



Contra
Costa
County

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: March 10, 2020

Subject: Consideration of Short-Term Rental Ordinance

RECOMMENDATION(S):

A. DETERMINE that adoption of Ordinance No. 2020-12 to regulate short-term rentals is exempt from CEQA, under CEQA Guidelines section 15061(b)(3) (common sense exemption);

B. FIND that the proposed zoning text amendment is consistent with the County General Plan;

C. ADOPT Ordinance 2020-12 to regulate short-term rentals; and

D. DIRECT staff to file a Notice of Exemption with the County Clerk.

FISCAL IMPACT:

Costs of preparing an ordinance to regulate and permit short-term rental activities was paid for by the Department of Conservation and Development (Land Development Fund). Collection of application fees is expected to offset most costs of implementing the ordinance.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **03/10/2020** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: March 10, 2020

Contact: Francisco Avila,
(925) 674-7801

David Twa, County Administrator and Clerk of the Board of
Supervisors

By: , Deputy

cc:

BACKGROUND:

The Department of Conservation and Development (DCD) has been directed by the Board of Supervisors (Board) to prepare an ordinance regulating the short-term rental of residential dwelling units within the unincorporated areas of the County. The draft Short-Term Rental (STR) Ordinance is attached. The ordinance would allow the short-term rental of residential dwelling units in specified zoning districts after the issuance of a permit. The ordinance would impose rental regulations and operational standards to minimize impacts to neighbors and the surrounding communities. An STR permittee will be required to obtain a business license and transient occupancy registration certificate prior to operation and to collect and remit transient occupancy tax as otherwise required by the County Ordinance Code. At the direction of the Board, staff is discussing potential collection agreements with rental host platforms such as Airbnb that could assist permittees in tax collection and remittance.

Current Status of Short-Term Rentals in the County

The County does not currently permit or allow STR activity. STRs are defined as: "a residential dwelling unit, or a portion of a residential dwelling unit, that is rented, or offered for rent, for compensation or consideration, for a period of 30 consecutive days or less". Adoption of the proposed STR Ordinance would allow private property owners an opportunity to rent their residence on a short-term basis while minimizing impacts on surrounding neighbors or the community in general.

Public Outreach

In October of 2017, DCD staff circulated a questionnaire with the Board's preferred STR framework to all Municipal Advisory Councils (MACs). The responding MACs considered the questionnaire during their December 2017 and January 2018 meetings and returned completed questionnaires which included comments and concerns. Issues commonly agreed upon include: number of days a dwelling can be rented (90), requiring a ministerial permit, notification of neighbors when an STR permit is issued, and requiring adequate parking.

Evaluation of Proposed County Regulations on Short-Term Rentals

This section summarizes key components of the draft STR Ordinance and how proposed regulations would limit potential impacts on residential communities within the County.

Permit Required

An STR may only be operated after issuance of an STR permit. Once an STR permit is issued, all property owners within 300 feet of the subject property will receive a notice that includes the contact information for the responsible party associated with the permit and the County's Code Enforcement Division. An STR that will comply with the

following STR regulations will be approved ministerially.

Key Limitations

1. An STR may not be rented for more than an aggregate of 90 days in any calendar year.
2. No more than one STR may be operated on any lot.
3. Accessory dwelling units may not be operated as an STR.
4. A residential dwelling unit located within a building that contains five or more dwelling units may not be operated as an STR.
5. Overnight guest occupancy may not exceed two persons per bedroom, plus two additional persons. Children under the age of 12 are not counted towards the total number of guests.
6. STRs with three or fewer bedrooms must include at least one off-street parking space available for use by guests. For STRs with four or more bedrooms must include at least two off-street parking spaces available for guests.

These STR regulations are intended to limit potential impacts to neighbors and the surrounding community. Prohibiting the rental of all Accessory Dwelling Units will protect affordable housing alternatives in the County. All STRs must also comply with the following operation standards.

Operational Standards

1. Excessive traffic inconsistent with residential use is prohibited.
2. Excessive noise inconsistent with residential use is prohibited.
3. Obstruction of any road is prohibited.
4. No more than 20 total persons shall gather at a short-term rental.
5. No special events are allowed (conference, weddings, or any commercial event).
6. No signage is allowed.

