CITY COUNCIL AGENDA REPORT
PUBLIC HEARINGS
AGENDA ITEM NO. L.2.

DATE: November 5, 2019

TO: City Council

FROM: Jeffrey Lambert, Community Development Director, (805) 385-7882, jeffrey.lambert@oxnard.org

SUBJECT: Planning and Zoning Permit No. 19-580-04 - Zoning Text Amendment to Create Regulations for Short Term Rentals, to include recommendations of the City Council Housing and Economic Development Committee (HEDC). (10/30/20)

RECOMMENDATION

That the City Council:
1. Receive a report regarding the regulations for Short Term Rentals;
2. Open a public hearing;
3. Determine the zoning text amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15061 and 15305 of Title 14, Division 6, Chapter 3 of the California Code of Regulations;
4. Introduce by title only and waive further reading of the following Ordinances by title only approving the following amendments to Chapters 7 (Nuisances), 16 (Zoning Code) and 17 (Coastal Zoning) of the Oxnard City Code:
   a. Chapter 7: modify Section 7-56 (Civil Fines: Amounts) to establish fine amounts for violations;
   b. Chapter 16: add Article XI to Chapter 16 regarding short-term rentals; add Subsection (19) to Section 16-21 (B) to the Residential Single-Family Zone and amend Section 16-148, Table 16-148 of the Downtown Code, add short-term rentals as an allowed, by right residential use in the DT-E, DT-G and DT-C zones subject to Article XI of Chapter 16;
   c. Chapter 17: add Section 17-53 to Chapter 17 in Article IV regarding short term rentals and amend Chapter 17 of the Oxnard City Code by adding Subsection (B) (10) to Section 17-10; R-B-1, Single-Family Beach, Sub-Zone; Subsection (B) (10) to Section 17-11. R-W-1, Single-Family Water-Oriented, Sub-Zone; Subsection (B) (10) to Section 17-12. R-W-2, Townhouse Water-Oriented, Sub-Zone; Subsection (B) (10) Section 17-13; R-2-C, Coastal Multiple-Family, Sub-Zone; Subsection (B) (10) to Section 17-14; R-3-C, Coastal Medium Density Multiple-Family, Subsection (B) (3) to Section 17-15; CPC, Coastal Planned Community Sub-Zone; and Subsection (B) (9) to Section 17-25; R-BF, Beachfront Residential, Sub-Zone regarding allowing short-term rental units subject to Section 17.53;
   d. Incorporate the following revisions to the proposed ordinances: (1) include a 100’ separation between STRs, (2) add a 5% cap to the R-BF zone, (3) limit annual rental days to 100, (4) require property manager/owner to be within 25 miles of the STR, (5) prohibit outdoor amplified music during quiet hours, (6) include parking limitations on STR advertisements, and (7) increase fines as noted; and
5. Set the Ordinances for a second reading and adoption at the City Council meeting of November 19, 2019.

BACKGROUND

Executive Summary: Given the feedback from the community, the Planning Commission and the City Council Housing and Economic Development Committee, staff is recommending the following provisions: (1) include a 100’ separation between STRs, (2) add a 5% cap to the R-BF zone, (3) limit annual rental days to 100, (4) require property manager/owner to be within 25 miles of the STR, (5) prohibit outdoor amplified music during quiet hours, (6) include parking limitations on STR advertisements, (7) increase fines as noted, and (8) prohibit STRs in the Colony.
Two Ninth Circuit cases indicate that an STR ban such as that adopted by Santa Monica does not violate the federal First Amendment, dormant Commerce Clause or Communications Decency Act, the two cases do not provide any legal authority under state law or state regulations for a California coastal city to ban STRs.

Right now, there is only one recent published California decision regarding STRs -- Greenfield v. Mandalay Shores Community Association (2018) 21 Cal. App. 5th 896. That case stated: “The decision to ban or regulate STRs must be made by the City and Coastal Commission, not a homeowners association.” (Id. at 901-902.)

