



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: November 25, 2020

TO: City of San Diego Planning Commission

FROM: Elyse W. Lowe, Director, Development Services Department

SUBJECT: Response to Planning Commission Meeting, December 3, 2020; Continuation of the October 8, 2020, Planning Commission Item No. 2, An Amendment to the City's Municipal Code and Local Coastal Program to Impose a License Requirement and Operating Regulations for Short Term Residential Occupancy Including Hosting Platforms and Repeal Regulations for Bed and Breakfast and Boarder Lodging.

REFERENCE: [Report to the Planning Commission No. PC-20-064](#), An Amendment to the City's Municipal Code and Local Coastal Program to Impose a License Requirement and Operating Regulations for Short Term Residential Occupancy Including Hosting Platforms and Repeal Regulations for Bed and Breakfast and Boarder Lodging.

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On October 8, 2020, the Planning Commission was presented with a new [proposal](#) from Councilmember Jen Campbell for regulating Short Term Residential Occupancy (STRO). The Planning Commission provided policy and administrative feedback on the item and unanimously requested City staff return with more information on December 3, 2020. This memo is intended to provide additional information requested by the Planning Commission in consideration of the STRO proposal. A summary of the issues contained in the motion by Commissioner Boomhower includes:

- **Administration:**
  - Clarification of legality of Accessory Dwelling Units and Guest Quarters use for STRO;
  - Administration of the proposed lottery framework for issuing a limited number of STRO licenses;
  - Questions about how the cap or limit on the number of licenses was determined.
- **Enforcement:**
  - Managing complaints from neighbors/ Posted Local Contact
  - How to enforce licensed, improperly licensed and unlicensed properties
  - Concerns for potential abuse of the license limit of one per host

## **Administration**

The ordinance proposes establishing an Office of Short Term Residential Occupancy (STRO) to license, regulate and enforce the new regulations in order to follow the Strategic Plan goals and objectives of the City by balancing economic opportunity created by STRO, protecting the rights of property owners and renters, and ensuring the health and safety of the community. The City Council, upon approval of the City's budget, will need to approve the positions necessary within the Office of the City Treasurer to administer the licenses and collect the fees, and for DSD's Code Enforcement to provide evening and weekend Code Enforcement for investigating complaints. In order to effectively manage the licensing of potentially tens of thousands of licenses in the proposed four tier strategy, the City will actively pursue acquiring short term rental licensing and fee collection software that will enable the City to provide the following online services:

- Online licensing portal including host application, registration documentation, and renewals
- STRO License fee collection for the four-tier strategy:
  - Tier 1- Part time (<20 days) whole home rental, unlimited number of licenses
  - Tier 2- Homeshare (room(s), or duplex), primary residence, unlimited # of licenses
  - Tier 3- Full time (>20 days) whole home rental, only 4,050\* licenses allowed (excluding MB)
  - Tier 4- Full time (>20 days) whole home rental, only 1,081\* licenses allowed in the MB community
- Transient Occupancy Tax registration and collection concurrent with STRO application
- System that cross references TOT paid with monthly report of room nights
- Enable landlords to block their property from being issued any unauthorized STRO host licenses
- Provide real time data and maps demonstrating short term rental activity by community
- Mobile functionality for Code Enforcement and Inspections
- STRO 24-hour portal for Code Enforcement complaints via phone or email; automatic enforcement notification letters
- Allows for Submission of Audio or Video evidence
- Report Human Trafficking
- Ability to collect data from taxes/licenses collected to determine Host compliance with Four Tier Approach

## **Clarification of legality of Accessory Dwelling Units and Guest Quarters use for STRO**

San Diego Municipal Code section 141.0302(f) prohibits the rental of an accessory dwelling unit for less than 30 consecutive days. This ordinance applies to accessory dwelling units permitted on or after October 15, 2017. There are approximately 100 accessory dwelling units permitted prior to the adoption of the City's 2017 ADU regulations that could legally be used for short term residential occupancy. DSD has record of several units built prior to the new ADU regulations that have made modifications under the new code, therefore they are no longer eligible to be utilized for short term residential occupancy.

\*Anticipated Quantities

Guest quarters are a separately regulated residential use located on a lot with a single dwelling unit. They do not provide complete, independent living facilities and are solely for the use of the occupants of the primary dwelling unit or their guests. Municipal Code section 141.0307(i)(1) prohibits guest quarters from being rented, leased, or sold as a separate dwelling unit and would not be eligible for STRO.

### **STRO Application: Lottery Framework**

How the limited number of STRO licenses would be granted was a concern discussed during public testimony and during Commissioner comment, with references made to the City's previous experiences in November 2017 using a lottery-based system for marijuana production facility (MPF) conditional use permit (CUP) applications. Though the ensuing discretionary process to obtain the MPF CUP approvals was complicated by the nature of the use, regulatory/locational limitations and robust competition for minimal opportunities (40 permits available city-wide), the application lottery itself was highly successful, opening an advance registration process for the event. The lottery was then conducted date/time certain in a calm and predictable manner (video-taped for authenticity), resulting in a list of applicants, their numerical order randomly selected through automated software. This list established the order for potential licensees to assemble and submit full applications for consideration via a future date/time certain appointment. For transparency this list was made public, being announced online and posted in Development Services.

