

Short Term Vacation Rentals

October 2015

SDCTA Position: The San Diego County Taxpayers Association recommends support for the Department of Development Services draft language regarding Short Term Vacation Rentals, with the addition of language proposed by the office of Councilmember Chris Cate regarding frequency and intensity. Staff recommends the removal of limitations on parking and gross floor utilization, and the addition of a tiered, increasing fine infrastructure.

Rationale for Position: SDCTA staff recommends **SUPPORT** for the policy framework provided by the Department of Development Services staff with the inclusion of additional language offered by Councilmember Cate's office, because in totality it provides a balanced plan that both maintains the economic benefits offered to the City by short term vacation rental and home share platforms through increased tourism spending and Transient Occupancy Tax generation while establishing reasonable protections to local residents who are concerned with neighborhood disturbances brought on by rowdy guests in the form of community self-policing measures, heavy fines for noise violations, and a dedicated code enforcement task force designed to handle the influx of code compliance calls.

Title: Department of Development Services Staff Proposal for Short Term Vacation Rentals

Jurisdiction: City of San Diego

Type: Municipal Code Amendment

Vote: Smart Growth and Land Use Committee

Status: Vote Pending

Issue: Short Term Vacation Rentals

Description: At the direction of the Smart Growth and Land Use Committee, Department of Development Services staff drafted a legislative framework to regulate Short Term Vacation Rentals (STVRs) or rentals of whole or a part of a whole residential home by the owner for a period of less than 30 days. This form of home rental has become much more common in recent years, facilitated by internet based services such as AirBnB, Homeaway, and VRBO that connect prospective tenants to home owners.

Fiscal Impact: Short Term Vacation Rental and Home Sharing arrangements brought in \$6,814,643.8 in Transient Occupancy Tax in Fiscal Year 2015. This number is expected to increase to as much as \$11.8 million as the City established an agreement with AirBnb, the largest STVR platform, to collect Transient Occupancy Tax and the Tourism Marketing District assessment (TMD) with each transaction that began on July 15, 2015. In addition to tax revenue, STVRs provide a considerable economic value to the region. According to preliminary research by Erik Bruvold of the National University System Institute for Policy Research, STVRs provide home owners in the San Diego Region who list their properties on online rental platforms over \$110 million dollars annually. In addition, these tourists spend an estimated additional \$86.4 million dollars annually in the local economy. Opposing proposals to limit frequency or ban the practice outright would put these revenues in jeopardy to various degrees.

Background:

For hundreds of years, private citizens have rented all or part of their homes on a short-term basis as a profitable business venture. This concept is perhaps best epitomized by the traditional bed-and-breakfast – a commercial property that functionally operates in a manner similar to a hotel, but that aesthetically retains many aspects of a private home – a kitchen and typically food provided to tenants, a location within a residential zone, with the owners living on site. Customers of this type of arrangement may prefer it to a more traditional hotel for a number of reasons: a home-like atmosphere, a wish to share the experience of being a local resident, or perhaps a desire to contribute more directly to the local economy. This model, which has been codified into law under City of San Diego Municipal Code §141.0603, is fairly easy to regulate because of its static and well defined nature: the space is an intrinsically profit-seeking venture, more easily thought of as a business with a living space attached than the reverse. Because of this distinction, bed and breakfasts are regulated as businesses, requiring amongst other things the same Neighborhood Use Permit that any other business would require if it operates within a residential zone.

This straightforward and easy to understand legal framework has been disrupted in recent years by the rise of online short term vacation rental (STVR) platforms. These services, such as Airbnb, Homeaway, and Flipkey, provide a mechanism by which home owners can rent out their dwellings on a short term basis and by which renters can find rental properties. Prospective tenants can log onto the online platform, search for the city they wish to visit, narrow down rental properties that fit their price, size and location parameters, and book rooms simply and easily.¹ Home owners list their properties on the platform free of charge, and the rental service takes a percentage of the booking rate as a transaction fee. More recently, these platforms have also begun collecting Transient Occupancy Tax (TOI) and the Tourism Marketing District (TMD) assessment automatically and paying the City of San Diego for all transactions performed on the website rather than requiring users to pay taxes to the city individually on their revenues.

