



Monterey County Board of Supervisors

Response to the

2020 - 2021 Monterey County Civil

Grand Jury

*Topic: “Vacation Rentals Enforcement in Monterey County:
Little Progress Despite Years of Struggle”*

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" Vacation Rental Enforcement in Monterey County: Little Progress Despite Years of
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REPORT TITLE: 2020 – 2021 Monterey County Civil Grand Jury Final Report –
“Vacation Rental Enforcement in Monterey County: Little Progress Despite Years of Struggle”
RESPONSE BY: Board of Supervisors of the County of Monterey and the Housing and
Community Development Department of the County
RESPONSE TO: Findings: F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, and F12

The County Administrative Office coordinated preparation of the recommended response to the 2020-21 Monterey County Civil Grand Jury Final Report “Vacation Rentals Enforcement in Monterey County: Little Progress Despite Years of Struggle” with the assistance, input and appropriate review by the Housing and Community Development Department (HCD). This report combines the responses to the Grand Jury report of the Board and the HCD.

FINDINGS

F1. Adobe PDF documents are currently used by Treasurer-Tax Collector (TTC) to enable Vacation Rental Operators to submit Transient Occupancy Tax (TOT) Registration applications. TTC must then manually input the data into the necessary software database application. This manual data input process is inefficient and increases the possibility of introducing errors.

Response F1:

The TTC has filed a separate response to this finding. The County Board concurs with the TTC’s response.

F2. Because data on properties which are currently registered and paying TOT is not publicly available on the County website, unnecessary additional email requests for information are received and processed manually by TTC.

Response F2:

The TTC has filed a separate response to this finding. The County Board concurs with the TTC’s response.

F3. Current accounting methods and database systems in TTC do not allow Vacation Rental TOT tax revenues to be easily broken out from other TOT classifications such as hotels and B&Bs, thereby reducing transparency and limiting data available for management and decision making.

Response F3:

The TTC has filed a separate response to this finding. The County Board concurs with the TTC’s response.

F4. Due to current quarterly TOT reporting methods, Vacation Rental occupancy data that is both timely and contains sufficient detail for use in [Code Compliance Division] CCD complaint investigation and enforcement activities is not readily available.

Response F4:

The County agrees in part with this finding. County agrees that code compliance investigations of vacation rentals would be better facilitated by the availability of occupancy data. The County disagrees that the lack of data is due to current Transient Occupancy Tax (TOT) reporting methods. At this time there is no mechanism to request and track occupancy data outside the information made available through the County's third-party compliance monitoring vendor.

The TTC has filed a separate response to this finding. The County Board defers to the TTC's response.

- F5. Vacation Rental complaints often occur at night or during weekends. Due to current budget allocations and staffing levels for Code Enforcement, complaint investigation timeliness and effectiveness is impacted by the lack of 24x7 coverage.**

Response F5:

The County agrees in part with this finding. The County agrees that Code Compliance complaint investigation timeliness and effectiveness to respond to evening and weekend complaints is impacted by the lack of 24-7 coverage. However, effective response to evening and weekend complaints for vacation rentals is additionally impacted as limited Code Compliance staffing resources are allocated to higher priority code compliance issues based on Board-adopted prioritization criteria. When a vacation rental complaint is raised to a higher priority, Code Compliance staff work over the weekend to investigate. Please see response to Finding 6 for additional information regarding vacation rental prioritization. Complaints concerning noise and disturbing the peace (related to vacation rentals) are responded to by the Monterey County Sheriff's Office (MCSO), and the Sheriff's ability to respond to such complaints is impacted depending on budget allocations, staffing levels, and demand for limited patrol services to respond to higher priority disturbances and crimes.

