



## Legislation Details (With Text)

**File #:** 2021-160      **Version:** 1      **Name:**  
**Type:** Discussion      **Status:** Agenda Ready  
**File created:** 2/16/2021      **In control:** City Council  
**On agenda:** 3/2/2021      **Final action:**  
**Title:** CONSIDER THE REGULATION OR PROHIBITION OF SHORT TERM RENTALS AND PROVIDE DIRECTION TO STAFF AND THE CITY ATTORNEY'S OFFICE (CITY COUNCIL)  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
3/2/2021	1	City Council		

### Report to Mayor and City Council

Tuesday, March 02, 2021

Discussion

#### **SUBJECT:**

**CONSIDER THE REGULATION OR PROHIBITION OF SHORT TERM RENTALS AND PROVIDE DIRECTION TO STAFF AND THE CITY ATTORNEY'S OFFICE (CITY COUNCIL)**

#### **I. SUMMARY**

The City Council has requested staff to provide options available for the City Council's consideration related to the regulation or prohibition of short term rentals. This staff report will provide definitions, describe adverse impacts and benefits, and provide examples of how regulation of short term rentals has been implemented in other cities. The City Council can choose from a variety of regulations to tailor to the needs of the community.

#### **II. RECOMMENDATION**

TAKE the following action:

1. PROVIDE direction to Staff and the City Attorney's Office regarding prohibition or adoption of regulations for short term rentals.

### **III. ALTERNATIVES**

1. MAKE NO CHANGES to current regulations on short term rentals; OR
2. TAKE any other action the City Council deems appropriate.

### **IV. BACKGROUND**

Short term rentals have become an increasingly common and popular option for travelers, as well as for party hosts and their attendees. A short term rental is broadly defined as the renting out of a furnished home, apartment or condominium, or a room in a home, apartment or condominium for a period of less than 30 to 31 days. Short term rentals tend to be located within residential neighborhoods.

Short term rentals are often reserved through an online platform such as Airbnb, VRBO, Flipkey, or Homestay. The typical transaction involves a property owner, or “operator,” listing their residential property on a short term rental website. A potential guest will then reserve and pay for the short term rental through the same website. More often than not, the entire transaction occurs over the internet.

Short term rentals are often used for weekend getaways or business travel, but also by individuals hosting parties and celebrations. The term “party-house” is commonly associated with short term rentals and has increasingly become a problem for many cities. The demand on short term rentals varies by location, season, amenities, and events such as concerts, festivals, and sporting events that draw large crowds from outside of the area.

#### **Adverse Impacts**

As short term rentals become an increasing use, an overabundance/ overconcentration may result in drastic changes in the character of the City’s neighborhoods. These impacts include (1) increased traffic, (2) parking shortages and illegal parking, and (3) public nuisance impacts such as increased noise, and trash. Short term rentals can depress hotel use, decreasing transient occupancy tax revenues if not properly regulated.

Depending on the use, short term rentals may require additional public safety resources to respond to neighbor complaints regarding noise, trash and other similar complaints. Consequently, many cities and counties have adopted regulations to address these effects, which range from a complete ban to detailed regulatory regimes of varying restrictiveness.

Short term rentals may also remove rental units from the long-term rental market, contributing to housing shortages and increasing rent prices.

#### **Benefits**

Short term rentals can generate more revenue for homeowners and investors than leases. For example, seasonality allows homeowners to increase the rates of their short term rentals. Operators are able to charge an above-average rate for Memorial Day Weekend, Fourth of July, Labor Day Weekend, Christmas, and New Year’s Eve. This extra source of income for residents may better position them to pay their debts, bills, and mortgage on time.

Additionally, the rise of short term rentals can lead to additional tax revenues for the City. Affordable accommodations provided by short term rentals can help travelers allocate their travel budget to other activities such as eating out and sight-seeing activities in the City or surrounding areas. In addition, the City can collect transient occupancy taxes on short term rentals if it adopts appropriate regulations. Staff estimates the transient occupancy tax revenues to be approximately \$45,000 per year.

The City has the authority to regulate or prohibit short term rentals. *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019); *Nguyen v. City of Buena Park*, 2020 WL 5991616, at \*5 (C.D. Cal., Aug. 18, 2020); *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579 (1991); *Johnston v. City of Hermosa Beach*, 2018 WL 458920, at \*1, (Cal. Ct. App., Jan. 17, 2018, No. B278424), as modified Feb. 13, 2018 (unpublished).

