



## MEMORANDUM

**TO:** Planning Commission

**FROM:** Brian Pedrotti, Community Department Director

**BY:** Patrick Holub, Associate Planner

**SUBJECT:** Discuss and Consider Amendments to Short Term Rental Ordinance

**DATE:** August 2, 2022

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### **SUMMARY OF ACTION:**

Discuss and consider the recommended changes to the Short Term Rental ordinance (Ordinance 663) and make a recommendation to the City Council to adopt the amendments.

### **IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

In accordance with Chapter 3.24 of the Arroyo Grande Municipal Code (AGMC), Short Term Rentals are required to pay the City's transient occupancy tax (TOT) in the amount of 13.5% of the rent charged by the operator, 10% of which is retained by the City, 2% is provided to the Arroyo Grande Tourism Business Improvement District (AGTBID), and 1.5% is provided to the San Luis Obispo County Tourism Marketing District (SLOTMD) (Visit SLO Cal). The City currently receives an estimated \$90,500 per year in TOT from Short Term Rentals.

### **RECOMMENDATION:**

It is recommended that the Planning Commission adopt a Resolution recommending the City Council adopt amendments to the Short Term Rental Ordinance (Attachment 1).

### **BACKGROUND:**

On June 10, 2014, the City Council adopted Ordinance No. 663, establishing vacation rentals and homestays (Short Term Rentals or STRs) as permitted land uses in the City's residential zoning districts, subject to the approval of a Minor Use Permit-Plot Plan Review (Attachment 2). A vacation rental is defined as a structure being rented for less than thirty (30) days without concurrently being occupied by the owner/operator, while a homestay is defined as an owner-occupied dwelling unit where a maximum of two short-term lodging rooms are provided for compensation. These two uses are collectively known as Short Term Rentals.

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During the development of Ordinance 663, both the Planning Commission and City Council discussed potential issues related to noise, parking, and other general nuisances. Performance standards by which a STR application is reviewed were generated from those discussions. Ultimately, both bodies came to the conclusion that these concerns could be addressed by compliance with the performance standards and abiding by conditions of approval. Additionally, these issues were found to be similar to instances when long-term renters, homeowners, and private guests of homeowners are the cause of these types of nuisances. For example, Ordinance 663 requires applicants to provide a local contact to address noise and general disturbance issues that may arise from the STR. A 300-foot buffer between rentals on the same street is required to prevent the oversaturation of STRs in a neighborhood.

Arroyo Grande Municipal Code Section 16.52.230 lists the performance standards required to be complied with in order to receive approval for and to operate a vacation rental, which are as follows:

1. *Operators of vacation rentals are required to obtain a minor use permit-plot plan review (Section 16.16.080) and a business license.*
2. *Any proposed vacation rental shall be compatible with the neighborhood in which it is located in terms of landscaping, scale and architectural character. The use shall be harmonious and compatible with the existing uses with the neighborhood.*
3. *All Building Code and Fire Code requirements for the level of occupancy of the vacation rental shall be met.*
4. *All environmental health regulations shall be met.*
5. *The operator of the vacation rental shall, at all times while the property is being used as a vacation rental, maintain a contact person/entity within a fifteen-minute drive of the property. The contact person or entity must be available via telephone twenty-four (24) hours a day, seven days a week, to respond to complaints regarding the use of the vacation rental. The contact person or entity shall respond, either in person or by return telephone call, with a proposed resolution to the complaint within three hours between seven a.m. and nine p.m., and within thirty (30) minutes between nine p.m. and seven a.m.*
6. *The operator of the vacation rental shall annually, at the time of renewal of the business license, notify the community development department of the name, address and telephone number of the contact person required in subsection (C)(6).*
7. *A written notice shall be conspicuously posted inside each vacation rental unit setting forth the name, address and telephone number of the contact person required in subsection (C)(6). The notice shall also set forth the address of the vacation rental, the maximum number of occupants permitted to stay overnight in the unit, the maximum number of vehicles allowed to be parked on-site, and the day(s) established for garbage collection. The notice shall also provide the non-emergency number of the Arroyo Grande Police Department.*
8. *On-site advertising of the vacation rental is prohibited.*

