



HOUSING & COMMUNITY DEVELOPMENT (HCD) DEPARTMENT

December 8, 2021
Item 7

SHORT TERM RENTAL ENFORCEMENT
Board Referral 2016.02



RECOMMENDATION

- a. Receive a presentation;
- b. Discuss and provide direction; or
- c. Rescind Portion of Board Referral 2016.02

RECENT BACKGROUND

June 8, 2021 - Civil Grand Jury Response

August 24, 2021 - Revision to Board Referral 2016.02

October 5, 2021 - Preliminary Analysis of Revision

EXISTING REGULATIONS

Resource Management Agency Memorandum Revised September 20, 2016

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director

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ADMINISTRATIVE GUIDELINE

Please note that this memorandum is issued solely for informational purposes, and does not constitute an interpretation or decision from which an appeal may be taken. If an interpretation is desired, the regulations provided in Sections 20.88.040 or 21.82.040 must be followed.

Date: July 9, 2015- Revised September 20, 2016

By: Mike Novo, AICP, RMA Director of Planning
amended by Carl P. Holm, AICP, RMA Director

Subject: Current Regulations Relative to the Transient Use of Residential Property (Short-Term Rental of Residential Property) (30 Days or Less)

Application: County-wide

What is the Question?

Which Monterey County Codes apply to the Transient Use of Residential Property (short-term rental) (30 days or less)?

Applicable Monterey County Policy/Regulation:

- Title 21 -Inland Areas: Sections 21.64.280 (Administrative Permits for Transient Use of Residential Property for Remuneration); 21.64.100 (Regulations for Bed and Breakfast Facilities)
- Title 20 - Coastal Zone: Sections 20.10.050W, 20.12.050U, 20.14.050Z, and 20.16.050NN (similar use as determined by the Planning Commission); 20.64.100 (Regulations for Bed and Breakfast Facilities)
- Chapter 5.40 (Uniform Transient Occupancy Tax Ordinance)

Short Answer:

Short-term rental (30 days or less) may be permitted with an approved discretionary permit, in certain designated zoning districts in the County. Discretionary permits require review and approval by a decision making body and may or may not be granted. Specific short-term rentals that may be permitted with an approved discretionary permit include:

- Bed and breakfast (B&B) facilities – a specific type of short-term rental as defined in Sections 21.06.110 and 20.06.110– may be permitted in designated zoning districts in both Inland Areas with an approved Use Permit and the Coastal Zone with an approved Coastal Development Permit (Monterey County Code sections 21.64.100 and 20.64.100, respectively).
- Rental for between 7-30 days may be permitted in the Inland Areas with an approved Administrative Permit (Monterey County Code Section 21.64.280).

- Rental for 30 days or less may be permitted in the Coastal Zone with an approved Coastal Development Permit based on a determination by the Planning Commission that the proposed use is of a similar character, density and intensity to those listed in the applicable zoning code sections if determined to be consistent and compatible with the intent of the applicable Chapter of the zoning code and the applicable land use plans. (Sections 20.10.050W, 20.12.050U, 20.14.050Z, and 20.16.050NN)

Rental for 30 days or less requires payment of transient occupancy tax (Monterey County Code Chapter 5.40). Each operator renting occupancy to transients are required to register with the Tax Collector and obtain from the Tax Collector a transient occupancy registration certificate, to be at all times posted in a conspicuous place on the premises. Payment of taxes does not otherwise permit a use that is not otherwise allowed.

Many events, such as weddings, may require a Use Permit or Coastal Development Permit as an assemblage of people, separate from short-term rental or B&B permit. Requirements for assemblages of people or special events is not addressed in this memorandum, but is mentioned here due to the frequent interconnection between short term rentals and special event use of property. The intent is to maintain a residential function.

Discussion:

Since the 1980's, Monterey County has allowed bed and breakfast facilities in certain residential areas of the County in both the Inland Areas and Coastal Zone (Monterey County Code sections 21.64.100 and 20.64.100, respectively). Bed and breakfast facilities (B&Bs) are a type of short-term rental in which the property owner occupies and manages the facility.

In the late 1990's, Monterey County determined the need to define and regulate a broader category of short-term rental uses (or transient occupancy) of residential properties, separate from B&Bs. In 1997, the County adopted an ordinance in the Inland Areas (Non-Coastal Zone), that regulates transient use for remuneration (short-term rental) of single and multiple family dwelling units, duplexes, guesthouses, caretaker units, and other structures normally occupied for residential purposes (Monterey County Code Section 21.64.280). The existing transient use ordinance provides a discretionary permit procedure in the Inland Areas to allow, or legalize existing, visitor serving opportunities. Establishing land use regulations for events was not part of the purpose of this ordinance.

The transient use ordinance adopted by the Board of Supervisors for the Coastal Zone (Title 20 Zoning) was not certified by the Coastal Commission and therefore never went into effect. A Coastal Development Permit may be applied for if the proposed use is similar to the listed uses allowed for the specific zoning district in which the property is located. This is a discretionary permit subject to approval by the Planning Commission.