Discretionary Short-Term Rental Permit

An applicant may apply for a discretionary STR permit to deviate from the STR regulations, e.g., to exceed 90 rental days per year, to provide a reduced amount of off-street parking, or to allow a greater number of guests per rental stay. Review of discretionary STR permit applications will include public noticing and a public hearing if one is requested. The required findings in order to approve a deviation are attached (same as a land use permit). No deviations to the Operational Standards will be allowed with either the ministerial or discretionary STR permit.

Staff Analysis and Findings

Consistency with the County General Plan

The Land Use Element of the County General Plan indicates home occupations,

residential care facilities, and incidental uses are consistent with residential neighborhoods. STRs are considered subordinate and incidental to the use of a residence, as the purpose of an STR is to provide lodging, albeit on a temporary basis. The draft ordinance is intended to ensure STR activities remain compatible with residential neighborhoods by limiting rentals to 90 days a year, prohibiting excessive noise, and prohibiting excessive traffic that has potential to disturb neighbors. Each STR operator must also adhere to all conditions of approval, Regulations and Operational Standards as stated in approved permits. Therefore, based on the operational standards and regulations applicable to all STR Permits, the STR Ordinance and associated use is consistent with the County General Plan.

Consistency with Zoning

The draft STR Ordinance would allow for residential dwelling units located within single-family residential districts R-6, R-7, R-10, R-12, R-15, R-20, R-40, R-65 and R-100 Districts, Planned Unit (P-1) Districts, water recreational district F-1, multi-family residential districts M-6, M-9, M-12, M-17, and M-29, or agricultural districts A-2, A-3, A-4, A-20, A-40, and A-80 to be rented for less than 30 consecutive days. It is expected that the vast majority of STR uses will be conducted within existing dwellings and not require issuance of building permits or improvements to be operable. Any construction or expansion of a dwelling unit for the purpose of enabling or improving an STR will require a building permit and must conform with the regulations of the applicable zoning district. Therefore, the proposed Ordinance would not conflict in any manner with applicable zoning regulations, such as setbacks or height limits.

California Environmental Quality Act (CEQA)

The draft STR Ordinance is exempt from environmental review under CEQA pursuant to CEQA Guidelines Section 15061(b)(3). The proposed Ordinance would authorize only minor changes to the use of residential dwellings. The proposed ordinance would not authorize any new development and would only authorize uses already consistent with the residential nature of residential dwelling units. Therefore, only negligible changes to the environment are expected to occur. Thus, it can be seen with certainty that there is no possibility that the project could have a significant effect on the environment.

County Planning Commission (CPC) Hearing, February 12, 2020

At the February 12, 2020, CPC hearing, the Commission received staff's presentation and took testimony from three members of the public. Each member of the public supported short-term rental regulation, and some emphasized the need for strong enforcement tools. The Commission also reviewed two emails that were received the evening before the hearing. One email sent on behalf of the Kensington Property Owners Association urged that all STR permits be issued through a discretionary process. The other email from a Kensington property owner sought more flexibility (such as a greater limit on rental days per year) for hosted rentals.

Upon acknowledging all public input, the CPC closed the public hearing and began deliberation. The CPC's dialogue primarily focused on: a) whether to limit the total number of rental days to 60 compared to 90, b) if requiring a discretionary permit process would be appropriate or unnecessarily onerous, c) which additional code enforcement tools can strengthen the overall draft ordinance, and d) if health and safety standards should be included in the ordinance. After considering regulatory options such as limiting total rental days to 60, allowing hosted rentals only, requiring all STR permits be discretionary, seeking more help from host platforms and considering the health and safety protections in existing codes, the Commission elected to not to recommend additional regulation that would unnecessarily encumber the STR process. By a 4 to 1 vote, the Commission recommended the Board approve the draft STR Ordinance without change and ensure adequate resources are dedicated to enforcement .

Enforcement

Currently, DCD does not receive complaints on STRs on a frequent basis, though host websites do indicate STRs for offer. Adoption of the STR Ordinance will increase the need for enforcement by raising the visibility of the practice and perhaps by prompting more listings. DCD is taking steps to prepare. Chief among these is readying our Code Enforcement team for issuance of citations. Historically, abatement and administrative fines have been the primary tools for Code Enforcement cases, but issuance of citations may be a helpful tool for situations such as STRs where the violations are short lived and enforcement needs to be more immediate.

