

CITY OF BUENA PARK
MINUTES OF CITY PLANNING COMMISSION
October 23, 2019

The regular meeting of the Planning Commission of the City of Buena Park convened at 7:00 p.m. on October 23, 2019, in the City Council Chamber, 6650 Beach Boulevard, Buena Park, California with Vice Chair Chung presiding.

PRESENT: COMMISSIONERS: Capelle, Chung, Desai, Diep, Schoales

ABSENT: COMMISSIONERS: Barstow, McGuire

Joel W. Rosen, AICP, Director of Community Development
Brady M. Woods, Planning Manager
Swati Meshram, PhD, AICP, LEED AP, Senior Planner
John W. Lam, Assistant City Attorney
Ruth Santos, Senior Administrative Assistant

1. APPROVAL OF MINUTES October 9, 2019

RECOMMENDED ACTION: Approve

Commissioner Schoales abstained from voting on this item due to his absence from the October 9, 2019 Planning Commission meeting.

The MOTION CARRIED unanimously.

AYES:	5	COMMISSIONERS:	Diep, Capelle, Chung, Desai, Schoales
NOES:	0	COMMISSIONER:	
ABSENT:	2	COMMISSIONER:	Barstow, McGuire
ABSTAIN:	0	COMMISSIONERS:	

PUBLIC HEARING:

NEW BUSINESS:

2. TEXT AMENDMENT NO. C19-2

A recommendation to the City Council to amend Division 9 of Title 19 of the Buena Park City Code pertaining to short term rental permit regulations.

PROJECT PROPONENT: City of Buena Park
6650 Beach Boulevard
Buena Park, CA 90622

RECOMMENDED ACTION: Approve Resolution recommending City Council Approval

Mr. Lam reminded everyone that tonight's public hearing is different from the previous study session on this item in that the typical procedure for a public hearing is to allot five minutes for each speaker, and avoid redundant discussions on specific points. He recommended that speakers adhere to the required procedure.

In reply to Vice Chair Chung, Ms. Santos stated that staff had distributed a memo with compiled written communication received regarding draft ordinance options for Short Term Rental (STR) permit regulations and emails, received after the memo was sent out, from Mark Rasile and Monica Wagner.

The staff report was presented by Dr. Swati Meshram, Senior Planner.

Staff recommends that the Planning Commission hold a public hearing, take public testimony on the proposal and adopt the attached Resolution recommending the City Council approve Zoning Text Amendment No. C19-2 with Option 1 limiting STRs to property owner's primary home and does not allow whole home rentals or with Option 2 which allows for whole home rentals.

Renting of residential units for a period of less than 30 days is known as short term (vacation) rentals (STRs). Short-term vacation rentals generally include the temporary rental of homes or portions of homes, condominiums, or apartments, typically brokered by third party on-line web sites such as Airbnb, VRBO, Home Away and other similar internet-based businesses. These internet-based businesses have expanded the opportunities world-wide for travelers to obtain short-term vacation lodging. Currently, STRs are not explicitly permitted by the Zoning Ordinance and are therefore prohibited.

The City contracted with an internet-based company (Host Compliance) to assist the City in identifying the location and number of STRs operating in the City. Host Compliance currently estimates there are approximately 80 STRs operating in the City. Since May 2018, when Code Enforcement staff began tracking STRs, staff has received complaints regarding nine properties (Attachment 2). The complaints generally related to late night noise/activities, traffic, parking and trash.

On May 14, 2019, the City Council adopted a temporary moratorium via an Urgency Ordinance to further clarify the City's existing prohibition of STRs. On June 25, the Council extended the moratorium to August 13, 2019. On August 13, the Council extended the moratorium until May 14, 2020. Additionally, the Council directed staff to begin drafting regulations to permit STRs, while assuring appropriate controls to avoid negative impacts on nearby properties. Staff presented policy considerations to the City Council at a Study Session on July 9, 2019, and offered to seek community input during the process of ordinance formulation.

