

## Attachment 2

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## **Vacation Rentals Enforcement in Monterey County: Little Progress Despite Years of Struggle**

### **SUMMARY**

The term “Vacation Rentals” – also referred to as “Short Term Rentals” - refers to residential properties rented to visitors for stays of 30 consecutive days or less. While this type of visitor serving activity has been in practice for many years, it has grown substantially in the last decade, advanced by the popularity of large-scale advertising platforms such as Vrbo and Airbnb. In the unincorporated areas of Monterey County, this growth has been most visible in Carmel Valley and the Coastal Zone and has led to increased public concern and discussion regarding the potential need for additional regulation. While cities within Monterey County have the right to institute their own regulations regarding Vacation Rentals, unincorporated areas of the County are directly under County jurisdiction.

Monterey County has been actively discussing Vacation Rental ordinance changes for the unincorporated areas since the late 1990’s and has had an ordinance effort underway since 2013. While this work is progressing, with the adoption of new ordinances currently expected in 2021/2022, there continues to be significant discourse, both publicly and within the County government, regarding the eventual shape of these regulations.

While the new regulations have been in development during the past seven years, the County has consciously taken a passive approach to enforcing the current ordinances. This has resulted in a significant growth of unpermitted Vacation Rentals throughout the County, increasing public tensions over this uncontrolled growth. The lack of enforcement, coupled with uncontrolled growth, will likely magnify the difficult problems that the County must ultimately address when new ordinances are eventually enacted and take effect.

It is the view of the 2020/21 Monterey County Civil Grand Jury (Civil Grand Jury) that the County Board of Supervisors has allowed this ordinance development effort to drag on for far too long. This delay, combined with the lack of a proactive enforcement of current ordinances, has effectively exacerbated the problem over time.

The Civil Grand Jury recommends that the Board of Supervisors commit to enacting new ordinances no later than end of calendar year 2021, and concurrently enable a properly funded, effective, and sustainable compliance enforcement program. The County should draft and adopt Vacation Rental ordinances that contain both comprehensive coverage as well as appropriate enforcement tools, that are supported by fiscal capabilities which promote sustained viability.

## **GLOSSARY & ACRONYMS**

**ADU** – Accessory Dwelling Units

**APN** – Assessor’s Parcel Number, a unique number assigned to each parcel of land by a county tax assessor

**CCC** – California Coastal Commission

**CCD** – Code Compliance Division of RMA/HCD

**Coastal Zone** – That portion of the unincorporated portion of the County lying in the Coastal Zone as established by the Coastal Act of 1976. Land Use Plans have been adopted by the County Board of Supervisors and certified by the CCC as governing plans for specific areas of the Coastal Zone lying in the unincorporated area of the County of Monterey. Specifically, these are the North County, Del Monte Forest, Carmel, and Big Sur Land Use Plans, respectively.

**Discretionary Permit** - Discretionary land use permits require review and approval by the Zoning Administrator, Planning Commission or Board of Supervisors (compare with Ministerial Permit).

**HCD** – Monterey County Housing & Community Development Department, formerly part of the Resource Management Agency (RMA)

**Inland Areas** – Also referred to as the Inland Zone, refers to those portions of unincorporated Monterey County which lie outside of the Coastal Zone.

**LUAC** – Land Use Advisory Council

**Ministerial Permit** - Ministerial permit approval is granted upon determination that a proposed land use complies with established standards set forth in the zoning ordinance and/or other applicable policy documents (compare with Discretionary Permit).

**Operator** – A person who operates a Vacation Rental and, if not the Owner, has the legal permission of the Owner to operate the Vacation Rental on the subject real property.

**Owner** – The person or persons who hold title to the real property that constitutes the Vacation Rental

**RMA** – Monterey County Resource Management Agency, now separated into two departments: Housing & Community Development (HCD), and Public Works, Facilities, and Parks

**STR** – Short Term Rental (STR), an alternate term commonly used to refer to Vacation Rental

**TOT** - Transient Occupancy Tax (TOT), a tax of 10.5% of the rent charged to transient guests in hotels and motels, bed and breakfast inns, and Vacation Rentals for stays less than thirty (30) consecutive calendar days, located in the unincorporated areas of Monterey County. TOT is commonly known as a “bed tax” or “hotel tax”.

