



# City of Culver City

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## Staff Report

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**File #:** 16-518, **Version:** 1

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**PC/CC -** (1) Discussion Regarding Banning or Regulating Short Term Rentals in Residential Zone Districts Citywide; and (2) Direction to City Manager as Deemed Appropriate.

**Meeting Date:** January 25, 2017

**Contact Person/Dept:** Marian Aspnes/Enforcement Services Manager  
Thomas Gorham/Planning Manager

**Phone Number:** (310) 253-5934; (310) 253-5727

**Fiscal Impact:** Yes ☒ No ☐

**General Fund:** Yes ☒ No ☐

**Public Hearing:** ☐ **Action Item:** ☒ **Attachments:** ☒

**Public Notification:** (E-Mail) Meetings and Agendas - City Council/Planning Commission (01/19/17); (E-Mail) Culver City Chamber of Commerce; Local Hotels; Trade Groups (1/11/17); (E-Mail-GovDelivery) The following neighborhoods: Blair Hills, Carlson Park, Downtown Neighborhood Association, Eastern Washington Boulevard, Fox Hills Neighborhood Association, Gateway Neighborhood Association, Studio Estates, Syd Kronenthal Park/Culver City East Neighborhood, West Washington Boulevard and Sunkist Park. Chamber of Commerce. (Publish) Culver City News (1/12/17 and 1/19/17). (POST) City's Public Notification Web Page (1/05/17); Facebook, Twitter, Cable Slide and Crawler (01/11/17)

**Department Approval:** Sol Blumenfeld, Community Development Director (01/13/17)

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### **RECOMMENDATION**

Staff recommends the City Council and Planning Commission:

- (1) Discuss options for regulating short term rentals including:
  - (a) Banning short term rentals in residential zone districts, citywide; or
  - (b) Allowing short term rentals citywide, subject to certain regulatory requirements, including, but not limited to, licensing, time limits, home-sharing vs. vacation rental; and
- (2) Provide direction to the City Manager as deemed appropriate.

## **BACKGROUND**

Short term rentals (STRs) have become increasingly popular around the world due in part to promotion on STR websites, sometimes referred to as Hosting Platforms such as Airbnb and Home Away. These websites enable property owners, tenants and occupants to rent or swap their living space. Typically, these are short-term rentals consisting of several days or a few weeks, and less than 30 days, although longer term rentals are also found on these sites.

Many cities are adopting regulations to address the impacts that STRs are having on their communities. These impacts include an influx of transient residents, increased vehicle traffic, and complaints of noise and nuisance. Some residents perceive the changes as disruptive to the neighborhood, while others simply see the rentals as a potential source of income and part of the new “sharing economy”.

STRs typically occur in privately owned residential properties, including apartments, condominiums, and single-family homes. They typically fall into two categories, vacation rental or home-sharing. The main distinction between the two is that with home-sharing the primary resident actively hosts their guests during their visit, while vacation rentals are un-hosted. The un-hosted nature of vacation rentals make their negative impacts on the community more prominent. If there is no one to contact when a problem arises, neighbors and cities bear the burden of dealing with noise, parking and traffic, while the owner receives the benefits with little accountability.

Home-sharing and vacation rentals are distinct from timeshares and house swapping. Although sometimes used as short-term rentals, timeshares are typically a fully furnished condominium or hotel type facility that is jointly shared by multiple owners. House swapping is the exchange of a house by one owner with another owner in a different city. Services, such as HomeExchange.com, connect homeowners through a website listing service. There is no “rent” paid by either party. Instead there is an agreement between both parties to exchange homes for a specified period of time. Under existing local law, including the Culver City Municipal Code (CCMC), this activity would not constitute a business activity or a short-term rental, and would generally be allowed.

Additionally, residents have historically hosted out of town guests in their homes for little or no compensation. For example, residents frequently host foreign exchange students and generally receive no compensation other than small gifts or other tokens of appreciation from their guests. These activities are also generally allowed by local law, including in Culver City.

