



Legislation Text

File #: 18-1072, **Version:** 1

Recommendation to receive and file a report on short-term rentals (STRs); select Option 2 (Limited STRs) for the framework of regulating STRs in Long Beach; direct City Attorney to prepare an ordinance to implement Option 2; and

Authorize City Manager, or designee, to enter into voluntary agreement(s) with STR-hosting platforms for the collection and remittance of transient occupancy taxes. (Citywide)

The recent rise of the sharing economy, particularly the significant growth in short-term rentals (STRs) using online platforms, such as Airbnb and HomeAway, enable individuals to rent out real property, not traditionally part of the temporary lodging marketplace, for 30 days or less. As a result, STRs have grown in the number of properties available and the frequency with which they are rented. This trend has contributed to local concerns regarding quality of life, noise, safety, housing affordability, parking, and enforcement.

On March 21, 2017, the City Council requested that the City Manager work with the City Attorney to review the regulation of STRs in other municipalities and report back with a review of next steps required to create an ordinance, along with zoning code changes, and a timeline for these next steps.

On June 1, 2017, staff transmitted a memorandum to the City Council summarizing the status of STRs in Long Beach and preliminary information on how other cities address STRs. Staff reported that due to the confidentiality of personally identifiable information on the hosting platforms, multiple listings, and the lack of addresses, it was difficult to obtain useful data on the number of STRs operating in Long Beach. Accordingly, staff recommended hiring a consultant to complete additional research to further analyze potential staffing needs for STR oversight, revenue and cost considerations, and to conduct community outreach to ensure that any resulting ordinance would reflect the specific concerns of Long Beach elected officials and residents.

In February 2018, Lisa Wise Consulting (LWC) and Host Compliance were selected to conduct additional research and support the community outreach process necessary to develop a potential STR ordinance. Since then, the project team has conducted an assessment of STR activity already occurring in Long Beach, an in-depth analysis of the Long Beach Municipal Code, multiple case studies, and five outreach events that included stakeholder interviews, an online survey, and three community workshops. In addition to providing opportunities for written and verbal comments, these public events afforded an opportunity to collect structured feedback on potential regulations. The workshops were very well attended by hundreds of people; many of whom directly participated. Methods used to

collect feedback included an online survey that assisted with selecting specific potential regulations and requirements for further analysis, a community workshop where participants were given scorecards to rank and prioritize them, and at the last community workshop where participants selected their preferred option for regulating STRs. This strategy ensured that the community had a direct role in developing the options and that they respond to the issues raised by the Long Beach community.

The research conducted by LWC revealed that STRs represent a tiny fraction of Long Beach's housing inventory. There are approximately 1,328 active STRs in Long Beach, which represent less than one percent (0.75 percent) of the total housing stock (177,245 units).

Based on analysis of the feedback compiled from the community outreach and the independent research conducted, the project team developed three STR ordinance options for consideration. The first option provides the lowest level of regulation, but would require STR hosts to register with the City and enable the City to collect transient occupancy tax (TOT). The second option includes additional regulations to address community concerns and quality of life issues. The third option provides a means for a defined area to "opt-out," which would prohibit un-hosted STRs within the boundaries of the defined area. The three options summarized in Table 1 are expanded upon further in this letter. Attachment A presents the options in greater detail.

Development of the three options has necessitated the use of new terminology. To provide a common understanding and assist in the discussion of the proposed options, the following definitions are provided:

- Primary Residence - The housing unit where the STR host occupies the residence for at least 275 nights per year (nine months).
- Non-Primary Residence - A STR unit that is not the primary residence of the STR host.
- Hosted Stay - The STR host is present onsite during the short-term rental activity.
- Un-hosted Stay - The STR host is not present onsite during the short-term rental activity.

Option 1 - Baseline Regulation

This option requires STR hosts to register with the City, and obtain an annual renewal (same as a business license). A local 24-hour contact would be required for each STR, and that contact must live within 15 miles of the STR to be able to respond quickly to any complaints or issues. Additionally, a 24-hour hotline would be provided (contracted out by the City) that would enable people to report non-emergency problems related to STRs at any time. The purpose of the hotline would be to minimize calls for police service for non-emergency situations, assist with enforcement, and create a record of potential violations of STR

operating regulations.

Under Option 1, STR hosts would be required to provide a hard or electronic copy of City rules and requirements to guests before their stay and to post them clearly in the STR space. Such rules and requirements include parking information, Noise Ordinance standards, trash and recycling information, the 24-hour local contact information, and fines and penalties for noncompliance with City requirements. Escape routes and fire extinguisher locations would also be required to be posted clearly in the STR. STR hosts would be required to maintain liability insurance of not less than \$1,000,000 or conduct STR transactions through a platform that provides equal or greater liability insurance coverage. Some prominent hosting platforms provide this level of insurance for STR listings as part of their standard agreement with the hosting party.

