




**COUNCILMEMBER CHRIS CATE
CITY OF SAN DIEGO
SIXTH DISTRICT**

M E M O R A N D U M

DATE: March 2, 2015

TO: Councilmember Lorie Zapf, Chair, Smart Growth and Land Use Committee

FROM: Councilmember Chris Cate 

SUBJECT: Short-Term Vacation Rentals

Please accept this memo as input from Council District 6 per your February 6, 2015 request for feedback on comprehensive policy changes.

The ambiguity of San Diego's regulations surrounding short-term vacation rentals have become increasingly apparent in light of today's sharing economy.

In the first week of my term as Councilmember, I was contacted by a constituent concerned about this lack of clarity and immediately began to research the regulations and ordinances proposed by other municipalities within and outside the State of California.

My office has engaged community stakeholders, hosting platform companies, and City Departments who will be affected by an ordinance change to develop a balanced proposal.

Attached please find an outline of my proposal as well as a Frequently Asked Questions fact sheet. We look forward to working with you, our council colleagues, and our communities to adopt an ordinance change that protects San Diego residents' ability to rent on a short-term basis, while protecting the integrity of our neighborhoods.

CC:jc

cc: The Honorable Kevin Faulconer, Mayor
Honorable Smart Growth and Land Use Committee Members
The Honorable Jan Goldsmith, City Attorney
Andrea Tevlin, Independent Budget Analyst
Ryan Purdy, Committee Consultant, Smart Growth and Land Use Committee

**Short-Term Rentals
Proposed Municipal Code Changes**

<p>TOT/Land Use Ordinance Amendment: Short-term Rental (STR)</p>	<p>Define "short-term rentals" as, "The incidental transient occupancy of a dwelling unit for any time period of less than 30 consecutive calendar days."</p> <p>Add the definition of "short-term rentals" where applicable in Municipal Code to ensure permission in all zones except pure commercial.</p>
<p>TOT Ordinance Amendment: Payment of Transient Occupancy Tax</p>	<p>Transient Occupancy Taxes are collected and paid to the City pursuant to Muni Code §35.0109. TOT are the responsibility of the host, but may be paid by a Hosting Platform on behalf of the host if the Incidental Transient Occupancy is created through a hosting platform that has an agreement with the City for collection and payment of such TOT.</p>
<p>Performance Criteria</p>	<p>The number of transients, including permanent resident(s) when applicable, shall not exceed reasonable occupancy standards of two per bedroom plus two.</p> <p>The host shall display notice within plain view of the general public and/or common areas, the local contact person for the property to take complaints regarding its operation. Local contact person means a person designated by the host who shall be available twenty-four hours per day, 7 days per week during the term of any transient occupancy.</p> <p>Hosts of short term rentals are responsible for any nuisance behavior of the occupants including, but not limited to unreasonable noise, disorderly conduct, and overcrowding.</p> <p>Upon notification that a transient occupant(s) has created a disturbance, the host shall respond within 60 minutes. Failure to respond to two or more complaints regarding transient violations is grounds for penalty.</p> <p>If a host is advertising online, via hosting platform or other, the host must list their TOT certificate number within the advertisement.</p>

Fines and Penalties

Violation documentation by law enforcement or code enforcement shall include, but not be limited to, copies of citations, written warnings, reports or other filed documentation by law enforcement.

Records of the documented violation shall be forwarded to the issuing office Director.

Whenever a Director determines that a violation of one or more provisions of the Municipal Code or applicable state code has occurred or continues to exist, a written civil penalties Notice and Order may be issued to the Responsible Person.

The Notice and Order shall refer to all code sections violated and describe how each section is or has been violated.

The Notice and Order shall refer to the dates and locations of the violations.

The Notice and Order shall describe all remedial action required to permanently correct outstanding violations and establish time frames for completion.

The Notice and Order shall establish a daily amount of civil penalties. The Director shall determine the daily amount of civil penalties pursuant to the criteria in Section 12.0805 of this Division (see Determination of Penalties).

