

# Exhibit A

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## SHORT TERM RENTAL DISCUSSION

### Overarching Questions

#### What are the key Short Term Rental (STR) characteristics?

Staff presents what it considers to be the key STR characteristics (e.g. rental frequency, number of occupants) for consideration in the discussion below. Staff recognizes there are many other characteristics that may be desirable to address as part of the regulation for STRs, however staff feels the characteristics under consideration today have the greatest influences on key issues of concern pertaining to STR regulation. The Planning Commission is being asked to provide direction regarding the characteristics presented here today.

#### Should those characteristics be tied to relevant thresholds for regulation?

For each STR characteristic discussed, the Planning Commission is being asked to weigh in as to what, if any, thresholds should be defined and considered by the STR regulations. Where possible, staff has identified what it believes are the most relevant thresholds. Where relevant thresholds are not clearly identified, staff seeks guidance to if and what thresholds should be used to regulate STRs.

#### If yes, How do we handle STRs that meet different thresholds?

STRs that meet different thresholds may be handled in a variety of ways by the regulations. Crossing certain thresholds may transition a rental from being consistent with a residential use to one that is more commercial in nature. Are there thresholds that, once crossed, would result in a rental operation that it is desirable to prohibit in residential areas? If a tiered permit process is desired, what thresholds once crossed should be subject to different levels of discretionary review and approval (e.g. ministerial permit versus use permit)? Staff is asking that the Planning Commission provide specific guidance on how it would like regulations to address STRs that meet different characteristics and thresholds discussed today.

### Background

Monterey County is an international visitor destination where online host platforms such as AirBnB, VRBO and others have proliferated rental of private properties for short periods of time (not more than 30 days). These short term rentals (STRs) have raised a number of issues. Not all of these issues are specifically addressed through current land use regulations.

In unincorporated Monterey County, as of 6/30/2016, a search on AirBnB, which is currently one of the largest online hosting platforms, turned up over 200 short term rentals in the unincorporated areas of Monterey County. According to records in Accela (the County's permit database), there were only 26 properties in the same areas of the County which are actually permitted to rent for not more than 30 consecutive days. Of those operations, 7 are permitted bed and breakfast facilities (3 Coastal, 4 Non-Coastal). The remaining 19 are all in the non-coastal zone and permitted as transient use of residential property for remuneration. Additionally, there

are 3 applications currently in process for transient use permits (non-coastal) and no applications in process for similar use (coastal).

Thus far, staff has participated in numerous community and stakeholder meetings as well as a workshop before the Planning Commission to gain an understanding of the issues. This outreach has revealed a public sentiment that ranges from allowing STRs everywhere with a minimal permit process, to prohibiting STRs altogether, and various combinations in between. The policy challenge is to ensure Monterey County's regulations address potential problems related to STRs (transient occupancy of not more than 30 consecutive days) and strike the right balance between community sentiment both in support of and against STRs.

On July 13, 2016 the County held a public workshop to discuss regulating STRs in Monterey County. During the July 13th workshop staff solicited direction from the Planning Commission regarding the primary issue of *if/where STR should be allowed*. Additional resources and information regarding STRs in Monterey County can be accessed at RMA's Short Term Rental Ordinances webpage<sup>1</sup>. At the July workshop staff was directed to proceed with developing an ordinance, using the existing Inland ordinance (Title 21 – Section 21.64.280: Transient Use of Residential Property for Remuneration) as a starting point. Direction was also given to develop clear definition of STRs and update county codes to reflect these definitions.

Many issues were raised regarding STRs during the July workshop that will need to be addressed as we develop regulations to permit STRs. To advance the development of the draft ordinances, staff finds that we must identify what STR characteristics result in a use crossing-over from a residential use to one that is no longer residential. Staff seeks to identify the thresholds for use that cross the line from being residential, and determine how to address these thresholds in the regulations.

The Planning Commission further directed staff to evaluate an ordinance to regulate STRs against all of the Local Area Plans to identify unique issues and consider appropriateness of STRs in each area. STR discussions have been scheduled with each of the Land Use Advisory Committees (LUACs) for November and December meetings.

