



City of San Leandro

Meeting Date: June 3, 2019

Staff Report

File Number: 19-309

Agenda Section: ACTION ITEMS

Agenda Number: 10.B.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for the Second Reading of the City of San Leandro City Council Ordinance to Add Chapter 4-40 to the San Leandro Municipal Code Regulating Hosted Short Term Rentals of Residential Dwelling Units

SUMMARY AND RECOMMENDATIONS

On May 20, the City reviewed, accepted public comments, and approved the first reading of the City of San Leandro Ordinance to Add Chapter 4-40 to the San Leandro Municipal Code Regulating Hosted Short Term Rentals of Residential Dwelling Units. Staff recommends the City Council approve for second reading an ordinance to add Chapter 4-40 to the Municipal Code, regulating hosted short term rentals.

BACKGROUND

Based on direction received from the City Council at its May 6, 2019 meeting, staff prepared a revised ordinance to regulate hosted short term rentals for City Council consideration. The ordinance includes provisions to allow hosted short term rentals for up to 180 days per year, notification by the City to adjacent neighbors of a proposed short term rental, and clarifications to the good neighbor policy.

Relevant Definitions

A "short term rental" is the rental of a residential dwelling unit (or portion thereof) to paying occupants on a short-term basis. Short term rentals can vary from the rental of a single bedroom or common area to an entire home or apartment. The duration of occupancy may also vary, but short term rentals are generally defined as the rental of any property or portion thereof for less than 30 days. Short term rentals are typically advertised and booked online through various short term rental listing services or rental agencies. The short term rental landlord or operator is responsible for the operation of the short term rental, the safety of the residential dwelling unit, and remittance to the City of transient occupancy taxes (TOT).

There are two different types of short term rentals. A “hosted” short term rental is one where the host or owner is present in the home while it is being rented, such as with the rental of an individual bedroom. A “non-hosted” short term rental is one where the host or owner is not present and the entire house or apartment unit is rented out, such as with a vacation home rental. These differ from a “Bed and Breakfast,” which is defined and regulated in the City’s Zoning Code as a single or multifamily dwelling converted into a formal lodging business having six or fewer rooms.

Analysis

As presented and discussed at the City Council’s May 6, 2019 meeting, hosted short term rentals would be allowed in residential dwelling units throughout the City. Hosted short term rentals would be subject to obtaining a permit, obtaining a business license, and payment of transient occupancy taxes. They would be subject to specific standards, including an updated good neighbor policy listed in Section 4-40-130 of the proposed ordinance.

The updated standards identified include:

- Hosted short-term rentals will be limited to a total of 180 calendar days per permit term
- An updated “good neighbor policy” posted in the host’s dwelling unit that identifies the maximum occupancy, smoking regulations, compliance with all laws, instructions on managing noise or any other disturbance, parking restrictions, provisions for quiet arrival and departure of renters, neighborhood information, emergency procedures, and property upkeep, including but not limited to trash disposal
- The ordinance requires the City notify adjacent neighbors of the proposed hosted short term rental and contains clarification regarding the appeal process

The City is in the process of hiring a third party data monitoring firm to consistently and regularly track hosted and non-hosted short term rentals and to inform and assist City staff with enforcement and tax collection.

Previous Actions

Ordinance 2017-003 on March 17, 2017 prohibited Accessory Dwelling Units (ADUs) from being used for short term rentals. The City Council held a work session on July 23, 2018 for first reading of a Loud and Unruly Gathering Ordinance. Prior to the most recent work session on July 23, 2018 during which the current urgency ordinance was adopted, the City Council held a work session to discuss the issue of short term rentals on November 13, 2017. On September 4, 2018, the City Council extended the temporary land use moratorium on non-hosted short term rentals to July 22, 2019. The City Council held a work session on this topic on December 10, 2018. The City Council approved the first reading of an ordinance to prohibit non-hosted short term rentals and directed staff to revise the proposed hosted short term rentals ordinance at its May 6, 2019 public hearing.

