



Board Report

File #: PC 17-095, Version: 1

REF100042/REF130043 - SHORT-TERM RENTAL ORDINANCES

- a. Conduct a public hearing to obtain input on preliminary draft regulations of short-term rentals for overnight accommodations in residential areas in the unincorporated area of Monterey County except the Big Sur Coast Land Use Plan Area;
- b. Provide direction whether to include the Big Sur Coast Land Use Planning Area in the proposed regulations for short-term rentals; and
- c. Provide direction to staff relative to draft regulations and process.

(Countywide, coastal and non-coastal)

Proposed CEQA Action: CEQA review to be conducted based on regulations developed.

RECOMMENDATION

It is recommended that the Planning Commission:

- a. Conduct a public hearing to obtain input on preliminary draft regulations of short-term rentals for overnight accommodations in residential areas in the unincorporated area of Monterey County except the Big Sur Coast Land Use Plan Area;
- b. Provide direction whether to include the Big Sur Coast Land Use Planning Area in the proposed regulations for short-term rentals; and
- c. Provide direction to staff relative to draft regulations and process.

SUMMARY

On May 10, 2017, the Planning Commission voted that the issues of Short Term Rental in the Big Sur Coast Land Use Planning Area be addressed with the Land Use Plan update as soon as possible, after reasonable access has been restored. On October 13, 2017, the Pfeiffer Canyon Bridge opened to the public, reconnecting the Big Sur community to the south with the north. Staff requests the Planning Commission consider bringing the Big Sur Coast Land Use Planning Area back into the planning process for developing regulations for STRs, and provide direction to staff as appropriate.

Staff is returning the Planning Commission with a revised Preliminary Draft STR Ordinance (Exhibit C), integrating and building upon Commission direction, public comment, and discussions during the May and June 2017 hearings. The updated preliminary draft ordinance seeks to establish regulations, standards and circumstances under which a STR business of a limited scale and impact may be established in zoning districts where residential uses are allowed. It further provides standards, review processes and periods, and code compliance provisions to assure that such uses are not detrimental to the residential property in the area in which a STR may operate.

Updates, revisions and additions have been made to the draft ordinance including, but not limited to the following key provisions:

- Revised STR types and permitting process based on the following criteria: STR operator's principal residence; number of bedrooms; if resident is present or not during STR rental period; and rental frequency limitations (based on number of contracts).
- All STRs proposed to have business license, and prior to issuance of the license must obtain either a Zoning Clearance or Use Permit (Coastal Development Permit in the Coastal Zone)

- Added size-based occupancy standards for bedrooms
- OWTS require performance evaluations only
- Added a definition for Home Stays
- Added code compliance, enforcement and fines sections
- Developed application criteria and draft samples of key application documents

The revised Preliminary Draft STR Ordinance does not propose any limitations that would apply to specific neighborhoods, zoning districts, land use planning areas, or other appropriate area. Once the Commission provides direction on the key provisions of the preliminary draft ordinance (e.g. STR types and permit process; occupancy limits), staff will then be able to evaluate if any limitations would be advisable, and if so, what limits are appropriate. Due to staff resource constraints, progress is anticipated to continue to be made toward the development of the STR Ordinance, and it likely that a STR ordinance will be in place before the Big Sur LUP is completed.

Staff requests Planning Commission policy direction on the preliminary draft short-term rental ordinance. Direction from this hearing will establish the next steps for staff to develop final draft STR ordinances. Once final draft ordinances are developed, staff will prepare an initial study to evaluate the environmental effects of the proposed regulations, and continue to move forward through the public hearing process accordingly.

STR and events are separate issues, so the STR regulations specifically exclude events. Ordinances for events will be developed after staff has completed ordinances for STR.

DISCUSSION

Background

On April 4, 2017 staff distributed the Preliminary Draft Ordinance for regulating short-term rentals (STR) for overnight accommodations in the unincorporated area of Monterey County. As a result of winter storms, staff received communications from the public requesting that the Big Sur Planning Area be expressly excluded from the draft ordinance due the restricted access along Highway 1 south of the Pfeiffer Canyon Bridge, since community members residing south of Pfeiffer Canyon had only intermittent road access to Salinas using Nacimiento-Fergusson Road or driving south highway one around.

