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Staff Report for a City Council Work Session on Short-Term Rentals

SUMMARY

The purpose of this staff report is to introduce the topic of short-term rentals so the City Council can consider and hear public testimony concerning this land use and potential regulations related to it. Because this meeting is a work session, no formal action of the City Council will be called for or required.

Staff requests City Council direction on next steps and guidelines for future policy implementation.

BACKGROUND

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 a listing service. 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 or common area. 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 Zoning Code as a single or multifamily dwelling converted into a lodging business having six or fewer rooms. In the City of San Leandro, bed and breakfasts are not permitted in most residential zoning districts (including RS, RO and RD) and otherwise require a Conditional Use Permit.

Aside from existing Municipal Code provisions requiring the collection of transient occupancy taxes at 14% (Chapter 2-10) and the City Council's decision in March 2017 to prohibit accessory dwelling units (ADUs) from being used as short-term rentals (Ordinance 2017-003, Zoning Code Section 2-576), San Leandro has not otherwise addressed the topic of short-term rentals. Because short-term rentals have not been expressly enabled in the Zoning Code, they are currently prohibited.

The primary interest in regulating short-term rentals relates to nuisance prevention, preserving neighborhood character and housing availability, and ensuring the safety of occupants. Although the City has responded to a few complaints involving known short-term rentals over the past year, the Police Department and Code Enforcement do not maintain statistics partly because officers are usually unable to ascertain of the status of a given rental property when responding. To date, the Police Department has issued four cease and desist letters to property owners engaged in short-term rental activities that were the subject of resident complaints.

Current Conditions

It is difficult to obtain precise data on the number and availability of short-term rental listings due to the profusion of such websites and that they do not generally share their data. In an informal City staff survey of the best known short-term rental websites such as Airbnb, Widmu, HomeAway, and VRBO, staff noted fewer than 75 available short-term rental properties listed in San Leandro. To put this into context, a recent presentation at a Bay Area Planning Director's Association meeting from Host Compliance, a short-term rental enforcement consulting firm, identified Oakland as having 2,306 known short-term rental listings, Berkeley with 1,694 listings, and Fremont with 282. These listings can vary widely in activity and duration. A property being listed on a short-term rental website does not necessarily mean that it is being rented frequently.

Analysis

There is no one-size-fits-all approach to regulating short-term rentals. In a review of other Bay Area cities, staff noted considerable differences in how each city approaches and regulates short-term rentals. What was noted is that each cities' approach reflects the needs and situation of their individual communities. For example, cities that prioritize housing availability like San Francisco and Berkeley typically impose a cap on the total number of nights a non-hosted short-term rental can be occupied each year. Resort communities with a high number of short-term rentals typically focus on proactive tax collection and nuisance prevention. Cities with older housing stock tend to focus on occupant safety, requiring building inspections or third-party certifications. Even the decision to require a permit and collect taxes on short-term rentals varies widely. Suburban bedroom communities with higher housing costs and little tourism tend to have fewer short-term rental listings. In situations where public interest and the potential for tax revenue is limited, cities are less likely to allow or regulate short-term rentals.

Short-term rentals pose unique challenges for enforcement and tax collection because precise information on their location, availability, cost, and actual occupancy rates are difficult to obtain. The Transient Occupancy Tax (TOT) revenue from short-term rentals is generally self-reported, and paid by hosts on an honor system. The ease of listing a property online and the myriad of websites and property management companies offering the service make it difficult for cities to monitor and enforce tax avoidance. Cities that do proactive permitting and tax enforcement typically employ an outside consultant specializing in online monitoring and enforcement. Airbnb is one of the few online listing companies willing to collect and remit local taxes on behalf of hosts through a formal agreement with individual cities, but the vast majority of short-term rental websites do not willingly share their listing

information and are unwilling to assist cities with tax collection and enforcement.

Other Alameda County City Policies

Regulations on short-term rentals vary widely among neighboring cities in Alameda County. Berkeley and Emeryville have specific code provisions to permit and regulate short-term rentals. Oakland and Union City have not established a special permit for short-term rentals, but allow them as long as transient occupancy taxes are paid. The City of Piedmont does not have a short-term rental permit nor does the City collect transient occupancy taxes, but it allows non-hosted short-term rentals with a business license. Newark, Hayward, and San Leandro have a permissive zoning code where short-term rentals are prohibited because they are not specifically identified as a permitted use.

Housing Availability

One concern with short-term rentals is their effect on housing availability. Non-hosted units negatively impact housing availability because the entire home is used as a short-term rental. Cities like San Francisco and Berkeley that have carefully crafted short-term rental regulations intend for such regulations to mitigate the loss of residential housing by imposing a 90-night cap on the total number of nights each year that a non-hosted short-term rental can be occupied. The City of San Leandro, along with many other cities, prohibit Accessory Dwelling Units (ADUs) from being used for short-term rentals because they are intended to provide a source of affordable housing. Short-term rentals can also be limited to prevent the professional or commercial rental of multiple residential properties by the same individual or company.