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9. *The number of overnight occupants shall be limited to two persons per bedroom and two additional persons. A bedroom shall meet the minimum size requirements as defined in the Building Code.*
10. *All refuse shall be stored in appropriate containers and placed at the curb for collection every week.*
11. *The operator of the vacation rental shall pay transient occupancy tax as required by Arroyo Grande Municipal Code Section 3.24.030.*
12. *Establishment of a vacation rental within three hundred (300) feet of an existing vacation rental on the same street shall not be permitted.*
13. *Violations. Violation of these requirements shall constitute grounds for revocation of the minor use permit pursuant to Section 16.16.220.*

Arroyo Grande Municipal Code Section 16.52.240 lists the performance standards required to be complied with in order to receive approval for and to operate a homestay, which are as follows:

1. *Operators of homestays are required to obtain a minor use permit-plot plan review (Section 16.16.080) and a business license.*
2. *Any proposed homestay shall be compatible with the neighborhood in which it is located in terms of landscaping, scale and architectural character. The use shall be harmonious and compatible with the existing uses with the neighborhood.*
3. *All Building Code and Fire Code requirements for the level of occupancy of the homestay shall be met.*
4. *All environmental health regulations shall be met.*
5. *The operator shall reside on the premises.*
6. *Individual guest stays shall be limited to fourteen (14) days, with a seven-day period between stays.*
7. *On-site advertising of the homestay is prohibited.*
8. *A bedroom shall meet the minimum size requirements as defined in the Building Code.*
9. *The operator of the homestay shall pay transient occupancy tax as required by Arroyo Grande Municipal Code Section 3.24.030.*
10. *Establishment of a homestay within three hundred (300) feet of an existing homestay on the same street shall not be permitted.*
11. *Violations. Violation of these requirements shall constitute grounds for revocation of the minor use permit pursuant to Section 16.16.220.*

On September 3, 2019, the Planning Commission received a status report on the City's STR regulations and made a number of recommendations including:

1. Implementation of parking requirements for STRs;
2. Administrative fines for non-permitted STRs;
3. Utilization of compliance technology to address non-permitted STRs; and
4. Reconsideration of current buffer distances or methods.

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On October 12, 2021, the City Council directed staff to bring back a discussion item at a future meeting to evaluate Ordinance 663 after receiving public comment expressing concerns regarding the recent proliferation of STRs, the application and appeal process associated with STRs, and other related issues such as the 300-foot location radius.

On March 22, 2022, the City Council conducted a study session regarding the existing short term rental ordinance. The Council made a number of recommendations including:

- Establishing a cap on the overall number of vacation rental approvals that can be granted;
- Contracting with an enforcement company to identify unpermitted rentals;
- Altering the methodology for how the buffer distance between rentals is calculated;
- Establishing objective revocation triggers;
- Requiring that all mailing labels for vacation rentals be provided by the City and paid for by the applicant;
- Improving the performance standards to ensure greater compatibility with the neighborhood;
- Establishing an expiration clause; and
- Considering whether to impose a parking requirement.

Each of these topics is addressed in more detail later in this report.

## **ANALYSIS OF ISSUES:**

### Trends

When Ordinance 663 went into effect in 2014, it was a first of its kind in San Luis Obispo County. While drawing on existing regulations implemented sporadically throughout the County, the Ordinance addressed the growing trend in home sharing by regulating both vacation rentals and homestays.

