respond to reported issues, contact the tenant regarding complaints received, and/or be physically present at the short-term rental to address complaints within 60 minutes from the time of notification.
- (c) Acknowledgement of Local Rules: Acknowledgment that upon both booking and arrival, the host must provide the short-term rental guest either a physical or electronic copy of the Town's Noise Ordinance, Smoking Ordinance, Short-Term Rental Ordinance, including highlighted parking and occupancy requirements, and local trash collection schedule.
- (d) Acknowledgment of Occupancy and Parking Limits: The number of rooms that will be rented and occupancy limits for the short-term rental must be acknowledged by the host. The number of either on-site parking spots or parking permits to be used for the short-term rental must also be provided as well as acknowledgment of the parking regulations in this article.
- (e) Advertisement: If the host is planning to advertise, the listing numbers or URL/website addresses of where the short-term rental is advertised must be provided.
- (f) Certificate of Occupancy: The host must attach a copy of the Certificate of Occupancy for the property to be used as a short-term rental to the application in order to ensure the space is habitable and in compliance with all permit conditions, laws and codes. If no Certificate of Occupancy can be produced, the host must pay for, obtain, and pass a Health and Safety Inspection from the Community Development Department prior to issuance of a short-term rental license.
- (g) Any property that is part of a homeowner's association (HOA) requires an attached letter of approval from the HOA authorizing use of the premises as a short-term rental.
- (h) All required fees must be paid. Registration of a short-term rental shall be on a calendar year basis. Fees shall be pro-rated for any approved license on a quarterly basis.
- (i) Any other information which the Community Development Director may require to properly administer the short-term rental license.

- (j) Upon application for a short-term rental license, all short-term rental units shall be subject to inspection by the Town for compliance with this Ordinance. The Community Development Department may conduct a site visit upon application for a short-term rental to confirm the number of bedrooms (as defined by the International Building Code) stated on the application and the number, location, and availability of on-site parking spaces. The site visit will be coordinated with the host and be conducted during the Town's normal business hours, and with reasonable notice.
  
- (k) The Community Development Director may delay or deny issuance of a short-term rental license or renewal for any reason, including, but not limited to, the following grounds:
  - (1) The short-term rental unit does not meet the definition of a dwelling unit or is deemed to be uninhabitable.
  
  - (2) The short-term rental license application is incomplete or does not comply with the Town's Short-Term Rental Ordinance regulations.
  
  - (3) The host refuses or fails to comply with the regulations set forth in this Short-Term Rental Ordinance.
  
  - (4) The host made a false statement or misrepresentation on the short-term rental license application.
  
  - (5) The building inspection report identifies an unsafe condition and the identified deficiencies have not been corrected prior to issuance of a short-term rental license.
  
  - (6) The short-term rental property has outstanding administrative penalties or the host or owner owes past-due transient occupancy taxes for prior short-term rental use, or the property under present ownership has previously been used for short-term rental use without a short-term rental license.

**Sec 14.140.030 - Transferability and Cap**

- (a) Each short-term rental license shall be non-transferable to any other person or location. No short-term rental license shall be assignable and shall not be transferred upon sale or other transfer of ownership of the property.
  
- (b) Short-term rental licenses shall be capped at five percent (5%) of the housing stock of the Town of Los Gatos. If at any time, the number of valid short-term rental licenses issued exceeds five percent of the Town's housing stock, the issuance of licenses will cease and additional applicants will be placed on a first-come, first-served waiting list.

#### **Sec 14.140.035 - Short-Term Rental License Renewal**

Each short-term rental license will be good through the end of the calendar year. No short-term rental license shall be renewed automatically. It shall be the responsibility of the host to renew the license at the end of each calendar year and submit an updated application/renewal form and any applicable fees.

#### **Sec 14.140.040 - Business License Requirements**

Each host operating a short-term rental in the Town of Los Gatos must obtain a Town business license and pay all applicable fees. The hotel business license application must be completed and submitted to the Finance Department. It is the responsibility of the host to make sure the business license is renewed before the end of each calendar year.

#### **Sec 14.140.045 - Transient Occupancy Tax Registration Form**

Transient Occupancy Taxes (TOT) shall be collected for short-term rentals and paid to the Town of Los Gatos, pursuant to Chapter 25, Article III of the Los Gatos Municipal Code. Collection and remittance of TOT is the responsibility of the host. If a hosting platform is used, and the Town has a voluntary collection agreement, or equivalent, with that hosting platform, TOT may be collected and remitted directly to the Town by the hosting platform. The host must maintain records of TOT paid, even if paid by a hosting platform, for three years.

#### **Sec 14.140.050 - Health and Safety**

- (a) It is the host's responsibility to assure that the short-term rental is and remains in substantial compliance with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws. The host must provide all renters with facilities for sleeping, bathing, and toileting within a permanent dwelling that is suitable for human occupancy. Rental of sleeping space in or on balconies, porches, tents, sheds, vehicles, garages, outdoor areas, or other uninhabitable spaces is prohibited.
- (b) During all months that the property is available for short-term rental use, the property shall have weekly solid waste collection service with assisted pick-up provided by the solid waste provider, if available.

#### **Sec 14.140.055 - Duration**

- (a) In a hosted rental, the number of nights that the property can be used for short-term rental purposes shall be limited to 180 nights per calendar year. If there are multiple rooms or units on the parcel that are intermittently used for short-term rental purposes, the 180 nights shall be calculated as the cumulative total for any and all units on the parcel.

- (b) In an un-hosted rental, the number of nights that the property can be used for short-term rental purposes shall be limited to 30 nights per calendar year.

#### **Sec 14.140.060 - Parking**

In areas where the Town does not provide permitted on-street parking for residents, all short-term rental parking must remain on-site. Parking areas shall not be located in the front yard or other non-approved areas. In areas where the Town provides permitted on-street parking for residents, short-term rental parking is limited to the use of the standard two guest parking passes purchased per house/property through the Police Department. No additional parking passes will be provided for short-term rental use.

#### **Sec 14.140.065 - Accessory Dwelling Units**

Per Town Code Sec 29.10.320 (b) (14), short-term rentals are prohibited in new accessory dwelling units, approved after February 6, 2018. Short-term rentals are only allowed in accessory dwelling units approved before February 6, 2018.

#### **Sec 14.140.070 - Occupancy Regulations**

The maximum number of overnight occupants (aged 18 or older) allowed within a short-term rental unit shall be two persons per bedroom, plus one additional person per unit. The maximum number of daytime (non-overnight) occupants shall be one and a half times the maximum number of occupants allowed to stay overnight at the unit. The Town has sole discretion to determine the final occupancy limit to be permitted at the short-term rental site.

