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**Subject:** FW: Short-Term Lodging - Newport Beach City Council Meeting, 2/11/20, Item XVIII. 20  
**Attachments:** Newport Beach STR Proposal EG Letter 02.10.20 FINAL.pdf  
**Importance:** High

**From:** Walter Gonzales (ELCA) <wagonzales@expediagroup.com>  
**Sent:** Monday, February 10, 2020 11:46 AM  
**To:** Dixon, Diane <ddixon@newportbeachca.gov>; Avery, Brad <bavery@newportbeachca.gov>; Duffield, Duffy <dduffield@newportbeachca.gov>; Muldoon, Kevin <kmuldoon@newportbeachca.gov>; Herdman, Jeff <jherdman@newportbeachca.gov>; Brenner, Joy <JBrenner@newportbeachca.gov>; O'Neill, William <woneill@newportbeachca.gov>  
**Cc:** Jurjis, Seimone <sjurjis@newportbeachca.gov>; Brown, Leilani <LBrown@newportbeachca.gov>  
**Subject:** Short-Term Lodging - Newport Beach City Council Meeting, 2/11/20, Item XVIII. 20  
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Dear Mayor O'Neill and Members of the Newport Beach City Council,

Thank you for the opportunity to provide comment on the City of Newport Beach's efforts to regulate short-term rentals (STRs). Expedia Group is a family of brands that includes vacation rental leaders Vrbo and HomeAway. Our experience working with communities in California and around the world gives us a unique understanding of the kinds of regulations that work for municipalities like Newport Beach, and we are grateful for staff's outreach to Expedia Group to date.

Newport Beach's proposed language includes new obligations on platforms—specifically, that platforms verify STR operators' license numbers before allowing any bookings and be responsible for collecting and remitting Transient Occupancy Tax (TOT) to the City of Newport Beach.

#### License Enforcement

Newport Beach's proposed regulations would require platforms to review listings for license numbers and check those numbers against a city-maintained registry before every booking.

As this provision moves forward, we encourage Newport Beach to keep two practical considerations in mind. First, developing a seamless registry portal and system available to all STR platforms can be a complex and time-consuming task. Based on our experiences with similar efforts in other cities, Expedia Group recommends an effective date at least 90 days after final passage of the ordinance. Second, once enabled, the City's license registry must be updated at least once per day, and ideally in real time, as licenses are approved or revoked. This would allow newly licensed operators to list their properties on STR platforms as soon as they are eligible and helps platforms remove unlicensed properties without delay.

#### TOT Requirements

As drafted, Newport Beach's proposed ordinance would require platforms to collect and remit TOT generated by short-term rental activity in the city. This provision requires voter approval consistent with Proposition 218, which prohibits a local government from "impos[ing], extend[ing] or increas[ing] any general tax unless and until that tax is submitted to the electorate and approved by a majority vote."

The proposed language would newly "impose" tax liabilities and obligations on platforms by subjecting platforms to tax collection, recordkeeping, enforcement and remittance liabilities for tax owed as a result of short-term residential occupancies the platform facilitates. While Newport Beach's TOT is imposed on "transients" for the privilege of occupancy, tax liability is also imposed on an "operator" if tax is not remitted, whether or not it is collected by the operator from the guest. The proposed language would effectively treat platforms like "operators" for purposes of tax collection, recordkeeping and remittance liabilities. For no other purpose would platforms be considered operators—thus, the proposed amendments "impose" tax liabilities and obligations that do not exist under current law. This can only be done if voter approval is first secured. We ask that this provision be removed from the ordinance.

Again, we are deeply grateful for the City's efforts to engage with Expedia Group and other stakeholders as part of this process. We look forward to working with you moving forward. Please feel free to contact me at [wagonzales@expediagroup.com](mailto:wagonzales@expediagroup.com) or 512-505-1615 with any questions.

Sincerely,

**Walter R. Gonzales**

Government Affairs Manager, Southwest Region

11920 Alterra Parkway

Austin, Texas 78758

Direct: 512.505.1615

[wagonzales@expediagroup.com](mailto:wagonzales@expediagroup.com)



February 10, 2020

Newport Beach City Council  
Will O'Neill, Mayor  
City Council Chambers  
100 Civic Center Drive  
Newport Beach, CA 92660

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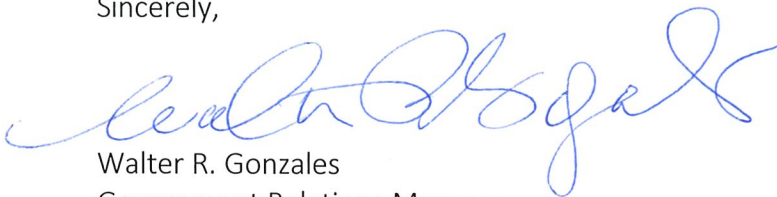
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Sincerely,