Like the competitive process conducted to file discretionary applications for a limited number of available marijuana production facilities, a lottery system would be developed to implement the STRO application process. Unlike the MPF CUP review process, which requires environmental analysis and decision-making via a public hearing, the STRO application process would be administrative in nature. Due to the high number of anticipated applicants (potentially over 10,000 applicants for 4,050 Tier 3 licenses, and 3,000 applicants for 1,081 Tier 4 licenses), STRO applications would be submitted electronically using specialized software via a web-based portal, and could develop as follows:

- The STRO Application process would be publicized.
- Using an automated STRO license application on the City's website, applicants would have a 90-day initial window to apply for a license, including payment of appropriate application fees.
- At the end of the 90-day window, if the number of applications received are greater than the number of licenses available, an automated lottery would be held to determine the initial order to process the Tier 3 and 4 applications.
- The results of the lottery would be publicized online for transparency.
- Staff would evaluate application materials and grant STRO licenses in order, tracking issued licenses on a dedicated STRO webpage.
- Once the list of order to process applications was established under the initial 90-day window, any applications submitted later would be added to the end of the list on a first-come, first-served, basis.
- Once all STRO licenses available were issued, a waiting list could be established and any future license available would be offered to the first person on the waiting list, who would have a certain amount of time to accept or would forfeit their space in line.

Application by lottery would ensure a fair and equitable opportunity for any potential licensee. Obviously, if the number of applications received during timeframe the initial 60-day online application window was open did not reach the maximum number of 5,000 allowed STRVs, there would not be a need for a lottery process and the applications could be processed on a first come/first-served basis.

#### **License cap rationale:**

The Commission requested an explanation of the rationale of the proposed caps for Tiers 3 and 4: (0.75% of City of San Diego total housing Units, and 30% of the total housing units in the MBCPA).

The STRO regulations include the recommendations proposed by the Mission Beach Town Council allowing for up to 30 percent of the total housing units in the community to be used for whole home STRO. Today this amount would equate to 1,081 whole home STRO units. Whole home STRO units in Mission Beach shall not be counted in the citywide whole home cap. In 2018, the City analyzed available data regarding private property ownership, within Mission Beach. It was found of the 1,992 total residential property owners - roughly 1/3 - own two or more units. Three hundred and nine property owners have three or more units in the Mission Beach neighborhood.

The Citywide cap rationale is a policy priority of Councilmember Campbell, and also was included in the MOU between Expedia and Unite Here Local 30.

#### **Units that are ineligible for STRO:**

Certain types of properties are not eligible for short-term rental.

- Income-restricted affordable housing units.
- Student housing, dormitories and Single-Room-Occupancy (SRO) buildings.
- Guest Quarters.
- Accessory Dwelling Units (ADUs) permitted after 2017; Only rentals/listings for 31 days or longer, per guest (31-day minimum stay), are allowed in ADUs.
- Sleeping quarters in vans or (RVs) recreational vehicles. RVs are not considered residential units.
- Non-residential areas within buildings, such as unpermitted living/sleeping quarters added in garages.
- Commercial office/retail or industrial (warehouse) spaces.

#### **Enforcement**

##### **Posted Local Contact Requirements:**

In addition to an established 24/7 STRO complaint portal which will generate enforcement investigative action from the City, the City will require each STRO host to post publicly the name, phone and email of a local contact person who can respond to such complaints within one hour and who can take action to resolve any nuisance activity. Posting a local contact for neighbors to call for fast resolution is a best practice that has been implemented by many other cities across the nation. The Local Contact posting does not discourage residents from calling City Code Enforcement or the Police Department. It requires a local contact to respond within an hour to neighbors when detrimental quality of life issues caused by STRO are occurring and ensures the property host is aware of the disturbance.

The Planning Commission specifically asked how the City will enforce the host's requirements to have a Local Contact respond within one hour. Office of STRO will track complaints submitted, and hosts are subject to having STRO license revoked if multiple complaints are registered and go unresolved. Complaints may also be filed on the SDPD non-emergency line. SDPD will respond to complaints that include large gatherings, significant disturbances reported by multiple neighbors (large parties etc.). STRO Code Enforcement will also monitor and investigate STRO complaints and will outreach to hosts where multiple complaints are occurring to either levy fines or revoke licenses.

### **Enforcing Licensed vs. Unlicensed properties**

The Commission requested more detail on how the City will enforce licensed vs unlicensed short-term rentals. There are two main types of enforcement needed.