On May 10, 2017, the Planning Commission held a hearing on Short-Term Rentals and took two actions at the hearing. First, the Commission voted that the issues of Short Term Rental in the Big Sur Coast Land Use Planning Area be addressed with the Land Use Plan update as soon as possible, after reasonable access has been restored. The result of this action is that staff continued to develop the short-term rental regulations for unincorporated Monterey County with the exception of the Big Sur Coast Land Use Planning Area. Second, the Commission voted that the hearing on the project be continued to the May 31, 2017 Planning Commission.

On May 31, 2017 and June 28, 2017, the Planning Commission continued the hearing regarding the preliminary draft regulations for STRs for unincorporated Monterey County with the exception of the Big Sur Coast Land Use Planning Area. The primary direction provided to staff during these hearings included:

1. Simplify the types of short-term rentals;
2. Structure the ordinance so that a primary or principal resident (owner or lessee) can do a short-term rental subject to a relatively simple permit/license process; STRs being operated at properties that are not a primary or principal residences should be permitted using a Use Permit process, similar to cottage industry or other business endeavors taking place in residential areas;
3. Return with recommendations and discussion regarding frequency limitations;

4. Do not support requiring two functioning disposal fields for sites on septic or on-site wastewater treatment systems (OWTS);
5. Do not support establishing a new water system permit category for short-term rentals, since we don't have regulations for rentals (e.g. permit category for long-term rentals); and
6. Return to the Planning Commission in the fall 2017 (within 3-4 months) with a Draft Ordinance.

Draft STR Ordinance Update Overview

Staff is returning the Planning Commission with a revised Preliminary Draft STR Ordinance, integrating and building upon Commission direction, public comment, and discussions during the May and June 2017 hearings. The updated preliminary draft ordinance seeks to establish regulations, standards and circumstances under which a STR business of a limited scale and impact may be established in zoning districts where residential uses are allowed. It further provides standards, review processes and periods, and code compliance provisions to assure that such uses are not detrimental to the residential area in which a STR may operate.

Updates, revisions and additions have been made to the draft ordinance including, but not limited to the following key provisions:

- Revised STR types and permitting process based on the following criteria: STR operator's principal residence; number of bedrooms; if resident is present or not during STR rental period; and rental frequency limitations (based on number of contracts).
- All STRs require business license, and prior to issuance of the license must obtain either a Zoning Clearance or Use Permit (Coastal Development Permit in the Coastal Zone)
- Added size-based occupancy standards for bedrooms
- OWTS require performance evaluations only
- Added a definition for Home Stays
- Added zoning districts where STRs allowed (Exhibit G - Inland and Coastal)
- Added code compliance, enforcement and fines sections
- Developed application criteria and draft samples of key application documents (Exhibit H)

The revised Preliminary Draft STR Ordinance does not propose any limitations that would apply to specific neighborhoods, zoning districts, land use planning areas, or other appropriate area. Once the Commission provides direction on the key provisions of the preliminary draft ordinance (e.g. STR types and permit process; occupancy limits), staff will then be able to evaluate if any limitations would be advisable, and if so, what limits are appropriate.

Key Ordinance Policy Decisions

What is the "line" between a short-term rental that is consistent with a residential versus a commercial?

A fundamental step to help ensure STRs that will be compatible with and not detrimental to the residential area and character in which they may operate, is to establish clear permit requirements and criteria. By definition as proposed in the draft ordinance, a STR unit can only be rented to one tenant (have only one rental contract) at any given time. All STRs are proposed in the draft ordinance to procure a Business License in order to operate. Monterey County Code Chapter 7.02, Business Licenses, will need to be amended to include STRs. For STRs that are considered consistent with residential use, a Zoning Clearance is recommended. For STRs that are commercial in nature and could potentially be incompatible in a residential area, a Use Permit process is recommended.

