



Board Report

File #: PC 19-052, **Version:** 1

Public hearing to consider making recommendations to the Board of Supervisors for vacation (short-term) rental regulations.

Project: REF100042/REF130043 SHORT-TERM RENTAL ORDINANCES

Proposed CEQA Action: To be determined based on final draft ordinances

RECOMMENDATION

It is recommended that the Planning Commission:

- a. Consider draft ordinances prepared to reflect public input and Planning Commission direction to date; and
- b. Provide direction to staff on recommended regulations to present to the Board of Supervisors and request Board input on those draft regulations.

SUMMARY

On April 22, 2019 the RMA released three draft ordinances amending the Monterey County Code (MCC) to establish regulations, standards, and circumstances under which Vacation Rentals (also known as short-term rentals) may be allowed in the unincorporated areas of Monterey County. The three draft ordinances include: Amend Title 20 (Coastal Zoning), including adding Section 20.64.290 (Regulations for Vacation Rentals) and amending other sections of Title 20 in relation to vacation rentals; Amend Title 21 (Inland Zoning) including amending Section 21.64.280 (Administrative permits for transient use of residential property for remuneration), adding Section 21.64.290 (Regulations for Vacation Rentals), and amending other sections of Title 21 in relation to vacation rentals; and Amend Title 7, including amending Section 7.02.060 (Business Licenses) and adding Chapter 7.110 (Vacation Rental Operation Permits). These draft ordinances are the result of the public input, Planning Commission direction, and subsequent refinement to ensure consistency with Monterey County policies and plans. Also made available for public review was the associated environmental analysis for the draft ordinances.

The RMA received public comment on the draft amendments to MCC and associated environmental analysis. All of the public comments received since April 22, 2019 are included with this report (Attachment 5). RMA was able to consider public comment received through June 20, 2019 as part of the analysis presented for this report. The public comment identified policy areas that warrant further consideration and possible refinement within the draft ordinances.

Individuals who submitted comment generally in support of vacation rentals primarily took issue with the discretionary permit requirements including the term limitation and potential permit costs, requesting ministerial approval only. Alternatively, the hospitality industry expressed concern over unfair business competition and with allowing unlimited homestays with only ministerial approval. In areas where visitor serving accommodation/unit maximum limits exist, hospitality representatives were concerned that counting vacation rentals against those limits would leave little to no opportunity for existing establishments to expand. California Coastal Commission (CCC) staff weighed in on the draft regulations, indicating that a Coastal Development Permit may not be the appropriate tool as it introduces a suite of local coastal plan compliance issues. CCC also expressed total rental days, as opposed to number of rental contracts, is a more appropriate threshold determinant between vacation rentals allowed with a ministerial versus discretionary approval. Those

largely opposed to vacation rentals expressed concerns with any form of “unhosted” vacation rental and expressed the desire for homestays (or any vacation rentals) to be allowed in owner-occupied residences only and were generally against unlimited homestays allowed with ministerial approval.

There were comments on both sides of the argument whether or not vacation rentals should be subject to “Proof of Access” ordinances and whether or not they should be allowed on private shared roads. Comments were received in support of allowing on-site parking only, and other comments in support of removing on-site parking requirements in areas where on-street parking is available. Many commenters raised environmental and resource concerns particularly with respect to possible traffic, water, and housing impacts and requesting analyses of the proposed ordinances; a number of letters questioned the CEQA approach and suggest an Initial Study and/or Environmental Impact Report are needed.

The purpose of the public hearing is to consider the draft ordinances, take public testimony on the draft ordinances, and make recommendations to the Board of Supervisors for the purpose of staff developing final draft ordinances, which would be subject to further public hearings. In this report staff presents some policy options the Commission may wish to consider that could address a number of key issues that were raised during public comment on the draft ordinances. RMA also received public comment pertaining to environmental analysis and California Environmental Quality Act (CEQA) determination. RMA proposes to first seek input from the Planning Commission regarding the draft vacation rental ordinances at the July 24, 2019 Special Meeting. RMA proposes to bring forward the draft vacation rental ordinances and outcome of the Commission’s recommendations and direction to the Board of Supervisors, tentatively on August 27, 2019. The intention is to obtain Planning Commission and Board input for staff to develop final draft ordinances, allowing staff to finalize the project description to be used for environmental analysis. Once the ordinance direction is provided from the Commission and Board, staff then plans to develop final draft ordinances.