- Enforcement of Unlicensed or Improperly Licensed STRO properties
- Enforcement of Neighborhood Disturbances from STROs

### **Enforcement of Unlicensed or Improperly Licensed STRO properties**

The City will need to grapple with determining best practices for enforcing when a host uses their license outside its regulatory parameters. The Tier 1 (whole home – rent out 20 days max) and Tier 2 (unlimited homesharing with host residency required 275 nights/year) licenses would be available in an unlimited capacity, compared to the more higher demand, limited availability, thus more fiscally valuable, Tier 3 (whole home unlimited) and Tier 4 (Mission Beach- whole home only) licenses, which have a finite cap on the annual amount of licenses that would be issued. It is likely that the City will see host compliance licensing, however a host may or may not be in the correct license category depending on how the rental is ultimately used over the year. A host may use a Tier 2 homesharing license to rent rooms in a unit, but it would be unlawful if the host ultimately does not reside in the unit for at least 275 nights per year. The City may not have an effective mechanism (other than host self-reporting) to audit the host residency requirement to ensure that “Homesharing” is the type of short-term residential occupancy that is occurring.

Staff from the City of Denver were interviewed by DSD and recommended utilizing easily accessible registration software to make it as easy as possible to get a license. The City of Denver realized a 65% compliance rate with their short-term rental license requirements within the first year, known to be an industry high, and now have compliance as high as 85% licensed<sup>1</sup>. Los Angeles passed STRO regulation in 2019 and has had limited success on enforcing non-licensed properties. According to the Los Angeles Times<sup>2</sup>, “...more than a year after that law went into effect, many rental hosts appear to be ignoring it. Thousands of illegal rentals are still being advertised online, according to city officials and a Times analysis of listings on the popular platform Airbnb – and only a fraction have been penalized with fines.”

While San Diego may see all 4,050 Tier 3 license issued (whole home rentals > 20 days annually), it is possible that hosts who were unable to secure a Tier 3 license will instead secure a Tier 1 or Tier 2 license and proceed to utilize it as a whole home rental for over 20 days per year. The administrative hearing process for unlawful use of the STRO license will be accessible but difficult to utilize for hearing potentially thousands of host violations.

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<sup>1</sup> 10/13/20 [Report](#) to Denver Short Term Rental Advisory Committee from Denver Excise and License Department

<sup>2</sup> 08/09/20 <https://www.latimes.com/california/story/2020-08-09/los-angeles-short-term-rental-violations>

In order to ensure hosts are properly licensed, the City will take proactive steps to assure transparency of the licenses. The City will:

- Publish maps of all licensed STROs by license type;
- Investigate complaints about unlicensed or improperly licensed STROs and issue Administrative Citations and penalties when violations occur;
- Office of Short-Term Residential Occupancy will proactively look for listings (manually and or with software) that do not meet City requirements (TOT, RUBT and City STRO license). If such listings are found, City will report to platform, and platform is required by the ordinance to remove the listing from the platform.

Penalties for Short Term Residential Occupancy (STRO) violations should be considered separately for licensed and unlicensed hosts. The STRO ordinance should define the criteria for enforcement of licensed rentals. Other jurisdictions immediately cite \$1,000 for any violation. Administrative Citations (AC) could be used to enforce violations at \$1,000 per occurrence. Additionally, license revocation should be codified after a predetermined number of ACs are issued to a host. ACs allow a ten-day period to appeal and request a hearing. If enforcement action is upheld at hearing, monetary restitution for all City costs associated with enforcement of the STRO should be requested. To enforce homesharing only, The City of Denver staff recommended utilizing a penalty of perjury provision to enforce homesharing and has charged four hosts with felony offenses for lying to the government about how the short-term rental was utilized.

Without inclusion of a separate fine for using a unit for STRO without a license, unlicensed short-term rentals would be enforced as a general zoning violation with remedies and penalties determined using the San Diego Municipal Code Chapter One guidelines. ACs up to \$1,000 could be issued for minor offenses that are easily correctable. Civil Penalty Notice and Orders (CPNO) would be issued for frequent or serious violations. CPNOs can assess a daily penalty of up to \$10,000 per violation. By evaluating licensed and unlicensed hosts differently, the City can address hosts that are willfully operating while working with hosts that are trying to be compliant.

### **Enforcement of Neighborhood Disturbances from STROs**

The Planning Commission wanted more information about how the City will be managing complaints from neighbors. The Office of STRO will evaluate complaint information that comes into the 24-hour complaint portal and will provide after the fact enforcement for repeat offenders and bad actors. To ensure the safety of hosts, guests and neighbors, Code Enforcement proposes to add a supervisor, additional code enforcement investigator and new City vehicles for a “third shift” of Code Enforcement to work after hours and weekend enforcement.

Office of Short-Term Residential Occupancy’s Code Enforcement will enforce City ordinances based on complaints, which can result in individual administrative citations to both the guest and the host, of up to \$1,000. The Good Neighbor policy requires hosts to inform guests that if the police are called to address disturbances, health, safety, or general welfare issues, the STRO guests may be responsible for repayment to the City for the cost of the police response.

Should you have any questions, I will be available at the public hearing.

A handwritten signature in blue ink that reads "Elyse W. Lowe". The signature is written in a cursive, flowing style.

Elyse W. Lowe, Director  
Development Services Department

cc: Honorable Mayor Kevin L. Faulconer  
Erik Caldwell, Deputy Chief Operating Officer, Smart & Sustainable Communities  
David Nisleit, Chief, Police Department  
Elizabeth Correia, City Treasurer  
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File