This new rental paradigm has presented a variety of challenges for policy makers that previously did not exist under the standard bed and breakfast model. The new platforms have simplified the process of finding tenants and collecting payments that the number of such rental properties has drastically increased in recent years in residential zones. Since 2008, the year Airbnb entered the local market, Transient Occupancy Tax revenues from STVR properties in the San Diego region have increased by over 250%.² This figure is made even more impressive given that Airbnb and the City of San Diego have only this year agreed upon a consistent method of collecting the Transient Occupancy Tax on each transaction processed through the platform. Home owners who would never have thought to convert their home into a full time bed and breakfast can do so on a part time, at-will basis. In the minds of many, the distinction between a full time business like a bed and breakfast, and an STVR property listed on Airbnb one weekend a month or only when the owner themselves is on vacation is enough to argue that the two are fundamentally different things requiring different regulations. Other citizens dispute this point, arguing that because some STVRs are rented full time, and due to the potential negative impacts on

¹ Zervas, Georgios and Proserpio, Davide and Byers, John, *The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry* 7 May 2015. Boston U. School of Management Research Paper No. 2013-16.

² City of San Diego Office of Financial Management 9/17/15

neighborhood quality caused by the flow of tenants to such STVRs, all short-term vacation rentals should be subject to the same laws as bed and breakfasts.

The confusion and disagreement as to this last point is epitomized by a recent case in San Diego, in which a Burlingame woman who had rented rooms in her house through Airbnb without first obtaining a Neighborhood Use Permit was fined over \$15,000 dollars after neighbors contacted the police over noise disturbances caused by guests.³ The fines were levied only after a protracted lawsuit between the homeowner and the City. According to the attorney for the home owner, the home owner rented the property at a fairly low intensity, a few nights a month. Both because it is so ordinary, and because the penalty that followed were so extraordinary, this case belies the necessity of solidifying the regulations surrounding short term vacation rental properties and making these regulations clear to all home owners, potential tenants, and neighbors. Currently there are over 6,100 registered users on various STVR platforms in the San Diego region, each of whom is technically in violation of the same regulations as the home owner in the Burlingame case, as the City has not issued a single neighborhood use permit to a short term vacation rental. For this reason, it is critical that the City's policy on short term vacation rentals is clarified. The City simply does not have the resources to litigate a lawsuit every time a dispute occurs between a the owner of an STVR and her neighbors.

Summary of Policy Recommendations:

With this urgency in mind we turn our attention to the proposed policy framework drafted by the Department of Development Services staff at the direction of the Smart Growth and Land Use Committee. This draft language takes the crucial step of defining short-term vacation rentals clearly and to the exclusion of other use categories such as a traditional, full time bed and breakfast or home sharing. This framework is generally permissive of short-term vacation rentals on the conditions that home owners who choose to rent:

- 1) Pay Transient Occupancy Tax (TOT) and the Tourism Marketing District assessment (TMD)
- 2) Formally notify all tenants of all pertinent laws and potential fines for misbehavior
- 3) Designate a local contact that is available to resolve potential disturbances at all times while the property is being rented who must respond to any calls within 1 hour.
- 4) Posts notice of the property's status as a short-term vacation rental in a visible location on the exterior of the home and provide contact information for his or her designated local contact.

Staff generally supports this framework for the following reasons:

A) Legitimizing short term vacation rentals and home sharing arrangements mitigates the ethical conflict posed by current policy

As discussed above, City policy towards STVRs and home sharing is currently unclear. The City requires the collection of the Transient Occupancy Tax and Tourism Marketing District

³ NBC 7 San Diego, *Woman Ordered to Pay 15k for AirBnb Without Permit*.
<http://www.nbcsandiego.com/news/local/Woman-Ordered-to-Pay-15K-for-AirBnB-Hosting-Without-Permit-321699962.html>

assessment on all STVRs and has negotiated with Airbnb and other rental services to collect these payments en masse. However, the City does not issue Neighborhood Use Permits for these properties and in fact has levied large fines on renters without permits. Therefore, under the current system the City is formally collecting taxes from a category of businesses it does not officially recognize as legitimate; a black market so to speak. This new policy proposal fixes this incongruity.

B) Regulating and taxing Short Term Vacation Rental and Homesharing activities supplies significant tax revenue to the City

While STVRs and home sharing still only account for a fraction of Transient Occupancy Tax revenue overall, the amount of money that rental platforms such as Airbnb generate has increased each year.⁴ According to research by Erik Bruvold of the National University System Institute for Policy Research, with the more efficient tax collection methods recently put into place by the City, revenue could increase further to up to \$11.8 million dollars annually.⁵ This revenue is critical in a time when the City is facing massive deferred maintenance and infrastructure obligations.