**TTC** – Monterey County Treasurer-Tax Collector Department

**Vacation Rental** – The use by any person of residential property for transient lodging for remuneration for a period of thirty (30) consecutive calendar days or less.

## **BACKGROUND**

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 the Coastal Zone.

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 of residential properties (also known as Vacation Rentals) separate from B&Bs. In 1997, the County adopted an ordinance for the Inland Areas (Title 21) that regulates transient use for remuneration of single and multiple family dwelling units, duplexes, guesthouses, caretaker units, and other structures normally occupied for residential purposes. This ordinance provides a discretionary permit procedure in the Inland Areas to allow non-B&B short term rentals.

At the same time, the County adopted a similar ordinance for the Coastal Zone (Title 20). This required approval by the California Coastal Commission (CCC). Such approval, however, was not forthcoming, and the Coastal Zone regulation therefore never became effective. Consequently, under the current legacy ordinance, a Coastal Development Permit from Monterey County may be applied for if the proposed new use is similar to the uses specifically allowed in the zoning district where the property is located. This would be a discretionary permit subject to approval by the Monterey County Planning Commission (Planning Commission).

More recently, Monterey County has experienced a rapid increase in the number of residential properties being used for Vacation Rentals. In 2013, in response to this growing trend, Monterey County began work to update the zoning ordinances for the Inland Areas and to draft a new ordinance to specifically regulate Vacation Rentals in the Coastal Zone.

The Vacation Rental ordinance redraft initiative has now been in progress for over seven years, driven by County RMA (now by HCD) resources under the direction of the Planning Commission. For reference, the summary timeline of that effort is as follows:

- 2013/14 Initial community meetings
- 2015/16 STR working groups
- 2016/17 LUAC outreach

- 2017 Preliminary draft ordinance
- 2018 Revised preliminary draft ordinances
- 2019 Public draft ordinances
- 2020 Revised public draft ordinances

It is currently expected that the new ordinances may be finalized in late 2021 or early 2022 for the Inland Areas and approximately twelve (12) months later for the Coastal Zone due to required CCC reviews. Further detail on the development of the new ordinances is available on the County website:

- [Vacation Rental Ordinance Development<sup>1</sup>](#)

During meetings held over the course of 2020, the Planning Commission and the Board of Supervisors received significant public input including hundreds of pages of written submissions<sup>2</sup> as well as many hours of verbal comment as the latest draft ordinances were considered. It is clear from monitoring these proceedings that the issues under consideration are both complex and controversial, with many policy elements still not resolved.

Analysis of these proceedings and the written submissions reveals that public opinion on this matter is clearly very divided and appears to be generally reflective of the various constituencies represented in the discussion, including:

- Residential property owners and neighborhood associations
- Vacation Rental owners and operators
- Affordable housing advocates
- Tourists and visitors
- Traditional hospitality and visitor serving industry representatives

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

<sup>2</sup> <https://www.co.monterey.ca.us/home/showpublisheddocument?id=81075>

As evidence of the many open issues remaining unresolved after their June 2020 meeting, the Planning Commission took the unusual path of drafting a formal letter to the County Board of Supervisors<sup>3</sup> asking for additional policy guidance on five areas essential to finalizing the proposed ordinances:

- Affordable Housing: How will a new Vacation Rental ordinance affect affordable housing?
- Support, Monitoring and Enforcement: How will we effectively support, monitor, and enforce new vacation rental ordinances?
- Character and Intensity: Staff assumes vacation rental is a ‘similar use’ consistent with character and intensity of residential use. Is there sufficient evidence to support this assumption?
- Visitor Serving Unit Caps: How do Vacation Rentals affect Visitor Serving Unit counts in areas with Visitor Serving Unit caps, if at all?
- Unique Neighborhoods: Some developments claim unique circumstances. Should developments such as this be provided with special rules?

Given the significance to the regulatory effort of the items identified by the Planning Commission in their June 2020 letter, the Civil Grand Jury finds it both surprising and deeply concerning that such obvious questions would remain unaddressed after seven years of ordinance development.

