



County of Santa Cruz

PLANNING DEPARTMENT

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ALVIN D. JAMES, DIRECTOR

March 13, 2002

Agenda: March 19, 2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, California 95060

RE: VACATION RENTALS

Members of the Board:

On November 6, 2001, in conjunction with your Board's review of a number of recommendations by the County Administrative Officer to increase the production of affordable housing the Board directed the Planning Department, Assessor's Office and the Treasurer/Tax Collector to provide a report on the Board's authority to regulate residential property for short term kinds of commercial use. The objective was to possibly address the impacts of vacation versus owner-occupied type of residences. The following report will address whether the County has the authority to regulate the use of single family residence as vacation rentals, what some other jurisdictions are doing about this issue and the impacts that these uses have on the General Fund.

Authority to Regulate Commercial Use of Single-Family Residences

Currently, the use of single-family residences for vacation rentals is not regulated by the County, except for the collection of Transient Occupancy Tax (discussed below). County Counsel has issued a number of opinions on this matter. In 1988, County Counsel was asked whether the renting of a single-family dwelling to a family was consistent with the uses allowed in the R-1 zone district. County Counsel's opinion (Attachment 1) cites an earlier memo to the Planning Department which concluded that "as long as a home in the R-1 district is not occupied by more than one family, as 'family' is defined by our ordinance, short-term rentals of such home by a single family are not prohibited by an ordinance." County Counsel re-affirmed this conclusion in 1988, and added that the County could prohibit these uses in the R-1 district if there was a rational basis for enacting such an ordinance.

On November 6, 2001, your Board accepted a report from County Counsel regarding a number of legal questions that were raised as a part of the Board's housing workshop. One of the questions concerned the County's authority to regulate the temporary use of residences for short-term

vacation rentals. County Counsel indicated in its report (Attachment 2) that the County could regulate these short-term commercial uses in residential zone districts. In support of this opinion, County Counsel cited the ‘Carmel’ case, where a homeowner sued the City for prohibiting the use of residences for commercial lodging (of any kind). The City’s ordinance was upheld by the appellate court.

Practices in Carmel and Capitola

Staffs research has found that two cities, Carmel and Capitola, deal with the issue of vacation rentals in residential zone districts in two different ways. The City of Carmel simply prohibits the use altogether, as mentioned above. Staff has attached excerpts from the Carmel Municipal Code regarding this prohibition (Attachment 3).

The City of Capitola, on the other hand, has adopted an ordinance (Attachment 4) which regulates vacation rentals in residential zone districts through the issuance of a use permit. The intent of this ordinance is to make sure that the vacation rentals are good neighbors and don’t cause problems. The use permit issued by the City requires that specific conditions relating to the vacation rental use be met, including the establishment of a maximum number of persons allowed in the unit, the provision of adequate parking, the designation of a responsible person (to receive complaints), signage, and registration for the payment of transient occupancy tax. The permit is valid for one year, but is renewable if there is not a history of the tenant’s violating the terms of the permit. If there is such a history, the permit may not be renewed for at least one year unless there is good cause to allow the renewal.

Fiscal Issues

The County Tax Assessor assesses these properties as single-family residences and does not maintain information on the use of properties as vacation rentals. Staff discussed the issue of vacation rentals with the Treasurer/Tax Collector. The Treasurer/Tax Collector maintains a list of hotels, motels, “bed and breakfasts”, individual vacation rental property owners and vacation rental management companies that pay transient occupancy tax to the County. From that list, staff identified **448** - 504 vacation rentals in the unincorporated area of the County. The Treasurer/Tax Collector indicated his staff investigates advertised vacation rentals to collect any transient occupancy tax due the County. While the Transient occupancy tax collected solely from vacation rentals is not known, the Treasurer/Tax Collector estimated that the County General Fund receives between \$2.5 and \$3 million a year in transient occupancy tax from all short-term rentals, including vacation rentals of single-family residence as well as motels, hotels, and “bed and breakfast” establishments.

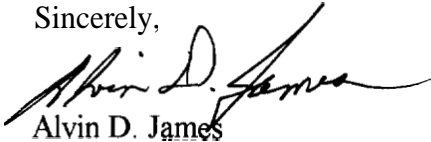
Conclusion and Recommendation

Vacation rentals of single-family residences are allowed in the residential zone districts under the current County Code, without restrictions. The County does have the authority to regulate these uses. This can be accomplished in a number of ways, ranging from prohibiting the use to

requiring conditional use permits. Any decision to regulate these types of uses must weigh the issues surrounding the impact of these uses on adjacent properties and neighborhoods with the needs of the County regarding the provision of visitor and tourist accommodations and the effects of any regulations on the collection of transient occupancy tax. Another factor to be considered, in the context of the housing needs of the County, is that these vacation rentals are residential units which have been removed from the stock of permanent housing for use as short-term rentals.

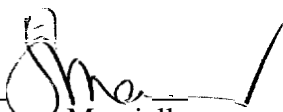
It is, therefore, RECOMMENDED that your Board accept and file this report.

Sincerely,



Alvin D. James
Planning Director

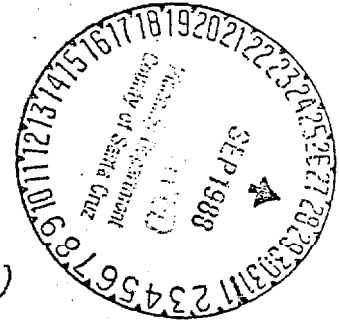
RECOMMENDED: _____


 Susan A. Mauriello
 County Administrative Officer

Attachments: 1. Memo of County Counsel, dated September **26**, 1988.
 2. Letter of County Counsel, dated October **24**, 2001.
 3. Excerpts from the Carmel Municipal Code
 4. Chapter 17.19 of the Capitola Municipal Code

cc: County Counsel
 Tax Assessor
 Treasurer/Tax Collector
 Bailey Properties, Attn: Paul Bailey
 Kendall-Potter
 Chesire Realty

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COUNTY OF SANTA CRUZ
Inter-Office Correspondence

DATE: September 26, 1988

TO: Planning Department, Attn: Bob Leggett JW

FROM: Jonathan Wittwer, Chief Deputy County Counsel

SUBJECT: Short-Term Rental of Single-Family Dwellings

You have inquired whether an owner of a single-family dwelling who rents such dwelling to another family (as defined for County Code § 13.10.700-F) is in violation of the uses allowed under the R-1 Zone District.

By Inter-Office Correspondence dated July 7, 1969, this office advised Planning that:

"...as long as a home in an R-1 district is not occupied by more than one family, as "family" is defined by our ordinance, short-term rentals of such home by a single family are not prohibited by an ordinance."

Our opinion in this regard has not changed. A single-family dwelling rented to another family is still being used as a single-family dwelling, a permitted use in the R-1 Zone District. The subsequent enactment of an ordinance establishing a Visitor Accommodations Zone District (one of the Commercial Districts) was not, so far as its purposes are stated, intended to change or limit the permitted uses in the R-1 Zone District.

Section 13.10.700-V defines Visitor Accommodations as:

"Visitor Serving Facilities for overnight or extended stay use, such as hotels, motels, horizontal hotels, inns, lodges, recreational vehicle parks, hostels, commercial camping and appurtenant uses."

