



## CITY COUNCIL AGENDA REPORT

City of Anaheim

### PLANNING AND BUILDING DEPARTMENT

**DATE:** DECEMBER 20, 2016

**FROM:** PLANNING AND BUILDING DEPARTMENT

**SUBJECT:** ADOPTION OF AN ORDINANCE THAT WOULD DELETE SECTION 4.05.120 AND AMEND SECTIONS 4.05.100, 4.05.110, 4.05.130, 4.05.140 AND 4.05.180 OF CHAPTER 4.05 (SHORT-TERM RENTALS) OF TITLE 4 (BUSINESS REGULATION) OF THE ANAHEIM MUNICIPAL CODE RELATING TO SHORT-TERM RENTALS, AND FINDING AND DETERMINING THAT THE ORDINANCE IS NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

**ATTACHMENT (Y/N):** YES

**ITEM # 39**

**RECOMMENDATION:**

That the City Council, by Ordinance:

1. Determine that the ordinance is 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 ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a project, as defined in Section 15378 of the State CEQA Guidelines; and
2. Delete Section 4.05.120 and amend Sections 4.05.100, 4.05.110, 4.05.130, 4.05.140 and 4.05.180 of Chapter 4.05 (Short Term Rentals) of Title 4 (Business Regulation) to, in pertinent part, accomplish the following: (1) remove provisions and penalties applicable to hosting platforms; (2) delete provisions that allow for citations to be issued when adult occupants of STRs fail to provide immediate access to code enforcement officers for the purpose of investigating alleged occupancy violations; and (3) provide the Director of the Planning and Building Department with discretion to extend the deadline by which STR owners must file hardship extension applications.

**BACKGROUND**

On July 12, 2016, the City Council adopted two ordinances pertaining to short term rentals (STRs): a “Regulate and Ban Ordinance” and an “Amortization Ordinance” (collectively referred to herein as “Ordinances”). The Regulate and Ban Ordinance

prohibits new STRs in residential neighborhoods and establishes new operational criteria and enforcement protocols. The Amortization Ordinance phases out or amortizes all existing STRs in residential neighborhoods by February 18, 2018; however, the Amortization Ordinance allows each STR owner to apply for a hardship extension that would potentially extend the amortization period as required to enable the owner to recoup the cost reasonably invested to establish the STR use. The Ordinances became effective on August 11, 2016 and are currently being implemented by the City. The Ordinances were adopted after conducting extensive public outreach in an effort to address neighborhood impacts reported by residents.

## **DISCUSSION:**

The City Attorney's Office and the Planning & Building Department are recommending limited and focused amendments to the Ordinances to address legal issues and a timing aspect related to the filing of hardship extensions. Each of the proposed amendments is summarized below and shown in "tracked changes" format on the attached "redlined" version of the Ordinance.

### Hosting Platform Language

The Regulate and Ban Ordinance includes provisions aimed at holding hosting platforms reasonably accountable for listing unpermitted STRs. The provisions were included to address concerns from residents and STR operators about unpermitted STRs and to facilitate the City's enforcement efforts. At the time of adoption, the City was aware of existing Federal legislation governing the subject matter and included a "saving clause" noting the pertinent sections of the ordinance would not apply if determined by the City to be in violation of existing laws. Shortly after adoption, and despite the "savings clause," Airbnb and Homeaway sued the City challenging the legality of the hosting platform language. As a result of recent litigation against San Francisco and other cities challenging similar restrictions, the City Attorney's Office concluded that a court was likely to find that the restrictions violated the Federal Communications Decency Act. To resolve the legal challenge without incurring the time and expense of a trial, the City agreed not to enforce the hosting platform restrictions and to introduce an amendment to the Regulate and Ban Ordinance to delete the restrictions.

### Modifications to Address "Warrantless Searches"

On August 15, 2016, a group of Anaheim STR owners and the Anaheim Rental Alliance ("Petitioners") filed a lawsuit seeking to invalidate and enjoin the City's enforcement of the Ordinances as well as the STR fee resolution adopted on August 9, 2016. Petitioners brought an application for a temporary restraining order against the City which was heard on August 19, 2016 and a motion for preliminary injunction against the City which was heard on September 29, 2016, both by Judge William Claster. Judge Claster denied Petitioner's request for temporary relief, but did not rule on the underlying merits of Petitioners' claims.

Judge Claster did express concern with the provisions of the Regulate and Ban Ordinance that require City Code Enforcement Officers to be granted immediate and unannounced access to STRs for purposes of investigating reported violations (e.g., occupancy limit violations). The

Regulate and Ban Ordinance specifies that the owner's or occupant's failure to grant immediate access constitutes a "major" violation, two of which are grounds for initiating a process to revoke the STR permit. Judge Claster's denial of the interim relief sought by Petitioners was conditioned upon the City's agreeing not to issue citations for failure to grant immediate access pending the outcome of a trial in the litigation, absent a search warrant, since Judge Claster felt that the requirement raised serious Fourth Amendment issues.

To address this concern, the attached amendment deletes the provisions in the Regulate and Ban Ordinance requiring immediate access (i.e., "warrantless searches"). However, amended language is proposed that preserves the integrity of the City's enforcement efforts by requiring the STR owner, the STR owner's agent and/or the local contact person to affirmatively respond to a City Code Officer's request regarding alleged violations within 45 minutes and to cooperate in facilitating the investigation and in correcting the suspected violation. Failure to do so would constitute a "major" violation of the ordinance. The amended language does not in any way prevent the City from using other investigative means that do not potentially constitute "warrantless searches" to address reported violations. In addition, where circumstances warrant, the City has the ability to pursue an inspection warrant to investigate reported violations.

#### Hardship Extensions

As previously mentioned, the Amortization Ordinance adopted an 18-month amortization period with provisions for a hardship extension. Under the Amortization Ordinance, STR owners have a 90-day "window" in which to file applications for hardship extensions. The 90-day period commenced on November 11, 2016 and ends on February 8, 2017. STR owners who wish to file for a hardship extension are required to use a financial data form prepared by the City. Due to complexities associated with the City's preparation of the financial data form, which delayed its release, and to ensure STR owners have sufficient time to assemble, organize, and submit the required data, the proposed amendment allows the Planning Director to extend the outside date for filing hardship extensions. However, the extension of the hardship application deadline, if adopted, would not extend the 18-month amortization period which expires on February 18, 2018.

#### **IMPACT ON BUDGET:**

There is no budgetary impact associated with the recommended actions.

Respectfully submitted,

David Belmer  
Planning and Building Director

#### **Attachments:**

1. Redlined Version of Ordinance Amending STR Ordinances
2. Clean Version of Ordinance Amending STR Ordinance