



Item No. 4 Town of Atherton

CITY COUNCIL STAFF REPORT – STUDY SESSION

TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER

FROM: JOE WADE, ACTING CHIEF OF POLICE

DATE: MARCH 1, 2017

SUBJECT: REVIEW AND DISCUSS SHORT-TERM RENTALS,
ENFORCEMENT AND FUTURE POLICY ISSUES IN ATHERTON;
AND PROVIDE STAFF WITH DIRECTION

RECOMMENDATION

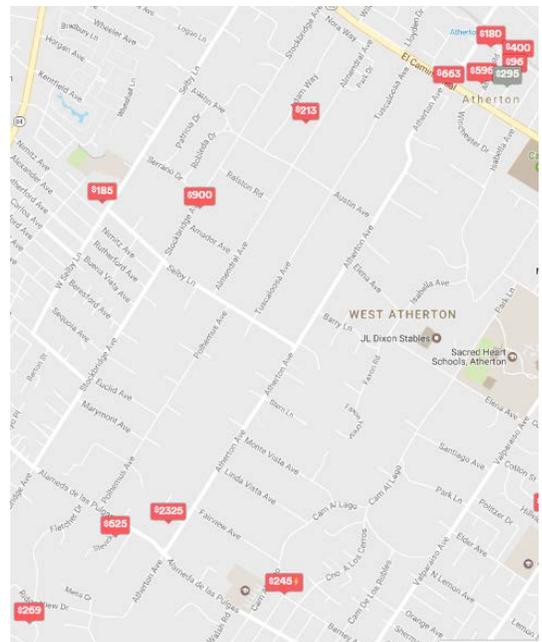
Review and discuss short-term rentals, enforcement and future policy issues in Atherton; and provide staff with direction.

BACKGROUND

Short-term rentals (identified as less than 30 days) are currently prohibited in Atherton. The issue has caused some tension between property owners who wish to use services such as VRBO, AirBnB, or Homeaway and other residents who have complained about the impact of short-term rentals.

Code Enforcement investigates allegations of short-term rentals. When violations are found, the result is typically a fine and a requirement that the rental operation be shut down or limited to stays greater than 30 days. Over the past 12 months, there have been 8 active cases related to short-term rentals.

Given available staff time and resources, this type of violation is most often addressed on a reactive basis. Residents will report symptomatic issues related to these uses and staff will investigate. Some of the symptoms include heavier than normal traffic in the neighborhood, trash and debris, unusual behavior from occupants and/or advertisements online. Reporting parties in past cases have expressed they do not like having commercial activities take place in their neighborhoods.



The AirBnB website currently identifies 13 properties for rent in Atherton between February 27 and March 3, 2017. The property photos, however, do not make these properties easy to identify.

General Plan

The overarching goal of the Atherton General Plan is to “preserve the Town’s character as a scenic, rural, thickly wooded residential area with abundant open space.” The General Plan describes residential areas as “designed to contain housing and related facilities such as schools and churches.” The following land use objectives and policies support the residential character of the Town.

Land Use Objective - 1.222 - *To limit the nature of land uses to those which are compatible with the overall land use planning goal.*

Land Use Objective - 1.223 - *To retain the high quality of maintenance and living environment existing in the Town’s residential neighborhoods.*

Land Use Objective - 1.332 - *The development of high density and/or high rise residential structures or commercial uses of any kind would destroy the scenic, rural and open space character of the Town, and is, therefore, prohibited.*

The Atherton Zoning Code further prohibits commercial uses in the Town via Section 17.30.050 which states:

“No new commercial-residential uses are permitted anywhere in the Town of Atherton. Such prohibited uses include hotels, motels, boardinghouses, and transient guest quarters, including bed and breakfasts.”