Since the Planning Commission workshop in July, a Monterey County Superior Court judge concluded during recent litigation that short term rental of property in the Coastal Zone is prohibited without a permit. Based on the specific facts of the case, the Court further held that the Petitioners are allowed to apply administratively for a permit under the "other similar uses" sections of the Monterey County Code. Under the current statutory scheme, short term rental of residential property should be considered a similar use whether similar to a single family dwelling or similar to a Bed and Breakfast facility, for example in low density residential districts under 20.14.050, for which a Coastal Development permit must be obtained.

## **Definitions**

See Attachment 1

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<sup>1</sup> Accessed at <http://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/short-term-rental-ordinances-coastal-ref130043-inland-ref100042>

## **Issues with Short Term Rentals**

Based on outreach and research efforts to date, groups/individuals have argued potential benefits of STRs as well as impacts.

STRs benefits include:

- Providing homeowners with rental income;
- Providing increasingly desirable lodging alternatives;
- Supporting the tourism industry;
- Generating local economic activity, and
- Generating transient occupancy tax (TOT) revenue.

STR impacts include the potential for:

- Loss of long-term and affordable housing stock;
- Degradation of neighborhood character;
- Generating excessive noise (e.g. parties);
- Unfamiliar drivers or parking of vehicles blocking access (emergency and private roads); and
- Security concerns (e.g. private gate codes, etc.).

In order to narrow the scope of the second Planning Commission Workshop, and to aid in development of a framework which can be used to draft more specific policies later, this report focuses on:

- 1) Housing Availability and Affordability;
- 2) Neighborhood Character and Integrity; and
- 3) Health and Safety.

These three categories have ties with most, if not all, of the issues presented by STRs.

### Housing Availability and Affordability

Short-term rentals will likely have an impact on the long-term housing market. Short-term rentals can impact affordable housing (very low, low, and median income households) where homeowners use accessory dwelling units intended to provide necessary employee housing in remote areas like Big Sur. A large interest for STR occurs in areas like Del Monte Forest where housing costs are already unobtainable to these households without some form of assistance. Impacts arise with moderate and workforce housing (market rate housing) due to limited housing stock and low rental vacancy rates in many areas of Monterey County. See Attachment 2 for further detail.

### Neighborhood Character and Integrity

Depending on the frequency, having a short-term rental next door or in the immediate vicinity of one's residence can be different than having an absent owner or permanent resident in the same structure. The reasons given for this distinction have included descriptions of short term rentals; being used for events/parties, creating excessive noise, congesting local roads, increasing litter, and heightening safety concerns due to the introduction of unknown people who are not familiar with the neighborhoods.

Many of these items are attributable to human behavior yet land use regulations can help minimize these potential nuisances if properly implemented. For instance, requirements to communicate basic rules and information in rental agreements and within the home itself can cutoff events before they happen, set quiet hours, designate parking spaces, and provide clear driving directions for visitors. Enforcement of these nuisance issues would initially be the responsibility of the property owner/ manager. Failure of the property owner/manager to respond appropriately or repeat violations could lead to fines, permit revocation, or other punishments depending on specific criteria that is yet to be developed in the ordinance.

As it relates to the framework of this report, Monterey County and other jurisdictions such as Sonoma County have noted an increase in complaints associated with higher occupancies. Occupancy limits, based on building and health code requirements are discussed in more detail below.

### Health and Safety

The 2016 California Building Code has different residential classifications concerning transient resident occupancy relevant to the STR discussion. There is an expectation that transient occupants are not as familiar with the building and their surroundings as long-term or non-transient residents. If occupants are unfamiliar with their surroundings, they may not recognize potential hazards or be able to use the means of egress effectively so additional safety requirements are necessary to ensure the safety of transient guests, based on certain thresholds. In the Building Code Residential Group R3 includes typical residential building standards, whereas Residential Group R1 is subject to additional building code requirements such as accessibility, alarm and sprinkler systems. Thresholds based on the number of guestrooms and number of occupants between Group R3 and R1 uses are defined in the building code, and if the use crosses the established threshold to . These safety requirements would need to be balanced with concerns for making "commercial improvements" to otherwise residential uses. STRs also need to be operated in a manner that ensures public health and meets the water and waste design capacity of the building.

