



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 02/05/2019

ITEM NO: 10

DATE: JANUARY 31, 2019
TO: MAYOR AND TOWN COUNCIL
FROM: LAUREL PREVETTI, TOWN MANAGER
SUBJECT: APPROVE THE RECOMMENDATION OF THE COUNCIL POLICY COMMITTEE TO PROCEED WITH THE INTRODUCTION OF AN ORDINANCE OF THE TOWN OF LOS GATOS ADDING ARTICLE XIV TO CHAPTER 14 OF THE TOWN OF LOS GATOS TOWN CODE RELATED TO SHORT-TERM RENTAL OF RESIDENTIAL PROPERTY

RECOMMENDATION:

Approve the recommendation of the Council Policy Committee to proceed with the introduction and first reading of an ordinance, by title only, adding Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to short-term rental (STR) of residential property.

BACKGROUND:

On October 2, 2018, a staff report regarding short-term rentals (STRs) was brought to the Town Council for initial discussion and direction. STR is the practice of renting a portion of or an entire home to a person or group of people for periods of less than 30 nights. In recent years, there has been exponential growth of STRs offered through “sharing economy” websites, such as Airbnb (by far the leader of the group), VRBO, Flipkey, and Homeaway. The growing popularity of STRs is forcing municipalities across the country and the world to develop strategies in response.

The current Town of Los Gatos Zoning ordinance is silent on the subject of STRs as a permitted use in any of the Town’s zones, which by default prohibits them from occurring within the Town’s jurisdiction. Town Code Sec. 25.30.010 defines a hotel as any structure occupied by transients for dwelling, lodging, or sleeping purposes. Town Code Sec. 29.10.020

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Management Analyst

Reviewed by: Town Manager, Assistant Town Manager, Community Development Director, Finance Director, and Town Attorney

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BACKGROUND (continued):

further defines a hotel/motel as a building where lodging, with or without meals, is provided for compensation and where occupancy is generally limited to no more than thirty (30) days.

A hotel is not a permitted use in the residential zones, therefore prohibiting homeowners from renting out a house for 30 days or less. A transient is defined as any person who exercises occupancy for a period of thirty (30) consecutive calendar days or less. In addition, Code Sec. 29.10.320 (b) (14) also specifically prohibits rentals for durations of less than thirty (30) days, including short-term rentals, in accessory dwelling units.

The current Transient Occupancy Tax (TOT) rate in Los Gatos is 12% and it applies to rentals that do not exceed 30 consecutive days. These rentals have historically been hotel stays, until the recent popularity of the sharing economy rentals. The Town currently collects this tax from hotels. The tax is paid by the hotel guest and collected and remitted by the hotel owners. No TOT is collected for STRs currently.

Data provided by Airbnb shows that there are currently 180 active Airbnb STR hosts within the jurisdiction of the Town of Los Gatos. The average length of stay for guests of Airbnb STRs in Los Gatos is four days. Based on data received from Airbnb, if the Town were to regulate the existing Airbnb hosts, the Town may receive estimated annual TOT revenue of \$226,800.

In October, the Town Council voted unanimously to refer the item to the Policy Committee for further discussion with input from Council members. Council requested additional research regarding how neighboring municipalities have responded to this issue and considerations that those jurisdictions took into account when formulating their approaches. A copy of the October Council Report is available as Attachment 1.

DISCUSSION:

The Discussion section of this report lays out the chronology of Policy Committee deliberations and the primary areas of consideration for the regulation of STRs, and reflects the direction demonstrated in the draft ordinance as recommended by the Policy Committee.

STRs were initially discussed at the October 18, 2018 Town Council Policy Committee meeting. A copy of the October 18, 2018 Policy Committee Staff Report is available as Attachment 2. The direction of the Committee was to explore options for allowing and regulating STRs in Los Gatos whilst taking into account the following:

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DISCUSSION (continued):

- Consider a goal of not denying homeowners the right to do what they wish with their homes while protecting neighbors from nuisance situations.
- Create a licensing process that is not too complicated or expensive.
- Allow for the Community Development Director to revoke STR licenses at his/her discretion.
- Address the concerns of investment properties being purchased for the sole purpose of use as an STR and losing affordable housing within the Town.
- Look at options for limiting the number of nights in un-hosted versus hosted rentals.
- Look at limiting STRs to one per owner and one per parcel.