Once final drafts of the vacation rental ordinances are written, staff will determine what, if any, environmental analysis or studies may be needed for the final draft ordinances. If environmental impacts are identified with anticipated adoption of the ordinances, staff may further modify the proposed regulations to mitigate and eliminate any potential impacts. Staff will return with final draft ordinances for Planning Commission consideration pending input from the Board of Supervisors.

DISCUSSION

Background

On April 22, 2019 the RMA released three draft ordinances amending the Monterey County Code (MCC) to establish regulations, standards, and circumstances under which Vacation Rentals (also known as short-term rentals) may be allowed including. Vacation rentals are defined as *“The use, by any person, of a residential property for transient lodging where the term of occupancy, possession, or tenancy of the property by the person entitled to such occupancy, possession, or tenancy is, except as provided herein, for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Vacation Rental includes Commercial Short-Term Rentals, Limited Short-Term Rentals, and Homestays. Vacation Rental does not include a bed & breakfast facility, hotel, motel, hostel, inn, roominghouse, boardinghouse, rooming or boarding.”*

The ordinances modify Monterey county code (MCC) as follows:

- Amend Title 20 (Coastal Zoning), including adding Section 20.64.290 (Regulations for Vacation Rentals) and amending other sections of Title 20 in relation to vacation rentals - Attachment 1;
- Amend Title 21 (Inland Zoning) including amending Section 21.64.280 (Administrative permits for

transient use of residential property for remuneration), adding Section 21.64.290 (Regulations for Vacation Rentals), and amending other sections of Title 21 in relation to vacation rentals - Attachment 2; and

- Amend Title 7, including amending Section 7.02.060 (Business Licenses) and adding Chapter 7.110 (Vacation Rental Operation Permits) - Attachment 3.

The ordinances distinguish between three types of vacation rentals:

- “*Homestay*” means vacation rental of a residential dwelling that is concurrently occupied by the dwelling’s Principal Resident while the dwelling is being rented as a vacation rental. A Principal Resident means a human being who occupies a residential unit as their Principal Residence, defined as the dwelling occupied by the resident and where the resident lives more than 50% of the year, defined herein as 183 days or more per calendar year.
- “*Limited Short-Term Rentals or Limited STR*” means a Short-Term Rental that is rented as a vacation rental four times or fewer per 12-month period. A Short-Term Rental means a vacation rental where the Principal Resident is not occupying the dwelling unit concurrently when renting it as a vacation rental.
- “*Commercial Short-Term Rentals or Commercial STR*” means a Short-Term Rental that is rented as a vacation rental five times or more per 12-month period.

The ordinances seek to establish what type of vacation rental operations are consistent with an existing single or multi-family dwelling use as to character, density and intensity and thus may be allowed or permitted ministerially, as compared to ones that are anticipated to have land use impacts similar to other recreational/visitor serving uses and deserve similar discretionary evaluation to establish. The ordinances propose that Homestays and Limited Short-Term Rentals be allowed uses with a ministerial permit and Commercial Short-term Rentals be uses allowed with a Use Permit (inland) or Coastal Development Permit (coastal) in zoning districts where single family dwellings and/or multiple family dwellings are allowed uses. The ordinances also provide that all vacation rental operations must apply for an annual Vacation Rental Operation Permit and register for an annual Business License.

The ordinances also establish areas or zones in which further limitation is necessary to ensure consistency with the local plans and policies. Exceptions include:

- Carmel Valley Master Plan Area - Commercial STRs are subject to visitor accommodation unit maximum limits;
- Big Sur Land Use Plan Area - Commercial STRs are not allowed and Limited STRs are allowed in principal residences only;
- Del Monte Land Use Plan Area - Commercial STRs are not allowed; and
- North County Land Use Plan Area - Commercial STRs subject to maximum unit limitations.

Also made available for public review was the associated environmental analysis for the draft ordinances (Attachment 4).

