



MEMORANDUM

TO: City Council

FROM: Brian Pedrotti, Community Development Director

BY: Patrick Holub, Associate Planner

SUBJECT: Introduction of Ordinance Amending Title 16 of the Arroyo Grande Municipal Code Regarding Short Term Rentals (Vacation Rentals and Homestays); Development Code Amendment 22-002

DATE: September 13, 2022

SUMMARY OF ACTION:

Introduction of the proposed amended Ordinance regulating short term rentals.

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 received an estimated \$150,000 in FY 2021-22 in TOT from Short Term Rentals.

RECOMMENDATION:

Introduce an Ordinance amending Title 16 of the AGMC regarding short term rentals.

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 or STRs.

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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. 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. Performance standards were adopted to address these issues when an STR is reviewed and considered for approval. 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.*

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8. *On-site advertising of the vacation rental is prohibited.*
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;

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3. Utilization of compliance technology to address non-permitted STRs; and
4. Reconsideration of current buffer distances or methods.

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 same street buffer.

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 performance standards to ensure greater compatibility with the neighborhood;
- Consider an expiration clause; and
- Considering whether to impose a parking requirement.

A Resolution containing a draft Ordinance was developed from these discussion points for the Planning Commission's consideration. On August 2, 2022, the Planning Commission conducted a noticed public hearing to consider the proposed revisions to AGMC Sections 16.52.230 and 16.52.240 and adopted a Resolution recommending the City Council adopt an ordinance amending the regulations regarding short term rentals. Their recommendations included the following amendments:

1. Establish a cap on vacation rentals of 120.
2. Increase the buffer between short term rentals of all kinds to 500 feet and provide a buffer from all schools of 500 feet.
3. Initiate revocation procedures if a designated emergency contact is unresponsive three consecutive times or if a citation is issued to a short-term rental tenant by the Police Department.
4. Require that short term rental permits expire at the point of sale of the property.
5. Require that any unit previously occupied by a long-term renter within the past year be ineligible to become a short-term rental.
6. Incorporate the same proposed performance standards for homestays as vacation rentals.
7. Provide two parking spaces off-street for all short-term rentals. The parking spaces can be covered or uncovered.

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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-six (86) vacation rentals and forty-seven (47) 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 – Seventeen (17) vacation rental approvals; nine (9) homestay approvals*

*Approvals listed for 2022 reflect approvals granted through the end of August.

STR Appeals

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. In addition to the nine (9) appeals filed by community members, the Planning Commission voted to appeal a vacation rental approval at its August 2, 2022 meeting. That appeal will be held before the Planning Commission and is currently scheduled for September 20, 2022.

Housing Needs

The City's General Plan is the blueprint for how development activities are to occur within 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 States 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 (86) comprises approximately 4% 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, among other things, is used for the maintenance of City streets and services being used by the short-term occupants of these facilities. Two percent (2%) of the tax 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%) of the tax is remitted to the SLO TMD (Visit SLO Cal) for the purpose of marketing and promotional efforts for the County lodging industry.

The Mid-Cycle Budget for FY 2022-23 projects that the City will receive approximately \$1,300,000 in TOT. It is estimated that \$155,000 will come from STRs during this fiscal year. In FY 2021-22, the City received an estimated \$150,000 in TOT from STRs.

Unpermitted STRs

One of the most difficult issues 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 internet vacation 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 significantly time consuming. Currently, City staff will monitor and rectify noncompliant rentals when there is a complaint, or when staff resources are available, which is infrequent.

The City advertised a Request for Proposals (RFP) to select a firm to assist with ensuring short term rental hosts are compliant with the City's regulations and to help the City identify unpermitted rentals that are operating within the City. This RFP closed on August 4, 2022. Staff has since reviewed the proposals and interviewed the top three (3) firms. Contract negotiations with the top firm are underway and a contract is expected to be fully

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executed in September. Based on estimates provided by one company, there may be between 150-200 unpermitted STRs operating in the City. Services from the selected consultant will help ensure that these STRs either come into compliance with City regulations or cease operations. It is anticipated that these efforts will increase collection of TOT revenue and either significantly or entirely offset the cost of the consultant's services.

ORDINANCE REVISIONS

Cap on Total Number of VRs

During the 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.

On August 2, 2022, the Planning Commission concurred that the cap for approved vacation rentals within the City should be one-hundred twenty (120). As of August 31, 2022, a total of eighty-six (86) vacation rentals have been granted approval to operate. 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. The Planning Commission did not express a preference as to whether the waiting list should be implemented through a first-come-first served or through a lottery approach. Staff is recommending that a waiting list be created, and has included this in the draft ordinance.

Short Term Rental Buffer

At the study session on March 22, the City Council recommended changing the methodology for calculating vacation rental eligibility to preclude the approval of a vacation rental within a three-hundred-foot (300') radius of another vacation rental, regardless of the street address for each application. This recommendation did not address the fact that under the existing code, the buffer only applies to vacation rentals. Homestays are subject to their own three-hundred-foot (300') radius from each other; therefore, vacation rentals and homestays can be located next to each other.

On August 2, 2022, the Planning Commission recommended expanding the buffer distance between any type of short-term rentals to five-hundred feet (500') regardless of street address and recommended that this restriction also apply to both vacation rentals and homestays. Additionally, the Planning Commission recommended establishing a five-hundred-foot (500') buffer from all schools for both short term rental types. Staff has included this additional buffer into the draft ordinance.