#### **Sec 14.140.075 - Specific Prohibitions**

The host is responsible for ensuring the property does not become a nuisance due to any short-term rental occupant activities. The following activities are examples that include, but are not limited to, those prohibited for short-term rentals:

- (a) Senior housing units and Below Market Price units may not be used for short-term rental purposes.
- (b) A host may not have licenses on more than one parcel for short-term rental use in the Town's jurisdiction. In addition, the parcel listed on the license must be the host's primary residence.
- (c) More than one short-term rental may not occur concurrently per parcel.
- (d) Short-term rentals are prohibited in all apartment complexes and multi-unit housing (more than three units).

- (e) Commercial or assembly uses, such as weddings, corporate events, and parties, are prohibited in short-term rentals.
- (f) Short-term rental to unaccompanied minors is prohibited.
- (g) Activities that exceed the noise limitations in the Town of Los Gatos Noise Ordinance in Chapter 16 of the Municipal Code or constitute a nuisance as defined in Chapter 17 of the Municipal Code are prohibited.

#### **Sec 14.140.080 - Violations**

In addition to complaints related to nuisance and noise and other violations of the Los Gatos Town Code, the following conduct are examples of, but not limited to, conduct which constitutes a violation of this chapter:

- (a) The discovery of material misstatements or providing of false information in the application or renewal process.
- (b) A change that occurs in any material fact upon which the short-term rental license was issued where the change was not reported to the Town within 14 days.
- (c) Representing a dwelling as available for use, occupancy, or rent as a short-term rental without a valid license issued under this chapter, or making a short-term rental available for use, occupancy, or rent without first obtaining a short-term rental license.
- (d) Advertising or renting a short-term rental that does not comply with the standards of this chapter.
- (e) Failure to self-report or remit Transient Occupancy Tax (TOT) on a quarterly basis to the Town.
- (f) Complaints which have been independently verified by Town of Los Gatos staff regarding limits on short-term rental use, such as, but not limited to:
  - (1) Exceeding allowable occupancy.
  - (2) Violation of the Town's noise ordinance.
  - (3) Failure to dispose of solid waste.
  - (4) Failure to properly store waste and refuse bins.

- (5) Failure to follow parking regulations.
- (6) Any other incident which, at the discretion of the Community Development Director, provides grounds for a verified complaint.

**Sec 14.140.085 - Penalties**

- (a) Each 24-hour period in which a dwelling is used, or advertised, in violation of this chapter shall be considered an occurrence for calculation of the following fines:
  - (1) The first occurrence of a violation will incur a warning.
  - (2) A second occurrence of a violation within a 12-month period is subject to a \$250 fine.
  - (3) A third occurrence of a violation within a 12-month period is subject to a \$500 fine and immediate revocation of the short-term rental license.
- (b) Revocation. The following actions are grounds for immediate revocation of a short-term rental license:
  - (1) Failure to renew a short-term rental license while continuing to operate a short-term rental.
  - (2) The occurrence of three or more violations within a 12-month period resulting in fines pursuant to Sec 14.140.085 (a).
  - (3) The discovery of material misstatements or providing of false information in the application or renewal process.
  - (4) Failure to self-report or remit quarterly transient occupancy tax to the Town.
  - (5) Such other violations of this chapter of sufficient severity in the reasonable judgement of the Community Development Director, so as to provide reasonable grounds for immediate revocation of the operating license.
- (c) Notice of Decision/Appeal/Stay. If the short-term rental license is revoked as provided in this section, the Community Development Director shall send written notice of revocation to the host stating the basis for the decision. The notice shall include information about the right to appeal the decision and the procedure for filing an appeal.

**Sec 14.140.090 - Appeal of Short-Term Rental License Determinations**

- (a) The host may file an appeal of a decision to revoke a short-term rental license by filing a written notice of appeal to the Community Development Department within ten (10) days of the mailing date of the decision and paying the applicable fees.
- (b) A Hearings Officer shall be responsible for determining an appeal of a decision denying an application or renewal application for a short-term rental license, or revoking a short-term rental license.
- (c) Within forty-five (45) days of receiving the notice of appeal, the Community Development Director shall schedule a hearing on the appeal before the Hearings Officer and shall give notice to the appellant of the time and place of the hearing as prescribed by law. The Community Development Director may establish administrative procedures to implement the appeal procedures provided in this section, including any required forms.
- (d) The Hearings Officer shall determine whether the Town's decision was based on a preponderance of the evidence. A decision of the Hearings Officer shall be based on the evidence received, in writing, no later than 30 days after the close of the hearing. The Hearing Officer's decision shall be final on the date of mailing the decision to the appellant. The Hearing Officer's decision is the final decision of the Town.

**Sec. 14.140.095 - Discontinuance of a Short-Term Rental License**

- (a) Revocation. After a short-term rental license has been revoked, the dwelling unit may not be used or occupied as a short-term rental unless a subsequent license is granted, and the host whose license has been revoked shall not be eligible to reapply for a short-term rental license for the same property, or other property, for a period of five years.
- (b) Expiration. If a short-term rental license expires, the dwelling unit may not be used or occupied as a short-term rental until such time as a subsequent license has been granted for that property.

**Sec 14.140.100 – Records of Compliance**

The host shall retain records documenting compliance with this chapter for a period of three years after each period of short-term rental, including, but not limited to, records showing payment of transient occupancy tax by the host or a hosting platform on behalf of a host. Upon reasonable notice, the host shall provide any such documentation to the Town of Los Gatos upon request for the purpose of inspection or audit.

**Sec. 14.140.105 – Amnesty Period**

Notwithstanding any other provision of law, short-term rentals operating on or before the enactment of this ordinance shall be considered existing, unpermitted uses. An amnesty period

of six (6) months after the effective date of this ordinance is being offered to allow these existing, unpermitted uses to be legalized by conforming to the requirements of the Chapter, including compliance with operating standards, registration, and record-keeping obligations. Transient occupancy tax (TOT) payment continues to be required at all times for short-term rentals and must be collected and paid during the amnesty period. Applications to bring an existing, unpermitted short-term rental use into compliance shall be made on or before six (6) months from the effective date of this ordinance. Existing short-term rental uses that do not conform to the requirements of this section shall cease operation within six (6) months of the effective date of this ordinance and shall be prohibited from resuming unless and until the use conforms to the requirements of this Chapter.

**Sec. 14.140.110 – Remedies Not Exclusive**

The remedies provided in this chapter are in addition to, and not in lieu of, all other legal remedies, criminal and civil, which may be pursued by the Town, to address any violation of this code or other public nuisance.

**SECTION 3. CONSTRUCTION.** The Town Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Los Gatos Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

**SECTION 4. CEQA.** The Town Council finds and determines that the adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines under the General Rule (Section 15061(b)(3)), which sets forth that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that the proposed Town Code text amendments will have no significant negative effect on the environment.