The Commercial Uses Chart includes as Type A Visitor Accommodations (subject to Section 13.10.335(b)):

"Hotels, inns, pensions [boarding houses], lodging houses, 'bed and breakfast inns', motels, [and] recreational rental housing units."

Martin Jacobson, Planning
Re: Short-Term Rental of Single-Family Dwellings
September 26, 1988
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Section 13.10.335(b) establishes Visitor Accommodations Use Standards, including allowed densities, density calculations, and permit conditions. Sections 13.10.690 et seq. also regulate Visitor Accommodations. A review of all of these sections will show that the concept of Visitor Accommodations did not contemplate rental of a single-family dwelling to another family. However, it must be stated emphatically that if the rental assumes the characteristics of a "bed and breakfast" inn, a boarding house, or a lodging house, it will be considered a Visitor Accommodation.

The Transient Occupancy Tax Ordinance is not a Zoning Ordinance, but is rather a revenue ordinance. Hence any definition of "hotel" therein would not govern land use matters. The Transient Occupancy Tax would be applicable to the rental of a single-family dwelling to another family for a period of less than 30 days.

There is, of course, nothing to prevent the Board of supervisors from enacting an ordinance prohibiting the rental of single-family dwellings for periods of less than 30 days if there is a rational basis for distinguishing such a use from the usual single-family dwelling use. However, until such an amendment to the existing zoning ordinance is enacted, it is our opinion that such a short-term rental of a single-family dwelling is a permitted use in the R-1 Zone District.

JW:sf:8316:2-3

cc: Robley Levy, Supervisor
Treasurer-Tax Collector



County of Santa Cruz

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Sharon Carey-Stronck
Margaret Burks

October 24, 2001

Agenda: November 6, 2001

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: RESPONSE TO QUESTIONS RAISED DURING AFFORDABLE HOUSING WORKSHOP

Dear Members of the Board:

On October 2, 2001, your Board conducted an extensive workshop on affordable housing. At the conclusion of that workshop, your Board directed that staff respond to certain questions and issues raised during the course of that proceedings through reports that were scheduled to return on this date. The following questions concerning the County's legal authority were directed to this Office: (1) the County's authority to limit the occupancy of single family dwelling units; (2) the County's authority to impose its land use regulations on the University of California; (3) the County's authority to regulate the temporary use of residences for short-term vacation rentals; and (4) the County's authority to enact a anti-retaliatory eviction ordinance.

DISCUSSION

1. The County's authority to limit the occupancy of single family dwelling units. Generally speaking, a land use restriction which focuses on the identity of a dwelling's occupants (i.e., a biological family versus a group of unrelated individuals, or renters versus owner occupants), rather than the intensity of use to which the dwelling is put is unlawful.

See *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123; *College Area Renters and Landlords Ass'n v. City of San Diego* (1996) 43 Cal.App.4th 667.

On constitutional privacy grounds, the Supreme Court in *Adamson* struck down an ordinance which imposed a numerical limitation on the number of nonfamily-related persons who could live together in a single-family residential zone district. In *College Area Renters*, an ordinance limiting the number of adults in rented single-family housing was found to have violated equal protection principles to the extent that it distinguished between owner versus renter-occupied residences.

It is also the case that State law, in the form of the Uniform Housing Code, generally governs the establishment of occupancy standards. See *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378. While a local government may make changes to these regulations, it must follow certain procedures and determine that the changes are "...reasonably necessary because of local climatic, geological, or topographical conditions." Health and Safety Code Section 17958.7

The County Code presently defines the term "dwelling unit" without placing limitations on the number of persons that may therein reside:

A structure for human habitation providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, with the restrictions that only one kitchen or set of food preparation facilities is allowed in each dwelling unit and an interior stairway shall be provided between all stories. County Code Section 13.10.700-D (Emphasis added.)

The County Code does establish a numerical limitation

Family. One person living alone, or two or more persons related by blood or marriage or a group of not exceeding five persons (excluding servants) who need not be related by blood or marriage, living together as a single housekeeping unit, in a dwelling unit as distinguished from a group occupying a hotel, club, fraternity or sorority house. County Code Section 13.10.700-F (Emphasis added.)

Because the cited definition restricts the total number of unrelated occupants that may reside within a dwelling unit (not to exceed five), places no corresponding limit on the number of persons related by blood or marriage, it is the opinion of this Office that this provision is not legally enforceable under the ruling in *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123.

The County may continue to enforce the other provisions of the Code that do establish minimum standards for addressing particular impacts related to residential uses. For example, Section 13.10.552 establishes the standards for off-street parking required for residential uses. In addition, standards for minimum lot widths, maximum lot coverage and floor area to lot area ratios, set-backs, maximum building height and story limitations are also established to address concerns related to residential density.

2. The County's authority to impose its land use regulations on the University of California.

As a general rule, whenever the State is conducting a sovereign activity, it is not subject to local land use controls unless the state legislature consents to such regulations. *Hall v. City of Taft* (1956) 47 Cal.2d 177. The Regents of the University of California is charged with the administration of the University **and** acts as an arm of the state itself. *Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 135. The California Constitution vests the Regents of the University of California with ownership and control of all university property. California Constitution Article IX, Section 9 (a).

A county is authorized to enact ordinances which are not in conflict with general laws. California Constitution Article XI, Section 7. However, the California Constitution does not authorize municipalities to apply local zoning restrictions to state agencies (*Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 424-427), a power which may be granted only by legislative consent.

In *City of Santa Monica*, the University of California undertook a renovation project within the City of Santa Monica and **paid**, under protest, construction permit fees assessed by the City. The Regents filed a claim for damages, alleging that it was not subject to the City's construction permit fees. The trial court found for the Regents and **permanently enjoined the** City from enforcing the ordinances against the University and refunded the fees paid **plus** interest. **On** appeal, the trial court decision was affirmed.

...in view of the virtually plenary power of the Regents in the regulation of affairs relating to the university **and** the use of property owned or leased by it for educational purposes, it is not subject to municipal regulation. "When ... [the state] engages in such sovereign activities as the construction and maintenance of its buildings, . . . , it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 183 [302 P.2d 574].) Thus, the Regents in constructing improvements solely for educational purposes are exempt from local building codes and zoning regulations *Regents of University of California v. City of Santa Monica*, supra, 77 Cal.App.3d at 135-136 (Emphasis added.)

Consequently, when the University is making use of its property for purposes consistent with its educational mandate, it is not subject to local land use regulations.



3. The County's authority to regulate the temporary use of residences for short-term vacation rentals.

Under the County's police power authority, it may regulate the use of residential property for short-term commercial purposes. In the case of *Ewing v. City of Carmel-by-the-Sea*, (1991) 234 Cal.App.3d 1579, the court upheld an ordinance enacted by the defendant city which prohibited the use of residential property zoned R-1 for commercial lodging (e.g., bed and breakfast, hostel, hotel, ~~in~~ resort, or other transient lodging) for periods of less than ~~thirty~~ consecutive calendar days. A property owner challenged the ordinance claiming that it resulted in an unlawful taking of his property. The appellate court upheld the ordinance finding that the city had a legitimate governmental purpose in maintaining the residential character of its neighborhoods **and** that the ordinance was reasonably related to this purpose. The court also found that the minimal diminution of property rights caused by the ordinance was outweighed by the public interest in maintaining permanent residential areas.

