



## Legislation Text

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**File #:** 18-322, **Version:** 1

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Staff Report for City Council Discussion of Short Term Rental Regulations and Consideration of 1) an Urgency Ordinance to Establish a Temporary Moratorium on Non-Hosted Short Term Rentals Land Uses; and 2) First Reading of a Regular Ordinance to Address Unruly Gatherings

### **SUMMARY**

Staff recommends that the City Council consider and adopt two items: 1) An urgency ordinance to establish a temporary moratorium that prohibits non-hosted short term rentals land uses; and 2) a regular ordinance to address unruly gatherings. Staff also seeks direction from the City Council on parameters of a future policy to regulate short term rentals.

### **BACKGROUND AND DISCUSSION**

San Leandro's Zoning Code does not define, enable or permit short term rentals of any kind and there are no enforcement provisions specific to short term rentals in the Municipal Code. This lack of specificity currently limits the City's enforcement efforts on short term rentals as a land use, and focuses instead on the related symptomatic or incidental problems, such as responding to noise complaints or the conduct of other unpermitted activities. It is also difficult to determine if and when a given private residence is being used as a short term rental.

The issue of short term rentals as a land use has evolved since the prior City Council work session held on November 13, 2017 (staff report attached). Since that time, the number of complaints filed by residents regarding short term rentals has increased and the number and nature of identified short term rental listings has become more egregious.

Short term rentals are currently prohibited under San Leandro's Zoning Code. However, staff has become aware of a number of online listings being posted in a manner to evade enforcement, such as not identifying a specific address or using languages other than English. The City has also been made aware of short term rental listed properties offering nightly lodging for up to 40 persons in a given single family residence. It is not legally possible for City staff to enter a private residence, without a judicially approved search warrant, to verify the number of inhabitants and enforce an occupancy limitation.

To address these problems, staff recommends that the City Council consider an urgency ordinance to adopt a temporary moratorium on non-hosted short term rental land uses to reinforce the City's current prohibitions and provide a more effective enforcement tool until permanent regulations can be established and implemented. Staff recommends that the proposed land use moratorium should be limited to prohibiting non-hosted short term rentals.

This would be because 1) most complaints received by the City involve non-hosted short term rental properties 2) a hosted short term rental has a responsible party or owner present and 3) because

some City Council members previously suggested support for permitting limited hosted short term rentals.

In addition to the proposed moratorium, staff recommends that the City Council consider adoption of a regular “Unruly Gatherings Ordinance.” This ordinance, which addresses parties or gatherings on private property that create a substantial disturbance due to unlawful, noisy, or disruptive behavior, was previously discussed at the prior November 13, 2017 short term rentals work session. The Council has the option of considering adoption of the proposed “Unruly Gatherings Ordinance” with a first reading.

### 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 property owner is responsible for the operation, safety, and remittance of transit 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

### **Need for Urgency Ordinance to Establish a Land Use Moratorium on Short Term Rental Land Uses**

The City’s Zoning Code does not expressly allow short-term rental land uses, but short-term rentals are currently taking place within the City. The unregulated expansion of short-term rentals would undermine the City’s achievement of its long-term planning goals and investments. The City Council has received complaints and numerous public comments at its regular meetings indicating that the proliferation of non-hosted short-term rentals within the City adversely affects the quality of life and the character of the City’s residential neighborhoods. In addition, short-term rentals pose challenges for enforcement and tax collection because precise information on their locations, availability, revenues earned, and actual occupancy rates are difficult to obtain. In brief, short-term rentals pose an immediate threat to public health, safety, and welfare.

The City has an overriding interest in planning and regulating the use of property within the City because without stable, well-planned neighborhoods, the quality of life and the character of the City’s neighborhoods can quickly deteriorate and suffer adverse social, environmental, and economic conditions. A moratorium on non-hosted short-term rentals would allow time for the City to revise its zoning code to provide for regulation of non-hosted short-term rentals in a manner that protects public health, safety, and welfare.

## Summary of Moratorium

The proposed moratorium on short-term rentals provides that any residential property owner in the City of San Leandro whose place of residence is not at the San Leandro property that he or she owns and intends to rent will be prohibited from renting the residential property, or having an intermediary rent the property, for a term of less than 30 days.

