



NOTICE OF MEETING

CITY OF PACIFIC GROVE CITY COUNCIL SPECIAL MEETING AGENDA

Wednesday, June 28, 2017, 6:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

The Council will not begin consideration of any item on this agenda later than 10:00 p.m. unless such consideration is approved. Any items on this agenda not considered this evening will be continued to a future meeting.

Copies of the agenda packet are available for review at the Pacific Grove Library located at 550 Central Avenue; the main counter in City Hall at 300 Forest Avenue, Pacific Grove; and on the internet at www.cityofpacificgrove.org/agendas. The most effective method of communication with the City Council is by sending an email to citycouncil@cityofpacificgrove.org. In order to allow the City Council adequate time to review communication related to an agenda item, and in order to allow for the communication to be photocopied and placed within the Reading File, it is recommended that the communication be sent no later than 9:00 AM on the day prior to the City Council meeting.

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

1. APPROVAL OF AGENDA

2. PRESENTATIONS

None.

3. COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)

- A. Report on Closed Session by City Attorney
- B. Boards, Commission, and Committee Vacancies by City Clerk
- C. Other

4. GENERAL PUBLIC COMMENT

General Public Comment must deal with matters subject to the jurisdiction of the City and the Council that are not on the Regular Agenda. This is the appropriate place to comment as to items on the Consent Agenda, only if you do not wish to have the item pulled for individual consideration by the Council. Comments from the public will be limited to three minutes and will not receive Council action. Comments regarding items on the Regular Agenda shall be heard prior to Council's consideration of such items at the time such items are called. Whenever possible, written correspondence should be submitted to the Council in advance of the meeting, to provide adequate time for its consideration.

REGULAR AGENDA

5. UNFINISHED AND ONGOING BUSINESS

- A. [Short-Term Rental Program](#) *This matter was continued from Council's May 17, 2017 meeting, during which time public comment was taken. No further public*

comment will be received during this meeting.

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Reference: Ben Harvey, City Manager and Mark Brodeur, Director of Community and Economic Development

Recommended Action:

1. Discuss the City's authority and interest to allow Short-Term Rentals; then
2. Determine whether to continue the program accepting City staff recommendations for the regulation and management of short-term rentals; or
3. Determine to sunset the program at a date-specific time.

CEQA: Categorically exempt pursuant to Guidelines Sec. 15305 (Class 5 – Minor Alterations in Land Use Limitations).

6. CLOSED SESSION

A. Conference with Labor Negotiators (Government Code Section 54957.6)

City Representatives: Ben Harvey, City Manager

Employee Organization: Management Employees Association

ADJOURNMENT

NOTICE OF ADA COMPLIANCE: Pursuant to Title II of the Americans with Disabilities Act (Codified At 42 United States Code Section 12101 and 28 Code of Federal Regulations Part 35), and Section 504 of the Rehabilitation Act of 1973, the City of Pacific Grove does not discriminate on the basis of race, color, religion, national origin, ancestry, sex, disability, age or sexual orientation in the provision of any services, programs, or activities. The City of Pacific Grove does not discriminate against persons with disabilities. City Hall is an accessible facility. A limited number of assisted listening devices will be available at this meeting. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format.



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Mark Brodeur, Director of Community and Economic Development
MEETING DATE: June 28, 2017
SUBJECT: Short-Term Rental Program
CEQA STATUS Does not Constitute a “Project” per California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

1. Discuss the City’s authority and interest to allow Short-Term Rentals; then
2. Determine whether to continue the program accepting City staff recommendations for the regulation and management of short-term rentals; or
3. Determine to sunset the program at a date-specific time.

BACKGROUND

On May 17, 2017, the City Council received a review and status update of the Short-Term Rental Program. This review was in keeping with Council’s direction at the time that the Short-Term Rental Ordinance was enacted to come back in twelve months to discuss the program, determine whether to continue it or not, and if continuing, determine where changes may need to be made. Lengthy public comment regarding the program was received at the meeting, and the City Council deliberated some of the areas of concern that have been voiced regarding the program. To allow for continued Council deliberation regarding the Short-Term Rental program, the topic was continued, ultimately being scheduled as tonight’s Special Meeting of the City Council.

DISCUSSION

To frame the discussion, some fundamental questions regarding short term rentals must be deliberated by the Council. To start:

1. Is the City allowed to permit short-term rentals in residential zones?
2. Assuming the City has the legal authority to permit short-term rentals, should the City continue to allow them?

It has been argued that Pacific Grove lacks authority to allow short term rentals in R-1 or other residential zones. Some point, by example, to Carmel-by-the-Sea where the court of appeal found the City held authority to prohibit transient use of residential property for less than 30 days (*Ewing v. City of Carmel-by-the Sea*). Some conclude the Pacific Grove General Plan prohibits short-term transient use of residential property.

The City Council previously considered these issues and concluded short-term rentals for remuneration for less than 30 days are permissible in R-1 or other residential zones. Although *Ewing* substantiated

Carmel’s exercise of discretion to prohibit short-term rentals, it does not stand for the proposition that no city may allow such a use (please refer to the attached list of cities that allow short term rentals).