On-Going Communications with Airbnb

Leading up to and since the February 12, 2020, CPC hearing, staff from DCD and the Treasurer Tax Collector's Office have engaged in a second round of discussions with Airbnb staff. One major point of discussion was the process and timing of entering into a Voluntary Collection Agreement (VCA) between Airbnb and the County that would enable Airbnb to collect Transient Occupancy Tax (TOT) on behalf of rental hosts and remit them to the County on a monthly basis. Procedurally, if the Board elects to adopt the STR Ordinance, County staff would return to the Board with a VCA in a form acceptable to both parties. Once a VCA has been executed, Airbnb staff would need approximately two months before they could assume the responsibility from their clients for submitting TOT funds to the County.

The second point of conversation was which if any enforcement tools are available from Airbnb to assist the County with code enforcement efforts. The conversation included agreements other jurisdictions have with Airbnb and new programs that Airbnb have recently implemented in order to address complaints. Other jurisdictions (San Francisco and Santa Monica) have "Notice and Take-down" agreements with Airbnb based on settlement agreements, whereby Airbnb will remove listings from their hosting website upon request by the municipality. Airbnb is not willing to enter into such an agreement

with the County at this time. Airbnb expressed a willingness to re-examine this position in about a year if that experience further justifies the need to enter into such an agreement. However, Airbnb indicated willingness to work with the County on problem listings on a case-by-case basis and also indicated they would alert their clients to the new regulations if approved. In addition, in response to the tragedy which occurred in Orinda and other unfortunate events around the Country, Airbnb has instituted several programs and efforts such as: a) "Neighbor Tools" on their website which allows complaints to be registered for specific rental locations, whereby if a property has demonstrated a history of violations, the listing will be suspended, b) a third customer support line which has 24hr staffing aimed at responding to complaints, and c) working with municipalities on "spot compliance" where Airbnb will remove a specific listing based on evidence (e.g., police reports, fine history, etc.) of code violations.

Other Regulations Evaluated and Available to the Board if Modifications to the Draft Ordinance are Desired

At the direction of the Board, staff had previously evaluated other possible regulations, which are not included in the proposed ordinance. The County Planning Commission also considered the following list and voted to recommend the Board approve the STR Ordinance in its current form. Nevertheless, if the Board desires to adjust the STR ordinance, the following options may be considered.

1. Prohibited non-hosted STRs or establishing different regulations for hosted vs. non-hosted
2. Restrict STRs to primary residence only
3. Establish a minimum stay
4. Prohibit holiday rentals
5. No discretionary STR permits
6. Prohibit all STRs

Summary

The draft STR Ordinance establishes regulations aimed at allowing reasonable use of private property while protecting the quality of life of neighbors. By limiting the number of allowed occupants per rental stay, establishing quiet hours, and requiring off-street parking for guests, the ordinance will minimize impacts on neighbors and the surrounding community. Prohibiting the STR of Accessory Dwelling Units and designated affordable housing will ensure that affordable housing options are not removed from the housing market. By limiting the total number of days a dwelling can be rented per year, the character of established communities will be retained. The proposed ordinance balances the interests of homeowners that wish to establish short-term rentals and concerns of neighbors that a nearby short-term rental may affect their residential community.

Conclusion

The CPC, at their February 12, 2020, hearing passed a motion which recommends the Board of Supervisor adopt the draft Short-Term Rental ordinance in its current form. No other information has been presented to staff since the CPC's recommendation that warrants modification to the draft ordinance as presented.

CONSEQUENCE OF NEGATIVE ACTION:

If unapproved, the use will not be allowed within the unincorporated areas of the County.

CLERK'S ADDENDUM

Speakers: Christine Chalmers, resident of Contra Costa; Laura Singh, resident of Kensington.

OPENED the public hearing; ACCEPTED public input; DIRECTED staff to modify the proposed ordinance to contain a 180-day limit for hosted rentals; CONTINUED the hearing to March 31, 2020 at 9:30 a.m.; and FURTHER DIRECTED staff to return to the Board with recommendations for their consideration on the regulation of the rental hosting platform(s).

ATTACHMENTS

Ordinance No. 2020-12 Short-Term Rentals

Discretionary Permit Findings

STR Regulations in Other Jurisdictions

BOS March 10, 2020 Presentation