Since the Ordinance's implementation, the City has permitted eighty-three (83) vacation rentals and forty-four (44) homestays. The following list represents the number of short term rentals approved per year:

- 2014 – Two (2) vacation rental approvals; five (5) homestay approvals
- 2015 – Two (2) vacation rental approvals; one (1) homestay approval
- 2016 – Six (6) vacation rental approvals; two (2) homestay approvals
- 2017 – Five (5) vacation rental approvals; seven (7) homestay approvals
- 2018 – Seven (7) vacation rental approvals; six (6) homestay approvals
- 2019 – Eighteen (18) vacation rental approvals; seven (7) homestay approvals
- 2020 – Ten (10) vacation rental approvals; four (4) homestay approvals
- 2021 – Nineteen (19) vacation rental approvals; six (6) homestay approvals
- 2022 – Fourteen (14) vacation rental approvals; six (6) homestay approvals\*

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\*Approvals listed for 2022 reflect approvals granted through the end of June and do not include approvals listed on this meeting's agenda.

### Neighborhood Impacts

Since the adoption of the Ordinance, nine (9) permits that were approved by the Community Development Director for the establishment of a vacation rental have been appealed to the Planning Commission, and zero (0) permits that were approved for the establishment of a homestay have been appealed. All nine (9) of the appeals were denied by the Commission and the Community Development Director's decision was upheld. Of the nine (9) appeals that were denied by the Planning Commission, two (2) approvals were further appealed to the City Council. Both of those appeals were later denied by the City Council, which was able to make the required findings for approval.

Appellants of vacation rental permits have cited similar reasons for their appeal, typically including concerns regarding:

- Noise;
- Traffic;
- Parking;
- Transient Occupation; and
- Loss of property values

In each consideration of the appeals, the Planning Commission indicated that although neighbors had concerns regarding nearby rentals, the concerns they raised were discussed during development of the Ordinance, were addressed by the performance standards required for the vacation rentals, or were addressed by conditions of approval implemented for the project. To date, staff has received community member complaints regarding two vacation rental properties and four unpermitted STRs. Of the unpermitted rentals, two are currently working to gain approval, one has stopped operating on a short term basis and the investigation into the final property revealed that there were no violations to enforce. Staff has been working closely with the City's Community Services Specialist as well as the Police Department to track and monitor complaints regarding short term rentals to ensure compliance with the City's regulations. Staff is currently evaluating whether the complaints surrounding the approved rentals rises to the level of revocation.

### Housing Needs

The City's General Plan is the blueprint for how development activities are to occur within the City limits. Housing Element Policy B.6. states: "The City shall continue to regulate the use of existing residences on residentially zoned properties for vacation rentals." Housing Element Program B.6-1 states: "The City shall monitor the loss of permanent workforce housing from vacation rentals and consider modifying the Development Code to adjust for this loss."

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The most recent data available from the United State Census Bureau estimates that there are 7,847 housing units in the City, and 2,169 of those are rental units. Analysis of the ownership information of properties where vacation rentals are permitted indicates that a majority of the vacation rentals are rented on a part time basis when owners are absent. The current number of vacation rentals (83) comprises approximately 3.8% of the City's total rental housing market. While this may not appear to be a significant impact on the City's housing stock at this time, analysis was completed utilizing the City's Geographic Information System (GIS) that estimate a total of 716 vacation rentals could be permitted under the current regulations. This would constitute 33% of the City's rental housing stock.

### Financial Impact

Operators of vacation rentals and homestays are required to obtain a Business License from the City every year, as well as remit Transient Occupancy Tax (TOT). TOT is assessed to any short term occupancies in the City, whether it be at a hotel, motel, bed and breakfast, vacation rental, or homestay, at a rate of 13.5% of fees charged for lodging. Ten percent (10%) of this tax goes into the City's General Fund, which is used for the maintenance of City streets and services being used by the short term occupants of these facilities. Two percent (2%) assessment is allocated to the AGTBID for the purpose of marketing and promotional efforts for the local lodging industry and the final one and one-half percent (1.5%) assessment is remitted to the SLOTMD (Visit SLO Cal) for the purpose of marketing and promotional efforts for the County lodging industry. The Biennial Budget for Fiscal Years 2021 through 2023 projects that the City will receive approximately \$2,031,480 in TOT. It is estimated that \$182,900 will come from STRs. In Fiscal Year 2020-21, the City received \$90,500 in TOT from STRs.