In recent years, Monterey County has experienced an increase in the number of residential properties being used for short-term rentals. In response to this growing trend, Monterey County has begun work to update the zoning ordinances in the Inland Areas and draft a new ordinance to specifically regulate short-term residential rentals in the Coastal Zone.

During the redraft of the short-term residential rental ordinance, the existing ordinances remain in force:

- In the Inland Areas, Transient Use of Residential Properties and B&Bs in designated zoning districts may be permitted with the approval of a discretionary permit.
- In the Coastal Zone, B&Bs may be permitted in designated zoning districts with the approval of a Coastal Development Permit.
- Rental for 30 days or less (non-bed and breakfast) may be permitted in the Coastal Zone as a similar use with a Coastal Development Permit.

Events require a separate permit for assemblages of people. The County will actively enforce violations to the existing code and continue to investigate any complaints that are received.

Facts of the situation:

Administrative Permits, Coastal Administrative Permits, Use Permits and Coastal Development Permits are discretionary type permits. Discretionary permits require public notice, conditions of approval, and may require a public hearing. Discretionary permits may or may not be granted. With permits and clear conditions of approval, enforcement is easier. Additionally, the permit process allows the County to address any potential adverse impacts of such use.

The Monterey County Resource Management Agency processes permits and enforces the County's land use regulations.

Bed and Breakfast facilities may be permitted in designated zoning districts in the Inland Areas with an approved Use Permit and in the Coastal Zone with an approved Coastal Development Permit (Monterey County Code Sections 21.64.100 and 20.64.100, respectively). Use Permits and Coastal Development Permits are processed through the Monterey County Resource Management Agency.

In Inland Areas (Title 21 Zoning Ordinance) short-term rental for overnight accommodations for 7-30 days may be permitted in all zoning districts that allow a residential use with an approved Administrative Permit (Monterey County Code Section 21.64.280). Administrative Permits are processed through the Monterey County Resource Management Agency.

In the Coastal Zone (Title 20 Zoning Ordinance), short-term rental for overnight accommodations for 30 days or less may be permitted as a B&B, or as a similar use.

Renting a home or property for 30 days or less is also subject to Transient Occupancy Tax (TOT), which is a part of the County Code and State Tax Code that is applied and enforced through the County Tax Collector's office, separate from land use regulations. Paying TOT does not imply or alleviate obligation for land use compliance nor legalize the use. Owners found to be renting homes without proper land use permits, regardless if TOT is paid, are subject to penalties and fines in accordance with the land use regulations. Failure to pay TOT may be subject to separate enforcement and collection.

Long-term rentals (greater than 30 consecutive days) are not regulated under the Monterey County Zoning Codes. Therefore, long-term rentals are all allowed without a permit and are not subject to transient occupancy tax.

External functions such as residential property used for corporate gatherings, rented out for weddings, or rented and used for parties during events (e.g. AT&T, UP Open, Concourse de Elegance, etc) will be viewed as events. Events require a Use Permit or Coastal Development Permit as an assemblage of people, separate from a short-term rental or B&B permit.

EXISTING REGULATIONS CONT.

Title 21 - Inland Areas

Section 21.64.280 - Transient Use of Residential Property

Section 21.64.100 - Bed and Breakfast Facility

Title 20 - Coastal Zone

Similar Use Determination

Section 20.64.100 - Bed and Breakfast Facility

EXISTING REGULATIONS CONT.

Land Use Applications

Application Form

Application Fee

Supporting Documentation

CEQA Compliance

Discretionary Review

EXISTING ENFORCEMENT

Reactive Enforcement - Complaints Received

Prioritized Based upon Health and Safety Conditions

Enforcement Action / Response

Prioritized Based upon Resources

Short Term Rentals are Priority 3, unless Health & Safety

EXISTING FINES

Daily Fines

\$100 First Violation

\$200 Second Violation

\$500 Additional Violations

Each and every day during any portion of which any violation of any provision of this Code is committed, continued, or permitted shall be considered a separate violation, and administrative penalties or fines shall be assessed accordingly.

PROPOSED ENFORCEMENT

- Outreach and Education - 30 days
- Enforcement Action Commencement
 - Group 1 - Not Paying TOT and Ineligible Properties
 - Group 2 - Nuisance Complaints
- Initial Letter
- Administrative Citation

BOARD DIRECTION FINES

- A. 175% of the Advertised Rental Rate per day or 1,000.00 per day for a first violation;
- B. 275% of the Advertised Rental Rate per day or 2,500.00 per day for a second violation; and
- C. 375% of the Advertised Rental Rate per day or \$5,000.00 per day for a third violation.

BOARD DIRECTION CONT.

- A. Urgency Measure - Interim Ordinance to Limit Land Use applications
- B. Operations During Enforcement?
- C. Staffing and Resources
 - i. Supervising Code Compliance Officer
 - ii. Code Compliance Inspector II
 - iii. Office Assistant
 - iv. Vehicles and Equipment

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