Staff updated the ordinance presented on May 6, 2019 and re-submitted it for City Council review

on May 20, 2019. Councilmember Lee motioned, seconded by Councilmember Ballew, to revise the proposed ordinance by increasing the number of allowable rental days from 180 days to no limits on days. Vice Mayor Lopez, seconded by Mayor Cutter, made a substitute motion to approve the second reading of the ordinance as recommended by staff which passed by a vote of 4-2.

Applicable General Plan Policies

Land Use 1.9 - Multi-Family Housing Upkeep. Maintain and enforce high standards of property upkeep for existing and new multi-family rental housing development.

Land Use 1.9.B - Maintenance of Rental Properties. Pursue ordinance revisions and incentives to ensure that landlords are held accountable for the appearance, maintenance, and safety of rental properties, including yard areas and structures.

Land Use 3.10 - Market Rate Housing. Encourage the provision of a significant amount of market-rate ownership and rental housing as part of an effort to maintain and diversify the City's economic base.

Economic Development 5.9 - Hospitality. Expand the hospitality sector in San Leandro, including hotels and visitor services such as conference and meeting facilities.

Housing Policy 56.10 - Efficient Use of Housing Stock. Support programs that encourage the more efficient use of existing single-family homes, for instance, roommate matching and shared housing programs. This could also include opportunities for local homeowners to rent out rooms in their homes for short-term stays, thereby providing an extra source of income which makes their own housing more affordable.

Housing Policy 56.11 - Second Units. Recognize second units as an essential part of the City's housing stock and a resource for lower income households, students and young adults, seniors, extended families and small households. Second units established prior to the adoption of the 1961 zoning code should be recognized as legal dwelling units and measures to legalize unregistered units developed after 1961 should be explored.

Housing Policy 59.01 - Zoning Regulations. Ensure that the development standards, use restrictions, parking requirements, and other regulations contained in the San Leandro Zoning Code enable the production of housing for all income groups. Overly restrictive or redundant requirements should be strongly discouraged.

Environmental Review

The proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 of the State CEQA Guidelines regarding existing facilities, specifically operation and leasing of existing structures, and under the "general rule" at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.

Legal Analysis

The City Attorney's Office drafted the updated ordinance regulating hosted short term rentals.

Fiscal Impacts

Hosted short-term rentals will be subject to a fourteen percent (14%) Uniform Transient Occupancy Tax as per Chapter 2-10 of the Municipal Code. A City business license with Transient Occupancy Registration will be required of anyone operating a short-term rental business. The average short term rental listing in San Leandro is approximately \$75 a night, generating \$10.50 in revenue. Given the low number of listed properties, the amount of tax revenue generated by enabling hosted short term rentals is projected to be relatively small and not likely to fully recover the cost of processing and enforcement.

The City will incur additional staff time and postage costs to perform neighbor notification services. Neighbor notifications routinely generate follow-up questions that contribute to the Permit Center's customer service workload.

The annual cost of third party short term rental data monitoring and tax collection assistance services are approximately \$3,500 to \$13,000 per year with the lower amount being for basic data monitoring services and the upper end for tax collection enforcement assistance. Pricing varies with the number of short term rental properties. San Leandro appears to fall within the lower volume range (e.g., under 150 units).

ATTACHMENT

- Ordinance to add Chapter 4-40 to the San Leandro Municipal Code to Regulate Hosted Short Term Rentals of Residential Dwelling Units.

PREPARED BY:

Andrew J. Mogensen, AICP, Planning Manager

Richard D. Pio Roda, City Attorney



City of San Leandro

Meeting Date: June 3, 2019

Ordinance

File Number: 19-280

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director,
Andrew Mogensen
Planning Manager and
Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE of the City of San Leandro City Council Adding Chapter 4-40 To Title 4 Of The San Leandro Municipal Code Regarding Hosted Short-Term Rental Of All Or Part Of A Residential Dwelling Unit

The City Council of the City of San Leandro recites the following:

WHEREAS, beginning in 2017 the City Council heard the community's concerns regarding the land use impacts of short term rentals, namely that short-term rentals could result in loss of residential character of neighborhoods, result in unwanted secondary effects that jeopardize public health, safety, and welfare, and exacerbate the shortage of affordable housing stock within the City; and