Property owners do have a legal right to rent their property in Atherton as a single-family residence. Although the Town’s Codes do not specify rental restrictions, short-term rentals - generally considered as rentals of less than 30-days - are considered a commercial use and are generally categorized as a hotel, transient guest quarters or vacation rental. These short-term rentals are not consistent with the single-family residential use and are therefore prohibited.

The Town’s website currently provides the following information:

Can I rent out my entire property?

The Town of Atherton does not regulate private rental agreements between a landlord and a renter, however these types of agreements shall involve some sort of lease agreement for use of the property as a single family residence, and short-term rentals (Airbnb) are not permitted.

Can I rent out a room in my house?

You rent your home to a family or a group of individuals. Homes can be shared by a group of individuals but cannot be rented like a rooming house or boarding house.

Can I build and rent a second unit?

Yes - use and development standards for second units are regulated by the Second Dwelling Unit Ordinance found in Chapter 17.52 of the Town Zoning Code. The Planning Department page also includes a handout detailing size, location, and design requirements for second dwelling units.

Are there restrictions on using/renting through companies like VRBO or AirBnB?

The Town of Atherton does not allow commercial-residential uses. Prohibited uses include hotels, motels, boardinghouses, and transient guest quarters, including bed and breakfasts. Renting homes on VRBO or AirbnB would be considered commercial use and is not allowed.

ANALYSIS

Other municipalities have investigated short term rental regulations. The City of Sausalito recently conducted a survey which revealed 63% of respondents preferred allowing short term rentals within a regulatory framework; 35% preferred to enforce a ban on short term rentals.

The survey presentation is available at this URL:

http://abag.ca.gov/events/BAPDA/2016fall/Danny_Castro-Sausalito.pdf

The survey captured arguments in favor of allowing short-term rentals, including:

- Supplemental income for homeowners and affordability for renters (retirees, families, young home buyers)
- Increased temporary housing for those relocating to the area, use during remodels, and for those visiting friends and family
- A source of revenue for the municipality via a transient occupancy tax, requiring registering and monitoring.
- Increased regulation could help mitigate some of the impacts and provide funding for additional code enforcement resources.

The survey likewise captured some of the perceived negative impacts, including:

- Neighborhood character might be lost as a result of increased visits of strangers.
- Parking of vehicles on the streets and increased car trips would contribute to congestion.
- Noise could be produced by occupants for celebratory gatherings or parties.
- Long term rentals (secondary units) inventory could be consumed by short-term rentals.
- Refuse and recycling could increase as a result of additional occupants.

The Sausalito Report also identified some challenges facing Code Enforcement. These same issues apply to Atherton:

- No address on the listing
- Photographs in listing do not allow for identification
- Difficult to prove whether the rentals are short term or long term
- Continually changing participants in the short term market makes it difficult to build cases for violations.
- Violation penalty costs are so low that they do not properly incent compliance

Other relevant community experience includes the City of San Francisco (2015) implementing a Short-Term Residential Rental Registration Process. The regulations permit short term rentals in single and multi-family units that are the owner or renter's primary residence (not a second or vacation home) for periods of less than 30 nights. This includes renting a portion or the entire unit while the owner is present for an unlimited number of nights per year and renting a portion or the entire unit while the owner is *not* present for a maximum of 90 nights per year. Additional requirements include obtaining a business license, providing proof of liability insurance (provided by the owner or hosting platform) and paying a fee of \$50. The registration is valid for two years.

Santa Monica continues to work through its short term rental regulations. Most recently, the City strengthened its prohibition on short term rentals while allowing "homesharing" (renting rooms, guest house, or space in homes to travelers while the primary owner of the residence is onsite during the visitors' stay).

The League of California Cities formed a staff-level working group on the issue but has not yet taken a formal position on the issue. The City of Mill Valley recently adopted an ordinance allowing short term rentals requiring payment of a \$50 application fee as well as Transient Occupancy Tax (TOT) (10%). Positions vary from jurisdiction to jurisdiction and range from no formal regulation to administrative permitting and collection of fees to prohibition.