The draft ordinance proposes distinguishing between an allowed residential STR (Zoning Clearance) versus commercial STR (Use Permit) using four criteria: 1) Number of bedrooms; 2) STR operator's principal

residence; 3) It qualifies as a Home Stay; and 4) Rental frequency, based on number of contracts. Exhibit D illustrates how the recommended criteria is used to determine if a land use clearance or use permit is required. Below is a summary:

Number of Bedrooms:

Staff recommends that only proposed STRs with a number of bedrooms (equivalent to a guestroom for determining occupancy) consistent with the California Building Code Residential Class R-3 standards be eligible for a Zoning Clearance (2016 R-3 = 5 or fewer). For larger STRs that exceed the R-3 standard number of bedrooms and are therefore consistent with the CA Building Code Residential Class R-1 be subject to a Use Permit process (2016 R-1 = more than 5). This is consistent with the Planning Commission's recent action to deny a Transient Occupancy Administrative Permit application for a large house with 8 bedrooms. The denial was in part based on the fact that it would be unreasonable if not impossible to restrict the number of guestrooms and occupants in accordance with the standards of the R-3 class, and the proposed use should more appropriately be subject to a Use Permit process.

Principal Residence:

A STR operator's principal residence is defined as proposed in the draft ordinance, as the residence where the person lives the majority of the time during the year; staff recommends having the STR applicant sign an affidavit of residency (to be developed). At the May and June hearings, the Planning Commission directed staff to allow STRs in an operator's principal residence (owner or lessee) with a simpler permit process, so local residents may access the benefits of STR. This allows residents to receive the benefits of supplemental income while without removing long-term housing from the housing market. The Commission felt that STRs that are not a principal residence are business/commercial endeavors and should require a Use Permit. The draft ordinance is consistent with this direction, however, it goes on to propose rental frequency limits to further differentiate between residential (Zoning Clearance) versus commercial (Use Permit) STRs.

Home Stay:

A home stay as proposed in the draft ordinance, means a short-term rental whereby the STR Operator rents bedrooms in his/her residence while the STR Operator is residing at the residence. The draft ordinance proposes Home Stays be allowed upon issuance of a Zoning Clearance and procurement of a Business License.

Rental Frequency:

Staff recommends limiting rental frequency based on the number of short-term rental contracts, as opposed to other measures such as number of rental days. Since the draft ordinance proposes that "each contract that enables an STR use shall be in writing...", it will be easier to enforce based on the written documentation as opposed to other measures. The draft ordinance proposes a:

- Zoning Clearance for Home Stays, and no limit to the number of contracts
- Zoning Clearance for STRs that are not home stays, and are limited to twelve (12) or fewer contracts in a year and two (2) or fewer contracts in any given month
- Use Permit for any STR that may be rented more than twelve (12) times per year and/or more than two (2) times in any given month.

The proposed limit of 12 contracts (or rentals) per year derives from the proposed short-term rental definition of 30 consecutive calendar days or less, which aligns with the rental term that is subject to transient occupancy tax. Typical long-term rental agreements are for duration of one year or month-to-month, enforcement of fewer than 12 contracts per year is challenging. That said, should it be desired to limit rental frequency to fewer than 12 contracts, the short-term rental definition can be changed to fit the desired frequency (e.g. 365 or 90 or other

consecutive calendar days or less).

What rules should be required for STRs that can be reasonably complied with, are easily enforceable, and ensure the STR is not detrimental to the residential area?

Once a STR is permitted, it is paramount that clear rules and standards be established to ensure the STR is operated in a manner that is compatible and not detrimental to the residential use and character of the area. Exhibit E lists the rules and standards proposed in the draft ordinance and provides a comparison of advantages and disadvantages. The figure also provides for consideration of regulations in the cities of Pacific Grove and San Francisco, and a summary of policy recommendations from the Short-Term Rental Workgroup, Monterey County Vacation Rental Alliance, and Monterey County Hospitality Association.

What is an appropriate framework for code compliance and enforcement to ensure STR operations are properly permitted, abiding by the rules, and that unpermitted or ‘bad acting’ STRs may be effectively shut down?

The draft ordinance proposes a multi-pronged approach to prevent un-permitted STR operations as well as ensure permitted operations are abiding by the rules and standards in the ordinance. The framework includes, but is not limited to, the following:

- Prohibits advertising any rentals that are prohibited by the STR ordinance
- Grants hearing officer ability to suspend, revoke or prohibit of any STR business license, and provides criteria for consideration in making such determinations
- Allows for administrative citation to impose fines based on Advertised Rental Rates

Exhibit F summarizes the advantages, disadvantages and other considerations with respect to the enforcement framework proposed in the draft ordinance.