**SECTION 5. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Los Gatos hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid. Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

**SECTION 6. EFFECTIVE DATE.** This ordinance shall take effect immediately and will be enforced thirty (30) days after its adoption.

**SECTION 7. PUBLICATION AND POSTING.** In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

**SECTION 8. INTRODUCTION AND ADOPTION.** This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on \_\_\_\_\_, 2019 and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on \_\_\_\_\_, 2019.

**COUNCIL MEMBERS:**

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN**

**SIGNED:**

**MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**

**ATTEST:**

**CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA**



**TOWN OF LOS GATOS**  
**POLICY COMMITTEE REPORT**

MEETING DATE: 12/20/2018

ITEM NO: 3

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DATE: DECEMBER 13, 2018

TO: COUNCIL POLICY COMMITTEE

FROM: LAUREL PREVETTI, TOWN MANAGER

SUBJECT: CONTINUE DISCUSSION ON PARKLETS AND PROVIDE DIRECTION TO STAFF.

**RECOMMENDATION:**

Continue discussion on parklets and provide direction to staff.

**BACKGROUND:**

At previous Policy Committee meetings, the Committee has explored options for a pilot program to implement parklets.

**DISCUSSION:**

Based on input from previous meetings, staff has begun to develop a draft parklet pilot program document (Attachment 1). The Committee may want to provide feedback on the document content and next steps. Staff is particularly interested in conversation regarding the use of parklets for table service. Staff believes that a pilot program may not result in interest from businesses if the use of the space is severely limited. With that consideration in mind, staff has provided additional alternative language in Attachment 1 for consideration.

**COORDINATION:**

The preparation of this report was coordinated with Community Development, Parks and Public Works, and the Town Manager's Office.

**FISCAL IMPACT:**

There is no fiscal impact associated with this initiative at this time.

**PREPARED BY:** Matt Morley  
Parks and Public Works Director

PAGE 2 OF 2

SUBJECT: DISCUSS AND PROVIDE DIRECTION REGARDING PARKLETS PARAMETERS

DATE: NOVEMBER 15, 2018

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Draft Parklet Pilot Program

# DRAFT - Parklet Pilot Program – Quick Reference

## Overview

The intent of the parklet program is to create publicly accessible open spaces in the downtown to enhance the attractiveness of the downtown for residents and visitors.

## The Parklet

A space along the street within one or more parking spaces that provide an amenity for visitors.

## The Applicant

The applicant should be the property or business owner most adjacent to the parking space(s). Community organizations are also eligible and need not have an adjacent office.

## Use of Parklet

The parklet shall be open to use by the public at all times. No preference will be allowed for patrons of the adjacent business, although those customers may utilize the parklet. No table service is permitted. No alcohol is permitted in the parklet.

### *Alternative language –*

The parklet shall be open to use by the public at all times. Adjacent businesses may use up to 50% of the parklet for seating (measured by linear feet, not seats) during business hours.

## Eligible Streets

The program will be available along Main Street from Santa Cruz Avenue to Villa Avenue.

## Parklet Size

The ideal size for a parklet in the pilot program is two parking spaces in length. Parklets of one or three parking spaces will also be considered.

## Number of Parklets

During the pilot program a maximum of two parklets will be allowed.

## Design Guidance

Parklets are intended to be gathering spaces for the public and should create a welcoming space with interactive elements to meet the need of a variety of residents and visitors.

## Community Support and Outreach

The applicant must have support of nearby businesses and residences and must notify those immediately surrounding the parklet.

## Term of Pilot Program

The pilot program will last for a period of two years.

# DRAFT - Parklet Pilot Program – Program Guidelines

1. Application Process: Applicants will submit an application outlining the parklet concept as detailed in the following sections. The Town will select the two top scoring applicants to move forward with technical applications.
2. Concept Submittal Requirements: Applicants shall submit the following to the Town as a concept application:
  - A written description of the proposed parklet addressing the requirements of the program and specifically identifying how the parklet meets each of the evaluative criteria in Section 7.
  - A schematic representation of the parklet showing design style and concepts that allow for evaluation by the criteria listed in Section 7.
  - Scaled drawing showing location, dimensions, and existing infrastructure.
  - Documents indicating support of adjacent business and property owners.
3. Selection: The Town will select two parklet locations through an open solicitation from interested parties. The Town will select the parklets for installation based on compliance with the required elements and by the highest scoring project based on the evaluative criteria in Section 7.
4. Eligible Applicants: A parklet may be proposed by an adjacent business owner or property owner. These businesses will benefit from increased exposure of the business to users of the parklet.

A community organization may also apply to provide a parklet as a benefit to the community.

Applicants are encouraged to meet with Town staff to review the concept and explore feasibility prior to submitting an application.

5. Locations: A parklet may be placed along the curb on Main Street between North Santa Cruz Avenue and Villa Avenue. Parklets must not obscure visibility at intersections or driveways.

Parklets are not permitted:

- At red (no parking) or white (passenger loading zone) curbs.
- To obstruct access to utilities (man holes, valves boxes, etc).
- Along the bridge deck over Highway 17.

6. Parklet Size: Parklets are intended to complement and balance current needs in the Downtown. The ideal size for a parklet is the length of two parking stalls, however one and three stall sizes will be considered. The finished width of the parklet, including all elements, shall not protrude past the inside of the parking stall hash mark painted on the roadway.

7. Evaluative Criteria:

Applications must achieve a minimum of 15 points (20 total possible) for consideration.

(5 points) – Built in tables and seating provide access to the space beyond the operating hours of any one business. The inclusion of counter height surfaces or standing height tables is desirable. Modular tables and chairs may be incorporated as well.

(5 points) – The parklet provides a benefit to all downtown visitors – creating a community benefit that invites casual gathering.

(3 points) – Support of adjacent and nearby businesses and property owners demonstrates a collaborative effort.

(5 points) – Design style, including landscaping or greenery, quality of materials, and creativity of design elements, provide for an appealing parklet.

(2 points) – The inclusion of lighting, heating, interactive elements, or other features may increase the usefulness and attractiveness of the parklet.

## DRAFT - Parklet Pilot Program – Technical Requirements

The Technical application will be reviewed with staff to ensure that the intent of the technical criteria is met. The applicant should provide documentation to support each of the following:

1. Operational Plan
  - a. Food may be ordered in a restaurant and served at the parklet.
  - b. Table side ordering is not permitted.
  - c. No alcohol service is permitted at the parklet.
2. Maintenance Plan
  - a. Daily maintenance and cleaning schedule and tasks
  - b. Weekly enhanced cleaning schedule
  - c. As needed component repair and replacement.
3. Site Plan
  - a. Detailed fully dimensioned plan set, including elevations.
  - b. Details of slopes, transitions, and clearances.
  - c. ADA accessibility including seating and travel ways at the parklet and on the sidewalk.
4. Design Requirements
  - a. Parklets shall be aligned with the interior edge of exiting parking space delineation.
  - b. Parklets, including all ancillary elements, shall not extend more than eight feet from the curb.
  - c. Parklet must be completely constructed within three months of issuance of encroachment permit.
  - d. No advertising signage is permitted.
  - e. Parklet applicants shall obtain encroachment and building permits from the Town at standard permit costs.
  - f. Parklet applicants shall maintain insurance at levels approved by the Town.
  - g. Parklet applicants shall maintain a current business license with the Town.

