



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 21-449

Meeting Date: 11/2/2021

TITLE:

ADOPTION OF AN URGENCY ORDINANCE TO PROHIBIT THE OPERATION OF SHORT TERM RENTALS WITHIN THE CITY OF COSTA MESA WITH THE EXCEPTION OF HOMESHARING

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/
PLANNING DIVISION

PRESENTED BY: JENNIFER LE, DIRECTOR OF ECONOMIC AND
DEVELOPMENT SERVICES AND TARQUIN PREZIOSI, ASSISTANT CITY ATTORNEY

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SUMMARY

Staff recommends that the City Council adopt the proposed urgency ordinance prohibiting the establishment and/or operation of short-term rentals (STRs) with the exception of homesharing.

RECOMMENDATION:

1. Find that urgency Ordinance No. 2021-xx is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (general rule) because it can be seen with certainty that there is no possibility that the proposed ordinance will have a significant effect on the environment.
2. Introduce and adopt urgency Ordinance No. 2021-xx.

BACKGROUND:

Short Term Rentals in the City

STR's can generally be described as rental of either an entire residential unit or a portion thereof for a period of less than 30 days. The City does not currently have specific regulations related to STRs. There are several online host platforms where short-term rentals are advertised (Airbnb, VRBO, FlipKey, Craigslist, Homeaway, etc.).

In 2020, at the height of the COVID-19 pandemic, the City experienced an increase in the number of complaints related to the operation of certain STRs. Such complaints were limited to a small number of properties; as such, the issue did not appear to be widespread, though the impact to local neighborhoods from nuisance activities due to certain short-term rentals was of concern. Complaints received by the City regarding STRs have been primarily associated with disruptive parties, noise, parking, trash, and disturbing the peace at these locations. Staff advised Council at that time that the

increase in complaints could be temporary and due to the spike in the use of short-term rentals while hospitality businesses were restricted due to COVID-19 conditions; however, the proliferation of STR-related complaints could also reflect an increasing trend of homeowners taking advantage of the opportunity to rent their homes for supplemental income.

Those cities in Orange County that have addressed the issue of STRs have either adopted an ordinance to permit, tax, and regulate short-term rentals or have prohibited the use entirely. In addition, the cities of Pasadena, Santa Monica, Long Beach and others have adopted comprehensive programs to permit and regulate owner-occupied units with short-term rentals. This latter “home-sharing” option prohibits operation of short-term rental properties for 100% commercial use but allows extra income for homeowners or long-term tenants to rent a portion of their home for transient use, while residing on the property.

Following the increase in STR-related complaints, the City Council held a Study Session on October 13, 2020 on this topic and directed staff to return to the City Council with options to prohibit STRs outright or to prohibit STRs with the exception of “home sharing”. On November 10, 2020, staff presented an interim urgency measure ordinance (commonly referred to as a moratorium) with options to prohibit STRs outright, or to prohibit STRs with the exception of “home sharing” STRs. City Council adopted a Moratorium prohibiting all short-term rentals in Costa Mesa, effective November 10, 2020 for an initial period of 45 days. Properties with an existing lease for occupancy within 30 days were given a 30-day grace period to come into compliance. That grace period ended on December 10, 2020. On December 15, 2020, the City Council extended the Moratorium prohibiting STR’s, exempting owner-occupied home sharing STRs established by December 1, 2020. The adopted Moratorium, as extended, expires on November 10, 2021.

COVID-19 Pandemic & State Housing Crisis

The State of California Public Health Officer recently issued the *Beyond the Blueprint* order, which accounted for the State entering into a new phase of the COVID-19 pandemic and reiterated that California should remain vigilant against COVID and its variants especially given high levels of transmission in other parts of the world. The state of emergency as declared by California’s Governor remains in effect and COVID-19 remains a concern to public health. Based on evolving public health conditions, including virus variants, there is still uncertainty as to how and how long the spread and impacts of the virus may continue.

In addition, the State has declared that California is in the midst of a “housing crisis” and in September 2021 the Governor signed nearly 30 housing bills into law specifically geared toward increasing and maintaining housing supply statewide. On September 24, 2021, Senate Bill 60, “Residential short-term rental ordinances: health or safety infractions: maximum fines”, was filed with the Secretary of State, as an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and went into immediate effect. SB 60 amends Government Code sections 25132 and 26900 to raise the maximum fines for violation of an ordinance relating to a residential short-term rental, that is an infraction and poses a threat to health or safety, to \$1,500 for a first violation, \$3,000 for a 2nd violation of the same ordinance within one year, and \$5,000 for each additional violation of the same ordinance within one year of the first violation. SB 60 also makes these violations subject to the process for granting a

hardship waiver. The bill's author states "According to vacation rental data compiled by AirDNA, short-term rentals such as Airbnb and Vrbo have increased by 105% over the past three years. Though short-term rentals offer a way to improve tourism and earn owners some extra money, their recent proliferation has allowed bad actors to use the platform to advertise and secure homes for large parties, oftentimes in violation of local ordinances. The Covid19 pandemic has led to an increase in people using short-term rentals to evade public health restrictions on large public gatherings..." The short-term rentals bill was adopted by the State as an urgency statute necessary for the immediate preservation of the public peace, health, or safety.

