REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: MARCH 12, 2019

TITLE: REVIEW OF ENFORCEMENT STRATEGY FOR BOARDING HOUSES, AND SHORT-TERM RENTALS, AND CODE AMENDMENT TO CLARIFY THE DEFINITION OF “BOARDING HOUSE”

RECOMMENDED ACTION

1. Receive staff report.
2. Re-open the public hearing, receive public input.
3. Close the public hearing.
4. City Council comments and questions.
5. Provide feedback and direction on strategy for enforcement of boarding houses, short-term rentals, and on-street parking.
6. Introduce for first reading and read by title only – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, APPROVING AN AMENDMENT (ZONE CHANGE 00765178-PZC) TO SECTION 1-2-1 OF THE CITY’S ZONING ORDINANCE RELATED TO THE DEFINITION OF A “BOARDING HOUSE”

EXECUTIVE SUMMARY

In response to increasing resident complaints and concerns regarding both boarding houses and short-term rentals, staff has developed a proposed proactive strategy for identifying code violations and a new set of tools for addressing the growing concerns. This strategy includes the engagement of a third party consultant to both search the internet for evidence of active listings within the City, and assist in issuing notices and citations for violations. The recent proliferation of boarding houses and short-term rentals in Irvine has resulted in an unsustainable strain on Code Enforcement and City Attorney resources. This proposed change to a proactive enforcement strategy and engagement of third party expertise will allow staff to better address the spread of these businesses in residential neighborhoods and make the most efficient use of City Code Enforcement resources. Staff is seeking feedback from the City Council on the proactive approach, and on options to address the related matter of overcrowded on-street parking in residential neighborhoods.

Incorporating contemporary best practices in the City’s Municipal Code and Zoning Ordinance is also vital to the enforcement of restrictions on these types of uses. The attached amendment to the Zoning Ordinance definition of “boarding houses” is intended
to clarify the City's existing regulations for these properties, improve Code Enforcement's ability to enforce boarding house regulations, and preserve neighborhood character. The recommendation will add a requirement that individuals living together in residential properties be a "single housekeeping unit." This simply means adults living together must have a relationship beyond mere cohabitation. With this language added to the City's boarding house definition, Code Enforcement will have an additional tool for the investigation of illegal boarding houses.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

At the Planning Commission (Commission) meeting on November 15, 2018, the Commission unanimously approved, with all members present, the proposed Zoning Ordinance amendment modifying the definition of "boarding houses." At this meeting, seven residents spoke about the negative impacts that illegal boarding houses and short-term rentals are having in their neighborhoods and asked for stricter enforcement by the City against these violations. The Commission asked for the City Council to be advised of its recommendation that Code Enforcement take a more aggressive, proactive approach to enforcement of boarding houses and short-term rentals.

ANALYSIS

Overview

The current City of Irvine Zoning Ordinance regulates boarding houses and short-term rentals. Under the existing regulations, "boarding houses" are generally defined as homes in which two or more tenants on separate leases rent separate rooms and only common areas (such as the kitchen) are accessible to all occupants. Last year, in response to changes in state law, the City amended its definition of "boarding houses" from a standard that was based on the number of occupants in residential properties to a standard based on the number of separate leases. This code update also reaffirmed the City's prohibition of boarding houses in all residential zones unless permitted under a Conditional Use Permit.

A "short-term rental" is generally defined as a residential tenancy of less than 31 consecutive days, commonly transacted through online platforms such as Airbnb and VRBO. This type of rental can be for an entire home, a single room, or a bed. The City recently updated the Zoning Ordinance to clarify the definition and reaffirm the City's existing prohibition of short-term rentals in all residential zones.

