



# Agenda Item

## City Council

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**Item #:** 11.2.

11/10/2020

**File #:** 20-243

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**TO:** Honorable Mayor and Members of the City Council

**FROM:** Rick Otto, City Manager

### 1. SUBJECT

Public Hearing to consider Introduction and first reading of an Ordinance of the City Council of the City of Orange Amending Title 5 of the Orange Municipal Code by Adding Chapter 5.94 regulating the licensing and establishment of short term rental businesses in the City and amending Title 17 by adding a definition, zoning requirements, and conditions for short term rental use.

### 2. SUMMARY

Short Term Rental properties have become more prevalent in recent years, and given the transitory nature of their tenants, Short Term Rentals can have a significant impact on residential neighborhoods when they are not properly regulated. The proposed Ordinance would recognize short term rentals as a use in the zoning code and establish restrictions for their use to protect the character of residential neighborhoods.

### 3. RECOMMENDED ACTION

Introduce and approve Ordinance No. 08-20. An Ordinance of the City Council of the City of Orange amending Title 5 of the Orange Municipal Code by adding Chapter 5.94 regulating the licensing and establishment of short term rental businesses in the City and amending Title 17 of the Orange Municipal Code by adding a definition, zoning requirements and conditions for short term rental use.

### 4. FISCAL IMPACT

Adopting this ordinance would generate revenue by requiring short term rentals to obtain a business license and pay transient occupancy tax. Staff resources would be required to administer the program.

### 5. STRATEGIC PLAN GOALS

Goal 3: Enhance and promote quality of life in the community  
c: Support and enhance attractive, diverse living environments.

### 6. DISCUSSION AND BACKGROUND

Short Term Rentals (STRs) are residential units (single-family homes, town homes, condominiums, apartments, etc.) that are rented for a period of less than 30 days. STRs have existed for many years but became much more common after the founding of Airbnb in 2008, and became increasingly more prevalent starting in 2012. Airbnb, Expedia Group (VRBO and HomeAway), and other similar sites create a convenient online marketplace for STRs.

### History of STR Policy

Initially, the City of Orange took the position that as the Orange Municipal Code (OMC) does not contemplate this type of rental, it has no basis to regulate STRs. In 2013, as STRs became much more prevalent, the City began sending notices to properties listed on rental sites and informing them that they were required to obtain a business license and collect transient occupancy tax (TOT) for the City. However, in 2017 staff determined that the City could not issue a business license or collect TOT as STRs are not specifically allowed in the OMC. As a result, the City sent notices to all registered STRs informing them that STRs are not recognized as a permitted use in the OMC for residential areas, and that they would no longer be issued business licenses or be required to collect TOT. At that time, the City had 30 registered properties that generated approximately \$8,000 per month in TOT. While the City no longer issued business licenses, we did not actively prohibit the activity. Rather, STRs were viewed as another form of home rental (similar to rentals of more than 30 days), which is also not contemplated in the OMC. This “hands off” approach provided flexibility should the City wish to regulate or prohibit STRs in the future. As part of this approach, it was determined that any municipal code violations that arise from STRs will be addressed in the same manner as other Municipal Code Violations.

Based on discussions with STR compliance services, staff estimates that there are now approximately 350 properties in the city that are rented as STRs at least part of the year. Our Code Enforcement staff typically receive two to three complaints about STRs per week. The frequency of complaints spikes in the summer months and then tapers off the rest of the year. Typical complaints include noise, trash, possible illegal activity, and parking issues. However, complaints have concentrated on a couple of houses in single-family neighborhoods that have been rented out for parties that negatively impact the affected neighborhood.

### STR Policy in Other Cities

Many cities, including Garden Grove, Huntington Beach, and Irvine, prohibit STRs in residential zones. Buena Park recently adopted an ordinance that allows STRs with restrictions. Anaheim has gone from a moratorium, to a ban, to a policy of allowing existing STRs with restrictions. Newport Beach also allows STRs with restrictions, while San Clemente restricts STRs to certain residential areas in the city.

Below is a table summarizing STR policy in select Orange County cities.

