



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: Set Hearing on
May 16, 2017, for
June 6, 2017
Placement: Departmental
Estimated Time: 3 hours on June 6, 2017
Continued Item:
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn S. Russell, Ph.D., Director, Planning and Development,
Director(s) (805) 568-2085
Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning
Division, (805) 568-2072
SUBJECT: Short-Term Rental (STR) Ordinances

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

On May 16, 2017, set a hearing for June 6, 2017, at which the Board should:

- a. Receive and file a staff report that sets forth the information that the Board requested at its December 6, 2016, hearing regarding STRs and determine that pursuant to the California Environmental Quality Act (CEQA) Guidelines 15378(b)(5) that these actions are not a project subject to CEQA review; and
- b. Adopt the STR ordinances, as recommended by the Planning Commissions, by taking the actions set forth in the Board letter and Attachments on this matter, dated December 6, 2016 (Attachment 1); or
- c. Direct staff to revise the proposed STR ordinances, and return and present the revised STR ordinances to the Board; or
- d. Take no action at this time.

Summary:

At the December 6, 2016, hearing, the Board considered ordinances that would allow the use of STRs with permits in some zone districts and prohibit the use in all other zone districts. After receiving the staff report and public testimony, the Board directed staff to return with additional information regarding STRs. This Board letter summarizes the information that the Board requested including (1) background information and relevant facts, (2) common approaches for regulating STRs, (3) permitting and development standards, and (4) enforcement.

As stated in the recommended actions (above), after considering the requested information, the Board should either (1) adopt the STR ordinances, as recommended by the Planning Commissions, by taking the actions set forth in the Board letter and Attachments on this matter, dated December 6, 2016, or (2) direct staff to revise the proposed STR ordinances and return to the Board for consideration of the revised STR ordinances, or (3) take no action at this time.

Information Requested at the December 6, 2016, Board Hearing:

At the December 6, 2016, hearing, the Board requested staff to research and report back to the Board regarding a number of items related to STRs. The following information is provided for the Board’s consideration.

1.0 Background Information and Relevant Facts

1.1 Information on the Tax Collector’s Application for the Transient Occupancy Tax (TOT) Certificate

Pursuant to the County Code (Chapter 32), the County of Santa Barbara Treasurer-Tax Collector’s office collects TOT. Hotel operators in the unincorporated areas of the County are required to collect the TOT from transients who stay for a period of 30 consecutive days or less. Chapter 32 of the Code defines “hotel” very broadly to include STRs. The current TOT amount is 12 percent of the rent that an operator charges. The table below lists the total amount of TOT revenue that the Treasurer-Tax Collector’s office collected for STRs, and the total number of TOT Certificates that the County of Santa Barbara Treasurer-Tax Collector’s office issued for STRs over the last two fiscal years.

Timeframe	Amount of TOT Collected	Number of TOT Certificates
Fiscal Year 2014 – 2015	\$1,416,339	492
Fiscal Year 2015 – 2016	\$1,669,810	535

The TOT certificate is for tax collection purposes and does not constitute a land use entitlement. The TOT application does not currently require applicants to provide information on the housing type (e.g., if the rental unit is a primary or secondary dwelling unit, or if the owner occupies the home at the same time as the transient), but the application could be modified to require the applicant to provide this information. A copy of the TOT application is included as Attachment 2 to this board letter.

1.2 Location of TOT Certificates Issued in FY 2015-2016

TOT certificate data are the only empirical data currently available to staff that shows where STRs exist in the County. This is due to the fact that STR platforms do not give the exact address of the rentals shown on their maps and often only include interior pictures. In fact, the radius from the actual unit can be as large as half a mile, in some instances. Attachment 3 illustrates the distribution of STRs for which the Tax Collector issued TOT certificates in FY 2015-2016 as follows:

1. TOT certificates by community plan;
2. TOT certificates by zone district;
3. TOT certificates by residential zone;
4. TOT certificate distribution by land use designation;
5. TOT certificates by zoning ordinance (Land Use Development Code, the Montecito Land Use Development Code, or Article II);
6. TOT certificates in the Montecito Community Plan (Montecito Land Use Development Code, or Article II); and
7. TOT certificate locations by community plan and by general zone district.

