



CITY COUNCIL AGENDA REPORT

City of Anaheim

PLANNING AND BUILDING DEPARTMENT

DATE: JUNE 29, 2016
FROM: PLANNING AND BUILDING DEPARTMENT
SUBJECT: INTRODUCTION OF ORDINANCES THAT WOULD IMPLEMENT NEW REGULATIONS FOR SHORT-TERM RENTALS (STRs) BY AMENDING CHAPTER 4.05 (SHORT-TERM RENTALS) OF TITLE 4 (BUSINESS REGULATION) OF THE ANAHEIM MUNICIPAL CODE PROHIBITING NEW STRs IN RESIDENTIAL ZONES AND PROVIDING FOR TERMINATION AND AMORTIZATION OF EXISTING LICENSED OR TO BE LICENSED STRs; AND CONSIDERATION OF GENERAL CONCEPTS FOR A FUTURE ORDINANCE THAT WOULD CREATE A NEW TYPE OF STR PERMIT FOR "HOME SHARING"

ATTACHMENT (Y/N): YES ITEM # 01

RECOMMENDATION:

Staff recommends that the City Council take the following actions:

- 1) By motion, determine that the introduction of the following two ordinances are not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because the ordinances will not result in a direct or reasonably foreseeable indirect physical change in the environment and are not a project, as defined in Section 15378 of the State CEQA Guidelines; and
- 2) By Ordinance, amend Chapter 4.05 (Short-Term Rentals) of Title 4, in its entirety, ("STR Regulations and Ban on New STRs Ordinance") to provide for a comprehensive amendment to the existing short-term rentals ordinance to, among other things, create new operational and enforcement standards for existing STRs and prohibit the establishment of new STRs on any property within zones in which residential uses are a permitted or conditionally permitted use, allowing only: (1) STRs that held short-term rental permits duly issued prior to the effective date of the ordinance and (2) short-term rental permits issued in response to pending applications (as defined in the ordinance), which are renewed by the Planning Director in accordance with the ordinance (these two categories are referred to as "pre-moratorium STRs"), and (3) STRs that have been authorized within the "G-C" General Commercial Zone by conditional use permit approved prior to the moratorium; and

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- 3) If the City Council desires to amortize pre-moratorium short term rentals (prepared at the request of the Mayor), by Ordinance, amend Chapter 4.05 (Short-Term Rentals) of Title 4 to phase out or amortize pre-moratorium short term rentals (“STR Amortization Ordinance”) within zones in which residential uses are a permitted or conditionally permitted use (except those STRs that have been authorized within the “G-C” General Commercial Zone by conditional use permit approved prior to the moratorium), pursuant to an amortization schedule aimed at providing for a reasonable period of time for the owners of properties with pre-moratorium short-term rentals to recoup the costs they reasonably invested for short-term rental use to the extent such costs could not already have been reasonably recouped during the period of short-term rental use of the property and cannot be recouped once the short-term rental use is terminated; and
- 4) Review and comment on the general concepts (presented in a “Frequently Asked Questions” format) that would be incorporated into a future ordinance (or amendment to the Short Term Rentals Ordinance) for a new type of short term rental permit that would allow “home sharing” or “hosted” short term rentals in residential zones on a “pilot program” basis.

BACKGROUND:

On May 6, 2014, the City Council added Chapter 4.05 to the Anaheim Municipal Code to regulate the use of residential units as STRs for occupancies of less than thirty (30) consecutive days. Based on community concerns regarding incompatibility and neighborhood impacts, the City Council, on September 15, 2015, adopted an interim measure to enact a 45-day moratorium on the filing of new applications for STR permits. On October 20, 2015, the moratorium was extended an additional six months. The intent of the moratorium was to suspend the establishment of new STRs while the City evaluated options and issues, including an amendment to the existing STR ordinance to address community concerns.