City	Policy January 2020	Policy September 2020
Anaheim	Allows existing STRs, but no new ones, with fines and possible revocation of licenses for repeat bad actors	No change
Buena Park	Moratorium on STRs while they prepare an ordinance to allow them with restrictions	STRs allowed with restrictions only if the property owner is onsite.
Dana Point	Allows existing STRs, but no new ones, with fines and possible revocation of licenses for repeat bad actors	No change

Fullerton	STRs are prohibited	STRs are prohibited although the City Council is considering allowing them with restrictions.
Garden Grove	STRs are prohibited	No change
Huntington Beach	STRs are prohibited	No change
Irvine	STRs are prohibited	No change
Lake Forest	STRs allowed up to three times per year in primary residence (not in rental properties)	Clarification: STRs are prohibited <i>Note: STRs are technically only allowed as part of a home swap/exchange program three times per year with a family member in another location</i>
Newport Beach	Allowed with permit in certain residential districts with restrictions on occupancy and requirements for local contact	Between July and October has adopted a series of reforms with additional restrictions such as minimum age of 25 to rent, 3-night minimum stay, cap number of permits at 1,550 and establish waiting list for permits
Santa Ana	Ended a moratorium in 2015, does not have a current policy response to STRs	No change
San Clemente	Allowed with permit in certain residential areas (not in single family neighborhoods) that are visitor serving (near downtown and the coast)	No change
Seal Beach	STRs are prohibited	No change

### Previous Council Consideration

Staff provided STR policy options to the City Council at its meeting on January 14, 2020. At the meeting, the City Council directed staff to prepare an ordinance that would prohibit STRs and place it on the February 11, 2020 City Council agenda for consideration. At that meeting, the Council declined to adopt the ordinance prohibiting STRs and instead directed staff to prepare an ordinance that would recognize STRs as an allowable use in all zones that allow residential uses, along with restrictions to reduce their impact on residential neighborhoods. The resulting ordinance was considered by the Planning Commission at its meeting on August 17, 2020. The Planning Commission reviewed the proposed ordinance and noted the prevalence of STRs and the desirability of establishing restrictions for their use that would mitigate neighborhood impacts. The Planning Commission adopted Resolution No. PC 21-20 recommending City Council approval of the proposed ordinance.

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**Overview of the Proposed Ordinance**

The draft ordinance contains the following provisions:

- Defines STRs and recognizes them as a permitted use in specified residential zones.
- Requires that STRs obtain a permit and business license and pay TOT.
- Establishes regulations for STRs, including:
  - Ownership limited to individuals and trusts. No STR permits will be issued to a corporation or LLC. Limit of two STR permits per individual or trust.
  - Minimum distancing of 300 feet between STRs with exceptions for existing STRs.
  - Occupancy limited to two people plus two per bedroom (e.g. eight people for a three-bedroom house).
  - Minimum two-night stay.
  - Property manager must be onsite or able to respond onsite within 30 minutes.
  - Good neighbor policy requires notifying neighbors with contact information for the property manager.
- Off-street parking is required.
- Quiet time is between 10 p.m. and 9 a.m.
- Establishes Major and Minor Offenses, with revocation of permit for three Major Offenses in a 12-month period.
- Offenses are categorized as follows:
  - Minor
    - Responds to a complaint in more than 30, but less than 60 minutes.
    - Occupancy limit exceeded by one or two people.
    - Failure to respond to noise complaint within 30 minutes.
    - Other violations deemed minor by City Manager or designee.
  - Major
    - Responds to a complaint in more than 60 minutes.
    - Occupancy limit exceeded by three or more people.
    - Rental of fewer than two nights.
    - Failure to abide by Good Neighbor Policy.
    - More than one complaint of street parking during any one occupancy.
    - More than one noise complaint during any one occupancy.
    - Failure to pay TOT when due.
    - Criminal activity on the short term rental policy.
    - Two minor offenses in a twelve month period.
    - Failure to renew short term rental permit and/or business license by due date.

Fine amounts and the maximum number of STR permits are not included in the ordinance, but are proposed to be adopted by resolution so that the Council can adjust them as needed without having to amend the ordinance. Staff is proposing an initial cap of 350 STR permits which should accommodate existing STRs.

**Public Outreach, Hosting Platforms, and Other Stakeholders**

Staff has met with AirBnB and Expedia Group, which between them own hosting platforms that contain the majority of Orange STR listings. Both companies provided feedback on the proposed ordinance and are willing to assist staff in administering the program by removing listings from problem properties and entering into agreements to collect and remit TOT to the City.

Staff has also spoken with and reviewed emails and voicemails from residents concerned about STRs in their neighborhood. Some residents have urged the City Council to ban STRs, while others would like an ordinance that provides the City with effective tools to address neighborhood impacts.