The data presented in Attachment 3 illustrates noteworthy trends:

- 50 percent of the TOT certificates are for STRs located in the areas subject to the Montecito or Santa Ynez community plan.
- 73 percent of TOT certificates are for STRs located in Residential zone districts and 24 percent are for STRs located in the County's agricultural zones.
- The majority of TOT certificates in residential zones are for STRs located in either the R-1 or E-1 (Single Family Residential) zone districts.
- 67 percent of all TOT certificates are for STRs located in Urban land use designations.
- 56 percent of the TOT certificates are for STRs located in the Inland Area (excluding Montecito), and 30 percent of the TOT certificates are for STRs located in the Coastal Zone.
- Of the 139 TOT certificates for STRs located in the Montecito Community Plan Area, 75 are for STRs located in the Montecito Inland area and 64 are for STRs located in the Coastal Zone.

1.3 Historic and Current Vacancy Rates for Santa Barbara County

Accurate and meaningful vacancy rate data for the unincorporated County is not currently available. Additional time, outside consultation, and cost would be required to disaggregate census data for specific communities (e.g., Summerland, Los Olivos, and Eastern Goleta Valley). Staff will continue to investigate available data sources for this information.

1.4 Consistency of STRs with the Legislative Purpose of Residential Second Units (RSUs) [also known as "Accessory Dwelling Units" (ADUs)]

State legislation involving ADUs is generally intended to reduce barriers, streamline the approval process, and expand the capacity to accommodate the development of ADUs because ADUs are considered an essential component of California's housing supply. The state legislature has determined that: ADUs are a valuable form of housing in California; ADUs provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods; homeowners who

create ADUs benefit from added income and an increased sense of security; ADUs in single-family and multifamily residential zones provide additional rental housing stock; and ADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods. (Government Code section 65852.150.) Most recently, on January 1, 2017, substantial revisions to the State Government Code regarding the permitting and development of ADUs went into effect. The key changes include (1) no minimum lot size requirements, (2) reduced parking requirements, and (3) streamlined permitting.

An important component of the new state legislation is that it allows local jurisdictions, with adoption of an ordinance that complies with state law, to require that an applicant for an ADU be an owner-occupant or that the property be used for rentals of terms longer than 30 days. Planning and Development staff is currently preparing zoning ordinance amendments to incorporate the ADU legislative changes. The Montecito Planning Commission heard this item on March 22, 2017 and April 12, 2017, and the County Planning Commission is expected this spring, with anticipated Board adoption hearings in the summer. The Board could place restrictions on using ADUs for STRs as part of the STR Ordinance or as part of the ADU Ordinance.

The County first adopted standards allowing ADUs in 1982 and has amended them many times since (e.g., in 1986, 1990, 1994, 1999, and 2002). Staff reviewed the permit data for ADUs issued in the County since 2001. Out of the 88 permits issued for ADUs, eight of the permits are located on lots for which the Tax Collector issued a TOT certificate. However, the TOT certificates do not indicate whether the property owner uses the primary dwelling or the ADU as a STR and, consequently, it is not clear to what extent the allowance of STRs has reduced the number of ADUs available as long-term rentals.

1.5 Effect on Housing Element

At the December 6, 2016, hearing, Board members asked about the possible effect that STRs might have on the County Housing Element and the RHNA. Because STRs occur in existing housing units, the allowance of STRs would not directly affect the current Regional Housing Needs Allocation (RHNA). The Housing Element inventories vacant and underutilized sites that are zoned and suitable for new development. It estimates what can be built in the future to accommodate the RHNA requirements. The RHNA requirements do not distinguish between uses (e.g., rental properties, owner-occupied units, or STRs) but call for the housing needs by four income categories (i.e., very low, low, moderate, above moderate) and analyze whether there is sufficient higher density zoning available for these various housing types. Therefore, the exact impact of the use of STRs on future RHNA is unknown, but staff does not believe the current Housing Element is at risk of being de-certified due to any action taken on the use of STRs.