Boarding houses and short-term rentals in residential zones often generate complaints to Code Enforcement for lack of street parking, excessive noise, high traffic volume, trash and debris, public disturbance, and general concerns for safety. The City has received a growing number of complaints from residents regarding both boarding houses and short-term rentals, and staff has encountered challenges in its efforts to effectively investigate and enforce the code in these cases.
Proactive Enforcement Strategy

As with most Code Enforcement cases, suspected boarding houses and short-term rentals are investigated and enforced through a reactive (complaint-based) approach. Generally, neighbors who are adversely affected contact the City and Code Enforcement responds with a comprehensive, education-based approach to gain compliance from the violator. This reactive enforcement strategy was deliberated by the City Council most recently in May 2016, at which time staff was instructed to take steps to make the regulations easier for the public to understand and to continue with the reactive enforcement approach.

Despite the 2017 code updates, which clarified the City’s regulations regarding boarding houses and short-term rentals, these business uses have continued to proliferate in residential neighborhoods throughout the City. Due largely to the growing sharing economy and popular online platforms such as Airbnb and VRBO, staff has seen an increase in complaints. Over the past three years, complaints to Code Enforcement related to boarding houses and short-term rentals have increased by over 50 percent (from 97 in 2015 to 146 in 2018) and we now estimate there are more than 1,300 short-term rentals in Irvine.

In addition to the increased number of cases, the City’s ability to gather evidence to verify violations of these regulations is proving to be increasingly difficult and resource intensive. Online platforms are eliminating property addresses from advertisements and skewing pin placements on maps to hide the true location of these properties. Operators of these businesses have learned similar tactics with their ads to disguise the true location of the properties. Even when the location of a short-term rental is known, many operators are coaching tenants to refuse to speak with Code Enforcement investigators.

To assist cities with this growing challenge, businesses have emerged with the technological capacity to search the internet for evidence of short-term rentals. These companies search beyond the online platform public interface and obtain legally enforceable evidence of both the location and the identity of the operator of these properties. In response to the growing enforcement challenges, the City recently solicited proposals from several of these companies and selected the firm Host Compliance.

The cost for services supplied by Host Compliance is $65,000 annually and is included in the Fiscal Year 2018-19 budget. Staff believes that this will be a more efficient and effective approach to the growing problem. Over the past year, the City spent approximately $187,000 in personnel costs associated with reactive enforcement of boarding house and short-term rental complaints. Staff estimates it would require two additional Code Officers working for five years to address the estimated 1,300 short-term lodging units within the City.

Staff is proposing to transition Code Enforcement to a more proactive approach to enforcing boarding house and short-term rental regulations. If approved, this effort will begin within the next several weeks with the assistance of Host Compliance conducting
a comprehensive search of the Internet for all such properties throughout the City. Then, starting with small test batches, notification letters will be sent to suspected violators. As always, staff's initial approach will be education-based and encourage voluntary compliance. Refusal to comply after three warnings will bring increasing enforcement consequences including the issuance of citations and, if necessary, legal action.

Due to the large number of these properties in the City, the initial effort to contact all suspected violators is anticipated to require six to eight months. Once this phase is completed, ongoing compliance monitoring and enforcement is expected to be significantly improved and make the most efficient use of Code Enforcement resources.

Boarding Houses Zoning Ordinance Amendment

In addition to transitioning to proactive enforcement, staff is recommending amendments to the current boarding house code language. As the code reads now, a boarding house is defined as a residence with multiple tenants on multiple lease agreements. Code Enforcement staff must secure copies of multiple lease agreements from operators or tenants of suspected boarding houses to enforce the code. Further, the regulation leaves a loophole whereby multiple tenants can be put on a single lease agreement to comply with the City's regulation. In other instances, operators and/or tenants are refusing to provide copies of their lease agreements, placing a strain on Code Enforcement and City Attorney resources to pursue enforcement through the courts.

To address the shortcoming in the existing regulations, Code Enforcement staff and the City Attorney collaborated on a revised “boarding house” definition anticipated to provide for more effective enforcement. The proposed definition adds a requirement that households be a “single housekeeping unit,” defined as the functional equivalent of a family where the residents share living expenses, chores, eat meals together, and/or are a close group with social, economic, and psychological commitments to each other.

