



City Council Meeting Agenda Report

Item # _____

Meeting Date: November 9, 2020

Subject: Introduction of an Ordinance Adding Chapter 5.92 to the Daly City Municipal Code and Adoption of the Short-Term Rental Fees

Recommended Action

Introduce the attached revised Ordinance adding Chapter 5.92 to the Daly City Municipal Code adopting regulations for Short-Term Rentals and adopt Resolution approving Short-Term Rental Permit Fees.

City Council Discussion

The fifth draft of the Ordinance and fees were not presented to the City Council at their September 28, 2020 meeting. The City Council decided to continue discussion of the Ordinance to tonight's meeting to provide additional time for Councilmembers to review the public comments received.

A discussion of the findings and recommended changes to the Ordinance from the Short-Term Rentals City Council Committee meeting on September 1, 2020 are provided in the Staff Recommendations section of this staff report. The Public Comments section was also revised to include a brief summary of public comments received for the September 28, 2020 meeting.

Background

In April 2018, the City Council convened a Task Force to discuss issues and potential regulations related to short-term rentals (i.e. homeowners renting their entire home or individual rooms within their home on a short-term basis (i.e., 30 days or less)). The Task Force consisted of eleven City Council-appointed residents (including a short-term rental host) and representatives from the San Mateo County Association of Realtors and the Legal Aid Society of San Mateo. The timeline below outlines the subsequent meetings conducted on short-term rentals and the proposed Ordinance. A brief summary of each meeting and the revisions to the Ordinance after each meeting, if any, are also included.

- April 25, 2018 Short-Term Rental Task Force Meeting: Staff provided an overview of the short-term rental market in Daly City, the associated potential revenue loss, and steps other cities have taken to address the impacts of short-term rentals. Task Force members expressed their concerns and made suggestions such as requiring owner-occupancy, not allowing short-term rentals in accessory dwelling units and limiting the number of days a homeowner can use their home as a short-term rental.
- March 11, 2019 City Council Study Session: The Task Force findings were presented to the City Council. After review of the information presented and input from staff and the public, the City Council directed staff to develop an ordinance.

- October 14, 2019 City Council Meeting: The first draft of the Ordinance (see Attachment A - Short-Term Rental Ordinance Draft #1) and Short-Term Rental Permit fees were introduced to the City Council. After conducting a public hearing, City Council directed staff to review the public comments received and revise the Ordinance accordingly. The following changes were made to the Ordinance:
 - Limited applicability of regulations to short-term rentals located outside the Coastal Zone until a Local Coastal Program Amendment is certified by the California Coastal Commission;
 - Revised to allow both owners and tenants to rent their primary residences as short-term rentals, but primary residency is still a requirement;
 - Added duplexes and properties with multiple rental units as permitted locations for short-term rentals; and
 - Added a notarized supplemental authorization form requirement if the host is not the owner of the dwelling unit or property.
- October 28, 2019 City Council Meeting: The second draft of the Ordinance (see Attachment B – Short-Term Rental Ordinance Draft #2) and fees were not presented because a public hearing was not conducted. The City Council continued discussion of the Ordinance to allow for enough time for a time-sensitive item on the agenda that evening. The only change to the Ordinance was relocation of the Coastal Zone applicability from Section 1 under Applicability to Section 4.
- November 25, 2019 City Council Meeting: The third draft of the Ordinance (see Attachment C – Short-Term Rental Ordinance Draft #3) was introduced to the City Council. Four out of five of the Council members were in attendance that evening. After a public hearing was conducted, the City Council decided to continue discussion so all Council members could be in attendance. The Council also directed staff to consider the public input received and revise the Ordinance accordingly. The following changes were made to the Ordinance:
 - Clarified that a booking may consist of the short-term rental of one or more bedrooms in the home or the short-term rental of the entire home;
 - Clarified that a short-term rental may operate in conjunction with a long-term rental (the rental of a primary residence for periods of more than 30 consecutive days to the same tenant) in the home since the Ordinance does not regulate long-term rentals;
 - Removed the evidence of insurance coverage requirement; and