Fig 1: Annual Transient Occupancy Tax Revenues

FY	STVRs	Growth	All Others	Percent Growth	Total	Growth
2006	\$1,919,479.19	-	\$135,538,650.40	-	\$137,458,129.59	-
2007	\$2,886,497.32	1.5	\$147,236,450.73	1.09	\$150,122,948.05	1.09
2008	\$2,743,697.43	0.95	\$155,744,100.96	1.06	\$158,487,798.39	1.06
2009	\$2,872,389.23	1.05	\$138,679,261.28	0.89	\$141,551,650.51	0.89
2010	\$2,682,521.46	0.93	\$122,425,148.53	0.88	\$125,107,669.99	0.88
2011	\$3,187,995.28	1.19	\$136,678,143.25	1.12	\$139,866,138.53	1.12
2012	\$4,169,051.82	1.31	\$143,632,482.10	1.05	\$147,801,533.92	1.06
2013	\$3,921,973.28	0.94	\$154,160,188.70	1.07	\$158,082,161.98	1.07
2014	\$5,263,432.33	1.34	\$164,726,024.20	1.07	\$169,989,456.53	1.07
2015	\$6,814,643.81	1.29	\$177,963,310.34	1.08	\$184,777,954.15	1.09
Total	\$36,461,681.15	3.55	\$1,476,783,760.49	1.31	\$1,513,245,441.64	1.34

Source: City of San Diego Office of the City Treasurer

Not only do STVRs bring in tax revenue, they do not appear to appreciably hamper the growth of existing hotels, with hotel revenue returning to a similar level of growth that was seen in the industry before the recession and before AirBnb's entry into the market. This would imply that the tax revenue generated by STVRs is in addition to that brought in by other lodging services rather than in substitution. This observation is born out by existing

⁵ National University System Institute for Policy Research. *Economic Impact of Short Term Vacation Rentals in San Diego*. 8 Oct 2015
http://www.nusinstitute.org/assets/resources/pageResources/NUSIPR_Short_Term_Rentals.pdf

research on the subject. According to a broad based study of Airbnb's entry into the market in various cities throughout the state of Texas published by a team of researchers based out of Boston University, for every 10% increase in bookings on Airbnb, the local hotel industry in a given region suffers only a slight decrease of 0.37% in bookings. The study's author speculates that hotels attract a different demographic of clientele than Airbnb, particularly those travelling on business, and who can afford to pay a premium to stay in a significantly more expensive room.⁶

C) Short term vacation rentals provide significant economic benefits that are captured by the local economy.

Given the finding that STVRs increase total room bookings in a given region over all, it stands to reason that these additional travellers contribute to the local economy in the form of food, beverage, and entertainment. According to preliminary research by the National University Institute for Policy Research, STVRs provide over \$110 million dollars to local home owners renting through the service. In addition, travellers staying at those STVR properties go on to spend an estimated \$86.4 million dollars while staying in San Diego. In both cases, that money is fed into the local economy, providing a net benefit for the region.⁷

D) Requiring 24-hour contact, and rental contracts between owner and tenant establishes a system for weeding out bad actors and preventing potential incidents.

The most significant criticism from community organizations in opposition to STVRs and home sharing operations is that STVRs reduce neighborhood quality by bringing loud, inconsiderate guests into residential areas. This is without a doubt a serious concern that must be weighed against the economic benefits of the practice. The Department of Development Services draft ordinance makes several positive steps toward creating an environment in which both renters and neighbors are treated fairly. The draft ordinance requires the renter to:

- 1: Designate a property management contact available 24 hours a day to respond within one hour to neighbor complaints or in case of an emergency. Contact information must be posted in a visible location on the rental property.
- 2: Create a rental contract with each renter that explicitly specifies the fines that can result from violation of City noise ordinances, up to and including \$1000 dollars to the home owner and to each resident renting the home.

These two provisions provide considerable protections to neighbors. Tenants will be made aware of the considerable fines that are very likely to follow bad behavior. Homeowners will be given motivation to police themselves and more carefully select tenants with the implementation of fines as well.