The City has been engaging the community regarding permitting and regulations for Short Term Rentals (STRs) for more than three years. The public outreach efforts during this time period include:

- March 2016, the City conducted an online community survey that contained a series of questions designed to receive public input on STRs.
- August 16, 2016, staff conducted a community workshop to summarize the March survey results and secure feedback from the community on specific STR related regulations and questions.
- November 3, 2016, the Planning Commission conducted a study session to receive input on specific STR regulations.
- June 1, 2017, the Planning Commission conducted a public hearing and specifically addressed STRs, questions raised at the November 3, 2016 meeting, and the STR processing guidelines. No clear policy direction was communicated.
- February 26, 2019, the Housing and Economic Development Committee (HEDC) met to discuss policy questions and provided the following comments: 1. Consider allowing STRs only in designated geographic areas; 2. Consider the California Coastal Commission’s position on STRs; and 3. Direct staff to prepare recommendations based on best practices for City Council.
- March 25, 2019, City Council held a special meeting and received public input and provided direction to staff. Council indicated three key areas for the staff to report back on when drafting a STR ordinance: 1. Enforcement; 2. Limiting the number of STRs, and 3. How to address and permit existing STRs.
- July 9, 2019, the HEDC met to discuss the draft ordinance with a focus on proposed changes to the ordinance, including the maximum number of days per year a residence could be used as a STR, the required minimum number of nights per rental, and the establishment of a cap on the number of STRs by neighborhood.
- August 1, 2019, the Planning Commission held a public hearing on the draft ordinance and recommended approval with modifications. Those recommendations were taken back to the HEDC and are covered in the discussion below.
- September 24, 2019, the HEDC, with Councilmember Lopez absent, received a summary report on the Planning Commission recommendations and provided input on the recommendations. The input is summarized in the discussion below.

ANALYSIS/DISCUSSION

The proposed ordinances establish a comprehensive set of operating requirements and performance standards for STRs. STRs include both vacation rentals and homeshares; both are defined as dwellings that are rented for a period less than 30 days. However, a homeshare must be the owner’s primary residence and the owner must be present in the dwelling while it is being rented. Owners of vacation rentals need not be present when renting out the dwelling.

There will be two separate STR ordinances. The non-coastal ordinance will be placed in Chapter 16-Zoning Code (Attachment 2) and the coastal ordinance in Chapter 17-Coastal Zoning (Attachment 3). A third ordinance makes modifications to civil fine established within Chapter 7-Nuisances (Attachment 1).

Subject to specific permitting requirements, short-term rentals will be allowed in the following zones:

<p>| Non-Coastal Zones |  |</p>
<table>
<thead>
<tr>
<th>Planning Commission and HEDC Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following table summarizes the HEDC’s position as stated at the September 24th meeting regarding each recommendation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th><strong>Staff Recommendation July 9, 2019</strong></th>
<th><strong>HEDC Outcome July 9, 2019</strong></th>
<th><strong>Planning Commission Recommendation August 1, 2019</strong></th>
<th><strong>HEDC Recommendation Sept. 24, 2019</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>No separation required between STRs.</td>
<td>Analyze 300’ &amp; 500’ separation requirement.</td>
<td>300’ separation between STRs.</td>
<td>Provide analysis of 100’ and 200’ separation between STRs.</td>
</tr>
<tr>
<td>2</td>
<td>No cap to the number of STRs.</td>
<td>5% cap per General Plan neighborhood</td>
<td>5% cap in R-BF zone (in addition to a 5% cap per General Plan neighborhood).</td>
<td>Supported the Planning Commission’s Recommendation.</td>
</tr>
<tr>
<td>3</td>
<td>No limit to the number of nights a STR can be rented.</td>
<td>2 committee members supported the 180-day annual cap per year, 1 committee member did not.</td>
<td>100-day annual cap per year (instead of 180-day cap).</td>
<td>One Council member expressed support, one Council member did not support, and the third Council member was absent from the HEDC meeting.</td>
</tr>
<tr>
<td>4</td>
<td>Property manager to be within 40 miles.</td>
<td>This was not discussed.</td>
<td>Distance of property manager/owner (25 miles).</td>
<td>Supported the Planning Commission’s Recommendation.</td>
</tr>
<tr>
<td>5</td>
<td>No outdoor amplified music during quiet hours.</td>
<td>This was not discussed.</td>
<td>No outdoor amplified music.</td>
<td>No outdoor amplified music during quiet hours; otherwise the existing sound regulations apply (OCC Section 7-185).</td>
</tr>
<tr>
<td>6</td>
<td>Parking required based on bedroom count included. Aligned with OCC.</td>
<td>This was not discussed.</td>
<td>Prohibit STRs from using on-street parking.</td>
<td>Support requiring specific number of on-site parking spaces and requirement to include the number of on-site spaces in advertisements and contracts.</td>
</tr>
</tbody>
</table>
The HEDC also added a recommendation to include the Planned Development Community known as the Colony at Mandalay Beach to the list of units that are not eligible for STR permits.