- Revised the Short-Term Rental Permit fees to include estimated costs for software and contractual services for compliance and monitoring of short-term rentals. The fees for a new Short-Term Rental Permit and a renewal of a Short-Term Rental Permit were revised from \$165.00 to \$225.00 and \$82.50 to \$142.50, respectively.
- January 13, 2020 City Council Meeting: The fourth draft of the Ordinance (see Attachment D – Short-Term Rental Ordinance Draft #4) was introduced to the City Council. After a public hearing was conducted, the City Council directed staff to conduct additional research on the eligibility criteria to become an Airbnb “superhost” and the primary residency requirements and permit fees of other jurisdictions. Discussion of the Ordinance was continued to a date uncertain.
- September 1, 2020 City Council Committee Meeting: The Short-Term Rentals City Council Committee (Committee) members, Mayor Sylvester and Council Member Buenaventura, met with staff to discuss the research conducted by staff (see Attachment E – September 1, 2020 Short-Term Rentals City Council Committee Meeting Staff Report and Attachments). After review and discussion with staff, the Committee provided input and direction on how the proposed Ordinance should be revised. The Committee recommended that the Ordinance be scheduled for an upcoming public hearing date.
- September 28, 2020 City Council Meeting: The fifth draft of the Ordinance (see Attachment F – Proposed Short-Term Rental Ordinance) and fees were not presented because a public hearing was not conducted. The City Council continued discussion of the Ordinance to their November 9, 2020 meeting to provide additional time for the Council members to review the public comments received. Staff did not make any changes to the Ordinance after the September 28, 2020 meeting.

The following report will summarize the ordinance development process, public noticing conducted, public comments received, the current state of the short-term rental market in Daly City, and recommended changes to the proposed Ordinance.

Research and Ordinance Formulation Process

In March 2019, staff retained the services of Host Compliance, a company that provides short-term rental compliance monitoring and enforcement solutions to local governments, to advise staff and provide data on the scale and scope of the short-term rental market in Daly City. After reviewing the feedback from the Short-Term Rental Task Force and discussing the goals of the Ordinance, Host Compliance provided a list of cities such as Pasadena and West Hollywood and their ordinances for staff to review. Staff also reviewed the ordinances of other Bay Area cities such as Berkeley and Redwood City and contacted their staff to gather feedback on their experience with implementation and enforcement. Additionally, staff met with representatives from Airbnb, a hosting platform for home-sharing, to learn about voluntary collection agreements (VCA), an agreement between a city and a hosting platform where the hosting platform collects transient occupancy tax (TOT) on behalf of the city. Staff learned about how short-term rentals would be regulated and TOT would be collected if the City had a VCA with Airbnb.

Staff from the Economic & Community Development Department, Finance Department, and City Attorney's Office have met regularly from March through September 2019 and after every public hearing to review and refine the proposed Ordinance and to create efficient implementation and enforcement processes based on the City Council and public feedback. Host Compliance also provided feedback on the proposed Ordinance and suggestions based on their understanding of the City's desired outcomes and their experience working with other cities.

Public Noticing

Staff sent courtesy notices for the October 14, 2019, November 25, 2019, January 13, 2020, and September 28, 2020 meetings to property owners who were identified hosts of short-term rentals in Daly City, the Short-Term Rental Task Force, and other interested parties. Notices were also posted in the local newspaper, the City's monthly electronic newsletter, water bills, cable channel, and social media platforms. In addition, a page on the City's website was created on short-term rentals and a link was provided on all notices to ensure the public could access information on the Ordinance all in one place online.

Since the public hearing was continued to tonight's meeting, no public noticing was required. However, staff sent courtesy notices to identified hosts of short-term rentals in Daly City, the Short-Term Rental Task Force, members of the public who provided public comment for the past public hearings, members of the public who have requested to be notified, and other interested parties.

Public Comments

Staff received several public comments for the past City Council meetings. The Economic and Community Department and Finance Department have also received numerous complaints and inquiries since the January 13, 2020 meeting.

Most of the public comments received were from hosts of short-term rentals and residents living near short-term rentals. The public generally recognizes the advantages of short-term rentals as a revenue stream for the City, both directly through TOT collection and indirectly when guests visit local commercial uses, and the ability for homeowners and tenants to earn supplemental income. However, public input is divided on the primary residency requirement. Some members of the public are requesting the requirement to prevent homes from being converted into hostels and developers from purchasing properties for the sole purpose of renting them as vacation rentals. Their comments state that un-hosted stays (i.e. host not present on-site during stay) have led to many nuisances from loud parties and unmaintained trash to increased police activity. Members of the public opposed to the requirement state that hosting platforms allow hosts to screen their guests which has led them to having law-abiding and respectful guests and request that the City Council acknowledge the Airbnb "superhost" status. They have also stated this requirement would not allow them to have the flexibility to check on the condition of their homes between stays, the ability to use their homes for family and other personal needs, and overall cause a financial strain that may push them to stop renting their home on a short-term basis entirely.