City Council Housing Goals and Strategic Objectives

At its September 27, 2021 goal setting retreat, the City Council identified five (5) three-year goals for the City. The goal setting session was instrumental in identifying key priorities as the City continues to address the significant workload impacts of the COVID-19 pandemic, the related financial crisis, and previously approved high-priority projects and objectives identified in 2019 and 2020. As part of that effort, and in light of the on-going need for housing and housing programs in Costa Mesa, the Council re-affirmed its housing goal:

- Goal: *Diversify, Stabilize, and Increase Housing to Reflect Community Needs*

To further that goal, the Council also identified five strategic objectives to be achieved in the next six months or by March 2022:

- Present to the City Council opportunity sites for potential motel conversions
- Present to the City Council for action the Housing Element
- Initiate and convene a Citizens Advisory Group to discuss Measure Y and Housing Element compliance
- Present to the Planning Commission a draft Inclusionary Housing Ordinance
- Present to the City Council for action necessary code amendments to address SB 8, 9, and 10

In light of the significant work effort and resources involved with completion of these six-month action items, the City Council identified two additional strategic objectives as future efforts, after March 2022.

- Initiate a draft STR Ordinance and an evaluation of program implementation options
- Present to the City Council for consideration a development plan and land use documentation for affordable senior housing at the Senior Center site

ANALYSIS:

The existing moratorium expires on November 10, 2021. Given City Council's immediate housing priorities, the State Housing Crisis and the on-going public health risks associated with the COVID-19 pandemic, staff is recommending that the City Council introduce and adopt the attached

uncodified urgency Ordinance that will prohibit all short term rentals within the City, with a limited exception for owner-occupied home sharing uses. This approach is consistent with the interim moratorium previously adopted by the City Council and addresses the immediate need.

Due to the recent adoption of SB 60, the City's enforcement options have been significantly enhanced, as discussed below. If adopted, a violation of the Ordinance would be a misdemeanor and would constitute a public nuisance. Such violation may be enforced by criminal prosecution/citation, administrative ("civil") citation, civil injunction and/or administrative nuisance abatement proceedings. As a matter of law, these enforcement actions may be pursued individually or in any combination thereof. The three main enforcement tools are discussed below.

Criminal Prosecution

A violation of a City ordinance is a misdemeanor, punishable by 6 months in jail and/or a \$1,000.00 fine. In a criminal action, the decision to file charges is at the discretion of the City Prosecutor; the penalties imposed and conditions of probation following a conviction are at the discretion of the court.

Civil Citation

A violation of a City ordinance is subject to civil citation under the provisions of Chapter II, Civil Citations, of Title I of the CMMC. In connection with amendments to the Civil Citation provisions of the CMMC, the fines for violation of a moratorium imposed pursuant to Section 65857 are set at \$500.00 for the 1st offense and \$1,000.00 for the second and any subsequent offense within one year. Appeals of civil citations are decided on by a third-party Hearing Officer and may be further appealed to the criminal division of the superior court. If the violation is not remedied, the enforcement case is normally forwarded to the City Attorney's Office to file an abatement or take other action at the City Prosecutor's discretion.

Pursuant to SB 60, a fine for a violation of an ordinance relating to a residential short-term rental that is an infraction and poses a threat to health or safety may now be increased to \$1,500 for a first violation, \$3,000 for a 2nd violation of the same ordinance within one year, and a \$5,000 for each additional violation of the same ordinance within one year of the first violation. Accordingly, if the urgency Ordinance is adopted, staff will return with an updated fine schedule and a process for hardship waivers as required by SB 60.

Nuisance Abatement

Violation of a City ordinance may be enjoined by filing a civil action for injunctive relief in superior court. Available remedies include a court order, a restraining order, preliminary or permanent injunction to cease operation, as well as potential recovery of enforcement costs and attorney fees. In addition, the City may also initiate an administrative action to abate a nuisance, where such action is ultimately heard by the City Council.

In addition to the above options, the Police Department would continue to respond to calls for service and issue criminal citations for violations of various parking regulations, disturbing the peace (Penal Code 415), as well as violations of CMMC Section 13-283 (Noise), and CMMC Section 11-171 related to threats to public peace and general welfare due to parties and large gatherings on private property.

ENVIRONMENTAL DETERMINATION

This Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines and the City's environmental procedures. Because the Moratorium is prohibitory in nature it is exempt pursuant to Section 15061(b)(3) (general rule) of the CEQA guidelines, in that it can be seen with certainty that there is no possibility that the proposed Ordinance will have a significant effect on the environment.

ALTERNATIVES:

The City Council could forego adoption of the urgency Ordinance. This alternative would continue the pre-moratorium status quo of non-affirmative prohibition of STRs, which in turn would likely result in STRs continuing to operate pending the future adoption of any regulations as determined by the City Council. The City Council may also direct that specific changes to the urgency Ordinance be made prior to adoption.

FISCAL REVIEW:

The adoption of this urgency Ordinance will not have any fiscal impact on the City's budget.

LEGAL REVIEW:

Proposed Ordinance 2021-xx has been reviewed and approved as to form by the City Attorney's Office.

CITY COUNCIL GOALS AND PRIORITIES:

City Council Goal No. 4(c), which refers to increasing Code Enforcement program to address neighborhood nuisances.

CONCLUSION:

Staff recommends that the City Council adopt the proposed urgency Ordinance as written to prohibit short-term rentals from operating in the City, with the exception of owner-occupied homesharing uses.