On August 28, 2019 the Planning Commission conducted a study session/ community workshop regarding this matter and reviewed a preliminary draft ordinance. Numerous comments regarding the preliminary draft ordinance were provided by the Planning Commission, the public at the meeting and by the public in the subsequent days. Staff has reviewed in detail all the comments received and responded (Attachment No. 1). A number of the comments have been incorporated into the current draft now before the Planning Commission for consideration.

The proposed ordinance amends BPMC Chapter 19 Zoning Ordinance allowing and regulating short term rentals.

Based partly on comments received, as well as, additional research conducted by staff two draft ordinances (Option 1 and Option 2) have been prepared (Attachments 4 and 5). Draft ordinance Option 1 limits STRs to property owner's primary home and does not allow whole home rentals. At the request of the community staff has included a draft ordinance Option 2 which allows for whole home rentals. Key features of the draft ordinances include the following:

1. Three year permit requirements
2. In draft ordinance Option No. 1 STRs must be hosted by the residential property owner and provide proof that the property is their primary residence. Draft ordinance Option No. 2 allows for a person to own one STR in the City, rent the whole home and not own the property as their primary residence.
3. Operating regulations addressing occupancy, noise, parking, trash
4. Separation requirement of 300 ft.
5. Annual inspections for compliance with Building and Fire Codes, including pool and spa safety requirements.
6. Public notice prior to permit issuance, and upon issuance.
7. Payment of Transient Occupancy Taxes (TOT) at the same rate as hotels.
8. Permit revocation process

The Resolution recommending approval of Zoning Text Amendment No. C19-2 is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations, sections 15060, subdivision (c)(2) and (c)(3) on the basis that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15061, subdivision (b)(3), and 15301 because there is no possibility the activity in question may have a significant effect on the environment.

Notice of this hearing was provided as required by law.

Vice Chair Chung asked if there were any questions for staff.

Commissioner Diep asked staff to confirm that the recommendation is to continue this item to the November 13, 2019 Planning Commission meeting and no final decision will be taken tonight.

Dr. Meshram confirmed that staff is recommending continuance to the November 13, 2019 Planning Commission meeting, with no final action to be taken tonight.

Vice Chair Chung stated that this is a public hearing; if there is anyone wishing to speak on the item, please come forward and state their name and address for the record.

Liem Khiem Nguyen, 9160 Via Balboa Circle, Buena Park, talked about America being a land of opportunity and economic freedom where citizens can enjoy the privacy of their homes without harassment and discrimination. He said they ventured into the STR business so as not to become a burden to the government but laws that are too restrictive and invasive will hinder that goal. He talked about the grim suicide statistics for the past decade - 56% among American youth, which he described as the highest that it has ever been in the country's history, and said it is probably due to parents who are too busy making money

outside their homes, unable to monitor and guide their children. He said the STR business will open up economic opportunities for the young generation and ensure that their children will not become part of the crisis; reiterated what was said in the last public meeting, that they did not retaliate, did not report on certain violations observed on properties of some complaining neighbors; their property had zero property damage, personal injury, death, fire, drinking of minors, and other violations and yet received more than 50 unwarranted inspections, more than 100 letters, and 21 collection letters in one day, giving staff the perception that they are the "black sheep." Mr. Nguyen said they look forward to working with Planning and Building staff as long as they do not give his family a hard time.