Staff received additional public comment for the September 28, 2020 meeting that generally repeated comments received from past meetings. Some comments also included a request to table the Ordinance until a later date due to the current COVID-19 pandemic while other comments

include a request to approve the Ordinance as is and as soon as possible citing the significant amount of time already spent on the short-term rental discussions.

Current State of Short-Term Rental Market in Daly City

In October 2019, a total of 485 short-term rental units and 702 active listings were identified in Daly City on various platforms. In January 2020, there were 549 short-term rental units and 788 active listings, an increase of approximately 13 percent. As of September 15, 2020, there were 493 short-term rental units and 787 active listings in Daly City, a decrease likely caused by the current COVID-19 pandemic.

Short-term rentals continue to be unregulated in Daly City and no TOT is being collected for short-term rentals. As mentioned previously, the Economic and Community Development Department and Finance Department continue to receive numerous complaints related to short-term rentals operating in Daly City and inquiries regarding the status of the Ordinance and enforcement of short-term rentals. With no adopted ordinance in place, staff lacks the enforcement mechanisms to address these complaints and inquiries and the City continues to forego an opportunity for potential revenue.

Staff Recommendations

As directed by the City Council at their January 13, 2020 meeting, staff conducted additional research and presented their findings and recommendations to the Short-Term Rentals City Council Committee (Committee) on September 1, 2020 (see Attachment E - September 1, 2020 Short-Term Rentals City Council Committee Meeting Staff Report & Attachments). The findings are summarized below.

1. The Airbnb term “superhost” refers to a status awarded every three months to top-rated and most experienced Airbnb hosts if they meet specific criteria such as average rating of 4.8 stars or higher (out of 5 stars) and at least 10 stays per year or 100 nights over three years. The Superhost status offers indirect benefits to hosts such as increased visibility on the platform by featuring a Superhost badge on their profile and listing(s).
2. Staff compared the proposed Ordinance with the ordinances of five cities in California: Berkeley, Los Angeles, Redwood City, San Francisco, and Santa Monica (see Attachment C of Attachment E – September 1, 2020 Short-Term Rentals City Council Committee Meeting Staff Report & Attachments). All five cities have a primary residency requirement and San Francisco, Berkeley, and Redwood City have the same primary residency requirement as the proposed Ordinance.
3. The un-hosted stay limits varied among the five cities. San Francisco and Berkeley have a 90-day limit, Redwood City has a 120-day limit, and Santa Monica does not allow any un-hosted stays. Los Angeles has a 120-day stay limit, but it includes both hosted and un-hosted stays.

4. The proposed Short-Term Rental Permit fee of \$225.00 for new permits is comparable to San Francisco (\$450.00 and valid for two years), Berkeley (\$220.00), and Redwood City (\$218.00). San Francisco, Santa Monica, and Los Angeles also require business licenses. Los Angeles and Santa Monica have permit fees less than half of the other three cities.

To provide the City Council with a comparison to another city in San Mateo County, staff revised the Short-Term Rental Ordinance Comparison to include South San Francisco (see Attachment G – Revised Short-Term Rental Ordinance Comparison). South San Francisco’s un-hosted stay limit of 90 days is in line with the proposed Ordinance and other cities in the comparison. However, South San Francisco does not specify the minimum amount of time an owner or tenant must reside in the home to be considered a primary resident. In contrast to the other cities, South San Francisco also only allows short-term rentals in single-family dwellings.

Based on the findings, staff recommends keeping the 90-day un-hosted stay limit but is amenable to increasing the limit to 120 days. This increase in the number of un-hosted days permitted would thereby reduce the primary residency requirement to 245 days per year (approximately 8 months) for a host to be considered a primary resident. Staff recommends keeping the un-hosted stay limit at no more than 120 days. Increasing the un-hosted stay limit and decreasing the primary residency requirement would increase the likelihood of hosts claiming more than one primary residence which is not in line with the goals of this Ordinance. However, if the City Council were to change the un-hosted stay limit to 120 days, enforcement would not be affected since hosts would be required to disclose the number of hosted and un-hosted stays annually when TOT is remitted. There would also be enforcement and monitoring tools available to the City to properly enforce the un-hosted stay limits. Further, keeping the primary residency requirement would still allow the City to accomplish the long-term goals of preserving long-term rental housing in Daly City and protecting the neighborhood character and livability from nuisances often associated with short-term rentals.