WHEREAS, on July 23, 2018, the City Council, considering the immediate impacts of short-term rentals, passed an urgency ordinance establishing a land use moratorium on non-hosted short term rentals of any residential dwelling unit; and

WHEREAS, on September 4, 2018, the City Council extended the land use moratorium to July 22, 2019 in order to review, take comment upon, and establish land use regulations for hosted short term rentals of residential dwelling units; and

WHEREAS, on May 6, 2019, after hearing public comments and testimony, the City Council approved and held a first reading of an ordinance prohibiting non-hosted short term rentals and provided direction for a revised hosted short term rentals regulations ordinance; and

WHEREAS, the City Council reviewed and considered the staff report, all public comments, and the proposed amendments to Title 4 of the San Leandro Municipal Code, as set

forth below.

NOW, THEREFORE, The City Council of the City of San Leandro **ORDAINS** as follows:

SECTION ONE. PURPOSE AND INTENT.

The purpose and intent of this ordinance is to amend the San Leandro Municipal Code to regulate the hosted short-term rental of all or part of a residential dwelling unit.

SECTION TWO. REQUIRED CEQA FINDINGS FOR ADOPTING ORDINANCE.

The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 of the State CEQA Guidelines regarding existing facilities, specifically operation and leasing of existing structures, and under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the approval of the ordinance may have a significant effect on the environment.

SECTION THREE. ADDING CHAPTER 40 TO TITLE 4 OF THE SAN LEANDRO MUNICIPAL CODE.

Chapter 40 of Title 4 of the San Leandro Municipal Code is hereby added to read as follows:

Chapter 4-40. SHORT-TERM RENTALS

4-40-100 Purpose.

The purpose of this Chapter is to establish criteria and procedures for hosted rental of all or part of a residential dwelling unit for fewer than 30 days. Hosted rentals are limited to residential dwelling units. The City finds it necessary to establish such requirements to regulate short-term rentals of property in the interest of the public health, safety, and welfare.

4-40-110 Permit Required.

No person shall establish, operate, or maintain a hosted short-term rental without first obtaining a valid permit pursuant to this Chapter.

4-40-120 Where and How Permitted.

Hosted short-term rentals are permitted in all dwelling units or portions of dwelling units that are also bedrooms. All other short-term rental of dwellings and parts of dwellings, except as permitted by the San Leandro Zoning Code, is prohibited. By approving a hosted short-term rental permit, the City is not conferring a vested right. Permits are not transferable. Permits are limited to one per dwelling unit. Only natural persons may obtain a permit.

Hosted short term rentals are prohibited in secondary dwelling units (ADUs).

4-40-130 Standards.

All hosted short-term rentals shall conform to the following standards:

- a) All hosted short-term rentals are limited to a total of 180 calendar days per permit term. Portions of calendar days shall count as full days.
- b) The dwelling unit that includes the hosted short-term rental must be the permittee's primary, permanent residence.
- c) If the permittee is not the owner, the permittee must have the owner's written permission to operate a hosted short-term rental on the property.
- d) The dwelling unit must have a smoke detector, a fire extinguisher, a carbon monoxide detector, and adequate egress, all as required by current codes and regulations.
- e) The permittee shall post in a prominent place within the dwelling unit a diagram of exits, fire extinguisher locations, Fire and Police Department phone numbers, the permittee's contact information, and the City Noise Ordinance hours.
- f) The permittee must obtain and maintain a current Business License and pay Transient Occupancy Tax as may be required by the San Leandro Municipal Code.
- g) The permittee must inform and update the City regarding what advertising platforms are in use to advertise the dwelling unit or bedroom for hosted short-term rental.
- h) The hosted short-term rental shall not result in a nuisance. The permittee shall post or provide a good neighbor policy in the dwelling unit that at a minimum includes the maximum occupancy, smoking regulations, compliance with all laws, instructions on managing noise or any other disturbance (including but not limited to the quiet and orderly arrival and departure of renters), parking restrictions, emergency procedures, neighborhood information including but not limited to local restaurants, retail stores, food markets, and points of interest, and property upkeep, including but not limited to trash disposal.
- i) Parking shall be only in designated or available parking spaces upon the property. Permittee shall instruct its renters or guests to not park on public streets.
- j) Cameras, including but not limited to security cameras whether they have recording capability or not, shall be prohibited in all bedrooms, and bathrooms. Sound receiving or recording capabilities on all cameras shall be off during a hosted short term rental.

