THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: August 12, 2015

TO: Honorable Chair Zapf and Members of the Smart Growth & Land Use Committee

FROM: Robert Vacchi, Development Services Director

SUBJECT: Prospective Short Term Vacation Rental/Home Sharing Regulations

---

This memorandum is written in response to the direction given at the Smart Growth and Land Use Committee meetings of April 22 and May 29, 2015. In accordance with that direction, Development Services staff compiled a draft code framework (Attachment 1) for regulating short term vacation rentals. Further policy direction is needed regarding the issues of frequency, occupancy and eligible housing types.

The draft framework proposes to: 1) create a new use category for short term vacation rentals that allows the rental of a dwelling unit as a whole for a term less than 30 calendar days within specified limits and includes flexibility to deviate beyond the limits with a discretionary permit; 2) modify existing boarder/lodger regulations to allow home sharing on a short term basis for a maximum of two adults where the owner resides on the premises and is present during the visitor stay; and 3) modify the bed and breakfast establishment regulations for consistency with the proposed home sharing regulations.

If further direction is provided on frequency, occupancy, and eligible housing types, the draft provides the location where those regulations could be incorporated.

An analysis is provided in Attachment 2 that highlights relevant state and local laws that pertain to this issue.

Robert Vacchi

Attachments: 1. Draft Code Language
2. Analysis of Occupancy, Frequency, and Eligible Housing Types

cc: Jan Goldsmith, City Attorney
David Graham, Deputy Chief Operating Officer
Gail Granewich, City Treasurer

DRAFT SHORT TERM VACATION RENTAL and HOME SHARING ORDINANCE FRAMEWORK

§141.0315 Short Term Vacation Rental of a Dwelling Unit

Short term vacation rental of a *dwelling unit* for a term less than one calendar month that provides for exclusive transient use of the *dwelling unit* may be permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the regulations in Section 141.0315(a) and (b). Section 141.0315 does not apply to bed and breakfast establishments subject to Section 141.0603.

(a) General regulations.

(1) The *dwelling unit* shall be maintained and used at all times for residential occupancy only. A minimum of 200 square feet per occupant shall be provided and maintained within the *dwelling unit* in order to meet the California Building Code occupancy load requirement for public health and safety.

(2) The operator shall maintain and enforce a rental agreement with visitor tenants that advises of the following:

(A) That the short term vacation rental is located in a residential neighborhood and occupants are expected to be respectful and maintain the residential character of the neighborhood;

(B) The number of bedrooms and maximum number of occupants for the short term vacation rental;

(C) The rules for trash and recycling containment and disposal; and

(D) The City noise limits per San Diego Municipal Code Section 59.5.0401 and remedies available to the City to address and enforce noise violations, including the issuance of individual administrative citations in an amount up to $1000 to each visitor tenant and to the property owner.

(3) A copy of the rental agreement required by Section 141.0315(a)(2) shall be provided to prospective visitor tenants prior to their occupancy of the *dwelling unit*, and shall be provided to the City upon request by a City official.

(4) The operator shall designate a local contact that shall be responsible to actively discourage and prevent any nuisance activity at the short term vacation rental, including excessive noise, disorderly conduct, overcrowding, and excessive accumulation of refuse. The designated local contact shall respond within 1 hour to all complaints reported to the local contact regarding detrimental activity in violation of the code associated with the short term vacation rental.

(5) The operator shall post notice on the *premises* in a location visible to the general public that includes the contact number for the designated local contact. Notice of the local contact shall be maintained in good condition with current contact information while the *dwelling unit* is rented out as a short term vacation rental.

(6) COLLECTION, REMITTANCE AND REPORTING OF RELEVANT TAXES

(b) Limited use regulations

(1) OCCUPANCY

(2) FREQUENCY

(3) A maximum of 25 percent of the *dwelling units* in a *multiple dwelling unit structure* may be rented out on a short term basis for occupant stays less than 30 consecutive days to minimize impacts to housing.

(c) Neighborhood Use Permit. In order to meet City goals to maintain and enhance quality of life in our communities and to ensure diverse and balanced neighborhoods and communities with housing available for households of all income levels, any requested deviations from the requirements in Section 141.0315(b) are subject to conditional approval of a Neighborhood Use Permit decided in accordance with Process Two where:

The applicant demonstrates that the proposed *development* will effectively minimize disturbances to the surrounding neighborhood and will not adversely affect the residential character of the neighborhood.

