

EXCERPT FROM FINAL CITY COUNCIL MINUTES OF JULY 18, 2017

H.2. The City Council will hold a public hearing to consider adoption of an ordinance relating to the City's regulation of short-term rentals (STRs) Recommendation:

Staff recommends that the City Council introduce the proposed ordinance and providing direction to staff regarding any desired changes.

Associate Planner Daisy Allen gave a PowerPoint presentation regarding an ordinance regulating short-term rentals in Orinda, which are rentals for fewer than 30 days which have become popular through Airbnb, VRBO and Craigslist. The City does not currently regulate short-term rentals and some residents would like them to be regulated to more easily allow code enforcement and for neighborhood cohesiveness.

On the other hand, some residents have expressed support for residents to make extra income and stay in their homes which might not otherwise be affordable. These rentals also provide a place for visitors to stay in Orinda since there are no hotels. According to data, there are 52 Airbnb rentals listed in Orinda and the report does not include other hosting platforms such as VRBO and Craigslist. Not all rentals are active at all times and as shown, the number has risen dramatically in the last few years. Two-thirds of the rentals are un-hosted by the owner and one-third of the rentals are hosted.

Ms. Allen spoke about an incident relating to a short-term rental wherein police were called and the City billed for outside police resources. Staff presented policy options last year regarding regulations of such rentals and Council directed staff to develop amendments to the Municipal Code including an annual registration process for short-term rental owners, mechanisms to encourage compliance with the City's noise and parking ordinances, prohibition on granting temporary event permits at short-term rentals, occupancy limits, and changes to ensure short-term rentals are covered by the City's transient occupancy tax (TOT).

Staff drafted an ordinance which was presented on June 13th to the Planning Commission. The Commission had questions, required additional information and continued the item to June 27th and on that date the ordinance was approved with modifications, as attached in the packet (PC Resolution 17-04).

The draft Municipal Code section in the ordinance creates a new section; 17.3.12; Annual Short-Term Rental Registration System, which she briefly described. Added by staff is that once there are 100 short-term rentals listed in Orinda, the Planning Commission will hold a public hearing to consider the ordinance's effectiveness and reconsider it.

The ordinance also includes related changes to the sections of the Municipal Code including the definitions section, temporary event permit section and uniform TOT. She pointed to an error in the draft ordinance regarding the TOT Administrator which should be listed as the City Manager.

Regarding pursuit of code violations, they would be pursued per Title 19 of the Municipal Code, which she briefly outlined. Staff researched other jurisdictions and found that enforcement of rules is always difficult and the more complicated an ordinance, the more difficult short-term rentals can be to enforce.

Ms. Allen also noted that the Planning Commission recommended prohibiting re-registration for two calendar years if a property had 3 or more code violations but this was not included in the ordinance because it would make it function more like a permit than a registration; however, the City Council can consider this.

Regarding next steps, staff recommends the Council consider draft Ordinance 17-04, fiscal impacts would be administrative costs associated with registration which is covered through registration fees, and Finance staff is working with Airbnb on the TOT side. In terms of public outreach, staff would hold a public workshop, providing notification on-line and through mailers.

Councilmember Gee asked what the potential penalty was for someone who does not register their short-term rental.

Ms. Allen stated the code compliance process is complaint-driven and staff would pursue Title 19 code violation process which involves a courtesy notice to the property owner. If there is no response, staff would issue a notice of violation and after 72 hours passes, a citation can be issued from \$250 to \$1,000 per day.

Interim City Manager Salomon noted there is a section in another part of the code about TOT. In other jurisdictions, if an owner of a short-term rental does not pay TOT they will have these registered. Therefore, this section may need to be amended to indicate penalties for non-payment and non-registration.

Mr. Buckley noted that he added a couple of sentence regarding this in the second paragraph on page 70 in the staff report summarizing what it states in the TOT section regarding the penalty if one does not pay the TOT. The actual fine would need to be established by the Administrator or by the Council similar to the resolution for fines assessed through Title 19.

Councilmember Gee asked if there were any levels of restriction on what this could be set at. Ms. Wolff stated she imagines the City will be limited to the state's definition of interest and she was unsure of the answer regarding penalties.

Mr. Buckley said this also sets forth Administrative Hearing procedures separate from Title 19 and that violation of the part of the code is a misdemeanor.

Councilmember Miller asked why there are hindrances to revoking the right to offer the unit on a short-term rental site or to have a permit; that the Planning Commission suggested if there were 2 violations the permit would be temporarily revoked for 1-2 years.

In order to do this, the City would have to assign a land use permit to then revoke. She understands that the City of Lafayette has attempted this route and has yet to have anyone come to apply with 46 rentals operating.

Ms. Wolff said this is not to say the permit would have to be that involved. It could be something simple as meeting certain criteria and given a permit; however, revocation would involve notice, opportunity to be heard and providing due process.