Regarding the proposed permit fees, they are in line with other nearby cities. Staff also anticipates the costs for software and contractual services for compliance and monitoring of short-term rentals to increase when these services are rendered after adoption of the Ordinance. Therefore, since the proposed fees currently account for staff’s time in addition to the current estimated costs for software and contractual services, staff does not recommend any changes to the fees at this time and would prefer to review the fees after the first year of implementation of the Ordinance. The City Council should also be aware that staff is proposing fees charged at an hourly rate for Planning services if the review exceed one hour of staff time (see next section).

After review and discussion with staff at the Committee meeting, the Committee supports staff’s recommendations.

Fees

Pursuant to Sections 5.16.020 and 5.15.050 of the Daly City Municipal Code, businesses and individuals who operate businesses or long-term property rentals in Daly City must pay a minimum of \$110.00 annually. Additional language applies to gross receipts. Since this payment scheme is already universally used for business licenses in Daly City, the Finance Department recommends the same fee apply for business licenses for short-term rentals.

Pursuant to Resolution No. 13-170, the hourly cost of Planning services is \$165.00. Planning staff anticipates the review of a new Short-Term Rental Permit will amount to approximately one hour of staff time and one-half hour for the renewal of a Short-Term Rental Permit. However, Planning staff anticipates some reviews may amount to more than one hour of staff time. In addition, the estimated costs for software and contractual services for compliance and monitoring of short-term rentals are as follows:

Estimated Costs for Enforcement and Monitoring Services (Per Short-Term Rental Listing/Unit Per Year)	
Address Identification	\$22.50
Compliance Monitoring	\$12.00
Rental Activity Monitoring	\$16.00
24/7 Dedicated Hotline	\$9.60
Total Per Listing/Unit Per Year	\$60.10

Therefore, the Finance Department recommends that the Planning Permit fees be set at \$225.00 for a new Short-Term Rental Permit and \$142.50 for the renewal of a Short-Term Rental Permit. For reviews that exceed one hour of staff time, fees will be charged at the hourly rate for Planning services. Furthermore, Planning staff will review the fees for the Short-Term Rental Permit after the first renewal period in 2020 to determine if the reviews exceed one-half hour of staff time and should be revised.

Environmental Assessment

Pursuant to Title 14 of the California Code of Regulations, Section 15378, staff has determined that the proposed Short-Term Rental Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as defined by the Act, in that it does not have a potential for resulting in a detrimental physical change in the environment, directly or ultimately, as provided in Title 14, Section 15378(a). The Ordinance is also exempt under the definition of “project” in Section 15378(b)(3) in that it concerns general policy and procedure making.

Findings

Staff recommends that the City Council approve the proposed Short-Term Rental Ordinance subject to the following findings:

1. The project is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as defined by the Act. The Ordinance is also exempt under the definition of “project” in Section 15378(b)(3) in that it concerns general policy and procedure making;
2. Notice of the public hearings was published in the local newspaper on September 29, 2019, November 14, 2019, and September 17, 2020;

3. The Ordinance addresses the potential impacts related to short-term rentals in Daly City and incorporates the information presented to the City Council at their March 11, 2019 meeting and input from staff and the public;
4. Staff has reviewed the public comments related to short-term rentals received at the City Council meetings on October 14, 2019, October 28, 2019, November 25, 2019, January 13, 2020, September 28, 2020, and November 9, 2020 and revised the Ordinance accordingly;
5. The City Council has reviewed and decided on the recommendations from the September 1, 2020 Short-Term Rentals City Council Committee and staff has revised the Ordinance accordingly;
6. The Ordinance seeks to generate City revenue as a contribution to City infrastructure costs and other public expenditures associated with the operation of short-term rentals under established standards;
7. The Ordinance focuses on preventing long-term rental units from being replaced with short-term rentals and protecting affordable housing units from conversion to short-term rentals; and
8. The Ordinance aims to preserve and protect neighborhood character and livability from nuisances that could be often associated with short-term rentals.

Recommendation

Staff recommends that the City Council:

1. Introduce the attached Ordinance adding Chapter 5.92 to the Daly City Municipal Code adopting regulations for Short-Term Rentals.
2. Adopt Resolution approving the proposed Short-Term Rental Permit Fees.
3. Affirm the Environmental Assessment.

Respectfully submitted,



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Attachments

Attachment A – Short-Term Rental Ordinance Draft #1

Attachment B – Short-Term Rental Ordinance Draft #2

Attachment C – Short-Term Rental Ordinance Draft #3

Attachment D – Short-Term Rental Ordinance Draft #4

Attachment E – September 1, 2020 Short-Term Rentals City Council Committee Meeting Staff
Report & Attachments

Attachment F – Proposed Short-Term Rental Ordinance

Attachment G – Revised Short-Term Rental Ordinance Comparison