The California Constitution vests the City with the authority to impose a moratorium on non-hosted short-term rentals to protect the health, safety, and welfare of its citizens, and to regulate zoning. In addition, the California Government Code enables the City to immediately protect and preserve the public peace, health, and welfare by prohibiting any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or planning department is considering. Therefore, the City can impose a moratorium provided it can demonstrate the need for it.

## Enforcement During Moratorium

During the temporary moratorium, City Code Enforcement staff would take the following steps, as per the Community Compliance Program established in the Municipal Code, to enforce against owners who violate the proposed moratorium:

Step 1: Courtesy Notice

Step 2: Notice of Violation (14 days after Step 1)

Step 2: Administrative Citation with \$150 fine (14 days after Step 2)

Step 4: Administrative Citation with \$300 fine (14 days after Step 3)

Step 5: Administrative Citation with \$600 fine (14 days after Step 4)

Step 6: Judicial Order to Abate (at least 1 or more weeks to prepare the order and have a judge approve it)

As shown above, enforcement will take time, as the City must comply and follow the notification procedures outlined above. If the violation becomes more complex (e.g., host status is unclear, clear documentation of short-term rental listings are unavailable, etc.) and City staff requires more time to investigate, then the enforcement process could take longer than 3 months. Particularly egregious violations, which would involve violations that would be public nuisances, or pose an imminent or immediate danger of significant harm to persons or property could be subject to summary abatement. However, the timing of summary abatement is substantially similar to the code compliance timeline described above, in that it would involve the judicial process, including court procedures and hearings.

## Unruly Gatherings Ordinance

Staff also recommends that the City Council consider a regular ordinance at first reading to address unruly gatherings on private property. This ordinance would consolidate for enforcement purposes certain behaviors associated with unruly gatherings on private property that have been the subject of numerous calls for service and complaints to the Police Department.

Unruly gatherings would be defined as follows: A gathering of twenty or more persons on private

property that results in conduct that causes a “substantial disturbance” of the quiet enjoyment of private or public property in a significant segment of a neighborhood or presents a threat to the health and safety of those in attendance, responding enforcement personnel, or occupants of immediately adjacent properties. For purposes of the ordinance only, conduct that causes a substantial disturbance would include, but would not be limited to a noise disturbance generating three or more complaints in any four hour period, obstruction of public streets or rights-of-way by people or vehicles, public drunkenness, unlawful possession of alcohol or drugs, serving alcohol to minors, fights, disturbances of the peace, urinating or defecating in public, setting off fireworks, vandalism, littering on public property or private property not belonging to the person responsible for the gathering, the observed presence of persons on rooftop areas not designed for occupancy, and throwing bottles or other objects or substances at law enforcement or any other person.

Persons responsible for the unruly gathering would be jointly and severally liable for any enforcement actions taken, which could include citations, all the way to misdemeanor enforcement. Such persons could be the property owner, the person responsible for the gathering, the parents or legal guardians of the person responsible if that person is a juvenile, and any person found violating the unruly gathering ordinance. There would be an exception if the property owner or person responsible for the unruly gathering had taken reasonable steps to request the uninvited guests or persons responsible for the offending behavior to leave, including making calls for service to the Police Department.

## **Previous Actions**

Ordinance 2017-003 on March 17, 2017 codified the prohibition of short term rentals in Accessory Dwelling Units (ADUs). The City Council previously held a work session to discuss the issue of short term rentals on November 13, 2017. No consensus was reached and Council directed staff to return with the item for further discussion at a future meeting.

## **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.

## **Legal Analysis**

The City Attorney's Office drafted the urgency ordinance establishing the land use moratorium, and the unruly gatherings ordinance.

## **Fiscal Impacts**

Short-term rentals are subject to a fourteen percent (14%) Uniform Transient Occupancy Tax as per Chapter 2-10 of the Municipal Code. A City business license and Transient Occupancy Registration Certificate would also be required of anyone operating a short-term rental business. Given the low number of listed properties, if the City opts to permit and regulate short term rentals, the amount of tax revenue generated is projected to be relatively small and not likely to recover the full cost of enforcement.

## **Related Legislative Files:**

- Urgency Ordinance Establishing Moratorium on Non-Hosted Short Term Rentals of Residential Properties (18-368)
- Loud and Unruly Gatherings Ordinance (18-370)

## **Attachments:**

- Staff Report and Attachments from November 13, 2017 City Council Short Term Rentals Work Session

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