- h. High quality, durable materials capable of withstanding year-round use in a marine environment are required. No bolts or anchors shall penetrate the pavement or sidewalk.
  - i. No overhead elements will be permitted, including lights, umbrellas, or other structures.
  - j. Parklet platform decking shall be at the same height as the curb. Platform shall not exceed ½" distance from the curb.
  - k. Platform shall allow for free flow of curb line storm water – subject to approval of the Parks and Public Works Department.
  - l. Platform shall allow for access for cleaning underneath the platform.
  - m. Platform design shall accommodate the cross slope of the street and shall retain a platform cross slope of less than 2%.
  - n. Parklet design shall fully comply with ADA requirements.
  - o. Parklet shall include a physical barrier along the street sides to prevent users from stepping directly into the roadway.
  - p. No perimeter wall or rail may be less than 36 inches and must not obstruct views of traffic.
  - q. Platform ends and corners must be capable of withstanding 500 pounds of horizontal force.
  - r. Additional street side platform reinforcement capable of withstanding 500 pounds of horizontal force must be placed a minimum of every 15 feet.
  - s. Parking stops and reflective delineators must be placed at the traffic flow side of the parklet.
  - t. Signs stating "Public Parklet – All Seating Open to the Public" with minimum dimensions of 12" x 12" shall be placed at each end and a minimum of every 15 feet along the sidewalk side of the parklet.
5. Project Construction and Approval
- a. Project construction will be authorized through issuance of an encroachment permit and a building permit.



**TOWN OF LOS GATOS  
POLICY COMMITTEE REPORT**

MEETING DATE: 12/20/2018  
ITEM NO: 4

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DATE: DECEMBER 11, 2018

TO: POLICY COMMITTEE

FROM: LAUREL PREVETTI, TOWN MANAGER

SUBJECT: DISCUSS AND PROVIDE DIRECTION ON PROPOSED AMENDMENTS TO CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING **FENCES, HEDGES, AND WALLS.**

RECOMMENDATION:

Discuss proposed amendments to Chapter 29 of the Town Code regarding fences, hedges, and walls and provide direction to staff for next steps.

BACKGROUND:

A draft Ordinance regarding fences, hedges, and walls was considered by the Town Council at the October 16, 2018 meeting, at which time a motion was approved to continue the matter to December 4, 2018, and forward the draft Ordinance to the Town Council Policy Committee for consideration of the following:

- Appropriate property size;
- Break down by zone versus property size;
- Appropriate materials;
- Number of properties the Ordinance would affect;
- Noticing requirements;
- Additional input from other groups;
- Review of Ordinances in similar jurisdictions; and
- Appropriate front yard fence heights.

PREPARED BY: SEAN MULLIN, AICP  
Associate Planner

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Reviewed by: Community Development Director, Town Manager

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BACKGROUND (continued):

A draft Ordinance was considered by the Town Council Policy Committee at its November 15, 2018 meeting. The Policy Committee received public testimony and discussed the points forwarded by the Town Council. The Policy Committee directed staff to prepare a draft Ordinance for consideration by the Town Council at its December 4, 2018 meeting, to address the following fence regulations:

- Fence height increase to seven (7) feet (non-hillside area only);
- Appropriate front yard and street side yard fence height and setbacks (Town-wide); and
- Vehicular gate setback requirements (Town-wide).

The Town Council considered and introduced an Ordinance effecting these regulations at the December 4, 2018 meeting. The second reading of the Ordinance is scheduled for the December 18, 2018 Town Council meeting (Attachment 1).

On November 15, 2018, the Policy Committee also continued the discussion of fence regulations in the hillside area and provided direction to staff to return with a draft Ordinance reflecting the language regarding fencing contained in the Hillside Development Standards and Guidelines (HDS&G).

DISCUSSION:

Staff has prepared a draft Ordinance reflecting the language in the HDS&G for consideration by the Policy Committee (Attachment 2). The following points are intended to guide the discussion. Staff looks forward to the discussion and direction of the Committee.

1. Permits Required

The Town does not currently require a Planning permit for fencing, walls, hedges, or gates. The draft Ordinance would not introduce a Planning permit requirement for fencing.

2. Divides the Town into two areas – Hillside and Non-Hillside Areas

The draft Ordinance divides the Town into two areas: hillside and non-hillside areas (Attachment 2). The sections of the draft Ordinance impacting the hillside area reflects the existing Standards and Guidelines in the HDS&G regarding fences and walls; and driveway entries (Attachment 3). The non-hillside area regulations included in the draft Ordinance reflect the Ordinance being considered under a second reading by the Town Council on December 18, 2018, with one exception: a list of

DISCUSSION (continued):

prohibited materials has been included as directed by the Town Council as a discussion point for the Policy Committee. This materials list is discussed below.

3. Purpose and Intent Statement – Hillside Area

The draft Ordinance for the hillside area introduces a purpose and intent statement reflecting the objectives stated in the Fences and Walls section of the HDS&G (Attachment 3).

4. Organization – Hillside Area

The regulations following the purpose and intent statement reflect the HDS&G Standards and Guidelines for fences and walls; and driveway entries. These regulations have been organized by category, similar in structure to the non-hillside area section of the draft Ordinance with the addition of separate subsections on Siting and Materials, and a separate section on Driveway Entries. The Materials subsection includes a list of preferred and discouraged materials, as listed in the HDS&G, as well as a list of prohibited materials included in the previous version of the draft Ordinance. The prohibited materials list has been included at the direction of the Town Council as a discussion point for the Policy Committee. This list is discussed below.

5. Materials – Hillside and Non-Hillside Areas

At the direction of the Town Council, the draft Ordinance introduces a materials section to the non-hillside area regulations. This list is included to aid in the Committee's discussion of materials appropriate to the non-hillside areas of Town. Similarly, a materials section is included in the hillside area regulations. This list reflects what was included in the previous draft of this Ordinance and is included to guide the Committee's discussion on the materials appropriate to the hillside area. Staff recommends careful consideration of the materials in each list, provided below.

Non-hillside Area Materials List (29.40.031):

(b) Materials.

(1) The following fence types and materials are prohibited for new or replacement fences:

- a. Any fence with bare lengths of wire stretched between posts.
- b. Electric fences, including any fence designed to produce an electric shock.