4. The County's authority to enact an anti-retaliatory eviction ordinance.

It is ~~within~~ the Board's power to enact an anti-retaliation ordinance based on the County's authority to regulate matters of the public health and safety that are not in conflict with general law. *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644.

In the landlord-tenant context, Civil Code § 1942.5 provides protections against retaliatory evictions.¹ Subdivision C deals with retaliatory action against a tenant who “has lawfully organized or participated in a lessees’ association or an organization advocating lessees’ rights or has lawfully and peaceably exercised any rights under the law.” This section “provides the tenant with an affirmative cause of action against the landlord for retaliatory eviction. *WesternLand Office, Inc. v. Cervantes* (1985) 175 Cal.App.3d 724.

However, Civil Code § 1942.5 explicitly disclaims any effect to limit the power of local governments to regulate evictions. (*Ibid*) The City of Berkeley has an ordinance that protects tenants from arbitrary, discriminatory or retaliatory evictions. (Berkeley CA Ordinance § 13.76.030, See *deZerger v. Meggs* (2000) 83 Cal.App.4th 28).

IT IS THEREFORE RECOMMENDED that your Board accept this report,

Very truly yours,

DANA MCRAE, COUNTY COUNSEL

By 
RAHN GARCIA
Chief Assistant County Counsel

RECOMMENDED:

SUSAN A. MAURIELLO
County Administrative Officer

cc: County Administrative Officer
Planning Director

¹ See attached copy of Civil Code § 1942.5.

Title 17 ZONING***Chapter 17.08 GENERAL REGULATIONS**

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**Chapter 17.08
GENERAL REGULATIONS****Sections:**

- 17.08.010** Unlawful Acts.
- 17.08.015** Demolition or Relocation of Structures.
- 17.08.020** Transient Commercial Use of Residential Property for Remuneration is Prohibited.
- 17.08.030** Water Management Program – Purpose.
- 17.08.040** Water Conservation.
- 17.08.050** Allocation of Water Resources.
- 17.08.060** Effect of Allocations.
- 17.08.070** Demolition of Structures.
- 17.08.080** Conversion or Demolition of Affordable Housing.
- 17.08.100** Wireless Communications Facilities.

17.08.010 Unlawful Acts.**A. It is unlawful:**

1. To use any building, structure, improvement or premises within any of the districts for any purpose not permitted by the chapter of this title relating to the district.
2. To erect, construct, establish alter, enlarge, or move any building, structure or improvement within any of the districts which is designed, arranged or intended to be occupied or used for any purpose not permitted by the chapter of this title relating to the district.
3. To erect, construct, establish, alter, enlarge or move any building, structure or improvement or occupy any premises contrary to the regulations and limitations prescribed in this title regarding building height, building site requirements, percentage of coverage and front, side and rear yards, or to violate the terms of a use permit.
4. No land, whether in the same original ownership or not, which has been designated and used as any part of the building site required for one building shall be included in the building site for another building if the inclusion will reduce the building site or the original building to less than the minimum amount required in this title.
5. To erect, construct, establish, or move any building in any commercial zone unless such building will be so located and constructed in such a manner that all usable accesses onto the property or into such building at the property line are so located that they will be at official grade as established by City ordinance; provided, however, that in the event that adjoining City property is not at official grade when a building permit is issued, that access will be permitted at other than official grade; provided, that such access is so constructed that the property owner can readily alter the access to meet official grade without cost or damage to the City or without a major alteration to the structures on private property at any time the street and/or sidewalk are brought to official grade.

B. It is unlawful for the owner, tenant, lessee or occupant of any property to permit any of the acts described in this chapter. (Ord. 85-32 § 6, 1985; Ord. 80-23 § 5, 1980; Ord. 159 C.S. § 1, 1968; Code 1975 § 1302.9).

17.08.015 Demolition or Relocation of Structures.

The demolition or relocation of any structure used for residential or commercial purposes shall require review and approval by the Planning Commission prior to the issuance of a building permit authorizing such demolition or relocation and in accordance with CMC 17.08.070. (Ord. 93-11 § 1, 1993; Ord. 87-14 § 4, 1987).

**17.08.020 Transient Commercial Use of Residential Property for Remuneration is Prohibited.****A. Purpose. The purpose of this section is to:**

1. Preserve and enhance the character of the R-1 district.
2. Promote the public health, safety and general welfare of the City.

3. Expressly prohibit transient commercial use of residential property for remuneration, which uses are inharmonious with and injurious to the preservation of the residential character and environment of the City.

4. Implement provisions of the General Plan, and advance the purposes and objectives of CMC Title 17.

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B. Definitions.

1. Except as otherwise defined or where the context otherwise indicates, the following defined words shall have the following meaning:

a. "Person" means an individual a group of individuals, or an association, firm, partnership, corporation or other entity, public or private.

b. "Remuneration" means compensation, money, rent, or other bargained for consideration given in return for occupancy, possession or use of real property.

c. "Residential property" means any single-family dwelling unit or structure located on one or more contiguous lots of record within the R-1 land use district.

d. "Transient" means a period of time less than 30 consecutive calendar days.

e. "Transient commercial use of property" means the commercial use, by any person, of residential property for bed and breakfast, hostel, hotel, inn, lodging, motel, resort or other transient lodging uses where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession or tenancy is for less than 30 consecutive calendar days.

2. The definitions herein include the singular and plural meanings of each defined word.

C. Transient Commercial Use of Residential Property for Remuneration is Prohibited. Transient commercial use of residential property for remuneration is prohibited in the R-1 land use district, except as otherwise expressly permitted by this code.

D. Liability and Enforcement.

1. Any person acting as agent, real estate broker, real estate sales agent, property manager, reservation service or otherwise who arranges or negotiates for the use of residential property in violation of the provisions of this section is guilty of an infraction for each day in which such residential property is used, or allowed to be used, in violation of this section.

2. Any person who uses, or allows the use of, residential property in violation of the provisions of this section is guilty of an infraction for each day in which such residential property is used, or allowed to be used, in violation of this section. (Ord. 89-17 § 4, 1989; Ord. 88-24, 1988; Ord. 82-12 § 1, 1982; Ord. 81-25 § 1, 1981; Code 1975 § 1302.91).

17.08.030 Water Management Program – Purpose.

The City recognizes a need to conserve and manage its water resources to achieve adopted land use planning objectives. The water resources of the City are presently derived from a water allocation system implemented by the Monterey Peninsula Water Management District. It is the purpose and intent of this chapter to establish a water management program that:

A. Reduces unnecessary water consumption in existing and new development;

B. Provides a process for dedication of the City's limited water resources in new development;

C. Establishes a process for determining the broad land use categories to be served through allocations of existing and future water resources available to the City;

D. Implements the General Plan. (Ord. 93-11 § 1, 1993; Ord. 87-14 § 2 (Exh. A), 1987).

17.08.040 Water Conservation.

Water conservation is an integral part of the City's water management program. Water resources available to the City are limited. In some cases, water conservation can increase the effective supply and allow development that otherwise would not be possible. Water conservation in new development can reduce the demand from each project and thereby increase the number of projects that can be served with available resources. It is the intent of this section to establish uniform standards for water conservation and to provide guidance on the manner in which conserved water is to be used within the City's total water management program.

