



NEWPORT BEACH

City Council Staff Report

February 11, 2020
Agenda Item No. 20

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2020-8: Amending the Newport Beach Municipal Code for Short Term Lodging

ABSTRACT:

At the January 22, 2019 City Council Study Session, staff presented an update on short-term lodging activities in the City. Due to complaints received by the City Council and staff, the City Council formed an ad hoc committee to review the current provisions in the Newport Beach Municipal Code (NBMC) Chapter 5.95 and to make recommendations for any potential changes. The complaints received from residents included issues with noise, too many guests in one unit, shortage of available street parking, or overflowing trash. For the past year, the ad hoc committee received public input at several community events and meetings, and worked with staff in drafting recommended changes to the short-term lodging ordinance. Staff incorporated these recommendations and drafted the attached ordinance for the City Council's consideration.

RECOMMENDATION:

- a) Find this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2020-8, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 1.05.020 Subsection (F), Section 3.16.060 and Chapter 5.95 of the Newport Beach Municipal Code Relating to Short Term Lodging*, and pass to second reading on February 25, 2020.

FUNDING REQUIREMENTS:

If the proposed ordinance is adopted, the additional requirements will require increased staff resources for administering and enforcing the program. Staff will evaluate and bring recommended staffing adjustments as part of the proposed FY 2020-21 Budget. Additionally, the estimated cost of an outsourced answering service is anticipated to cost \$35,000 per year.

To offset the increase in costs, staff proposes to complete a fee study and return to City Council with a revised short-term lodging permit fee from the current amount of \$103 per year. Transient occupancy tax revenue will also increase. Although staff cannot project the increase at this time, historically, the cost of staffing for short-term lodging compliance has been more than offset with revenues derived from discovery and enforcement efforts.

BACKGROUND:

The NBMC permits short-term lodging in areas where zoning primarily allows for residential duplex and multifamily structures. The City Council first adopted the short-term lodging permit ordinance in 1992 in an effort to regulate the long-standing practice of renting dwelling units on a weekly and monthly basis.

In April 2004, the City Council adopted an updated ordinance that precluded a short-term lodging permit from being issued in Single-family Residential (R-1) zones and other areas intended for single-family residential uses. At the time, 212 properties zoned for single-family uses held short-term lodging permits. The dwellings on those properties were considered to be “grandfathered” and allowed to continue with short-term lodging activity.

In January 2019, the City Council held a study session on short-term lodging and later formed an ad hoc committee to review and recommend changes to the ordinance in response to increasing community concerns and complaints on short-term lodging activity affecting residential neighborhoods. The ad hoc committee included City Council Members Diane Dixon, Joy Brenner, and Jeff Herdman. The committee members hosted several community events and meetings to gain public input from residents, property owners, as well as property managers and agents.

The proposed Ordinance (Attachment A) incorporates input from the residents and owners, balancing the needs of both. The committee recommends the proposed changes regarding parking, noise, maximum occupants, information and rules for guests, contact information, a cap to the overall number of permits issued, removal of units outside the coastal zone, and requirements for agents and hosting platforms.

It is important to note that the rental of short-term lodging units for 30-days or less is not considered a property right. Renting a unit for 31 days or longer is a property right. The proposed changes to the short-term lodging ordinance does not violate owners’ property rights.

DISCUSSION:

The ad hoc committee as well as the City Council held several events and meetings with the community to gain their input. The following dates were opportunities for the community and the City Council to provide their input:

- January 19, 2019 – City Council Study Session
- August 19, 2019 – Community Meeting
- October 14, 2019 – District 5 Town Hall (Council Member Jeff Herdman)
- October 26, 2019 – District 6 Town Hall (Council Member Joy Brenner)
- November 19, 2019 – City Council Study Session
- February 3, 2020 – District 1 Town Hall (Council Member Diane Dixon)

The community provided extensive input, much of which has been incorporated into the draft ordinance. The challenge for the ad hoc committee was proposing changes that would fairly balance the concerns of the residents living next to short-term lodging units with the priorities of the property owners who operate them. Correspondence was received after the draft ordinance was placed on the City's calendar making it available to the public (Attachment C).