⁶ Zervas, Proserpio, & Byers, pg. 16

⁷ San Diego Regional Economic Development Corporation, *Tourism By The Numbers*
http://www.sandiegobusiness.org/sites/default/files/Industry_Tourism.pdf

Unfortunately, the Department of Development Services Draft Ordinance only covers the front end of the enforcement problem. While the punitive system it has designed would likely be effective in curbing bad actors, a common complaint of residents in neighborhoods where there is a high density of short term vacation rentals is that local police and code enforcement officers do not have the resources to properly handle disturbances from STVR properties. SDCTA Staff believes that funds must be set aside in any STVR regulation policy to appropriately respond to community complaints.

Cate Amendment

While SDCTA Staff broadly supports the original policy, it is notably lacking in concrete enforcement measures to protect neighborhood quality. Indeed, the biggest criticism levied against STVRs both in council hearings and in local media is that they attract unruly vacationers to residential areas they would otherwise not have disturbed.⁸ This potential threat to neighborhood quality of life is a valid concern, and though the original measure did include measures requiring a 24-hour local contact and provided provisions for large fines to be levied against bad actors, SDCTA Staff is concerned for the ability of local authorities to respond quickly and adequately to community complaints. For this reason Staff supports additional language for the measure supplied by the office of Councilmember Chris Cate to the language of the DSD proposal. Councilmember Cate's amendment requests spending \$255,000 dollars to hire three Police Investigative Service Officers specifically to handle increased community calls for assistance with regards to STVR properties. Funding for these positions would be offset by new tax revenues provided by the Transient Occupancy Tax.

In addition, Cate's amendment provides some more minor improvements to the existing framework. Perhaps most importantly of these smaller changes, Cate's amendment sets an occupancy limit of 2 lodgers per bed plus one. Staff supports this change as well, as it provides an objective and reasonable standard by which City officials responding to complaint calls can assess liability.

Policy Concerns

While the proposed measure provides many benefits, there remain some areas in which SDCTA Staff believes slight adjustments would improve the overall quality and effectiveness of the policy.

I) Remove the Off Street Parking Regulations

Under §141.0301(f) *Boarder, Lodger and Homesharing Accommodations* of the draft ordinance, home owners renting to tenants while remaining on site are required to provide off-street parking at a rate of 1 space for each 2 boarders and lodgers. Staff considers this requirement onerous, unnecessary, and particularly difficult to enforce. It precludes apartment owners with a limited number of parking spaces from sharing their home. The measure appears to be an effort on behalf of the City to prevent homeowners engaged in homesharing from overutilizing street parking, but its necessity and efficacy in this regard is questionable. Firstly, homesharing operations are unlikely to use much street parking. Homesharing arrangements in

⁸ Save Our San Diego Neighborhoods Website, <http://savesandiegoneighborhoods.org/index.html>

which renters are occupying a spare bed, bedroom, or couch are unlikely to house more than a few people. A survey of available homesharing spaces on Airbnb by SDCTA staff revealed that there are currently only 163 listings in all of San Diego that can house 4 or more guests. Four guests and fewer would be likely to arrive in a single vehicle, making the effect of homesharing arrangements on neighborhood parking minimal. Secondly, many travellers are likely to arrive at their destination by taxi via a ride sharing service such as Airbnb. These guests would require no parking at all, making the parking requirement entirely superfluous in many cases.

In addition, this regulation would be highly difficult to enforce. Code enforcement officers have no way to know if cars parked on the street belong to the home owner, the home sharer, or a patron at a local bar. Because parking is a public resource, regulating it without some sort of much more involved permitting process would be difficult bordering on impossible.

II) Remove the 25% Gross Floor Area Limitation on Homesharing Arrangements

This regulation also applies to the aforementioned homesharing section of the Department of Development Services framework. This regulation is likely intended to curb the amount of homesharers renting space in a dwelling to prevent overcrowding. However, it restricts access to homesharers with smaller housing units. While vacation rental listings that offer an individual bedroom for renters may be the most common listing type, there are many local residents willing to rent out less space at a lower price or to allow sharing of a room by multiple travelers. In the abstract, the distinction between permitted uses based on floor area is unclear. In a small studio apartment, two people are currently allowed to reside full time. They are also currently allowed to invite a friend to ‘couch surf’ and stay a night for free. This guest could legally access the entirety of the small apartment with no legal recourse. However, under this proposal, the exchange of money for the privilege of couch surfing for a night would render the entire stay illegal.