A. **Uniform Standards for Plumbing Fixtures.** The use of water-conserving plumbing fixtures shall be required for all new construction. All existing plumbing fixtures within any building that do not comply with the adopted standards for water conservation shall be replaced with complying fixtures upon issuance of any building permit authorizing substantial construction. Standards for water-conserving plumbing fixtures and the criteria for when such fixtures are required are established in Chapter 15.28 CMC.

<p>Title 17 ZONING*</p> <p>Chapter 17.24 R-1 LAND USE DISTRICT*</p>

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Chapter 17.24
R-1 LAND USE DISTRICT*

Sections:

Article I. Land Use Regulations

- 17.24.010 Purpose.
- 17.24.020 Permitted Uses.
- 17.24.030 Conditional Uses.
- 17.24.040 Prohibitions.
- 17.24.050 Lots, Parcels and Building Sites.
- 17.24.060 Regulatory Lot Mergers.
- 17.24.070 Voluntary Waiver of Subdivision Rights.
- 17.24.080 Voluntary Lot Mergers.
- 17.24.090 Floodplain Land.
- 17.24.100 Single-Family Residential Dwellings.
- 17.24.105 Accessory Structures.
- 17.24.110 Guesthouses.
- 17.24.120 On-Site Parking Requirements.
- 17.24.130 Subordinate Units.

Article II. Design Regulations

- 17.24.200 Purpose.
- 17.24.210 Objectives.
- 17.24.220 Design Guidelines.
- 17.24.230 Residential Design Review.
- 17.24.240 Definitions.
- 17.24.250 Setbacks.
- 17.24.260 Height.
- 17.24.270 Site Coverage.
- 17.24.280 Floor Area Ratio and Exterior Volume.
- 17.24.290 Table of Floor Area and Site Coverage Standards.
- 17.24.300 Fences and Walls.
- 17.24.310 Outdoor Antennas.

* Prior legislation: Ords. 85-18, 85-35, 86-3, 87-14, 87-22, 87-28, Urgency Ord. 88-22, 88-24, 89-2, 89-17, Urgency Ord. 89-20, 90-8, 90-13, 91-9, 91-10, 91-13, 91-14, 93-3, 93-4, 93-25, 95-7, 97-6, 98-8 and 98-14.

Note: All provisions in Chapter 17.24 CMC related to exterior volume (contained in CMC 17.24.080, 17.24.240 and 17.24.280) will expire on January 6, 2003, unless re-adopted by ordinance of the City Council.

Article I. Land Use Regulations

- 17.24.010 Purpose.

To provide an appropriate land area for permanent single-family residential **uses** and structures and to enhance and maintain the residential character of the City. (Ord. 2001-03 § 1, 2001).

17.24.020 Permitted Uses.

The following uses are allowed on each legal building site:

- A. Single-family residential use occupying not more than one dwelling unit;
- B. Parks, playgrounds and recreational facilities;
- C. Public schools, public libraries and municipal facilities;
- D. The growing of plants and the raising of animals not otherwise prohibited by law;
- E. Home Occupations. The use of up to two rooms in a single-family dwelling by a person residing therein as the studio of an artist, writer or musician, or by a teacher of the arts having up to two pupils under instruction at any one time. For this section, the arts shall include only the following: painting, graphics, computer graphics, music, dance, drama, sculpture, writing, photography, weaving, ceramics, needlecraft, jewelry, glass and metal crafts;
- F. One Class 1, Class 2 or Class 3 subordinate unit. (See CMC 17.04.675 and 17.24.130). (Ord. 2001-03 § 1, 2001).

17.24.030 Conditional Uses.

The Planning Commission may authorize the following with a conditional use permit:

- A. Churches and accessory buildings on existing sites established prior to December 1, 1980.
- B. Private kindergartens, nursery schools and daycare centers.
- C. Motels that (1) were in existence prior to January 1, 1967, (2) have been issued use permits, and (3) have not had such uses terminated for any reason since that date. Legal nonconforming motels located in the sphere of influence shall obtain a use permit upon annexation. (See CMC 17.46.040(L) and (M)).
- D. Public or quasi-public service uses at existing sites and all public utility uses.
- E. Plumbing fixtures including any sink, washbasin, shower or water closet in any single-family dwelling or accessory building when located in other than an authorized kitchen/dining room, bathroom, workshop or laundry room.
- F. One noncommercial guesthouse. (See CMC 17.24.110).
- G. Off-street parking areas, in existence as of January 1, 1988, and which are (1) part of a conditional use, (2) adjacent to a commercial use, or (3) provide public parking. (See CMC 17.18.240 for required findings).
- H. Senior Citizen Housing. Any City-owned building may be developed to provide senior citizen housing as defined by California Statutes. All site development requires design review. (See CMC 17.40.030).
- I. One Class 3 subordinate unit. (See CMC 17.24.130(B)(3)). (Ord. 2001-03 § 1, 2001).



17.24.040 Prohibitions.

- A. All uses not expressly permitted in this code are expressly prohibited.
- B. Timesharing projects, programs and occupancies are prohibited. Use of residential structures under a use or occupancy agreement which divides the right to use the structure on a time interval basis so that no owner with a right to use the structure under the agreement can legally register as a voter, giving the structure as the owner's or occupant's voting residence address, is prohibited unless otherwise provided for in this code. This subsection shall not apply to persons inheriting the real property where no consideration was paid for the inheritance rights.
- C. Use of single-family residential property in the R-1 land use district for commercial **use** including, but not limited to, transient commercial use for bed and breakfast, hostel, hotel, inn, lodging, motel, hotel, resort and other transient lodging uses for remuneration, is prohibited except as otherwise provided for in this code.
- D. Subordinate units not authorized by this chapter, as provided in CMC 17.24.130(B). (Ord. 2001-03 § 1, 2001).

17.24.050 Lots, Parcels and Building Sites.

Parcels not meeting the standards for legal building sites shall not be issued any building permits, other than permits for demolition, until the parcel has been brought into compliance with this section.

A. Standards. A parcel of land within the R-1 land use district shall meet all of the following standards to be considered a legal building site:

- 1. Slope. Building sites shall have less than a 30 percent slope as measured between any two property lines. Sites with steeper slopes require a use permit. See CMC 17.46.040(F).
- 2. Water Supply. To qualify as a building site an adequate water supply must be available to serve the site as established in CMC 17.08.050 and 17.08.060.

ATTACHMENT 4

17.18.170--17.19.010

0543

17.18.170 Lot dimension determination. For the purposes of this chapter, lot depth shall be the average length of the side property lines which run approximately perpendicular to the street, and the lot width shall be the average length of the front and rear property lines. In the case of an odd-shaped lot, the city planner shall determine the lot depth and width using the criteria for normally-shaped lots as a guide-line. Anyone affected by the city planner's determination may file within ten days of the determination a written appeal the planning commission, which shall consider and decide the matter. No fee shall be required. (Ord. 388 §6.07(e)(8), 1975).

17.18.180 Yard encroachments. Nothing permitted in yard encroachments shall allow an increase in coverage or a decrease in required open space.