Walter R. Gonzales  
Government Relations Manager  
Expedia Group

cc: Seimone Jurjis, Community Development Director

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**Subject:** FW: STL Revised Ordinance Comments

**From:** Jeff Herdman <[jherdman204@icloud.com](mailto:jherdman204@icloud.com)>

**Sent:** Monday, February 10, 2020 12:11 PM

**To:** Craig Batley <[cbatley@burrwhite.com](mailto:cbatley@burrwhite.com)>

**Cc:** Jurjis, Seimone <[sjurjis@newportbeachca.gov](mailto:sjurjis@newportbeachca.gov)>; Dixon, Diane <[ddixon@newportbeachca.gov](mailto:ddixon@newportbeachca.gov)>; Brenner, Joy <[JBrenner@newportbeachca.gov](mailto:JBrenner@newportbeachca.gov)>

**Subject:** Re: STL Revised Ordinance Comments

Hi Craig!

I can't respond to all of your questions, but I can take a stab at a few of them:

1. If a guest violates their STL agreement I do not believe that they should be given a chance to correct the violation. Are we given chances to correct a motor vehicle violation when we are issued a ticket. A code is a code. Ignorance of the law is no excuse for a violation. And in this particular case, rental agents, rental platforms, individual property owners are charged with the responsibility of completely enlightening tenants on city code before their term of rental begins so the tenant should be well-informed about what they can and can't do when moving in to the place they have rented.
2. A violation is a violation. One is does not have weight over the other.
3. It would appear that number 3 would be a possibility, but I would need to get an opinion from our City attorney or Chief of Police.
4. What application is sued is not important to me. That is not the issue here. The issue is a quality of life issue for people who live near or next to an STL. The application used to rent a place is a non-issue.
5. If a violation occurs, it is one strike against the property owner. I am not aware of any time limit that we are proposing where a property owner can correct a violation and not have it count against them. A violation is a violation.
6. The legal definition of an accessory dwelling unit can be found on the city website.
7. I don't understand this question. Do you mean that an owner would affirm a **terms off use** on the city website to avoid repeated paperwork? Your questions says "of" the city website and it doesn't make sense.
8. Staff will have to answer this one.
9. An occupant is an occupant. A six month old baby is an occupant.
10. Code violation notification would be handled by the police department of code enforcement. What it actually looks like I do not know right now.
12. I don't understand this one, Craig. I'd have to have this one explained more to me before I could attempt a response.

Hope these responses help! I'm sure that as these new practices/procedures are implemented, it will probably be necessary to revisit this whole topic at a time in the future, and I am certainly open to that.

Jeff

On Feb 10, 2020, at 11:43 AM, Craig Batley <[cbatley@burrwhite.com](mailto:cbatley@burrwhite.com)> wrote:

Hello City Council:

After reading the proposed revision of the Short-Term Lodging city code, I have a few questions. I am also attaching the pertinent code sections that in my opinion need clarification or editing based on years of managing a few hundred permitted short-term vacation rentals the past 20 years.

I am asking the council to send this draft back to staff for further clarification and editing making the STL code revision a document that reflects the current STL marketing and management as it operates today. In other words, after some refinement, perhaps the code revision will be ready for approval at the February 25<sup>th</sup> or March 10<sup>th</sup>.

If I can be of assistance to staff, I am willing to work with staff to assist in crafting a code revision that works for all stakeholders.

Questions that need answers, comment or explanation:

1. If a guest violates their STL: vacation contract should the proprietor be given a chance to correct the violation within a reasonable time period maybe 2-12 hour period of code violation without penalty?
2. Are all code violations equal? Garbage citation vs noise violation?
3. Should the city LUGO addendum be incorporated in the STL vacation contract?
4. Why not require STL permit applicants agree to use a city STL contract?
5. How long of a time period is an owner allowed in order to correct a violation before it counts against them? Remembering the goal is to encourage adherence to STL code
6. What is an accessory dwelling unit?
7. Is it possible to have an owner affirm a **terms of use** acknowledgement of the city website, thereby avoiding unnecessary paperwork to be management by city staff?
8. Do the fines set forth in Section 1.05.020(F) supersede fines in the STL code (chapter 5.95)?
9. Does a 6-month-old baby (sleeping in a basinet) count as an occupant?
10. Shall the city notify a STL permit holder of code violation via a formal "Desist and Cease" order or a "Notice to Quit"
11. What procedure for notification a violation has occurred and what period of time is allowed to correct said deficiency?
12. If a short-term lodging permit is suspended or revoked should the city punish guests who have made plane reservations and intend to visit Newport Beach by requiring a calcitrant STL permit holder to cancel all future confirmed bookings? Or is it enough to prevent the permit holder to discontinue making any new bookings?