Although state law prohibits the City from establishing a limit on the number of occupants in a residential dwelling or a requirement based on families or households as traditionally defined (e.g., blood relations), the law does allow the City to require that adults cohabitating in residential properties be "single housekeeping units" as defined above. With this language added to the City's current "boarding house" definition, Code Enforcement staff can pursue a violation without requiring a landlord to produce lease documents. Under the proposed new standard, information obtained from tenants about the nature of their relationships with each other, would in many instances, be sufficient to initiate enforcement action against the operator of a boarding house.

When this proposed code amendment was recently presented to the Planning Commission, members of the public asked if the City's regulations could be further strengthened by adding a prohibition of advertising for boarding houses. This concept has been evaluated by the City Attorney, determined to be legal, and will be incorporated into a broader code cleanup that will be ready for City Council consideration within the next three months.
On-Street Parking

Increasing resident complaints and concerns related to congested on-street parking in residential neighborhoods can be partly attributed to the recent proliferation of illegal boarding houses and short-term rentals and the corresponding influx of transient visitors. By transitioning Code Enforcement to a more proactive enforcement strategy for these cases, staff anticipates parking shortages in many neighborhoods will improve. However, another contributing factor to overcrowded on-street parking is the preference of many residents to use their garages for storage or entertainment space, and parking exclusively on the street.

Staff has reviewed this concern and identified potential solutions that other communities have established in similar circumstances, such as the following:

- **Overnight Parking Ban:** The City could establish an overnight parking ban, either on a citywide basis or in targeted areas. For example, on-street parking could be restricted between 2 to 6 a.m. Within Orange County, three cities have long-established citywide overnight parking bans. These cities provide parking permits to eligible residents and their visitors that exempt them from the overnight parking restrictions on their streets, based on proof of need for on-street parking.

- **Parking Permits:** The City could expand its existing special parking district program, making the program citywide. Under this program, on-street parking is limited to residents of a defined area within established time periods of the day or night. The City’s current program was created in response to parking concerns related to University California, Irvine, and, as of today, is only available for neighborhoods south of Interstate 405. Within Orange County, 15 cities including Irvine have special parking district programs. Each city has its own unique set of regulations. For example, Tustin requires a resident to have all garage and driveway spaces available as a condition to be eligible for an on-street parking permit, and the Tustin Police Department conducts periodic inspections to ensure compliance.

Under the current code, most of the parking regulations applicable in the City are not enforceable on privately owned streets. Some cities have adopted regulations which provide that, upon a request by the majority of residents of a given street or a Home Owners Association board, local law enforcement is authorized to enforce parking regulations in those private areas. To address the concerns of residents in Irvine that live on private streets, the City could amend its code to establish such a procedure.

Staff is seeking feedback from the City Council regarding these potential measures to address on-street parking concerns. If so directed, Community Development staff will work with Public Safety, Transportation, and Public Works staff to identify a
recommendation for future City Council consideration, including regulations that would allow for parking enforcement on privately owned streets.

ALTERNATIVES CONSIDERED

The proposed revision to the City's definition of "boarding houses" has been reviewed by the City Attorney and determined to comply with state law. The City Council may change, alter, or decline the proposed revision, as well as Code Enforcement's proposed proactive enforcement approach to investigating and enforcing suspected boarding houses and short-term rentals.

FINANCIAL IMPACT

The transition of Code Enforcement to a proactive enforcement approach includes a new anticipated annual expense of $65,000 for hiring a consultant to assist with online investigations and serve as a clearinghouse for notification letters to suspected violators. This cost is included in the current adopted FY 2018-19 Budget. A proactive approach to enforcement of boarding houses and short-term rentals without the assistance of an outside firm would require additional staff resources at an annual cost of as much as $320,000.