### Unpermitted STRs

One of the most difficult items associated with implementation of the Ordinance is enforcement associated with non-permitted rentals. At any given time, searches can be done on many of the popular rental sites that show rentals operating outside of City regulations. However, efforts necessary to find, geo-locate, track, build a case of facts, and attempt to rectify illegal rentals are time consuming. Staff will monitor and rectify noncompliant rentals when there is a complaint, or when staff resources are available, which is infrequent.

There are companies that can utilize technology to do this work for the City. One company has recently estimated that there are between 150 and 200 unpermitted STRs operating in the City. An enforcement company, acting as a consultant for the City, could assist with identifying unpermitted STRs for purposes of collecting unpaid taxes, and shutting down illegal STRs that are not subject to the same scrutiny as permitted ones. Services provided by these companies are generally offered as a menu, with each service being charged per rental within the City, per month. Specific estimates on additional TOT anticipated from enforcement efforts cannot easily be completed, as a number of assumptions would need to be made regarding the number of operators that simply cease

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their rental, the fees charged for these rentals, etc. However, it is anticipated that the TOT collected with the aid of a consultant would exceed the costs of the services provided.

The City is currently advertising a Request for Proposals (RFP) to select a firm that will assist with ensuring short term rental hosts are compliant with the City's regulations and will also help the City identify unpermitted rentals that are operating within the City. This RFP is scheduled to close on August 4<sup>th</sup> and City staff anticipates being able to select a firm within the weeks following closure of the solicitation.

### Application, Approval Process and Notification Procedures

The application and approval process for STRs have been raised as areas of concern in recent appeals of STR approvals. Currently, an application to establish a STR is submitted as a Minor Use Permit – Plot Plan Review and is reviewed by staff, with approval by the Community Development Director. Notification of the Director's approval is mailed to all property owners within 300 feet of the STR, and included on the following Planning Commission's agenda, which is posted on the City's website and at City Hall. The approval is appealable to the Planning Commission with a \$497 appeal fee. The fee to appeal the Planning Commission's decision to the City Council is an additional \$1,163.00. Community members and appellants have indicated that an STR application should be subject to an initial public hearing so that community input can be provided without having to pay the fee and go through the appeal process.

One of the concerns regarding notification of the Community Development Director's approval of vacation rental applications has involved the ability of applicants to provide the required mailing labels because there is the potential to omit property owners that legally should be notified of the decision. In response to this concern, staff has been able to use a combination of City and County resources to verify the correct property owners are notified of each decision. Community Development staff intends to work with an on-call Geographic Information Systems (GIS) consultant to update the City's capabilities to be able to perform this function fully in-house. If preferable, staff may be directed to generate the mailing labels for each application rather than allowing mailing labels generated by a third party/applicant to be submitted. Currently, the City charges applicants \$417.00 to provide the mailing labels for their applications.

An additional concern raised by members of the public in relation to STRs involves how the Community Development Director's decision is reported to the Planning Commission. Per Arroyo Grande Municipal Code Section 16.12.155, a notice of administrative decision for Minor Use Permits, including any approvals, denials or referrals by the Community Development Director, shall be reported on the Planning Commission agenda. Due to the infrequency of Planning Commission meetings during the pandemic, approvals began to be reported along with the cancellation notice for the cancelled Planning Commission meeting, rather than strictly on scheduled meeting agendas. Staff has made a procedural change in response to this concern to require all notices of administrative approval to be placed on agendas for meetings that are held.

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### **ORDINANCE REVISIONS**

#### Cap on Total Number of VRs

At their study session on March 22, 2022, the City Council recommended capping the total number of permitted vacation rentals at one-hundred twenty (120), which represents approximately 1.5% of the housing units within the City. As of June 30, there have been eighty-three (83) vacation rental approvals granted. As additional applications are submitted, the applications deemed complete first would be processed first in the event of the City reaching the cap. After reaching the cap, the City could keep a waiting list of property owners wishing to entitle a vacation rental until there is another available opening.