Vacation Rental Activity in Unincorporated Monterey County

There are currently 20 permitted vacation rentals (transient use of residential property) in unincorporated Monterey County: 18 in Del Monte Forest; 1 in Carmel Valley; and 1 in the Arroyo Seco/Central Salinas Valley.

Based on data available to the RMA from its third-party vendor that monitors on-line advertising platforms for

vacation rental activity, an estimated 382 vacation rentals have been actively advertised in unincorporated Monterey County over the past 12 months: 107 in the coastal zone; 137 inland; and 138 unknown. Based on the definitions in the draft ordinances and the data acquired from the vendor, it is estimated that of the total 382 advertised vacation rentals: 48 units were listed as “private room(s)”, which suggested they could qualify as potential Homestays; based on rental unit advertisement frequency 188 were rented four times or fewer, suggesting they could qualify as Limited STRs; 55 were rented five times or more, suggesting Commercial STRs ; and the remaining 139 advertised units had insufficient rental advertisement frequency to be able to categorize.

In Carmel Valley, there are 51 visitor serving units remaining east of Via Mallorca and 175 units remaining west of Via Mallorca. In North Monterey County in the Moss Land Community Plan area there are 110 visitor serving units remaining.

In addition to providing a lodging type to accommodate the changing preferences of travelers, vacation rentals are viewed as more affordable lodging alternatives. An analysis of data available for advertised vacation rental rates in the unincorporated areas of Monterey County shows the average vacation rental rate in the Coastal Zone is over \$1,100 per night and approximately \$900 per night in the inland areas; on the coast and inland a vacation rental can cost as much as \$10,000 per night.

Public Input Summary

The RMA received significant public comment on the draft ordinances and associated environmental analysis, and below paraphrases the major and/or recurring concerns expressed as part of the input received. In particular, staff attempted to summarize the salient issues that arose that the Commission, and ultimately the Board, may wish to consider for modifying the draft ordinances. Please refer to Attachment 5 - Correspondence for the details and all public comment received.

Area-Specific Issues

Countywide

- Treat vacation rentals as residential uses and eliminate discretionary permit process for any vacation rental
- If permit fees for Use Permits and CDPs for vacation rentals are similar to the current RMA fee schedule, they will be cost-prohibitive and will cause failure of ordinance
- Maximum occupancy limit is overly restrictive and unfairly limits larger rental units
- Four (4) rental contracts per year is an arbitrary and unreasonably low number to limit STRs; 12 had been prior discussed
- Create single “unhosted” category (not Limited versus Commercial STR) and allow with ministerial approval
- Don’t require on-site parking; allow it to be met with on and/or off-site parking
- Do not subject vacation rentals to “Proof of Access” ordinances
- Do not limit vacation rentals to one contract at a time and allow individual rooms to be rented separately
- Vacation rental permits should be in perpetuity, not term-limited
- How do ordinances take into account private rules such as HOAs and CC&Rs?
- Do not allow unlimited homestays with only a ministerial permit/license
- Principal residents should reside in home more than the proposed 183 days per year
- Agricultural lands/operations can benefit from vacation rentals (aka farm stays), consider allowing these

types of activities

Coastal Zone

- Coastal Development Permit (CDP) introduces a suite of local coastal plan compliance issues that may not be necessary for rental of existing homes to visitors
- Number of rental contracts is not an appropriate measure to distinguish Limited STR from Commercial STR; consider rental duration or total rental days

Big Sur Coast Land Use Plan (BSLUP)

- Vacation rentals are inconsistent with the BSLUP
- Vacation rental of residential dwellings unreasonably stresses the limited housing market; there simply is not enough housing in Big Sur to accommodate any vacation rental uses
- Will result in cumulative traffic impacts to State Route 1
- Fully exclude vacation rentals in Big Sur
- If allowed at all, any vacation rental should count against the visitor serving limits
- Count each room as a visitor serving unit
- Allow Homestays only, limited to owner-occupied; owner must be natural person or Living Trust of a natural person who is permanent resident and the unit is their primary residence. Opposed to all un-hosted vacation rentals.
- Limit owners to one vacation rental only, regardless of number of properties owned
- Subject all vacation rentals to “Proof of Access” ordinances
- Big Sur has likely already exceeded 300 visitor serving limit in plan
- Enforcement ability in Big Sur is limited
- Allow Commercial STRs in Big Sur to offer affordable lodging alternatives
- Providing work force housing is responsibility of businesses, not private residences, so vacation rentals should be allowed
- See Coastal Zone and Countywide comments