Following the adoption of the moratorium, staff researched “best practices” employed by other cities impacted by STRs and also researched applicable legal principles. As part of its study efforts during the moratorium, the City Council directed staff to engage stakeholders. Accordingly, staff organized and facilitated a variety of community outreach efforts. These outreach efforts included public workshops, an electronic survey to solicit opinions on STRs and potential amendments to the City’s existing ordinance, and the formation of an advisory committee comprised of residents and STR operators to provide input and assist staff in formulating its recommendations to the City Council.

Staff’s efforts culminated in a City Council workshop on February 23, 2016 at which staff presented recommendations and action items aimed at addressing immediate and longer-term issues and concerns associated with STRs. Staff’s recommendations included a phased approach (presented below in order of priority):

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- 1) Amend the City’s existing STR ordinance to provide new operational criteria and enforcement protocol and prohibit or ban the establishment of new STRs in zones which allow residential use. Pre-moratorium STRs would be allowed to remain but would be subject to the new operational criteria and enforcement procedures. Staff recommended the amended ordinance be “tested” for one year to assess its effectiveness in addressing neighborhood concerns. Staff would report back to the City Council at the one-year mark to recommend additional amendments or other actions based on the results of the “test” period. The goal was to have the ordinance ready for City Council consideration in June, 2016. This ordinance (or amendment to the existing STR ordinance) is referred to for ease of reference as the “STR Regulations and Ban on New STRs Ordinance.”
- 2) Establish a new type of permit (via separate ordinance) to allow home sharing STRs in zones which allow residential use. This model is one where the legal owner of the property resides in the home as his/her primary place of residence and rents or “shares” a portion of the home with guests for periods of less than 30 days. This type of permit is commonly referred to as an “owner–occupied” or “hosted” STR. At the workshop, staff estimated it would have such an ordinance ready for City Council consideration in August, 2016.
- 3) Evaluate zones where non-owner-occupied STRs may be allowed without negatively impacting single- and multi-family neighborhoods (e.g., mixed use and commercial zones). This option was presented conceptually and was recommended as a longer-term endeavor. Staff estimated the matter would be presented to the City Council in September, 2016.

At its workshop, the City Council considered staff’s recommendations and received comments from the public on the three-phase action plan. Following discussion by members of the City Council, the Mayor requested that staff and the City Attorney prepare two ordinances: one containing all the items recommended by staff (including a prohibition on establishing any new STRs in zones allowing residential use) and a second ordinance that would terminate and “phase-out” (or amortize) existing STRs. The ordinance prepared in response to the Mayor’s request is referred to for ease of reference as the “STR Amortization Ordinance.

On April 12, 2016, the City Council adopted an ordinance approving the third and final extension of the STR moratorium allowed under State law, which extended the expiration date for one year to May 3, 2017.

DISCUSSION:

1. STR Regulations and Ban on New STRs Ordinance:

Consistent with the recommendations presented at the City Council workshop, staff and the City Attorney's Office (with the assistance of outside counsel) have prepared a comprehensive

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amendment to the existing STR ordinance (Attachment 1). Because the changes are substantial, and to better ensure the substantive and procedural provisions are logically organized, the existing STR ordinance was completely re-written. With the exception of provisions to address fire safety issues, the new ordinance is substantially consistent with the recommendations contained in the matrix presented to the City Council at its workshop. Subsequent to the City Council workshop, the Anaheim Fire Department recommended the ordinance contain specific fire prevention and life safety provisions, including, among others, a requirement for the installation of an automatic fire sprinkler system for STRs with a permitted occupancy of more than ten (10) persons within eighteen (18) months of the adoption of the ordinance. The matrix presented at the February 23 workshop is attached for the City Council’s information (Attachment 2).

