



## Board Report

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**File #:** PAR 21-009, **Version:** 1

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Receive a preliminary analysis report in response to a revision of **Board Referral 2016.02** requesting that the Housing and Community Development Department (HCD) address the enforcement of unauthorized short term rentals and potential funding sources to cover costs.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

1. Receive a preliminary analysis report in response to a revision of **Board Referral 2016.02** and direct staff to maintain current enforcement practices; or,
2. Direct the department(s) to proceed with the implementation of enforcement as outlined in Option 1 of this report.
3. Provide further direction, as appropriate.

### PRELIMINARY ANALYSIS:

On August 24, 2021, Supervisor Adams submitted a revision to **Board Referral 2016.02** requesting HCD address enforcement of unauthorized short term rentals (STRs), and potential funding sources to cover cost. The revision to **Board Referral 2016.02** came subsequent to the Board's review of the draft Short Term Rental Ordinance (the Ordinance) on May 25, 2021. Understanding that the environmental evaluation, pursuant to the California Environmental Quality Act (CEQA) may take some time to prepare, the revision to the referral contemplates initiating the implementing of the enforcement program in advance of the CEQA preparation and consideration of the draft Ordinance.

Current practice of HCD Code Compliance is reactive enforcement based on complaints received, which are then prioritized based on health and safety conditions. The code compliance categories depending on the risk to human life, health, and safety are:

- **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.

HCD code compliance prioritizes its response efforts according to these categories to focus its limited resources on the complaints which pose the most danger to the community. Given available resources, HCD code

compliance priorities are established by HCD Chief of Building, following direction and input of the HCD 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.

STRs conducted in legal structures (homes) are generally assigned as a Priority Three, unless there is some health or safety issue identified.

#### DISCUSSION:

Maintaining the current enforcement practices in advance of the Ordinance may be preferred since the Ordinance, if adopted, would provide greater opportunity for an administrative remedy. However, community tension continues to rise in certain areas of the County due to increased STR activity.

At present, the HCD code compliance unit consists of four Code Compliance Inspectors who are responsible for the enforcement of Monterey County building and land use codes for the entire County. Addressing the unpermitted STRs would increase HCD code compliance caseload by over 600 new cases in addition to the current 2,387 cases. Currently, there are over 600 advertised Vacation Rentals in unincorporated Monterey County, approximately 50 of which are in areas/zones where CVRs are not allowed per the draft ordinances (Big Sur Coast Land Use Plan, Low Density Residential zones in the Carmel Area Land Use Plan). A more robust, proactive, responsive code compliance team would be needed to respond to complaints across the County - from Arroyo Seco to North County to Big Sur - during peak vacation rental times (weekends and evenings).

Should the Board direct the implementation of enforcement now, staff suggests that the enforcement program take place in phases. During Phase 1, code compliance would initially focus efforts on Vacation Rental outreach, education, health/life/safety investigations, and responding proactively to nuisance complaints. After 6 to 8 months, the code compliance team would shift away from education/outreach into proactive enforcement of vacation rentals that continue to operate but fail to apply for or obtain the proper permits. Voluntary compliance is preferred; however, for operations that do not voluntarily cease the unpermitted activity, code compliance will take progressive enforcement actions to achieve compliance. Once voluntary compliance and enforcement actions have progressed and a significant proportion of unpermitted operations are shut down, anticipated by the end of the third year, the enforcement will enter Phase 2 - On-going monitoring and enforcement. Code compliance will continue its progressive enforcement actions for remaining unpermitted

operations as well as permitting operations that cause nuisance or are otherwise operating outside their permit.

To carry out the aforementioned phases, there are two code compliance program staffing options. Option 1 would include an in-house STR code compliance team with Third-party monitoring and hotline support. Option 2 would be a reduced County staffing alternative with increased third-party support. Further staffing details for each option are provided below.