In a nearly three-hour session dedicated to Vacation Rentals during their November 17th, 2020 meeting, the Board of Supervisors discussed these topics in detail, thereby providing feedback to RMA/HCD staff and the Planning Commission as the ordinance development process continued.

In observing and monitoring these proceedings in recent months, and noting that the future ordinances will potentially affect many hundreds of residential properties

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<sup>3</sup> PDF download: <https://monterey.legistar.com/View.ashx?M=F&ID=8917755&GUID=ABBA1CC0-9A40-4CFB-A90A-86AF6B2E81F7>



throughout the County, scores of neighborhoods, and thousands of visitors annually, a number of questions came to mind with respect to County governance:

- Why does it appear that there are many public complaints regarding Vacation Rentals, but little apparent follow up by the County? How does the County manage incoming complaints from residents regarding Vacation Rentals? What actions are taken on those complaints, by whom and to what effect?
- Why haven't the existing regulations regarding Vacation Rentals in the County been enforced up to the present day, leading to hundreds of properties operating without required permits?
- Why does the County enforce and collect Transient Occupancy Taxes (TOT) on the operation of many hundreds of Vacation Rentals that are not in compliance with County land use regulations?
- What are the potential future ramifications of adopting proposed new ordinances currently under consideration without first addressing the need for a viable and effective enforcement policy and program?
- Why has the Board of Supervisors allowed efforts to develop new ordinances drag on for over seven years, further exacerbating the problem, particularly in light of the non-enforcement of current ordinances?

The fundamental question is whether our County government is acting in an efficient, effective, and consistent manner with respect to Vacation Rentals, and whether all necessary aspects of making the proposed new ordinances successful are being fully considered.

## **METHODOLOGY**

In performing this investigation, the Civil Grand Jury interviewed multiple senior staff members from both the County Housing & Community Development and Treasurer-Tax Collector departments.

In addition, hundreds of relevant records and documents were obtained and reviewed from the above County departments as well as from the cities of Carmel-by-the-Sea, Marina, Monterey, Pacific Grove, and Seaside (see “Local Cities Perspective” in the Appendix for additional information).

There was also extensive review of all publicly available materials on the Monterey County website including Board of Supervisors and Planning Commission meeting recordings and public documentary submissions. The Civil Grand Jury investigation also extended to live attendance at numerous meetings, and review of other relevant public websites, including services vendor [Host Compliance](https://granicus.com/solution/govservice/host-compliance/)<sup>4</sup> and the [Monterey County Vacation Rental Alliance](https://www.mcvra.org)<sup>5</sup>.

Finally, regional press archives covering the past seven years were extensively reviewed for relevant coverage to provide historical context. Select articles are noted in the bibliography section of this report.

## **DISCUSSION**

### **Scope**

In considering the potential scope of an investigation, the Civil Grand Jury elected to focus primarily on aspects related to ordinance compliance and enforcement. Our investigation therefore includes an analysis of current internal County processes such as complaint handling, tax registration and collection, permitting, code enforcement, as well as enforcement considerations for new ordinance development. The Civil Grand Jury also considered business software applications and departmental staffing levels to understand how these potentially contribute to the current environment.

The Civil Grand Jury consciously avoided considering, or taking any position on, the eventual content of the new ordinances, as that responsibility is clearly with the Board of Supervisors. Rather, our intent was to attempt to identify relevant objective factors in the

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<sup>4</sup> <https://granicus.com/solution/govservice/host-compliance/>

<sup>5</sup> <https://www.mcvra.org>

environment that potentially contribute to the current issues, and through that process highlight areas where additional attention must be focused in order to ensure the success of any new Vacation Rental ordinances which are adopted.

Please note that this report does not attempt to account for COVID-related impacts experienced by the local economy during 2020/21. For example, TOT revenue is reported through fiscal year 2018/19 only; fiscal year 2019/20 is not considered as part of this analysis due to the unusual drop in visitor activity resulting from the pandemic.

### **Current Complaint Process**

One of the most common methods by which concerned residents and other interested parties interact with the County with respect to Vacation Rentals is through complaints.