The contents of the proposed ordinance, which were informed and shaped by the City’s extensive outreach, include new operational criteria and enforcement provisions designed to address compatibility issues and enable the City to take swifter and more stringent enforcement action on STRs that violate the ordinance. In addition, the ordinance bans the establishment of new STRs in zones allowing residential use. However, STRs that are already licensed and those that may be licensed through the processing of applications filed before commencement of the moratorium on September 15, 2015 (when the initial moratorium ordinance was adopted) would be allowed to continue operating, although they must comply with the terms of the new ordinance. In addition, those STRs permitted within a commercial zone by conditional use permit that was approved prior to the moratorium would be allowed to continue operating. They, too, would be required to comply with the terms of the new ordinance. The only STRs that would qualify for this last exception are up to 21 residential units located in the historically significant Kraemer Building at 201 East Center Street, which were conditionally permitted by the adoption by the Planning Commission of its Resolution No. PC2015-041 on June 15, 2015.

Some highlights of the STR Regulations and Ban on New STRs Ordinance are summarized below:

- The permitted occupancy limits for STRs would be lowered;
- “Quiet time” would be established between 10:00 p.m. and 9:00 a.m., during which outdoor activities would be restricted to minimize the potential for disturbances;
- STR owners/operators would be required to designate a “local contact person” who must be available 24/7 to respond to calls regarding violations;
- STR owners would have an affirmative obligation to ensure their occupants are informed of the operational requirements that apply to them, and owners and designated persons responsible for the occupants are subject to citation for violating the ordinance (without the need for a warning);
- The ordinance creates two categories of violations (“minor” and “major”); two “major”

violations in a 12 month period would be cause for revocation of the STR permit;

- Fines for violations would be increased;
- The ordinance provides greater clarity regarding parking, the use of garages as game rooms, and limits how STRs may be enlarged; and
- Hosting sites that advertise unpermitted STRs would be subject to citation or other enforcement remedies.

Staff believes adoption of the proposed STR Regulations and Ban on New STRs Ordinance would result in immediate and meaningful changes to the operation of STRs and bring relief to residents without imposing unnecessary regulations on operators. The new enforcement provisions would make it easier (when warranted) to suspend or revoke permits when major violations occur. To the maximum extent possible, the new/amended operational requirements were designed to ensure they can be practically enforced.

2. STR Amortization Ordinance:

As requested by the Mayor, staff and legal counsel prepared an ordinance (Attachment 3) that would “phase out” or amortize existing STRs, which include licensed STRs and those operating pursuant to “pending applications.” Pending applications include those that may be licensed through the processing of applications filed before the commencement of the moratorium on September 15, 2015. Excepted from this phase out are those STRs permitted within a Commercial zone by a Conditional Use Permit that was approved prior to the moratorium. Presently, there are 310 licensed STRs and 51 pending applications. These STRs (361 in total) are referred to in the STR Regulations and Ban on New STRs Ordinance as “pre-moratorium short-term rentals.” The STR Amortization Ordinance, the applicability of which is predicated on the adoption of the STR Regulations and Ban on New STRs Ordinance, would do two things. In principal part, it would require the amortization of the pre-moratorium short-term rentals within a defined period of time (discussed in greater detail below), and it would set forth a process by which owners of STRs may apply for a hardship extension to lengthen the amortization period if they believe that the period established in the ordinance would not allow them to recoup the costs they reasonably invested for their short term rental use, provided that such costs are not recoverable by any other means.

In evaluating options for the duration of an amortization period, staff and legal counsel considered the following: (1) case law and the various legal principles that inform the practice of amortizing lawfully established uses, (2) recent actions taken or contemplated by other cities, (3) the results of an electronic survey developed by staff and legal counsel to solicit input from STR owners on investment costs, revenues, and other factors associated with establishing and operating their STRs, and (4) specific analyses provided by residents and STR owners. With regard to item number four, a group of residents residing in the Sherwood Village community submitted an analysis asserting that 32 of the 42 STRs in their community could be sold for a

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profit (without the need for an amortization period) after considering investment costs and revenues (Attachment 4). Conversely, legal counsel representing the Anaheim Rental Alliance submitted a "Preliminary Report" based on data relating to 54 distinct STRs; as noted in the cover letter, the report concludes that, on the low end, an amortization period of 10 years would allow two-thirds of the STR permit holders to recoup their unrecoverable investment (Attachment 5).