Councilmember Miller summarized that the City would like owners to register their units and abide by regulations but not make it so difficult and restrictive to follow where the City does not have anyone following the rules. Mr. Buckley agreed and said this was the direction received last year.

Councilmember Orr asked staff to explain the difference between property owner and the registrant who is someone with expressed permission from the owner, as language refers to both.

Ms. Wolff explained that some long-term renters may have the right in their lease to engage in short-term rentals given the owner's permission. If a problem occurs at the property, the City wants both the owner and the registrant responsible. If the registrant produces evidence that they have been given permission such in their lease, the owner does not have to sign the registration. It could also be an agent or a host managing the short-term rental.

Mr. Buckley said it is similar to when a property owner authorizes someone to be their agent to file the application and act on their behalf.

Councilmember Orr said it seems important that a property owner is aware of the activity regardless. Mr. Buckley said the Council may wish to have the property owner sign a statement saying they authorize the use on their property.

Mayor Phillips asked about current rate of follow-up with code enforcement, complaints and confidence that the City will be able to enforce this.

Mr. Buckley staff is very diligent in investigating all complaints and getting to a conclusion. The idea is that they are creating a simple set of rules and registration process. If the Council would like to reduce the rules or make things simpler, staff is willing, and he noted that these were established when the Planning Commission considered the matter and made its recommendation and believe they are all very workable.

Where staff has seen them be the least successful is when requirements are most onerous namely places where there has been a complete ban. He questioned the alternative and said he believes it is better to have a simple system. The registration process is the one where the City would achieve most compliance with and this helps them to collect the TOT from Airbnb and be able to address any problems.

Mayor Phillips opened the Public Forum.

Laura Myers said she was in favor of regulations proposed. Many people spoke last year and were in favor of short-term rentals, some noted financial difficulties without them and also families are able to live in them. She echoed Mr. Buckley's comments about not making it so onerous that no one complies. She voiced concern with publicly posting an owner's name given she was a victim of identity theft and asked that this requirement be stricken as the registration aspect should be sufficient.

She said while she never heard of being able to collect TOT from Airbnb she thinks regulations are fine and recognizes that regulations address any problems with large parties and events. She noted the same 1 to 4 properties repeatedly have problems and this was not a basis to take away the rights of others to enjoy their properties. She also did not see why there couldn't be a maximum of 2 rentals at any time so the main house and unit also be able to be occupied at the same time.

Tracy Apple thanked the Council for their work and democracy in action. She has been a host for Airbnb for a long time. Her first guest was a young woman graduating from St. Mary's College, and she has had only excellent experiences which she briefly described. As a resident she thinks there is a difference between hosted and non-hosted short-term rentals and favors hosted rentals, and would not be opposed to non-hosted rentals if the Council voted in this way. She is interested in registering and following regulations, and loves to be a host and be able to share her rental.

Myra Silverman asked the Council to apply the same care and standard it does with who can and cannot use or build on commercial property in Orinda to residential neighborhoods. While she did not think Ms. Apple was an example, she thinks property owners should not be able to convert a residential neighborhood into a commercial neighborhood. She asked to make the registration process secure and proper, and asked that the City enforce short-term rentals, especially when there are problems.

Erik Preminger said he objects to the idea of having to post a name and contact information for owners. The community has gotten a bit unsafe and he asked how the City knows there is a problem or there is a rental unless a complaint is filed. He thinks if someone wants to rent out a room in a house and the owner is there it should be allowed. He said he has had wonderful people staying with them from all over the world, have off-street parking for them and do not infringe on their neighbors at all.

Michael Gordon said the Planning Commission made a real distinction between long-term rentals and short-term rentals. Anyone turning over a room in a house every few days is a commercial enterprise and this is the reason the Commission introduced a provision that restricts short-term rentals to one per lot at any one time which he supported which is under Section 17.12.6 which is an essential provision. He asked the Council to not interfere with this provision.

Linda Michels said since divorced she has always had people staying with her sometimes for a week, a month, longer and sometimes in more than one room. Her house has 5 bedrooms. She vets the people prior to their staying in her home, noted they have had kids from China, kids from the academy, and amazing experiences. She thinks it is beneficial for all involved and financially very helpful for her as well as socially positive for her.

Councilmember Orr said he thinks staff did a great job in bringing back something which addressed questions asked in previous meetings. He suggested just having the registration on site and on file versus posting it in the window. He said any type of ordinance should accomplish a vehicle for the City to track short-term rentals and to capture the TOT and to have a registration process so the City can create safe environments and know where they occur. He was less concerned with the number of people in homes or units, and was also less concerned with trying to enforce this. If something goes wrong, the City should have a registration process and he asked to have property owner contact information on file.

Mayor Phillips said C-1 A and B on pages 81 and 82 may address these specifics relating to owner and/or contact.

Councilmember Orr said A requires the contact information and he thinks it is important that the owner be aware of and consent in writing to allow the use as a rental.