DISCUSSION (continued):

- c. Barbed or razor wire fences, including any fence with attached barbs, sharp points, or razors.
- d. Transparent fences such as barriers of glass or clear plastic.
- (2) Plastic fencing is discouraged everywhere and is prohibited in Historic Districts.
- (3) Chain link fences are strongly discouraged.

Hillside Area Materials List (29.40.032):

(c) Materials.

- (1) Wood rail-type fences and gates are preferred.
- (2) Solid fencing materials shall not be used unless needed for privacy.
- (3) Chain link fences are strongly discouraged.
- (4) Chain link fencing shall be coated with green, brown, or black vinyl or finish and shall be supported by a wood frame. Dark, painted metal poles may be allowed if deemed appropriate by the decision-making body.
- (5) The following fence types and materials are prohibited for new or replacement fences:
  - a. Chicken wire, welded wire, wire mesh, or similar fence material.
  - b. Buck and rail fences.
  - c. Any fence with bare lengths of wire stretched between posts.
  - d. Electric fences, including any fence designed to produce an electric shock.
  - e. Barbed or razor wire fences, including any fence with attached barbs, sharp points, razors.
  - f. Double fences.
  - g. Transparent fences such as barriers of glass or clear plastic.

CONCLUSION:

Staff looks forward to the discussion and direction of the Committee for next steps.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office.

PAGE 5 OF 5

SUBJECT: PROPOSED AMENDMENTS TO THE TOWN CODE REGARDING FENCES, HEDGES,  
AND WALLS

DATE: DECEMBER 11, 2018

Attachments received with this Staff Report:

1. Draft Ordinance Amending Town Code Chapter 6 and Chapter 29 being considered by the Town Council on December 18, 2018
2. Draft Ordinance Amending Town Code Chapter 29
3. Excerpts of the Hillside Development Standards and Guidelines Regarding Fences and Walls; Driveway Entries; and Retaining Walls

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**ORDINANCE**

**ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 6 SECTION 6.150.050 AND CHAPTER 29 (ZONING  
REGULATIONS) SECTION 29.40.030 OF THE TOWN CODE  
REGARDING FENCES, HEDGES, AND WALLS**

**WHEREAS**, the Town Council at its meeting of January 31, 2017, identified amendments regarding fences in the Hillside Area as a strategic priority to maintain wildlife movement corridors and address movement-restrictive fences; and

**WHEREAS**, the Planning Commission considered proposed amendments regarding fences at its meeting of September 13, 2017, and forwarded a draft Ordinance to the Town Council for consideration without an up or down vote with consideration of comments from Commissioners and the public;

**WHEREAS**, at the September 19, 2017 Planning Commission meeting, a community member requested that the maximum fence height allowed without an exception outside of the hillside area be increased from six feet to seven feet to reconcile many existing nonconforming fences and reflect the desires of the residents; and

**WHEREAS**, On December 5, 2017, the Town Council reviewed and commented on the proposed amendments regarding fences, and continued the matter to a date uncertain for further consideration; and

**WHEREAS**, On October 16, 2018, the Town Council reviewed and commented on the proposed amendments regarding fences, and continued the matter to a date certain for further consideration forwarded the matter to the Town Council Policy Committee for consideration; and

**WHEREAS**, at the October 16, 2018 Town Council meeting, a community member expressed concern with the Town Code allowance of six-foot tall fences and gates in the front yards of properties and requested that the Town Council Policy Committee consider whether this allowance was appropriate; and

**WHEREAS**, On November 15, 2018, the Town Council Policy Committee reviewed the proposed amendments regarding fences in the hillside area, considered an increase to the maximum allowed fence height without an exception outside of the hillside area, and considered the appropriateness of six-foot tall fences and gates in the front and street side yard setbacks of properties. The Town Council Policy Committee continued the consideration of proposed amendments regarding fences in the hillside area to a date uncertain for further consideration by the Town Council Policy Committee and forwarded recommended amendments regarding fences throughout Town to the Town Council for consideration; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on December 4, 2018; and

**WHEREAS**, on December 4, 2018, the Town Council accepted the report of the Town Council Policy Committee's recommendation and voted to introduce an Ordinance on the proposed amendments to Chapters 6 and 29 of the Town Code regarding fences, hedges, and walls.

**NOW, THEREFORE,** THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Los Gatos Town Code Chapter 6, Section 6.150.050, is hereby repealed as follows:

**~~Sec. 6.150.050. — Work exempt from permit.~~**

~~CRC Section R105.2 Work exempt from permit.~~

~~Building: Item 2. is amended to read:~~

~~2. Fences not over 7 feet high.~~

~~{Ord. No. 2257, § 1, 11 15 16}~~

Los Gatos Town Code Chapter 29, Section 29.40.030 is hereby repealed and reenacted to read as follows:

**Sec. 29.40.030. Fences, walls, gates, gateways, entry arbors, and hedges.**

- (a) In the hillside area, fences, walls, gates, gateways, entry arbors, or hedges may not exceed six (6) feet.
- (b) In non-hillside area, fences, walls, gates, or hedges may not exceed six (6) feet, with one (1) foot of lattice on top (seven (7) feet high in total); and gateways or entry arbors may not exceed six (6) feet.
- (c) Exceptions. The following exceptions apply:
  - (1) Fences, walls, gates, and hedges may not exceed three (3) feet in height above the nearest curb when located within a required front or street side yard area, driveway view area, traffic view area, or corner sight triangle unless a permit is secured from the Town Engineer and Community Development Director. Trees, hedges, and growth within a corner sight triangle shall meet the requirements of section 26.10.065.
    - a. A front or street side yard area is equivalent to the front yard and side yard abutting a street required under Chapter 29, Article IV of the Town Code.
    - b. A driveway view area is a triangular area at the intersection of driveways and sidewalks and street intersections having sides ten (10) feet in length, as measured along the driveway's path of travel from the back of the sidewalk or street.
    - c. A traffic view area is the area which is within fifteen (15) feet of a street and within two hundred (200) feet of the right-of-way line of an intersection.
    - d. A corner sight triangle is a triangular area at street intersections having sides thirty (30) feet in length, as measured from intersecting property lines.