A. Cornices, eaves, fireplaces, stairways, decks, and fire escapes, balconies and similar architectural features, but not including any flat wall or window surface such as bay windows or project closets, may extend into any required side yard a distance not exceeding two feet, or into any required front or rear yard a distance not exceeding four feet.

B. The development standards set forth in Section 17.18.190 shall apply for detached garages and accessory buildings. (Ord. 388 §6.07(f), 1975).

17.18.190 Garages and accessory buildings. Garages and accessory buildings may not be used for human habitation. (Ord. 388 §6.07(g), 1975).

17.18.200 Parking. Parking standards shall be as provided in Chapter 17.51. (Ord. 388 §6.07(h), 1975).

17.18.210 Loading areas. Loading areas shall be as provided in Chapter 17.51. (Ord. 388 §6.07(i), 1975).

Chapter 17.19

TRO--TRANSIENT RENTAL USE OVERLAY DISTRICT

Sections:

- 17.19.010 Purpose and definition.
- 17.19.020 Use permits.

17.19.010 Purpose and definition. The TRO--transient rental use overlay district is an overlay district. This

ATTACHMENT

4

17.19.020

0544

means that all regulations of the underlying basic zoning district (R-1 or R-M) are applicable to any property located in the TRO district, except that transient rental use, as defined in Section 17.03.686 may be allowed pursuant to Section 17.19.020. (Ord. 708.53(part), 1991).

17.19.020 Use permits. Properties in TRO districts may apply for conditional use permits to operate as a transient rental use. In addition to such conditions as may be imposed pursuant to Chapter 17.60 (conditional use permits), all such permits shall be subject to the following standard Conditions:

A. The ~~maximum~~ number of persons that may occupy the unit shall be determined by the planning commission and may not be exceeded.

B. Adequate parking (as determined by the planning commission), whether on site or by Pacific Cove parking permit, must be provided.

C. The conditional use permit holder must designate a person who has authority to control the property and represent the landlord. This "responsible person" must be available at all reasonable times to receive and act on complaints about the activities of the tenants.

D. A business license and transient occupancy tax registration must be obtained.

E. Only one sign per unit, not to exceed one square foot in size., shall be permitted to advertise the transient rental.

F. No unit may be rented unless the renter is provided, in writing, with a statement of the conditions (such as is provided in subsection A of this section) which are applicable to the renter and his or her guests, and the renter agrees, in writing, to comply with those conditions.

G. Permits issued under this section shall expire within one year. No permit holder shall have a vested right to a renewal permit.

H. If there is a history of the permit holder or his/her tenants violating the permit's conditions, the permit shall not be reissued for a least one year following its expiration date, unless good cause is shown. The revoking authority may establish a longer period before which another application may be filed. (Ord. 708 §3(part), 1991).

County of Santa Cruz
PLANNING DEPARTMENT
INTER-OFFICE CORRESPONDENCE

0545

DATE: March 18,2002

TO: Board of Supervisors

FROM: Mark Deming, Principal Planner 

SUBJECT: Vacation Rentals, Item No. 45

The discussion on the ordinance that regulates vacation rentals in the City of Capitola (page 2) implies that the City's Transient Rental Use Overlay District (included as Attachment 4 in the Board letter) applies to all residential areas in the City. Upon further research, staff has discovered that it does not apply to all residential areas in the City. Rather, it applies only to those limited residential areas in the 'core' of the City, roughly the area surrounding the Esplanade and Capitola Avenue areas, between Monterey Avenue and Cliff Drive.

County of Santa Cruz
PLANNING DEPARTMENT
INTER-OFFICE CORRESPONDENCE

0546

DATE: April 3, 2002

TO: Board Members

FROM: Mark M. Deming,  Principal Planner

SUBJECT: Additional material regarding vacation rentals

The attached article from the March 2002 Zoning News, published by the American Planning Association (APA), discusses vacation rentals and some of the ways that other jurisdictions are handling these uses. I have obtained permission from the APA to copy this article and to forward it to you for your information.

Short-Term Vacation Rentals: Residential or Commercial Use?

By Nate Hutcheson

What happens when people live and vacation in the same town, where vacation homes and permanent homes are often side by side?

... A survey of almost 40 tourist-oriented communities was taken for this issue of Zoning News.

Americans love to vacation as much as they love their vacation destinations, and demographers have noticed. New migration patterns into some of the fastest growing communities in the country—resort towns—suggest that many people are relocating to the places that were once just summer or weekend getaways. According to Peter Wolf, author of *Hot Towns*, “A new species of American is on the move: not, as in the past, the needy, but the comfortable, well-educated, and well-trained; not the job seekers and risk takers, but those with leisure, choices, and the wherewithal to seek out the best.” By Wolf’s estimates, this migration includes anywhere from 700,000 to 1.6 million people per year. The strong 1990s economy brought a wave of second-home purchases as investments and family retreats. Resort areas—coastal, mountain, and lakeside—have what these trendsetters want: natural beauty, fresh air, and recreation. Communities with such amenities are prime candidates for conflicts in land-use planning.

What happens when people live and vacation in the same town, where vacation homes and permanent homes are often side by side? Regulations that govern short-term rentals in residential districts are getting more attention as planners and residents notice that these vacation homes can have a much greater impact on the community than those that house year-round residents. Angry neighbors say short-term rentals look like single-family homes but function more like commercial uses. The crux of the matter for planners is finding a balance between the interests of year-round, seasonal, and vacationing people while considering the effects on property rights, economic vitality, and the sanctity of residential neighborhoods.

The dynamics vary from one town to the next, but the issue seems to grow more contentious as more vacationers and year-round residents live next to one another. A survey of almost 40 tourist-oriented communities was taken for this issue of *Zoning News* in order to shed light on this increasingly vexing land-use phenomenon.

Relevance and Research Background

In 2001, APA’s Planning Advisory Service recorded an increase in the number of inquiries about planning for and regulating short-term rental properties in residential areas—particularly single-family districts. The survey revealed that a significant percentage experienced an increase in conflicts between these and adjacent land uses. While some have recently drafted ordinances to address the short-term rental problem, others are still in the process of doing so or have expressed the need for change, and because resort communities have different attitudes toward tourism, each approaches the issue in a different way.

Impacts

The impact of a short-term vacationer compared with year-round residents can be significant. Seasonal populations live and work in the community, and thus become somewhat integrated. Naturally, they increase demands on infrastructure and services. Impacts associated with short-term vacationers, however, are more nuisance related, often generating noise and light pollution. Generally, the shorter the stay, the less inclined one might be to respect neighbor diplomacy. Late-night music and merrymaking, floodlights, garbage taken out to the street on off days, dogs at large, illegal parking, and negligent property maintenance are

garden-variety complaints often cited by annoyed neighbors. Neighbors, planners, and property owners point to the correlation between such problems and length of stay for the rental property. In other words: the shorter the stay, the higher the impact. The stereotypical "weekend warrior"—trying to pack the most fun into the least amount of time—will invariably generate more trips to the store or beach, keep later hours, and create a greater disruption with light and noise. Still, for some communities, the concern is not so much the negative impacts as the lack of community involvement typical of transients.