Interim City Manager Salomon noted that Item B on page 81 talks about registration and both the short-term rental owner and registrant which is in several sections as well. The intent is that the form would have that information on it. The City would need to share this with police and fire. Ms. Wolff said this is why the Planning Commission wanted to add the posting requirement.

Councilmember Orr said he would hope it could be done in a different way, given the posting requirement seems awkward.

Ms. Wolff said it sounds like Councilmember Orr would like to have the owner sign because then they have real time knowledge as opposed to giving advanced approval in a lease. Therefore, staff can require the owner sign the application.

Councilmember Orr said he would also agree and appreciates point number 6 under the registration that it is about a single rental which is a key component of the language.

Councilmember Gee said she thinks staff has done a good job regarding not being too onerous while still addressing the matter. She agrees with Councilmember Orr that the posting needs to be addressed differently and to ensure police, fire and City staff knows who to contact. She would not be opposed to the property owner having to sign off as well because she could see instances where someone may have the right to do that as a renter, but it would benefit the City to know the owner has given permission.

She said she thought a lot about comments the Council received about hosted and non-hosted and voiced support for hosted rentals. However, she could envision situations where this might not be necessary, along with enforcement, as a huge percentage of people comply with the rules. She thinks TOT is beneficial and supported some framework over none and thinks with some modifications she can support what she views as a balanced result.

Mayor Phillips referred to Item B-6 and Councilmember Gee said she is supportive of limiting it to one.

Vice Mayor Worth thanked staff and thinks it was important having the main points before the Council, and believes the City should have a framework. People rent rooms in their homes and this provides a framework and meets a balance and knowing where rentals take place. She concurred with Item 6 regarding the intent of limiting it to one rental to take place at any given time. She understands the intent of posting the short-term rental information, but there is a way to do this to ensure it is on file with the City.

She thinks what triggered this matter was the short-term rental of a large party and the City does not envision these being used for large parties. This is a completely separate process and she concurs with the caution that short-term rentals are not eligible for event permits which will be an important element in terms of protecting neighborhood peace and privacy. She would concur with the recommendations of the Planning Commission and staff with modest changes.

Councilmember Miller echoed comments of Councilmembers and she thanked people for embracing new ways of sharing their homes. It creates challenges in the way the City looks at the land use in the community to ensure people are not bringing commercial businesses into residential areas and this came out in correspondence received. The Council is not being asked to granting new rights but rather restraining certain rights people have to rent out their homes. She supported the recommendations of the Planning Commission, agrees with Ms. Myers' point regarding not putting information on the front of the house and asked that staff work on this so information can be available to police, fire and City staff.

Regarding hosted versus non-hosted, there are some non-hosted homes where one reservation can be made at a time. In looking at these rules, she did not think they were so onerous that people would not follow them. She was hopeful that those participating will see these are like hotel rooms, pay TOT and adhere to the ordinance requirements.

Mayor Phillips referred to the tragic incident and asked if that event had a temporary permit, and Mr. Buckley said no. She said the vast majority of residents would like to see some sort of regulations, wanted people to know that it may not necessarily prevent a tragedy, but hopefully the funds from TOT may give the City more resources, and regarding registration she supported moving away from the posting.

Regarding page 82 and confirmation that all construction at the property containing the short-term rental was conducted in compliance with building codes applicable at the time, she confirmed with Mr. Buckley that this requirement ensures safety is in place in the home.

Vice Mayor Worth asked if “confirmation” could be substituted for a different term in the registration. Mr. Buckley said staff was not trying to indicate confirmation was done by the planning department but by the applicant.

She confirmed there was consensus for one rental on the lot under No. 6, recognized the homes that have large parties were the problem rentals in neighborhoods and asked for ideas to help address these, and she asked if there was anything the City could do to entice people to register their units.

Mr. Salomon said he had worked with the Chamber of Commerce to create some coupons for restaurants in the City and he suggested possibly including the Theater or the Shakespeare Festival which could be placed on-line and/or given to registrants.

Councilmember Orr recognized there was consensus and said he appreciates the Planning Commission’s thoughtfulness that the matter should return to them after 100 permits. He would also like to add that the City Council receives a statistical report after 12 months the ordinance taking effect on enforcement, registration, and other data.

Vice Mayor Worth said she thinks it is important to make an attempt to make the owner affirm that the homes/rooms are safe. She would suggest replacing the word “confirmation” with “affirmation”. She thinks the intent is to ensure fire safety.

Regarding the issue regarding “acknowledgement of the registrant shall post” if it is important to maintain these files, police and fire can have access to these.

Ms. Wolff stated staff would recommend that the Council continue this hearing to August 15, 2017 so staff can make revisions to the ordinance per the discussion.

MOTION by Councilmember Orr and seconded by Councilmember Miller **to continue the public hearing to August 15, 2017 and direct staff to make revisions per Council discussion.** Said motion carried by unanimous voice vote.