**Focus of Planning Commission and HEDC Discussion**

The following regulations have been the focus of discussions at various public meetings:

1. STR Separation requirement,
2. Limiting the number of allowed STRs in the City: a.) 5% cap in the R-BF zone, and b.) Prohibition of STRs in the Colony, and
3. Establish a maximum time a property could be utilized as a STR (100 or 180 days).

**Separation Analysis**

Staff did not recommend a separation between STRs to the HEDC in July; however, the Planning Commission asked that staff analyze a separation requirement between STRs so that an overconcentration of STRs would not occur. The HEDC at their September 24, 2019 meeting recommended the analysis be expanded to include a 100 and 200-foot separation analysis.

An analysis was completed for the four neighborhoods in the Coastal Zone and for RiverPark. The analysis included a 100 foot radius and then intervals of 50 feet up to 250 feet. Attachment 4 is a table of the results. The total number of units by separation distance and under perfectly spaced conditions is provided. Since conditions will rarely result in perfectly spaced STRs, the total number of STRs would most likely be 50-60% of the number shown in this column. The total number of units by 5% cap is also provided. The analysis is based on the separation requirement first, then the 5% cap.

The ordinance is worded so that the separation requirement is applied first when analyzing an application and then the 5% cap is applied. With a 200 or 250-foot separation distance, none of the neighborhoods would ever reach the 5% cap number. With a 150-foot separation, Oxnard Shores and Channel Islands would be limited by the 5% cap, however, the Dunes and Hollywood by the Sea would not reach the 5% cap number. At a 100-foot separation, all of the neighborhoods would be limited by the 5% cap number. As previously reported, the total number of STRs citywide is estimated to be 243 with 95% or more of the 243 in the coastal zone. The 5% cap number would be the limiting factor to the total number of STRs and the coastal zone would be allowed 206 STRs. Implementing a separation requirement that is too restrictive would result in a reduction in STRs below a 5% cap.

**5% Cap on the Number of STRs**

Section 16-662 and 17-53(D) of the draft ordinances includes a 5% cap per General Plan neighborhood (Attachment 2). The Planning Commission recommended that a section be added to Section 17-53 requiring a further limitation of 5% cap specifically to the R-BF zone and at their September 24th meeting, the HEDC concurred with this recommended. The R-BF zone consists of the properties that lie between the ocean and the first public road (Attachment 6). The zone is made up of 93 existing single-family homes and 14 vacant lots. Of the 93 single-family homes, 16 are currently operating an STR, which is 17% of the existing units or 15% of all lots zoned R-BF. By comparison, Oxnard Shores neighborhood, as defined in the General Plan, currently has 3.2% of the properties operating an STR. These properties, with their proximity to the beach, are the most popular properties for STRs.

At the current concentration of 17% in the R-BF zone, this is approximately one STR per every five lots. With the proposal for a 5% cap, there could be one STR per every 20 lots. Adoption of the 5% cap specifically to the R-BF zone
would reduce the total number of STRs allowed in the zone to 5 STRs - which is a 69% reduction of existing STRs in the zone.

