



Board Report

File #: 21-1064, **Version:** 1

Consider a comprehensive analysis in response to revised **Board Referral 2016.02**, regarding enforcement of existing County regulations relating to transient use of residential properties, also known as short term rentals or vacation rentals, and provide direction to staff regarding unauthorized vacation rentals and potential funding sources to cover costs.

RECOMMENDATION

It is recommended that the Board of Supervisors:

- a. Receive a presentation regarding existing regulations relating to the transient use of residential properties and the enforcement of said regulations;
- b. Discuss and provide direction regarding the enforcement of existing transient use of residential properties regulations and potential funding sources to cover costs; or
- c. Rescind that portion referral related to receiving a proposal from Housing and Community Development Department to address the implementation of enforcement of unauthorized vacation rentals at this time.

SUMMARY/BACKGROUND

On June 8, 2021, the Board of Supervisors considered and approved a response to the 2020-21 Monterey County Civil Grand Jury Final Report "Vacation Rentals Enforcement in Monterey County: Little Progress Despite Years of Struggle" and directed the County Administrative Officer to file the approved response with the Presiding Judge of the Superior Court, County of Monterey, by June 15, 2021. In response to the Civil Grand Jury Report, the County indicated, among other responses, that the County's proactive enforcement of unauthorized vacation rentals is limited due to resource constraints including budget allocations and staffing levels. On August 24, 2021, Supervisor Adams submitted a revision to **Board Referral 2016.02 (Attachment 1)** requesting the Housing & Community Development Department (HCD) implement enforcement of existing County regulations to address unauthorized short-term rentals and address potential funding sources to cover costs.

On October 5, 2021, HCD presented a preliminary analysis to the Board of Supervisors regarding the Board Referral and received direction to return to the Board with the Department's proposed approach to enforcement of the County's existing regulations related to the transient use of residential properties, focusing enforcement actions within Supervisorial District 5 (District 5) where 85% of short-term rentals are currently concentrated.

In response to the Board's direction on October 5, 2021, HCD has prepared an enforcement action outline (**Attachment 2**) that indicates its initial focus would be on outreach and education of the existing regulations. After the outreach and education, HCD would focus its enforcement efforts on those unauthorized vacation rentals that are not paying the appropriate transient occupancy tax (TOT), those for which HCD has received health/life/safety and nuisance complaints, and those that are not eligible to obtain the proper permits to operate a transient use. Once the enforcement efforts for these groups are well underway, the Department would focus on the remaining unauthorized operations.

Focusing the compliance efforts within District 5 where the concentration of unauthorized uses exist alleviates some of the budgetary and staffing limitations. Although to implement enforcement action, HCD would still need to increase Code Compliance staff and obtain equipment necessary to support the efforts. HCD suggests that transient occupancy tax be used to fund the increased staffing and equipment costs.

DISCUSSION

Existing Land Use Regulations Allowing Transient Use of Residential Properties

On September 20, 2016, the now dissolved Resource Management Agency revised its July 9, 2015 Administrative Guideline memorandum (**Attachment 3**) addressing the County's existing regulations related to the transient use of residential properties. The memorandum is for informational purposes and discusses County Inland (Title 21) and Coastal (Title 20) Zoning Code provisions related to the transient use of residential properties. The information is still relevant, and the newly formed Housing and Community Development Department is now the responsible agency that implements and enforces these regulations.

In short, there is existing opportunity to operate the transient use of residential properties and there are approximately 22 land use permits that have been issued for the transient use of residential properties. However, over 600 vacation rentals are advertised in the unincorporated areas of the County, and there appear to be over 502 residential properties potentially operating without the benefit of a land use entitlement within District 5. Focusing the enforcement efforts within District 5 would reduce costs on initial education and outreach, reduce vacation rentals where the use is not eligible due to existing land use policies, and reduce staff drive times by condensing site inspection hours due to the relative proximity of the unauthorized properties.

Should the Board of Supervisors direct the active enforcement of its regulations, HCD anticipates a surge of land use applications for short term rentals under County's existing regulations, which is another benefit of a phased approach to the enforcement. With that said, HCD staff and its consultants are prepared to handle the anticipated land use applications.