Affordable Housing

A more insidious problem with short-term rentals is their impact on housing costs. When property owners decide to increase their "rent stream" with short-term rental agreements rather than renting by the season or year, they essentially "squeeze" the

Politics

Planners admit to a dilemma: Many property owners rely on the rent streams and spending dollars generated by vacationers, but locals want to preserve their neighborhood's residential character. Furthermore, business owners would prefer to see an expansion of the local vacation lodging market. When property owners are unwilling to forfeit certain rights, leaving them at odds with neighbors who want the relative quietude expected in a single-family neighborhood, what should be done?

Indeed, people "vote with their feet" when choosing vacation destinations or a permanent home, so politicians try to appease the greatest number of constituents. Invariably, residents will threaten to abandon a once-beloved community or resort locale if renting a house on the beach or settling into a neighborhood means an endless stream of nuisances from disruptive vacationers.



(Above, left) Short-term rentals in **Ship Bottom, New Jersey**. Paved yards and excessive numbers of vehicles at short-term rental houses are a common complaint of neighbors: Believe it or not, these are the fronts of the houses. (Above, right) Most short-term renters are unaware of garbage collection schedules. (Left) Boat and recreation vehicle parking is an unpleasant sight for neighbors in this **Monroe County, Florida**, neighborhood.

supply of housing, pushing up the demand and, subsequently, the cost. Ty Simrosky, planning director for Key West, Florida, says, "It's another means of financing the acquisition of local housing by non-local people and it fuels speculation in a rising housing market." Simrosky explains that by allowing short-term rentals, investors can cover the carrying costs of a house for a year or two while the property appreciates in value and then sell it for a healthy profit. Simrosky also says that while long-term homebuyers are strongly opposed to short-term rentals in a prospective neighborhood, investment buyers are less inclined to care if a neighboring property is a short-term rental. This can create a snowball effect that eventually replaces year-round neighborhood residents with vacationers.

Communities most affected by a housing shortage are those with businesses that rely on lower-paying service and tourism jobs. High housing costs have pushed many workers out of the community, even beyond commuting distance. Simrosky also speculates that there are workers being bused in from the Florida mainland to sleep in bunk-house conditions just to work for three- or four-day periods in Key West.

Residents of Monroe County, Florida, put the issue on a ballot, narrowly deciding—; 1 to 49 percent—against allowing short-term rentals in improved subdivisions (single-family districts). Subdivisions retained the right to vote on the issue separately.

Health, Safety, and General Welfare

Historically, property owners in resort communities could rent a home, regardless of the duration of the stay, by claiming that the house was not used "primarily for commercial purposes." What this really meant was that the structure could not be used for such purposes for more than 50 percent of the year. However, planners claim that approach is difficult to monitor and easy to abuse. Most feel zoning codes and a licensing system offer a better solution despite the time and expense required for administering and enforcing new regulations.

Most of the surveyed communities deal with short-term rentals through the zoning code. Imperial Beach, California, justifies its interim short-term rental ordinance with a purpose and intent that states "there is a current and immediate threat to the public health, safety, or welfare of its citizens by owners or their agents renting or selling units for periods of thirty

Community	Regulate Short-Term Rentals	Specific Ordinance Provisions ¹	Term Used	Permitted		By Zone	License Required	Year Adopted	Legal Challenges
				Number of Consecutive Days ²	Number of Times Per Year				
Aspen, CO	No								
*****, NC ³	Yes	No							
Boone, NC	No								
Burlington, VT	No								
Cape Cod, MA	No								
Carmel-by-the-Sea, CA	Yes	Yes	Transient Commercial Use	30		Prohibited		1975	
Cocoa Beach, FL	Yes	Yes	Transient Lodging	30	3	Yes		2000	
Colchester, VT	No								
Eagle County, CO	Yes					per/PUD ⁴			
Imperial Beach, CA	Yes	Yes	Short-term Rental	30		Prohibited	Yes	2001	Yes
Islamorada, FL	Yes	Yes	Vacation Rental	28		Yes	Yes	1998	Yes
Key West, FL	Yes	Yes	Transient Lodging	30					
Kiawah Island, SC	Drafting		Short-term Rental	30		Yes	Yes	In draft	
Maggie Valley, NC	No								
Manchester, VT	No								
Marathon, FL	Yes	Yes	Vacation Rental	30		Yes	Yes	2000	
Melbourne Beach, CA	Yes	No	Resort Dwelling	30			Yes		
Mendocino County, CA	Yes	No	Transient Habitation	30			Yes	1987	
Monroe County, FL	Yes	Yes		30		Yes	Yes		Yes/Upheld
Monterey, CA	Yes	No	Short-term Residential Rental	30		Prohibited			
Muskegon, MI	Yes	No		7 ¹		Yes	No		
Myrtle Beach, SC	Yes	Yes	Transient Accommodation	30		Yes	Yes		
Nantucket, MA	No						Yes		
Ocean City, MD	No								
Pasco County, FL	Yes	Yes	Short-term Rental	30	3	Yes	Yes	1999	
Saco, ME	Yes	Yes	Seasonal Rental	4 months		Prohibited	Yes		
			Daily Rental	1					
San Juan County, WA	Yes	Yes	Transient Accommodation/Residence/Guesthouse	30				1998	
Sanibel, FL	Yes	Yes	Resort Housing			Yes	Yes	2001	
Santa Cruz, CA	No/Transient Occupancy Tax		Short-term Rental					1984	
Saugatuck, MI	No								
South Haven, MI	Yes	Yes	Short-term Dwelling Unit	2 ¹		Yes	No		
Stowe, VT	No								
Sturgeon Bay, WI	No/Transient Occupancy Tax								
Sullivan's Island, SC	Yes	Yes	Vacation Rental	28		Yes ⁵	Yes		
Telluride, CO	Yes		Short-term Dwelling Unit	30	X ⁶			1992	
Traverse City, MI	No								
Vail, CO	No								
Yachats, OR	Yes	Yes	Transient Rental	30		Allowed in all Zones	Yes	1992	

Ph. by Marja Morita; research by Navee Paruchoson

This matrix is not exhaustive. Every reasonable attempt was made to achieve accuracy and thoroughness, but variations in ordinance language, format, and local practice made a "complete" matrix impossible. Thus, it is meant only as a quick reference guide for readers of this article. The short-term rental survey evolved as it was being conducted, so not all questions were asked uniformly or of every survey participant.

1. This indicates any section of the code that is dedicated to short-term rentals, such as interim ordinances or amendments.
2. Language varies from code to code in terms of how they specify a time period. Where a month or four weeks was used as the length of the term, 30 days is the default response.
3. Community preferred not be mentioned by name.
4. Decision made by subdivision bylaws.
5. STRs not permitted by right in any of the zones.
6. In most restrictive districts, they are permitted to rent three times or fewer per year for a total of 30 days or less.

consecutive calendar days or less . . . and that such rentals in the residential zones of the city . . . may create adverse impacts.”