Pearl Nguyen, 9160 Via Balboa Circle, Buena Park, introduced herself as the owner of the STR property on Via Balboa, a legal Vietnamese immigrant, a U.S. citizen, mother of three young home-schooled children, and a new resident of Buena Park. She said she opposes D2 and 6 in the proposed ordinance because these will give her neighbors the power to complain even without sufficient evidence of noise, parking, or trash issues. These items will open a Pandora's box for covert discrimination and harassment from neighbors who complain of "strangers coming in and out of her house," described by Ms. Nguyen as "guests who are actually minorities." She talked about certain proposed measures that, according to her, violate private property rights; she said neighbors do not have the right to dictate what she can and cannot do; if she is not allowed to park on her driveway, long term renters should also not be allowed to do so. She said she regrets giving notice about her STR property to one neighbor who used that notice against her, in collaboration with two other "Caucasian" neighbors, which started off the 50 complaints on her property, the nature of which are common in other homes; she felt that her family was targeted; if she is unable to use her air conditioning unit because the sound is above Orange County standard, how will the occupants of her home survive in the summer? That will be a health hazard to heat-sensitive renters. She explained that disallowing the use of the side doors was triggered by a complaint from her neighbor and is unreasonable; the more information the neighbors are given, the more they will use that information to cause pain and suffering to her family, as was the case last year. She explained that if the 100 STR properties in the City received that many complaints, it would be a waste of City resources. Ms. Nguyen also spoke about the requirement to use the garage for parking, asked that the City be practical - most garages are used for storage, she sees her neighbors parking their cars on their driveway; she opposes that she is not allowed to convert her garage to ADU (Accessory Dwelling Unit) so her parents can live with her, said it will make housing more affordable to extended families.

Brian Nguyen, a resident of Buena Park, spoke in support of whole home rental, Option 2. He stated the difference between long term rentals and whole home STRs - owners of long term rentals are not on site and therefore unable to monitor problems; they cannot readily evict tenants (there is a process to the eviction), leaving neighbors to deal with the issues which, if left unresolved, will lower property values in the neighborhood; whole home STR hosts can easily evict problematic tenants; have an incentive to regularly upkeep their properties in order to ensure continuous flow of renters; and can monitor their short term rental property via video and noise monitoring devices

Cassandra Elliott pointed out that Option 3, referred to by Dr. Meshram, was not posted to the website. She said the required draft floor plan of the entire STR property, not just the rental unit, would pose privacy issues if it becomes public information when someone wants to pull a permit; spoke about her concerns about the City dictating the use of a garage; said the two-week notification timing to conduct an annual inspection is not enough time to ensure that the unit/s will be available for inspection as there could be renters at that time;

explained her concerns about notification to neighbors within 300 ft. radius - that would "pit neighbors against neighbors," said notification to adjacent neighbors would be sufficient; the requirement for guests to use the front entrance only is overreaching, the noise ordinance should take care of the matter; talked about the challenge it would pose to Code Enforcement officers when they receive a report about someone entering through the side door at 2:00 a.m. when it is difficult to determine if the person entering was a renter or a property owner; said the guest registration driver's license requirement which hotels impose is not fair if submitted to the City because of privacy rights; asked for the types of projects that require the 300 ft radius notification; referred to the Code Enforcement statistical analysis requested by a Planning Commissioner and said she noted that the case notes stopped in June; said she would like to know why and how an analysis can be conducted if the notes stopped in June.

Dennis Heroux said he has been a resident at 9201 Via Balboa Circle for over 40 years; discussed Option 2 - said it is bad enough that the City is drafting regulations for owner-occupied STRs, but absentee-owner STR rentals should not even be a consideration; said it does not help even if, as stated in a previous meeting, the owner is ten minutes away from the STR because a lot of things can happen in ten minutes - if the owner is out of town, on vacation, at a sporting event, or out to dinner, the neighbors will have to deal with the situation; by authorizing Option 2, the City will be allowing motel-type operations in residential areas, which is not what people had in mind when they purchased their homes in Buena Park. Mr. Heroux strongly urged the Planning Commission to strike out Option 2 in its entirety. He said he agrees that only the front entrance should be used during the quiet hours so as not to disturb the adjoining neighbors; emphasized that owners should reside in their STR properties - if someone wants to purchase a property with the sole purpose of renting it out with absentee owner, it should be a long term rental; people who buy homes in Buena Park do not expect to live next door to a motel type operation; said he did not think any of the Planning Commissioners would want to live in a neighborhood like that.