#### Short Term Rental Buffer

At the study session on March 22, Council recommended changing the methodology for calculating vacation rental eligibility to preclude the approval of a vacation rental within a 300' radius of another, regardless of the street address for each application. This change would prevent a situation with two vacation rentals on separate streets, but still within 300' of one another. This could, however, create a number of legally non-conforming properties as they were approved under different criteria. The draft ordinance has been updated to reflect this direction from the City Council.

#### Revocation Process

During their study session, the City Council discussed the objective triggers that could be utilized to revoke permits that are operating out of compliance with their performance standards. During their study session, the City Council requested that the Planning Commission suggest specific triggers involving a number of verified complaints that are received regarding a particular property. Staff recommends that the triggers be based upon verifiable information. The Planning Commission may consider whether it is more appropriate to consider revocation after a certain total number of complaints or after complaints are received from a certain number of adjacent properties.

#### Application, Approval Process and Notification Procedures

During the March 22, 2022 study session, the City Council suggested that all applications be required to purchase mailing labels from the City at an additional cost to ensure proper notification procedures are followed consistently. The current fee for the City to produce mailing labels is \$417.00 and would be charged in addition to the current \$756.00 application fee. These fees would be in addition to the \$34 annual cost to maintain a City Business License.

#### Performance Standards

The City Council has asked that the Planning Commission review the current performance standards and make any necessary changes. The City Council did not discuss specific changes to performance standards and simply asked that the Planning Commission explore possible ordinance amendments during their consideration. Staff



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has included a number of changes to the performance standards within Attachment 2. Redlines showing those changes are included in Attachment 3.

### Expiration

There is currently only one way that a short term rental approval can expire separately from the revocation process. Short term rental approvals are conditioned to expire two years from the date of approval if a Business License has been issued. During the short term rental study session on March 22, 2022, the City Council suggested adding an additional expiration threshold where approvals would automatically expire if an operator does not remit TOT to the City for a consecutive period of twelve (12) months. City staff, if directed, will contact permit holders informing them of the fact that their approval is nearing expiration.

### Parking

The Council asked that the Planning Commission specifically look at whether parking requirements should be applied to short term rentals. There are currently no specific parking requirements for short term rentals. For reference, single family homes, which are the most common type of structure utilized for short term rentals, are required to provide two enclosed parking spaces.

### Next Steps

Following this hearing, staff will be incorporating the suggested changes from the Planning Commission for final consideration by the City Council. There will be a total of two public hearings at the City Council level for approval of the Ordinance and final adoption.

### **ALTERNATIVES:**

1. Discuss and review the recommended Ordinance revisions and make a recommendation to the City Council for adoption; or
2. Discuss and review the recommended Ordinance revisions and do not make a recommendation to the City Council for adoption; or
3. Provide other direction to staff.

### **ADVANTAGES:**

Recommendations for changes to the Ordinance will allow staff to make any necessary revisions and continue to the City Council for final adoption in order to address concerns from members of the community regarding STRs in the City.

### **DISADVANTAGES:**

None identified.

### **ENVIRONMENTAL REVIEW:**

In compliance with the California Environmental Quality Act (CEQA), the Community Development Department has determined that the adoption of an ordinance to implement

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amendments to the short term rental regulations is consistent with the City's General Plan, and therefore is statutorily exempt from the requirements of CEQA pursuant to Section 15183.

### **PUBLIC NOTIFICATION AND COMMENTS:**

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

#### **Attachments:**

1. Draft Resolution
2. Ordinance 663
3. Ordinance Amendments with redlines
4. Minutes from the September 3, 2019 Planning Commission meeting
5. Minutes from the October 12, 2021 City Council meeting
6. Minutes from the March 22, 2022 City Council meeting
7. Public Comment