



## Board Report

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**File #:** 18-619, **Version:** 1

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- a. Receive a report on Short-Term Rental Code Compliance; and
  - b. Provide direction to staff regarding Short-Term Rental Code Compliance.
- (Board Referral No.: 2018.10)

### RECOMMENDATION:

As a referral, staff seeks Board direction if staff is to pursue this item further. Given the current state of the budget, staff recommends Option 1 (No Change) until ordinances are adopted. If the Board directs staff to pursue any option besides Option 1, staff will return with a more detailed program for consideration.

### SUMMARY:

On March 27, 2018, Supervisor Adams submitted a referral requesting RMA formulate a response from the Monterey County Board of Supervisors to a January 31, 2018 Planning Commission letter requesting policy direction related to Short-Term Rental (STR) enforcement. Current practice of Resource Management Agency (RMA) Code Compliance is reactive enforcement based on complaints received, which are then prioritized based on health and safety conditions.

Complaints are addressed based on priority and available staffing and resources for the RMA code compliance team. An exception is compliance for cannabis where RMA received cannabis tax funding for one Code Compliance Inspector to be used on enforcement of that program. STRs conducted in legal structures (homes) would generally be assigned Priority 3, unless there is some health or safety issue identified.

The Board may consider an interim STR code compliance policy. STR enforcement requires a lot of research (support staff) and working odd hours that could result in overtime. RMA has identified a number of options for the BOS to consider addressing the PC's questions and concerns:

- 1) **No change.** STRs would continue to be processed as priority three and no resources would be allocated to increase service levels.
- 2) **Increase funding.** Additional inspector(s) and/or support staff dedicated to STRs. The level of staffing would depend on the level of enforcement desired. Each Inspector can manage a caseload of 120-150 cases.
- 3) **Hire a third-party vendor.** RMA could investigate professional services to act as enforcement official for initial steps in process (e.g. send courtesy letters, issue Notices of Violation, etc.) RMA staff would need to advance the code case through the administrative hearing process for those that don't voluntarily comply. This option would require preparation and processing of an RFP.
- 4) **Make STRs higher priority** (e.g. Priority 1). Staff estimates addressing unpermitted STRs would increase RMA code compliance caseload by over 1,000 new cases. Without increasing staff and resources, this option would affect Priority One and Priority Two case investigations unless additional

resources are provided (Options 2 and 3).

- 5) **Enact a moratorium** (temporary ban on new STRs). Staff recognizes that there is already quite an extensive number of non-compliant STRs, even though a path to permitted STRs exists. While a moratorium eliminates this legal path forward, it does nothing to eliminate the consumer demand for STRs or amount of existing STRs operating in violation of County Code. As such, there would be no benefit for a moratorium without increased enforcement. However, enacting a moratorium could have an unintended consequence of reduction in TOT, currently paid by unpermitted STRs.
- 6) **A combination of the above**

Considering the current state of non-compliance in STRs and the available enforcement resources, any option above (excepting Option 1) would need to be paired with increased code compliance expenditures in order to have a measurable effect on the incidences of unpermitted STRs. Consultants are better suited for addressing temporary peaks in services, rather than hiring employees and later laying them off. Staff finds that the current number of violations could diminish with more active enforcement and establishment of a licensing program for all levels of STRs. Staff believes that the supply of STRs would likely rise to meet demand unless the cost and probability of enforcement is higher than the expected payout for operating an illegal STR. Penalties are a critical part of the ordinance development. Current penalties are not substantial enough to deter the illegal activity, especially in high rent areas where many Monterey County STRs occur.

RMA has been developing ordinances for regulation of Short Term Rentals (STRs). At the Planning Commission's direction, over the past few months, staff has been attending meetings with all 12 of the Land Use Advisory Committees. Once we have draft ordinances, staff will present options for enforcement.

#### DISCUSSION:

During a public hearing on January 31, 2018, the Planning Commission heard public testimony regarding STR activities. The two main concerns raised at the hearing were that community tension is rising due to increased STR activity, and that County staff's limited resources prevent a robust code compliance response to STR complaints. The Commission specifically requested the Board of Supervisors give clear direction to RMA staff regarding:

- 1) An interim STR code compliance policy while awaiting the adoption of new regulations
- 2) Providing adequate staffing and resources to RMA Code Compliance; and
- 3) The possibility of using technology and/or contractors to assist with consistent and predictable code enforcement practices.

RMA code compliance activities are reactive in practice, meaning code compliance acts on the basis of citizen complaints. RMA code compliance classifies 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 One examples include men, women, and children living in sheds or dug out basements, and active dumping of waste, trash and debris into environmentally sensitive habits such as the Carmel River, the Elkhorn Slough and other waterways.
- 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 Two examples include non-habitable accessory structures built without permits, contractor yards in residential zones, and rubbish and garbage on a parcel.

- Priority Three cases pose no danger to human life, health and safety but include situations where County zoning or building code is not being followed. Priority Three examples include house color violations, fence height, or other setback violations. STR complaints are classified as priority three unless additional, more serious violations also exist on site.