Revocation Process

During the March 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. Council requested that the Planning Commission suggest

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specific triggers involving a number of verified complaints that are received regarding a particular property.

During its meeting on August 2, 2022, the Planning Commission suggested that revocation procedures be initiated against any permit holder whose emergency contact was unresponsive three consecutive times. Additionally, the Planning Commission recommended initiating revocation procedures against any permit holder whose short-term rental guests' behavior resulted in a citation from the Arroyo Grande Police Department. Staff has included this recommendation into the draft ordinance.

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 not 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.

In addition to the expiration clause recommended by the City Council, the Planning Commission recommended that short term rental permits be conditioned to automatically expire at the point at which the property is sold to a new owner. Following discussions with the City Attorney, staff is not recommending that this recommendation from the Planning Commission be included. Short-term rentals permits run with the land, and a permit expiration based on change in ownership is inconsistent with the City's approval process of a MUP-Plot Plan Review. Regarding expiration, the proposed ordinance does not include language requiring the automatic expiration of an approval upon sale.

It should also be noted that existing short-term rentals will have the status of being legal nonconforming uses under AGMC Section 16.48.110(B)(1), which provides as follows:

Right to Continue a Nonconforming Use. A use lawfully occupying a structure or a site, that does not conform with the use regulations and site area regulations for the district in which it is located shall be deemed to be a nonconforming use and may be continued, except as otherwise provided by this section. Continuation of a nonconforming use may include a change of ownership, tenancy or management if the building, structure, land use or activity is substantially unchanged.

One approach to address the legal nonconforming status would be to provide an amortization period to provide a reasonable time period before the permit holder subject to loss of its legal status has to conform to the new requirements in consideration of the investment involved in the use. In that regard, it is noted that owners of short-term rentals

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would still have the use of their property and could also rent them out on a long-term basis. If the City Council would like an amortization period to be considered, further direction to staff would be appropriate.

Performance Standards

During the March 22, 2022 study session, the City Council asked that the Planning Commission develop objective performance standards with the goal of making the revocation process simpler to initiate for properties that are not operating in a way that is compliant with the City's short-term rental regulations. Additionally, the City Council suggested that the performance standards be amended to require that vacation rental applicants be required to purchase the required mailing labels from the City to ensure proper noticing is performed for each application.

At their meeting on August 2, 2022, the Planning Commission recommended that the amended short term rental ordinance include provisions that homestays not be approved within Planned Unit Developments, aligning with staff's recommendation that vacation rentals be prohibited in PUDs. Additionally, the Commission recommended that any new performance standards that are applied to vacation rentals also apply to homestays. The proposed ordinance includes requirements that applicants purchase mailing labels directly from the City, that vacation rentals be prohibited in PUDs, that the buffer distance between short term rentals be increased to five-hundred feet (500') and that no short-term rental of any type be approved within five-hundred feet of another short-term rental or school. Additionally, the draft ordinance includes language which caps the total number of vacation rentals allowed within the City at one-hundred-twenty (120), allows staff to initiate revocation procedures of a vacation rental's emergency contact is non-responsive three times or if the property is issued a citation for guest behavior by the AGPD and requires that short term rental operators remit TOT to the City at least once every twelve (12) months. Lastly, the draft ordinance includes language which requires vacation rentals to provide two (2) off-street parking spaces and requires homestays to provide one (1) off-street parking space per bedroom rented.

Parking

During the March 22, 2022 study session, the City Council asked the Planning Commission to consider the application of a parking requirement for short term rentals.

At its meeting on August 2, 2022, the Planning Commission recommended that a parking requirement of two (2) parking spaces be provided for each vacation rental, and one (1) off-street parking space per rented bedroom for each homestay. The parking spaces could be covered or un-covered, but must be provided off-street.

Definitions

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Staff is recommending that the definitions of both vacation rentals and homestays be amended to allow staff to more easily define short term rentals that occur on properties with multiple units and to further clarify that a homestay requires the property owner not only to classify the property as their primary residence, but also that the property owner is physically present on-site while renting a portion of their residence.

Each of the preceding amendments is included in the proposed amended Ordinance except where noted regarding expiration at point of sale. Redlines showing the proposed changes from the existing ordinance are also included as a separate attachment. Introduction of the proposed ordinance amending the City's Short Term Rental regulations will enable the ordinance to be adopted at a future City Council meeting.

ALTERNATIVES:

1. Introduce an Ordinance amending the short-term rental regulations within the City;
2. Revise and introduce an Ordinance amending the short-term rental regulations within the City; or
3. Provide other direction to staff.

ADVANTAGES:

Introduction of the amended Ordinance will allow the City to further regulate short term rentals in a manner that is harmonious with the existing character of the neighborhoods in which the rentals currently or will exist.

DISADVANTAGES:

If the proposed ordinance is ultimately adopted, it will establish a cap on Short Term Rentals that will reduce potential TOT revenue from new STRs.

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 amendments to the short-term rental regulations is categorically exempt from CEQA pursuant to Section 15305 – Minor Alterations in Land Use Limitations.

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. Proposed Ordinance
2. Proposed Ordinance with redlines

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3. Minutes from the September 3, 2019 Planning Commission meeting
4. Minutes from the October 12, 2021 City Council meeting
5. Minutes, staff report and attachments from the March 22, 2022 City Council meeting
6. Minutes from the August 2, 2022 Planning Commission meeting
7. Staff report and attachments from the August 2, 2022 Planning Commission meeting