**STRs in the Colony at Mandalay Beach**

The application of the STR ordinance to the Colony was discussed by both the Planning Commission and the HEDC. There are 440 residential units in the Colony. If the Colony is removed from the Oxnard Shores neighborhood, the existing percentage of STRs would be 4% within the Oxnard Shores neighborhood.

A representative from the Colony spoke at the HEDC meeting and requested STRs be removed from consideration within the Oxnard Shores. The spokesperson indicated the Oxnard Shores community felt the City should not allow STRs in the Colony based on the 1989 Settlement Agreement reached when the Colony was approved as part of a Planned Development. The Chief Assistant City Attorney advised the Planning Commission that the Settlement Agreement was related to the subdivision of the area and did not address STRs. The Chief Assistant City Attorney also advised the Planning Commission that a recent legal ruling (*Greenfield v. Mandalay Shores Community Association* (2018) 21 Cal.App.5th 896) determined that private CC&R's cannot be used to prohibit STRs and only the City and the Coastal Commission have the ability to regulate STRs.

The Planning Commission did not recommend prohibiting STRs in the Colony; however, the HEDC at their September 24th meeting did recommend a prohibition.

The City Council has the ability, if desired, to exclude STRs from being allowed at The Colony based upon factors unique to this development. As part of a larger planned development next to the beach, visitor-serving beach access was included by providing land for a hotel and public parks. In recognition of the adjoining hotel use, The Colony's covenants, conditions, and restrictions include language that specifically prohibits the rental of the units for transient or hotel purposes for less than 30 days. The Colony itself consists of 440 units with gated access and private streets. The units are all attached with some townhome-style units, 4 unit stacked buildings, and 8 unit stacked buildings. All the unit types share common walls; however, in many case, the units also share common floors and ceilings. The units were built between 1985 and 1987 when noise attenuation standards in the building code were not as stringent as in buildings constructed today. This combination of circumstances creates a unique situation that gives the City Council the ability to exclude units within The Colony from being converted to STRs.

**Maximum Number of Rental Days**

Nuisance response plans and operational standards are the best practices to protect neighborhood character and address negative behaviors associated with STRs, but some cities establish a maximum rental period as an extra step to protect neighborhood character. Goleta established a 183-day limit and Pismo Beach established a 182-day limit. Staff did not, on July 9th, recommend to the HEDC a maximum number of rentals per calendar year.

The HEDC discussed the issue at their July 9th meeting but did not reach consensus on whether the 180-day limit should be included. Two Committee members suggested the 180-day limit be included in the ordinance while one did not feel a limit was necessary. Although the HEDC did not agree on a 180-day limit (vs. no limit), all three Committee members agreed that the effect any proposed limit has on the STR market should be reviewed after a determined period of time. Staff recommended the limit be reviewed in 18 to 24 months to provide enough data points to analyze the effects of a 180-day limit.

Consistent with direction given by the HEDC on July 9th, staff drafted the ordinances with a maximum of 180 rental days per calendar year. The Planning Commission recommended that the 180 days be reduced to 100 days per year. The Planning Commission discussed the issue and, based on a recent Coastal Commission approval of a 100-day limit for Del Mar and public comment, recommended that the City’s proposed 180-day limit be reduced to a 100-day limit.

At their September 24th meeting, the HEDC did not reach consensus on this issue with one member recommending 100
days, while one member suggested their may not be agreement on this but didn't suggest a specific alternative number of days, and a third member was absent.

Staff attended a Coastal Commission STR workshop on July 12, 2019. At the July 12th workshop, the Coastal Commission stated its concern that cities with STR ordinances limiting the number of days a STR can be rented are not providing adequate visitor serving accommodations. Coastal Commission staff indicated that any Local Coastal Plan update must provide data to show that adequate visitor serving accommodations such as hotels, campgrounds, and STRs are available.