## **Permit Process for Regulating Short Term Rentals**

A ministerial permit is granted when a proposed use meets a specific set of standards or regulations (i.e.: a checklist of requirements). This type of permit is commonly referred to as an “over the counter” approval. While more expedited than a Discretionary permit, the specific standards are still set to protect the public health, welfare and safety of surrounding neighborhoods and the community. The concept of permitting an STR through the ministerial, or over-the-counter, process aligns with the idea that some minimal level of STR use under certain circumstances that are innocuous in a community.

If some thresholds are crossed for a STR, additional review or discretion in issuing a permit may be warranted. A discretionary permit requires at a minimum analysis by County Planning, with some cases requiring additional review from various County departments and agencies. Furthermore, some may also require a public hearing prior to any decision being made. The basic types of Discretionary Permits are Administrative Permits and Use/Coastal Development Permits. With an administrative permit application, the Chief of Planning has final decision on the approval or denial based on Staff recommendations. Administrative permits require public notice before they are finalized. The Chief of Planning’s decision to approve or deny an Administrative permit is appealable to the Planning Commission and then the Board of Supervisors.

When a permit requires more consideration than the Administrative level, a Use (or Coastal Development) Permit goes before either the Zoning Administrator or the Planning Commission for a public hearing. The Use Permit process could be triggered in a number of ways for an STR. If it is determined that STR is a change/intensification of use, then the Proof of Access Ordinance (CITE) would apply on private roads.

The California Coastal Commission (CCC) supports provision of short term vacation rental in the Coastal Zone to provide for affordable coastal access consistent with the Coastal Act. In its October 26, 2016 memo regarding Public Workshop: Lower Cost Visitor Serving Accommodations (Attachment 3), CCC staff support its preliminary recommendation regarding short term vacation rentals. County staff reached out the CCC to discuss STRs in Monterey County, will participate in the November 3, 2016 CCC workshop, and plans to coordinate with CCC as we develop regulations for STRs.

Staff seeks to establish regulations for STRs that do not result in the intensification of use of a residential property, however depending on STR characteristics and thresholds that may be established, a STR could result in a change of use.

*County Code:* The Inland ordinance provides for Administrative Permit as a transient residential use. Bed and breakfast ordinances provide for Use Permits in both coastal and inland zoning codes.

*STR Workgroup:* The group did not agree on whether or not STRs should require a permit or business license or both. Generally the group felt that if STRs are to be permitted, the permit should not run in perpetuity, but rather be issued for a limited term (e.g. 2 years, 5 years).

*Permit Process Options to Consider* include:

- Single permit process: Over the Counter; Administrative; or Use
- Tiered permit process depending on the conditions;
  - Over-the-Counter (ministerial)
  - Administrative
  - Use

### **Thresholds for Regulating Short Term Rentals**

The best regulation is one that is as simple and as clear as possible to ensure it is easy to understand, comply with, and enforce. To help identify relevant thresholds that change a STR from residential in nature to a non-residential use, staff is considering the following with respect to housing, neighborhoods, and health/safety:

- 1) STR characteristics that most influence these issues;
- 2) existing regulations; and
- 3) thresholds for STR elements that may be used to refine the regulatory framework for STRs.

To focus this workshop, staff identified what it believes to be the regulatory elements likely to have the greatest influence on the primary issues of concern both now and into the foreseeable future. They include:

- 1) rental frequency;
- 2) tenant turnover;
- 3) number of guestrooms;
- 4) number of occupants;
- 5) owner/proprietor residence;
- 6) water; and
- 7) waste.