Currently, 1,465 units are active with short-term lodging permits. These units generate approximately \$4 million in annual transient occupancy tax revenue.

The following is a summary of the proposed changes to the short-term lodging ordinance:

Parking

Lack of parking is a major issue associated with short-term lodging. The proposed ordinance requires on-site parking for every short-term lodging unit that applies for a permit. The required on-site parking space may include a garage, carport, driveway, or tandem spaces. The new requirement would remove some vehicles from City streets and alleviate some of the parking impact to residents. Staff believes a small number of short-term lodging units will not be able to comply with this requirement. As proposed, if the property owner cannot provide an on-site parking space, then the property is not eligible for a short-term lodging permit.

Maximum Unit Occupant Load

At the outreach meetings, residents have complained of overcrowding in the short-term lodging units. The draft ordinance proposes a maximum occupancy limit for each unit based on two people per bedroom plus two additional people. For example, a two-bedroom unit would be limited to six people total (two people times two bedrooms, plus two additional people). The proposed calculation for occupancy is an industry standard that is accepted in many communities.

Interior Information Rules for Guests

In order to ensure all guests have the basic information they need for their stay in Newport Beach, another proposed requirement is each short-term lodging unit shall post the following information in the interior of the unit:

- a) Name and number of a local contact available at all times, that is located within twenty-five miles;
- b) The number and location of on-site parking spaces;
- c) Street sweeping and trash collection schedule; and
- d) No amplified sound between 10 p.m. and 10 a.m.

Exterior Signage and City's Answering Service

A unique provision that is proposed is a requirement for exterior signage on every permitted short-term lodging unit. The sign will be a maximum of two square feet in size and posted in a location that is visible from the public right of way. The exterior sign will display the primary contact name, the City's answering service phone number and the maximum occupancy limit for that unit. The City will contract directly with an answering service and utilize a local number.

The purpose of the exterior sign is to allow surrounding residents that may be impacted by activity at a short-term lodging unit to be able to immediately report the issue to the City's answering service. When the answering service receives a complaint, they will contact the property owner directly and report the issue. Staff believes that the answering service will: 1) assist in managing the increase in service calls to City staff that will arise from these ordinance changes, and 2) help the City better collect data about the number and type of complaints on short-term lodging units. It is intended that staff will receive daily reports from the answering service, allowing staff to investigate if a violation is taking place. If a property owner is not reached by the answering service, staff will still receive the report and follow up with the property owner or investigate the complaint. If a violation of the NBMC is observed, then staff can issue a citation as further discussed under Violations, Penalties, and Appeals in this report.

Limit on Number of Permits Issued

If every eligible unit in the City decided to apply for a short-term lodging unit, the number of lodging units could potentially be over 10,000. In order to address resident concerns that the City retain its residential neighborhoods, and still allow for residential short-term lodging, the draft ordinance provides for a maximum cap on the number of short-term lodging permits at 1,600 permits. Any application for a permit received after 1,600 permits have been issued will be placed on a waiting list maintained by the Finance Department. The current number of permits issued at the time of writing this report is 1,465 permits, which means an additional 135 permits could be issued before the cap is reached.

To further address the number of active short-term lodging permits issued, the ordinance proposes to phase out short-term lodging units outside the coastal zone. Currently, there are 58 active short-term lodging units outside the coastal zone. Those existing short-term lodging units will need to cease operation after a ten-year phase out period. No further short-term lodging permits will be issued outside the coastal zone.

Staff recommends that the regulations regarding the permit cap and the non-coastal zone limit be effective immediately. The rest of the ordinance would be effective as of July 1, 2020, to give staff time to update the forms and processes necessary to implement the ordinance.

Advertising Short-Term Lodging Units

In order to ensure that prospective guests know that the unit is properly permitted by the City, the draft ordinance will require property owners who advertise their short-term lodging unit on a hosting platform or through print literature, to post the short-term lodging permit number issued by the City. This requirement will also assist the City confirming the legality of the short-term lodging unit.