**Option 1 - In-House Staffing Model with Third-Party On-Line Monitoring and Hotline.** This option allows the County to be fully staffed when the regulations are operative. Should compliance with the new regulations be extremely high, the County might need to reduce the team size after the initial few years, depending on the mechanism for funding the team. The proposed tasks for each team member are as follows:

- **Code Compliance Inspectors (2 Full-Time Equivalents or FTEs)** - Provides optimal coverage during evening and weekends, and safely and effectively respond to complaints. Implements progressive enforcement actions for non-compliant rentals (e.g., stipulated agreements, administrative law hearing).
- **Office Assistant (1 FTE)** - Provides administrative support to code compliance.
- **Third Party Compliance Services** - Online monitoring of Vacation Rental listings and complaint hotline services. On-Call or as needed services include collection and consolidation admissible evidence of non-compliance, communication with noncompliant properties, and initiating audits of operations who exceed rental frequency and other limits in the regulations.
- **Environmental Health Specialist, Senior (1 Full-Time Equivalent or FTE)** - Provides optimal coverage for evaluating and assessing Environmental Health requirements including but not limited to water system requirements, wastewater discharge requirements, adherence to MCC 18.15, safely and effectively responding to health related and substandard housing complaints including but not limited to sewage overflows, trash and debris nuisances, pests infestations and mold. Implements progressive enforcement actions for non-compliant rentals (e.g., stipulated agreements, administrative law hearing).
- A vigorous code enforcement program would require participation by County Counsel.
- **Technology Start-Up and Outreach Materials** - One-time start-up costs associated with setting up Accela workflow and reporting, user-friendly website, and outreach materials and workshops will be needed to successfully launch the vacation rental program. This will likely be accomplished utilizing a combination of in-house and contract services.

**Option 2 - Minimal Staffing Model with Third-Party Inspection and Compliance Services** This option allows the County to minimize initial hiring of County employees by augmenting code compliance with an outside vendor and providing shared office support. This option is optimal if compliance with the new regulations is relatively high, and additional condition compliance efforts begin to slow significantly after the first few years. The proposed tasks for each team member are as follows:

- **Code Compliance Inspector (1 FTE)** - Provides coverage during evening and weekends and be may be limited to respond to complaints in different parts of the County. Implements progressive enforcement actions for non-compliant rentals (e.g., stipulated agreements, administrative law hearing).
- **Office Assistant (1 FTE shared)** - Provides administrative support to code compliance and the permit review/condition compliance teams, includes keeping website up to date with appropriate information regarding permitted operations. **Third Party Compliance Services** Online monitoring of Vacation Rental listings, complaint hotline services, collecting and consolidating admissible evidence of noncompliance, communicating with non-compliant properties, and initiating audits of operators who exceed rental

frequency and other limits in the regulations. Third Party Inspection Services - Augment staff coverage during evening and weekends for complaints across the County.

- Environmental Health Specialist, Senior - (0.5 Full-Time Equivalent or FTE) - Provides coverage for evaluating and assessing Environmental Health requirements including but not limited to water system requirements, wastewater discharge requirements, adherence to MCC 18.15, safely and effectively responding to health related and substandard housing complaints including but not limited to sewage overflows, trash and debris nuisances, pests infestations and mold. Implements progressive enforcement actions for non-compliant rentals (e.g., stipulated agreements, administrative law hearing).
- Participation by County Counsel would likely be the same in this option as in Option 1.
- Technology Start-Up and Outreach Materials - One-time start-up costs associated with setting up Accela workflow and reporting, user-friendly website, and outreach materials and workshops will be needed to successfully launch the Vacation Rental program. This will likely be accomplished utilizing a combination of in-house and contract services.

The Board should discuss and provide direction regarding these options.

OTHER AGENCY INVOLVEMENT:

HCD coordinates with Monterey County Treasurer-Tax Collector on enforcement matters with STRs. Also, HCD consults County Counsel on code enforcement cases. Therefore, increases in Code Compliance for STR would directly impact County Counsel.

FINANCING:

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

Sr Code Compliance Inspector	= \$ 153,204
Code Compliance Inspector	= \$ 131,654
Office Assistant	= \$ 81,178
Senior Environmental Health Specialist	= \$ 154,728
Deputy County Counsel	TBD

Whether there is an increase now or after ordinances are adopted, HCD would recommend assigning revenue from the taxes received (TOT) to support the STR code compliance program. Assigning revenue from TOT to expand code compliance for STRs would require redirecting existing allocations of discretionary funding. As the TOT is a general rather than a special tax, funding from that source would require yearly review and analysis.

Due to late submission of this Board Report, the CAO Budget and Analysis Division was not provided adequate time to fully review for potential fiscal, organizational, policy, or other implications to the County of Monterey.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The short term rental enforcement program supports the Board of Supervisors Strategic Initiatives by enhancing the health and safety of Monterey County residents.

Economic Development  
x Administration  
Health & Human Services

Infrastructure  
Public Safety

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

Attachment 1 - Board Referral 2016.02