These complaints are quite varied, including for example, noise and parking concerns, unsafe or illegal activities such as fireworks or open fires, and inquiries as to whether a particular residence has obtained the proper permits and tax registrations for Vacation Rental operation. Most often the complaints are initiated by concerned neighbors, sometimes in frustration after failing to gain resolution directly from the property owner, or sometimes in an effort to avoid direct interaction and possible confrontation with the property owner or their guests.

Complaints can come to the County in many ways and through a variety of access points, such as through the Sheriff's department, County Supervisor's office, the Treasurer-Tax Collector's office (TTC), or the Code Compliance Division (CCD) of RMA/HCD. For the purposes of this investigation, the Civil Grand Jury focused on complaints which came to the County through TTC as well as CCD, as the Civil Grand Jury believes these represent the two most common avenues for the filing of public complaints.

TTC typically receives complaints and inquiries via email. Within the office, there are several individuals who are knowledgeable on Vacation Rental related matters and who consequently are tasked with responding to these inquiries. In reviewing approximately one hundred fifty (150) email records provided by TTC, the overwhelming majority of the inquiries were requests for information as to whether a given property was properly

registered for TOT, and whether that property was properly reporting and paying TOT. It was evident from the tone and content of many of the emails that knowledgeable, concerned citizens have deduced that one potentially effective means of discouraging Vacation Rentals in their neighborhood is to alert TTC as to the operation. For Vacation Rentals that are not registered for tax payments, TTC compels the Operator to register for TOT and pay the required occupancy taxes, including back taxes where applicable. For the more casual or occasional Operators, this action in itself may act as a deterrent to continued Vacation Rental operation.

In a few cases, the inquiry to TTC included concerns that extended beyond TTC's purview such as parking and noise. In these cases, the complainant was typically referred by TTC to CCD to pursue possible resolution. As such, while TTC appears to be quite responsive to external requests, in practice they clearly limit their responses to matters for which they are directly responsible.

The Code Compliance Division has responsibility for enforcement of codes, applicable ordinances, and land use regulations in the County, and therefore has the responsibility to receive, record, and act on all complaints and inquiries regarding the same. This includes responding to complaints concerning Vacation Rentals to the extent the nature of the complaint is believed to be zoning or code enforcement related.

Beyond the occasional direct referral by TTC, there are many ways that zoning or code related complaints can be communicated to CCD. These avenues are detailed on the County website page dedicated to this purpose:

- [Filing a Complaint | Monterey County, CA](https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency/building-services/building-services/code-compliance/code-compliance-complaint)<sup>6</sup>

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<sup>6</sup> <https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency/building-services/building-services/code-compliance/code-compliance-complaint>

Additionally, specifically for Vacation Rentals, there is a separate Complaint Hotline phone number as well the capability to enter a complaint directly via an online form:

- [Short Term Rental Information | Monterey County, CA](https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/ordinances-plans-under-development/short-term-rental-ordinances-coastal-ref130043-)<sup>7</sup>

Vacation Rental related complaints and inquiries which come through these specific interfaces are initially routed to a third-party vendor [Host Compliance](#) that provides initial responses to the complainant before routing the complaint to CCD personnel.

CCD enforcement activities are almost exclusively reactive in practice, meaning Code Compliance acts on the basis of receiving citizen complaints. CCD classifies all incoming code-related complaints according to three categories, depending on the risk to human life, health, and safety:

- Priority One cases pose an immediate risk to human life, health and safety or immediate environmental impacts.
- Priority Two cases include situations not of an immediate threat to human life, health, and safety, but that require attention to avoid such future risks.
- Priority Three cases pose no actual or potential danger to human life, health and safety, but include situations where there is a claim or belief that County zoning or building codes are not being followed.

Vacation Rental complaints are classified by default as Priority Three unless there is a reason to believe that additional, more serious violations also exist. CCD prioritizes its response efforts according to these categories in order to focus its resources on the situations which pose the most danger to the community.

For Priority Three complaints, CCD sends a Courtesy Letter to the property owner advising how to remedy the code violation. Follow-up is done as time allows, which given current staffing levels for Code Enforcement Inspectors within CCD effectively means that there is very little follow up on Priority Three complaints.