Carmel Area Land Use Plan (CLUP)

- Allow Homestays only, limited to owner-occupied; owner must be natural person or Living Trust of a natural person who is permanent resident and the unit is their primary residence. Opposed to all un-hosted vacation rentals.
- Limit owners to one vacation rental only, regardless of number of properties owned
- Subject all vacation rentals to “Proof of Access” ordinances
- Commercial STRs in residential neighborhoods are inconsistent with CLUP
- On-site parking only for residents and guests
- See Coastal Zone and Countywide comments

Carmel Valley Master Plan (CVMP)

- Visitor serving limits are expressly applicable to and intended for traditional/existing hospitality venues to expand, not vacation rentals
- Allowing vacation rentals creates unfair competition to current hotel/motel/inns/lodges
- Given existing residential unit limits, allowing any residential units to be removed from the housing stock as visitor serving further stresses housing
- Restrict vacation rentals to owner-occupied dwellings only

- Count all vacation rentals against visitor serving unit limits; one bedroom equals one visitor serving unit
- Do not allow Commercial STRs
- Vacation rentals are akin to bed and breakfast facilities and should undergo similar discretionary level of approvals.
- Allow Homestays only, limited to owner-occupied; owner must be natural person or Living Trust of a natural person who is permanent resident and the unit is their primary residence. Opposed to all un-hosted vacation rentals.
- Limit owners to one vacation rental only, regardless of number of properties owned
- Subject all vacation rentals to “Proof of Access” ordinances
- See Countywide comments

Del Monte Forest

- Homes in Pebble Beach are large and would not be considered affordable or work force housing; owners should be allowed to do vacation rentals
- Restricting vacation rentals to only Limited STRs as currently defined is too restrictive
- Allow a maximum of 16 guests per vacation rental to allow families to travel together
- Use of property as principal residence is no different than use as vacation rental; concerns regarding due process and unfair treatment of different types of property owners
- See Coastal Zone and Countywide comments

Toro Area Plan (TAP)

- Draft ordinances inconsistent with supplemental policies in TAP
- Vacation rentals will impact traffic on Highway 68, already rated at level F along certain sections

Resource-Specific Issues

Various resource-specific issues of concerns were raised in the public comment on the draft ordinances including concerns pertaining to water use, wastewater capacity, traffic, parking, emergency and safety risk/access/burden, neighborhood impacts/change, and housing. Staff intends to consider, and as appropriate address, possible resource impacts based on any recommended changes to the draft vacation rental ordinances.

Policy Considerations and Recommendations

While many of the issues raised during public comment on the draft ordinances would require an overhaul of approach the Commission has taken toward regulating vacation rentals, there are a number of potential modifications that could be made within the proposed regulatory framework to better refine the ordinances. Below are the staff-identified key issues with options presented for the Commission to consider.

Defining Principal Resident

Should the regulations change the definition of a principal resident for purposes of Homestay operations, and if so, how? Some policy options are presented below.

Option A. Person residing in residence 275 calendar days per year or more.

Option B. Other definition of principal resident.

Option C. No change to draft ordinance.

Approval Threshold - Ministerial versus Discretionary

Should the threshold between a use allowed (ministerial permit/license needed only) and use allowed with Use/Coastal Development Permit (in addition to ministerial permit/license) be differently defined? Some policy options are presented below.

Option A. Establish a maximum occupancy of four (4) or fewer guests (subject to ordinance limit to count 2 people per bedroom toward maximum occupancy) for a Homestays as an allowed use with ministerial permit/license only. Homestays proposing to rent to more than 4 guests could be allowed with a discretionary land use permit, similar to Commercial STRs.

Options B. Restrict Limited STRs to having 4 or fewer guests at a time; more guest would require discretionary permit approval.