- F6. CCD classifies Vacation Rental complaints as Priority 3 and therefore only reacts when there are immediate concerns for Life, Health, or Safety. Due to current budget allocations and staffing levels for Code Enforcement, proactive enforcement of applicable zoning ordinances is precluded thereby encouraging the growth of unpermitted Vacation Rentals.**

Response F6:

The County agrees in part with this finding. The Board of Supervisors adopted code enforcement priorities for land use that protect the public's health and safety and the environment. Vacation rental violations typically meet the definition of a Priority Three-Minor and Technical Code Violations. The Board's position has been to maintain status quo priorities for code compliance until updated ordinances are in place. The Board's general consensus when considering the draft vacation rental ordinances has been for staff to develop an effective, proactive code compliance program that can be implemented hand in hand with the adoption of revised regulations. The proposed vacation rental ordinances include provisions to phase out unpermitted vacation rental operations. The County agrees that due to current

budget allocations and staffing levels, proactive enforcement of vacation rental applicable zoning ordinances is not feasible at this time.

The County respectfully disagrees with the statement that it only reacts to code violations that present immediate concerns to life, health, or safety. The first alternative to code compliance, except in extreme situations, is voluntary compliance. Upon receipt of a code complaint, a Courtesy Letter is sent to the property owner that has been reported for a potential code violation alerting the owner to the complaint which was received, and providing them the opportunity to voluntarily cease or remedy the unpermitted activity. Many unpermitted vacation rental operations have stopped renting on a short-term basis (30 or fewer consecutive days) as a result of this contact from Code Compliance staff. For operators that do not voluntarily stop the vacation rental activity, Code Compliance does not currently take escalated enforcement action to effectively shut down unpermitted operations, except for vacation rentals that present circumstances posing or likely to pose imminent threat to public health and safety or the environment, due to staff resources being allocated to higher priority enforcement cases.

The County also disagrees that the lack of proactive enforcement is encouraging unpermitted vacation rentals. We did not see any evidence in the Grand Jury report of this cause and effect. It is unknown what difference proactive enforcement would have on unpermitted vacation rentals. The rise in vacation rentals may just be a response to market demand.

F7. Online public access to complaint information is limited by poor web portal design, the lack of a common database between TTC and CCD, and insufficient internal staff necessary to perform timely processing of Vacation Rental complaints. It is therefore difficult for the general public to determine, with respect to a given property, whether complaints have been registered against that property, how many such complaints have been made, and the disposition of individual complaints.

Response F7:

The County agrees in part with this finding. The County Housing and Community Development Department utilizes Accela for permit and code compliance processing and records management. Code compliance cases are typically opened within 48 hours once a complaint is received unless the matter is reported and opened directly by a member of the public through Accela Citizen Access (ACA). The County respectfully disagrees that public access to information about code compliance cases is limited due to insufficient internal staff. Through ACA, members of the public can file a complaint and view the status of code compliance cases that have been registered against a property. While ACA may not include the level of detail related to code compliance cases as desired by the public, the County respectfully disagrees that the ACA web portal is poorly designed. In fact, the ACA webpage includes links to a number of how-to guides to help the public navigate the site. The County does agree that information available on ACA to the public related to code compliance cases is limited, because while a code compliance case is open, most of the information related to the case is protected and maintained confidential as it is an open investigation.

The County agrees with the finding that a common vacation rental database does not exist between the Treasurer-Tax Collector (TTC) and the Housing and Community Development Department (HCD).

The TTC has filed a separate response to this finding. The County Board concurs with the TTC's response regarding implementation of an online search function. The County Board defers to the TTC's response regarding legal requirements for TTC to protect confidential information on operator tax returns.

F8. While the capability exists for TTC to access the Code Compliance database for Vacation Rental zoning information and complaint information, and similarly CCD is able to request [Transient Occupancy Tax] TOT registration data from the Tax Collector's office, the Civil Grand Jury could find no evidence that such direct cross checking occurs as a standard practice thereby contributing to the growth of unpermitted Vacation Rentals which are nevertheless registered for TOT.

Response F8:

The County agrees with this finding. It is accurate that Code Compliance does not cross check TOT registration data for vacation rental violations. Such practice to cross check TOT registration and payment by Code Compliance to identify unpermitted vacation rental operations would require an accompanying shift in policy for proactive enforcement and increase in funding and staffing resources to successfully implement this shift. See response to Finding 6 above.

The TTC has filed a separate response to this finding. The County Board concurs with the TTC's response.