REPORT PREPARED BY: Steve Holtz, Manager of Neighborhood Services

ATTACHMENTS:

1. Red-line Version - Proposed Revisions to Zoning Ordinance
2. Final Version - Proposed Revisions to Zoning Ordinance
3. Ordinance No. – 19-XX Approving an Amendment (Zone Change 00765178-PZC) to Section 1-2-1 of the City's Zoning Ordinance Related to the Definition of a "Boarding House"

cc: Tim Gehrich, Deputy Director of Community Development
Kam Chitalia, Chief Building Official
Kerwin Lau, Manager of Planning Services
Cassi D. Palmer, Code Enforcement Supervisor
Bill Jacobs, Principal Planner
David Law, Principal Planner
Joel Belding, Principal Planner
Stephen Higa, Principal Planner
Section 1-2-1 Definitions:

“Boarding house” or “rooming house”: Any residence or dwelling unit, or portion(s) thereof, other than a hotel/motel, wherein:

(a) two (2) or more rooms are independently rented or there are two (2) or more of its occupants are subject to separate written or oral rental agreements, leases or subleases or combination thereof, regardless of whether or not the owner, agent or rental manager resides within the residence or dwelling unit, either written, oral, or implied; and/or

(b) the occupants do not operate as a single housekeeping unit.

For the purpose of this definition, “Boarding House” or “Rooming House” shall not include a hotel/motel, single room occupancy hotel (SRO), or any structure which provides housing for less than 31 consecutive days, and “boarding house” or “rooming house” shall not include a facility licensed by the State Department of Health Services, the State Department of Social Welfare, or the County of Orange; convalescent homes; or community care or congregate care facilities.

“Single housekeeping unit” means:

(a) two (2) or more persons related through blood, marriage, or legal adoption or joined through a judicial or administrative order of placement and guardianship; or

(b) two (2) or more unrelated adult persons (eighteen years or older) meeting all of the following:

(i) they jointly occupy and have equal access to all areas of a residence or dwelling unit; and

(ii) they live together and act as the functional equivalent of a family by, including but not limited to, sharing living expenses and chores, eating meals together, and being a close group with social, economic, and psychological commitments to each other; and

(iii) if a residence or dwelling unit is leased or subleased, the tenants are subject to a single written lease agreement with joint use and responsibility for the premises and joint-and-several liability for breach of the single written lease agreement.
Section 1-2-1 Definitions:

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(a) two (2) or more of its occupants are subject to separate rental agreements, leases, or subleases, either written, oral, or implied; and/or

(b) the occupants do not operate as a single housekeeping unit.

For the purpose of this definition, “Boarding House” or “Rooming House” shall not include a hotel/motel, single room occupancy hotel (SRO), or any structure which provides housing for less than 31 consecutive days, and “boarding house” or “rooming house” shall not include a facility licensed by the State Department of Health Services, the State Department of Social Welfare, or the County of Orange; convalescent homes; or community care or congregate care facilities.

“Single housekeeping unit” means:

(a) two (2) or more persons related through blood, marriage, or legal adoption or joined through a judicial or administrative order of placement and guardianship; or

(b) two (2) or more unrelated adult persons (18 years or older) meeting all of the following:

(i) they jointly occupy and have equal access to all areas of a residence or dwelling unit; and

(ii) they live together and act as the functional equivalent of a family by, including but not limited to, sharing living expenses and chores, eating meals together, and being a close group with social, economic, and psychological commitments to each other; and

(iii) if a residence or dwelling unit is leased or subleased, the tenants are subject to a single written lease agreement with joint use and responsibility for the premises and joint-and-several liability for breach of the single written lease agreement.
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, APPROVING AN AMENDMENT (ZONE CHANGE 00765178-PZC) TO SECTION 1-2-1 OF THE CITY’S ZONING ORDINANCE RELATED TO THE DEFINITION OF A “BOARDING HOUSE”

WHEREAS, the City of Irvine has an adopted Zoning Ordinance; and

WHEREAS, the City of Irvine Community Development Department has initiated a Zone Change 00765178-PZC to modify Zoning Ordinance Section 1-2-1, Definitions, to include a revised definition of “boarding house” and to include “single housekeeping unit” as a defined term; and