- (2) Historic Districts and/or Landmark and Historic Preservation Overlay. The maximum height of fences in the required front yard shall be three (3) feet and shall be of open-view design except as provided in subsection 29.40.033(b)(4).
  - (3) Gateways or entryway arbors. May be up to eight (8) feet high, including within Historic Districts or for properties with a Landmark and Historic Preservation Overlay, and shall be of open-view design. A gateway or entryway arbor shall have a maximum width of six (6) feet and a maximum depth of four (4) feet. No more than one (1) gateway or entryway arbor per street frontage is allowed.
  - (4) Adjacent to commercial property. Boundary line fences or walls adjacent to commercial property may be eight (8) feet high if requested or agreed upon by a majority of the adjacent residential property owners.
  - (5) Properties not on a street corner. At the discretion of the Director of Community Development, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification to the Planning Department that demonstrates either of the following conditions exist:
    - a. A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening.
    - b. A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.
  - (6) Public utility facilities and critical infrastructure. Written exceptions may be granted when the Director of Community Development finds that the strict application of these requirements will result in a security or safety concern at public utility facilities or critical infrastructure.
- (d) Materials.
- (1) Plastic fencing is discouraged everywhere and is prohibited in Historic Districts.
  - (2) Barbed wire or razor ribbon wire is prohibited in all zones.
- (e) Vehicular gates. Vehicular gates shall be setback a minimum of eighteen (18) feet as measured along the driveway's path of travel from the back of the sidewalk or street with the gate(s) in the open position.
- (f) Exemptions. All fences, hedges, gates, and walls existing when this Ordinance became effective that do not meet the regulations contained in this section are exempt from these regulations.

## **SECTION II**

The Town Council finds and determines that:

1. The adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines under the General Rule (Section 15061(b)(3)), which sets forth that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that the proposed Town Code text amendments will have no significant negative effect on the environment; and
2. The Town Code amendments are consistent with the General Plan.

## **SECTION III**

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

## **SECTION IV**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

## **SECTION V**

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c),(1).

**SECTION VI**

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on December 4, 2018, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on December 18, 2018.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

**Sec. 29.40.030. Fences, walls, gates, gateways, entry arbors, and hedges.**

**Sec. 29.40.031. Non-hillside area lots: Fences, walls, gates, gateways, entry arbors, and hedges.**

- (a) Height. In non-hillside area, fences, walls, gates, or hedges may not exceed six (6) feet, with one (1) foot of lattice on top (seven (7) feet high in total); and gateways or entry arbors may not exceed six (6) feet.
- (b) Materials.
  - (1) The following fence types and materials are prohibited for new or replacement fences:
    - a. Any fence with bare lengths of wire stretched between posts.
    - b. Electric fences, including any fence designed to produce an electric shock.
    - c. Barbed or razor wire fences, including any fence with attached barbs, sharp points, or razors.
    - d. Transparent fences such as barriers of glass or clear plastic.
  - (2) Plastic fencing is discouraged everywhere and is prohibited in Historic Districts.
  - (3) Chain link fences are strongly discouraged.
- (c) Exceptions. The following exceptions apply:
  - (1) Fences, walls, gates, and hedges may not exceed three (3) feet in height above the nearest curb when located within a required front or street side yard area, driveway view area, traffic view area, or corner sight triangle unless a permit is secured from the Town Engineer and Community Development Director. Trees, hedges, and growth within a corner sight triangle shall meet the requirements of section 26.10.065.
    - a. A front or street side yard area is equivalent to the front yard and side yard abutting a street required under Chapter 29, Article IV of the Town Code.
    - b. A driveway view area is a triangular area at the intersection of driveways and sidewalks and street intersections having sides ten (10) feet in length, as measured along the driveway's path of travel from the back of the sidewalk or street.
    - c. A traffic view area is the area which is within fifteen (15) feet of a street and within two hundred (200) feet of the right-of-way line of an intersection.
    - d. A corner sight triangle is a triangular area at street intersections having sides thirty (30) feet in length, as measured from intersecting property lines.
  - (2) Historic Districts and/or Landmark and Historic Preservation Overlay. The maximum height of fences in the required front yard shall be three (3) feet and shall be of open-view design except as provided in subsection 29.40.033(b)(4).
  - (3) Gateways or entryway arbors. May be up to eight (8) feet high, including within Historic Districts or for properties with a Landmark and Historic Preservation Overlay, and shall be of open-view design. A gateway or entryway arbor shall have a maximum width of six (6) feet and a maximum depth of four (4) feet. No more than one (1) gateway or entryway arbor per street frontage is allowed.
  - (4) Adjacent to commercial property. Boundary line fences or walls adjacent to commercial property may be eight (8) feet high if requested or agreed upon by a majority of the adjacent residential property owners.

- (5) Properties not on a street corner. At the discretion of the Director of Community Development, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided the property owner can provide written justification to the Planning Department that demonstrates either of the following conditions exist:
  - a. A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening.
  - b. A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.
- (6) Public utility facilities and critical infrastructure. Written exceptions may be granted when the Director of Community Development finds that the strict application of these requirements will result in a security or safety concern at public utility facilities or critical infrastructure.
- (d) Vehicular gates. Vehicular gates shall be setback a minimum of eighteen (18) feet as measured along the driveway's path of travel from the back of the sidewalk or street with the gate(s) in the open position.
- (e) Exemptions. All fences, hedges, gates, and walls existing when this Ordinance became effective that do not meet the regulations contained in this section are exempt from these regulations.

**Sec. 29.40.032. Hillside area lots: Fences, walls, gates, gateways, entry arbors, and hedges.**

The objective of the following regulations is to limit six-foot high fences and walls and deer fencing to those areas where they are absolutely necessary. It is recognized that fencing around limited landscaped areas is sometimes necessary for security and to provide yard areas for and to protect children and pets. However, the cumulative impact of six-foot high chain link fences and solid fences and walls surrounding hillside properties has a significant impact on the movement pattern of wildlife and on the open rural character of the hillsides.

- (a) Height.
  - (1) In the hillside area, fences, walls, gates, or hedges may not exceed six (6) feet.
  - (2) Gateways or entryway arbors. May be up to eight (8) feet high, including within Historic Districts or for properties with a Landmark and Historic Preservation Overlay, and shall be of open-view design. A gateway or entryway arbor shall have a maximum width of six (6) feet and a maximum depth of four (4) feet. No more than one (1) gateway or entryway arbor per street frontage is allowed.
- (b) Siting.
  - (1) The use of fences and walls shall be minimized and located so that natural landforms appear to flow together and are not disconnected. The primary emphasis shall be on maintaining open views; protecting wildlife corridors; and maintaining the rural, open, and natural character of the hillsides.
  - (2) Fences and walls with a height of six (6) feet shall be limited to those areas where they are necessary for protection of ornamental landscaping, security, or play areas.