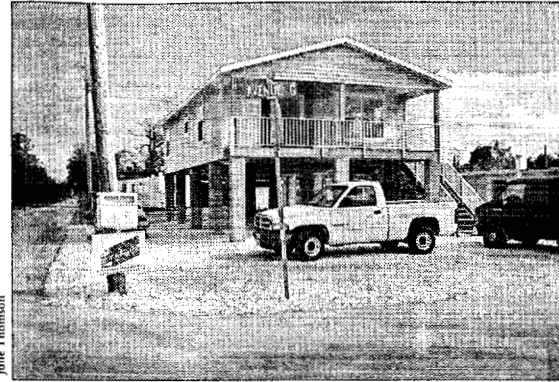
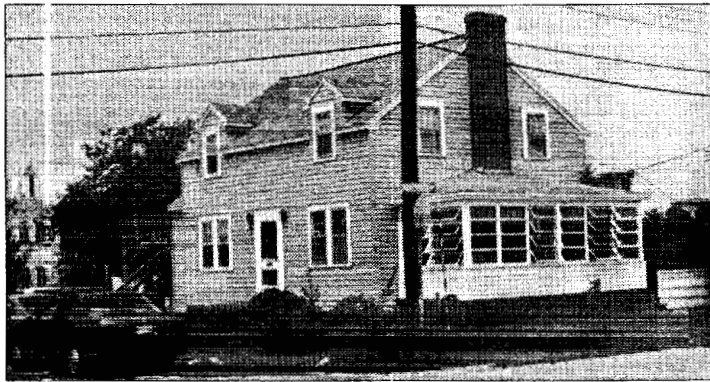
Commonly cited reasons for drafting an ordinance or provision for short-term rentals include protecting residential character, maintaining housing affordability, managing infrastructure and service requirements, and complying with hurricane evacuation capacity. Zoning ordinances, business permits, and transient occupancy taxes are ways of managing this quasi-commercial use.

Definitions are often at the root of governing short-term rentals. Unfortunately, many zoning codes have a discrepancy between defined terms and the provisions that use them. Terms are sometimes defined at the beginning of the ordinance but then never used in the provisions. Conversely, provisions may contain undefined terms, rendering the code too ambiguous. For example, some towns prohibit “transient rentals” in certain districts without

about what actually is a short-term rental. Length of stay (where not determined by a definition of transient) is an important factor in defining short-term rentals.

There is a wide range of occupancy tenure in a short-term rental ordinance. Communities specify the maximum length of stay in days, weeks, or months. Some simply distinguish the use by type of occupant, usually transient or tourist, in which case the terms should be clarified in the definitions section.

Measures of occupants’ permanency can include everything from specifying the length of stay to whether the residence is the legal address of its occupants. At this fundamental level, communities can best begin to guide local land-use practices. Here, parameters are set largely according to the nature of a community’s tourist population, the importance of tourism on the local economy, and community goals.



(Above, left) Short-term rental property prominently displayed on a corner lot in Lewes, Delaware. The impact: Vehicles of vacationers spilling over from the driveway onto the street. The problem: This type of impact occurring for weeks or months on end. (Above, right) Apparently, more pavement, less yard means more parking and less yard maintenance for this short-term rental property in Monroe County, Florida. (Right) Driveway signs for a Kiawah Island, South Carolina, short-term rental welcome the next round of families sharing a house.



defining the term “transient.” Distinctions can be easily made between the various types of lodging and rental property, and only those uses that are specifically listed as permitted or conditional should locate to designated districts. However, where single-family residences are a permitted use, and the length of tenure is unspecified, nothing in the ordinance can stop property owners from renting the house on a short-term basis.

Definitive Criteria

For communities grappling with such disputes, clear definitions are essential. Other terms for short-term rentals include transient commercial use, vacation rental home, vacation property, transient lodging, resort dwelling, and resort housing. Because transient also is used in the definition of other terms, it too should be defined in context to alleviate confusion and ambiguity. These terms are defined using various criteria, such as structure type, length of stay, measures of occupants’ permanency, number of occupants, and the type of occupants (family members or unrelated people).

The type of structure (single or multifamily) often is not specified in the ordinance, allowing room for interpretation

Regulating the number of occupants also can mitigate the impacts of rental properties. Some communities specify total number of occupants by persons per bedroom, family members, or non-related persons, notwithstanding local fire codes. Islamorada, Florida, limits occupancy to two people per bedroom plus two additional persons. Other communities simply limit occupancy to a single family, as defined in their ordinance (see “Definitions and Distinctions” for examples and commentary on relevant terms).

Defining family also can complicate the matter. Restricting the use of single-family homes to families can be a difficult way to regulate short-term rentals, mainly because the term family is open to a wide range of literal and legal interpretations. Even so, “traditional” families are not devoid of impact risks, including noisy infants or rowdy teenagers. The ever-changing family paradigm does not make it the best measure by which to regulate short-term rentals.

Once Defined, Where Are Short-term Rentals Allowed?

Tolerance levels about the impacts of short-term rentals will vary among communities. Communities with an intense interest in

DEFINITIONS AND DISTINCTIONS

■ BED AND BREAKFAST

Commentary: Bed and breakfasts are similar in appearance and location to many short-term rentals in residential areas. However, the primary distinction is the mitigating presence of the owner/operator.

Definitions: Generally small, owner-operated businesses providing the primary financial support of the owner. Usually the owner lives on premises. The building's primary usage is for business. Inns advertise, appropriate taxes, and post signs. Breakfast is the only meal served and only to overnight guests. The inn may host events such as weddings, small business meetings, etc. Room numbers range from four to 20 with a small, but increasing number up to 30. Reservations may be made directly with the property. (*Professional Association of Innkeepers International*)

Bed and breakfast means the use of an owner-occupied or manager-occupied residential structure providing no more than four rooms for temporary lodging for transient guests on a paying basis. A "Bed and Breakfast Inn" may include meal service for guests. (*Blue Springs, Mo.*)

■ BOARDING HOUSE

Commentary: A boarding/rooming/lodging house differs from the short-term rental house because it has multiple rooms or units for rent and occupants share common kitchen or dining facilities. Occupants of a boarding house also tend to be less transient (the definition of which depends on community standards).

Definitions: A single-family dwelling where more than two, but fewer than six rooms are provided for lodging for definite periods of times. Meals may or may not be provided, but there is one common kitchen facility. No meals are provided to outside guests. (*Champaign, Ill., which uses the term "boarding/rooming house"*)

An establishment with lodging for five or more persons where meals are regularly prepared and served for compensation and where food is placed upon the table family style, without service or ordering of individual portions from a menu. (*Venice, Fla.*)

■ FAMILY

Commentary: Restricting the use of single-family homes to families can be a problematic way to regulate short-term rentals, mainly because the term family is open to a wide range of literal and legal interpretations. Even so, a "traditional" family is not without impacts, such as vocal infants or rowdy teenag-

ers. The definition of family or single-family house is not the most widely used or recommended tool for short-term rental regulation.