13. Should a proprietor lose his STL permit for cause IF while his property is being managed by a property management company allowing guests to violate noise ordinances OR Should the proprietor be allowed to change management companies?
14. How would a city approved 24 hour answering service distribute messages to STL permit holders? Are owners contacted immediately and directly? Instead, wouldn't it be simpler to require permit holders to provide evidence of employing a commercial 24-hour answering service?
15. Assuming guests sign a vacation rental contract, IF the guest violates its terms shouldn't the guest be subject to an administrative fine, especially if occupancy or noise provisions are violated?

<image003.jpg>

<City Council 5.95 Revision.docx>

Color code:

Delete, edit as specified or recommended, duplicative/needs simplification, notation

Suggestions for the PROPOSED STL code revision:

#### 5.95.005 Purpose and Findings

C. Many of the occupants of short term lodging units are permanent residents of areas distant from Newport Beach and the City has no effective way to prevent occupants from continuing to violate provisions of this Code and the Penal Code relating to noise, disturbances and disorderly conduct. The only effective way to minimize the problems associated with occupancy of short-term lodging units is to impose responsibility on the owner of the property, either personally or through an agent, to control the conduct of guests and occupants.

D. Numerous incidents involving excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking and accumulation of refuse are directly related to short term lodging units which increasingly require response from police, fire, paramedic and other City services.

E. The increase in demand for City services resulting from short term lodging units increases during the summer overburdens, and but does not threaten the City's ability to provide necessary services.

F. A few many short term lodging units are operated by agents and/or absentee owners who exercise little or no supervision or control of occupants

M. The restrictions of this chapter are necessary to preserve the City's housing stock, the quality and character of the City's residential neighborhoods as well as to prevent the continued burden on City services and adverse impacts on residential neighborhoods off the peninsula posed by short term lodgings.

#### 5.95.010 Definitions.

A. "Accessory dwelling unit?" (like an efficiency unit) needs clarification why not just define an accessory dwelling unit? shall have the same definition as set forth in Chapter 20.70 of Title 20 of this Code.

#### 5.95.017 Maximum Number of Permits

Exception to the permit eligibility in favor of exceeding the arbitrary 1600 permit limit should be IF a previous STL permit holder for a R-2 property, whose current status is now inactive and subsequently, the owner desires to reinstate such STL permit, then such application should be allowed, subject to the applicant's previous status was in good standing. Otherwise, this previous STL permit holder suffers from unintended consequences and would be forced to be on a waiting list for an indefinite period of time.

#### 5.95.030 Applicant for Permit.

D. Should be The number of bedrooms, including lofts or dens in the lodging unit



F. A proposed location for the placement of the sign require to be posted on the exterior of the unit should be: A sign shall be posted on the front of the permitted residential property.

G. A Owner certification ( form supplied by the City or terms of use agreement of the city website) that the applicant has reviewed the covenants, conditions and restrictions, if any, and a short term use is permitted at the location pursuant to the terms of the covenants, conditions and restrictions, if any.

H. Owner Acknowledgement of receipt and inspection of a copy of all regulations pertaining to the operation of a short-term lodging unit.

#### 5.95.045 Conditions.

A. All permits issued pursuant to this chapter are subject to the following standard conditions:

1. The owner shall enter into a written agreement with the transient use that requires all persons residing in the short term lodging unit to live as a single housekeeping unit; and that the transient user limit the overnight occupancy of the short term lodging unit two occupants, per bedroom (including lofts and dens) plus two persons per lodging unit. The owner shall use best efforts to ensure that the overnight maximum occupancy is not exceeded.

NOTE: If the STL contract limits occupancy and the guest violates such occupancy, then the guest should be subject to immediate eviction

4. The owner of the short term lodging unit shall use best efforts to ensure compliance with all the provisions of TITLE 6 of this Code

9. The owner shall utilize the City's answering service OR provide evidence of employing a commercial 24-hour answering service and otherwise shall provide the City with the name and twenty-four (24) hour phone number of a local contact person(s) (who reside within twenty-five (25) miles (10 miles) of the property) who shall ensure compliance with this chapter in a timely manner.