The two most prominent Platform Host companies are Airbnb and HomeAway. HomeAway maintains several sites that it has acquired over the last ten years. Business trade media indicate that Airbnb has overtaken hotel companies relative to valuation by investors and is expected to outpace hotels relative to bookings in several years.

### **HomeAway**

HomeAway, Inc. was founded in 2004 as CEH Holdings. The company acquired several sites and consolidated them into a single vacation marketplace, launching HomeAway.com in June 2006. Vacation Rentals by Owner (VRBO), one of HomeAway’s holdings was founded in 1995 by a married couple trying to rent their ski condo. The Company’s website notes: “HomeAway, Inc. is the world's leading online marketplace for the vacation rental industry. At HomeAway, our mission is to make

every vacation rental in the world available to every traveler in the world through our online marketplace. With over one million online bookable vacation rental homes in 190 countries, we're committed to helping families and friends find the perfect vacation rental to create unforgettable travel experiences together."

### Airbnb

According to its website Airbnb "*connects people to unique travel experiences, at any price point, in more than 34,000 cities and 191 countries. And with world-class customer service and a growing community of users, Airbnb is the easiest way for people to monetize their extra space and showcase it to an audience of millions.*"

Airbnb has transformed the short-term rental market, particularly because of the marketplace platform it has created that provides for a decentralized supply of short-term lodging positioned to compete directly with hotels instead of only providing an alternative when hotel rooms are scarce. Real estate agents have also highlighted offering short-term rentals as an attractive revenue source in multi-family dwellings, ultimately contributing to the justifications of high sales prices.

There are more than a hundred Hosting Platforms available to list short-term rentals.

Property owners can utilize these websites to list their properties, which could consist of an entire house, a single room or any other accommodation a person could think to rent. It is free to create a listing, and hosts decide how much to charge per night, per week or per month. Each listing allows hosts to promote properties through titles, descriptions, photographs with captions and a user profile where potential guests learn about the host. The company charges guests a percentage fee for each listing.

Airbnb lists three types of rentals:

1. Entire Place - Guests have full access to the unit, which may be a house, apartment, or condo.
2. Private Room - Guests rent a private bedroom but share the unit, which may be a house, apartment, or condo with another person. The guest might share the unit with the full time occupant of the unit or with another guest.
3. Shared Room - Guests rent a bed or couch in a unit with limited expectation of privacy. The guest may share a bedroom or other common room such as a living room. The guest might share the space with the full time occupant of the unit or with another guest (these types of shared rentals are commonly referred to as "hacker hostels" or "communal spaces").

## DISCUSSION

The issue of STRs was originally discussed by the City's Finance Advisory Committee (FAC) in relation to the application of the City's Transient Occupancy Tax (TOT). The FAC felt that it was premature to provide a recommendation on whether to apply the City's TOT to STRs without first considering whether they should be permitted at all within the City and, if so, establishing regulations for their operation. As a result, the FAC's recommendation was that the City Council direct the Planning Commission to study the matter and make Zoning Code recommendations to the City Council.

A preliminary review of the issues related to STRs suggests that these issues are a multi-departmental concern. The permitted use versus a prohibition is a zoning issue; however, the applicability of the City's TOT and/or other taxes involves the Finance Department. Enforcement of an STR ban or adopted regulations would impact Code Enforcement staff and possibly the Planning and Building Safety Divisions, and the Police and Fire Departments.

For the purpose of this report the following terms are defined as:

- (1) "Home-Sharing Rental" - An activity whereby a resident hosts visitors in their home, for periods of less than 31 consecutive days, while at least one of the primary residents lives on-site throughout the visitor's stay. The guest enjoys the non-exclusive shared use of the unit with the person who is domiciled at the location.
- (2) "Vacation Rental" - Rental of any dwelling unit, in whole or in part, to any persons for exclusive transient use of less than 30 consecutive days, whereby the unit is only approved for permanent residential occupancy and not approved for transient occupancy. The guest enjoys the exclusive private use of the unit.
- (3) "Short-Term Rental" - Any rental of a residential dwelling unit that is 30 consecutive days or less, including home-sharing and vacation rentals.
- (4) "House Swapping" - The exchange of a house by one owner with another owner in a different city for short periods of time by agreement between both parties to exchange homes for a specified period of time without compensation.