Staff has modified the ordinance to reflect the 100-day limit. This change may result in further delay in implementing the ordinance because the Coastal Commission may make recommended modifications that would increase this 100-day limit and the ordinance would need to return to the City Council for a decision to accept or refute the Coastal Commission's recommendations. The Local Coastal Plan amendment (Coastal STR Ordinance) has to be approved by the Coastal Commission before it could go into effect.

The following is a summary of the remaining operational, penalty and fee provisions of the STR regulations before the City Council for adoption.

**Operational Standards**

- Sets overnight occupancy limits at two persons per bedroom plus two others, up to a maximum of 10 persons in vacation rentals and 5 persons in homestays.
- Establishes a maximum number of persons allowed on the property at any time. Cannot exceed the maximum overnight occupancy plus 6 additional persons.
- Establishes quiet hours from 10:00 pm. to 7:00 a.m. No outdoor amplified music/sound will be allowed during quiet hours.
- No one other than the renters are allowed on site during quiet hours.
- Requires the submittal of a nuisance response plan. Nuisance response plan must include name, address and telephone number of the person or persons who will be available to promptly respond to a nuisance complaint. The property owner must correct the problem within thirty minutes, or within fifteen minutes during the quiet hours between 10:00 p.m. and 7:00 a.m. after the complaint is first received.
- The primary occupant must be 21 years or older.
- Establishes on-site parking requirements: 1.) 1 space for vacation rentals in studio or one bedroom, 2.) 2 spaces for vacation rentals/homeshares with 2 to 4 bedrooms, and 3.) 3 spaces for vacation rentals/homeshares with 5 bedrooms.
- Permitted garages and driveway on the property must be unobstructed and made available for renter parking.
- Prohibits on-site events.
- Requires the provision of adequate waste collection facilities and requires waste collection schedule and information about recycling to be included in rental agreement and posted inside rental unit.

**Enforcement and Penalties**

- Specifies property management and complaint response requirements.
- Reiterates California Penal Code Section 148.5 regarding filing false reports.
- Three or more verified and valid complaints of any violation within a 12-month period are grounds for permit revocation.

Enforcement actions are intended to quickly remedy situations that are causing nuisance issues for the neighborhood in which the STR is permitted. These best practices include high fines, prosecution as a misdemeanor or both. The fines are cumulative for each violation and for each day the violation continues. They also include very little room for repeated offenses before permits are suspended or revoked. The proposed ordinance incorporates these best practices.
Enforcement of the ordinance is proposed to begin with a contract compliance company, the cost of which will be incorporated into the permit fees. There are a number of compliance companies that are able to monitor non-compliance, violations and complaints for a flat, contracted amount regardless of the number of enforcement calls. These companies offer 24-hour hotlines, have dedicated staff who scan the internet for listing and who begin to build enforcement cases where it is deemed necessary. These enforcement cases are then handed over to code compliance or the City Attorney for citations and enforcement. Additionally, the ordinance requires the STR owner to pay for any code enforcement costs. A Request for Proposal was released on October 23, 2019 and responses are due on November 22, 2019. Staff anticipates bringing this contract to City Council in January 2020. As the City further limits the number of STRs to be allowed, it may be more difficult to raise the permit revenue to cover these enforcement costs.

Violations include any deviation from the proposed ordinances. Each violation is considered a separate offense and each day that a violation continues is also a separate offense. Currently, violations can be prosecuted as a misdemeanor subject to a fine of $1,000 per violation or six months in jail or both. Based on direction from the HEDC Committee, the proposed ordinance now establishes progressive fines of $1,000 for first violation, $2,000 for second violation and $3,000 for third violation. A $5,000 fine will be established for property owners operating an STR without a City permit. Additionally, the STR owner must pay the City for any monies unlawfully obtained, the cost of abating the violation, the cost of investigation, and attorney fees.

