



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Mark Brodeur, Director, Community & Economic Development
MEETING DATE: September 16, 2015
SUBJECT: Conceptual Modifications To Amend PGMC Chapter 7.40 Regarding Short-Term Rentals
CEQA: Does not Constitute a "Project" per California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Receive staff report and provide direction on measures to be pursued and code changes to be developed for review by the Planning Commission and final consideration by the Council.

DISCUSSION

Before Pacific Grove adopts modifications to the Municipal Code, a threshold question should be asked: is there truly a need for additional restrictions? Thus far, the perceived need for stronger short-term rental restrictions or an outright ban is based mostly on anecdotal evidence. Anecdotal evidence can and should probably be used to formulate public policy, but data driven empirical evidence provide a basis as well. Is the current ordinance inadequate or does the city simply need to upgrade enforcement of its current regulations? Internal and external input suggest both approaches are warranted.

Following adoption of the urgency moratorium ordinance (August 5th) limiting issuance of new Transient Use Permits, City staff acted to address a number of measurable issues surrounding short-term vacation rentals. Staff found empirical evidence supports that a few quantitative modifications to the Municipal Code would go a long way to improve neighborhood relations. It also became clear that an improved enforcement model is needed, one that does not place the burden of enforcement on neighbors adjacent to the rental property.

Effective modifications to our existing short-term rental regulations should be narrowly tailored to address specific needs of the local community. Balancing the needs of different community segments is a delicate challenge that, quite frankly, is more art than science. The potential for over-regulation is a legitimate concern, particularly given the myriad of vocal complaints the City Council has received during past public hearings on the matter. Residents complain that short-term rentals are inherently incompatible with residential neighborhoods because they are seen as commercial uses. In contrast to that, concerns are, other locations reveal short-term rentals that are good neighbors or where residents of the neighborhood are unaware of the nature or use of the property.

Below are a series of conceptual solutions to these various concerns. If approved by straw vote, staff will develop a draft ordinance and continue implementing staff-level improvements to enforcement efforts.

QUANTITATIVE RESTRICTIONS

Quantitative restrictions (e.g., fixed caps, proximity restrictions, off-street parking requirements, maximum permitted rentals during a 7-day period, and number of licenses per property) offer means to mitigate impacts of short-term rentals. These limitations can significantly reduce the number of complaints and are preferable to an outright prohibition on the use.

Fixed Cap. Staff examined two distinctly different approaches to ascertain the carrying capacity of our City to accommodate short term rentals in residentially zoned areas. One was based on a minimum 200- foot radius between adjacent rentals. The second used a single rental per block-face (defined as the opposing structures on both sides of a street from corners of the block). We employed that front on a single street segment). The city’s GIS system was used to calculate the maximum number of short term rentals that would be allowed under both scenarios. Both approaches set the total fixed cap within the City at between 380 and 390 rentals total citywide. We currently license approximately 170 short term rentals with no cap. A reasonable compromise would limit the number of short term rentals in the City to 300.

Proximity Restrictions. Short term rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on adjacent full-time residents. For this reason, it is suggested that “...no vacation rental shall be located within 200 linear feet of a parcel on which is located any short term rental.”

Off-Street Parking Requirements. The Municipal Code does not currently set off-street parking requirements for vacation rental uses. Along with noise, however, parking impacts are the most oft-cited complaint about short-term rentals. If a rental site cannot physically provide off-street parking, the City could either deny the permit request or require the subject property purchase two parking permits in the Municipal Lots. (Of course, nothing guarantees the renter will park in a Municipal Lot.) Such a restriction would need to be carefully crafted to ensure against unequal treatment of short term vs. long term renters in this regard.

Maximum Rentals Permitted in 7-Day Period. Much has been discussed regarding the general hubbub created by even respectful guests in our residential neighborhoods at the time they arrive. Usual “coming and going” activities are commonly recognized as falling outside a long-term resident’s normal neighborhood daily experience. These are not the type of disruptions for which one would reasonably call the Police or Code Enforcement Division. One option would limit the number of permitted rentals to two at one location during a 7-day period.

Number of Licenses per Property. City staff can find no compelling reason to permit more than one short term rental per property. One identified issue addresses when multiple rental properties accumulate in a single area. If we were to implement a 200-foot radius rule, the second unit would not be permitted in any case. Disruption to long-term renters in an apartment complex occupied by more than one short term rental would be extreme. A 200-foot circumference rule would disallow permitted rental of a second unit.

Enhanced transient occupancy tax. The City's current hotels, motels, and bed-and-breakfast inns are in City-approved zones, have external signage, are required to meet more stringent building code standards than is the case for owner-occupied residences, and are otherwise regulated to limit potential negative impacts. Short-term rentals, on the other hand, can occur in any residence in the City. One proposed option to even the playing field and to compensate impacted neighborhoods is to ask voters to approve an enhanced transient occupancy tax for short term rentals, such as 12%, an increment of 2% over the standard TOT citywide, and to dedicate the additional revenues to neighborhood improvements. (Monterey currently restricts a certain percentage of its overall TOT to neighborhood improvements.) Such a ballot measure would require approval by a majority of those who vote at the election.