The Notice and Order shall identify a date when the civil penalties began to accrue and a date when the assessment of civil penalties ended, unless the violation is continuous. In the case of a continuous violation, there shall be an ongoing assessment of penalties at the daily rate established in the Notice and Order until the violations are corrected.

If a Director determines that the violations are continuing, the Notice and Order shall demand that the Responsible Person cease and desist from further action causing the violations and commence and complete all action to correct the outstanding violations under the guidance of the appropriate City Departments.

The Notice and Order shall enumerate any other consequences, including permit revocation, should the Responsible Person fail to comply with the terms and deadlines as prescribed in the Notice and Order.

	<p>The Notice and Order shall identify appropriate hearing procedures.</p> <p>The Notice and Order shall be served upon the Responsible Person by any one of the methods of service listed in Section 11.0301 of this Chapter.</p> <p>The Notice and Order shall identify the factors used by a Director in determining the duration and the daily amount of civil penalties.</p> <p>More than one Notice and Order may be issued against the same Responsible Person if it encompasses either different dates or different violations.</p>
<p>Determination of Penalties</p>	<p>In determining the date when civil penalties started to accrue, a Director may consider the date when the Department first discovered the violations as evidenced by the issuance of a Notice of Violation or any other written correspondence.</p> <p>The assessment of civil penalties shall end when all action required by the Notice and Order has been completed.</p> <p>In determining the amount of the civil penalty to be assessed on a daily rate, a Director may consider some or all of the following factors:</p> <ol style="list-style-type: none"> (1) The duration of the violation. (2) The frequency or recurrence of the violation. (3) The nature and seriousness of the violation. (4) The history of the violation. (6) The willfulness of Responsible Person's misconduct. (7) The Responsible Person's conduct after issuance of the Notice and Order. (8) The good faith effort by the Responsible Person to comply. (9) The economic impact of the penalty on the Responsible Person. (10) The impact of the violation upon the community. (11) Any other factors that justice may require.
<p>Civil Penalties Hearing</p>	<p>All violations will go before a hearing officer before the penalties are assessed.</p> <p>Written notice of the time and place of the hearing shall be served at least ten (10) calendar days prior to the date of the hearing to the Responsible Person.</p> <p>Administrative enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do</p>

not apply. The procedure and format of the administrative hearing shall follow the procedures promulgated by the Department.

The City bears the burden of proof at an administrative enforcement hearing to establish the existence of a violation of the Municipal Code or applicable state code. In the case of an abatement hearing the City bears the burden of proof to establish the existence of a public nuisance.

The standard of proof to be used by the Enforcement Hearing Officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.

Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her case.

The decision of the Enforcement Hearing Officer shall be entitled "Administrative Enforcement Order" and shall be issued in accordance with the rules and procedures promulgated by the City Manager.

The Administrative Enforcement Order shall become final on the date of service of the order.

The Administrative Enforcement Order shall be served on all parties by any one of the methods listed in Section 11.0301 of the Municipal Code.



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Use	Current	Proposed
Rentals allowed?	Short-term Rentals allowed, but not specifically defined allowing for confusion and open interpretation of the activity.	Clearly define short-term rentals (STR) as the transient occupancy of a dwelling for any period of less than 30 consecutive days.
Defined "short-term rental" (STR)	Not currently defined.	Define STRs in both the land use and tax code sections of the Municipal Code.
Required TOT/TMD/RUBT	The collection and remittance of Transient Occupancy Tax (TOT), Tourism Marketing District assessment (TMD) and payment of the Rental Unit Business Tax (RUBT) are currently required.	The proposed ordinance will not change current TOT/TMD/RUBT requirements, but will allow for the collection and payment of TOT/TMD on behalf of the host by a hosting platform if the hosting platform has an agreement with the City.
Fines/Penalties/Enforcement/Appeals	Current neighborhood nuisance issues are enforced through the Development Services Department (DSD) through code compliance.	The proposed ordinance will not change current enforcement or appeal procedures, with the exception of revocation of ability to rent on a short-term basis by repeat offenders.