Staff contacted the California Department of Housing and Community Development; this agency does not have a position on the use of STRs affecting affordable housing.

1.6 Effect on Housing

The general theory of housing supply holds that if the demand for apartments and houses exceeds the supply, the prices will rise and reduce affordable housing opportunities. STRs take housing stock out of the market and, therefore, could be driving up the cost of housing, making it

challenging for workforce and low income renters to find housing, and for first time homebuyers to enter into the market.¹ It is unclear what the affects of a prohibition of STRs would be to the housing market. This is due to the fact that we cannot predict the owner's behavior in the face of a prohibition; they could not rent the unit and use it only for the time they come to the area, they could sell the unit; or they could rent it full time.

1.7 Data on Owner Occupied STR Properties

Another question that was raised at the December 6, 2016, hearing was how many STRs were owner-occupied. Although we do not know the extent of STRs in the County, we do have data on TOT certificates and information from the Assessor on the issuance of homeowner's exemptions. The owner can claim the exemption only for the primary residence, which results in a \$7,000 property tax reduction. The reliability of this data depends on the owner to claim the exemption, and it is likely that not all qualified owners request this exemption. Of the 535 issued TOT certificates, 185 owners are claiming an exemption at this time. In the future, your Board could direct the Tax Collector's office to request this information on the TOT certificate application, as well.

1.8 Coastal Commission's Comments Regarding STRs

At the Board hearing on December 6, 2016, staff presented the Planning Commissions' recommendations to permit the use of STRs in (1) the Agricultural II (AG-II) zone, (2) certain Mixed-Use zones, and (3) certain Commercial zones where other transient lodging is permitted. The Planning Commissions' recommended ordinances would prohibit STRs in Residential, Resource Protection, Industrial, and certain Special Purpose zones.

Coastal Commission staff submitted a letter dated November 30, 2016 (Coastal Commission staff letter), regarding the Planning Commissions' recommendations (Attachment 4). It states: "...[S]hort-term rentals, including those in residential zones, can provide an important source of visitor accommodations in the Coastal Zone. In some instances, residential short-term rentals may provide a lower cost alternative to renting hotel or motel rooms, especially for large families or groups of individuals." At the hearing on December 6, 2016, the Board requested staff to report back with an analysis of STR rates in the Coastal zone.

Staff reviewed AirBnB, Homeaway, and other local rental platforms for rentals offered in 2017 for the winter and summer months. Staff's research revealed that STR costs in coastal, residential zones in the unincorporated areas of the County, range from \$150 per night for a one bedroom STR to over \$4,200 per night for a five bedroom STR. Attachment 5 shows the average costs of rentals in the Coastal Zone by community and number of bedrooms. These average rates include additional fees (e.g., cleaning fees). Many of the listings also had three-day minimum rental periods, which increases the overall rent payment. Staff also reviewed the cost of hotel rooms in the Coastal Zone and found that they range from \$250 per night to \$700 per night (Attachment 5).

There are also many camping sites in the County (e.g., Gaviota, El Capitan, Refugio, and Jalama) that offer an affordable lodging option for coastal access. In total, there are approximately 330 camping sites for RVs, trailers, or tents with an average cost during the high

¹ County Planning Commission staff memo, dated November 18, 2015 (Attachment B, C, and D).

season of \$55 per night. Additionally, Jalama Beach Park has seven cabins available for approximately \$140 per night.

In light of this data, staff has generally found that when comparing the various accommodations, the cost of STRs in the Coastal Zone is not substantially lower than the cost of other types of similarly situated accommodations (e.g., hotel rooms on the coast). However, the comparison of STRs to other types of lodging is not always “apples to apples.” The price per bedroom of a given STR will often be more affordable than the price per hotel room. Thus, a sizeable group may find the STR to be more economical. But even the room-to-room price comparison is not directly correlated due to the differences between the products. For example, each hotel room has bathroom facilities; each STR room may not. STRs have kitchens; most hotel rooms do not.