The City Council similarly considered the argument that short-term uses are prohibited by the General Plan. It concluded the defined terms of “residential” (“Land designated in the City or County General Plan and zoning ordinance for buildings consisting only of dwelling units.”) and “dwelling unit” (“A room or group of rooms – including sleeping, eating, cooking, and sanitation facilities – that constitutes an independent house-keeping unit, occupied or intended for occupancy by one household on a long-term basis (i.e., for more than 30 days.), do not by themselves stand for the proposition the City lacks authority to allow short-term rentals. This conclusion finds the General Plan clearly regulates creation of structures within zones, but it lacks regulatory provisions related to use of existing structures. By ordinance, the Council allows short-term dwelling unit rental within any land use zone. The City Attorney concluded this action fell within the Council’s discretion and is consistent with the General Plan.

Based on the above discussion, it appears the City holds the discretion to allow short-term rentals in residential zones. Nonetheless, the City Council must determine whether as a policy the City wishes to continue to allow them, or not. This second decision – whether as a policy to allow short-term rentals, or not – is important for the second part of the discussion, as it determines whether to draft sunset provisions to end the program, or to adopt modifications to alter the existing program, continuing to allow short-term rental use.

If the Council chooses to sunset the program, then amendments to the Ordinance will need to be enacted to rescind the regulations upon a certain end date. City enforcement would transition from ensuring compliance as a permitted use, to ceasing operation of a prohibited use.

If Council deliberates and determines that the program should continue, then amendments to the current regulations are recommended as follows:

LICENSE TYPE

Establish one type of STR license (formally known as the Type “A” license – a short-term rental unit licensed for transient use of residential property for remuneration (a) where the property owner does not reside at the site, or (b) where the property owner resides at the site, and where the property is available for short-term guests for more than 90 days in a single license year (365 days).

1. Eliminate the Type “B” license - a short-term rental unit licensed for transient use of residential property for remuneration where the property owner resides at the site, and where the property is available for short-term guests for no more than 90 days in a single license year (365 days).
2. Type “C” or Room Rentals remain in effect and subject to licensing process, not subject to cap or density requirements. Regulated by Pacific Grove Municipal Code (PGMC) §23.64.370 Permitting Home Sharing, the rental of one room in a single-family dwelling for 29 consecutive days or less and are also subject to transient occupancy tax.

CAP

1. Establish a new City-wide license cap of up to 250 STR licenses not limited by zoning district or street.
2. No limits on the number of nights a unit is rented.

DENSITY

1. Density determined by a fifty-five (55') foot radius drawn from the STR property lot lines on all sides of the property. No STR shall be permitted in any portion of the highlighted buffer (55 linear feet in all directions).

TIMELINE

1. Establish a moratorium on any new licenses or transfers effective as soon as administratively possible. Existing licenses remain unchanged until March 31, 2018. License renewal process will begin in February 2018.
 - a. Renewal License will be screened to meet density requirements.
 - b. Renewal License over the density requirement will be subject to a public lottery.
 1. Renewal License selected in the public lottery will proceed.
 2. Renewal License not selected in the public lottery will sunset on March 31, 2019.
2. New License applications will be available for areas not exceeding the cap and density radius.

ENHANCED ENFORCEMENT ACTION

The City will continue to pursue enhanced enforcement actions to address unlicensed properties or those suspected to rent with remitting corresponding transient occupancy tax.

TRANSIENT OCCUPANCY TAX

Should Council allow, but modify, the existing short-term rental program, a question arises as to whether an effort can be made to increase the Residential Transient Occupancy Tax (TOT) rate assessed upon short-term rentals (such a change would require an ordinance approved by a majority of City voters). The concept is that commercial TOT might remain unchanged (or not – currently it stands at 10% of room rental), but that voters could be asked to authorize an increased Residential TOT rate (e.g. a rate of 12%). The City Attorney has concluded voters hold authority to approve assessment of independent TOT rates on STRs because a rational basis differentiates the different use classes.

FISCAL IMPACTS

If the program is terminated, the subsequent \$1M revenue generated from the license fees and transient occupancy tax generated by the activity will be lost. City staff has researched whether commercial transient occupancy tax may increase as a result of prohibiting the use, but has not found any studies or data that supports this.

If the program continues with the proposed recommendations it is estimated that residential TOT and program fees/fines will continue to generate significant annual revenue to the City, however the proposed new regulations could reduce the amount of residential TOT currently received.

ATTACHMENTS

1. Attachment – Partial List of California Cities permitting short-term rentals

RESPECTFULLY SUBMITTED:



Mark Brodeur, Director
Community and Economic Development

REVIEWED BY:



Ben Harvey
City Manager

Partial List of California Cities that Permit Short-Term Rental Use

1. Anaheim
2. Arroyo Grande
3. Auburn
4. Carlsbad
5. Dana Point
6. Laguna Beach
7. Mammoth Lakes
8. Moro Bay
9. Petaluma
10. Sacramento
11. San Francisco
12. San Jose
13. Sebastopol
14. South Lake Tahoe
15. Tiburon
16. 29 Palms