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<sup>7</sup> <https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/ordinances-plans-under-development/short-term-rental-ordinances-coastal-ref130043->

CCD currently has three fulltime Code Enforcement Inspectors on staff with budget for a fourth which they are attempting to fill in early 2021. These inspectors are responsible for responding to all code and zoning related matters across the 3770 square miles of the County. Each inspector is typically assigned over one hundred (100) new cases per year, and currently there is a backlog over two thousand (2000) open cases.

In the exceptional instance when a Vacation Rental complaint is actively pursued, the general process is well established but can be quite time consuming. Once the Courtesy Notice has been sent to the owner and there has been either no response or an unsatisfactory response, an investigation file is created, and an inspection is conducted to establish direct evidence of a violation. If the inspection confirms a violation, a Notice of Violation is issued triggering fines. Further failure to reach agreement on resolving the violation can result in initiation of an Administrative Hearing process, which often results in a Stipulated Agreement between the County and the Owner.

From the original complainant's perspective, this is generally an opaque process which can contribute to public frustration. There is limited ability for direct, online public access to complaint information. CCD utilizes the [Accela](#)<sup>8</sup> software application for much of their internal records management. Accela is used by many government entities and is generally regarded as capable. Nonetheless, it is quite difficult in practice to use the County's [Accela Citizen Access web portal](#)<sup>9</sup> to obtain property-specific complaint information. Part of this difficulty is attributable to the fact that, as a matter of policy, details of open investigations are not publicly viewable. Additionally, due to staff constraints, there is little detail provided regarding complaints registered with CCD due to the need for department personnel to review and redact any sensitive information prior to public posting. Finally, as noted previously, most Vacation Rental complaints received by CCD are classified as Priority Three with no subsequent action. The net

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<sup>8</sup> <https://www.accela.com>

<sup>9</sup> <https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/resources/online-permit-information>

effect from the public's perspective is that complaint processing can appear to be somewhat of a black hole, where complaints go into the County but nothing tangible seems to result.

It is also worth noting that, as a matter of general practice, there is minimal interaction between CCD and TTC with respect to processing of complaints. While CCD utilizes Accela for maintaining complaint data on properties, TTC typically utilizes email records specifically for complaints and inquiries and as such does not utilize Accela, though that access capability does reportedly exist. And, as discussed in more detail in the next section of this report, TTC uses the services of [Host Compliance](#) for discovery of possible Vacation Rental operators who have not registered for TOT payments. CCD has the ability to access these data but reportedly rarely does so.

### **Tax Collection**

Based on data the Civil Grand Jury received from TTC, as of December 2020 there were approximately 658 Vacation Rental properties currently on the Monterey County tax rolls. Putting aside the recent impacts of Covid-19, TOT registrations for Vacation Rental properties have grown significantly in recent years, rising from approximately 400 registered properties in June 2018 to 658 by December 2020. Much of the growth is attributable to TTC contracting with third-party software/services vendor [Host Compliance](#) during the past four years to effectively front-end the registration process for the department. Host Compliance monitors more than sixty (60) vacation rental websites through automated software algorithms, identifies non-compliant properties, and streamlines outreach efforts to property owners. According to TTC personnel, Host Compliance has been extremely effective in identifying non-compliant Vacation Rental operations and subsequently helping to bring them into TOT compliance.

Host Compliance also collects and aggregates occupancy information from publicly available sources which enable TTC personnel to assess approximate levels of unpaid back tax for which a given Owner may be liable. This information has reportedly been used on occasion as evidence during CCD investigations into public complaints of unpermitted Vacation Rental operations.

TOT revenue from Vacation Rental operations totaled approximately \$1.39M in fiscal year (FY) 2016/17, \$1.84M in 2017/18, and \$2.60M in 2018/19. Calculations based on gross [TOT receipts from the table below](#)<sup>10</sup> therefore imply that the TOT attributable to Vacation Rentals comprised approximately 6.5% of the total occupancy tax revenue in FY 2016/17, rising to approximately 9.0% in FY 2018/19. TTC personnel attribute this rise to a combination of factors which include engaging the services of Host Compliance, updating of TOT tracking software, and dedicating an internal resource to the TOT program.