F9. Implicit internal acknowledgement of the desire not to negatively impact TOT revenue has contributed to a reluctance on the part of CCD to actively enforce applicable Vacation Rental zoning ordinances. The lack of consistency between TTC and CCD in enforcing Vacation Rental ordinances has served to further increase public confusion and community tension.

Response F9:

The County agrees in part, and disagrees in part, with this finding.

The County agrees that TTC proactively enforces the County regulation requiring registration and collection of transient occupancy tax (TOT), while code enforcement of unpermitted vacation rental operations is assigned a lower priority, as discussed in responses to Findings 5 and 6 above. We can accept the statement that this leads to public confusion and community tension, as determined by the Grand Jury, although we have not seen evidence that statement is true. County staff make every effort to communicate to the public that tax and land use regulations are separate, and that registering for and paying TOT is necessary to be in compliance with the County's TOT regulations, yet the vacation rental may still be operating illegally if the appropriate land use approvals have not been obtained.

The County respectfully disagrees with the finding that there is a reluctance to take code compliance action to shut down unpermitted vacation rentals as a result of implicit internal acknowledgement of the desire not to negatively impact TOT revenue. The County's code compliance approach for vacation rental operations has been consistent with Board and departmental policy to be reactive to code compliance complaints (as opposed to being proactive) and to prioritize and respond to vacation rentals violations as Priority 3, as discussed above in response to Findings 5 and 6. There has been no implicit (or explicit) direction to staff to not enforce the regulations to preserve TOT revenue. In fact, there is no certainty that enforcement of unpermitted vacation rentals would reduce TOT revenue; any displaced visitors could stay in a legal vacation rental or in a commercial visitor accommodation (e.g., hotel).

F10. Due to the potential increase in secondary housing units resulting from newly enacted County [Accessory Dwelling Unit] ADU ordinances, coupled with the current Priority Three reactive Vacation Rental enforcement policies, increased community tension and complaints with respect to Vacation Rentals are likely to result.

Response F10:

The County agrees in part with this finding. In September 2020, the Board adopted Accessory Dwelling Unit (ADU) ordinances that allow for an ADU (or Junior ADU or JADU) to "...be separately rented, provided such rental is for more than thirty (30) days. No ADU or JADU shall be used as a Vacation Rental (rented for thirty (30) consecutive days or less)". The ordinance amending Title 21 (non-coastal zoning) of the County Code is in effect in the unincorporated inland area of the County, and the ordinance amending Title 20 (coastal zoning) of the Monterey County Code is pending California Coastal Commission certification to be operative in the Coastal Zone. Renting an ADU/JADU as a vacation rental is prohibited by law and would be prohibited as a condition of permit issuance for the unit. The HCD Condition Compliance team could be utilized to augment the Code Compliance team to monitor ADU/JADU compliance, increasing the County's ability to identify ADUs operating as vacation rentals. See response to Finding 6.

F11. The Board of Supervisors failure to take timely, definitive enforcement action to limit the growth of non-permitted Vacation Rental operations in the County has allowed the problem to continue to grow in an uncontrolled fashion, exacerbating tensions within the community.

Response F11:

The County agrees with this finding, with clarification. In recognizing the low compliance rate with current County regulations for vacation rentals as discussed in response to Finding 6, the Board has supported maintaining status quo pending the adoption of new vacation rental regulations and accompanying implementation of an effective proactive enforcement program. While this policy to maintain status quo enforcement priorities may have contributed to the continuation of unpermitted vacation rental operations in the County, growth of vacation rentals in the County over the past decade has been primarily driven by the development of online rental platforms (e.g., Airbnb, VRBO) and an increase in the popularity and preference for whole house rentals by tourists. The County has seen a decrease in vacation rental operations

over the past couple years through voluntary compliance to stop the unpermitted use in response to Courtesy Letters that have been sent by Code Compliance in response to complaints, as well as some enforcement actions for vacation rentals that rose to a higher priority.