#### Arguments in favor of STRs:

- Proponents express that short-term rentals are much more profitable than renting on a long-term basis. As such, owners can reinvest into their properties through renovations and employ locals to perform gardening, housekeeping and other home maintenance services.
- It is claimed that users of local vacation rentals stay longer and spend more money in the local economy.
- Advocates maintain that with the rising cost of living in California, STRs provide for added income to help pay the rent or mortgage, which some residents may not otherwise be able to afford.
- Hosting Platforms, like Airbnb, claim they are bringing strangers together and providing travelers with a sense of belonging to a community.
- They provide an alternative to expensive hotel stays.

#### Arguments against STRs:

- Opponents argue these types of rentals are destroying single family neighborhoods. Neighbors no longer know who is living next door to them as strangers check in and out regularly. Gone are the days when a neighbor might bring in your mail or check on an elderly person. The closeness of a community is lost when you don't know your neighbors.
- Some property owners argue they have a substantial investment in their property and lawmakers should protect the rights of full-time residents over absentee landlords and visitors.
- Opponents also claim that STRs continue to have a disastrous effect on the supply of housing at all income levels. As STRs become more profitable, long term housing is being depleted causing rents to increase.

- Another claim is that they provide an incentive for property owners to illegally convert garages or accessory structures into dwelling units in order generate income.
- Some claim they impact city services such as additional trash collection, increased calls to police and code enforcement for noise and parking problems.
- The hospitality industry may be negatively impacted. Reduced business affects jobs for both the hotels as well as those businesses which provide support to the industry.

Further background information on short-term rental market trends and impacts is contained in Cities, The Sharing Economy and What's Next, A report issued by the National League of Cities Center for City Solutions and Applied Research, March 2015, (Attachment No.1).

### Zoning

Currently, STRs are not permitted in residential zone districts of Culver City. The Culver City Zoning Code classifies rentals of less than 30 consecutive days as a hotel/motel use and they are not listed as a permitted use in residential zones.

The City's Zoning Code is a permissive Code, in that if a land-use is not specifically identified as permitted, then it is considered to be prohibited. In the case of short-term rental uses, they are considered prohibited within the City since they are not enumerated as a permitted use.

### Transient Occupancy Tax (TOT)

Several cities have been applying their transient occupancy tax (TOT) to STRs. Culver City's current TOT is written broadly enough that it could apply to owners who rent their homes, apartments or rooms using the services of Hosting Platforms, such as Airbnb, Vacation Rentals by Owner, etc. The City's TOT ordinance (CCMC Section 11.02.100, et seq.) applies to transient occupancy of a hotel for a rental period of 30 days or less (Attachment No. 3). Hotel is defined broadly as:

***“Any structure, or any portion of any structure,*** which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, ***tourist home or house,*** motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, ***or other similar structure or portion thereof.***” (Emphasis added.)

Also, the definition of “operator” in the City's TOT ordinance does not distinguish between property owners who rent their homes, apartments or rooms directly to short-term tenants and those owners who rent via Hosting Platforms, and includes a proprietor serving in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or ***“any other capacity”***. Therefore, the TOT ordinance should be equally applicable to property owners and Hosting Platform companies.

Pursuant to CCMC Section 11.02.105 each transient is subject to and shall pay the City's TOT in the amount of fourteen percent (14%) of the rent charged by the hotel operator.

If short-term rentals are permitted in residential areas with new zoning standards, it must also be determined how best to ensure collection of TOT.

Instances where cities impose the obligation to collect and remit TOT on the Hosting Platform companies is less common than cities' direct imposition of TOT on the owners of the properties being rented on a short-term basis.