SDCTA additionally questions the practicality of enforcing this section of the ordinance. It seems unlikely that current Code Enforcement funding will allow for City staff to gather the physical dimensions of any short term vacation rental property. It seems more plausible that this clause would be utilized only to heap on additional penalties to a rental unit that has already drawn Code Enforcement staff’s attention through a separate violation.

III) Add a tiered fining structure

While Staff believes the current fining mechanism of up to \$1,000 dollars per violation is a good start toward reining in bad actors, the SDCTA believes that local neighborhoods would be better served if the City Council added to its prospective STVR regulations a tiered, increasing fine structure in order to cut into the profitability of homeowners who repeatedly rent to disruptive parties. For example, the maximum fine available for the first violation may be \$1,000 dollars – as the Department of Development Services proposal lays out – but the second may be raised to \$2,500, with the third going even higher. The actual amount for the fines would be entirely to the discretion of City Council, and could be adjusted over the course of the first few years of the program to find the optimal level that successfully deters bad actors but also keeps the total fine amount from reaching a point that would become onerous or excessive.

Alternate Proposals

Zapf Amendment

An alternative amendment to the Department of Development Services proposal was offered by the office of Councilmember Lori Zapf. Responding to criticisms of STVRs by several vocal community groups such as Save Our San Diego Neighborhoods and Preserve Our Communities, Councilmember Zapf's proposal takes a much more robust approach to regulating STVRs by only allowing stays of a minimum of 21 days for whole-home rentals, while allowing homesharing operations. SDCTA Staff ultimately could not support this amendment to the Department of Development Services proposal for the same reasons that Staff supports Councilmember Cate's amendment.

In the view of SDCTA Staff, a 21-day minimum stay requirement is a de facto ban on short-term vacation rentals. STVRs are much more often utilized for shorter stays of a weekend or a week for a variety of reasons. According to information retrieved by SDCTA Staff from AirDNA, an analytics company that monitors Airbnb, the median nightly booking rate for a whole home rental in the City of San Diego is approximately \$175 dollars⁹. Multiplied by 21 the base rate for this average rental rises to \$3,675 before cleaning and service fees (which vary from rental to rental) are applied. To contrast, the average monthly rent on a property in the San Diego Metro area was \$2,300 according to research by the online real estate listing company Zillow.¹⁰ Due to this disparity, either no consumer will stay in a short term rental, or rents on spaces that rent on a month to month basis will increase drastically to meet parity. In addition, very few workers receive anywhere close to 21 days of vacation time at any given time. Essentially, the short-term vacation rental model was designed to be just that: short term.

This measure will effectively eliminate most of the massive economic benefits of STVRs discussed above. It is the opinion of SDCTA Staff that the City should first attempt to regulate the industry in an attempt to find a balance between the interests of homeowners and renters, and only to consider stricter measures if that becomes untenable rather than eliminating an entire industry out of hand.

Proponents:

- Councilmember Chris Cate
- San Diego Chamber of Commerce (conceptual support)
- San Diego Vacation Rental Management Association
- Short Term Rental Alliance of San Diego
- Short Term Rental Advocacy Center

⁹ AirDNA. Airbnb Data and Pricing Analytics September 2015.
http://www.airdna.co/city/us/california/san-diego?report=us_ca_san-diego

¹⁰ Market Overview: Real Estate. San Diego August 2015
<http://files.zillowstatic.com/research/public/realestate/ZHVI.San%20Diego.395056.pdf>

Proponent Arguments:

- The current policy paradigm is inconsistent and confusing; this measure clarifies the rules.
- Short term vacation rentals provide a positive economic impact to the region
- Short term vacation rentals provide significant income to the City in the form of TOT and TMD revenues

Opponents:

- Councilmember Lorie Zapf
- Save Our San Diego Neighborhoods
- Preserve Our Communities
- Community Planners Committee

Opponent Arguments:

- Short Term Vacation Rentals negatively impact neighborhood quality as a result noise, trash and parking issues caused by unruly house guests.
- Short Term Vacation Rentals could potentially raise rents in the San Diego region by detracting from the housing stock.
- Short Term Vacation Rentals erode neighborhood quality by replacing permanent resident with short term residents who have no ties to the community