With the ramp up of code enforcement and resulting expected surge of applications for short term rentals under the existing regulations, the Board could consider, pursuant to Section 65858 of the Government Code, directing as an urgency measure that staff prepare and present to the Board an interim ordinance prohibiting the processing and approval of any further permits for the transient residential uses pending completion of environmental review and consideration by the Board of draft vacation rental ordinances for the inland and coastal areas of the County. The interim ordinance may be adopted by a four-fifths vote following notice and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days. If the Board of Supervisors is interested in this option, the Board could provide direction to staff to bring back a draft interim ordinance at a future Board meeting for the Board's consideration.

Existing Enforcement

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. Short Term Rental (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 Services, 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 and 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.

Vacation rentals conducted in legal structures are generally assigned as a Priority Three, unless there is some health or safety issue identified. With the Board direction, staff would prioritize the enforcement at a level like those at a Priority One. No fines or penalties are currently being assessed for these STRs, although administrative citations and fines are allowed per Monterey County Code section 1.22.100 in the amount of \$100 for a first violation, \$200 for a second violation of the same ordinance within one year, and \$500 for each additional violation of the same ordinance within one year.

Proposed Enforcement Efforts

As previously indicated, the enforcement efforts would initially focus on outreach and education, where unauthorized operators would be contacted via mail to inform them of existing regulations and the pathway to achieve compliance. Staff would also distribute information via the newspaper and electronically to business organizations that are directly involved in vacation rentals (e.g., real estate agencies, rental alliances, property managers, etc.). HCD would utilize Host Compliance, the County's third-party service provider, to conduct the initial mailings, and HCD staff would track, and coordinate follow up communications through Host Compliance. The initial outreach would be conducted over a 30-day period upon filling the staff positions.

Staff anticipates some compliance would be achieved during this outreach, either ceasing operations or the operators obtaining the proper permits to operate the transient use of a residential property. The Board should discuss and provide direction regarding the ability for operators to continue operations during the processing of the land use entitlements, provided the operators are actively pursuing the applications and paying the proper transient occupancy tax. However, staff would suggest not allowing the unauthorized activity to occur because it creates complexity and increased administrative efforts, but it is within the Board's discretion to provide such direction.

Upon conclusion of the outreach, staff would take a more active enforcement approach by grouping those operating without the benefit of permit into groups. Because of the large number of unauthorized units, HCD proposes to divide the enforcement efforts into two groups based on analysis of the data received through Host Compliance, received on November 2, 2021. The first group will include the 145 rentals that are not paying Transient Occupancy Tax (TOT) or are in an area that is ineligible to receive land use permits for vacation rental use. The STR code compliance team would also address any health/life/safety and nuisance complaints investigations related to vacation rentals received directly by HCD, referred from the Sheriff's Office or by the existing third-party hotline during this initial effort. The remaining 357 that are paying the TOT, have not received complaints and do not have the proper land use permits would be in the second group.

The enforcement effort is expected to take 12 to 18 months to complete, as there are approximately 502 advertised vacation rentals within the District 5 boundary (**Attachment 6**).

After both groups have received the informational/outreach mailing and the subsequent 30-day notification for compliance, the vacation rental code compliance team would then shift to proactive enforcement of vacation rentals that have not ceased operations and/or have failed to apply for and obtain proper permits. Progressive enforcement action would be taken to achieve compliance, including issuance of administrative citations, fines, and if necessary, administrative hearings.

Staff also seeks direction on increasing the penalties for violation of existing regulations. Increasing the penalties would require an ordinance to amend the County Code which staff could prepare and present to the Board early next year. If the Board supports this concept, for continuity, staff would propose the same administrative citations and fines proposed in the revised draft Vacation Rental Ordinances that are currently undergoing environmental review rather than the existing penalties, as follows:

“For violations of this Section, a Building and/or Health Enforcement Official may issue to a responsible person an administrative citation that imposes:

a. A civil penalty not exceeding one-hundred and seventy-five percent (175%) of the Advertised Rental Rate per day, or part thereof, or one thousand dollars (\$1,000.00) per day, or part thereof, for Vacation Rentals without an Advertised Rental Rate, for a first violation;

b. A civil penalty not exceeding two-hundred and seventy-five percent (275%) of the Advertised Rental Rate per day, or part thereof, or two thousand five hundred dollars (\$2,500.00) per day, or part thereof, for Vacation Rentals without an Advertised Rental Rate, for a second violation of the same ordinance within one (1) year; and

c. A civil penalty not exceeding three-hundred and seventy-five percent (375%) of the Advertised Rental Rate per day, or part thereof, or five thousand dollars (\$5,000.00) per day, or part

thereof, for Vacation Rentals without an Advertised Rental Rate, for a third violation of the same ordinance within one (1) year.