If a unit is subject to a homeowner's association (HOA), the applicant would need to affirm, under penalty of perjury, that STRs are not prohibited by the HOA. In addition, HOAs and landlords may proactively notify the City that STRs are prohibited in their properties. In any case, the burden of documenting compliance lies with the host, not the City.

STRs would be subject to the City's TOT currently at a rate of 12 percent, 6 percent of which is deposited into the City's General Fund and 6 percent of which goes to the City's Special Advertising and Promotion Fund. STRs would also be required to pay a registration fee to cover the cost of processing applications, and the City's standard business license tax, which is currently required for residential property renting four units or more.

Option 2 - Limited STRs

Option 2 includes all the requirements of Option 1, plus regulations to further address community concerns. In this option, an STR host must be a resident of Long Beach. For example, a resident/host must be an individual owner(s) and not a corporation, limited liability company, partnership, or other business or commercial entity. A registered STR host could operate two non-primary residence STRs that would not have a limit on the number of un-hosted nights. If also hosting an STR in their primary residence, a host would be allowed to host an additional 90 days of un-heated nights in the primary residence. Accessory dwelling units (ADUs) would be considered as part of a primary residence, meaning that a resident could occupy the primary dwelling (not have to occupy the ADU) and operate the ADU as a primary residence STR. ADUs and duplexes where the resident/host lives onsite would be considered a hosted stay and could be rented 365 days per year. See Attachment B for a diagram of hosting scenarios.

To minimize potential impacts to the long-term housing market, Option 2 caps the number of non-primary residence STRs in multi-family buildings to 25 percent of the total units in the building or up to six non-primary residence STRs, whichever is less. A duplex or four-plex building would be allowed one non-primary residence STR. This limitation would be enforced by the City on a first-come, first-served basis during the registration application and renewal

process.

STR hosts would be prohibited from the use of a STR as a venue for commercial activities such as conferences, weddings, fund raisers, pay-to-attend parties or events, or similar gatherings. STR quiet hours of 10:00 p.m. to 7:00 a.m. would be imposed, and would prohibit use of all outdoor pools, hot tubs, and outdoor common areas during these hours.

Additionally, occupancy would be limited to two people per bedroom plus two people, with a maximum occupancy of 10 people in any STR. "People" would be inclusive of children.

The regulations under Option 2 are more substantial in addressing key issues of concern such as sense of community, housing supply and affordability, and noise and parties. By limiting the number of STRs per resident, establishing maximum occupancy limits, capping the number of non-primary residence STRs in multi-family buildings, and prohibiting large-scale events, Option 2 addresses many of the concerns raised by the community.

Option 3 - Geographic Opt-Out for Un-hosted STRs

Option 3 provides a geographic-based alternative to regulate un-hosted STRs further. It would allow un-hosted STRs to be prohibited within existing 2010 census tract boundaries through a petition and simple majority vote of the residents within the boundary. "Un-hosted" means that the resident is not present on the property where the STR activity is occurring. Hosted stays, where the resident is present onsite, would not be restricted. This option responds to certain neighborhoods, particularly in coastal areas, where complaints about disruption (noise, parking violations) were voiced consistently in the outreach process. The petitioners would be responsible to pay the cost for the City to review the petition for legal sufficiency and for notifying property owners within the boundary when/if a geographic opt-out is established.

Option 3 relies on the June 2018 Central District of California Court decision that found Santa Monica's Home-Sharing Ordinance is a proper exercise of the City's police power and is not preempted by the Coastal Act.

Housing Supply and Affordability

Currently, less than 1 percent of the City's housing stock is used as STRs. By limiting the number of un-hosted STRs that can be operated by a Long Beach resident and by limiting the number of un-hosted STRs in multi-family buildings, fewer residential units are likely to be removed from the housing market under Option 2 than Option 1. The interest in entire multifamily residential buildings converting to STRs has already been demonstrated by multiple inquiries recently received by Planning Bureau staff from investors regarding whether or not such activity is allowed by the Long Beach Municipal Code. Without the restrictions offered by Option 2, the housing market could experience multiple conversions of multi-family buildings to STRs, thereby decreasing the housing supply in Long Beach. A decrease to the housing supply could in turn lead to increased rents.

While Options 2 and 3 are aimed at minimizing impacts to the housing supply and addressing potential community impacts, the operation of STRs is a growing industry. Following the adoption of a STR Ordinance, staff will work with consultants to assess the impacts of the adopted STR Ordinance on the City's housing supply, including affordable housing, and propose remedies for any identified impacts for City Council consideration. One of the remedies that staff will be recommending is an impact or linkage fee related to a future inclusionary or other affordable housing program.

Comparison of Options

To broadly compare the efficacy of the three options in addressing six key topics identified based on feedback from the community kickoff workshop and further explored during the roundtable workshop, please refer to Table 2.