Big Sur Status

On October 13, 2017, the Pfeiffer Canyon Bridge opened to the public, reconnecting the Big Sur community to the south with the north. The Big Sur community continues to recover from the 2016 Soberanes Fire and subsequent winter storm damage, yet with the reopening of the bridge, by far the most significant limitation for Big Sur community members to participate in discussions related to short-term rental regulations has been eliminated.

In May, it was the Commission’s desire that once reasonable access was restored the Big Sur community’s discussion related to regulations for short-term rentals should take place through the Big Sur Coast Land Use Plan update process. At the Planning Commission and Land Use Advisory Committees Joint Annual Meeting on October 25, 2017, this topic was discussed. The Big Sur LUP update is part of the Long-Range Planning Workplan and was identified as a priority task in 2016, but it was not identified as one of the top priority projects adopted by the Board of Supervisors for 2017 (Exhibit B). Until key planning staff vacancies can be filled the LUP is not likely to move forward. Given the nature and complexity of the LUP development process in Big Sur, and the importance of the lead having knowledge of Big Sur and the planning history, the LUP can only adequately be advanced by the Chief of Planning or RMA Director. In the meantime, progress continues to be made toward the development of the STR Ordinance, and it likely that a STR ordinance will be in place before the Big Sur LUP is completed.

Next Steps

The revised Preliminary Draft STR Ordinance does not propose any limitations that would apply to specific neighborhoods, zoning districts, land use planning areas, or other appropriate area. Once the Commission provides direction on the key provisions of the preliminary draft ordinance (e.g. STR types and permit process;

occupancy limits), staff will then be able to evaluate if any limitations would be advisable, and if so, what limits are appropriate.

Staff requests Planning Commission policy direction on the preliminary draft short-term rental ordinance. Staff requests the Planning Commission provide direction whether to include the Big Sur Coast Land Use Planning Area in the proposed regulations for short-term rentals, and provide direction to staff as appropriate.

Direction from this hearing will establish the next steps for staff to develop final draft STR ordinances for the Planning Commission to consider. Once final draft ordinances are developed, staff will prepare an initial study to evaluate the environmental effects of the proposed regulations, and continue to move forward through the public hearing process accordingly.

STR and events are separate issues, so the STR regulations specifically exclude events. Ordinances for events will be developed after staff has completed ordinances for STR.

OTHER AGENCY INVOLVEMENT

The following agencies and departments have been consulted in the preparation of the preliminary draft ordinance and this report included: Resource Management Agency; County Counsel; Environmental Health Bureau; Monterey Regional Fire; and the Treasurer-Tax Collector.

Prepared by: Melanie Beretti, Special Programs Manager (831) 755-5285

Reviewed by: Jacqueline R. Onciano, RMA Chief of Planning

Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the RMA:

Exhibit A - Correspondence - June 28, 2017 to November 8, 2017

Exhibit B - Annual Report for the General Plan and Housing Element - 7-18-17

Exhibit C - Preliminary Draft Ordinance (Version: 2017.11.08)

Exhibit D - STR Draft Ordinance Permit Process Flow Chart

Exhibit E - STR Draft Ordinance Rules & Standards Summary

Exhibit F - STR Draft Ordinance Code Compliance Summary

Exhibit G - Proposed Zoning Districts where STRs Allowed

Exhibit H - Draft Application Check List and Materials

cc: Front Counter Copy; Planning Commission; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; RMA-Code Compliance; Economic Development; Wendy Strimling and Brian Briggs, County Counsel; Treasure/Tax Collector; Jacqueline R. Onciano, Chief of Planning; Dan Dobrilovic, RMA Building Official, Dorothy Priolo, Monterey Regional Fire Deputy Fire Marshal; Monterey County Sheriff's Office; District 5, Supervisor Potter; STR Public Distribution List; Land Use Advisory Committees; Planning File REF100042 - Inland/REF130043 - Coastal