One variable discussed in communities is the threshold for defining a short term rental and the frequency of times such rentals will be allowed. State law does not offer a definition of short term rental, though 30 days appears to be a common threshold. This timeframe is likely widely used to define short-term rentals, as it correlates with TOT models. Additional complexities include regulating the number of short term rentals allowed in a year, capping the number of total rental days allowed in a year, controlling whether the primary owner or tenant needs to be in residence at the time of the rental.

There is at least one third party company which may be able to assist in compliance monitoring: <https://hostcompliance.com/> which offers the following services

- Implementing fair and effective short-term rental ordinances
- Identifying privately-owned short-term residential properties on behalf of local governments
- Monitoring and enforcing registration, permitting and lodging tax compliance
- Registering, processing and verifying permit applications (online and offline)

- Providing 24/7 telephone hotline services that makes it easy for neighbors and other stakeholders to anonymously report and resolve issues with short-term renters without involving law enforcement officials
- Identifying tax under-reporting and other fraudulent practices

Regulatory Controls

If the Town wishes to continue to not allow short term rentals, it will be important to educate the community and continue enforcement. Enforcement will be on a reactive basis as the uses are sometimes hard to spot unless you are part of the immediate neighborhood.

Discussion around regulatory mechanisms would be appropriate:

- Establishing a use in the zoning code – allowed, permitted, prohibited
- If allowed, license and/or registration requirements, administrative permit requirements, discretionary permit requirements, operational restrictions
- Enforcement and monitoring controls

Options for Consideration

1) Allow Short Term Rentals by Right

The Council could consider allowing short term rentals in single-family residential areas “by right” through a registration process. Requiring a license and registration enables the Town to maintain a database of units for code enforcement and potentially tax collection purposes.

2) Conditionally Permit Short Term Rentals

The Council could consider to provide more control in the approval of short term rentals through some sort of conditional use permit process. A permit could be reviewed administratively through a staff-level review process subject to the application of certain review criteria and operating requirements

Operating requirements or conditions could include such things as:

- A permit cap – a maximum number of short term rental permits that may be issued within a neighborhood or the entire Town
- A calendar cap – limitations on the number of short term rental days allowed for each rental in a given year (e.g. 90 or fewer days)
- Owner Occupancy – allow short term rentals when the owners reside in the unit 275 days per year or more (limiting the rental period to 90 days).
- Length of Stay/Turnover – define “allowable” short term rentals as “not less than seven (7) days”.
- Maximum Occupancy – rental occupancy could be limited based on the number of bedrooms in the home – this might address issues such as noise, parking impacts, parties, etc.

- Number of Bedrooms – limitations can be placed on the size of short term rental homes, for example, homes with more than 3 bedrooms could be prohibited from short term rentals. This limitation may address concerns about large homes being rented out for large gatherings such as family retreats, special events, or corporate events.
- Geographical Limits – short term rentals could be limited by proximity to other permitted short-term rentals.

Other guidelines could include safety policies, good neighbor policies (parking, noise, trash, etc.), insurance requirements, and termination of use. There could be annual or bi-annual inspections.

3) Continue to Prohibit Short Term Rentals

The Council could also specifically prohibit short term rentals.

POLICY FOCUS

Staff currently enforces short-term rentals in Atherton as being commercial use and prohibited. If the City Council wishes to consider allowing short-term rentals, staff could conduct public outreach, research necessary code revisions and the opportunity to apply a Transient Occupancy Tax (commonly known as a hotel tax) on short-term rentals. Other jurisdictions in San Mateo County charge between 9.5% and 12% transient occupancy tax. The tax does not apply to stays longer than 30 days. Transient occupancy taxes require voter approval.

FISCAL IMPACT

As change in regulatory policy may increase staff time in the monitoring and enforcement of compliance. This expense may be offset through the recovery of revenue through taxes or fees.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

<http://www.ci.atherton.ca.us>

ATTACHMENTS

None.