The Coastal Commission staff letter also states:

The Commission has not...supported amendments that prohibit or unduly restrict the rental of residences to visitors in a manner that will diminish the public's ability to access and recreate on the coast. A ban of short-term rentals...would thus be inconsistent with previous Commission actions...Commission staff recommends that the regulation of short-term rentals include regulation within residential zones rather than a complete prohibition within those zones.

Coastal Commission staff also questioned the allowance of STRs on agriculturally zoned property, and recommended “...that the county consider alternatives to avoid potential adverse impacts to long term agricultural use and operations in AG-II in the Coastal Zone, such as allowing homestays instead of short-term rentals.”

Staff also received a letter from Steve Kinsey, then Chair of the Coastal Commission, dated December 6, 2016 (Attachment 6), in which he states that members of the Coastal Commission “...support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for vacation rentals, while providing appropriate regulation to ensure consistency with applicable laws.” Coastal Commission staff also prepared a document on the Coastal Commission’s recent decisions regarding the use of STRs in other jurisdictions (Attachment 7).

In summary, County staff’s research indicates that STRs in the County of Santa Barbara provide an alternative accommodation product type to traditional hotel rooms and, depending on the guests’ needs; STRs may be a lower cost visitor option in the Coastal Zone.

Staff does not agree with the Coastal Commission staff’s assertion that allowing STRs on agriculturally zoned land is inconsistent with the policies of the Local Coastal Program (LCP). The Coastal Commission’s staff presented no evidence to support the claim that the use of STRs will have an adverse impact on agricultural operations. County staff presented this item to the Agricultural Advisory Committee (AAC). The AAC recommended that STRs be allowed, with regulation, as they could provide an additional revenue stream to support agriculture². The Agricultural Preserve Advisory Committee (APAC) recommended that agri-tourism lodging opportunities be allowed through a farmstay option.³ Sections 3.4 and 3.5 of this staff report

² County Planning Commission staff memo, dated February 24, 2016 (Attachment H).

³ County Planning Commission staff memo, dated February 24, 2016 (Attachment I).

(below) set forth additional responses to some of these concerns, particularly with regard to the additional uses of homestays and farmstays, and the possible creation of an overlay district in which STRs would be allowed. County staff will actively work with Coastal Commission staff to address any continuing concerns based upon direction from your Board regarding regulation of STRs.

2.0 Common Approaches for Regulating STRs.

A number of California jurisdictions are addressing the increased use of STRs and homestays through changes in ordinance regulations. Attachment 8 includes a table summarizing how other counties with similar attributes as the County of Santa Barbara and neighboring cities have addressed STRs and homestays. There is a wide range of approaches to the regulation of the use, including, outright prohibition, the allowance of only a homestay option, or allowing the use in only certain areas or zones. The counties and cities that do allow STRs or homestays in some form allow it through a permit approval process, with regulations (similar to the regulations shown in Attachment 9) and/or through a business license approval process with the revenue or tax collectors department.

3.0 Permitting and Development Standards.

Below is a list of possible development standards that staff developed during the Planning Commissions' meetings for the use of STRs and/or homestays. In addition to the standards that are part of the proposed ordinance amendments presented on December 6, 2016, a supplemental application is proposed to be required with the permit application that includes submittal requirements. Verification and enforcement of these standards would be completed through the permit process, the supplemental application, and the condition compliance monitoring.

3.1 Ordinance Standards

STRs could be subject to new development standards to address safety and compatibility issues, including compliance with certain fire, building, and health codes in regards to smoke and carbon monoxide detectors and other safety measures; prohibitions on the use of certain structures as STRs; and limitations on the number of STRs allowed per lot. These development standards, although presented in the recommendation from the Planning Commission for use in the AG-II zone district, could be applied to other zone districts, upon direction, to address neighborhood compatibility issues (Attachment 9).