15. The owner shall post on a sign not to exceed two square feet, which shall be approved by the City, the local primary contact name, the phone number for the City's answering service. and maximum overnight unit occupancy. The sign shall be posted at a location on the exterior of the unit readily visible from public right of way, subject to the approval by the City, in lettering of sufficient size to be easily legible.

#### 5.95.050 Agent and Hosting Platform Responsibilities

B. Subject to applicable laws, agents and hosting platforms shall disclose to the City on a regular basis each home-sharing and vacation rental listing located in the City, the names of the persons responsible for each such listing, the address of each such listing the length of stay for each such listing and the price paid for each stay. Why

#### 5.95.055 Issuance of Administrative Subpoenas

The City Manager shall have the authority to issue and serve administrative subpoenas to the owner, agent or hosting platform, as necessary, for cause,

#### 5.95.060 Violations and Penalties.

B. Except as provided in subsection C in the case of any **substantial** administrative citation issued pursuant to this chapter, administrative fines shall be assessed in the following amounts:

3. A fine not exceeding one thousand dollars (\$1,000) for a **third violation**, or any subsequent violation, with one year of the date of the prior violation. **Thought after 2 violations a STL permit is revoked?**

#### 5.95.065 Suspensions and Revocations

A. Suspensions/Revocations.

1. Except as otherwise provided in this subsection, if any **person** **guest while the lodging unit was occupied on a short term basis**, violates a short term lodging permit **code provision condition two (2) or more times** in any twelve (12) month period or any other provision of this Code, state law or federal law, **two (2) or more times** in any **twelve (12) month** period, and the violation relates in any way to the unit that has a short term lodging permit, the STL permit for the unit **subject to written notice to permit holder of such violation and providing for a period of correction AND the permit holder fails to correct said deficiency THEN permit holder's STL permit** may be suspended for a period of **six (6) months** in accordance with subsection (B).

2. In the case of a short term lodging permit for a unit that is located in a Safety Enhancement Zone, if there is a violation of any provision of the Code during the period that the Safety Enhancement Zone is in effect, the short term lodging permit for the unit may be **suspended for a period of one year** or revoked in accordance with subsection (B).

**NOTE:** if any **person** **guest While the lodging unit was occupied on a short term basis**, violates a short term lodging permit **code provision condition two (2) or more times**

3. If a lodging unit that is subject to a short term lodging permit has been the location of **TWO or more loud or unruly gatherings**, as defined in Chapter 10.66 of this code, **this section is Confusing it talks about two or more LUGO's within any 24 month period permit may be suspended, however, there is an exception for a prior to the passage of fourteen calendar days for the mailing of notice.....shall not be included within the calculation of the two or more LUGO's.....**

5. If any person violates a short term lodging permit condition or any other provision of this Code, state or federal law with **six (6) months** of have a previously suspended short term lodging permit reinstated for a unit, and the violation relates in any way to the unit that has the short term lodging permit, the short term lodging permit for the unit may be revoked in accordance with subsection (B).

6 If any person violates a short term lodging permit condition three (3) or more times in any twelve (12) month period or provision of this Code, state or federal law three (3) or more times in any twelve (12) month period and the violation occurs during a short term occupancy, relates in any way to the unit that has a short term lodging permit, the short term lodging permit for the unit may be revoked in accordance with subsection (B).

7. If any person fails to collect and remit transient occupancy tax or the visitor service fee in accordance with the requirements of this chapter, Chapters 3.16 or 3.28 in regards to any unit that has a short term lodging permit, two or more times with any thirty six (36) month period, the short term lodging permit for the unit may be revoked in accordance with subsection (B).

#### **5.95.065 Suspensions and Revocations. Too many conditions and exceptions**

C. If a short-term lodging permit is suspended or revoked, it shall be the owner's responsibility to cease making any new bookings going forward vacate any future bookings and remove all advertisements related to the short-term rental of the unit during the term of the suspension. If a short-term lodging permit is revoked, it shall be the owner's responsibility to vacate any future bookings and remove all advertisements related to the short-term rental of the unit.

#### **5.95.080 License and Permit Closure.**

B. The Finance Director shall close any permit that has no short-term lodging activity for a period of two consecutive years by remitting zero dollars on the required transient occupancy tax and visitor service fee forms and or has failed to return the transient occupancy and visitor service forms. After any permit closure any permit closure pursuant to this subsection, the owner may reapply for reinstatement of the short-term lodging permit which shall be processed in accordance with Section 5.95.030. Section 5.95.017 does not apply if application for reinstatement occurs within 6 months.