



CITY OF

NEWPORT BEACH

City Council Staff Report

June 23, 2020
Agenda Item No.19

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2020-15: Amending the Newport Beach Municipal Code Restrictions for Short Term Lodging; and Emergency Ordinance No. 2020-006: Restricting the Short Term Rentals on Newport Island to a Minimum of Four Consecutive Nights

ABSTRACT:

On July 9, 2019, the City Council formed an ad hoc committee to review the short term lodging regulations set forth in the Newport Beach Municipal Code (NBMC) Chapter 5.95. After receiving public input at several community events and meetings, the committee recommended the City Council modify the short term lodging regulations at the February 11, 2020, City Council meeting. Based on input received at the City Council meeting, the committee was tasked with conducting additional public outreach and refining its recommendations. The committee has now honed its recommendations and is proposing more succinct modifications to the short term lodging regulations. In addition, given the current state of the COVID-19 outbreak, City staff is recommending the City Council lift the ban on short term lodging on Newport Island and impose a four consecutive night minimum stay.

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;
- b) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2020-15, *An Ordinance of the City Council of the City of Newport Beach, California, Amending 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 July 14, 2020; and

- c) Pursuant to City of Newport Beach Charter Section 412, waive full reading, direct the City Clerk to read by title only, and adopt Emergency Ordinance No. 2020-006, *An Emergency Ordinance of the City Council of the City of Newport Beach, California, Prohibiting the Rental of Any Lodging Unit on Newport Island for a Period of Four Consecutive Nights or Less, to Any Person Other Than a Medical Professional or Emergency Responder Coming to the City of Newport Beach to Aid with the COVID-19 Outbreak.*

FUNDING REQUIREMENTS:

If the proposed ordinance is adopted, the additional restrictions may require increased staff resources for administering and enforcing the program. Also, an outsourced answering service is anticipated to cost \$27,000 per year (not including first year implementation costs). To offset the increase in any additional costs, staff will 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.

BACKGROUND:

The NBMC permits short term lodging in areas where zoning primarily allows for residential duplex and multifamily structures. To regulate the short term rental of dwelling units, the City Council first adopted the short term lodging permit ordinance in 1992.

In April 2004, the City Council adopted an updated ordinance that precluded a short term lodging permit from being issued in Single-Unit Residential (R-1) zoning districts, other than to the current/future owners of the 212 properties zoned for single-family uses that held short term lodging permits at the time the ordinance was adopted.

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. 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.

In February 2020, after the committee made its recommendations and more public comments were submitted, the City Council tasked the committee with refining its recommendations.

While the committee was working on honing its recommendations, the COVID-19 outbreak occurred, and the City Council adopted the following emergency ordinances to protect Newport Beach residents:

- Emergency Ordinance No. 2020-001 (enacted April 3, 2020, expired May 20, 2020), which prohibited short term rentals or the issuance of new short term lodging permits.
- Emergency Ordinance No. 2020-003 (enacted May 12, 2020, expires when either the state or local emergency proclamation is terminated, or when repealed by City Council), which prohibited the rental of short term lodging units on Newport Island.
- Emergency Ordinance No. 2020-004 (enacted May 12, 2020, expires when either the state or local emergency proclamation is terminated, or when repealed by City Council), which allowed short term lodging to resume in Newport Beach (except as provided in Emergency Ordinance No. 2020-003), with a three consecutive night minimum stay. Also, this ordinance prohibited the issuance of new short term lodging permits.

DISCUSSION:

Currently, 1,523 units are active with short term lodging permits. In a non-pandemic environment, these units typically generate approximately \$4 million in annual transient occupancy tax revenue. While short term rentals provide additional income to owners, they can also significantly impact the City's residents' enjoyment of their homes and neighborhood.

Based on input received at the City Council meeting on February 11, 2020, and additional public outreach, the ad hoc committee has refined its recommendations to balance the needs and priorities of residents and short term rental owners as follows:

Recommendations

Parking

The previous proposed ordinance required on-site parking for every short term lodging unit. The committee is recommending that the Planning Commission consider this change and provide input to the City Council prior to considering this modification. The proposed ordinance for City Council consideration requires an owner, on its permit application, to describe the number of parking spaces available, the location and size of each parking space, and provide that information to the transient occupant.

Maximum Unit Occupant Load

Previously, the recommendation proposed a maximum occupancy limit for each unit based on two people per bedroom plus two additional people. The committee is recommending that the Planning Commission consider this change and provide input to the City Council prior to considering this modification. The proposed ordinance for City Council consideration limits the number of occupants to the maximum permitted by the Building Code and Fire Code.