3.2 Supplemental Application

If STRs and/or homestays are allowed in any zones, staff recommends they be permitted through a Land Use Permit (LUP) or Coastal Development Permit (CDP). Staff has developed a supplemental application specifically for STRs in order to obtain additional information that is not currently requested in the LUP or CDP application. The supplemental application could require a copy of the STR owner's/operator's standard rental contract and floor plan of the STR (Attachment 10). It was requested at a previous hearing that staff review the possibility of including an insurance requirement. Planning and Development staff does not have the expertise to review insurance coverage/policies and therefore does not recommend including this provision in the STR supplemental application.

3.3 Additional Permit Review

In addition to complying with ordinance requirements and supplemental application standards,

the APAC would be required to review any application for a STR on a lot that is subject to an agricultural preserve contract to determine if the use is a compatible use with the Santa Barbara County Uniform Rules for Agricultural Preserves and Farmland Security Zones (Uniform Rules).

3.4 Possible Permit Path for Homestays and Farmstays.

The Board could also pursue the option of permitting homestays and/or farmstays, either as the sole type of permissible STR or in addition to other types of STRs, as discussed below.

Homestays

The proposed general definition of a “homestay” used by staff in the development of the STR Ordinance is “[a] residential unit rented for 30 consecutive days or less where the owner or long-term tenant of the property inhabits a legal dwelling on the same parcel at the same time as the transient occupant.”⁴ The justification for allowing homestays is that if the owner or long-term tenant of the property is present at the same time as the transient, then the owner or long-term tenant would be the first to experience a nuisance issue and would be quick to respond. In addition, a review of hosting platforms indicated that the number of transients is almost always less for homestays (which are normally capped at two people), as compared to STRs in which the owner or long-term tenant is not present and the entire dwelling is rented (which in many cases can accommodate six or more people).

Typically, in other jurisdictions, the permit regulations for a homestay are less restrictive than the permit regulations for other types of STRs, if both are allowed. LUPs and CDPs are the simplest types of entitlements to allow homestays, which could also have conditions of approval that staff could enforce. Furthermore, staff could verify that the homeowner or long-term tenant of the dwelling lives in the homestay through the application process.

Farmstays

The Gaviota Coast Plan adopted in 2016 allowed farmstays with a LUP or CDP on properties with an Agriculture II (AG-II) zoning designation (Attachment 11). A “farmstay” is defined as “[a] type of working farm...that is partially oriented towards visitors...by providing guest accommodations. Such an operation may include interactive activities where guests participate in basic...ranch operations such as collecting eggs and feeding animals...”⁵ These provisions for the use of a farmstay currently do not apply to properties in the Coastal Zone, and are pending Coastal Commission certification; however, these provisions currently apply to the Inland area of the Gaviota Coast. Farmstays could be allowed with a LUP or CDP in other agricultural zones located outside of the area that is subject to the Gaviota Coast Plan in addition to, or in place of, STRs.

3.5 Creating a STR Overlay.

The Board also requested that staff review the possibility of creating a zoning overlay to limit the geographic areas in which STRs would be allowed. Zoning overlays have been used in other areas of the County where unique characteristics distinguish the areas from other areas of the County that have the same base zoning designation, yet warrant specific, additional regulations that would apply to development within the areas.

Using an overlay as a zoning tool to regulate STRs would be challenging. Specific criteria and

⁴ County Planning Commission, Short-term Rental Ordinance Briefing, November 4, 2015

⁵ Land Use and Development Code, Article 35.11 - Glossary

defined geographic boundaries would need to be established which uniquely distinguishes, for example, residential neighborhoods in the Los Olivos and Eastern Goleta Valley from other areas which are zoned similarly. One possible approach is to apply the overlay to neighborhoods which have “historically” been used for vacation rentals and transient lodging use. There are several small beach enclaves (e.g., Miramar Beach) which could potentially meet this criterion. Staff suggests that if the Board wants to pursue this option, “historically” could be defined as neighborhoods which have regularly been used for vacation rentals, going back several decades, and prior to the emergence of popular internet vacation rental platforms.