Financial Benefits to Homeowners

Advocates for short-term rentals often point to the benefit of hosted units where an individual bedroom is rented and the host continues to live within the home. Homeowners may also make some or all of their property available for short-term rentals when they are away on vacation. The ability to engage in short-term rentals can provide financial assistance to homeowners and enable them to pay their mortgage and other bills.

Nuisances and Neighborhood Character

Residents are often concerned about the effect short-term rentals have on their neighborhood. Over concentration, noise, and parking are typical concerns. San Leandro has a number of tools at its disposal to address public nuisances, but does not have codes or provisions in place specific to short-term rentals.

A way to address short-term rentals that become a public nuisance could be through an “Unruly Gathering Ordinance” which addresses parties or gatherings on private property that create a substantial disturbance due to unlawful, noisy, or disruptive behavior. These ordinances are generally crafted to apply to gatherings of twenty or more persons. They are meant to address a wide range of public nuisances including noise, public drunkenness, fights, loitering, public defecation, fireworks, littering, and vandalism. When combined with a permit suspension or revocation process, unruly gathering ordinances are useful for holding both property owners and occupants responsible and accountable for the misuse of a short-term rental.

Safety

While commercial lodging facilities are required to comply with a number of building, fire, health, and safety codes, there are no equivalent standards or requirements for short-term rentals in private homes. Websites that list short-term rentals have no responsibility or liability for ensuring that hosts are providing occupants with a safe environment. It is up to each individual city to decide upon which, if any, safety requirements to impose. At a minimum, most cities require short-term rental hosts to submit annual proof of liability insurance with significant commercial coverage. A safety inspection or certification of the property is also a possible requirement. Safety inspections can be done by either an approved third party or a city building inspector, who would typically inspect and address things like fire egress, smoke detectors, and building code issues. Safety also includes establishing provisions requiring that an evacuation plan and emergency contact information is clearly posted in the home or room being rented.

Business License and Tax Collection

The City of San Leandro's Municipal Code currently would require any host offering a short-term rental to obtain both a city business license as well as a Transient Occupancy Registration Certificate from the Finance Department. This certificate is required under the City's Uniform Transient Occupancy Tax (TOT) provisions in the Municipal Code and applies to any operator providing short-term lodging, including both hotels and single-family homes. The holder of the certificate is required to collect, report, and remit transient occupancy taxes to the City, which are currently set at 14%. The Municipal Code contains penalties for operators who fail to report and submit any tax payments due.

Enforcement

With or without a required permit, short-term rentals generally function on an honor system where the host is responsible for reporting the number of nights of occupancy and paying taxes to the City. It is practically impossible for cities to accurately collect taxes from short-term rentals, as there is no way to know how often they are rented and for how much.

The expense of operating a short-term rental permit program directly correlates with the amount of enforcement desired. The two primary tools for enforcing short-term rentals generally involve responding to complaints and monitoring short-term rental website listings. A response-based approach is the most cost effective. Proactively monitoring online listings would require the assistance of a consultant specializing in monitoring online listing data, because there are hundreds of potential listing websites and listings change constantly. To encourage compliance, short-term rental permits should be reasonably priced with uncomplicated application requirements. Any permit process should also include procedures for suspension and revocation to address potential problems.

Addressing Short-Term Rentals in San Leandro

San Leandro does not have a substantial number of short-term rentals and, given the high cost of housing and because San Leandro is a suburban community with limited tourism, staff does not expect to see significant growth in their numbers if their use was legalized. However, allowing non-hosted short-term rentals impacts the availability of housing. The amount of transient occupancy tax revenue generated by enabling short-term rentals in San Leandro is assumed to be limited and unlikely to compensate for the full cost of permitting and enforcement. San Leandro already has a

number of effective codes in place to address residential nuisances, but the City does not currently have provisions specific to short-term rentals. The benefit of enabling short-term rentals would be to those hosts who already are or have expressed an interest in operating a short-term rental property.

The City does not currently have provisions specific to short-term rentals. Staff requests direction from the City Council on its position regarding short-term rentals, and a desired process for outreach and further discussion in order to support development of Municipal Code and/or Zoning Code updates.

Previous Actions

Based on an interest in expanding housing availability, the City Council directed staff to prohibit short-term rentals in accessory dwelling units (ADUs) at its March 20, 2017 meeting. The Council unanimously adopted Ordinance 2017-003, which codified the prohibition in City of San Leandro Zoning Code Section 2-576(F). During that meeting, staff noted the topic of short term rentals would return for wider discussion at a future City Council work session.

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.

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 at this time appears to be relatively small.

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