Permits and Fees

- Temporary and annual STR permit fees are yet to be determined. STR permits are intended to be “full cost recovery” permits. It is estimated that STR permits would require up to 10 hours of staff time per permit to process (up to 4 hours of Planning staff time, 1 hour of Planning administrative staff time, 3 hours of code enforcement staff time, and up to 2 hours of Police staff time). The required inspections may need to be conducted by a contract inspection company. Additionally, the annual compliance company contract costs would also be added to the permit costs.
- Allows vacation rentals and homeshares with a STR Permit, which must be obtained annually.
- STRs must maintain a valid City business license and timely pay annual business taxes.
- STR permits are to be conditioned to obtain and maintain a City Transient Occupancy Tax (TOT) certificate and make timely City TOT payments.
- Requires a notice of permit issuance to be sent to all property owners and occupants within 300 feet of a registered STR. Appeals allowed only for denials, suspensions and permit revocation.
- Establishes a hearing officer appeal process for denials, suspensions and permit revocation.

Health and Safety

- Requires a pre-permitting inspection to ensure the unit meets health, safety, and parking standards.
- Allows inspection and monitoring to ensure continued operation of the homeshare or vacation rental in compliance with regulations.

In addition to the initial pre-permitting inspection, the Oxnard City Code will require, with reasonable advance notice, that City staff be given access to the dwelling and site during the term of the permit to ensure that the STR continues to operate in compliance with the Oxnard City Code. Ongoing monitoring would include a contracted compliance company that will track the number of complaints received or calls for service for each STR property during the term of the permit. This information will then be taken into consideration during the annual renewal process and, if necessary, the revocation process.

Owner Requirements and Limitations

- Establishes a minimum 3-day stay for a rental contract at a vacation rental in the coastal zone.
• Establishes ownership requirements and limitations: 1.) Only property owners can obtain a STR permit, 2.) STR permits expire upon a change of ownership, and 3.) Only one STR within the City per owner.
• Vacation rentals must have one or two designated property managers, one of whom must be available at all times and within 25 miles of the property. A property owner can serve as one of the property managers.
• Each rental agreement shall include the following information:

1. Permitted occupancy and guest limits for both day and night,
2. Notification of quiet hours,
3. Notification that no outdoor amplified music or sound is allowed during quiet hours,
4. Notification the property cannot be used for events,
5. Notification of available on-site parking spaces and notification advising renters they must park on-site,
6. Waste collection schedule and tenant’s responsibilities regarding waste collection, and
7. Notice that fireworks are illegal in the City of Oxnard.

• Posting of sign inside the unit with the following information: 1.) Name and contact information for designated property manager and telephone number at which a person can be reached at all times, 2.) Waste collection schedule and information about recycling, and 3.) Notification that the property owner, renter and occupants are subject to criminal citation and fines, civil penalties and/or permit revocation for violations of occupancy limits, noise standards and other operational standards.

A recent code enforcement symposium on STRs indicated that cities that have established regulations requiring STRs to post a sign with contact information outside the property have observed an increase in property crimes against those properties. The signs serve as indicators to a criminal element that the property does not have a permanent resident and would be considered an easier target. Therefore, staff has removed a previously proposed regulation to require the posting of a sign on the exterior of an STR building. The nuisance response plan and required notification will be sufficient to give the neighbors recourse to resolving any issues that may arise.

• Identifies ineligible dwellings (e.g. affordable, caretaker, and farmworker units, accessory dwelling units, mobile homes located within a mobile home park, tents, recreational vehicles, boats, buildings without a valid building permit, and other specific areas made exempt by the ordinance).

**Existing STRs-Draft Processing Guidelines**

Staff has outlined STR Processing Guidelines for processing STR applications (See Attachment 9). Any property owner wishing to operate an STR will have to apply for an STR permit and, provided they meet all the regulations, they would be permitted subject to the cap established by ordinances.

