



## Legislation Text

---

**File #:** 19-218, **Version:** 1

---

Staff Report for the First Readings of Ordinances to Add Chapter 4-40 and Chapter 4-41 to the San Leandro Municipal Code to Regulate Hosted Short Term Rentals of Residential Dwelling Units

### **SUMMARY AND RECOMMENDATIONS**

Staff recommends the City Council introduce for first reading ordinances to add Chapter 4-40 and Chapter 4-41 to the Municipal Code to prohibit the rental of non-hosted residential dwelling units and regulate hosted short term rentals.

### **BACKGROUND**

To provide time to further examine and address issues related to short term rentals, the City Council unanimously approved an urgency ordinance on July 23, 2018, placing a temporary moratorium on non-hosted short term rental land uses. The measure reinforced the City's prohibitions and provided a more effective enforcement tool until permanent regulations could be established and implemented related to short term rentals of residential dwelling units land uses. Staff utilized the period to conduct public outreach and develop a new draft hosted short term rental ordinance and a new draft ordinance to prohibit non-hosted short term rentals of residential dwelling units for the City Council's consideration.

### **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, 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**

As presented and discussed at the City Council's December 10, 2018 work session, where there was a staff presentation, public comment, and robust City Council commentary, staff comes to the City

Council with proposed ordinances to establish short term rental regulations.

As directed, and in summary, the proposed Ordinances regulate short term rentals as follows:

All Non-Hosted Short Term Rentals of residential dwelling units in all properties are prohibited. The penalties laid out in the ordinance are as follows:

- a) 1st Notice of Violation (NOV): Misdemeanor prosecuted by City, \$1000 fine or six months in jail.
  
- b) 2nd violation: \$1000 fine or six months in jail, declaration of a public nuisance, and legal action by the City against host or property owner to enjoin illegal use of the property, with pleading to include repayment of City's attorneys' fees and costs.
  
- c) 3rd violation within a 2 year period: \$1000 fine or six months in jail, and triple damages for a second or subsequent civil or criminal judgment within a 2-year period, and repayment of City's attorneys' fees and costs. City Attorney is authorized to bring without City Council approval an action for punitive damages for willful violation of the Code.

Hosted Short Term Rentals would be allowed throughout the City, but only in residential dwelling units. Hosted short term rentals would be subject to obtaining a permit, obtaining a business license, and payment of transient occupancy taxes. Most importantly, they would be subject to specific standards, which are listed in Section 4-40-130 of the ordinance. The standards presented were culled from the December 10 work session utilizing public and City Council comments and staff research of other jurisdictions, and from updated anecdotal evidence gathered by staff. Notable standards include:

- Hosted short-term rentals are limited to a total of 120 calendar days per permit term
- The hosted dwelling unit must be the permittee's primary, permanent residence
- 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
- 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.
- The permittee must inform and update the City regarding the advertising platforms such as Airbnb, VRBO, etc.
- 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, parking restrictions, emergency procedures, and property upkeep, including but not limited to trash disposal.

- Parking shall be in designated or available parking spaces on the permittee's property. Permittee shall instruct its renters or guests to not park on public streets.
- 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.

The hosted short term rental permits and licenses would be administered by the Finance Department, which may collaborate as needed with the Community Development Department, including the Chief Building Official, Planning Division, and Code Enforcement, and the Police Department. The Community Development Director, at his/her discretion, may give such notice as is deemed appropriate to adjacent property owners or other interested parties of a permittee application to operate a hosted short term rental.

The ordinance provides for a permit renewal process. Most importantly for the City Council and community, a robust enforcement, and permit suspension, modification and revocation process is presented, that also balances permittee due process considerations through a straightforward appeals process. Revocation of a permit would result in a permanent bar from ever obtaining a new permit.

A decision of the Director on a new short-term rental permit may be appealed to the City Manager, in which case the City Manager's decision shall be final. If the Community Development Director refers a new short-term rental permit application to the Board of Zoning Adjustments / Planning Commission, the decision of the Board of Zoning Adjustments / Planning Commission may be appealed to the City Manager, whose decision shall be final. A decision by the Finance Director to revoke, suspend, or modify a short-term rental permit may be appealed to the Administrative Hearing Board. The decision of the Administrative Hearing Board shall be final.

Code Enforcement or the Police Department shall enforce this proposed ordinance through the issuance of notices of violations and citations or take any other enforcement actions necessary. However, neither Code Enforcement nor the Police have the staffing or resources to monitor short term rental listings in the City on a regular basis. Therefore, the City intends to hire a third party monitoring firm to consistently and regularly track hosted and non-hosted short term rentals to inform and update the Code Enforcement and Police. See "Fiscal Impacts" below for a summary of the estimated third party costs.

### **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.

### **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 ordinances are 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 ordinances regulating hosted short term rentals.

### **Fiscal Impacts**

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. 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 enforcement.

Staff estimates the annual cost for third party monitoring services to be approximately \$3,500 to \$10,000 per year with the lower amount being for basic online monitoring services and the upper end for enhanced services like a toll free complaint hotline. Pricing varies with the number of short term rental properties and San Leandro appears to fall under the lower volume range (e.g., under 150 units).

### **Budget Authority**

Community Development staff shall solicit and select a qualified third party monitoring service firm and determines the actual costs for the first year of short term rental ordinance implementation. Funding for the third party contract shall come from the FY 2018-2019 City Manager's Contingency Fund, be transferred to 010-41-006-5120 (Code Compliance consulting budget line item).

### **ATTACHMENT(S)**

- Ordinance to add Chapter 4-40 to the San Leandro Municipal Code to Regulate Hosted Short Term Rentals of Residential Dwelling Units.
- Ordinance to add Chapter 4-41 to the San Leandro Municipal Code to Prohibit Non-Hosted Short Term Rentals of Residential Dwelling Units

**PREPARED BY:** Tom Liao, Community Development Director; Andrew J. Mogensen, AICP Planning Manager; Richard D. Pio Roda, City Attorney