



MEMORANDUM

DATE: April 9, 2015
TO: Planning Commission
FROM: Julia Capasso, Associate Planner, via John Swiecki, Community Development Director
SUBJECT: **Workshop #2: Short-Term Residential Rentals in Brisbane**

BACKGROUND

On March 12, 2015, the Planning Commission held a workshop to accept public input on the concept of short-term rentals in residential neighborhoods in Brisbane. Approximately 15 community members attended the workshop and engaged in a discussion with the Commission regarding potential benefits of allowing short-term rentals to operate in residential neighborhoods, as well as the potential negative impacts.

While the perspectives of workshop attendees ranged from opposition to short-term rentals in residential neighborhoods to advocating for their existence by-right, several themes emerged that touched upon ideas raised by all attendees.

- Everyone's rights should be protected in balance: neighbors, property owners, and long-term residents.
- If regulations are adopted, they should be realistic and enforceable.
- Negative impacts of short-term rentals should be mitigated.
- Short-term rentals should be incidental to existing residential uses, not standalone business ventures.
- Existing residential neighborhood character must be maintained
- Internet-based homesharing is already occurring; providing a regulatory path to approval would allow residents with short-term rentals to operate lawfully and create accountability.

DISCUSSION

Following the discussion with the community, the Commission continued the workshop to the April 9, 2015 regular meeting and directed staff to provide information about how other communities regulate short-term residential rentals in response to the concerns and suggestions voiced by the workshop attendees. The Commission also asked staff to provide information regarding impacts to homeowners' insurance rates and how the hospitality industry has reacted to short-term residential rentals.

The discussion below addresses the following:

- The results of the community survey;

- Short-term rental regulations from other communities;
- Homeowner's insurance discussion;
- Hospitality industry stance;
- A summary of the City's existing home occupation regulations.

It should be noted that as this process is still in the information gathering stage, continued discussion of the issue does not commit the Commission to a particular policy direction.

Community Survey Results

The community survey was released at February 23, 2015 and closed at midnight on March 27, 2015, with 188 responses submitted. The results of the survey will be presented at tonight's workshop. The survey responses show common themes in the concerns raised by community members and in potential regulatory strategies, should short-term rentals be allowed. These themes informed staff's review of short-term rental regulations in other communities, which are discussed below.

Regulation of Short-term Residential Rentals in Other Communities

Based on the March 12 workshop discussion and community survey responses, staff gathered examples of regulations from other communities. Many of these examples respond to the potential issues of concern as noted above. The jurisdictions include St. Helena (Napa County), Petaluma (Sonoma County), and the County of Santa Cruz. San Francisco's ordinance is also included for comparison purposes; however, staff does not find the city's ordinance to be responsive to the types of concerns raised by the Brisbane community or to be easily enforceable by staff. The sample jurisdictions were chosen based on their relatively smaller population size, primarily residential character, and/or the specific components of their respective ordinances. The various ordinances are summarized in the attached table.

- Permit Type & Hearing Body

Many workshop attendees and survey respondents voiced interest in permitting short-term residential rentals either ministerially (permit issued by City staff, subject to compliance with defined standards), or with a conditional use permit or other special discretionary permit from the Planning Commission.

The selected ordinances demonstrate the wide range of discretionary control the City could maintain in regulating short-term residential rentals. Both St. Helena and Santa Cruz County require public notice prior to action on a permit, and refer applications to the Planning Commission when a certain threshold of neighbors voice opposition or at staff discretion. Petaluma and San Francisco have adopted ministerial processes with performance standards reviewed by city staff.

- Notice to Neighbors

While not a significant focus of discussion at the workshop, public noticing is a component of most short-term rental ordinances researched by staff. With the exception of San Francisco, all cities surveyed require some type of notice to neighbors either prior to action on the permit, or subsequent to action on the permit. In the case of St. Helena and Santa Cruz County, neighbor

opposition prior to permit approval is a mechanism to refer the application to the Planning Commission. In Petaluma, notification of permit approval is provided to immediate neighbors for informational purposes. Notification requirements are specifically linked to whatever permit process is established.

- Residency Requirement

There was majority support from both workshop attendees and survey participants that short-term rentals, if allowed, should be operated by permanent residents as an incidental use and not as a purely commercial venture by absentee property owners or corporations. This type of restriction would also help to protect the existing residential character of neighborhoods.