**Initial California Coastal Commission Feedback**

On June 12, 2019, staff sent the draft coastal ordinance to the Coastal Commission staff for review and comment. Staff also attended the Coastal Commission’s STR workshop on July 12, 2019. The Coastal Commission has been clear that the City will need to provide data to support the proposed percentage cap and the 100-day limit. However, in other jurisdictions Coastal Commission staff supported a 180-day limit on STRs and as noted previously a 100-day limit in Del Mar. At the July 12th workshop, the Coastal Commission stated that there is concern that STR ordinances are not providing adequate, quality, visitor serving accommodations. Any Local Coastal Plan update must provide data to show that adequate, quality, visitor serving accommodations are available. The accommodations may include quality hotels, camp grounds, and STRs.

**Homesharing Only (Santa Monica Model)**

Opponents of STRs in Oxnard have pointed to two Ninth Circuit Court of Appeal cases decided in 2019 as the legal basis for banning STRs, despite the direction from the Coastal Commission indicating that STRs should be allowed within the
Coastal Zone. Both cases involved challenges to Santa Monica’s regulations banning STRs in specific zones.

As background, in 2015, Santa Monica adopted an ordinance prohibiting STRs in residential zones, while still authorizing homestays in the residential zones. In 2017, Santa Monica amended their regulations to prohibit companies from providing and collecting a fee for booking services for unlicensed STRs.

Homeaway.com and Airbnb challenged the ordinance on a number of grounds, but did not include the Coastal Commission as a party to the litigation. After the district court dismissed the lawsuit, the Ninth Circuit affirmed the district court’s dismissal of the case on March 13, 2019, indicating that Homeaway.com and Airbnb had failed to state a claim under the federal Communications Decency Act or the federal First Amendment. (HomeAway.com v. City of Santa Monica, 918 F.3d 676 (9th Cir. 2019).) In its decision, the three-judge panel specifically did not address whether Santa Monica’s STR regulations violated the California Coastal Act or other provisions of state law.

On October 3, 2019, the same three-judge panel of the Ninth Circuit dismissed another lawsuit challenging Santa Monica’s STR prohibition. (Rosenblatt v. City of Santa Monica, 2019 U.S. App. LEXIS 29689.) In this case, the court ruled that the STR ban did not discriminate against interstate commerce (an alleged violation of the federal dormant Commerce Clause). Once again, the Coastal Commission was not a party to the litigation and the decision did not address whether Santa Monica’s STR regulations violated the California Coastal Act or other provisions of state law.

While these two Ninth Circuit cases indicate that an STR ban such as that adopted by Santa Monica does not violate the federal First Amendment, dormant Commerce Clause or Communications Decency Act, the two cases do not provide any legal authority under state law or state regulations for a California coastal city to ban STRs.

Right now, there is only one recent published California decision regarding STRs -- Greenfield v. Mandalay Shores Community Association (2018) 21 Cal. App. 5th 896. That case stated: “The decision to ban or regulate STRs must be made by the City and Coastal Commission, not a homeowners association.” (Id. at 901-902.)

Public Communications Received Since the HEDC’s Meeting of September 24, 2019

The HEDC last reviewed the STR ordinances on September 24, 2019. Since that point in time, and before the publication of this staff report, staff has received correspondence from members of the public (Attachment 8). Staff will organize and transmit any additional correspondence received after the publication of this report to the City Council via the City Clerk’s Office. These correspondences would also be available to members of the public.

ENVIRONMENTAL IMPACT

In accordance with the California Public Resources Code Sections 21000 et seq. and State California Environmental Quality Act (CEQA) Guidelines (Sections 15000 et seq.), Planning staff have determined that the proposed zoning text amendment is exempt from CEQA pursuant to Sections 15061 and 15305 of Title 14, Division 6, Chapter 3 of the California Code of Regulations (Attachment 7).

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Goal 1. Improve community safety and quality of life through a combination of prevention, intervention, and suppression efforts that address crime and underlying issues.

Objective 1e. Develop a rental inspection program.
Goal 3. Strengthen neighborhood development, and connect City, community and culture.

Objective 3a. Create a renewed focus on establishing a positive outlook and orientation of our City, neighborhoods and overall community.

