

DRAFT CODE CONCEPTS

STR as “Home Occupation”

Based on the above feedback from City Council, staff recommends classifying STRs as Home Occupations as described below. This likely would keep the number of STRs low and minimize neighborhood impacts. The City would have to collect information about each rental that it does not collect for other types of home occupations for collection of transient lodging taxes, but other than that, enforcement would be the same as for other home businesses. As of January 29, 2019, the City has 577 home occupations with active business licenses, and the top 10 types of home businesses are:

Interior design services	40
Administrative management consulting services	34
Professional, Scientific, and Technical Services (General)	29
Other Services (except Public Administration) (General)	25
Housing, single-family, construction general contractors	22
Business management consulting services	19
Manufacturing (General)	15
Marketing consulting services	15
Administrative management services	12
Centralized administrative offices	12

Although STRs are not similar to any other type of home occupation, the approach is recommended based on the idea that STR hosts who reside at a property are more likely to have higher standards for renter-conduct (noise, parking, etc.) than would an absentee owner or commercial property manager, and therefore would be more conscientious about protecting neighborhood livability. “Reside” would have to be defined for purposes of STRs, because unlike other types of home occupations (where the resident works at home) a STR property could be owner-occupied but have a third party host unless otherwise prohibited by the City.

Proponents contend the activity is self-policing because hosts and renters “review” one another and the comments are posted online. While it is true, the market penalizes those who do not adhere to high standards of hospitality, safety, etc., there is greater assurance of quality control for neighbors where residents are on-site or in an adjacent dwelling on the same lot.

It has also been suggested that rental platforms (Airbnb, VRBO, etc.) can delist rentals that do not comply with their rules. However, a city cannot delegate enforcement (to protect public safety and welfare) to private enterprises. Proponents also say the difficulties that some communities have had in regulating STRs are due to a high volume of tourists and a high rate of absentee homeowners in those communities, which Lake Oswego does not experience. If regulated as home occupations, they say, STRs can peacefully coexist with other residences. We agree, and that is why we recommend the Home Occupation approach, or Social Model.

Home Occupation Regulations

Home Occupations are defined in the CDC as “a lawful use conducted in a residential zone in or on the premises of a dwelling unit, said use being **secondary to the use of the dwelling** for dwelling purposes.” [Emphasis added]

Home Occupations are allowed as an accessory use in all residential zones; no permit other than a business license is required to operate one. The use requires a valid business license, but no inspection is required by the City; if STR was an allowed type of home occupation, under current regulations, no inspection would be required unless a remodel was proposed that required a building permit. The specific standards for home occupations, with commentary, follow (LOC 50.03.004.1.b.ii).

Home Occupation

A home occupation may be conducted where allowed by other provisions of this Code if the following conditions are continuously complied with:

- (1) The use does not alter the residential character of the neighborhood nor infringe upon the right of residents in the vicinity to the peaceful enjoyment of the neighborhood.

Comment: The very nature of a STR is that renters reside on the property albeit for a very short time. Therefore, the term “residential character” may need clarification for purposes of regulating STRs. For example, the City could require that a primary resident be present when the property is used as a STR, and if a STR becomes a public nuisance (due to noise, garbage, storage, or other issues) or violates other city codes it could also be found in violation of the “residential character” standard. A violation of “peaceful enjoyment” would be the same as for any home occupation including STRs.

- (2) A current and valid business license is maintained.²
- (3) No employees other than family members who reside at the dwelling.

Comment: The Community Development Code definition of Family is, “An individual or two or more persons related by blood, marriage, legal adoption, or associated by guardianship, conservatorship or a foster care relationship, or a group of not more than five persons not so related or associated living together in a dwelling unit as a single housekeeping unit.” (LOC 50.10.003)

- (4) No outside storage of goods or materials other than vegetation.

²Requirements for transient lodging taxes are found in LOC 24.02 Transient Lodging Tax.

- (5) No more than 25% of the aggregate floor area** on the lot is devoted to nonresidential use; an accessory structure may be used provided the provisions of this subsection are met.

Comment: Guidance would be needed to describe how the total floor area of a STR is determined, or this Home Occupation standard should not apply to STRs.

- (6) Marijuana facilities are prohibited.**

Comment: Ord. [2689](#) bans all marijuana facilities in the City, and the voters approved continuation of the ban on Nov. 8, 2016.

Pros: Existing home occupation standards address the “residential character of the neighborhood” and “the right of residents to the peaceful enjoyment of the neighborhood.” As noted above, the City could require that a primary resident be present when the property is used as a STR, and where a STR becomes a public nuisance (due to noise, garbage, storage, or other issues) or violates other city codes it could also be found in violation of the “residential character” standard. A violation of “peaceful enjoyment” would be the same as for any home occupation including STRs.

The home occupation standards’ other requirements assure that the residence is owner- or family member- occupied and has no outside employees.

Additional requirements such as parking, number of guests, or limits on nightly rentals could be added, though enforcement of some of these standards would be difficult and largely on the honor system.

Transient lodging taxes and maintenance of contact information, respectively, are already codified in LOC 20.24 Transient Lodging Tax, and LOC 20 Licenses. These non-land use regulations would be reviewed and amended, as necessary, as CDC changes come to City Council for adoption.

Recent amendments to the System Development Charge regulations providing a fee exception for Accessory Dwelling Units excludes STRs from the fee exemption. (Ordinance 2810, adopted December 4, 2018)

This approach does not preclude HOAs from restricting STRs.

Cons: The “residential character” and “peaceful enjoyment” home occupation standards cited above are discretionary, which can lead to disagreement over their interpretation. However, this approach has served Lake Oswego well.