Agents and Hosting Platforms

To address concerns that agents and hosting platforms may be facilitating illegal rental units in the City, the proposed ordinance provides that agents and hosting platforms cannot complete any bookings unless the short-term lodging unit is listed in the City's registry. In addition, agents and hosting platforms must disclose the unit's address, length of stay, responsible person and price paid to the City. If an agent or hosting platform collects a fee for the booking of the transaction, then they shall also collect the transient occupancy tax.

Violations, Penalties, and Appeals

In order to ensure compliance with the short-term lodging requirements, the proposed ordinance provides for stricter enforcement regulations, allowing for suspensions and revocations, depending on the violation of the short-term lodging regulations. In addition, the new ordinance clarifies that violations of the short-term lodging ordinance would result in penalties up to \$250, \$500 and \$1,000, if such violations occurred within a year of each other.

The new ordinance also provides an appeals process, which allows an owner to request a public hearing before a hearing officer if the short-term lodging permit has been suspended or revoked.

Coastal Development Permit

Staff believes the proposed changes do not violate the Coastal Act and will not require a Coastal Development Permit. Short-term rental units are considered visitor-serving accommodations and the number of allowed units in the coastal zone is not proposed to be reduced.

Staff Resources

Short-term lodging unit owners are required to obtain a short-term lodging permit and a business license, as well as remit transient occupancy tax. Owners and operators of illegal units who fail to comply with the City's requirements have an unfair advantage, and their units can be a detriment to the residential neighborhoods. The City dedicates staff resources within the Finance Department and Community Development Department to level the playing field for all owners and operators.

In the Finance Department, a part-time Senior Fiscal Clerk position, 21 hours per week, is dedicated solely to short-term lodging. The position was created to identify unpermitted short-term lodging units, and together with our contract with Host Compliance, a company that provides leads through website search tools, has been successful in growing the transient occupancy tax revenue from residential lodging by nearly 20 percent over the last four years. From June 2015 to November 2019, revenues attributable to these resources was approximately \$2.5 million. With the success in these efforts and growth in number of permits, the workload to administer the program has also significantly grown. The part-time position must now also process initial and renewal applications, track accounts, and provide customer service and enforcement. Approximately 2 years ago, a new renewal process was implemented in order to obtain the property owner's agreement to the short-term lodging regulations and understanding that the short-term lodging permit was not a property right. The renewal process is more labor intensive, with sometimes multiple interactions with a single property owner, resulting in a backlog of other administrative duties associated with short-term lodging.

In addition to the current backlog, the proposed ordinance will require additional hours to ensure a timely implementation of the ordinance, as well as ongoing compliance with the updated requirements. For example, currently reviewing and processing a new short-term lodging application takes approximately 45 minutes. The new application review and process under these proposed amendments, which will include location of property, signage, number of bedrooms, and parking oversight, will add approximately 30 minutes.

In the Community Development Department, Code Enforcement officers play an enforcement role with the City's short-term lodging program. Code Enforcement staff respond to complaints related to the operation of illegal units, noise, or complaints related to trash. If the new ordinance is adopted, staff estimates the number of complaints will double in its first year from 35-40 open cases to 70-80 open cases per week. This is a 10% increase in overall caseload for the Code Enforcement staff.

Staff is evaluating the necessary additional resources needed to successfully implement the proposed changes and provide appropriate customer support, both for property owners with short-term rentals and residents with concerns about a short-term rental property in their neighborhood. The needed resources under evaluation include additional contract or part-time staff and an increase of one or two part-time positions to full-time. The permit fee would also be analyzed in conjunction with the resource requirements, and it is anticipated the additional fee revenue will cover the additional cost. If the ordinance amendments are adopted, staff will bring additional staffing resources considerations as part of the proposed FY 2020-21 Budget.

ENVIRONMENTAL REVIEW

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

This agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Ordinance No. 2020-8
Attachment B – Redline Strikeout
Attachment C – Correspondence