Both St. Helena's and San Francisco's ordinances restrict who may apply for a short-term rental permit (the property owner and the permanent resident, respectively). St. Helena's ordinance requires a public hearing before the Planning Commission if the property owner is a corporate entity. Further, San Francisco's and Petaluma's ordinances restrict the number of days per year that a vacant ("non-hosted") unit may be rented. Verification and enforcement of this requirement, however, could be difficult to achieve, and staff is uncertain how these limits are actually verified as it would require regular monitoring of rental activity.

- Type of Housing Permitted

Restricting the type of housing in which short-term rentals are permitted is one way to ensure the existing character of the neighborhood is maintained. Some workshop participants advocated for limiting the types of housing where short-term rentals may operate (e.g., only secondary dwelling units). The majority of survey participants identified single-family homes and secondary dwelling units as desirable for short-term rentals, with lesser support for duplex and multi-family dwellings. Both St. Helena's and San Francisco's ordinances contain restrictions on the types of units that may be rented.

- Ensuring Neighborhood Compatibility

There was majority support among workshop attendees and survey participants to require that short-term rentals, if allowed, comply with defined standards in order to ensure compatibility with the surrounding neighborhood, particularly in regards to on-street parking and noise.

Most surveyed ordinances limit how many renters may be on-site at any time, require on-site or other dedicated parking spaces, and require compliance with adopted noise standards to address the most common neighborhood disturbances. On-site parking may be verified through submittal of a site plan, and enforcement of noise violations is provided through existing Municipal Code provisions. Limiting how many renters are on-site may be difficult to enforce in the absence of other violations (e.g., noise).

- Management

While the concept of on- or off-site management was not discussed in detail at the workshop, many short-term rental ordinances researched by staff require a designated individual to be available to handle disturbances at the short-term rental within a specified response time. This information is provided to neighbors and kept on file by the city.

- Business License & TOT

All ordinances surveyed by staff require short-term rental operators to obtain a business license and to pay Transient Occupancy Tax. This is consistent with the community's desire to allow short-term rentals as incidental uses to the primary residential use, and with the City's existing home occupation regulations (see further discussion below).

- Permit Expiration/Revocation/Penalties

At the workshop, permit expiration was discussed as a potential mechanism for phasing out short-term rentals with chronic enforcement issues, or any other case where operation of the rental was inconstant with community standards. The surveyed ordinances differ in how long permits are valid and whether or not they may be renewed after expiration. Most ordinances utilize existing enforcement provisions in their respective Municipal Codes regarding permit revocation in instances of code or permit violations.

Short-Term Residential Rentals and Homeowner's Insurance

Each homeowner's insurance policy is different, and varies in coverage; homeowners should read their policy carefully and consult with their insurance agent to understand the limitations of their current coverage. However, it is commonly acknowledged by rental hosting companies such as HomeAway and Airbnb that typical homeowner's insurance policies do not cover activities associated with home-based businesses, such as vacation or short-term rentals. A few major insurance companies offer insurance products specifically for vacation rentals or occasional short-term rentals of a primary residence. Landlord insurance for rental properties is a common product but may not be appropriate for occasional short-term rentals. Some rental hosting companies, including HomeAway and Airbnb, offer their own insurance products to clients for varying degrees of coverage. The cost to homeowners will inevitably vary by the product they choose, the company offering the coverage, and the extent of the policy's coverage. It should be noted that the City would not bear liability for any activities occurring on private property.

Hospitality Industry Responses to Short-Term Residential Rentals

The California Lodging and Hospitality Association (CLHA) has been very active at a State level advocating for the interests of the hospitality industry in regards to the phenomenon of short-term residential rentals. At a March 18, 2015 joint meeting of the California State Assembly Local Government and Revenue and Taxation committees, a CLHA representative stated its members are not opposed to competition posed by short-term residential rentals, so long as there is a level regulatory playing field; i.e., equal taxation. Staff spoke with a representative of the San Francisco Hotel Council, which was actively involved in the community conversations for San Francisco's short-term residential rental ordinance. The Council representative confirmed that the primary concern of the hospitality industry in San Francisco is that short-term residential rentals pay the same transient occupancy tax as traditional lodging establishments.