To balance benefits and undesirable impacts of STRs, we must define STRs in a way that clearly distinguishes them from a bed and breakfast as well as their commercial counterparts such as hotels, motels, resorts, inns, etc. In developing a definition for short term rentals, there may be value in distinguishing different STR characteristics and thresholds. Based on direction provided



by the Commission, STRs that meet certain thresholds may be handled differently by the regulation.

#### Rental Frequency (per year)

The policy may identify a threshold or maximum time period for which the unit may be rented in a given year. For example, we could distinguish STRs that relatively infrequently rented throughout the year (e.g. owner leaves town for Car Week and rents home) from those that are able to operate essentially year-round. Consideration for total tenancies or rental nights allowed per year, for example, may prove useful for defining allowable short term rentals or alternative regulatory approval pathways (e.g. over the counter, administrative, discretionary). A higher level of discretionary review may be desirable for properties that are not limited in how often it will be rented throughout the year.

Ensuring compliance with occupancy rate restrictions could be challenging. Compliance may be facilitated through reporting and tracking requirements for STR operators.

*County Code:* Existing Transient Residential Use and Bed and Breakfast ordinances do not regulate frequency.

*STR Workgroup:* The group was generally divided as to whether or not there should be some sort of limit to the number of weeks per year than a short term rental could be rented or occupied (10-positive, 3-neutral, 4-negative).

*Threshold of consideration* for total number of rental tenancies or nights per year:

- No limit
- Maximum number of tenancies/rental nights/rental weeks per year
- year
- Other?

#### Tenant Turnover

The frequency at which the tenant of a property change can affect all of the key issues identified for this discussion. Two aspects should be considered for setting possible limits regarding how often a rental may turnover to a new tenant or group of tenants. Limiting the term (or duration) of rental sets a de-facto limit for rental frequency to once per week. Limiting one tenancy per week, for example, reduces turnover rates to avoid new tenants every night of the week in a residential area. Ensuring compliance with frequency restrictions could be challenging. Compliance may be facilitated through reporting and tracking requirements for STR operators.

*County Code:* The existing Transient Residential Use ordinance identifies a minimum duration of 7-day rental and expressly prohibits transient use of a property for a term less than 7 days. The Bed and Breakfast ordinances does not limit tenant turnover.

*STR Workgroup:* The group generally agreed that one night stays are not acceptable, but otherwise did not agree with respect to minimum stay length. General splits were between 2 night minimums and one week minimums. No formal consensus vote was conducted.

Thresholds of consideration for frequency of rental tenant (turnover) are:

- No limit between 1 and 30 days
- One (1) tenancy per week
- One (1) tenancy per month
- Other?

#### Number of Guestrooms

The 2016 California Building Code utilizes the number of guest rooms as an important threshold for classifying a transient occupancy as either Group R3 or Group R1. Guest rooms are defined as rooms used or intended to be used by one or more guests for sleeping purposes. A Lodging House is classified as Group R3 (like a single family dwelling) that is owner-occupied and has not more than five (5) guestrooms. A Hotel or Motel is classified as Group R1 and defined as any building containing six (6) or more guest rooms.

*County Code:* The existing Transient Residential Use ordinance does not consider number of guestrooms. Bed and breakfast ordinances allow no more than ten (10) guestrooms.

*STR Workgroup:* The group did not specifically address.

*Threshold of consideration* for the number of guestrooms offered for rent are:

- Five (5) or fewer guestrooms (Unit has 5 or fewer bedrooms) – Group R3 Lodging House (if owner/proprietor occupied)
- Five (5) or fewer guestrooms (Unit has 6 or more bedrooms) – Group R3 Lodging House (if owner/proprietor occupied)
- Six (6) or more guestrooms – Group R1 Hotel or Motel
- Other?

