



Agenda Item

City Council

Item #: 7.3.

1/12/2021

File #: 20-331

TO: Honorable Mayor and Members of the City Council

FROM: Rick Otto, City Manager

1. SUBJECT

Policy options for enforcement of prohibition on Short Term Rentals and Third Amendment to Master Subscription Agreement with Granicus, LLC for short term rental compliance services.

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. The proposed policy options would enforce a prohibition on short term rentals. The proposed Third Amendment to the agreement with Granicus, LLC would expand the scope of services to include Short Term Rental compliance services.

3. RECOMMENDED ACTION

1. Approve Third Amendment to Master Subscription Agreement with Granicus, LLC, in the amount of \$15,846 for short term rental compliance services, and authorize the Mayor and City Clerk to execute on behalf of the City.
2. Provide direction to staff on enforcement of a prohibition on Short Term Rentals.

4. FISCAL IMPACT

The total expenditure for this amendment is \$15,846 and will be funded through General Fund (100).

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, accessory dwelling units...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 known as "hosting platforms", 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 specify 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. However, 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 currently an estimated 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.

In response to concerns expressed by community members, the City Council directed staff to provide STR policy options at January 14, 2020 Council meeting. At that meeting, after deliberating the various options, 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 adopted Resolution No. PC 21-20 recommending City Council approval of that ordinance. However, at their November 10, 2020 meeting, the City Council declined to adopt the ordinance. Rather, the Council directed staff to proceed with banning STRs and research policy options to enforce the prohibition on STRs.

STR Ordinance

While some cities enforce a prohibition on STRs because they are not listed as an allowable use in the zoning code, staff recommends that the City adopt an ordinance specifically prohibiting STRs if the Council desires to enforce an STR ban. Staff recommends that the ordinance include the following provisions:

- Define STRs as rentals of dwelling units for fewer than 30 consecutive calendar days. The definition of STRs would include rentals of a portion of an owner-occupied dwelling unit (such as a bedroom) and accessory dwelling units.
 - Alternatively, the Council could decide to exclude owner-occupied rentals from the definition of an STR as they could be more difficult to prohibit in practice, and since with the property owner onsite, they are less likely to affect the neighborhood. Host Compliance estimates that approximately 22% of STR listings in Orange are for a portion of the dwelling unit or for an accessory dwelling unit.
- Add STRs as a prohibited use in the Master Land Use Table.
- Prohibit property owners from advertising STRs on hosting platforms.
- Include STRs in the definition of Hotels for purposes of assessing transient occupancy tax.

The purpose of this provision is not to allow STRs, but as an enforcement tool for violators.

- Outline the process for the City Attorney's Office to prosecute Municipal Code violations.
- Provide a period for currently operating STRs to wind-down their operations and honor existing reservations. Staff recommends a 12-month wind-down period, with an additional six months available upon request for the 30 properties that had business licenses in 2017.

Any ordinance would first be considered by the Planning Commission before being considered by the City Council since it would amend Chapter 17 of the Orange Municipal Code.

STR Enforcement in Other Cities

Many cities, including Garden Grove, Yorba Linda, and Irvine, prohibit STRs in residential zones. Some cities have adopted ordinances that define STRs and prohibit them, while others enforce a prohibition on STRs since they are not an allowed use in the zoning code. Two of the cities surveyed for this report are transitioning from prohibiting STRs to allowing them with restrictions.

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

City	STR Ordinance	Enforcement
Fullerton	Adopted an ordinance in November that allows STRs with restrictions.	Operated a complaint-based enforcement program and are transitioning to allowing STRs with restrictions.
Garden Grove	No specific STR ordinance but they are not allowed.	Contracts with Host Compliance to identify STRs. Code Enforcement issues citations and residents may submit affidavits to report STRs in neighborhoods.
Huntington Beach	Is in the process of adopting an ordinance that allows STRs with restrictions.	Operated a complaint-based enforcement program and are transitioning to allowing STRs with restrictions.
Irvine	Adopted an ordinance to ban STRs and are considering an update to make it illegal for hosting platforms to list properties in the city.	Contracts with Host Compliance to identify STRs. Code enforcement issues citations and the city is considering dedicating one Code Enforcement Officer to handle STR enforcement.
Tustin	No specific STR ordinance, but they are not allowed.	Complaint-based enforcement of STR prohibition by Code Enforcement staff.
Yorba Linda	Adopted an ordinance to ban STRs and gave existing STRs one year to wind down operations.	Contracts with Host Compliance to identify STRs. Code enforcement enforces prohibition on STRs.

Enforcement of STR Ban

Provided below are the various components to enforce the ban on STRs:

- **Complaint-Based Enforcement** - Relies on resident complaints before sending Code Enforcement to reach out to the STR property owner and seek compliance. Alone, this option is the least costly and least effective method of enforcing a prohibition of STRs. However, combined with the below enforcement components, Code Enforcement will play a critical in enforcement activities. Whatever direction the Council proceeds with STRs, the existing vacant Code Enforcement position will need to be filled to accommodate the anticipated additional workload of enforcement.
- **Compliance Service to Identify and Monitor STR Properties** - STR listings on sites such as AirBnB and VRBO do not include the address of the property, and it can be difficult and time consuming for staff to determine the true address of a listing. STR compliance services automate the process of identifying STR properties in the city and also provide ongoing monitoring of STR sites for compliance. Garden Grove, Irvine, and Yorba Linda all use Host Compliance to identify STRs and report that it is useful and more cost effective than having City staff identify STR properties. Host Compliance was recently acquired by Granicus, LLC, and the attached Third Amendment to Master Subscription Agreement with Granicus, LLC would expand the scope of services of that agreement to include STR address identification and compliance monitoring.
- **Municipal Code Violations** - While most property owners will comply with a prohibition on STRs, some will continue to operate even after multiple notices from the City. For those property owners, the City Attorney's Office has the ability to prosecute repeat offenders for municipal code violations. Staff believes judicious use of this enforcement tool, in conjunction with the ability to assess transient occupancy tax on STRs that operate despite City notifications, will help bring these properties into compliance.

Recommendation

Staff recommends the City Council direct staff to prepare an ordinance prohibiting STRs as outlined above for consideration by the Planning Commission and approve the Third Amendment to Master Subscription Agreement with Granicus, LLC.

7. ATTACHMENT

- Third Amendment to Master Subscription Agreement with Granicus, LLC