Transient Occupancy Tax Collections						
FISCAL YEAR	1 <sup>st</sup> QUARTER	2 <sup>nd</sup> QUARTER	3 <sup>rd</sup> QUARTER	4 <sup>th</sup> QUARTER	TOTAL	+ / -
2020-21	\$5,713,854					
2019-20	\$9,843,682	\$6,868,705	3,869,845	\$1,225,393	\$21,807,625	-24.47%
2018-19	9,217,666	6,720,632	4,734,079	8,198,714	\$28,871,091	+17.08%
2017-18	7,142,513	5,540,099	4,904,513	7,070,590	\$24,658,596	+16.44%
2016-17	7,300,709	5,318,097	3,426,404	5,131,661	\$21,176,871	-7.18%
2015-16	7,193,366	5,635,239	4,106,349	5,879,581	\$22,814,535	+ 6.13%

It is worth noting that due to current record keeping methods within TTC, obtaining accurate information on Vacation Rental registrations and revenue generation requires manual data collection by TTC staff. Current data entry and database design does not differentiate between traditional hotels, B&Bs, and Vacation Rentals, therefore making more detailed data less readily available.

TTC currently utilizes [HdL Prime](#)<sup>11</sup>, a software solution designed for the management of government revenue administration processes, for common operations including managing tax collection and business licenses. From discussions with TTC personnel, the Civil Grand Jury learned that they intend to modify their data practices in the future

<sup>10</sup> <https://www.co.monterey.ca.us/home/showpublisheddocument?id=98898>

<sup>11</sup> <https://www.hdlcompanies.com/services/software>



to allow direct breakout of Vacation Rental information. However, that improvement has been on hold for the past several years awaiting final enactment of the revised Vacation Rental ordinances and necessary budget allocations.

TOT Registration applications are submitted via a hard copy form available via download from the County website. The forms may be filled in by computer or by hand and then submitted to TTC where they are subsequently manually input into the internal database by TTC personnel. TOT quarterly reports of occupancy data for tax calculation purposes are due one month after the close of every quarter and are also submitted via a hard copy form which is manually processed by TTC personnel, or via online direct entry which is now available as an alternative method for submittal. TOT quarterly reports submitted by Operators only report aggregate numbers and do not include detailed occupancy data such as specific visitor dates, number of occupants for each date, or number of rooms rented. Members of the general public who want to know whether a given property is properly registered for TOT must send their inquiry via email to TTC personnel, who respond manually.

Improvements in the processes and systems noted above could lead to increased public transparency, increased revenue through decreased tax avoidance, and greater departmental efficiency through reduction of manual operations.

### **Alignment of County Actions**

Throughout the Vacation Rental ordinance development process during the past seven years, one of the key recurring questions asked by policymakers and the public alike is: how can the County collect taxes from unpermitted and possibly illegal businesses?

As noted above, TTC has issued TOT Certificates and currently collects occupancy tax receipts from approximately 658 Vacation Rental businesses in the unincorporated County, a number which reflects significant growth over time.

At the same time, RMA/HCD has approved and issued approximately twenty (20) total permits for Vacation Rental operations in the unincorporated County, a number which has remained constant for a number of years.

From Civil Grand Jury discussions with County personnel in TTC and RMA/HCD, as well as a review of select communications involving various members of the Board of Supervisors dating back to at least 2015, it is clear that there is a general awareness of this apparent inconsistency and a tacit acceptance of this situation by the County.

The TTC perspective is straightforward and is referred to internally as the “Al Capone Rule,” referring to the infamous gangster from the 1930’s who, despite his many crimes, was ultimately convicted and jailed on charges of tax evasion after he famously bragged that “they can’t collect legal taxes from illegal money”. The U.S. Government ultimately proved that statement to be false, fining Capone today’s equivalent of millions of dollars and sentencing him to eleven years in prison. It is TTC’s job to collect taxes and generate revenue for the County, and their focus remains on this task. It is worth noting that TTC’s TOT registration certificates and other relevant TTC documents prominently feature a legal disclaimer notifying the recipient that tax registration does not confer a legal permit for operation:

Registration with the Tax Collector is for the purpose of collecting and remitting TOT to the Tax Collector. It does not authorize any person to conduct any unlawful business, or conduct any lawful business in an unlawful manner, nor to operate without strictly complying with all local applicable laws, including, but not limited to those requiring a permit from any board, commission, department or office of this county. Registration with the Tax Collector does not constitute a permit to operate. Operators should contact the Resource Agency for information related to permits and zoning.