Definitions: One or more persons occupying a single dwelling unit, as a single housekeeping unit, provided that unless all members are related by blood, marriage, or adoption, no such family shall contain over six persons, including any roomers, boarders and/or domestic Servants. A home for independent living with support personnel that provides room and board, personal care and habilitation services in a family environment as a single-housekeeping unit for not more than six resident elderly or disabled persons (mentally and/or physically impaired) with at least one, but not more than two resident staff persons shall be considered a family. (*Tulsa, Okla.*)

One or more persons, related by blood, marriage, or adoption, occupying a living unit as an individual housekeeping organization. A family may include two, but not more than two, persons not related by blood, marriage, or adoption. (*Iowa City, Iowa*)

One or two persons or parents, with their direct lineal descendants and adopted or legally cared for children (and including the domestic employees thereof) together with not more than two persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four or fewer persons living in such housekeeping unit shall be considered a separate family for the purpose of this code. (*St. Paul, Minn.*)

Two or more persons related to each other by blood, marriage, or legal adoption living together as a single housekeeping unit; or a group of not more than three persons who need not be related by blood, marriage, or legal adoption, living together as a single housekeeping unit and occupying a single dwelling unit. (*Lake County, Ill.*)

One or more persons occupying a premise[s] and living as a single housekeeping unit as distinguished from a group occupying a boardinghouse, lodging house, or hotel as herein defined. (*Scottsdale, Ariz.*)

■ GUEST HOUSE OR GUEST COTTAGE

Commentary: Guest cottages can present a loophole for short-term rentals in single-family residential districts unless certain specifications are made—namely that usage is only allowed for non-paying guests.

Definition: Guest house (accessory dwelling unit) means a detached or attached accessory structure secondary to the principal single-family residential unit designed and most commonly used for irregular residential occupancy by family members, guests, and persons providing health care or property maintenance for the owner. (*San Juan County, Wash.*)

■ HOTEL OR MOTEL

Commentary: Hotels/Motels typically have separate entrances and an on-site management office.

Definitions: A building in which lodging is provided and offered to the public for compensation, and which is open to transient guests and is not a rooming or boarding house as herein defined. (*Boone County, Mo.*)

A building or group of buildings in which lodging is provided to transient guests, offered to the public for compensation, and in which access to and from each room or unit is through an exterior door. (*Cecil County, Md.*)

■ TRANSIENT

Commentary: "Transient" can be used to describe a person or a land use. Ambiguous or subjective words—"short," "long," "seasonal," "temporary"—should be either avoided altogether or clarified with precise units of time—number of hours, days, weeks, or months. When a community defines a transient as a person living in a dwelling unit for "a short time only," the term "short" could be interpreted in a variety of ways. To alleviate further confusion, the nature of a person's stay may be clarified, as is done in the definition below from Sturgeon Bay, Wisconsin.

Definitions: A person who travels from place to place away from his or her permanent address for vacation, pleasure, recreation, culture, or business. (*Sturgeon Bay, Wis.*)

Any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a visitor accommodation facility shall be deemed to be a transient until the period of 30 days has expired unless there is an agreement, in writing, between the operator and the occupant providing for a longer period of occupancy. (*Monterey, Calif.*)

promoting tourism may be more permissive, allowing them in restricted districts, while others will diligently protect residential districts. In the most restrictive communities, short-term rentals may be prohibited outright in residential districts. Monroe County, Florida, prohibits them unless a majority of homeowners vote them into a subdivision. Communities may permit short-term rentals as a conditional use or allow them only when rented fewer than four times each year.

Conditional Uses and Licensing

Whether short-term rentals are allowed by right or as a conditional use, additional requirements to benefit both the occupants and neighbors are recommended. For example, operating a short-term rental may require physical inspection to determine the safety of the structure from hazards such as fire and over occupancy. Other requirements might include posting a "notice to occupant" reminding visitors of mandatory evacuation in case of a hurricane (in prone areas) or a "code of conduct" for the neighborhood, which might list regulations for occupancy, parking, boat dockage, fines, or helpful information such as garbage and recycling pick-up. Both should be printed in a large font and prominently displayed.

Regulating by Ratio

Mendocino County, California, settled on an acceptable ratio of short-term rental properties to year-round residents: Locals deemed 3 year-round resident houses to one short-term rental house tolerable. The community requires operating permits for short-term rental properties. An additional vacation rental permit is issued for every 13 new residential units. The number of permits is finite but siting is still flexible. To maintain an orderly and fair distribution of permits, the county does not allow them to be sold or transferred. The county considers short-term rentals a commercial use, allowing additional short-term rentals as part of a 50/50 mix of commercial and long-term residential dwelling units in mixed-use districts.

Legal Challenges

Legal challenges will invariably arise in neighborhoods where homeowners enjoying the comforts of a quiet back yard are suddenly interrupted by noise or light from an adjacent short-term rental property. Places with restrictions on short-term rentals such as Key West and Imperial Beach have faced legal challenges, which may include vesting, consistency with the comprehensive plan, definition of family, and allowable time for amortization. However, anecdotal evidence suggests that the longer an ordinance has been in place, the more accepted it is. Most of the planners interviewed for this article were confident in the defensibility of their short-term rental ordinances.

Mitigation and Amortization

Some of the mitigation tools used to offset the impacts of short-term rentals include having a 24-hour contact person or management service, vehicle registration, and short-term rental medallions—a sign or badge on the front of the home identifying the residence as a vacation property, the name of the management company, and a contact person. The use of medallions is widely criticized because critics say they invite thieves and vandals. Such mitigation measures are typically paid for and provided by the property owner as a condition of receiving an operating permit. Other measures, such as increasing code enforcement staff—as is done in Key West—or bolstering visitor awareness through signage to politely inform them of the neighborhood's quiet residential character may be paid for with tax revenue generated from short-term rental properties.

To avoid a takings challenge, communities that have recently enacted more restrictive codes also have included an amortization schedule that phases out short-term rental properties. Islamorada allows two years for amortization and Imperial Beach is proposing five-year amortization. Sullivan's Island, South Carolina, requires proof of use as a short-term rental during the previous 12-month period to reduce the number of rental properties. Those that lapse are not eligible for future licensing.

Enforcement

Detection of problem rentals can occur either from complaining neighbors or a dedicated municipal enforcement staff. Penalty fines range from \$100 a day in Saco, Maine, to \$500 for each day of violation in Kiawah Island, South Carolina. Other penalties include denied permit renewals, permit revocation, or misdemeanor citations. Fines are a comparatively small expense for property owners whose short-term rentals generate healthy returns, so some owners virtually ignore the restrictions, says Monroe County planner Marlene Conway. Saco requires property owners to renew permits annually. A history of complaints is kept on file and those with more than two recorded complaints will not be issued a permit for the coming year.

Administering a short-term rental ordinance burdens both the budget and staff. Issuing permits and code enforcement takes time and money. Permit or licensing fees and taxes on short-term lodging can offset these expenses. Fees vary from a fixed amount to a sliding scale based on the percent of income generated per calendar year—both of which usually amount to \$100 to \$200. In states that grant local governments the authority to tax this type of land use, the taxes for the lodging fee can range from four percent on the low end to seven percent in Deschutes County, Oregon. Santa Cruz, California, taxes 10 percent.

Conclusion

Technology, telecommuting, and lifestyle priorities will continue to fuel the infiltration of newcomers into resort communities with long-established residents. For these and other reasons, the populations of traditional get-away destinations will surge and change, bringing with them increased pressure to adapt to new people and new land-use challenges. Deciding whether short-term rentals are commercial or residential land uses is an important first step in addressing the issue. Perhaps the zoning code is the best defense in preserving the tranquility that made such places attractive in the first place.

Selected ordinances from the short-term rentals survey are available to *Zoning News* subscribers. Please contact Michael Davidson, Co-editor, *Zoning News*, American Planning Association, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603, or e-mail mdavidson@planning.org.

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