Airbnb has argued that it is only a platform to facilitate the rental of short-term rental units and that the individuals providing the units should be subject to compliance with regulatory measures including taxes. However, Airbnb does collect and remit TOT for rentals in the following jurisdictions:

- Multnomah County and Portland, Oregon USA (as of July 2014)<sup>1</sup>
- San Francisco, CA USA (as of October 1, 2014)<sup>2</sup>
- San Jose, CA USA (as of February 1, 2015)
- Chicago, IL USA (as of February 15, 2015)
- District of Columbia USA (as of February 15, 2015)
- Amsterdam, NL (as of February 1, 2015)
- Malibu, CA USA (as of April 20, 2015)
- Santa Monica, CA USA (as of November, 2015)<sup>3</sup>
- Los Angeles, CA USA (as of August, 1, 2016)

### Recent lawsuits

Several lawsuits have been filed by Airbnb against various municipalities with regard to STR regulations, including the cities of New York, San Francisco, Santa Monica, and Anaheim.

One of the primary claims of these lawsuits is that Airbnb is protected by Section 230 of the Communications Decency Act of 1996, which is designed to protect free speech online and specifically provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Airbnb attorneys have interpreted this provision to prohibit states and local jurisdictions from holding Internet platforms liable for content created by users of the websites. Airbnb argues that the company cannot be held accountable for third-party content and, because they are only providing the hosting platform, they have no responsibility in making sure users of their site are in compliance with local law. The company has claimed these cities have violated federal laws protecting privacy and online speech and claimed the law unfairly puts the responsibility of ensuring a property owner's compliance on Airbnb instead of on city regulators.

Despite Airbnb's claims, the Court in the San Francisco case issued a tentative ruling that was favorable to cities. The Court's tentative ruling determined that the hosting platforms are acting as facilitators of these rentals and as such cannot facilitate an illegal activity, which allows for local jurisdictions to enforce local regulations and require Hosting Platforms to work with the cities by checking for city licenses or registrations before completing a booking. However, because San Francisco and Airbnb settled the lawsuit before the matter went to a formal hearing, there was no official ruling in the case and this tentative ruling is not binding law.

Some of these cases have settled, with Airbnb and the respective cities reaching cooperative agreements. City staff continues to monitor the pending litigation regarding STR regulations (including the Santa Monica lawsuit), as the outcomes of those cases may further inform the City's potential actions in the future.

### Regulatory Approaches

The City Council could decide to maintain the City's current regulations, which do not allow hotels/motels (the cities definition of an STR) in residential zones, but only allows hotels/motels in commercial districts.

If the City Council determines STRs should be allowed in residential zone districts, there are a number of issues/regulations to consider.

1. Identify specific residential zone district(s) in which STRs should be permitted (R-1, R-2, R-3, RLD, RMD, and/or RHD).
2. Establish the method/process for collection of the City's TOT.
3. Establish the requirements to be imposed on hosts and Hosting Platforms to collect and remit TOT.
4. Establish a regulatory framework to legalize and regulate Home-sharing.
5. Determine which type of rentals are allowed (hosted or un-hosted).
6. Establish who may operate (owner and/or renter).
7. Determine whether to disallow in subsidized housing.
8. Set neighborhood quotas.
9. Require host to post noise ordinance.
10. Licensing/Permitting requirements, including:
  - Short term rental owners and operators required to designate a 24 hours, 7 days a week, local contact to respond to reported complaints.
  - Supply contact information to neighbors and the City.
  - Renters must be 21 or older.
  - Regulate or prohibit additions or accessory structures used for STR.
  - Determine who the responsible party is and require they actively prevent any nuisance activities that may take place as a result of STRs.
  - Require adequate parking and garbage disposal.
  - Compliance with all applicable laws, including all health, safety, building, fire protection, and rent control laws. Possible inspections.
  - Prohibit any person from advertising on a Hosting Platform that is not licensed.
  - Ban signs.
  - Require Hosting Platforms to check for City Licenses prior to completing a booking.
  - Place a possible limit on the number of days a unit may be rented per year and determine how this would be monitored.

Attachment No. 5 contains a summary table of how other select jurisdictions have regulated STRs.

### Enforcement/Permitting

Currently, short-term rental enforcement is handled on a complaint basis by the City's Enforcement

Services Division. The enforcement of STR cases is extremely resource intensive because it can be very difficult to verify the violation. Unlike most other Code Enforcement cases, these violations are frequently not in plain-view. Also, the Hosting Platforms do not provide addresses, making it difficult to utilize the information on the websites. Although a map is provided, it only shows an approximate location. Staff would need to read through listing text and review pictures to identify the location of the house or building. Sometimes, a complainant will provide the listings they find online to assist with enforcement.