### **STR Operators**

A group of Orange property owners that operate STRs has spoken at previous City Council meetings about the importance of having STRs recognized in the OMC along with common sense restrictions that protect neighborhoods. This group has provided feedback to staff about the proposed ordinance and has expressed their willingness to obtain business licenses, pay TOT, and comply with the proposed restrictions. Below are their requested changes to the proposed ordinance along with staff recommendations regarding certain proposed changes:

#### **Section 5.94.060.G (Good Neighbor Policy)**

- Add response time to this section and define as 60 minutes by phone and 90 minutes in-person with reasonable consideration
- Remove requirement for signatures from all but primary guest, with special concern around requirement from minors (14-17 year-old guests)
- Confirm that electronic consent can be used for house rules
- Allow street parking in front of STR properties
- Adjust quiet hours to 10 p.m. to 7 a.m. (quiet hours extend to 9 a.m. in the proposed ordinance)
- Replace the phrase “as it deems necessary or prudent” in the inspections language to “with probable cause” to address fourth amendment concerns

#### **Section 5.94.070 (Offenses)**

- Remove response time as an infraction
- Add a pre-revocation appeal process as protection from unfounded complaints
- Remove 5.94.070.B1.d and 5.94.070.B2.k (too open ended)
- Make 5.94.070.B.2 b, c, d, and e minor offenses (currently major offenses)

**Re-assignment of Fines** - Allow the re-assignment of fines for noise, max occupancy, and criminal activity to the guest. Staff recommends retaining the existing language that holds the property owner responsible for fines.

#### **Section 5.94.080 (STR Platforms)**

- Add provision for automated collection and remittance of TOT - staff recommends not including this in the ordinance and entering into agreements with the platforms for this provision
- Add “active” to Section A.2.a, so that it reads: “The total number of *active* Short Term Rentals in the city listed on the platform during the applicable reporting period”
- Add “qualifying” to Section A.2.b, so that it reads: “The total number of *qualifying* nights all short term rental units were rented through the platform during the applicable reporting period”
- Review any final versions, of this ordinance, especially this section, with key STR platforms - staff has reviewed the current draft ordinance with AirBnB and Expedia, the two largest

platforms, and incorporated their feedback

The group also provided input on the maximum number of STR permits and fine amounts. Staff will include those comments in a subsequent draft resolution to establish those provisions should the City Council adopt an STR ordinance.

### **STR Program Administration**

Should the City Council adopt the ordinance recognizing STRs, staff is recommending that the City contract with an STR compliance service. STR compliance services offer a range of services to help cities achieve compliance with STR regulations and reduce the administrative burden on City staff. Typical services include:

- **STR Identification** - Software checks all major listing sites for listings and then verifies the address of all listings located in the City.
- **Automated Notifications** - Once an STR is identified, automated notifications can be sent to the STR host to notify them of requirements to obtain a business license, pay TOT, and follow the good neighbor policy.
- **24-Hour Hotline** - Allows residents to report violations of the STR ordinance at any time. The compliance service will contact the STR host and check back in 30 minutes to verify that the complaint was addressed and if not, forward the case to Code Enforcement.
- **Online Registration and Payment** - Provides a simple online solution for STR hosts to apply for a permit and pay TOT.
- **Compliance Monitoring** - Ongoing monitoring of listings for compliance with the STR ordinance along with assistance in auditing TOT payments.

The annual cost to the City for the above services would be between \$30,000 and \$40,000. Staff estimates that the TOT revenue generated by 350 STRs when using a compliance service would range from \$500,000 to \$750,000 per year. Staff also estimates that in addition to reducing the burden on City staff, the increased compliance from using a compliance service would generate more than enough additional TOT to pay for the annual costs of the service. In addition to a compliance service, the City may need to fill a vacant code enforcement position to enforce STR regulations effectively.

### **Alternatives**

City Council may choose to adopt an ordinance that prohibits STRs in the City. For such a prohibition to be effective, the City would also need to contract with a compliance service to identify STRs and staff would work to remove STR listings and bring property owners in compliance with the ordinance. Alternatively, the City Council could allow STRs but with stricter standards than the proposed ordinance. Additional restrictions could be crafted to address specific concerns regarding STRs.

### **Recommendation**

Staff recommends that the City Council adopt Ordinance No. 08-20 allowing STRs with the restrictions noted above. If the City Council adopts the proposed ordinance, staff would return at a subsequent meeting with an agreement for STR compliance services along with a resolution establishing a maximum number of STRs and the amounts for fines for violations of the ordinance.

## 7. ATTACHMENTS

- Ordinance No. 08-20
- STR Operator Recommendations