

MEMORANDUM

Planning Department



DATE: December 16, 2021

TO: Mayor and Council

THROUGH: Steve McHarris, City Manager

FROM: Ned Thomas, Planning Director

SUBJECT: Short Term Rental Pilot Program, Enforcement Mechanisms, and Revenue Generation

This Information Memo provides an update on the City's Short Term Rental Pilot Program and includes information about proposed enforcement mechanisms.

Background

On March 3, 2020, the Milpitas City Council adopted [Ordinance](#) 38.835 to regulate short-term rentals (STRs) within the City of Milpitas. The new Ordinance established a Short-term Rental pilot program to inform STR operators about the new regulations and provide a simple, straightforward process to bring them into conformance. The pilot program included a fee as well as an amnesty period of six (6) months after the effective date of the Ordinance to allow existing STRs to come into conformance with the new operating standards, registration requirements, and record-keeping obligations.

Status Update on STR Pilot Program Implementation

The Planning Department has dedicated one staff member to set up and monitor the STR Pilot Program, and others have assisted as needed. To date, the following efforts have been made to identify existing STR operators and communicate the program's rules and regulations:

- The City has engaged the services of Host Compliance to identify all STRs currently operating in Milpitas and send initial information about the program to each operator.
- Information about the program has been shared with the community in a variety of ways including a press release issued on May 19, 2021, to notify the community of the official launch of the program; establishment of a one-stop resource web page for STRs at the program's launch; and an online workshop in July 2021 to further promote the new STR pilot program. The workshop was publicized on the city's website and social media platforms, and a public notice was posted in the Milpitas Beat on June 4, 2021.
- Planning staff has taken several steps to notify STR operators including sent a first Courtesy Notice to all STR operators in the City which provided 60 days to come into compliance as well as all necessary links and detailed instructions for STR operators to register with the City, make regular TOT payments, obtain the required business license. The notice was delivered to 31 identified rental units on July 29, 2021.
- A follow-up first Notice of Zoning Code Violation was then sent on October 13, 2021. This formal notice informed operators that they must immediately discontinue online advertising and/or renting of their STR until they obtained the required STR Permit and business license. As of November 29, 2021, the Planning Department has received and approved three (3) Permits and Business Licenses for STRs. These results are disappointing given the significant amount of time and effort made by City staff to promote the new program.

Ongoing Actions to Implement the Pilot Program

The City will continue its contract with Host Compliance to identify and monitor STRs operating in Milpitas. On a rolling basis, the Planning Department will continue to notify non-compliant STR operators of their obligations under the City's STR Ordinance. To date, 31 non-compliant STRs have been identified by Host Compliance, which translates into a total of approximately \$19,344 in unrecovered revenue intended to support the STR pilot program. This total includes \$15,128 in Planning Permit fees + \$4,216 in Business Licensing fees. Host Compliance has also identified 38 additional STRs within Milpitas, for which it has a general locations and images of the rental but has not yet matched with an APN or mailing address. These additional 38 STRs would account for an estimated \$23,712 in potential fee revenue.

Voluntary TOT Collection Agreement with Airbnb

On March 1, 2020, the City of Milpitas entered into a voluntary TOT collection agreement with Airbnb to facilitate the reporting, collection, and remittance of the applicable taxes by STR operators. The voluntary agreement does not include STRs using other rental platform, such as VRBO or TurnKey. etc., and it does not include the collection of any City fees for permits or businesses licenses.

The following table summarizes total TOT collected by the City through the voluntary agreement with Airbnb:

Transient Occupancy Tax collected on STRs through the City's Agreement with AirBnB (Fund 100 Object 3175)		
FY 2019-20	FY2020-21	FY2021-22
Actual	Actual	Actual July 30, 2021 to date
\$35,920	\$76,379	\$30,090

*Data source Tableau Variance Detail

Next Steps

Based on the program implementation thus far staff will be proceeding with additional progressive enforcement actions to address zoning code violations related to the STR program and to ensure compliance by STR operators, in accordance with [MMC XI-10-63.07](#). A phased approach as noted below will be used, with the end goal of having an effective and safe STR program in Milpitas.

- The Planning Department and Code Enforcement would issue a First Notice to Abate and provide 30 days for the STR operator to come into compliance with the requirements of the City's STR Ordinance.
- After 30 days, if compliance has not been reached, the STR operator in violation could be assessed an initial fine of \$100 for the first violation and escalate up to \$500 according to [MMC I-21-1.03 and 04](#).
- If the STR operators are still not in compliance, additional enforcement actions could include an Administrative Hearing on Abatement that results in an assessment and lien on the property to recover fines.