- (3) Fences shall not be allowed in areas that would impede the movement of wildlife as determined by the decision-making body.
  - (4) Temporary construction fencing shall be limited to the building envelope or shall be elevated to allow for movement of small animals.
  - (5) Fencing located within twenty (20) feet of a property line adjacent to a street shall be of open design.
  - (6) Fences shall follow the topography.
- (c) Materials.
- (1) Wood rail-type fences and gates are preferred.
  - (2) Solid fencing materials shall not be used unless needed for privacy.
  - (3) Chain link fences are strongly discouraged.
  - (4) Chain link fencing shall be coated with green, brown, or black vinyl or finish and shall be supported by a wood frame. Dark, painted metal poles may be allowed if deemed appropriate by the decision-making body.
  - (5) The following fence types and materials are prohibited for new or replacement fences:
    - a. Chicken wire, welded wire, wire mesh, or similar fence material.
    - b. Buck and rail fences.
    - c. Any fence with bare lengths of wire stretched between posts.
    - d. Electric fences, including any fence designed to produce an electric shock.
    - e. Barbed or razor wire fences, including any fence with attached barbs, sharp points, or razors.
    - f. Double fences.
    - g. Transparent fences such as barriers of glass or clear plastic.
- (d) Exceptions. The following exceptions apply:
- (1) Fences, walls, gates, and hedges may not exceed three (3) feet in height above the nearest curb when located within a required front or street side yard area, driveway view area, traffic view area, or corner sight triangle unless a permit is secured from the Town Engineer and Community Development Director. Trees, hedges, and growth within a corner sight triangle shall meet the requirements of section 26.10.065.
    - a. A front or street side yard area is equivalent to the front yard and side yard abutting a street required under Chapter 29, Article IV of the Town Code.
    - b. A driveway view area is a triangular area at the intersection of driveways and sidewalks and street intersections having sides ten (10) feet in length, as measured along the driveway's path of travel from the back of the sidewalk or street.
    - c. A traffic view area is the area which is within fifteen (15) feet of a street and within two hundred (200) feet of the right-of-way line of an intersection.
    - d. A corner sight triangle is a triangular area at street intersections having sides thirty (30) feet in length, as measured from intersecting property lines.
  - (2) Properties not on a street corner. At the discretion of the Director of Community Development, side yard and rear yard fences, walls, gates, gateways, entry arbors, or hedges, behind the front yard setback, may be a maximum of eight (8) feet high provided

the property owner can provide written justification to the Planning Department that demonstrates either of the following conditions exist:

- a. A special privacy concern exists that cannot be practically addressed by additional landscaping or tree screening.
- b. A special wildlife/animal problem affects the property that cannot be practically addressed through alternatives. Documented instances of wildlife grazing on gardens or ornamental landscaping may be an example of such a problem.
- (3) Public utility facilities and critical infrastructure. Written exceptions may be granted when the Director of Community Development finds that the strict application of these requirements will result in a security or safety concern at public utility facilities or critical infrastructure.
- (e) Exemptions. All fences, hedges, gates, and walls existing when this Ordinance became effective that do not meet the regulations contained in this section are exempt from these regulations.

**Sec. 29.40.033. Hillside residential lots: Driveway Entries.**

- (a) Entryways shall be designed to blend with the natural environment and to maintain the rural character of the hillsides.
- (b) Vehicular gates shall be set back from the edge of the adjacent street a minimum of eighteen (18) feet. A greater setback may be required when a gated entrance serves more than one house.
- (c) Lighting fixtures at entryways shall direct light downwards and shall be designed so that no part of the light source is visible from the street.
- (d) The property address shall be clearly displayed so that it is visible from the street at each driveway.
- (e) Vehicular gates equipped with locking devices or electronic control switches shall be approved by the Santa Clara County Fire Department.
- (f) Vehicular gates and entryway fencing shall be of an open design.
- (g) Vehicular gates that are monumental are strongly discouraged.



## VI. SITE ELEMENTS

### A. Fences and walls.

The objective of the following standards and guidelines is to limit six-foot high fences and walls and deer fencing to those areas where they are absolutely necessary. It is recognized that fencing around limited landscaped areas is sometimes necessary for security and to provide yard areas for and to protect children and pets. However, the cumulative impact of six-foot high chain link fences and solid fences and walls surrounding hillside properties has a significant impact on the movement pattern of wildlife and on the open rural character of the hillsides.



Rural character allows wildlife to pass through.  
**Do this**



Urban character  
**Don't do this**

### Standards:

1. The use of fences and walls shall be minimized and located so that natural landforms appear to flow together and are not disconnected. The primary emphasis shall be on maintaining open views, protecting wildlife corridors, and maintaining the rural, open, and natural character of the hillsides.
2. Fences and walls shall not exceed a height of six feet measured from the highest side of the fence or wall and should be limited to those areas where fences and walls of this height are necessary for protection of ornamental landscaping, security, or play areas.
3. Solid fencing materials shall not be used unless needed for privacy.



4. Deer fencing up to a maximum height of eight feet shall be limited to areas around ornamental landscaping. Larger areas shall not be enclosed unless specific reasons for keeping deer out have been demonstrated to the satisfaction of the decision making body.
5. Fences shall not be allowed in areas that would impede the movement of wildlife as determined by the decision making body.
6. Temporary construction fencing shall be limited to the building envelope or shall be elevated to allow for movement of small animals.

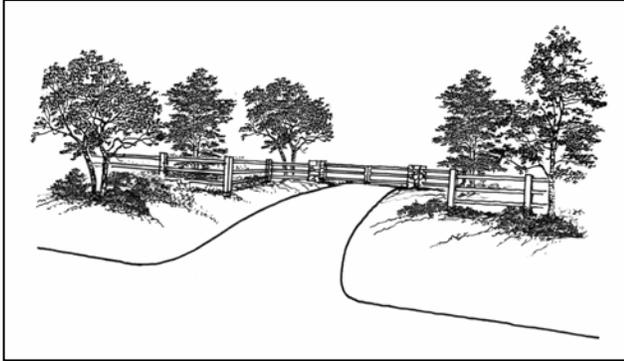
### **Guidelines:**

1. Wood rail-type fences and gates are preferred.
2. Chain link fences are strongly discouraged.
3. Chain link fencing should be coated with green, brown, or black vinyl or finish and shall be supported by a wood frame. Dark, painted metal poles may be required if deemed appropriate by the decision making body.
4. Only open fencing should be located within 20 feet of a property line adjacent to a street.
5. Fences should follow the topography.

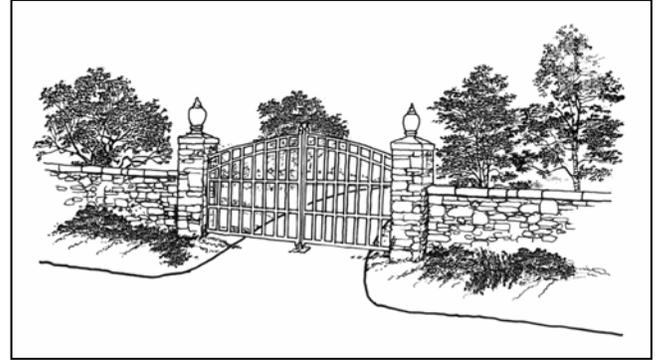
## **B. Driveway entries.**

### **Standards:**

1. Entryways shall be designed to blend with the natural environment and to maintain the rural character of the hillsides.
2. Entry gates shall be set back from the edge of the adjacent street a minimum of 25 feet. A greater setback may be required when a gated entrance serves more than one house.
3. Lighting fixtures at entryways shall direct light downwards and shall be designed so that no part of the light source is visible from the street.