WHEREAS, amending Section 1-2-1 will improve the functionality of the Zoning Ordinance by ensuring clarity for residents and property owners on the definition of a boarding house and rooming house; and

WHEREAS, Zone Change 00765178-PZC is considered a "project" as defined by the California Environmental Quality Act (CEQA); and

WHEREAS, Pursuant to Section 4 of the City of Irvine, California, Environmental Quality Act (CEQA) procedures and Article 5 of the CEQA Guidelines, it has been determined that the proposed project is covered by the General Rule Exemption [Section 15061(b)(3)], for projects where it can be seen with certainty that the activity in question will have no significant effect on the environment; and

WHEREAS, the Planning Commission of the City of Irvine has considered information presented by staff and other interested parties at a duly-noticed public hearing held on November 15, 2018, and has recommended that the City Council approve the Zoning Ordinance amendment (vote 5-0); and

WHEREAS, the City Council of the City of Irvine considered information presented by the Community Development Department at duly-noticed public hearing held on February 12, 2019.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. Pursuant to Section 4 of the City of Irvine California Environmental Quality Act (CEQA) procedures and Article 5 of the CEQA Guidelines, it has been determined that the proposed project is covered by the General Rule Exemption [Section

ATTACHMENT 3
15061(b)(3)], for projects where it can be seen with certainty that the activity in question will have no significant effect on the environment.

SECTION 3. As required per Section 2-38-7 of the City of Irvine Zoning Ordinance, the City Council makes the following findings:

A. The proposed Zone Change is consistent with the City of Irvine General Plan.

The purpose of the Zone Change is to incorporate minor “clean-up” changes to clarify the definition of a “boarding house,” including adding a new definition for “single housekeeping unit,” and to indicate a rooming house is synonymous with a boarding house. The new and revised definitions will provide for more effective enforcement. No changes to the existing zoning designations, land uses, or allowable development intensities are proposed. As such, this Zone Change is consistent with the goals and objectives of the City of Irvine General Plan.

B. The proposed Zone Change is consistent with any applicable Concept Plan.

There is no Concept Plan associated with this project.

C. The proposed Zone Change meets all the requirements set forth within Division 8 for the dedication of permanent open space through a specified phased implementation program for affected planning areas and zoning districts.

This project is not required to dedicate open space because there is no development associated with the Zone Change.

D. The proposed Zone Change is in the best interest of the public health, safety, and welfare of the community.

The Zone Change is consistent with all applicable provisions of the Zoning Ordinance and is in the best interest of the community’s health, safety, and welfare. The Zone Change is limited to incorporating minor revisions to land use definitions.

E. Based upon information available at the time of approval, adequate sewer and water lines, utilities, sewage treatment capacity, drainage facilities, police protection, fire protection/emergency medical care, vehicular circulation and school facilities will be available to serve the area affected by the proposed Zone Change when development occurs.

The proposed project does not include any specific development. The Zone Change is limited to incorporating minor revisions to land use limitations.
F. If the proposed Zone Change affects land located within the coastal zone, the proposed Zone Change will comply with the provisions of the land use plan of the certified local coastal program.

The project does not include any development within the coastal zone.

SECTION 4. That the City Clerk shall enter this Ordinance into the book of original Ordinances.

NOW, THEREFORE, Based on the above findings, the City Council of the City of Irvine DOES HEREBY APPROVE an amendment to the City’s Zoning Ordinance related to the definition of a “Boarding House,” as shown in Exhibit A.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the __________ of __________, 2019.

________________________________
MAYOR OF THE CITY OF IRVINE

ATTEST:

CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA )
COUNTY OF ORANGE ) SS
CITY OF IRVINE )

I, MOLLY MCLAUGHLIN, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing resolution was introduced for first reading on the ___ day of February, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the _______ day of ___________, 2019.

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

________________________________
CITY CLERK OF THE CITY OF IRVINE
Section 1-2-1 Definitions:

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