Option C. Limit the number of rentals as a Homestays per 12-month period to four (4) as an allowed use with ministerial permit/license only. Homestays proposing to be rented five (5) or more times per 12-month period could be allowed with a discretionary land use permit, similar to Commercial STRs.

Option D. Eliminate the distinction between Homestays and Short-Term Rentals in the ordinances and have only two categories of rentals: Limited Vacation Rental (or STR, if that nomenclature is preferred) and Commercial Vacation Rental (or STR).

Option E. Require a discretionary permit for Homestays.

Option F. Other guestroom/occupancy limits and/or frequency limits.

Option G. No change to the draft ordinances.

Visitor Serving Unit Counts

Should the ordinances be modified to change the way vacation rentals are proposed to be counted (or not) as visitor serving unit/facility/accommodation (collectively referred to as “visitor serving units”) and deducted from established limit counts? Some policy options are presented and discussed below.

Option A. Where visitor serving limits apply, count each bedroom in a vacation rental as a visitor serving unit.

Options B. Where visitor serving limits apply, count every two bedrooms in a vacation rental as a visitor serving unit.

Option C. Other visitor serving unit accounting options

Option D. No change to the draft ordinances

Areas-Specific Modifications

Should the ordinances be modified to change the way vacation rentals are allowed and/or limited in different areas of the County? Some policy options are presented below.

Big Sur

As stated in the BSLUP, the primary land use planning objective is to minimize development of the Big Sur coast in order to preserve the coast as a scenic rural area where residents' individual lifestyles can flourish,

traditional ranching uses can continue, and the public can come to enjoy nature and find refuge from the pace of urban life. Striking a balance between housing/community needs and visitor serving uses in Big Sur is challenging.

Option A. Regarding Homestays in Big Sur:

1. Further limit homestays (e.g. total allowed, rental frequency, fewer guests).
2. Do not allow homestays.
3. Restrict homestays to owner-occupied residences.
4. No change to draft ordinances.

Option B. Regarding Limited STRs in Big Sur:

1. Further restrict Limited STRs (e.g. total allowed, fewer guests).
2. Do not allow Limited STRs.
3. Restrict Limited STRs to owner-occupied residences.
4. No change to draft ordinances.

Option C. Regarding Commercial STRs in Big Sur:

1. Allow Commercial STRs in principal residences or owner-occupied residences.
3. No change to draft ordinances.

Option D. Other modifications pertaining to Big Sur:

1. Prohibit outdoor fires.
2. No change to draft ordinances.

Carmel Area.

Per the CLUP, the Carmel Area supports a rich treasure of natural and cultural resources. The challenge is how to accommodate increasing numbers of visitors and to maximize the use and enjoyment of the Carmel coast without depleting or further degrading its sensitive resources or reducing the vigor and productivity of the natural systems or impairing the scenic values important to residents and visitors alike.

Option A. Regarding Homestays in Carmel Area:

1. Further restrict homestays (e.g. total allowed, rental frequency, fewer guests).
2. Do not allow homestays.
3. Allow homestays only in the Special Treatment Area - Point Lobos Ranch per CLUP Section 4.4.3.F.4.
4. Restrict homestays to owner-occupied residences.
5. No change to draft ordinances.

Option B. Regarding Limited STRs in Carmel Area

1. Further restrict Limited STRs (e.g. total allowed, fewer guests).
2. Do not allow Limited STRs.
3. Allow Limited STRs only in the Special Treatment Area - Point Lobos Ranch per CLUP Section 4.4.3.F.4.
4. Restrict Limited STRs to principal residences or owner-occupied residences.
5. No change to draft ordinances.

Option C. Regarding Commercial STRs in Carmel Area:

1. Do not allow Commercial STRs.
2. Allow Commercial STRs only in the Special Treatment Area - Point Lobos Ranch per CLUP Section 4.4.3.F.4.
3. Restrict Commercial STRs to principal residences or owner-occupied residences.
4. No change to draft ordinances.