§141.0301 Boarder, ~~and~~ Lodger, and Home Sharing Accommodations

Boarder, ~~and~~ *lodger*, and home sharing accommodations is a type of home sharing activity in a *dwelling unit* whereby a property owner or a resident host provides lodging accommodations for *boarders*, *lodgers*, or visitors in their home in exchange for compensation, including any type of in-kind trade or exchange agreement between the property owner or designated resident host and the *boarder*, *lodger*, or visitor. *Boarder*, *lodger*, and home sharing accommodations activity conducted in accordance with Section 141.0301 is ~~are~~ permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following limited use regulations.

(a) ~~*Boarder* and *lodger* accommodations are permitted only as an *accessory use* to a primary dwelling unit.~~ The property owner shall reside in the *dwelling unit*.

(b) The property owner or a designated resident host shall remain present during any *boarder*, *lodger*, or visitor stay less than 30 consecutive days to actively discourage and prevent any nuisance activity from occurring.

(c) *Boarder*, *lodger*, and home sharing accommodations shall function as an *accessory use* to the primary *dwelling unit*. The total floor area dedicated to *boarder*, *lodger*, and home sharing accommodations shall not exceed 25 percent of the *gross floor area* of the *dwelling unit*.

~~(b)~~(d) No more than two *boarders*, ~~or~~ *lodgers*, or visitors paying compensation for lodging in the *dwelling unit* are permitted at any one time ~~per primary dwelling unit~~.

(e) FREQUENCY

~~(c) In the RM zones and all commercial zones, *boarders* and *lodgers* must occupy the *premises* for a minimum of 7 consecutive calendar days. In all other zones, *boarders* and *lodgers* must occupy the *premises* for a minimum of 30 consecutive calendar days.~~

~~(d)~~(f) Off-street parking shall be provided at a rate of 1 space for each 2 *boarders* or *lodgers*. Within the beach impact area of the Parking Impact Overlay Zone, off-street parking shall be provided at a rate of 1 space for each *boarder* or *lodger*.

(g) COLLECTION, REMITTANCE AND REPORTING OF RELEVANT TAXES

(h) *Boarder*, *lodger*, and home sharing accommodations for stays less than 30 consecutive days that provide for multiple short term rental agreements in a *dwelling unit* at one time or that exceed the intensity limitations set forth in Section 141.0301(c), (d) or (e) are considered a commercial visitor accommodations use of a residential structure that is subject to Section 141.0603 (Bed and Breakfast Establishments).

(i) *Boarder*, *lodger*, and home sharing accommodations in the RM-5-12 or commercial base zones are not subject to the limitations set forth in Section 141.0301(c), (d), or (e).

§141.0302 Companion Units

A companion unit is a *dwelling unit* that is an *accessory use* for a *single dwelling unit* on a residential *lot* that provides complete living facilities, including a kitchen, independent of the primary *dwelling unit*. Companion units are permitted as a limited use in accordance with Process One in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) and Chapter 15, Article 1, Division 4 (General and Supplemental Regulations), subject to the following regulations:

(a) through (o) [No change in text.]

(p) COMPANION UNIT REGULATIONS

§141.0603 Bed and Breakfast Establishments

Bed and breakfast establishments are visitor accommodations within a residential *structure* where lodging is provided to visitors in *guest rooms* for a period of less than one calendar month in exchange for compensation, ~~breakfast is typically~~ and where meals or access to *kitchen* facilities may be provided for guests as part of that exchange. Section 141.0603 does not apply to *boarder*, *lodger*, and home sharing accommodations subject to Section 141.0301 or to short term vacation rental of a dwelling unit subject to Section 141.0315.

Bed and breakfast establishments are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations. Bed and breakfast establishments may be permitted with a Neighborhood Use Permit in the zones indicated with an "N" or with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(a) In the RM zones, bed and breakfast establishments are subject to the following regulations.

(1) No more than one bed and breakfast establishment is permitted on a *premises*.

(2) Only one *kitchen* is permitted in a newly constructed bed and breakfast establishment except that one additional *kitchen* may be permitted for the owner or operator that is separate from the *kitchen* for the bed and breakfast establishment.

(3) A bed and breakfast establishment that is a conversion of existing *multiple dwelling units* may contain the number of *kitchens* permitted by the applicable zone provided the existing off-street parking on the *premises* is not decreased.

