



# Information Item

**Date: March 10, 2016**

To: Mayor and City Council

From: David Martin, Director of Planning and Community Development

Subject: Short-Term Rental Program Update

## **Introduction**

This item updates the City Council on the progress of the enforcement of the City of Santa Monica's Home-Sharing Ordinance (#2484) and outlines the successes and challenges staff has encountered in enforcing the law. The ordinance was passed unanimously in May of 2015, in part as the result of a study by the [Los Angeles Alliance for a New Economy \(LAANE\)](#) linking the upsurge in short-term rentals to the decrease in housing stock in the Los Angeles area. City Council also passed the law out of concern that short-term rentals may have an undesirable impact on the stability and character of residential neighborhoods. Short-term rental activity has been on the rise in recent years due to improved technology platforms that provide individuals with tools to convert their living units to short-term rentals, in particular companies such as Airbnb, which directly facilitate the short-term rental activity.

## **Background**

At its [April 15, 2015](#) meeting, City Council directed staff to draft an ordinance to explicitly prohibit vacation rentals and to establish regulations that legalize home-sharing with conditions.

A vacation rental is defined as the rental of any dwelling unit, in whole or in part, to any persons for exclusive transient use of less than 31 consecutive days, whereby the unit is only approved for permanent residential occupancy and not approved for transient

occupancy. Home-sharing is defined as an activity whereby a resident hosts visitors in their home for periods of less than 31 consecutive days while at least one of the primary residents lives on-site throughout the visitor's stay. Home-sharing hosts must obtain a Santa Monica business license to conduct this activity, and must comply with the [Home-Sharing Rules](#).

A public hearing was held before the City Council on [April 28, 2015](#) and on May 12, 2015, City Council unanimously voted to adopt the Home-Sharing Ordinance adding Chapter 6.20 to the Santa Monica Municipal Code. The law took effect on June 12, 2015.

Throughout the summer of 2015, staff conducted a citywide educational campaign, which included disseminating information about the new law via an informational web page on the Planning and Community Development website, inserting flyers in residential water bills, and posting announcements in local newspapers and on CityTV. During this period, courtesy warning letters were sent to potential violators and enforcement action was taken in cases resulting from complaints. At Council's direction, staff did not require hosts of illegal vacation rentals to cancel any listing that had already been reserved during the peak season.

City Council approved the hiring of one Administrative Analyst and two Code Enforcement Officers dedicated to enforcing the Home-Sharing law. The Analyst was an internal hire and started in late June, 2015. The recruitment of the two officers was open-competitive and hiring was complete by the end of August. During September and October, 2015, staff developed enforcement procedures and set priorities. Staff determined that the highest priority for enforcement would be corporate hosts, which are hosts who remove multiple rental units from the residential market to operate vacation rentals.

On November 1, 2015, Code Enforcement staff began proactive enforcement of the Home-Sharing law.

## **Discussion**

### Goals

The Home-Sharing Ordinance established standards that regulate home-sharing, which is consistent with the Inclusion, Diversity and Affordability goal set forth by the City Council on August 23, 2015. Hosts can apply for a business license to conduct the home-sharing activity that complies with established guidelines. The application requires the host to submit certain information that describes how the activity will be conducted. Once approved, home-share hosts must continue to comply with the Home-Sharing Rules. As of March 1, 2016, there are 120 licensed home-shares in Santa Monica.

Another goal of the new law was to require hosts and hosting platforms to collect and remit Transient Occupancy Tax (TOT) to the City. From June, 2015 through January, 2016, the City of Santa Monica collected \$58,000 in TOT from licensed home-share hosts. On November 1, 2015, Airbnb began collecting TOT on behalf of its Santa Monica hosts. To date, the City has received over \$340,000 in TOT from Airbnb for their rentals from November, 2015 through January, 2016. Staff expects to continue to receive TOT payments from Airbnb. The only other hosting platform to remit TOT on behalf of its guests is TripAdvisor, who has paid about \$550 in TOT for its December, 2015 and January, 2016 rentals.

The primary goal of the new ordinance was to be explicit that short-term vacation rentals are unlawful. This measure was essential since enforcing the existing ban through the zoning regulations was difficult and cumbersome. Code Enforcement staff can now issue citations for unlawful vacation rentals based on business regulations in addition to zoning regulations, including the following Code sections:

- SMMC 6.20.030: *No person, including any hosting platform operator, shall undertake, maintain, authorize, aid, facilitate or advertise any home-sharing activity that does not comply with Section 6.20.020 of this Code or any vacation rental activity. (\$500 fine)*
- SMMC 6.04.020: *Failure to obtain a business license (\$500 fine)*
- SMMC 6.68.070: *Failure to collect and report tax (\$75 fine)*
- SMMC 9.48.010 (a): *No person shall establish, operate, erect, move, alter, enlarge or maintain any use, activity or improvement in contravention of any provision of Article IX of the Municipal Code (to wit: SMMC Section 9.08.020, which does not authorize Vacation Rental of properties within any zoning district). (\$500 fine)*

### Priorities

In preparation for proactive enforcement of the Home-Sharing law, Code Enforcement staff established priorities to reflect the concerns expressed by City Council. Staff determined that the highest priority for enforcement would be corporate hosts; that is, hosts who have removed multiple residential units from the market to rent them short-term in violation of the law. Investigations have led to the discovery of several cases in which multi-family residential buildings, some rent-controlled, contain multiple units that are being used solely as vacation rentals. The majority of staff's resources are being dedicated to vigorously investigating these cases and taking enforcement action, which could ultimately include criminal prosecution.

Staff has also prioritized cases originating from complaints, and those cases in which hosts who have been cited for vacation rental activity continue to operate in violation of the law.