4.0 Enforcement.

The Planning and Development Department’s current approach to zoning enforcement is generally reactive, in response to reported complaints. The enforcement program is funded and staffed to support this approach.

Enforcement of an STR ordinance could take a variety of approaches:

- Complaint-driven, as with the current zoning enforcement program;
- Added public outreach and education;
- Some proactive enforcement, such as reviewing hosting platforms/spot checking compliance with the ordinance; and
- Actively enforcing the ordinance.

The need for effective enforcement was a consistent theme that participants expressed during the processing of the Planning Commissions’ recommended STR ordinance amendments and at the December 6, 2016, Board hearing. Enforcement will be challenging, similar to other uses that do not require the construction of a new structure (e.g., special events, or animal keeping), and any enhanced enforcement efforts would have budget and staffing implications. Staff will present enforcement options to the Board for consideration, after the Board provides direction regarding the regulatory approach that the Board would like to take with regard to STRs.

The Treasurer-Tax Collector has been actively collecting TOT on STRs by sending out enforcement letters to owners that Treasurer-Tax Collector staff finds by reviewing web platforms since 2008. The enforcement duties of the Treasurer-Tax Collector’s staff include:

- Internet searches;
- Sending introduction packets to potential rental owners;
- Correcting mistakes on monthly returns;
- Sending a letter to vacation rental owners if monthly information is not received;
- Calculating penalties; and
- Sending letters regarding penalties on either late or incorrect submittals.

Zoning enforcement staff could also work with the Treasurer-Tax Collector’s staff to gather data on the enforcement of an STR ordinance.

Fiscal Analysis:

The Board initially approved the staffing and budget allocations for the STRs ordinance project as part of the Board’s adoption of the Long Range Planning Division FY 2015-2016 work program. Total project costs in FY 2015-2016 were \$64,328.

Current fiscal year staff salaries and other costs associated with the STRs ordinance project are budgeted in the Planning and Development Department Long Range Planning Budget Program on page D-295 of the FY 2016-2017 operating budget. FY 2016-2017 project costs as of the June 6, 2017, Board hearing are anticipated to be approximately \$70,000.

Staff included resources in the FY 2017-2018 work plan to complete remaining tasks on this project. If the Board adopts any STR Ordinances in 2017, the adoption of a STR ordinance in the coastal zone will require staff resources to facilitate the Coastal Commission's certification of amendments to the Local Coastal Program to include the STR ordinance. If the Board's direction will result in a greater work effort than is currently envisioned and budgeted for this project, including possible additional enforcement efforts, staff will be requesting reallocation of existing resources or additional resources to complete this project.

There are no facilities impacts. Implementation of the ordinances will occur primarily through the development review process (i.e., zoning requirements and development standards applied to new LUPs and CDPs). Fiscal impacts, including enforcement measures, will be evaluated after direction from the Board.

Special Instructions:

Planning and Development Department staff will fulfill noticing requirements. The Clerk of the Board shall provide a copy of the Board Minute Order(s) to the Planning and Development Department, Attn.: David Villalobos.

Attachments:

1. Link to Previous Board of Supervisors Board Letter, December 6, 2016
2. Transient Occupancy Tax, Application for Certificate Registration
3. Location of Properties for Which TOT Certificates Were Issued in FY 2015-2016
4. Coastal Commission Staff Letter, November 30, 2016
5. Short Term Rental Rates in the Coastal Zone
6. Coastal Commission Chair Letter, December 6, 2016
7. Sample of Coastal Commission Actions on Short Term Rentals
8. How Other Jurisdictions Regulate the Use of Short Term Rentals
9. Development Standards
10. Short Term Rental Supplemental Application
11. Gaviota Coast Plan Farmstay Standards

Authored by:

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