(4) Off-street parking shall be provided as follows:

(A) One space for the operator of the establishment;

(B) One space per guest room for up to two *guest rooms* or, if located in a *transit area* identified in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone), one space for up to two *guest rooms*; and

(C) One-half space for each additional *guest room*.

(5) Eating and drinking facilities shall be available only to the overnight guests.

(6) For newly constructed bed and breakfast establishments, the number of exterior accesses shall not exceed the maximum number of dwelling units permitted on the *premises*.

(7) One *sign* is permitted on the *premises* with a maximum *sign copy area* of 12 square feet and a maximum horizontal or vertical dimension of 6 feet.

(8) The property owner or operator shall remain present during visitor stays to actively discourage and prevent any nuisance activity from occurring.

(b) In the RE, RS, RX, OR, and AR zones, bed and breakfast establishments are subject to the following regulations.

(1) Bed and breakfast establishments in RS and RX zones shall be limited to the conversion of existing *structures*.

(2) In the RS zones, bed and breakfast establishments with six or more *guest rooms* may be permitted only in *historical buildings*.

(3) The maximum number of *guest rooms* in the RE, OR, and AR zones is nine.

(4) No more than one *kitchen* is permitted in a bed and breakfast establishment.

(5) Off-street parking shall be provided as follows:

(A) Two spaces for the *single dwelling unit*;

(B) One space per guest room for up to two *guest rooms* or, if located in a *transit area* identified in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone), one space for up to two *guest rooms*; and

(C) One-half space for each additional *guest room*.

(6) One *sign* is permitted on the *premises* with a maximum *sign copy area* of 8 square feet and a maximum dimension of 4 feet in any horizontal or vertical direction.

(7) Eating and drinking facilities shall be available only to the overnight guests.

(8) The property owner or operator shall reside on the *premises* and shall remain present during visitor stays to actively discourage and prevent any nuisance activity from occurring.

(c) In commercial zones, the development regulations of the zone that are applicable to visitor accommodations shall apply.

(d) REMITANCE, COLLECTION AND REPORTING OF RELEVANT TAXES.

~~(d)~~(e) Bed and breakfast establishments of six *guest rooms* or less in any residential zone for which the required Rental Unit Business Tax and the Transient Occupancy Tax were current as of May 2, 1996, and have remained current since that date, may continue to exist and operate subject to Chapter 12, Article 7 (Previously Conforming Premises and Uses) provided that the owner or operator of the bed and breakfast establishment provides evidence of payment of the required Rental Unit Business Tax and Transient Occupancy Tax to the City Manager upon request and the City Manager confirms this evidence in writing to the owner or operator. ~~Bed and breakfast establishments continuing to exist and operate under this provision are not subject to Section 127.0102(a).~~

Mission Beach Planned District Ordinance

§1513.0303 Permitted Uses – Residential Subdistricts

No building or improvement or portion thereof shall be erected, constructed, converted, established, altered or enlarged, nor shall any lot or premises be used except for one or more of the following purposes:

(a) Primary Uses

(1) Single dwelling units.

(2) Duplexes (2 dwelling units in a single structure).

(3) Multiple dwelling units; restricted to a maximum of 4 dwelling units in any single structure including common wall construction on adjoining lots.

(4) Parks and Playgrounds.

(5) Off-premises parking lots for residential uses in accordance with the provisions of Land Development Code Section 142.0535 except that the parking lot shall be within a horizontal distance of 300 feet of the premises for which the off-street parking is located. Off-premises parking shall not be utilized in lieu of required on-premises parking.

(6) Short term vacation rental of a dwelling unit for less than 30 consecutive calendar days subject to the regulations in Land Development Code Section 141.0315(a).

(b) Accessory Uses

Accessory uses and buildings customarily incidental to any of the foregoing permitted uses including the following:

(1) Private garages, parking areas, and storage areas.

(2) Recreational facilities intended only for the use of residents residing on the premises.

(3) ~~Lodgers, permitted as follows:~~

~~(A) For a single dwelling unit which is the only dwelling unit on the premises, not more than 2 lodgers with each being provided a bedroom and with more than one full bathroom facility within the dwelling unit.~~

~~(B) For duplexes and multiple dwelling units, not more than one lodger being provided with a bedroom and with more than one full bathroom facility on the premises.~~ Boarder, lodger, and home sharing accommodations in accordance with Land Development Code Section 141.0301.