The variation in the actions taken or contemplated by other cities, coupled with data submitted by the residents and STR owners, underscores the complexity of the issue and the difficulty of objectively fixing a specific amortization period. In addition, there are no reported court decisions relating to amortization periods for short-term rental units. For these reasons, if the City Council wishes to adopt an amortization program, the Council may need to base its decision primarily on what it considers to be reasonable and fair, while trying to reconcile the impacts reported by concerned residents and the claims made by STR owners related to their expectation of continued operations.

In deference to the City Council, the amortization period in the attached STR Amortization Ordinance is blank. Legal counsel believes an amortization period as short as eighteen (18) months is legally defensible, provided the ordinance includes the ability for STR owners to apply for a hardship extension (discussed in greater detail below). While eighteen months is legally defensible, legal counsel and staff recommend that the City Council consider an amortization period of three (3) years with the ability to file for a hardship extension. The 3-year period is on the lower end of a range (three to five years) of what many cities have considered or adopted after studying the issue. Staff and legal counsel believe that a 3-year period would provide sufficient time for the majority of owners to plan for the termination of their short-term rental uses and two full summer seasons to potentially recoup costs. Owners who feel additional time is needed to recoup costs may apply for a hardship extension and provide relevant information justifying their request.

The shorter the amortization period, the more essential it is to include a provision for a hardship extension. Such a provision is contained in the attached STR Amortization Ordinance. As proposed, applications for a hardship extension would need to be filed not sooner than ninety (90) days following the effective date of the ordinance but not later than six (6) months following the effective date. The prohibition on filing within the first ninety (90) days would provide staff with the time necessary to develop more specific processing protocols and to prepare and make available a form for use by those STR owners who file for an extension. Staff will also be engaged in completing the processing of pending applications and applications for renewal. Staff envisions a form that would be used as a cover sheet to summarize the extensive financial data and supporting documentation that must be submitted with the hardship application. The information required to be submitted would provide, on a property-specific basis, a comprehensive identification of an STR owner's actual costs and revenues and any extraordinary factors that affect the time period for recouping the costs reasonably invested to establish the use.

Hardship extension applications would be reviewed by the Planning Director, who may approve the extension request as submitted by an STR owner, approve an extension for a period of time that is shorter than requested, or deny the request for an extension. The proposed ordinance clearly states that extensions may only be granted for the period of time necessary for the STR owner to recoup the costs reasonably invested to establish the use. An STR owner may appeal the Planning Director’s decision regarding the hardship extension to the City Hearing Officer.

As part of its recommendations presented at the STR Workshop on February 23, staff did not recommend amortization of the pre-moratorium STRs. Staff’s recommendation was (and remains) to test the effectiveness of the new operational and enforcement provisions of the proposed STR Regulations and Ban on New STRs Ordinance before considering the option of amortization. Staff is hopeful that the new operational and enforcement provisions will prove successful in addressing neighborhood impacts. If they do not, the option of amortization would remain available to the City Council by adoption of an ordinance similar to the proposed STR Amortization Ordinance.

3. Concepts for a New Type of STR Permit for “Home Sharing”

At the February 23 STR Workshop, staff proposed that the City establish a new type of permit (via separate ordinance) to allow home sharing STRs in residential zones. This model is one where the legal owner of the property resides in the home as his/her primary residence and rents or “shares” a portion of the home with guests for periods of less than 30 days. This type of permit is commonly referred to as an “owner-occupied” or “hosted” STR. Staff estimated it would have such an ordinance ready for City Council consideration in August, 2016.