More specific regulatory options were narrowed down by the Policy Committee at the November 15, 2018 meeting. The November Policy Committee Staff Report is Attachment 3 to this report. The Committee directed staff to return with a draft STR ordinance akin to those of the more regulated models of other jurisdictions. The Committee asked that staff consider incorporating the following regulations:

- Allow both hosted and un-hosted rentals with a limit on the number of days for each.
- Provide options for limiting the use of accessory dwelling units as STRs to maintain the Town's housing stock.
- Require parking to remain on-site in areas where on-street parking is not permitted and require parking to be limited to using the two guest passes purchased per house/property through the Police Department in areas where on-street parking is permitted.
- Allow the Community Development Director the ability to revoke STR licenses at his/her discretion and also for licenses to be automatically revoked after a certain number of violations.
- Create a penalty for failing to register an STR.
- Implement various other regulations in order to conserve housing stock and mitigate neighborhood impact.

Staff drafted an ordinance taking into consideration the above direction from the Policy Committee. At the December 20, 2018 Policy Committee meeting, the Committee forwarded a recommendation to the Town Council to approve the draft STR ordinance with minor modifications to the draft language. A copy of the December 20, 2018 Policy Committee Staff Report is available as Attachment 4 and a copy of the revised draft ordinance is available as Attachment 5 to this report.

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DISCUSSION (continued):

Provided below is a summary of some of the key elements of the proposed ordinance. While the Policy Committee ultimately reached consensus on the draft ordinance, there were certain areas that required greater discussion, deliberation, and consideration of public comment among the Committee members.

Hosted versus Un-Hosted Rentals

Hosted STRs may present fewer code compliance issues since the host is present to oversee the rental. Having a resident host may also increase the comfort of neighbors who may otherwise be unsure about guests. Un-hosted rentals may have more neighborhood compatibility and enforcement issues, such as noise complaints. Initially, the Policy Committee was split on the issue of whether to allow un-hosted rentals in Los Gatos at all. However, after further discussion and consideration of public comment, the Committee agreed that both types of rentals should be allowed with stricter time limit regulations for un-hosted rentals. In order to allow property owners to utilize their homes for both types of rentals and mitigate potential nuisance situations for neighbors, the draft ordinance caps hosted rentals at 180 days per year and un-hosted rentals at the lesser amount of 30 days per year.

The Policy Committee also discussed the option of regulating the number of STRs allowed in each residential zone. However, after further deliberation, the Committee recommended focusing the regulation on the number of days allowed for hosted and un-hosted rentals instead of regulating and capping the number of STR licenses allowed in each zone.

STR Concentration

In an effort to thwart the excess proliferation of STRs in Los Gatos, the Ordinance, as drafted, limits short-term rentals to one per parcel and one per owner. In addition, short-term rentals are limited to the primary residence of the applicant. In a further effort to conserve the Los Gatos housing stock, the draft ordinance caps total STR licenses at five percent of the Town's overall housing stock. With the current total housing stock of 13,299 units, this would limit STR licenses to 665. The Policy Committee was in agreement that these regulations were vital in order to conserve Los Gatos housing.

Accessory Dwelling Units

Existing Town Code Section 29.10.320 (b) (14) prohibits rentals for durations of less than 30 days in new accessory dwelling units (ADUs) approved after February 6, 2018, when the ordinance went into effect. The Policy Committee agreed that accessory dwelling units should

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DISCUSSION (continued):

have limited use as STRs, so that the Town may maintain a greater availability of long-term affordable housing. After discussion, the Committee recommended the draft ordinance allow STRs in ADUs approved before February 6, 2018 only. The current prohibition on STRs in ADUs approved after February 6, 2018 would be maintained with the proposed ordinance.

Parking

In order to decrease neighborhood impacts and mitigate existing parking concerns, the draft ordinance requires all STR parking to remain on-site in areas where on-street parking is not permitted. It requires parking to be limited to using the two guest parking passes purchased per house/property through the Police Department in areas where on-street parking is permitted. The draft ordinance does not allow for any extra parking passes to be purchased for STRs. The Policy Committee recommended this regulation unanimously.

Licensing Process

The draft ordinance outlines an STR licensing process that is as simple as possible in order to encourage compliance. It is possible for the process to be completed over-the-counter, which was important to the Policy Committee. The steps involved in obtaining an STR license include: obtaining a business license, submitting an STR registration form (fee to be determined, but likely similar to that of a Home Occupation permit), submitting a Transient Occupancy Tax (TOT) form, self-reporting/remitting TOT, and providing a Certificate of Occupancy for the property to ensure the space is habitable. The draft ordinance also requires that STR licenses be renewed at the end of each calendar year, with a pro-rated fee each quarter, similar to the process for maintaining a Town business license.