(4) On-premises signs subject to the Sign Regulations in accordance with Section 1513.0404(a) titled Residential Subdistricts – On Premises Signs.

Chapter 13 Use Tables:

§131.0222 Use Regulations Table for Open Space Zones

Table 131-02B
Use Regulations Table of Open Space Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**					
	1st & 2nd >>	OP-		OC-	OR[(1)]-		OF[(11)]-
	3rd >>	1-	2-	1-	1-		1-
	4th >>	1	1	1	1	2	1
Short Term Vacation Rental of a Dwelling Unit		=	=	=	=		=
Boarder, ~~and~~ Lodger, and Home Sharing Accommodations		-	-	-	L		-

§131.0322 Use Regulations Table for Agricultural Zones

Table 131-03B
Use Regulations Table of Agricultural Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Short Term Vacation Rental of a Dwelling Unit		-		L	
Boarder, ~~and~~ Lodger, and Home Sharing Accommodations		-		L	
Bed & Breakfast Establishments		-			
Visitor Accommodations		-		-	

§131.0422 Use Regulations Table for Residential Zones

Table 131-04B
Use Regulations Table of Residential Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**																							
	1st & 2nd >>	RE-			RS-													RX-		RT-					
	3rd >>	1-			1-													1-		1-					
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4	
Short Term Vacation Rental of a Dwelling Unit		L			L														L		L				
Boarder, ~~and~~ Lodger, and Home Sharing Accommodations		L			L														L		L				
Rooming House		-			-														-		-				
Bed & Breakfast Establishments																					-				
Visitor Accommodations		-			-														-		-				

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	**Zones**											
	1st & 2nd >>	RM-											
	3rd >>	1-			2-			3-			4-		5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
Short Term Vacation Rental of a Dwelling Unit		L			L			L			L		L
Boarder, ~~and~~ Lodger, and Home Sharing Accommodations		L			L			L			L		L
Rooming House		-			-			P			P		P
Bed & Breakfast Establishments											P		P
Visitor Accommodations		-			-			-			P[6]		P[6]

§131.0522 Use Regulations Table for Commercial Zones

Table 131-05B
Use Regulations Table for Commercial Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**									
	1st & 2nd >>	CN[(1)]-			CR-		CO-		CV-		CP-
	3rd >>	1-			1-	2-	1-		1-		1-
	4th >>	1	2	3	1	1	1	2	1	2	1
Short Term Vacation Rental of a Dwelling Unit		L			L	-	L		L		-
Boarder, ~~and~~ Lodger, and Home Sharing Accommodations		L			L	-	L		L		-
Rooming House		P			P	-	P		P		
Bed & Breakfast Establishments		-			P	~~P~~ -	-		P		-
Visitor Accommodations		-			P	P	-		P		-

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**														
	1st & 2nd >>	CC-														
	3rd >>	1-			2-			3-		4-				5-		
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Short Term Vacation Rental of a Dwelling Unit		L			-			L		L					L				
Boarder, ~~and~~ Lodger, and Home Sharing Accommodations		L			-			L		L					L				
Rooming House		P			-			P		P					P				
Bed & Breakfast Establishments		P			~~P~~ -			P		P					P				
Visitor Accommodations		P			P			P		P					P				

§131.0622 Use Regulations Table for Industrial Zones

Table 131-06B
Use Regulations Table for Industrial Zones

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	**Zone Designator**	**Zones**									
	1st & 2nd> >	**IP-**			**IL-**			**IH-**		**IS-**	**IBT-**
	3rd >>	1-	2-	3-	1-	2-	3-	1-	2-	1-	1-
	4th >>	1	1	1	1	1	1	1	1	1	1
Short Term Vacation Rental of a Dwelling Unit		-	-	L	-	-	-	-	-	-	-
Bed & Breakfast Establishments		-	-	-	-	-	-	-	-	-	-
Visitor Accommodations		-	-	-	-	-	-	-	-	-	-

Analysis of Options for Short Term Vacation Rentals (Limited Use Criteria)

LIMITED USE STANDARD #1: OCCUPANCY

DESCRIPTION OF AN OCCUPANCY STANDARD

State law sets a public health and safety standard for occupancy in a dwelling unit of 200 square feet of floor area per occupant. The City is preempted from conflicting with the state standard, but can set a threshold for approval, as a limited use based on occupancy, and can require a discretionary permit for requests to exceed the local threshold up to the maximum occupancy provided for by state law.