Option D. Other modifications pertaining to Carmel Area:

1. On-site parking only.
2. Prohibit outdoor fires.
3. No change to draft ordinances.

Carmel Valley

Per the CVMP, all policies, ordinances, and decisions regarding Carmel Valley shall be consistent with the goal of preserving Carmel Valley's rural character. The CVMP establishes counts and maximum limits for both new visitor accommodation unit and residential units.

Option A. Regarding Homestays in Carmel Valley:

1. Further limit homestays (e.g. total allowed, rental frequency, fewer guests).
2. Do not allow homestays.
3. Allow homestays only in visitor accommodation and commercial zones.
4. Restrict homestays to owner-occupied residences.
5. No change to draft ordinances.

Option B. Count Homestays as visitor accommodation units, similar to how the CVMP requires bed and breakfast facilities to be counted.

Option C. Regarding Limited STRs in Carmel Valley:

1. Further restrict Limited STRs (e.g. total allowed, fewer guests).
2. Do not allow Limited STRs.
3. Allow Limited STRs only in visitor accommodation and commercial zones.
4. Restrict Limited STRs to principal residences or owner-occupied residences.
5. No change to draft ordinances.

Option D. Regarding Commercial STRs in Carmel Valley:

1. Do not allow Commercial STRs.
2. Allow Commercial STRs only in visitor accommodation and commercial zones.
3. Restrict Commercial STRs to principal residences or owner-occupied residences.
3. No change to draft ordinances.

Option E. Other modifications pertaining to Carmel Valley:

1. Prohibit outdoor fires.
2. No change to draft ordinances.

Other Proposed Modifications

Option A. Require applicants to acknowledge they have reviewed any private agreements (e.g. CC&Rs, HOA rules) they may be subject to and verify to the best of their knowledge they are not subject to private agreements that prohibit vacation rental use

Next Steps

RMA plans to bring forward the draft vacation rental ordinances and the Commission's recommendations and direction to the Board of Supervisors, tentatively planned for August 27, 2019. At the Board meeting, staff will explain the Commission's recommended changes and CEQA considerations with respect to the draft ordinances and seek Board recommendations and direction. The intention is to obtain Planning Commission and Board input for staff to develop final draft ordinances, allowing staff to finalize the project description to be used for environmental analysis. Once the ordinance direction is provided from the Commission and Board, staff then plans to develop final draft ordinances, conduct environmental analysis that may be necessary to make a CEQA determination, and return to the Planning Commission with the recommended final draft ordinances.

OTHER AGENCY INVOLVEMENT

Resource Management Agency; Treasurer-Tax Collector; County Counsel; and Environmental Health Bureau have participated in the preparation of these regulations and report. Staff has met with California Coastal Commission staff to discuss ordinance development for the Coastal Zone.

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Reviewed by: John Dugan, RMA Deputy Director of Land Use and Community Development

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

Attachments:

- **Attachment 1** - Coastal Zoning Title 20 amendments and additions including addition of Chapter 20.64.290 (Regulations for Vacation Rentals)
- **Attachment 2** - Inland Zoning Title 21 amendments and additions including addition of Chapter 21.64.290 (Regulations for Vacation Rentals)
- **Attachment 3** - Title 7 amendment to Chapter 7.02.060 (Business Licenses) and addition of Chapter 7.110 (Vacation Rental Operation Permits)
- **Attachment 4** - Vacation Rental Ordinances Environmental Analysis Report
- **Attachment 5** - Correspondence

cc: Freda Escobar and Liz Gonzalez, RMA Permit Center; Planning Commission; Nicki Fowler and Roger Van Horn, Environmental Health Bureau; Water Resources Agency; Katie Butler, California Coastal Commission; Josh Bowling, RMA-Code Compliance; Wendy Strimling and Brian Briggs, County Counsel; Mary Zeeb, Treasure/Tax Collector; Brandon Swanson, Acting RMA Chief of Planning; Neville Pereira, RMA Building Official; John Dugan, Deputy Director of RMA Land Use Division; Dorothy Priolo, Monterey Regional Fire Deputy Fire Marshal; Monterey County Sheriff's Office; District 5, Supervisor Adams; STR Public Distribution List; Land Use Advisory Committees; Planning File REF100042 - Inland/REF130043 - Coastal