Home Occupations in Residential Districts

Concerns were raised at the previous workshop regarding the potential for commercial uses in residential zones to fundamentally alter the character of a residential neighborhood. Staff notes that existing home occupation regulations in Chapter 17.44 of the Zoning Ordinance allow residents to operate certain small-scale businesses from their homes in residential zoning districts. With granting of a home occupation permit from the Planning Director, a home occupation may be conducted in any dwelling unit, or in an accessory structure on the same site, subject to compliance with defined performance standards to protect the character of the surrounding residential neighborhood. The full text of the ordinance is attached for reference. This existing framework may be worth considering if changes to the Municipal Code are ultimately recommended by the Commission.

STAFF RECOMMENDATION

Staff recommends that the Commission consider the information presented, take public comment, and provide further direction to staff.

Attachments:

1. Comparison of short-term rental regulations
2. BMC Chapter 17.44, Home Occupations

Comparison of Short-term Rental Regulations

Jurisdiction	Type of Permit	Hearing Body	Notice to Neighbors	Residency Requirement	Inspection	Management	Occupancy Limits	Parking	Noise	Business License/ TOT	Permit Revocation/ Penalties
St. Helena (Napa County)	Discretionary; max. 25 active permits. \$1075 application fee	Director; PC review if ≥20% neighbors oppose notice, or if owner isn't a natural person.	300 ft. radius prior to action on permit, and annually after permit granted	Only property owner may apply; single-family homes only	Annual inspection by FD	Manager who can respond within 30 min.	2x the # of bedrooms plus 2 people	Must provide 2 spaces on-site; no street parking allowed overnight.	Quiet hours 10 p.m.- 7 a.m.	Yes/Yes	Permit valid for 2 yrs; may be revoked by Director if the owner violates Ordinance or conditions.
Petaluma (Sonoma County) ¹	Ministerial; \$300 initial fee, \$100 renewal fee	Director	100 ft. radius AFTER approval	Non-hosted rentals capped at 90 days/yr	No; applicant self-certifies health & safety status	Manager who can respond with 1 hr.	2x the # of bedrooms plus 2 people	Must meet min. standard of district with adopted or apply for CUP	Must comply with adopted noise standards	Yes/Yes	May not be renewed if TOT is outstanding, neighbor complaints, etc.
County of Santa Cruz	Discretionary	Director, may refer to PC	Prior to action on permit	None	No; plans must show code compliance.	Manager who lives within 30 mi.	2x the # of bedrooms plus 2 people; 2x max for daytime gatherings	Renter's cars must be parked on-site except for 2 cars allowed on-street	Must comply with adopted noise standards; notice must be posted in unit	Yes/Yes	Conflict resolution acceptance is required. Handled by County mediation center.
San Francisco ²	Ministerial; \$50 fee. 1 permit per permanent resident. Proof of insurance req'd.	Planning Dept. staff	-	Permanent resident (natural person, owner or lessee). Primary residence only. Non-hosted rentals capped at 90 days/yr	-	Yes; permanent resident or other designated contact.	-	-	-	Yes/Yes; collected by hosting platform	Permit valid for 2 yrs; code violations cause for revocation. Penalties may apply.

¹ Currently in public hearing process; subject to change.

² San Francisco ordinance may undergo further review and revisions due to difficulties in Implementation.

G. 1.6.

Chapter 17.44 - HOME OCCUPATIONS*

Sections:

17.44.010 - Purposes of chapter.

In addition to the objectives set forth in Section 17.01.030, home occupation permits are included in the Zoning Ordinance to achieve the following purposes:

- A. To support economic opportunities and encourage the development of small locally owned businesses by allowing certain commercial activities to be conducted by the occupants of residential dwellings.
- B. To protect the character of residential districts and the health and safety of the community by establishing performance standards for the conduct of home occupations.
- C. To implement and promote the goals and policies of the general plan so as to guide and manage home occupations in accordance with such plan.

(Ord. 463 § 11(part), 2002).

17.44.020 - Home occupation permit required.

- A. A home occupation may be conducted in any dwelling unit, or in an accessory structure on the same site, by the occupant of such dwelling unit, only upon the granting of a home occupation permit by the planning director pursuant to this chapter.
- B. No person, other than the person to whom the home occupation permit is issued, shall be authorized to conduct the home occupation. Home occupation permits shall constitute personal licenses granted to the individual applicant for the permit and may not be sold, transferred or assigned to any other person, nor shall such permits run with the land. If granted, the home occupation permit shall be effective only with respect to the particular property identified in the permit and may not be transferred or used for the conduct of a home occupation at any other location.