#### Number of Occupants

Identifying occupancy standards for STRs is a tool that most directly addresses concerns for health/safety as well as some neighborhood impacts. The 2016 edition of the California Building Code classifies a Boarding House (transient) as a Group R3 occupancy when it is a building used for lodging for compensation and not occupied as a single- family residence, and having 10 or

fewer occupants (residing overnight at the unit). The code establishes maximum occupant loads, and a Boarding House (transient) occupancy that exceeds an occupant load of 10 is classified as Group R1 occupancy. Whether a Boarding House is classified as a Group R1 or R3, it would be synonymous with a short term rental that is not the owner/proprietor's primary residence. Ensuring compliance with occupancy standards can be challenging. Compliance can be facilitated through reporting and tracking requirements for STR operators (e.g. lease documenting guest numbers).

*County Codes:* The existing Transient Residential Use ordinance limits occupancy per a now defunct state law. This ordinance states that each permit shall specify the maximum number of occupants allowed. Bed and Breakfast ordinances do not address the number of occupants.

*STR Workgroup:* There was strong support for limiting number of occupants at not to exceed 2 persons per bedroom plus 2 total additional occupants (14-positive, 0-neutral, 3-negative). Regardless of bedroom count, the group concurred that the maximum rental occupancy should not exceed 12 people (17-positive, 0-neutral, 0-negative).

*Thresholds of consideration* for the rental occupancy are:

- Maximum tenants per unit
  - Ten (10) or fewer tenants – Group R3 Boarding House
  - More than ten (10) tenants – Group R1 Boarding House
  - Limited by site constraints (e.g. # guestrooms, water, OSWT, other)
  - Other?

### Owner/Proprietor Residence

The 2016 California Building Code added to its definition of *Lodging House*, a building or portion thereof 'that is occupied by the proprietor as the residence of such proprietor', adding clarity that Lodging Houses are bed and breakfast-type facilities (in Monterey County Code a morning meal is also included in the definition of bed and breakfast facility) and are classified as Group R3 occupancies. In these cases, the proprietor is residing on-site when it is being rented to guests.

The owner's (proprietor) primary residence may be used to better provide potential benefits and help limit impacts of STR on housing, neighborhood, and health/safety. The precise definition of "primary residence" and ways in which it can be verified would need to be considered in more detail if the Planning Commission wishes to distinguish STRs in this manner.

*Owner's Primary Residence (Unit)* - Renting one's primary residence on a short term basis can provide household income to help an owner afford and remain in his home. Given the already

high cost of housing in Monterey County, STR in this case most directly ensures affordable housing for the owner, helping to keep the owner in his home, neighborhood and community.

The unit may be rented while it is occupied by the owner (the owner is present and residing in the unit) while guestrooms are being rented. This scenario is similar to the concept of a bed and breakfast (Lodging House per the building code). Alternatively, the unit may be rented while owner is not occupying (or residing at) the unit. This scenario would be consistent with a Boarding House per the building code. While the overall housing benefits are the same in either case, potential concerns for health/safety and neighborhood nuisance may not be fully addressed if the owner is residing off-site while the unit is rented, resulting in an un-hosted STR. The discussion of hosted (an owner or manager resides on-site during rental) versus un-hosted rentals will be included in the next iteration of ordinance development.

*Owner's Primary Residence (Property)* - The unit to be rented is on the same property where the owner resides, but is not the unit in which the owner lives. The benefits to housing affordability for the owner, and helping to keep him in the neighborhood and community, are the same. A key difference in this scenario is if the unit being rented could have been part of the local housing stock as a long-term rental. Depending on the situation (e.g. house size, location), the unit being rented may be a loss of affordable or workforce housing. And if it was, this may or may not have impacts on overall affordability of housing. Depending on whether or not the owner is present on-site (residing in his home on the property) while a separate unit is being rented, potential concerns for health/safety and neighborhood nuisance may not be addressed if the owner is off-site while the unit is rented.

*Not Owner's Primary Residence* - The property to be rented, whether in part or in whole, is not the primary residence of the owner or proprietor. If the STR is not the owner's primary residence, then the property/unit could be solely occupied by transient renters and creates the opportunity to operate as a full-time STR. Of particular concern to proponents as well as opponents of STRs is speculative purchase of properties for the sole purpose of income generation as STRs. Consideration for the owner's primary residence may prove useful should alternative regulatory approval pathways be established (e.g. over the counter, administrative, discretionary). A higher level of discretionary review may be desirable for properties that are not primary residences.