With the many Hosting Platforms available, it can be difficult to find an actual rental listing and it takes time to search. The City could utilize the services of a company, such as iCompass, to assist with locating those advertisements, which of course, comes at a cost.

Other jurisdictions have hired additional staff dedicated solely to enforcement of STRs. For example, Santa Monica hired an Analyst and two Code Enforcement Officers to enforce its ordinance at an initial cost of \$410,029 with subsequent annual funding of \$266,898. They also utilize credit cards purchased by the city to perform “sting operations”. In order to catch an illegal operation, they book a rental and then pay overtime to their staff to stay the number of days booked. The Officer verifies if the owner is actually hosting the rental or whether it is operating as an un-hosted Vacation rental. They can also find unlicensed STRs with this type of enforcement. Upon conclusion of the investigation, the city will fine the violator. However, this doesn’t necessarily mean they have achieved compliance. The host could continue to operate creating the need for continued enforcement action. Noncompliance leads to prosecution through the City Attorney’s office impacting the resources of the city further.

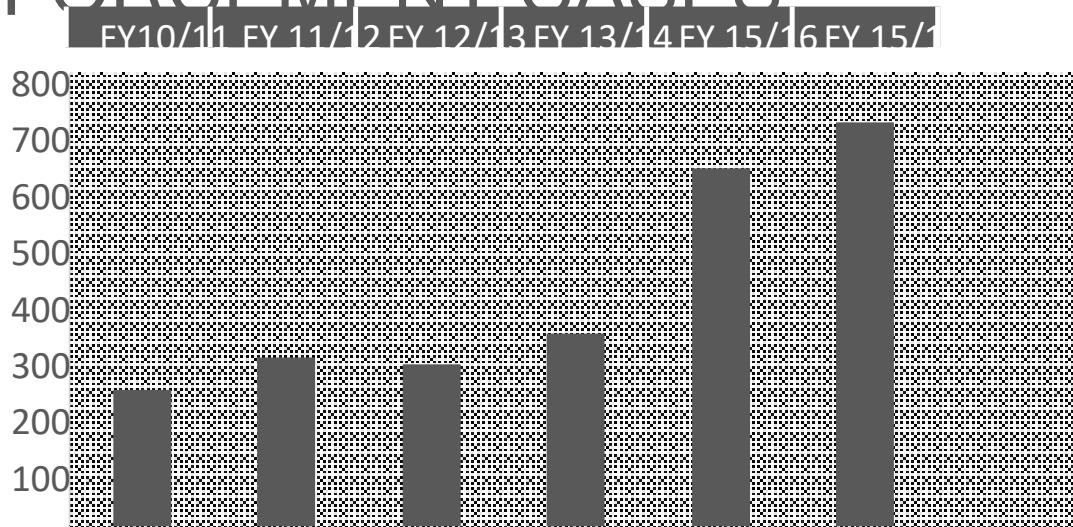
If the City Council decides to maintain the current regulations (which do not permit the operation of an STR in residential zones), the enforcement will still be labor intensive dependent upon the number of complaints. The Code Officer would have to be able to determine that the unit is being rented and that the persons are not “guests” of the property owner. During one such investigation, the homeowner stated they have friends who live all around the world and they occasionally come to visit and no money changes hand. Without the cooperation of the Hosting Platform, it is difficult to prove a guest from a renter. Culver City would need to perform an investigative sting in the same manner as Santa Monica in order to obtain the needed evidence to fine and/or prosecute.

### Staffing

There are approximately 300 STRs in Culver City listed on the main hosting platforms. This does not include the other websites available for hosting. For perspective, Code Enforcement staff is currently working 630 (non-STR) active cases relating to various CCMC violations, with approximately 500 new cases annually.