### Home-Sharing

Since the law took effect, the City has received 127 applications for business licenses to conduct home-sharing. Of those, 120 were approved and 7 were denied based on the information provided in the application that indicated that the activity being proposed did not fall under the definition of home-sharing. Two hosts appealed the City's decision to deny their licenses, but in both cases the hearing officers sided with the City and upheld the denials.

### Enforcement Progress

In the April 28, 2015 City Council report, staff estimated that there were 1700 total listings for short-term rentals in Santa Monica. This estimate was gathered from the three most prominent vacation rental hosting platforms: Airbnb, VRBO/HomeAway, and Flipkey/TripAdvisor. Currently, staff estimates that there are approximately 1071 listings on these three platforms, a decrease of 629 listings since the law took effect. This estimate does not account for duplicate listings (i.e. those advertised on more than one platform) or for listings that may be advertising as rentals in neighboring communities, but are actually in Santa Monica.

In addition to the three largest platforms, staff is aware of dozens of smaller hosting platforms, each with a handful of listings, and local vacation rental and property management companies that are engaging in illegal short-term rentals. Staff has begun enforcement action against three of these operators and is actively investigating a number of other local companies.

Each vacation rental hosting platform has specific and unique differences in the manner of operation. Some platforms are more involved in facilitating the rental activity while others operate as an advertising bulletin board only. The investigation and enforcement action varies depending on the nature of the operation. One platform was issued citations for 418 separate violations of SMMC 6.20.030 in part because of their

significant involvement in facilitating vacation rentals. This platform has paid \$31,350 in fines for these violations and has removed the advertisements for which they were cited. However, staff has found that many illegal listings reappear on the platform necessitating further enforcement efforts.

Code Enforcement staff is currently investigating approximately 200 active cases and has issued 90 citations to individual hosts for advertising, facilitating, and/or operating vacation rentals or unlicensed home-shares. Given the recurring nature of these violations, cases are not closed until they have been monitored for at least 30 days unless staff has confirmed that the activity is no longer taking place.

### Enforcement Challenges

This information item does not include details about enforcement strategy, nor does it contain an exhaustive list of challenges staff has encountered in enforcing the law, as revealing this information could jeopardize enforcement efforts. The disclosable challenges staff has encountered in the first few months of proactive enforcement of the Home-Sharing law include the confusion surrounding corporate housing and the low financial penalties currently attached to vacation rental violations.

### *Corporate Housing*

Many hosts have mistakenly assumed that the City of Santa Monica allows vacation rentals of longer than 30 days, and therefore have switched to advertising rentals of that duration. For some, it is a genuine effort to be in what they believe to be compliance with the law. For others, it is an attempt to skirt the law. In either case, enforcement of the City's prohibition against corporate housing remains extremely time intensive, in part because enforcement staff must prove that the guest intends to return to a primary residence elsewhere and that certain hotel-style amenities are being offered. Proving intent presents significant challenges. Guests and hosts are generally not willing to cooperate with City investigators.

Section 9.51.020 of the Zoning Ordinance defines corporate housing as rental housing which has the following attributes:

- a. The housing is designed for use by individuals who will reside on the property for a minimum stay of at least 30 consecutive days, but who otherwise intend their occupancy to be temporary.
- b. The housing is intended for use by persons who will maintain or obtain a permanent place of residence elsewhere.
- c. The housing includes two or more of the following amenities:
  - i. Maid and linen service
  - ii. Health club, spa, pool, tennis courts, or memberships to area facilities
  - iii. Business service centers
  - iv. Meeting rooms
  - v. Fully furnished units including a combination of some but not necessarily all of the following: furniture, appliances, housewares, bed linens, towels, artwork, televisions, entertainment systems, and computer equipment
  - vi. Valet parking

Corporate housing is currently not permitted in any zoning district in Santa Monica. For Code Enforcement staff to effectively enforce the ban on corporate housing, clarifying the intent of this ban and developing regulations that are consistent with and complementary to the Home-Sharing Ordinance are essential. This clarification should include an explicit prohibition against the advertising of corporate housing so that staff may take enforcement action against those advertising the activity, as directed by City Council. These changes are being considered as part of an amendment to the Zoning Ordinance, which City Planning staff intends to bring to Council in the summer of 2016.

### *Fines*

Another obstacle to successful enforcement of the Home-Sharing law has been the low fine amounts attached to violations. From June, 2015 to January, 2016, the penalty for violating SMMC 6.20.030 was \$75, which was calculated by hosts as a cost of doing

business. City Council approved an increase to \$500 at the [January 26, 2016](#) City Council meeting, which may help to serve as a more effective deterrent for hosts to continue operations of illegal short-term rentals after they have been cited. It may also assist in educating other hosts of the risks of operating illegal vacation rentals. However, it is still too early to know, given the lucrative nature of the vacation rental industry, particularly for corporate hosts, if these increased fines will be enough to act as an effective deterrent. If experience concludes so, staff will return to Council to seek yet greater fines.

### **Summary**

Santa Monica is the first city in the United States to proactively enforce a ban on short-term vacation rentals. In spite of significant obstacles, in the first few months of enforcement of the law staff has been successful in collecting over \$40,000 in fines, \$400,000 in transient occupancy tax, and reducing the number of illegal vacation rental advertisements by more than 600 listings. Enforcement actions have resulted in the closure of approximately 100 cases as a result of staff obtaining code compliance. Progress can also be measured by the lengths to which illegal vacation rental and home-sharing hosts have gone to avoid detection by enforcement staff, and in the response and compliance from the nation's largest hosting platform, Airbnb.

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