4-40-140 Application.

Application for a hosted short-term rental permit shall be submitted to the Finance Department on a form provided by the Finance Director, which shall include an application to operate a hosted short term rental prepared and approved by the Community Development Department, including but not limited to the following, the applicant's name and the address of the dwelling unit where the hosted short-term rental would occur:

- a) Driver license or State identification card;
- b) If the permanent primary occupant is not the owner, written permission from the owner to operate hosted short-term rentals, with owner contact information;
- c) Photos of smoke detector, carbon monoxide detector, and fire extinguisher in the area of the dwelling unit to be rented, and egress from the rental space to the exterior of the building;
- d) One of the following documents to prove that the applicant/permittee is the primary, permanent resident of the property where the short-term rental is proposed to occur:
 - 1) Proof of Homeowner's Tax Exemption,
 - 2) Voter Registration Card or Certificate,
 - 3) Proof of vehicle registration,
 - 4) Original proof of car insurance,
 - 5) One original and most recent utility bill such as from EBMUD, ACI, Waste Management, or PG&E,
 - 6) Lease.
- e) Statement of what advertising platforms will be used to advertise the space to be rented;
- f) Statement on the locations, recording capabilities, including any sound recording capabilities, and number count of all cameras, security or otherwise, in use within the residential dwelling unit;
- g) Current City of San Leandro Business License.

4-40-150 Approval Procedure.

The Finance Director shall consider applications for short-term rentals. The Finance Director may consult, as the Director deems necessary, with the Chief Building Official, Fire Marshal, Community Development Director and Police Chief, or their designees on any application. The Community Development Director shall provide notice to adjacent property owners of a permittee's application to operate a hosted short term rental. The Community Development Director may refer any application to the Board of Zoning Adjustments / Planning Commission for consideration. If considered by the Board of Zoning Adjustments / Planning Commission, the application shall be heard at a public hearing, which shall be noticed in the same manner as consideration of Conditional Use Permits are noticed. The Finance Director or the Board of Zoning Adjustments / Planning Commission, as the case may be, may approve or disapprove an application or impose conditions of approval which, in his/her/its judgment, are necessary to

ensure conformity with the provisions of this Chapter. The decision may be appealed to the City Manager, whose review and decision shall be final.

4-40-160 Required Findings.

In order to approve a Short-term Rental permit, the Community Development Director and Finance Director shall find that the proposed hosted short-term rental conforms to the standards in Section 4-4-130.

4-40-170 Renewal.

A short-term rental permit shall expire on December 31st of the calendar year in which it was issued or renewed. A valid permit which has not been surrendered, suspended, or revoked may be renewed for subsequent periods of no longer than one year upon the following terms and conditions:

- a) All annual short-term rental permits issued under this Chapter, except the first permit issued for a newly established short-term rental, shall be considered to be issued on January 1st of each year and shall expire on December 31st of the same year, all of which shall coincide with business license annual renewals.
- b) An application for renewal of a short-term rental permit shall be filed with the Finance Department before the short-term rental permit expires, on a form provided by the Finance Director, accompanied by a statement indicating whether any information required by Section 4-40-140 has changed for the renewal period.
- c) The Finance Director shall review the renewal application. The Finance Director may, at the Director's discretion, consult with the Chief Building Official, Fire Marshal, Community Development Director and Police Chief, or their designees, to ensure the short-term rental's continued compliance with the provisions of this Chapter and any conditions of approval, and to assess any outstanding violations or complaints. The Finance Director may request additional information from the permittee in order to complete the review. To renew a short-term rental permit, the Finance Director and the Community Development Director must make the same findings as for approval of an initial permit.
- d) Upon completion of the review, the Finance Director shall determine whether to renew the application, and shall promptly inform the renewal applicant of his/her decision. If the permit is renewed, the Director shall provide a new permit for the renewal period. In renewing the short-term rental permit, the Director may modify or delete any existing conditions of approval, and impose any new conditions of approval, as they deem appropriate. If the permit is not renewed, the Director shall provide a written explanation to the renewal applicant detailing the reasons for the non-renewal. If the permit is not renewed, the renewal applicant shall immediately cease operating the hosted short-term rental.

