

**CITY COUNCIL
AGENDA REPORT**



**CITY OF MILLBRAE
621 Magnolia Avenue
Millbrae, CA 94030**

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| SUBJECT: Ordinance Amending Chapters 3.30, 5.100, 10.05 of the Millbrae Municipal Code, and Adding Chapter 7.30 to the Millbrae Municipal Code to Allow and Provide for the Regulation of Short-Term Residential Rentals and Adopting a Resolution Establishing a Fee for a Short-Term Residential Rental Permit | Report No. 60143 |
| | For Agenda of: July 24, 2018 |
| | Department: Community Development |
| ATTACHMENTS: 1. Draft Short-Term Residential Rental Ordinance (Clean Copy) 2. Draft Short-Term Residential Rental Ordinance (Redline from 5/22/2018 Version) 3. Summary Chart of Major Amendments 4. Short-Term Residential Rental Permit Application 5. Summary of Public Comments 6. Written Public Comments Received 7. Resolution Establishing a Fee for a Short-Term Residential Rental Permit | Originator: Tom Madalena  |
| Budget Action Yes: _____ No: <u>X</u> _____ | Approved:  |
| Finance Review: _____ | |

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| REPORT TYPE: ACTION <u>X</u> INFORMATIONAL _____ |
| ITEM TYPE: CONSENT _____ PUBLIC HEARING <u>X</u> EXISTING BUSINESS _____ NEW BUSINESS _____ |

RECOMMENDATION:

Staff recommends that City Council, by motion, introduce and waive the first reading of a draft ordinance amending Chapters 3.30, 5.100, 10.05 of the Millbrae Municipal Code, and adding Chapter 7.30 to the Millbrae Municipal Code to Allow and Provide for the Regulation of Short-Term Residential Rentals (STRRs) as an accessory use in certain residential structures in all R-1LL, R1, R-2, R-3, C, and Downtown Improvement Area districts subject to certain regulations and adopt a resolution establishing a fee for a Short-Term Residential Rental Permit.

BACKGROUND:

With the emergence and growing popularity of on-line home sharing platforms, the City of Millbrae has experienced an increase in residents renting both homes and rooms to renters for periods of less than thirty days. These STRRs present opportunities for the City and its residents, including the potential for residents to increase their income and for visitors to become new customers for local businesses.

However, STRRs also present challenges for the City, such as the potential for increased disturbances in residential neighborhoods, the reduction of housing stock for long term residential use, the diversion of transient occupancy tax (TOT) revenue from traditional hotels, and the effective collection of TOT in this new context. Like many municipalities across the United States, Millbrae's ordinances and land use regulations are not currently adequate to address the issues arising from the rapid expansion and use of STRRs.

Despite the fact that the Millbrae Municipal Code does not allow for the operation of STRRs, staff estimates that there are approximately 200 STRRs currently operating in Millbrae. Although the Millbrae Municipal Code allows for and currently regulates boardinghouses, bed and breakfasts, and commercial lodgings, these uses are distinct from STRRs, particularly because STRRs are often located in residential areas. STRRs also have more frequent turnover of guests and attract activities that are atypical for traditional residential zones. The potential exists for the City to increase its transient occupancy tax (TOT) revenue through a licensing program for STRR operators. However, due to their decentralized nature, STRRs present unique challenges for TOT collection. The City Council directed the City Manager and staff to develop regulations for adoption and to take the necessary actions to implement a regulatory program for STRRs in Millbrae.

On May 8, 2018, the City Council heard public comment, received input from stakeholders, including Airbnb, residents who rent their properties as STRRs, residents living near STRRs, and law enforcement. The City Council provided policy direction to City staff to prepare necessary amendments to the Municipal Code to allow STRRs as a permitted use in the City, establish a permit process and operating rules for STRRs, implement mechanisms to improve collection of TOT from STRRs, and provide additional tools for law enforcement to respond to the issues that arise at STRRs.¹

Staff provided a draft of a Short-Term Residential Rental Ordinance (STRR Ordinance) at the May 22, 2018 City Council meeting to allow for the public and City Council to have an opportunity to better understand the framework for the proposed regulatory program, and to receive preliminary feedback from the Council and the public. The STRR Ordinance proposed amendments to four chapters of the Municipal Code, including the Zoning Code.

Staff presented the draft STRR Ordinance on June 18, 2018 at the regularly scheduled Planning Commission meeting for consideration of the proposed amendments to the Zoning Code. The Planning Commission adopted a resolution of intention to amend the Zoning Code as proposed in the STRR Ordinance. In addition, the Planning Commission also provided a series of recommendations to the Council regarding the amendments proposed to the remainder of the Municipal Code, which are summarized in Attachment 5.

ANALYSIS:

Staff is now presenting the complete STRR Ordinance to the Council for adoption. Staff has made a number of amendments to the STRR Ordinance since it was previewed to the Council on May 22nd. A redlined version of the draft STRR Ordinance presented in May, as well as a chart summarizing and explaining the major changes, are attached as Attachments 1, 2 and 3, respectively.

¹ The City Council's May 8, 2018 discussion also included concerns about boardinghouses and related uses that are operating illegally and causing nuisances. The proposed ordinance does not address these issues, which are already regulated under the Municipal Code. As these uses are already regulated, staff will continue to work with code enforcement to enforce the City's existing nuisance and zoning ordinances to address this issue.