Nahiam Tahn, Hidalgo Street, Buena Park, CA 90621, said he is concerned that the proposed 300 ft. radius notification is an invasion of privacy and could result in undue discrimination; Fair Housing does not require this for long term rentals so why should this be required for short term rental - there should be a standard. He urged the Planning Commission to consider how the required monthly remittance of the Transient Occupancy Tax (TOT) will impact any short term rental that uses a platform - there is an option for short term rental hosts using the platform to add TOT on top of the normal fee and required rent; they should be able to utilize existing methods by short term rental platforms so the TOT can be easily collected using the platforms.

Danh Hong, 3521 W. Kent Avenue, Santa Ana, referred to the statement on the staff report that says, "Currently, STRs are not explicitly permitted by the Zoning Ordinance and are therefore prohibited," and asked how a law that is not explicit or not clear can become a law. He noted the numerous Code Enforcement violations on some STR properties, some citations sent on a daily basis, and costing the owners huge amounts of money. He emphasized that STR owners are in the business because they need the money to pay their mortgage, medical bills, and other necessities. Mr. Hong also spoke about equal protection rights under the Fourteenth Amendment and the freedom of speech under the First Amendment.

Debra Leazenby thanked the Planning Commission and staff for all the effort and time they devoted to come up with the proposed ordinance which she described as reasonable. She

said she is concerned about the proposed 300 ft. radius notification requirement; she is not building a hotel, why she should ask her neighbors' permission or notify them that she is renting out her home or a room in her house? Regarding the requirement that guests use the main entrance during quiet hours, she said that if the intent is to maintain silence during those hours, a sign saying "Please be mindful..." would suffice; guests should not be forced to use the main entrance only. She said she has been in the multifamily rental industry for 33 years and described herself as an expert in Fair Housing, have conducted training for 15 out of the last 20 years in Fair Housing; she is aware of what can and cannot be done, and stated that what is good for one is good for all. She asked for fairness, and said consistency is the buzz word in Fair Housing.

There being no one else wishing to speak on the matter, Vice Chair Chung asked if the Planning Commissioners had any comments/questions.

Commissioner Diep asked for clarification on the statement, on page 141 of the agenda packet, which states that, "Short-term rental host/authorized agent shall be responsible for informing their renters of all relevant City codes."

Dr. Meshram said that statement will be taken out.

Mr. Rosen added that there will possibly be clarification and/or revision on that statement.

Commissioner Diep recommended that the prohibition of fireworks, except on the 4th of July, be clearly stated in the house rules under the proposed ordinance.

Commissioner Diep explained, and Dr. Meshram confirmed, that the 300 ft. radius notification is required because the property will be used for business; that the notification is required for businesses that go through a Conditional Use Permit (CUP) process. Commissioner Diep added that there are certain projects that require a 500 ft. radius notification.

Dr. Meshram explained that other entitlements such as development agreements, or proposals for guest houses in single family homes require such notification; ADU proposals that do not meet the criteria for ministerial approval go through the CUP process which requires a 300 ft. radius notification.

Mr. Rosen said it is staff's perspective to require the 300 ft. radius notification on all STRs because of the fundamental change in land use.

Commissioner Diep asked who is responsible for sending out the 300 ft. radius notification on STRs.

Dr. Meshram said the City will prepare and disseminate the notification.

Commissioner Diep asked why the maximum number of occupancy was removed from the proposed ordinance. She said there is supposed to be some sort of formula based on number of rooms per approximate square footage, as in commercial properties or in hotels with maximum occupancy per room. She said she is concerned that without a maximum number of occupants, STRs could turn into rental party homes.

Dr. Meshram explained that the removal was prompted by feedback from the community.

Mr. Rosen clarified that the maximum number of people will be determined during the permit process when areas in the house will be identified as well as fire exits.