*County Code:* The existing Transient Residential Use ordinance does not address. Bed and Breakfast ordinances specify that the B&B must be the proprietor's residence.

*STR Workgroup:* The group expressed general concerns about residential properties being purchased by corporate entities solely for the purpose of being rented as a short term rental. The group addressed issues pertaining to property management as opposed to the owner/proprietor's

residence. If the owner/proprietor does not reside at the rental property, the group was divided as to whether or not it would be acceptable to allow the use of a local contact designated by the owner or a professional property management.

*Thresholds for consideration of Owner/Proprietor Residence is:*

- Unit to be rented is the owner/proprietor's residence
- Property, but not the unit to be rented, is the owner/proprietor's residence
- Owner/proprietor does not reside at the rental property
- Other?

### Water

It is important to consider the health and safety of tenants at a STR. If water is not provided by a regulated public utilities provider for the rental unit, then special considerations may be desirable. If the STR source of potable water is from an individual well, a well under the influence of surface water, a spring or the source is taken directly for a creek, stream or river they will be required to test the water to comply with Monterey County Codes 15.04 and 15.08, Title 17 and Title 22 of the California Code of Regulations, and the California Plumbing Code. Please see Attachment 4, Environmental Health Bureau Memo dated May 23, 2016.

*Current Code:* The existing Transient Residential Use ordinance purpose includes promoting the public health, safety, and general welfare of the County. Bed and Breakfast ordinances states that establishment of the bed and breakfast facility will not be detrimental to the health, safety, and general welfare. Bed and Breakfast ordinances also require that adequate sewage disposal and water supply facilities exist or are readily available to the facility.

*STR Workgroup:* The groups concurred that any proposed short term rental must have existing or have readily available adequate permitted water supply facility (16-positive, 0-neutral, 0-negative, 1-absent).

Threshold of consideration if the potable water source is a:

- Regulated public utility company
- Individual well, a well under the influence of surface water, a spring or the source is taken directly for a creek, stream or river

### Wastewater

If sewer service is not provided by a regulated public utility, then special considerations may be desirable. For STR served by an onsite wastewater treatment (OWTS) or septic system, the system shall be sized in accordance with requirements set forth in Monterey County Code 15.20, specifically 15.20.070 Standards and Specifications, based on requirements of two (2) people per bedroom. Please see Attachment 4, Environmental Health Bureau Memo dated May 23, 2016.

*Current Code:* The existing Transient Residential Use ordinance purpose includes promoting the public health, safety, and general welfare of the County. Bed and Breakfast ordinances states that establishment of the bed and breakfast facility will not be detrimental to the health, safety, and general welfare. Bed and Breakfast ordinances also require that adequate sewage disposal facilities exist or are readily available to the facility.

*STR Workgroup:* Concurred that any proposed short term rental must have existing or have readily available adequate permitted sewage disposal facility (16-positive, 0-neutral, 0-negative, 1-absent).

*Threshold of consideration* if rental unit is served by a:

- Regulated public utility company
- Onsite wastewater treatment system (OWTS) or septic system

### **The Policy Questions at Hand Today**

This analysis and discussion is provided to facilitate the Planning Commission policy direction on these matters. The questions at hand today are:

- What are the key Short Term Rental (STR) characteristics?
- Should those characteristics be tied to relevant thresholds for regulation?
- If yes, how do we handle STRs that meet different thresholds?

Staff respectfully requests Planning Commission policy direction on these issues. Following PC direction on the overarching regulatory framework and process, staff will develop draft ordinance(s). Prior to bringing draft ordinances to the Commission for consideration and refinement, staff will hold a meeting with each LUAC and the STR working group. Staff estimates it would take about four months before returning to the Commission. Alternatively, the Planning Commission could serve as the forum for stakeholder input, which means staff could return with draft ordinances in January.