RMA code compliance prioritizes its response efforts according to these categories in order to focus its limited resources on the complaints which pose the most danger to the community. Given available resources, RMA code compliance priorities are established by RMA Chief of Building Services, following direction and input of the RMA Chief of Planning (Zoning Codes), RMA Deputy Director of Land Use and Community Development, and the RMA Director. Initial responses to complaints are determined by category according to priority as follows:

- **Priority One:** A site visit is attempted by code compliance to assess the complaint. If unable to access the site, a courtesy letter is mailed to the property owner requesting access. Code compliance begins the research and analysis of permit and violation history on the parcel.
- **Priority Two:** A courtesy letter is mailed to the property owner requesting a site visit. A site visit may also be attempted when code compliance is in the vicinity while performing Priority One inspection duties.
- **Priority Three:** A courtesy letter is sent to the property owner advising how to remedy the code violation. Follow-up is done as time allows in relation to Priority One & Two caseload demands.

After the initial response, all priority levels then follow the same process: If a violation is confirmed, code compliance will issue a Notice of Violation and work with the property owner to achieve compliance. If no violation exists, the case will be closed. In practical terms, Priority One cases take most of the unit's time and resources while Priority Three cases are handled mostly through voluntary compliance on the part of the offending party.

The RMA code compliance unit has struggled for many years to meet its demanding volume of complaints with limited staff and resources. Staffing cuts during the economic downturn and slow economic recovery from 2007-2014 resulted in an accumulation of a large backlog of unresolved code compliance cases.

In approximately 2010 the RMA began tracking its backlog of unresolved code compliance cases. Through refining its management practices and staffing resources, the unit has been able to reduce the backlog to a more manageable level by closing more cases each year than are opened. RMA currently has 1,616 open Code Compliance cases; 488 Priority One, 706 Priority Two and 422 Priority Three cases. (Figure 1)

Of the current Priority Three cases, 76 are STRs, constituting roughly 5% of the total current caseload. STR complaints would be considered Priority One only if there were additional violations (unpermitted or unsafe structures, inadequate sewage facilities, etc) that may threaten life, health and safety. Some of the more

common issues with STRs include nuisances such as noise and parking (private roads).

Staff has been engaged in developing an ordinance to address STRs for about three years. The process has been slow due to extensive engagement with the communities. Until a new ordinance is adopted, RMA code compliance must research the designated, allowable uses in the General Plan, Land Use Plans and Zoning Ordinance to determine if a violation has occurred with regard to complaints received about suspected STRs. If the STR is operating in violation, it is classified as Priority Three and sent a courtesy letter advising of the violation and the remedy.

RMA permit records show only twenty permitted STRs in the unincorporated area of the County. The Treasurer-Tax Collector has provided the RMA with information on the property owners registered to pay Transient Occupancy Tax (TOT) that includes approximately 400 potential STRs. In addition, the Treasurer-Tax Collector has contracted with a third party, Host Compliance, and have received a list of 644 additional properties in unincorporated Monterey County advertising STR properties that are not registered to pay the TOT. (Figure 2)

Addressing the unpermitted STRs would increase RMA code compliance caseload by over 1,000 new cases. At present, the RMA code compliance unit consists of one RMA Services Manager and four (4), Code Compliance Inspectors (CCI) who are responsible for the enforcement of Monterey County building and land use codes for the entire County. One of the four CCI positions is funded with cannabis tax revenues to support the cannabis program. Staff finds that establishing business licenses/permits for all STRs (similar to cannabis) will aid in enforcement against any operation without a license.

#### **OTHER AGENCY INVOLVEMENT:**

RMA coordinates with Monterey County Treasurer-Tax Collector on enforcement matters with STRs.

RMA consults County Counsel on code enforcement cases. Therefore, increases in Code Compliance for STR would directly impact County Counsel.

On November 28, 2017, staff presented a draft ordinance to the Planning Commission. The Planning Commission directed staff to present the draft ordinance to all of the Land Use Advisory Committees, which extended the time to get ordinances completed. Staff anticipates having a draft ordinance to the Planning Commission in June 2018 to make a recommendation to the Board.

#### **FINANCING:**

If the Board directs the RMA to expand its operations by adding additional staff, fully-burdened labor costs would be as follows:

Sr Code Compliance Inspector	= \$ 131,155
Code Compliance Inspector	= \$ 129,757
Office Assistant	= \$ 78,827
Deputy County Counsel II	= \$ 156,734

Whether there is an increase now or after ordinances are adopted, RMA would recommend assigning revenue from the taxes received (TOT) to support the STR code compliance program (similar to the cannabis program).

The adopted budget for FY 2017-18 and recommended budget for FY 2018-19 include the allocation of all TOT revenues. Assigning revenue from TOT to expand code compliance for STRs would require redirecting existing allocations of discretionary funding.

**BOARD OF SUPERVISORS STRATEGIC INITIATIVES:**

The Monterey County Short-Term Rental Code Compliance Policy addresses the Strategic Initiative Policy Areas that promote the growth of a responsible and legal Monterey County Short-Term Rental industry.

Mark a check to the related Board of Supervisors Strategic Initiatives

X Economic Development

Administration

Health & Human Services

Infrastructure

X Public Safety

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The following attachments are on file with the Clerk of the Board:

Attachment A - Code Enforcement Cases by Priority Map

Attachment B - Potential Code Enforcement from TOT List Map