### **What other cities are doing**

The City Attorney's Office surveyed short term rental regulations of 7 cities: Anaheim, Los Angeles, Lawndale, Morro Bay, Pasadena, Rancho Palos Verdes and Santa Monica. The approach to short term rentals varies from city to city, but collectively, these cities have the following regulations:

- Short term rentals totally prohibited;
- Short term rentals permit requirements, including application fees (either business regulatory permit or a land use permit) as well as inspections for and compliance with City/County building, health, and safety codes, and other applicable laws (including noise restrictions);
- Other regulations imposed on short term rentals:
  - Impose stay restrictions (e.g., stays must be a minimum 2 consecutive nights);
  - Maximum guest restrictions (e.g., 2 guests per bedroom, or maximum number);
  - Insurance requirements;
  - Parking requirements;
  - Conduct requirements;
  - Local contact (e.g., operators must have a local contact who can respond to inquiries within a specified time);
  - Owner-occupied requirements;
  - Record keeping requirements;
  - Permit term;

Restrictions to certain zoning districts;

Accessory dwelling units (ADUs) cannot be used as short term rentals.

## **Examples of regulatory schemes**

### Cities of Rancho Palos Verdes and Lawndale

Both cities have adopted a complete prohibition on the operation of short term rentals within the cities' residential zoning districts. Rancho Palos Verdes has also enacted significant civil fines for violations of \$2,500 for the first violation, \$5,000 for the second violation, and \$7,500 for the third and subsequent violations.

### City of Los Angeles

The City of Los Angeles has adopted a permitting system for all short term rental operations. Operators who want to engage in short term rentals must register with the City, must pay an annual fee, and post their registration number on all advertisements. The property to be rented must be the operator's primary residence, where they live for more than six months out of the year. Operators must sign a declaration agreeing to exclusively list their property on a hosting platform with a "Platform Agreement" with the City of Los Angeles to pay the transient occupancy tax. The City of Los Angeles has also detailed several other conditions. For example, the operator must do the following: (1) collect and remit the City's transient occupancy tax and a per-night fee to be determined by the City; (2) assign its tax collection duties to a hosting platform that has an agreement with the City; (3) be responsible for any nuisance violations and associated inspection fees; (4) provide a code of conduct to all guests; and (5) apply for an extended registration permit if the operator wants to rent out a primary residence for more than 120 days per year.

### City of Santa Monica

The City of Santa Monica only allows home-share short term rentals, i.e., the operator must be present during the visitor's stay. The City has a permit/licensing scheme and a transient occupancy tax collection system. The operator must obtain an annual home-share permit and home-share business license to host visitors for compensation for a period of less than 31 days. The initial home-sharing permit application cost is \$100 and annual renewal fee is \$50. In addition, the City of Santa Monica also requires the following: (1) the operator must take responsibility for and actively prevent any nuisance activities; (2) ensures that basic health and safety features are provided; (3) does not book or rent to more than two groups of visitors; (4) limits the occupancy of the property to the lesser of 10 people, one person per 200 sq. ft, or two persons per room; (5) operator must maintain liability insurance of not less than \$500,000. Further, the City of Santa Monica limits guests to no more than one vehicle per bedroom.

### City of Anaheim

The City of Anaheim requires operators to obtain a permit and pay a transient occupancy tax. The City of Anaheim only permits 235 permitted short term rentals in the entire City.

The number of short term rental guests is limited by the number of rooms at a property. The City requires that (1) operators have a local contact who can respond within 45 minutes to any complaints, (2) guests must be 21 years or older, and (3) guests must adhere to quiet times from 10 p.m. to 9 a.m. A studio may only host two guests, a one-bedroom property may only host 4 individuals, while an 8-bedroom home may host up to 19 people. In the City of Anaheim, property owners, operators, and guests may be issued fines of \$200 for the first “minor” offense, up to \$2,500 for a “major” third offense. The Anaheim Municipal Code defines what is a minor- and major offense.

### Morro Bay

The City of Morro Bay has a similar regulatory regime like that of the City of Anaheim. However, in Morro Bay, operators must ensure guests do not (1) create unreasonable noise or disturbances, (2) engage in disorderly conduct, (3) violate provisions of the Morro Bay Code, or (4) consume alcohol or use illegal drugs. Failure to comply with such regulations may result in, first, a written warning within a 12-month period, second, a \$250 fine, third, a \$500 fine, and fourth, a hearing on whether the permit should be revoked.

### **Taxation**

Of the cities surveyed, most imposed a transient occupancy tax between 7% to 15%.

The City of Carson already imposes a transient occupancy tax of 9% pursuant to Chapter 4 the City’s Municipal Code. However, whether short term rentals are covered by this tax will depend upon whether the definition of “hotel” under Section 6401 includes short term rentals. Section 6401 defines “hotel” as follows:

“Hotel” means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.”

This definition appears to cover short term rentals such that the 9% tax is applicable, and any short term rental operator would have to collect and remit the transient occupancy tax.