Under existing City regulations a Residential High Occupancy Permit (San Diego Municipal Code Article 3: Division 5: 123.0502) is required for a single dwelling unit when the occupancy of the dwelling unit would consist of six or more persons eighteen years of age and older residing in a dwelling for a period of 30 or more consecutive days. Setting a limited use short-term occupancy standard, on number of adults residing in a dwelling unit for less than 30 days, could allow for more predictable enforcement and reduce conflicts with the existing Residential High Occupancy Permit regulations. Short-term high occupancy, over and above the limited use, could be regulated by a discretionary permit such as a Neighborhood Use permit, which is approved by staff with an appeal to the Planning Commission. This would allow applicants to continue to rent out high occupancy units if they receive permit approval, but with conditions of approval that would reduce impacts on the surrounding neighborhood.

REFERENCES

- California Building Code occupancy standard (2013 construction code Part 2, Ch 10)
- Local Residential High Occupancy Permit Regulations (SDMC Ch 12, Art 3, Div 5)

LIMITED USE STANDARD #2: FREQUENCY OF RENTALS

DESCRIPTION OF A FREQUENCY STANDARD

In order to allow for predictability for property owners and enforcement staff, a frequency standard, for short-term rentals, could be considered. This standard would indicate the applicable zone and the number of days in a month that a short-term rental is allowable. Duration of rental period could also be included. For example, a limit on the frequency of rentals could at a minimum be applied within the RS zones, which are intended to be areas with the lowest intensity of development by comparison, and which currently do not specify a minimum stay for occupants of a single dwelling unit. In multiple dwelling unit zones, a limit on rental frequency could replace the existing requirement for occupants of a multiple dwelling unit to reside on the premises for a minimum of seven consecutive days.

DRAFT

REFERENCES

- Local Single Dwelling Unit and Multiple Dwelling Unit Regulations (SDMC 131.0422 Table 131-04B, including Footnote 5 and 131.0522 Table 131-05B, including Footnote 2)
- Local Boarder and Lodger Accommodations Regulations (SDMC 141.0301)

LIMITED USE STANDARD #3: LIMIT ELIGIBLE HOUSING TYPES FOR SHORT TERM VACATION RENTAL

DESCRIPTION OF LIMIT ON SHORT TERM RENTAL OF COMPANION UNITS

Companion units are small dwelling units (less than 700 square feet), that are accessory to a single dwelling unit and that provide complete independent living facilities, including a kitchen. State law regulates companion units as "second units" and requires that they be approved with a ministerial permit by local jurisdictions. The purpose and intent of the state law is that companion units provide long-term housing that can be more affordable to lower and moderate income individuals and households than the typical market rate units in a neighborhood. Consideration of short-term rental regulations could address whether companion units or other types of affordable housing should be eligible housing types for short-term rental.

The City of San Diego regularly declares a local housing emergency due to the lack of available affordable housing. The City has an adopted general plan policy to provide diverse and balanced neighborhoods and communities with housing available for households of all income levels. Companion units are a small unit type that provides a more affordable long term housing option and the California Department of Housing and Community Development encourages local jurisdictions to facilitate and promote second units for that purpose. State law requires that local jurisdictions allow companion units by right in order to encourage development of these second units to meet local housing needs, which the City has implemented with a series of code changes since 2003 to facilitate development of companion units including the 7th Update (O-20081) and 9th Update to the Land Development Code (O-20481). Following is the purpose and intent of the state law regarding second units (companion units):

Government Code Section 65852.150 explains the legislative intent of the second unit law:
The Legislature finds and declares that second units are a valuable form of housing in California. Second units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. Homeowners who create second units benefit from added income, and an increased sense of security.

Companion units are a type of housing most often sought out by seniors, students, and young professionals as an affordable long-term housing opion for independent living (often referred to as a granny flat). SDMC Section 141.0302 requires the owner to reside in either the companion unit or the primary dwelling unit.

DRAFT

REFERENCES

- Government Code Section 65852.2 Second Unit law
- HCD housing policy and purpose and intent of second units (companion units) http://www.hcd.ca.gov/housing-policy-development/hpd_memo_ab1866.pdf
- Local Companion Unit regulations (SDMC Section 141.0302)
- New York Times.com article June 16, 2015 "Room for Debate: Cities Must Add to the Affordable Rental Supply" in response to article "Airbnb Is a Problem for Cities Like New York and San Francisco"

DRAFT