Summary

Staff recognizes the distinct and unique challenges that arise in developing appropriate policy for the allowance and regulation of STRRs. The draft STRR Ordinance takes these challenges into consideration and has been crafted in order to best provide the mechanisms and tools needed to address transient habitation activities that can negatively affect the welfare of the community. The revised STRR Ordinance addresses these objectives through the following approaches:

1. Clearly define and distinguish STRRs as separate from commercial lodgings, boardinghouses, and other transient habitation uses.
2. Allow STRRs as an accessory use in all single family dwellings, units in a multi-family dwellings, or accessory dwelling units in residential zoning districts with a business license, TOT registration certificate, and STRR permit. Impose substantial fines for STRRs operating without a permit.
3. Improve the safety of STRRs and reduce neighborhood impacts by establishing a permitting process wherein the City reviews certain information regarding the proposed STRR, including whether it complies with the applicable requirements of the Municipal Code, including all applicable building and safety code requirements, and whether the use would be detrimental to the public health, safety, or welfare.
4. Prevent the loss of long term rental housing by 1) limiting STRR permits to units that are the primary residence of the applicant; and 2) limiting the nights a STRR can operate per year as a non-hosted unit.
5. Prevent the deterioration of the quality of life to residents of neighborhoods that may be caused by the impact of STRR on noise, parking, traffic and security by imposing operating restrictions on STRRs. These restrictions include:
 - a. Limits on occupancy
 - b. Parking restrictions
 - c. Requirements for property maintenance
 - d. Prohibition on commercial functions and other events that have the potential to cause excessive noise or traffic
6. Provide law enforcement and neighbors with additional tools to mitigate disruptions from STRR activities. These include:
 - a. Requiring all STRR operators to have an agent available onsite within 60 minutes to address issues arising from STRR activities.
 - b. Establishing a citywide registry of contact information for STRR agents.
 - c. Allowing for revocation of STRR permits for repeated violations of the operating restrictions.
 - d. Improving cost recovery provisions for certain code enforcement actions.
7. Improve the City's ability to collect TOT by:

- a. Authorizing the City to enter into TOT collection agreements with online STRR hosting platforms, such as Airbnb.
- b. Imposing additional application and reporting requirements on STRR operators.

Residency Requirements

Most of the concerns relating to STRRs center on units that are non-hosted, particularly those rented by absentee landlords. The STRR Ordinance takes steps to address these issues.

The STRR Ordinance requires that an STRRs must be the primary residence of the permittee, which is defined as the place where the permittee resides and intends to return, and at which the permittee sleeps for at least 265 nights per year. The permittee may be either the homeowner or a long term tenant. However, renters seeking to obtain a STRR permit must comply with several additional steps, including demonstrating that the landlord has consented to this use of the property and furnishing a deposit.

The STRR Ordinance further limits the ability of permittees to rent their units "non-hosted" (i.e. when the host is not sleeping on the site). The draft STRR Ordinance provides a clear distinction for "hosted" or "non-hosted units" as that is the determining factor in the limitation of the number of available nights that the unit can be rented.

- "Hosted Unit" means a STRR at which the Permittee and sleeps while it is being rented, and at which no more than two bedrooms are rented for transient occupancy pursuant to this Chapter.
- "Non-Hosted Unit" means a STRR that is not a hosted unit.

A STRR permit would allow the Permittee to rent the unit for an unlimited number of nights during the duration of the permit as a hosted unit. Due to the additional possibility for detrimental community impacts, there are a number of additional requirements to rent a non-hosted unit. A permit applicant must request specific authorization to rent their units as non-hosted units, and the permit only allows the Permittee to rent the unit for up to 100 nights during the duration of the permit as an non-hosted unit. This permit does not negate the primary residence requirement. Instead, it allows the primary resident the limited ability to rent the unit while the primary resident is absent, for example, a homeowner who rents the unit while on vacation. Applicants must place a deposit with the City to rent their STRRs as non-hosted.

Public Safety

The City received a number of complaints relating to impacts of STRRs on the surrounding neighborhoods and public safety issues arising out of STRR uses. The proposed STRR Ordinance takes several steps to address these concerns.

During the development of the STRR program, staff worked with the Chief of the Millbrae Police Bureau to gain a better understanding of the needs of our police force in effectively and efficiently responding to incidents that may arise at a STRR. The Police Bureau stated that the most useful tool to them would be the requirement to have permittees or authorized agents available to be present at the unit upon request by the officers. The STRR Ordinance requires this, and also requires that the City publicly post a list of permittees and authorized agents. This list will give the City, as well as neighbors, a point of contact when issues arise at STRRs, and give neighbors an avenue to resolve their concerns without involving code enforcement or the police.

The Millbrae Police Bureau has opined that having an authorized agent available to grant officers access to the premises is sufficient for them to enforce the law and respond to disturbances at STRRs. As a result, the provision granting officers the authority to enter STRRs upon only a reasonable suspicion of wrongdoing has been removed.

The STRR Ordinance also strengthens the City's ability to obtain cost recovery for responding to unruly disturbances at STRRs. The STRR program, once adopted, will require that hosts apply to the City for STRR permit, acquire a business license from the City as well as register with the City for the Transient Occupancy Tax registration certificate. Additionally, inspection fees may also apply to determine whether the unit complies with the applicable requirements of the municipal code, including all applicable building and safety code requirements. A Resolution to establish the fee for the STRR permit provides for a fee of \$100 for processing the STRR permit application and is included as Attachment 7.

FISCAL IMPACT:

As the program is implemented staff will evaluate revenue and expenditures to evaluate full cost recovery. Staff will return to City Council at the mid-year budget report with an update.

CITY COUNCIL ACTION:

By motion, introduce and waive the first reading of an ordinance amending Chapters 3.30, 5.100, 10.05 of the Millbrae Municipal Code, and adding Chapter 7.30 to the Millbrae Municipal Code to allow and provide for the regulation of STRRs as an accessory use in certain residential structures in all R-1LL, R1, R-2, R-3, C, and Downtown Improvement Area districts subject to certain regulations and adopt a resolution establishing a fee for a Short-Term Residential Rental Permit.