Wood fences and gates are encouraged  
**Do this**



Monumental entry gates are strongly discouraged  
**Don't do this**

4. The property address shall be clearly displayed so that it is visible from the street at each driveway.



5. Entry gates equipped with locking devices or electronic control switches shall be approved by the Santa Clara County Fire Department.

**Guidelines:**

1. Entryway gates and fencing should be of an open design.
2. Entry gates that are monumental are strongly discouraged.



**TOWN OF LOS GATOS  
POLICY COMMITTEE REPORT**

MEETING DATE: 12/20/2018  
ITEM NO: 5

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DATE: DECDEMBER 14, 2018  
TO: POLICY COMMITTEE  
FROM: LAUREL PREVETTI, TOWN MANAGER  
SUBJECT: DISCUSS AND PROVIDE DIRECTION ON STREAMLINING THE LAND USE  
APPEAL PROCESS

**RECOMMENDATION:**

Review and discuss the land use appeal process and provide direction to staff for next steps.

**BACKGROUND:**

The Policy Committee last considered this matter on July 19, 2018. After discussion, the Committee's direction was to:

- Eliminate Town Code Section 29.20.300;
- Replace the language in Section 29.20.295 of the Town Code with the more general language in the first paragraph of Ordinance 1901;
- Return to the Committee with the draft "Whereas" statements for the proposed Town Code amendments;
- Return to the Committee with legal analysis and options that define who might be eligible to appeal certain projects (e.g., commercial new construction, commercial use change, single-family homes, or larger residential developments); and
- Consider an increase to the Town's fees for appeals to achieve cost recovery when the Council considers the results of the fee study.

**PREPARED BY:** JOEL PAULSON  
Community Development Director

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Reviewed by: Town Manager and Town Attorney

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DISCUSSION:

Town Code Amendments

Pursuant to the Policy Committee direction, staff has prepared draft Town Code amendments (Attachment 1) to address the matters discussed at the July 19, 2018 meeting.

Appeals

Regarding options that define who might be eligible to appeal projects, staff has provided the following options for consideration:

No appeal shall be considered unless it is filed by an aggrieved person. Potential definitions of an aggrieved person are:

- a) An aggrieved person can be defined as any person or persons or entity or entities who own property within the same zoning district or person that resides within 300 feet of the property for which a decision has been rendered and who appeared at a public hearing held in connection with the decision or action appealed and informed the deciding body of the nature of their concerns.
- b) An aggrieved person is defined as any person or persons or entity or entities who can demonstrate that their property will be injured by the decision or anyone requiring notice pursuant to this chapter and who appeared at a public hearing held in connection with the decision or action appealed and informed the deciding body of the nature of their concerns.

Another suggestion related to appeals, is to change the code related to minor residential projects found in Section 29.20.480 (f) which states:

If an objection to the project is filed in a timely manner and the differences cannot be resolved at the staff level, the application is scheduled before the Planning Commission on the next available agenda for consideration at the applicant's cost. All property owners and residents notified originally shall be notified of the Planning Commission meeting.

Another suggestion related to appeals is requiring a vote of 4/5 for Town Council and 5/7 for Planning Commission to overrule a decision from the Planning Commission or Development Review Committee.

Appeal Fees

The Town Council will have the opportunity to discuss fees for appeals early in 2019 when it reviews the fee study that is currently being prepared.

PAGE 3 OF 3

SUBJECT: STREAMLINING THE LAND USE APPEAL PROCESS

DATE: DECEMBER 14, 2018

Staff looks forward to the discussion and direction of the Committee for next steps.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office and the Town Attorney.

Attachment:

1. Draft Town Code amendments regarding appeals

**ORDINANCE**

**ORDINANCE OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE  
REGARDING THE LAND USE APPEAL PROCESS**

**WHEREAS**, the Town Council would like to streamline the land use appeal process to reduce the back and forth between Planning Commission and Town Council; and

**WHEREAS**, the proposed amendments give the Town Council more discretion as the ultimate decision-maker without needing to make one of the three findings currently required by Section 29.20.300; and

**WHEREAS**, the proposed amendments still provide the Town Council the option of remanding an application that is appealed to the Town Council back to Planning Commission for review; and

**WHEREAS**, the Town encourages prospective applicants to utilize the Town's Conceptual Development Advisory Committee to receive initial feedback on a possible development prior to application submittal;

**WHEREAS**, the Town Planning staff are available to answer questions as applicants are putting together their application materials;

**WHEREAS**, the Town expects all applicants to do their best work in the initial application and not wait until a potential appeal process to propose viable solutions that meet Town Codes, Policies, and Guidelines;

**WHEREAS**, the Planning Commission is expected to fully vet the land use application according to the Town Code, adopted Policies, and Guidelines;

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on insert date; and

**WHEREAS**, on insert date, the Planning Commission reviewed and commented on the proposed amendments regarding land use appeals and forwarded a recommendation to the Town Council for approval or denial of the proposed amendments with or without modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on insert date; and

**WHEREAS**, on insert date, the Town Council reviewed and commented on the proposed amendments regarding land use appeals and the Town Council voted to introduce an Ordinance with specific changes identified and agreed upon by a majority of the Council.

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

#### SECTION I

Section 29.20.295 and Section 29.20.300 of Town Code Chapter 29 are hereby amended to read as follows:

**Sec. 29.20.295. - Council hearing.**

When hearing the appeal, the Council shall consider the record and such additional evidence as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. ~~The appellant bears the burden of proof before the Council is proving that one or more of the reasons specified in section 29.20.300 exist on the appeal for reversing or modifying the Commission determination.~~ The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

**Sec. 29.20.300. - Decision.**

(a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.

~~(b) If the Council decides to modify or reverse the decision of the Planning Commission on any appeal, the resolution shall specify one or more of the following:~~

- ~~(1) Where there was error or abuse of discretion on the part of the Planning Commission; or~~
- ~~(2) The new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or~~
- ~~(3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.~~

~~(c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection (b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of~~

~~the new information unless the new information has minimal effect on the application.~~

(d**b**) The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.

## SECTION II

With respect to compliance with the California Environmental Quality Act (CEQA), the Town Council finds as follows:

A. These Town Code amendments are not subject to review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendment to the Town Code would have significant impact on the environment; and

B. The proposed Town Code amendments are consistent with the General Plan and its Elements.

## SECTION III

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

## SECTION IV

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

## SECTION V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on insert date, and adopted by the following vote as an ordinance of the Town of Los

Gatos at a meeting of the Town Council of the Town of Los Gatos on insert date and becomes effective 30 days after it is adopted.

In Lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

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