QUALITATIVE REMEDIES

Qualitative remedies suggest ways in which the City and the property owners better manage the short term rental properties. The first steps are to inspect all existing properties, require re-licensing of permitted locations, and eliminate illegal activity. Finally, efforts to continually monitor and require performance of each short-term rental property are essential. This would provide a basis to revoke permits from those who abuse the system.

Annual Re-Licensing and Inspections. Many communities require short-term rentals to pass certain hurdles, including an inspection prior to issuance or renewal of a transient use permit. Mandatory inspection arguably advances Pacific Grove's interest in protecting and maintaining residential character by preventing adverse impacts of transient occupancy. Inspection should focus on how the property's use as a transient occupancy may adversely impact residential character. On-site parking, low level lighting, and other common features should be reviewed and approved. Neighboring properties would be noticed of pending license applications. Fees would be adjusted to match the cost of the inspection and licensing requirements.

Eliminating Illegitimate Properties. City staff is in current negotiations with a firm that has a proven track record in identifying short-term rentals on VRBO, Airbnb, FlipKey, and others. The task will involve identifying properties listed on the various websites. The firm would analyze on-line listings to determine addresses, owner information, and an estimate of days rented over the previous period on a regular basis (e.g., monthly), and would provide this information to the City. The firm can also provide optional services including website portal creation, enforcement, and administrative assistance. A robust review of the City's power and process to subpoena records, as provided in the City's Charter, has also been undertaken to better support enforcement efforts.

Placing a Bond/Deposit. Being granted a license to operate a short term rental in a residential neighborhood is a privilege. It is not unreasonable to expect licensees to take great care to ensure their property does not interfere with the residential character of the neighborhood. It is not uncommon for a community such as Pacific Grove to enact special enforcement and penalty provisions. In essence, these licenses are similar to a "conditional use permit" whereby serious infractions should include immediate revocation of the license. The proposed remedy is to have each short-term rental property post deposit as a condition of the license. Owners of short-term rentals are not going to want to lose their deposit. As a result, they are likely to require a deposit from the renters, most of whom also are not going to risk loss of the deposit. Thus, the deposit requirement will encourage self-compliance, by both owners and renters. If an owner fails to comply with standard conditions required by the Municipal Code, the City may seek remedy by

imposing a non-compliance fee to reimburse its actual costs of investigating complaints and compelling compliance

Mandatory Property Management. Other transient uses in Pacific Grove such as B&Bs and motels have full time, on-site representatives to address events at the property. Recent review of response times on a random number of existing short term rentals illustrated the need for professional property management if the property owner did not live in Pacific Grove. The required response time in the current ordinance is 30 minutes. If a property owner cannot repeatedly demonstrate the ability to have a representative available 24/7, within 30 minutes, the City can require the owner to retain professional property management.

Compliance Assistance Program.

Currently, enforcement of noise and parking provisions rests with neighborhood residents. They are required to “snitch” on the vacation property to the police or actually confront renters about their conduct. While most residents are able to talk to a long term resident, they are reticent about confronting a complete stranger.

A comprehensive website may provide part of the answer. The website can identify a myriad of pieces of information such as address, designated manager contact info, and specific restrictions on parking or occupancy. Set up can include expiration and mandated renewal time on current permits. It can also include electronic notices to adjacent residents wishing to know about a new or renewal license. It can also be used as a device to permit adjacent residents to submit complaints. Problems could be classified by complainants in categories such as “emergency”, “complaint” or “observed problem”. Abuses could easily be minimized.

Additional Staff Resources. Short-term rental restrictions and programs create administrative and enforcement burdens on several City Departments. Processing permits, inspections, responding to complaints and day to day care of the program will place new burdens on existing staff. The financial burden of administering a short-term rental ordinance will weigh heavily if some or all of the suggested remedies are put in place. These suggested quantitative and qualitative improvements will require retaining expertise outside of City Hall and will require the Community and Economic Development Department to hire additional staff to enforce the new provisions.

These improvements—as well as the other improvements addressed by the Council at its August 12 meeting (such as development of the fully articulated database for use when complaints are received) are likely to address the majority of weaknesses with the current short term rental ordinance. These can be further enhanced, as needed. The proposed ordinance will first be taken to the Planning Commission for its consideration and recommendation.

OPTIONS

1. Do nothing.
2. Provide alternative direction for drafting the revised ordinance.

FISCAL IMPACT

No direct impact.

ATTACHMENTS

None.

RESPECTFULLY SUBMITTED,



Mark Brodeur, Director
Community & Economic Development



Thomas Frutchey
City Manager