While the Civil Grand Jury understands that TTC is not responsible for zoning enforcement, hence the prior disclaimer, it is nonetheless interesting to note that the disclaimer language specifies that “Operators should contact the Resource Agency for information related to permits and zoning,” therefore implying that these steps are optional. In conversations with TTC personnel, it was similarly noted that they do not attempt to cross check with RMA/HCD as to whether a property has the required zoning permits in place before issuing a TOT Certificate.

CCD, as previously noted, currently has three fulltime Code Enforcement Inspectors on staff with a fourth position currently budgeted. CCD has responsibility for responding to all property code and zoning related matters across the County. As such, enforcement of zoning regulations specifically pertaining to Vacation Rentals is classified as a low, Priority Three matter and is therefore handled on a purely reactive basis.

In discussions with CCD personnel, it is apparent that there is simply insufficient staff to enforce Vacation Rental zoning ordinances proactively. In addition, there is also an understanding that a more active enforcement profile would likely result in a decrease of TOT revenue as businesses are forced to either comply or shutter operations, an outcome that CCD believes the Board of Supervisors would likely find undesirable.

In summary, all personnel interviewed by the Civil Grand Jury understood the apparent inconsistencies of the current approach but felt that it was an inevitable outcome of the current situation, with significant modification only possible when the new Vacation Rental ordinances are ultimately enacted.

### **New Ordinance Finalization & Establishment of Enforcement Program**

The Vacation Rental ordinance redraft initiative has now been in progress for over seven years driven by HCD/RMA under the direction of the Planning Commission. Throughout this period, there have been numerous acknowledgements in Board of Supervisor and Planning Commission statements as well as in local press regarding “community tension” surrounding Vacation Rentals.

In examining how to enable an effective enforcement program, the Board of Supervisors has been aware for many years of staff and budget limitations preventing development of a robust code enforcement capability. Quoting from a [June 2018 Board communication to the Planning Commission](#)<sup>12</sup>:

... the Board is not in support of increasing funding for code enforcement but will reconsider that issue once an ordinance is developed. However,

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<sup>12</sup> <https://monterey.legistar.com/View.ashx?M=F&ID=7038683&GUID=9E011D2B-3D45-4325-B770-730DD38888E6>

we are clear that there is an urgency to complete the ordinances along with the need to continue with enforcement efforts to manage the current STR situation and reduce community division on this topic.

Despite the Board's recognition of the "urgency to complete the ordinances," it is now approaching three years since those statements were made and the new draft ordinances remain in development. During this same period, known unpermitted Vacation Rental operations – as evidenced by TOT registrations - rose from approximately 400 in June 2018 to 658 in December 2020.

Separately, effective in January 2020, the State of California passed new [Accessory Dwelling Unit \(ADU\) statutes](#)<sup>13</sup> resulting in mandatory changes to relevant County ordinances. The State statutes, which prompted the County to update its ordinances for ADUs, establish a more permissive environment for ADU construction to help reduce housing market pressure. The updated ordinances explicitly prohibit use of an ADU for Vacation Rental operations.

In Civil Grand Jury conversations with multiple County personnel, there was general acknowledgment that the new ADU ordinances will likely exacerbate the issues with unpermitted – and in this case illegal – Vacation Rental operations, particularly without a viable, proactive enforcement program.

The Civil Grand Jury applauds and supports recommendations from the Planning Commission for an "ongoing, funded, effective, and proactive program that does not depend on neighbors reporting on one another for enforcement."

The Civil Grand Jury also applauds the Board of Supervisors for encouraging a thoughtful, thorough, and inclusive process for the development of new ordinances over the past seven years. However, that needs to be balanced with expediency, which it clearly has not been, therefore allowing the problems to continue to fester and grow. The excessive multi-year development time for the new draft ordinances, coupled with the lack of direction from the Board of Supervisors on enforcement, has allowed

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<sup>13</sup> [www.hcd.ca.gov/policy-research/accessorydwellingunits.shtml](http://www.hcd.ca.gov/policy-research/accessorydwellingunits.shtml)

uncontrolled growth of new unpermitted Vacation Rentals, resulting in substantially increased public tension and further magnifying the difficult problems which will need to be resolved when new ordinances are eventually enacted.