The number of cases has increased substantially from FY 10/11 to FY 15/16 due in part to the additional regulations added over the last two years including the smoking ban in multi-unit housing, storm water and drought related water restrictions, an increase in unpermitted construction and an increase in homelessness. The chart below shows the increasing number of enforcement cases:

# ENFORCEMENT CASES



FISCAL YEAR	0	1FY11	2FY12	3FY13	4FY14	5FY15	6Trend
TOTAL CASES	242.00	298.00	286.00	342.00	635.00	714.00	

As noted, other cities have had a very difficult time enforcing against STRs, as well as registering STRs where it has been legalized. Additionally, most cities in California that allow for STRs only allow property owners to conduct the activity, not renters.

The operation of an STR is fundamentally a zoning violation. To ensure an efficient enforcement process, staff would also need to incorporate Business Licensing regulations in enforcement activities. That is, staff could initiate cases by enforcing the lack of a business license. By using this approach, once the unit and owner or occupant is identified, staff may be able to issue a Notice of Violation or fine based on the advertisement and/or any other information that can be gathered through an investigation, which would serve as evidence of doing business.

If staff were to implement a more proactive program, instead of relying on complaints, there would be an initial spike in STR cases that would likely be sustained for approximately two years or more. Cases might then begin to level off. Additionally, as residents become aware of an enforcement process, the number of complaints could possibly increase.

With the current staff of two Code Enforcement Officers, one administrative support staff and a Manager, the ability to effectively enforce against STRs would mean that other complaints could not be addressed without an increase in staffing. One additional Code Enforcement Officer would initially cost approximately \$104,565, not including the necessary related supplies and expenses, i.e. vehicle, office supplies, etc.

Additionally, registering or licensing procedures would affect the Finance Departments operations as well.

## FISCAL ANALYSIS

If Council were to allow STRs as a permitted use, the City would have to reach out to existing platforms, including Airbnb and HomeAway, to ensure the collection of TOT on behalf of the City. If we estimate there are 300 units listed in Culver City and these units generate approximately \$1,000,000 in revenue per year, for an average of \$3,333 per unit and Culver City charges a 14% tax on the full amount paid for room rental, the city could expect to receive approximately \$139,986 in tax revenue or an average of \$467 per unit.

This number could increase as more people might take advantage of the opportunity to create income and as more hosts are identified. Increased rental units could, however, result in more complaints and the need for increased enforcement action which in turn would negate the value of collecting the tax.

The revenue collected from fines would be relatively low as Administrative Citations, pursuant to the CCMC, are limited to \$100, \$200, and \$500 respectively.

## **OPTIONS**

1. The City Council could make no changes to the current CCMC. Enforcement would continue on a complaint basis and as time allows.
2. The City Council could direct staff to draft an ordinance that would re-enforce existing prohibitions against home-sharing and vacation rentals in residential neighborhoods, provide additional definitions for clarity, tools, and increase the Code Enforcement staffing for enforcement purposes.
3. The City Council could direct staff to draft an ordinance legalizing STRs in residential zones.
  - (1) Establish a proactive enforcement program and determine how much additional staff is required and hire for FY17-18.
  - (2) Begin an education campaign regarding the ordinance with public and listing companies.
  - (3) Reach out to listing companies to set up arrangements for listing companies to collect TOT on behalf of the City.
  - (4) Evaluate the program and return to Council with any adjustments necessary to ensure the success of the program by FY18-19.
  - (5) Provide Council with a status report by 2018.

## **ATTACHMENTS**

1. Cities, The Sharing Economy and What's Next, A report issued by the National League of Cities Center for City Solutions and Applied Research, March 2015
2. Culver City Municipal Code (CCMC) Section 17.220.015 - Residential District Land Uses and Permit Requirements - Land Use Table; and Section 17.700.010 Definitions of Specialized Terms and Phrases.
3. CCMC Chapter 11.02: Hotels and Motels.

4. City of Los Angeles Memo and LA Times Article re Airbnb
5. Table Summary of other jurisdictions regulations

## **MOTION**

1. That the City Council and Planning Commission discuss banning or regulating short term rentals in residential zone districts citywide; and
2. Provide direction to the City Manager as deemed appropriate.