Short-Term Rental Proposal Frequently Asked Questions

Why do we need a Short-Term Rental Ordinance?

Current laws regarding short-term rentals are ambiguous and unclear. This creates a situation of open interpretation of the activity potentially resulting in fines, penalties or the requirement of obtaining a Conditional Use Permit or business license at a cost of \$5,000 to \$10,000.

How will this proposal help hosts and the community?

Clarity will allow for hosts to rent all or a portion of their home on a short-term basis, defined as under 30 days, as long as they adhere to performance criteria to preserve the integrity of their neighborhoods.

How will this be enforced?

Enforcement of nuisance behaviors will stay under the jurisdiction of the DSD through code enforcement, with the assistance of the San Diego Police Department. Once there has been a verified offense (violations documented by law or code enforcement, i.e. citations, written warnings, reports, or other filed documentation) fines and penalties will be assessed. Continued offenses could result in fines and penalties of up to \$250,000 and/or the revocation of the ability to rent on a short-term basis.

Is there a limit on how many transient occupants I can rent to at once?

You may rent to two transient occupants per bedroom, plus an additional two occupants per residence.

Is there a limit to how many days per year I may rent to transient occupants on a short-term basis?

No.

I've received a letter from the City Treasurer; does this ordinance address back taxes or fines and penalties resulting from prior non-compliance?

The proposed ordinance does not address back taxes, fines, or penalties related to prior non-compliance.

Are the TOT/TMD/RUBT new tax requirements?

No. All residents who rent all or a portion of their homes for any period of time are required to pay the Rental Unit Business Tax. All residents who rent all or a portion of their home on a short-term basis are currently required to collect and remit both the Transient Occupancy Tax and the Tourism Marketing District assessment.

Will this proposal increase the TOT/TMD/RUBT?

No.

How much are the TOT/TMD and RUBT?

The Transient Occupancy Tax is 10.5% and Tourism Marketing District assessment is 0.55% for any lodging under 30 units and 1.45% for 30 or more units. The Rental Unit Business Tax is \$50 per property plus five dollars (\$5.00) per unit annually.

What are the steps I need to take to rent my home or space in my home under this proposal?

1. Complete and submit the [Application for Transient Occupancy Registration Certificate \(PDF\)](#) to the Office of the City Treasurer:

Office of the City Treasurer
TOT/TMD Administration
P.O. Box 122289
San Diego, CA 92101

Once your application is processed, you will receive a certificate number from the Office of the City Treasurer. This number is the account number associated with the lodging business and should be referenced on all remittances and/or correspondence submitted to our office.

2. Comply with all performance criteria:

- Payment of TOT/TMD/RUBT assessments.
- Occupancy shall not exceed two per bedroom, plus two in the residence.
- Display a notice in plain view with name and contact information for a 24/7 local contact for the property to take and address complaints.
- Respond to disturbance notifications within 60 minutes.
- List TOT certification number on all on-line rental advertisements.

3. Pay your TOT, TMD, and RUBT assessments. TOT and TMD must be remitted monthly and are due no later than the last day of the following month. For example: the TOT and TMD assessment collected in the month of April must be remitted by May 31st. A penalty is due on all late payments; the penalty is 1% of the TOT and TMD assessment due for the 1st delinquent day, plus 1/3 of 1% for each additional day, not to exceed 25%. To assist with the calculation of the penalty percentage, see the Penalty Table. The TOT and TMD assessment may be remitted online, by mail, or in person.

The RUBT is typically due by March 1 of each calendar year. It is the owner's responsibility to keep their mailing address current. If the Rental Unit Business Tax bill is not received by February 1st of a given year, individuals should contact the Treasurer's Office at (619) 615-1545 or at rtax@sandiego.gov.