4-40-180 Suspension, Revocation or Modification of Permit.

A permit issued pursuant to this Chapter shall be subject to suspension, revocation, or modification for the violation of any provision of the Municipal Code or for any grounds which would warrant the denial of the issuance of such original permit. Code Enforcement or the Police Department may issue notices of violation or take any enforcement action necessary for any failure to comply with any requirement of this Chapter, violations of any State law, local ordinance or regulation, or any condition of the permit. Notices of violation shall set forth the action necessary to come into compliance and a time frame for compliance. If the noncompliance is not abated, corrected, or rectified within the time specified by Code Enforcement in the said notice, or the Police, or any other regulatory authority, the Finance Director may revoke, suspend, or modify the permit, upon 7 days' notice. If the Director decides to suspend or revoke the permit, the permittee shall cease operation of the short-term rental immediately.

Revocation of a permit shall be a permanent bar to obtaining any new short term rental permit.

4-40-190 Appeals.

- a) A decision of the Director on a new short-term rental permit pursuant to Section 4-40-150 may be appealed to the City Manager. The decision of the City Manager shall be final.
- b) If the Community Development Director refers a new short-term rental permit application to the Board of Zoning Adjustments / Planning Commission for consideration pursuant to Section 4-40-150, the decision of the Board of Zoning Adjustments / Planning Commission may be appealed to the City Manager, whose decision shall be final.
- c) A decision by the Finance Director to revoke, suspend, or modify a short-term rental permit pursuant to Section 4-40-180 may be appealed to the Administrative Hearing Board in accordance with Chapter 1-12. The decision of the Administrative Hearing Board shall be final. If the Administrative Hearing Board issues an order to revoke or suspend the permit, the permittee shall cease operation of the short-term rental immediately.

4-40-200 Enforcement.

The City Attorney shall have authority to initiate a civil action to enforce the provisions of this Chapter without prior City Council approval.

4-40-210 Definitions.

As used in this Article:

- a) "Hosted" means that the primary occupant of the dwelling within which the rental takes place occupies the dwelling during the entire rental period.
- b) "Non-hosted" means that the primary occupant of the dwelling within which the rental takes place is absent from the dwelling for some or all of the rental period.
- c) Dwelling, Duplex. A building containing two (2) dwelling units.

- d) Dwelling, Multi-Family. A building containing three (3) or more dwelling units.
- e) Dwelling, Secondary Unit also means an “Accessory dwelling unit” (ADU), which is an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. ADUs shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as a single-family dwelling is situated.
- f) Dwelling, Single-Family. A building containing one (1) dwelling unit.
- g) “Dwelling Unit” means one room, or a series of rooms that provides not more than one kitchen and one or more bathrooms, and is intended for occupancy by a single housekeeping unit. An individual dwelling unit is characterized by a single main pedestrian entry, with all other points of entry being visually subordinate, and an interior stairway provided between all stories.
- h) “Bedroom” means a room used for sleeping, living, or dining purposes, excluding enclosed places (e.g., closets, pantries, bath or toilet rooms, service rooms, rooms without windows for egress, connecting corridors, laundries, unfinished attics, foyers, storage spaces, garages, cellars, utility rooms and similar spaces).

SECTION FOUR. TERMINATION OF TEMPORARY LAND USE MORATORIUM

Upon the effective date of San Leandro Municipal Code Chapter 4-40 and Chapter 4-41, whichever is earlier, Ordinance No. 2018-017 shall automatically expire and have no further force or effect.

SECTION FIVE. SEVERABILITY.

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION SIX. EFFECTIVE DATE AND POSTING.

This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.