Commissioner Capelle commented that as in group home proposals, the 300 ft. radius notification is required to let the neighbors know about the change of use in the property. She said it would be beneficial for all to know the wordings in the proposed notification, such as what the recipient of the notice is directed to do. Commissioner Capelle said it is understandable to require a driver's license from hotel guests and renters, with the info to be kept in strict confidence unless there is a reasonable basis to turn over the information. She said she would be interested to know at the next meeting what the City's intent is in wanting that information. On the requirement for guests to use the main entrance during quiet hours, Commissioner Capelle commented that it would be something she would expect of her house guests; however, although noise abatement is a fair one to address, she said she is not sure if such requirement will accomplish that.

Commissioner Diep discussed housing affordability and the housing crisis in California; the idea of converting single family homes, which are intended to be owner-occupied vs. multi-family homes which are typically rental homes; taking a whole home from a single-family home and converting it to a short term rental would remove that from the housing stock in Buena Park, meaning someone who wants to live in Buena Park on a long term basis may not be able to do so; looking at 1.34 million homes assigned to the region in Southern California, staff will have to find sites to locate at least a couple of thousand new housing units in the City; the housing stock that we have is finite, we need to look for more; the idea of owning a home and living in Buena Park on a long term basis is something that we have to consider in Option 2. Commissioner Diep commended staff on the tremendous job of working with the public to compile the information and recommending continuance to get more information and feedback. She said that at this point, she is leaning towards Option 1 but more information about Option 2 at the next meeting will be helpful.

Mr. Rosen said that staff is also concerned about the removal of long term housing from the housing stock. He said one suggestion was discussed in one of the past hearings to cap the number of total units in the City as a percentage of the existing housing stock; more information can be provided at the next meeting – the options may be a different percentage for wholehome rental vs owner-occupied or maybe no percentage for owner-occupied but with percentage on wholehome rental.

Commissioner Diep said she is interested in the second one – if you are supplementing your own income and living in it; turning the whole unit into STR is different providing someone with a single family unit large enough to rent on a long term basis vs someone who will rent to live/work/play in the City.

Mr. Lam said the Governor of the State of California signed a legislation overturning a lot of ADU ordinances; there is a provision that addresses the STR aspects of ADUs and gives the City the authority to prohibit them.

Vice Chair Chung advised that the item requires a Minute Action to approve continuance, as recommended by staff, to the Planning Commission meeting of November 13, 2019.

Commissioner Capelle moved, and Commissioner Diep seconded, the motion to continue this item to the Planning Commission meeting of November 13, 2019.

The MOTION CARRIED unanimously.

AYES:	5	COMMISSIONERS:	Capelle, Diep, Chung, Desai, Schoales
NOES:	0	COMMISSIONER:	
ABSENT:	2	COMMISSIONER:	Barstow, McGuire
ABSTAIN:	0	COMMISSIONERS:	

ORAL COMMUNICATIONS:

None

AGENDA FORECAST:

Mr. Woods said the continued item from tonight's meeting is the only item so far on the November 13, 2019 Planning Commission meeting agenda.

STAFF REPORTS:

Mr. Rosen and Dr. Meshram discussed the Meet on Beach (MOB) event happening on November 17, 2019, from 10:00 a.m. to 2:00 p.m. along Beach Blvd, beginning at Orange in Anaheim to La Palma in Buena Park. Mr. Rosen acknowledged the commendable job that Dr. Meshram, project manager, has undertaken on the Meet on Beach project.

COMMISSION REPORTS:

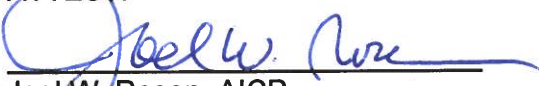
Commissioners Capelle and Desai thanked City Council and the City Manager for having given them the opportunity to participate in another educational conference - the Planning Officials Forum at the Nixon Library.

ADJOURNMENT: At 8:25 p.m., Vice Chair Chung adjourned to the Planning Commission meeting on Wednesday, November 13, 2019, in the City Council Chamber.



 Jae Joon Chung
 Vice Chair

ATTEST:



 Joel W. Rosen, AICP
 Secretary