F12. The failure of the Board of Supervisors to enact new ordinances in a timely manner has further magnified difficult problems that must be resolved as new ordinances are put into effect, including establishing policy and driving subsequent compliance and enforcement actions for existing unpermitted Vacation Rentals whose operations may ultimately be illegal under the new ordinances.

Response F12:

The County agrees with this finding, with clarification. The protracted timeline to develop new vacation rental ordinances for the County may have magnified difficult problems that have persisted for some time. The County of Monterey is highly diverse, as are its different land use planning areas. Public sentiment regarding vacation rentals in residential neighborhoods is highly divided. To develop balanced, informed vacation rental ordinances, the County has undertaken extensive public outreach and involvement to develop the current draft ordinances, contributing in part to this protracted timeline. Adoption and implementation of new ordinances, or a shift in enforcement program priorities, is needed to remedy current challenges with unpermitted vacation rentals operating in the County. The current draft vacation rental ordinances include provisions to phase out unpermitted vacation rental operations by providing clear timelines for existing operations to obtain proper permits or cease operations.

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“Vacation Rentals Enforcement in Monterey County: Little Progress Despite Years of Struggle”
RESPONSE BY: Board of Supervisors of the County of Monterey and the Housing and
Community Development Department of the County
RESPONSE TO: Recommendations: R1, R2, R3, R4, R5, R6, R7 and R8

RECOMMENDATIONS

R1. The Treasurer-Tax Collectors Department should migrate Vacation Rental TOT registration to an online software service with an electronic database repository to allow applicants to apply and check application status directly through the County website, and which also allows the general public to verify whether a given property is registered and possesses a valid TOT Certificate. (F1, F2) This capability should be operational within six months after the date of enactment of new ordinances.

Response R1:

The TTC has filed a separate response to this finding. The County Board concurs with the TTC’s response.

R2. The Treasurer-Tax Collectors Department should construct an online records system and require Vacation Rental operators to directly enter visitor occupancy data (including specific occupancy dates, number of occupants, number of rooms rented, and revenues received) in near real time, thereby facilitating tax verification and code compliance related activities. (F3, F4) This capability should be operational within six months after the date of enactment of new ordinances.

Response R2:

The TTC has filed a separate response to this finding. The County Board defers to the TTC’s response.

R3. The Treasurer-Tax Collector’s Department and Department of Housing and Community Development should implement an online system for direct public access to file complaints and obtain the status of enforcement action and complaint resolution. This system should be implemented in such a way that complete, consolidated electronic records including TOT registrations and Vacation Rental zoning permits can be easily maintained, searched, and referenced by street address and APN. (F1, F2, F7, F8) This capability should be operational within six months after the date of enactment of new ordinances.

Response R3:

The County currently has an operable system, Accela Citizen Access (ACA), that allows the public to file complaints and obtain the status of enforcement action and complaint resolution on-line. The County is evaluating Accela’s vacation (short-term) rental modules and capabilities to develop the needed workflow modifications to support permit processing and condition compliance monitoring for the new vacation rental regulations once operative. Additionally, the

County anticipates utilizing a third-party vendor to monitor, track and aid in enforcement of vacation rentals. Further analysis and additional resources would be needed to evaluate establishing a single, consolidated electronic record of the TTC TOT and business licensing records and the HCD's land use entitlement and Vacation Rental Operators Permit (VROP or VRO Permit) tracking systems; however, at a minimum the two systems should be able to interact. As proposed in the draft ordinances, the VRO Permits will be the operative, searchable record for vacation rentals, as it can only be issued if the requisite land use entitlements has been obtained, and it can be renewed annually only if the operation is in good standing, having registered and paid TOT and obtained a business license to operate. HCD and TTC can jointly explore the possibility of a single, consolidated electronic record within six months after the date of enactment of new ordinances. The County intends to follow the recommendation of implementing an electronic system, either a single consolidated one or one that communicates between HCD and TTC, no later than six months after the date of the enacted ordinances.

The TTC has filed a separate response to this finding. The County Board concurs with the TTC's response.