## **FINDINGS**

- F1. Adobe PDF<sup>14</sup> documents are currently used by TTC to enable Vacation Rental Operators to submit 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.
- 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.
- 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.
- F4. Due to current quarterly TOT reporting methods, Vacation Rental occupancy data that is both timely and contains sufficient detail for use in CCD complaint investigation and enforcement activities is not readily available.
- 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.
- 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

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<sup>14</sup> Portable Document Format (PDF), registered trademark Adobe Corp.

budget allocations and staffing levels for Code Enforcement, proactive enforcement of applicable zoning ordinances is precluded thereby encouraging the growth of unpermitted Vacation Rentals.

- 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.
- 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 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.
- 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.
- F10. Due to the potential increase in secondary housing units resulting from newly enacted County 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.
- 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.

- 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.

## 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.**
- 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.**
- 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 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.**

- 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.**

- 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.**

- 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.**

- 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.**

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.**

## **REQUIRED RESPONSES**

The following responses are required pursuant to Penal Code sections 933 and 933.05:

From the following governing body within 90 days:

- Monterey County Board of Supervisors  
Findings: F1-F12  
Recommendations: R1-R8

From the following elected County officials within 60 days:

- Monterey County Treasurer-Tax Collector  
Findings: F1-F4, F7, F8  
Recommendations: R1-R4

## **INVITED RESPONSES**

- Monterey County Director of Housing & Community Development (formerly part of RMA)  
Findings: F4-F10  
Recommendations: R3-R6

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Civil Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

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## APPENDIX

### Local Cities Perspective

While this report is focused on the unincorporated areas of Monterey County, it is instructive to consider briefly how the local coastal cities within the County have responded to the growth in Vacation Rentals. The Civil Grand Jury requested relevant documents from Carmel-by-the-Sea, Marina, Monterey, Pacific Grove, and Seaside in order to gain an understanding of their general ordinance structure and their respective approaches to tax collection and code enforcement.

With respect to ordinance structure, each city has well defined policies regulating Vacation Rentals within their jurisdiction. The approaches taken by the individual cities are quite varied, reflecting the specific character and sensibilities of each area. For example, Monterey and Carmel both prohibit the operation of all Vacation Rentals in residential areas of their respective cities. Marina allows Vacation Rentals but only in an Owner's primary home, non-hosted rentals are prohibited. Seaside has taken the approach of allowing licenses to Operators who can provide proof that they were operating a Vacation Rental prior to April of 2018.

Pacific Grove's unique ordinance structure resulted from the 2018 voter approved Measure M which prohibits Vacation Rentals in non-coastal residential zones. Vacation Rentals are permitted in the coastal zone subject to a city-wide maximum limit and a density limit requiring a minimum fifty-five (55) lineal feet exclusion zone between Vacation Rentals.

Regarding tax collection and code enforcement, four of the five cities have contractual engagements with vendor Host Compliance to provide Vacation rental monitoring and management services. Various levels of service are contracted by the four cities, from a minimum of Address Identification and 24/7 Hotline capability to the maximum of Address Identification, 24/7 Hotline, Compliance Monitoring, Tax Registration & Collection, and Rental Activity Monitoring.

In addition to engaging contract services provided by third-party vendors such as [Host Compliance](#), effective Vacation Rental enforcement programs require dedicated

municipal personnel to handle necessary tasks such as monitoring and managing the reports and activities of Host Compliance, providing information on regulations to property owners and the general public, responding to complaints, working with property owners to correct code violations, issuing citations, etc. Several of the cities in the survey use outside contracting firms such as [CSG Consultants](#)<sup>15</sup> for augmentation of internal code enforcement staff given the potentially variable workload requirements. Finally, while not specifically requested as part of the survey, at least one of the cities noted that it formally funds its Vacation Rental compliance and enforcement program by specifying that up to 10% of TOT receipts be used for this purpose.

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<sup>15</sup> [www.csengr.com](http://www.csengr.com)

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