California Coastal Commission

For the California Coastal Commission (CCC), STRs represent a high-priority visitor-serving use that should be promoted; however, the CCC has approved local STR ordinances with reasonable restrictions (e.g., requirements for minimum lengths of stay, prohibiting accessory dwelling units from being used as STRs, minimum parking, neighbor notification, etc.). Any proposed STR ordinance applicable in the Coastal Zone will require CCC approval of a Local Coastal Program Amendment. None of the options include an outright ban on STRs, as a ban was not supported by community consensus, would be problematic to enforce, and would likely be rejected by the CCC.

Public Response to Proposed Options

During the October 10, 2018 Public Review community workshop, participants were given the opportunity to select their preferred option. Of the 175 respondents, 107 preferred Option 1, 10 preferred Option 2 and 12 preferred Option 3. In addition, 46 attendees stated on their comment cards a preference for a "No Action" option. Based on participant's comments, the "No Action" Option means no regulation, no taxes, and continuation of the status quo of current STR activity. This position does not recognize that STRs are currently banned. However, enforcement of the current ban is limited by available tools, yet creation of a STR Ordinance based on one of the options presented would provide a legal pathway for hosting STRs. Several attendees voiced concern that the issues attributed to STRs are not unique to STRs and can be addressed by better enforcement of existing regulations, primarily the Noise Ordinance. Other common themes included displeasure with being taxed at the same rate as hotels, and that many properties being used as STRs would not be returned to the rental housing stock if STRs are prohibited, as the property owners still occupy these units at various times throughout the year.

Although a clear majority of attendees at the October 10, 2018 workshop favored little or no

regulation, a number of persons who did not attend have provided feedback to the project team electronically and by phone, voicing strong opposition to allowing STRs and expressing concern that they are not being heard.

Voluntary Collection Agreement

Some hosting platforms, Airbnb foremost among them, offer voluntary collection agreements with local governments. Airbnb has approached the City of Long Beach with an offer to enter into such an agreement. Under these agreements, Airbnb assumes the role of taxpayer for the sole purpose of collecting and remitting TOT on behalf of Airbnb hosts. Airbnb collects the TOT at the applicable tax rate on completed booking transactions based on the fee charged by the host for the accommodation. Hosts are not required to register to collect, remit and/or report any tax or activity through Airbnb, and Airbnb will not provide, without a binding legal process, personally identifiable information regarding its hosts.

Conclusion

Although the majority of participants at the Public Review Community Workshop had a preference for the most baseline regulations provided by Option 1, staff is recommending the adoption of Option 2 because it addresses the primary concerns and quality of life issues consistently voiced by the community throughout the duration of this study. Also, the number of STRs allowed per host under Option 2 is in line with the number of STRs currently operated by 96.6 percent of Long Beach hosts, which is approximately one to three STRs per host. While Option 3 is the most responsive to addressing these same concerns by allowing for the complete prohibition of un-hosted stays, this option also has the greatest potential for ongoing legal challenges from property owners wanting to host STRs in these areas, as well as having the highest ongoing costs, and would result in more City resources dedicated to appeals and enforcement cases.

Upon City Council's direction to prepare a STR Ordinance, the Department of Development Services will return with a proposed ordinance, as well as updated estimates on costs for one-time, ongoing costs, and ongoing revenues.

This matter was reviewed by Principal Deputy City Attorney Gary J. Anderson and by Budget Manager Grace Yoon on November 12, 2018.

City Council action is requested on December 4, 2018, to move forward with a STR Ordinance that is based on the priorities of the community.

The following provides a preliminary assessment of revenues and costs that could result from adopting a STR Ordinance. Estimated potential revenues include TOT, business license taxes, registration fees, and administrative citation penalties. Estimated ongoing costs include staff resources for processing STR registrations, enforcing the Ordinance and, under Option 3, processing "opt-out" requests.

Because regulation of STRs would be a new service for the City, implementation costs have been estimated on a high to low range, and could vary from these estimates. The estimated costs do not include upfront costs such as development of a pass-through system that links hosts from their platforms to the City's website to register and pay TOT, as well as costs to develop the Ordinance including legal review and staff time. Table 3 presents the preliminary estimated revenues and ongoing costs to implement the three proposed options.

Option 1 provides for the greatest potential for new revenue because it does not place any limitations on the number or type of STRs; requires the least amount of staff time to process registrations and conduct enforcement due to limited regulation; and, provides the City with the most net revenue, estimated at \$975,000 to \$1.12 million. Options 2 and 3 provide similar amounts of estimated revenue with a range of 40 percent to 50 percent less than Option 1, and have higher administrative and enforcement costs which, when combined with the lesser revenue generation, result in more limited net revenue.

Authorization to enter into voluntary agreements with STR-hosting platforms, such as Airbnb, related to the collection and remittance of TOT will allow the City to begin to receive TOT during the period in which the implementation details of the STR Ordinance are in process. The exact amount of TOT to be collected during this period has not been determined.

A specific impact on local jobs has not been determined; however, the adoption of a STR Ordinance is anticipated to have a positive impact on local jobs.

Approve recommendation.

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APPROVED:

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