To this end, staff researched ordinances adopted in other cities and discussed potential approaches with current permit holders that operate the “home sharing” model, including two representatives from the STR Advisory Committee. As a preliminary step in preparing an ordinance for the City Council’s consideration, staff prepared a Frequently Asked Questions (“FAQ”) document for a proposed Home Sharing Pilot Program (Attachment 6). The answers to the questions posed in the FAQ (many of which staff has received from parties interested in such a program), provide an overview of what it would mean to be a “home sharer.” In addition, the FAQ outlines proposed operational conditions and provides a general overview of how such a permit program would work. Many of the proposed operational and enforcement provisions would mirror those of the non-owner occupied STR ordinance. However, others have been tailored to reflect unique aspects of “home sharing” as an accessory use to the primary use as a single family residence. For example, permits would only be issued to the legal owner of the home who must reside in the home as his/her primary place of residence. No person or family trust would be allowed to apply for or hold more than one home sharing STR permit. In addition, staff proposes that no more than half the number of bedrooms in the home be used for “home sharing” purposes.

Staff proposes the “home sharing” STR permit program be established as a pilot program with an initial limit of 50 permits. This would allow the City to monitor the effectiveness of the

ordinance during the first year of its implementation to ensure that "Home Sharing" STRs are being operated as intended and are not causing negative impacts in residential neighborhoods. The first 50 permits would be issued on a "first come, first served basis." Prior to conclusion of the pilot program's first year, staff would report back to the City Council with recommendations on whether to continue, expand or modify the program.

Subject to City Council comments on the proposed pilot program parameters at the meeting on June 29, staff would post the FAQs on the City website and invite public comments for a period of 30 days. Comments would be considered as the FAQ document is formulated into an ordinance that would be presented to the City Council for its consideration in July or August, 2016.

4. Updated/New Fees:

At the February 23 STR Workshop, staff indicated it would be proposing updated fee amounts and new fee categories to ensure the City reasonably covers its cost of administering and enforcing the STR program. Presently, a \$250 application fee is collected at the time the initial STR application is filed and a \$250 application renewal fee is collected annually. These fees do not cover the City's costs, especially when considering the augmented code enforcement resources committed to the STR program.

Staff prepared a detailed evaluation of the current fee amounts and categories, as well as the actions and time associated with current processes and those anticipated in the event one or both of the ordinances under consideration are adopted. The evaluation confirmed that new fee categories and updated fee amounts are required to ensure the City reasonably recovers its costs. The proposed updated fees and new fee categories are provided on Attachment 7 which includes a description of the actions required for the STR program, the associated tasks, the City's actual cost based on hourly rates, and the proposed fee amounts. The proposed fees are marked "draft" to allow for further refinement until such time that they are adopted. Depending on which ordinance(s) the City Council elects to adopt, if any, staff would bring a fee resolution for consideration at a public hearing for consideration at time of second reading of the proposed ordinances.

With the exception of a possible Hardship Extension Fee (only required if the STR Amortization Ordinance is adopted), all of the proposed fees would be "flat fees" set at amounts that would enable the City to recover its costs. Should the STR Amortization Ordinance be adopted, staff proposes a Hardship Extension Application Fee be established on a "deposit, full cost recovery basis." The complexity of the data to be reviewed would likely require the City retain consultant services, the cost of which, along with staff time, would be billed to the deposit similar to many of the City's existing fees for Planning Services.

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IMPACT ON BUDGET:

Existing, operating STRs in Anaheim pay Transient Occupancy Taxes (TOT) to the City on a monthly basis. STRs began paying TOT in July, 2015 (first payment due on August 31, 2015). Since that time, payments have averaged approximately \$250,000 per month which equates to approximately \$3 million annually. To provide context, the City anticipates it will collect approximately \$150 million of TOT revenues in Fiscal Year 2016-17. TOT revenues are “unrestricted” and are used to fund services City-wide.

Respectfully submitted,

David Belmer
Planning and Building Director

Attachments:

1. STR Regulations and Ban on New STRs Ordinance
2. Summary Matrix Presented at the February 23, 2016 STR Workshop
3. STR Amortization Ordinance
4. Amortization Analysis Submitted by Sherwood Village Resident(s)
5. Amortization Analysis Submitted by Legal Counsel for Anaheim Rental Alliance
6. Home Sharing Frequently Asked Questions
7. Outline of Proposed STR Fees