Revocation of STR Licenses

The draft ordinance allows the Community Development Director to have the ability to revoke an STR license at his/her discretion (including an appeal process) and the automatic revocation of STR permits after three confirmed violations in a twelve-month period. The draft ordinance provides examples of STR violations, and details penalties, revocation and an appeal process for revoked STR licenses. The appeal process is similar to processes the Town already has in place for other types of appeals.

The Policy Committee was initially divided on whether STR licenses should be revoked permanently or for a defined period of time. The Committee ultimately agreed on a longer revocation period of five years as opposed to one or two years seen in some other jurisdictions.

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DISCUSSION (continued):

The draft ordinance reflects this duration of five years for a revoked license before a host can re-apply at the same property or other property.

Enforcement

Staff and the Policy Committee recommend that enforcement continue on a complaint-driven basis initially, given the low number of STR-related complaints the Town currently receives. Should the need arise, there are third-party firms that provide services such as identifying all STR rentals in Town for registration and providing a 24/7 rental hotline for complaints.

The Policy Committee supported the creation of a penalty for failing to register an STR. The draft ordinance penalizes operating an STR without a license with both monetary fines and the ability to revoke or deny an STR license in an effort to encourage compliance.

Miscellaneous Regulations to Conserve Housing Stock

The draft ordinance includes various regulations aimed at mitigating STR neighborhood impact.

Initially, the Policy Committee was divided on whether commercial or assembly uses (i.e. weddings and special events) should be allowed in STRs. After further conversations, the Committee agreed that the draft ordinance should prohibit commercial/assembly uses in STRs with the intent of limiting potential nuisance situations for neighbors.

The draft ordinance provides that any properties that are part of a homeowner's association (HOA) need to submit a letter of approval for any potential STR that is part of an HOA. The Policy Committee agreed that the draft ordinance is not intended to trump existing, more restrictive rules of HOAs regarding STRs.

The Policy Committee also discussed the possibility of allowing STRs in apartment buildings. In order to be in compliance with the rest of the draft ordinance, the owner of the building would need to reside in a unit of the apartment complex and would be allowed one additional unit to rent as an STR. After further consideration, the Committee agreed that STRs should not be allowed in apartment buildings in order to conserve affordable long-term housing stock.

The draft ordinance requires STR hosts to provide their guests with local rules to follow during their stay in order to minimize impact on the permanent residents of the neighborhood. The number of day and overnight lodgers is also limited. Overnight occupancy is limited to two overnight guests per bedroom, plus one additional person per unit in order to limit potential

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DISCUSSION (continued):

nuisance situations stemming from an overcrowded STR unit. This regulation was supported unanimously by the Policy Committee.

The draft ordinance prohibits renting to unaccompanied minors and requires all STR hosts (or an appointed site representative) to be on call 24/7 to manage the STR unit and respond to reported issues, contact the tenants, and/or be physically present at the unit within 60 minutes from time of notification. This regulation encourages the speedy resolution of STR-related neighbor complaints. The Policy Committee supported these regulations.

Amnesty Period

STRs are widespread and have been operating throughout the Town for several years. Staff recognizes that it will take time for hosts to bring their STRs into compliance with the proposed ordinance. However, a shorter time frame for compliance may reduce impacts on the neighborhoods and housing stock and increase the accuracy of TOT collection. The draft ordinance includes a six-month amnesty period for hosts to bring their STRs into compliance with the ordinance once it becomes effective. The Policy Committee agreed with this recommendation.

CONCLUSION AND NEXT STEPS:

Staff recommends that the Town Council approve the recommendation of the Council Policy Committee and introduce the ordinance, by title only, adding Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to STR of residential property.

ENVIRONMENTAL REVIEW:

The proposed ordinance is not considered a project under CEQA Guidelines Section 15378 because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. Additionally, the ordinance is exempt from CEQA as it can be seen with certainty that there is no possibility for causing a significant effect on the environment (Section 15061 (b) (3)). The action will not cause a direct or reasonably foreseeable indirect change in the environment, as the use of STRs would be limited to existing primary residences and no additional structures or construction is required in order to comply with the regulations. The draft ordinance provides for regulations to limit traffic, parking, and noise impacts throughout Town.

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FISCAL IMPACT:

Based on data received from Airbnb, the Town may receive estimated annual transient occupancy tax revenue of \$226,800 if the Town were to enter into a voluntary TOT collection agreement with Airbnb.

Attachments:

1. October 2, 2018 Los Gatos Town Council Report
2. October 18, 2018 Policy Committee Report
3. November 15, 2018 Policy Committee Report
4. December 20, 2018 Policy Committee Report
5. Draft Ordinance
6. Public Comment received by 11:00 a.m. January 31, 2019