R4. The Treasurer-Tax Collector's Department and Department of Housing and Community Development should implement Internal process changes to ensure future alignment between County departments in the registration, permitting, licensing, and enforcement of vacation rental businesses. (F8, F9) These process changes should be implemented within six months after the date of enactment of new ordinances.

Response R4:

The County intends to implement this recommendation by or before six months after the date of enactment of new ordinances. The proposed draft vacation rental ordinances require that a VROP can only be issued if the requisite land use entitlement has been obtained, and it can be renewed annually only if the operation is in good standing, having registered and paid TOT and obtained a business license to operate.

The TTC has filed a separate response to this finding. The County Board concurs with the TTC's response.

R5. As a necessary part of new Vacation Rental ordinance development, the Board of Supervisors should establish specific paths and timelines for addressing how current unpermitted Vacation Rental operations may be eligible to obtain permits under the new ordinances. (F11, F12) These regulations and processes should be complete effective with the date of enactment of new ordinances.

Response R5:

The County intends to implement this recommendation. The proposed vacation rental ordinances include provisions to phase out unpermitted vacation rental operations and provide clear timelines for existing operations to obtain proper permits or cease operations. Once the new regulations are adopted and in effect, processes will be in place for unpermitted vacation rental operations to come into compliance or cease operation.

R6. As part of the new ordinance development, the Board of Supervisors should specify procedures for handling current Vacation Rental operations that may be illegal and ineligible for permits under the new ordinances. (F11, F12) These regulations and processes should be complete effective with the date of enactment of new ordinances.

Response R6:

The County intends to implement this recommendation. The proposed vacation rental ordinances include provisions to phase out unpermitted vacation rental and provide clear timelines for existing operations to obtain proper permits or cease operations. Once the new regulations are adopted and in effect, processes will be in place that address this recommendation.

R7. The Board of Supervisors should authorize the development of a comprehensive Vacation Rental enforcement program funded through revenue generated from TOT tax receipts, zoning permit fees, and zoning ordinance violation penalties in a manner similar to the Cannabis program. The program should be designed to be sustainable and should include the funding necessary for IT system enhancements, dedicated personnel for proactive enforcement, and contracting of third-party services for development assistance and staff augmentation, as needed. This program should be implemented as soon as possible - in advance of new ordinances being enacted - enabling personnel and systems to effectively enforce the new ordinances upon adoption. (F1, F2, F3, F4, F5, F6, F7, F10) These authorizations should be completed at least three months prior to the date of enactment of new ordinances.

Response R7:

The County intends to implement this recommendation and approve an effective, proactive code enforcement program (including staffing, IT solutions, and third-party vendors) and funding (e.g., TOT, permit fees, code compliance cost recovery and fees) in tandem with approval of the new ordinances. The Board has directed staff to develop and present to the Board for its consideration a proposed vacation rental enforcement program that identifies potential revenue sources (e.g., TOT, permit fees, enforcement penalties). Timing to implement this program is intended to be informed by the lead time necessary to have the technology, vendor and staff resources available when the ordinances become effective and to allow timely processing for unpermitted operations to apply for a permit or cease operation.

R8. The Board of Supervisors should fully commit to accelerating efforts to achieve final approval of new Vacation Rental ordinances by end of calendar year 2021. (F11, F12) The new ordinances should be enacted no later than December 31, 2021.

Response R8:

The County Board of Supervisors is committed to approving vacation rental ordinances as quickly as feasible, allowing sufficient time to complete the appropriate level of

environmental review under the California Environmental Quality Act (CEQA), obtain additional public input, and conduct the final public hearings required by law at the Planning Commission and Board of Supervisors. The inland ordinances will be effective on the thirty-first day following Board adoption. Following Board adoption of coastal ordinances, they must be certified by the California Coastal Commission before becoming operative. In response to Board direction for revision of the draft ordinances, staff has scheduled a hearing at the Board of Supervisors for May 25, 2021 to present the revised draft ordinances, after which staff intends to conduct environmental review under CEQA. Due to environmental review timelines, a December 31 completion date is likely not feasible, but the Board will support the staff to complete the environmental review and bring the final ordinances to hearing during fiscal year 2021-22.

DRAFT