This approach only works where a portion of a house, a guesthouse, or an accessory dwelling unit is rented, because the code limits home occupations to 25% of the total floor area on the lot. As noted above, guidance would be needed to describe how the total floor area of a STR is determined, or this Home Occupation standard should not apply to STRs.

OPTIONS

If the Commission finds that STRs should be allowed more broadly than home occupations (exceed 25% floor area, or no resident on premises) and the standards for home occupations are insufficient to control the land use impacts of STRs, the Commission could consider adding the following regulations.

- **Parking** on-site based on number of bedrooms or guests; this would be verified prior to issuance of a business license and the City could check listings if there were a complaint.
- **Contact information** registry posted online with Business License; this would be easy to implement, as the Finance Department already makes business license information available online.
- **No commercial events** such as weddings, cooking classes, etc. This would be enforced similar to enforcement of the home occupation standards.
- **Limit number of bookings** annually. This would be difficult to enforce other than on the honor system (self-certification).
- **Limit occupancy** based on number of bedrooms, similar to long-term rentals under landlord-tenant laws. This would be difficult to enforce other than on the honor system (self-certification).
- **Require safety inspections.**³ This is not a land use regulation; it would likely fall under the purview of the Building Department and would have a budgetary impact. The City of Portland's experience with STR inspections is that requiring them drove STRs underground, which created additional enforcement issues.

³ Lake Oswego Fire Marshal, Gert Zoutendijk, notes, that for single-family and duplex dwelling structures, Portland will verify that each bedroom to be rented to overnight guests meets the building code requirements for a sleeping room at the time it is created or converted, has a smoke detector that is interconnected with a smoke detector in an adjacent hallway, common area, or immediate vicinity of sleeping rooms and is located on a floor that has a functioning carbon monoxide alarm. Carbon monoxide alarms shall be located in each bedroom or within 15 feet outside of each bedroom door. For multi-dwelling structures, the property owner or their authorized agent must self-certify that the bedrooms comply with the interconnected smoke detector and carbon monoxide detector requirements.

- **Check-in or “sunset”** after a certain number of years to review regulations with the Commission and Council. This is easy to require but it creates uncertainty for STR operators, which may result in additional enforcement issues.

Other ideas that the Commission has not previously discussed include allowing STRs that exceed Home Occupation standards only with approval of a Conditional Use Permit (CUP), and/or establishing a cap on the number of STRs permitted citywide. If either option were proposed, it would be necessary to draft additional code provisions.

The existing CUP approval criteria follows:

LOC 50.07.005

3. AUTHORIZATION TO PERMIT OR DENY CONDITIONAL USES

- a. An application for a conditional use shall be allowed if:
- i. The requirements of the zone are met; and
 - ii. Special conditions found in LOC 50.03.003.3, 50.03.003.4.a through 50.03.003.4.c, 50.03.003.5.a, 50.03.003.5.c, 50.03.003.5.e through 50.03.003.5.f, 50.03.003.5.h, 50.03.003.6.a and 50.03.003.6.p.i, if applicable, are met; and
- Comment:** None of the special conditions listed above apply to STRs, though STR-specific conditions such as those identified on page 5 could be added to Section 50.03.003.
- iii. The site is physically capable of accommodating the proposed use; and
 - iv. The functional characteristics of the proposed use are such that it can be made to be reasonably compatible with uses in its vicinity.
- b. In permitting a new conditional use, or the modification of an existing conditional use, the hearing body, or the City Manager in the case of a minor modification, may impose conditions which are suitable and necessary to assure compatibility of the proposed use with other uses in the vicinity. These conditions may include, but are not limited to:
- i. Limiting the manner in which the use is conducted, by restricting the time an activity may take place and by minimizing such environmental effects as noise, vibration, air pollution, glare and odor.
 - ii. Establishing a special yard, setback, lot area or other lot dimension.
 - iii. Limiting the height, size or location of a building or other structure.
 - iv. Designating the size, number, location and design of vehicle access points.
 - v. Increasing roadway widths, requiring street dedication, and/or requiring improvements within the street right-of-way.
 - vi. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area.

- vii. Limiting or otherwise designating the number, size, location, height and lighting of signs.
- viii. Limiting the location and intensity of outdoor lighting, requiring its shielding, or both.
- ix. Requiring berming, screening or landscaping and designating standards for its installation and maintenance.
- x. Designating the size, height, location and materials for fences.
- xi. Protecting and preserving existing trees, soils, vegetation, water resources, wildlife habitat or other significant natural resources.
- xii. On- and off-site public improvements.

The Development Review Commission reviews CUP applications in a public hearing following the Major Development procedure in LOC 50.07.003.15.⁴

CONCLUSION

Over the past two years, there have been an estimated 30-80 short-term rentals operating illegally in Lake Oswego at any one time, with the numbers fluctuating seasonally but gradually declining. During the same timeframe, the Planning Department has responded to 10 STR complaints.

By comparison, since March of this year, out of approximately one thousands complaints relating to noise, parking, and suspicious persons that the Police Department received, only one was associated with a STR property and it was not possible to attribute it to the use of the property as a STR. On the other hand, if STRs are made legal the number of rentals could grow and there may be unintended consequences; hence, the above options.

RECOMMENDATION

Provide direction to staff for preparing draft code amendments for STRs focusing on the Social Model that is preferred by a majority of City Council.

This staff memo and past meeting materials can be found by visiting the project webpage using this link:

<https://www.ci.oswego.or.us/all-projects>
(Under Search enter LU 18-0034 and press Enter)

⁴ The current application fee for CUPs is \$5,814. A pre-application conference and neighborhood meeting are also required.