Staff believes the existing penalties are not a disincentive. A more substantial penalty to discourage the unauthorized activity is suggested but would require an update to the County's regulations. As such, staff seeks Board direction regarding an update to penalties specific to vacation rentals.

To carry out the various enforcement phases, HCD would require additional staff, including one Supervising Code Compliance Inspector, one Code Compliance Inspector II and one Office Assistant. Two vehicles and two laptop computers would also be warranted to provide optimal coverage during evening and weekends, and safely and effectively respond to complaints. The Inspectors would be responsible for implementing progressive enforcement actions for non-compliant rentals (e.g., administrative citations, stipulated agreements, administrative law hearing). The additional Office Assistant would provide administrative support to the vacation rental code compliance team.

HCD would utilize the existing contract with Host Compliance for online monitoring of Vacation Rental listings and the complaint hotline service. Host Compliance would also provide additional services as needed including collection and consolidation of admissible evidence of non-compliance, communication with noncompliant properties, and initiating audits of operations who exceed rental frequency and other limits in the regulations.

A complete enforcement outline is in Attachment 2, Vacation Rental Code Compliance Enforcement Outline.

PUBLIC COMMENTS

Opposition to Enforcement of Existing Regulations

The County has received a significant amount of correspondence (**Attachment 7**) from those in opposition to the enforcement efforts. Some of the correspondence indicates that the County plans to ban short term rentals. This appears to be a misunderstanding. The Board to date has only directed HCD staff to bring forward plans to enforce County regulations, which allow the transient use of residential properties with appropriate permits in the inland area and allow short term rentals with appropriate discretionary permits, if similar in use and intensity to uses listed in zoning districts, in the coastal zone.

Many vacation rental operators expressed that the additional income is needed to keep their homes. Others in opposition to the enforcement simply enjoy sharing their vacation home with family, friends and now paying guests. Some vacation rental guests have indicated that they oppose shutting down vacation rentals and that they would not visit Monterey County without being able to stay in a home-like environment for reasons that include families staying together, vacationing with pets, mobility issues, traveling with larger groups, sleep disorders, dislike of hotel noise, etc. Those opposed to the enforcement in advance of adoption of new ordinances also cite the benefits of TOT revenue, employment, and tourist-based revenue to local businesses and restaurants. Those opposed request that the Board consider the draft ordinances prior to enforcement.

Support Enforcement of Existing Regulations

The County has also received correspondence in support of active enforcement. Those in support of the County enforcing its existing regulations indicate concern over the proliferation of noise and traffic, water shortages and limited housing stock. Those in support ask that the Board protect its residents from the commercialization of residential neighborhoods and enforce its existing ordinances.

FINANCE

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

Supervising Code Compliance Inspector	\$168,524
Code Compliance Inspector	\$131,654
Office Assistant	\$81,178
County Counsel	Increased workload, exact cost tbd
Hearing Officer	Est \$10,000

This same staffing level would be warranted if the draft Short Term Rental Ordinances are adopted. Whether there is an increase now or after ordinances are adopted. Additionally, vehicles and laptop computers would be warranted and would be approximately \$95,000. HCD recommends redirecting existing allocations of discretionary funding to support compliance. Discretionary funding includes revenues collected from TOT.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES

The vacation rental enforcement effort supports the Board of Supervisors Strategic Initiatives by enhancing the health and safety of Monterey County residents.

- ☐ Economic Development
- ☒ 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
- Attachment 2 - Vacation Rental Code Compliance Enforcement Outline
- Attachment 3 - Administrative Guideline Memorandum Revised September 20, 2016
- Attachment 4 - MCC, Section 21.64.100, Bed and Breakfast Facilities
- Attachment 5 - MCC, Section 21.64.280, Transient Use of Residential Properties
- Attachment 6 - District 5 Map
- Attachment 7 - Correspondence in Opposition to Enforcement
- Attachment 8 - Correspondence in Support of Enforcement