Exterior Signage and City's Answering Service

Previously, the recommendation proposed requiring the owner to post outdoor signage. Because of concerns that exterior signage would be an eyesore impacting the look of neighborhoods, the proposed ordinance eliminates the exterior signage requirement. The City will still contract with a 24-hour answering service, for neighbors to report any issues. The answering service number will be shared Citywide, including being posted the City's website.

Limit on Number of Permits Issued

The previously proposed ordinance had included an ultimate cap of 1,600 permits and a phase-out of short term lodging permits outside the coastal zone. The committee is recommending that the Planning Commission consider capping the total number of permits but not phase-out short term lodging outside of the coastal zone. The proposed ordinance for City Council consideration does not contain any language which limits the number of short term lodging permits; however, Emergency Ordinance No. 2020-4 does not allow for any new permits to be issued during the emergency related to COVID-19.

Agents and Hosting Platforms

The previously proposed ordinance required hosting platforms to collect and remit all taxes and fees. Rather than requiring hosting platforms to collect and remit taxes and fees, the proposed ordinance gives discretion to the City to require the hosting platforms collect and remit taxes and fees upon notice from the City. Under the proposed ordinance, the ultimate responsibility for the collection and remittance of all taxes and fees lies with the owners of the properties. This modification allows for the City, hosting platforms and owners to work together to ensure full collection and remittance of taxes and fees.

The proposed ordinance still 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, person responsible and price paid to the City.

Violations, Penalties, and Appeals

To ensure compliance with the short term lodging requirements, the proposed ordinance still provides for stricter enforcement regulations, allowing for suspensions and revocations, depending on the violation of the short term lodging regulations. Specifically, the proposed ordinance provides that after two violations in any 12-month period, the permit may be suspended for six months after review and consideration by the Finance Director. Additionally, the Finance Director has authority to suspend or revoke a permit if the Finance Director finds the use violates state or federal laws.

The violation penalty amounts are currently up to \$1,000 for the first violation, \$2,000 for the second violation and \$3,000, for the third violation, if such violations occurred within a year of each other.

Advertising Short term Lodging Units

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

Interior Information Rules for Guests

The proposed ordinance requires the owner of each short term lodging unit to post the following information in the interior of the unit:

- a) Name and number of a local contact available at all times, who is located within 25 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.

In addition, the owner must provide the transient user with a copy of the City's Good Neighbor policy.

Short Term Subletting

In many cases, owners are unaware that their tenants are renting the unit to a transient owner. The proposed ordinance expressly prohibits a lessee of a lodging unit from renting the unit on a short term basis or home-sharing.

No Rentals to Persons Under 21 Years of Age

To minimize the number of parties, the proposed ordinance expressly prohibits owners from renting a lodging unit to a transient user that is under the age of 21.

Nuisance Response Plan

To ensure that owners take responsibility for issues with their short term lodging customers, owners must provide a nuisance response plan when applying for or renewing a permit, indicating how they would deal with unruly guests.

Newport Island

In addition to the above ordinance changes, staff recommends repealing Emergency Ordinance No. 2020-003, and enacting Emergency Ordinance No. 2020-006, which allows for renting of short term lodging units on Newport Island, with a four consecutive night minimum stay, unless the permit holder is renting to a medical professional or emergency responder.

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.

The Finance Department will retain its part-time Senior Fiscal Clerk position, 21 hours per week, to continue to work with Host Compliance, or its successor, to identify unpermitted properties, process new applications (once the Emergency Order is terminated) and process renewals, but is not currently requesting additional resources.

In the Community Development Department, Code Enforcement staff respond to complaints related to the operation of illegal units, noise, or complaints related to trash. No new Code Enforcement staffing is proposed at this time. Staffing levels in both departments will be further evaluated after the ordinance is fully implemented.

The short term lodging permit fee will be studied to ensure that the City's costs in managing the short term lodging program are recovered. In addition, a permit renewal fee will be added.

Next Steps

Staff is working on other ad hoc committee recommendations. Those recommendations affect the zoning code and local coastal implementation plan. The recommended changes will be presented to the Planning Commission at the July 23, 2020 meeting. A recommendation from the Planning Commission will be brought to the City Council for consideration in September 2020.

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. 2020-15
Attachment B – Redline Strikeout
Attachment C – Emergency Ordinance No. 2020-006