However, collection could be challenging. For example, many short term rentals use online websites, such as Airbnb, VRBO, Flipkey, or Homestay, where payment and reservations are handled online and without regard to transient occupancy taxes, thus, resulting in the operator being required to separately collect the taxes owed since they are still required to collect and remit the taxes. To address this, some cities have entered into voluntary tax collection agreements with these online hosting platforms, in which the hosting platform collects and remits transient occupancy taxes. Note that hosting platforms are reluctant to enter into these agreements.

### **Enforcement**

Statistics from the City of Anaheim of short term rental enforcement from August 2016 through May 2019 (approximately a three year period), resulted in 997 code violations

related to short term rentals, 882 short term rental related code cases were opened, 285 short term rental related citations were issued, and 180 cease and desist letters were mailed.

Enforcement costs can range from \$4,000 per incident for staff time and minor legal involvement when dealing with a general routine enforcement matter where the operator appeals the administrative citations and an administrative hearing is needed, up to \$50,000 per incident for staff time and legal fees should the City need to investigate and bring the property into compliance, which can require seeking to abate the public nuisance or filing criminal charges. The City may recover its administrative costs for an appealed administrative citation and attorney's fees in a civil action. Gov. Code section 38773.5 ["A city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance."]; Gov. Code section 38773 ["The legislative body may provide for the summary abatement of any nuisance at the expense of the person creating, causing, committing, or maintaining it and by ordinance may make the expense of abatement of nuisances a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with Section 38773.1 or 38773.5."]

### **Carson's Short Term Rentals**

Currently the City of Carson estimates it has 83 short term rentals, compared to the City of Anaheim's 235 short term rentals. If portioned the same, the City of Carson could see an increase of 308 code enforcement cases during a three year period, which could amount to approximately 102 more code enforcement cases a year. As a result, the City's code enforcement division could experience an increase in the number of cases and violations it issues. Using the above mentioned enforcement costs of \$4,000 per incident, 102 code enforcement cases could cost the City up to \$408,000.

The impacts on the code enforcement division will vary depending on whether the department's enforcement is complaint driven or proactive. Complaints may be generally received after check in time which is often around 3:00 p.m., late evenings if the guest is hosting a party, or on the weekends. Calls to the City or Sheriff may increase during these times as well.

A proactive approach to illegal short term rentals is quite labor intensive. Addresses of the short term rentals are not readily available on the posting advertising the short term rental, so locating illegal short term rentals is time-consuming. Cities generally hire a third party investigator or a consultant to determine the address of illegal short term rentals in order to bring an enforcement action against the property owner.

### **Overview of the City's Current Short Term Rental Operations**

Currently, the City does not have any regulations (other than general building, health, and safety regulations) so current operators are not specifically regulated. The average nightly rate for the 83 short term rentals in the City is \$86 a night. On an annual basis, short term rentals are rented 67 nights a year. As a result, short term rental operators, in the aggregate, are averaging approximately \$495,532 in revenues a year, which means if taxed at 9% the City would receive \$44,597. This is a conservative number that does not account for changes due to seasonal times, weekends, and special events, nor does it

account for continuous enforcement monitoring required. These numbers also assume that there are no limitations such as only home-share short term rentals. A license or permit registration fee of \$200 to \$300 dollars would result in revenue of \$16,600 up to \$24,900.

## **Conclusion**

The City Council has a variety of options that it can consider, such as:

1. Status quo, no regulations;
2. Collecting TOT from existing short term rentals with no further regulations (an administrative permit and/or an agreement with the hosting platforms may be required);
3. Allowing a limited number of short term rentals;
4. Limiting short term rentals to home-share rentals where the property owner or resident is present during the guest's stay;
5. A permit scheme that would impose the appropriate limitations on the operation of short term rentals;
6. Prohibiting certain types of short term rentals, such as homes that host more than a certain number of persons or that are rented for events rather than stays;
7. Prohibiting short term rentals altogether.

Upon receiving direction from the City Council, staff will draft appropriate regulations, if any, to present to the Planning Commission and City Council. The regulations, if the City Council wishes to adopt some, will be tailored to suit the needs of the City of Carson and to address specific issues that the City might have. Depending on the issues, other existing ordinances or statutes may already exist to address them, for example public nuisance laws.

## **V. FISCAL IMPACT**

This specific action has no Fiscal Impact. However, the following fiscal impacts may result from adopting further regulations. Based on the current number of short term rentals, the

City could collect approximately \$45,000 annually in transient occupancy taxes. An annual license or permit registration fee of \$200 to \$300 would result in cost recoupment in the range of \$16,600 to \$24,900. Enforcement costs can range from \$4,000 up to \$50,000 for staff time and legal fees per enforcement matter.

The true fiscal impact is difficult to estimate at this early stage without direction from the City Council regarding how and if the City wishes to regulate short term rentals.

## **VI. EXHIBITS**

None

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