This agenda item supports the Economic Development Strategy. The purpose of the Economic Development Strategy is to develop and enhance Oxnard’s business climate, promote the City’s fiscal health, and support economic growth in a manner consistent with the City’s unique character. This item supports the following goals and objectives:

Goal 1. Create vibrant and economically sustainable commercial, industrial and retail industries throughout the City.

Objective 1a. Focus available resources on a comprehensive effort to promote economic activity in Oxnard, including a marketing program that communicates the City’s available resources and assets.

Goal 2. Enhance business development throughout the City.

Objective 2a. Develop a strong citywide economy which attracts investment, increases the tax base, creates employment opportunities, and generates public revenue.

Objective 2c. Capitalize on historic, cultural and natural resources.

Objective 2d. Public safety will collaborate with the business community to promote an environment that supports economic development.

FINANCIAL IMPACT

The City will not receive revenues from newly permitted STRs within the Coastal Zone until the Coastal Commission approves the new STR regulations within the Coastal Zone (Oxnard City Code Section 17-53) pursuant a Coastal Development Permit. The proposed STR regulations outside of the Coastal Zone (adding Article XI to Chapter 16 of the Oxnard City Code) would become effective 30 days after the City Council adopts the ordinance.

Once the recommended STR ordinances received final approval, the ordinances would raise revenue for the General Fund in four different ways:

1. Short-term rental permit (annual): Staff is currently completing a cost analysis to determine the fee amount required to fully recover the cost of administering the STR program. Since the STR permit fee would be limited to cost recovery, this revenue source would have no net impact on the General Fund. It should be noted that as the City implements provisions to limit STRs, it will be more challenging to ensure sufficient funding from fees will be in place to ensure adequate enforcement of these regulations. Staff will return to Council with a fee structure that reflects the final approved regulations.

2. Progressive fines for misdemeanor violations: Ideally, the City will not need to assess any fines because all STR owners will comply with the ordinance. To the extent they do not, however, the progressive fines could generate noticeable new revenue for the General Fund. For example, with a cap of 206 STRs in the Coastal Zone; and if only 5% of those STRs incur two fines per year, then annually the General Fund revenue would increase by $30,900 (.05 * 206 * ($1,000 + $2,000)). There will, however, be costs associated with these enforcement actions.

3. Business tax revenue: With the cap in the Coastal Zone of 206 STRs and a business license tax of approximately $300.00 per year, the General Fund would receive $61,800 annually for STRs in the Coastal Zone if 206 STRs were permitted within the Coastal Zone. The City would also receive a business license tax for STRs located outside of the Coastal Zone.
4. Transient Occupancy Tax revenue: There are many variables in estimating new TOT revenue to be paid by STRs. The following example is not a projection, but merely an illustration of how to estimate revenue under any given set of assumptions. Assuming 206 STRs in the Coastal Zone, 100 days per year rental, an average rental price of $350.00 per night, the current TOT tax rate of 10% then the General Fund revenue from STRs in the Coastal Zone would be:

$721,000.00. (206 STR’s * 100 days rented * $350/day * 10% T.O.T. rate = $721,000). The amount of revenue generated will fluctuate significantly per year based on the variables including (but not limited to) the number of STRs that are actually permitted within the Coastal Zone and within other areas of the City.

The FY 2019-20 Adopted Budget does not assume any General Fund revenue from these sources. If approved, these new revenues will be added to the next General Fund forecast.

COMMITTEE OUTCOME

This item is a public hearing and was heard by the Planning Commission and presented to the Housing and Economic Development Committee (HEDC). The recommendations of both the Planning Commission and HEDC are fully elaborated in this report.

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ATTACHMENTS

1. CH 7 - Fines Ordinance 10-1-19
2. CH 16 - Short Term Rental Ordinance 10-1-19
3. CH 17 - Short Term Rental Ordinance - Coastal 10-1-19
4. Spatial Analysis of the Coastal Zone
5. General Plan Neighborhood map
6. R-BF Zone Map
7. Notice of Exemption
8. Correspondence
9. STR Processing Guidelines
10. STR Ordinance PPT CC 11.05.19