(Ord. 463 § 11(part), 2002).

17.44.030 - Application for permit.

- A. Application for a home occupation permit shall be made by the occupant to the planning director on such form as the planning director shall prescribe. The application shall be accompanied by payment of a filing fee established from time to time by resolution of the city council. The planning director may request the applicant to submit any additional information or documents the planning director deems necessary in order to evaluate the impacts of the proposed home occupation, and until such items are furnished, the application shall not be considered complete.
- B. Within thirty (30) days after receipt of the completed application, the planning director shall either grant or deny the home occupation permit. The permit may be granted subject to any conditions imposed by the planning director, and may be granted only for a specified period of time. The planning director shall give written notice to the applicant of the decision rendered by the planning director and such decision shall become effective as of the date of the notice.

(Ord. 463 § 11(part), 2002).

17.44.040 - Performance standards.

No home occupation permit shall be granted unless the planning director finds and determines that the proposed activity will be conducted in compliance with each of the following performance standards as may be applicable:

- A. The home occupation shall be conducted entirely within an enclosed structure; provided, however, the planning director may grant an exception to this standard if the planning director determines that the activity to be conducted outside of the structure:
 - 1. Shall not create a nuisance or in any way adversely affect neighboring properties or the public welfare; and
 - 2. Shall not create the appearance of a nonresidential use on the site.
- B. A home occupation conducted in a garage shall not reduce the parking required for the building site.
- C. The home occupation shall not generate pedestrian or vehicular traffic beyond that normal to the zoning district in which it is located.
- D. The home occupation shall not involve employees at the site other than those who reside at the dwelling unit; provided, however, the planning director may grant an exception to this standard if the planning director determines that:
 - 1. Occasional trips to the site by employees who generally work off the premises do not exceed the trip generations that would normally be expected for single family dwellings; and
 - 2. There are sufficient parking places available for employees visiting the; and
 - 3. Vehicles and equipment used by employees who generally work off the premises are not stored at the site.
- E. Commercial vehicles making deliveries to or from the premises shall be no larger than a step-van or similar vehicle normally used for making small package deliveries to residential neighborhoods.
- F. Stock in trade may be kept on the site provided the stock in trade is sold off the premises or by limited appointment.
- G. The home occupation shall not be conducted and the premises shall not be altered or used in a manner that would give the dwelling unit the appearance of a nonresidential use.
- H. No mechanical or electrical equipment shall be used on the premises which causes undue noise, electrical interference, or other adverse impact upon any adjacent properties.
- I. Signs for the home occupation shall comply with the regulations set forth in Chapter 17.36
- J. The home occupation shall not involve the use of any toxic, hazardous, flammable, or other material or waste that may cause a threat to the public health or safety.

(Ord. 463 § 11(part), 2002).

17.44.050 - Modification or revocation of permit.

- A. The planning director shall retain continuing jurisdiction over the home occupation permit and may, at any time, modify or revoke the permit, upon the occurrence of any of the following events:
 - 1. The home occupation is being conducted in violation of any condition of the home occupation permit, or in violation of any provision of this chapter or any other applicable statute, ordinance, rule or regulation of any governmental authority; or

2. The activity being conducted is materially different from the activity described in the application for the home occupation permit; or
 3. The home occupation, as conducted, does not comply with any of the applicable performance standards set forth in Section 17.44.050 of this chapter, or is otherwise found to be detrimental to the public health, safety or general welfare.
- B. In the event the planning director proposes to modify or revoke the home occupation permit, the director shall give a written notice of intent to the permittee and afford the permittee a period of at least ten (10) days to request a hearing before the planning director to protest the intended action. If no hearing is requested within the specified time, the planning director may proceed with the action described in the notice. If a hearing is requested, the planning director shall fix a time and place for the hearing, which shall be not less than ten (10) days after the director's receipt of the request. Following the conclusion of the hearing, the planning director shall issue to the permittee a written decision containing the findings of the director and the action taken with regard to the modification or revocation of the home occupation permit.

(Ord. 463 § 11(part), 2002).

17.44.060 - Appeals.

Any decision or determination by the planning director pursuant to this chapter may be appealed to the planning commission in accordance with the procedure set forth in Chapter 17.52 of this title.

(Ord. 463 § 11(part), 2002).