



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: PAR 23-011

March 21, 2023

Introduced: 3/13/2023

Current Status: Agenda Ready

Version: 1

Matter Type: Preliminary Analysis
Report

Receive a preliminary analysis report in response to **Board Referral No. 2023.05** seeking to consider an interim ordinance to enact a stay or moratorium on issuance of Administrative Permits for transient use of residential property for remuneration (Inland) under Monterey County Code Section 21.64.280 until new vacation rental regulations are adopted.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive a preliminary analysis report in response to **Board Referral No. 2023.05** and:
 - 1) Direct that staff proceed with completion of referral based on description in this report; or,
 - 2) Direct that staff:
 - i. Proceed with completion of referral based on modifications by the Board; or,
 - ii. Return to Board with a more comprehensive analysis of referral and anticipated effort for completion; or,
 - iii. Rescind referral.
- b. Provide further direction, as appropriate.

PRELIMINARY ANALYSIS:

Referral Summary & Background: Referral No. 2023.05 is seeking to consider an interim ordinance to enact a stay or moratorium on issuance of Administrative Permits for transient use of residential property for remuneration (Inland) under Monterey County Code Section 21.64.280 until new vacation rental regulations are adopted. On February 28, 2023, the full Board of Supervisors added Supervisor Adams's Referral No. 2023.05 to the County Board of Supervisors' referral matrix. The referral was assigned to the Housing and Community Development Department (HCD) for consideration and analysis.

The Board of Supervisors adopted Ordinance No. 3911 on April 15, 1997 establishing provisions for the transient use of residential property for remuneration, also known as short term rentals. The provisions for the transient use of residential property for remuneration are codified in Section 21.64.280 of the Monterey County Code. With certain limitations (e.g., stays greater than seven consecutive calendar days and less than 30), Section 21.64.280 provides a process to allow the transient use of residential property with an Administrative Permit. The Coastal Commission did not certify Ordinance No. 3911. As such, these provisions only apply to the inland areas of the unincorporated County of Monterey. As such, an interim ordinance related to Section 21.64.280 would only apply to the inland areas.

On December 8, 2021, the Board of Supervisors directed staff to prioritize the compliance of short term rentals operating without the benefit of permit. On March 1, 2021, the Board of Supervisors authorized two Code Compliance Inspector II positions and one Office Assistant position to support the compliance efforts. HCD has now filled these positions and is prepared to move forward with the proactive enforcement of unauthorized operators. The Board of Supervisors also directed HCD to return with an ordinance increasing the fine amounts for unauthorized operators. The ordinance related to the fines will likely be considered in April. On February 23, 2023, HCD held a community meeting to inform residents and operators of the looming compliance efforts. HCD plans to proceed with proactive enforcement in March and April, as directed by the Board of Supervisors.

As a result of the anticipated code compliance efforts, there has been a recent surge in Administrative Permit applications to allow the transient use of residential property. The majority of the applications are within Supervisorial District 5. Additionally, applications that have recently been scheduled for the Director of Planning's consideration have been elevated to the Zoning Administrator and Planning Commission; however, a few have been approved by the Director of Planning. The Zoning Administrator and Planning Commission have struggled with the applications knowing that HCD is preparing an environmental impact report ("EIR") related to new draft coastal and inland short term rental regulations. The Planning Commission is raising questions concerning the appropriate level of environmental review on current applications given the ongoing work on the draft long term regulations and EIR. The Planning Commission recently approved an Administrative Permit for transient use, but limited the length of that permit to three years.

HCD has a growing backlog of Administrative Permits for operations seeking approval, as shown on Attachment C. Additionally, the code compliance section within HCD is anticipating a significant caseload processing the code compliance cases. HCD will first focus on operators not paying transient occupancy taxes but would not pursue other proactive enforcement until the draft ordinances are considered by the Board of Supervisors.

Proposed Project Description: Government Code section 65858 allows the County to adopt an interim ordinance without following the procedures otherwise required for a zoning ordinance to protect public safety, health, and welfare. An interim ordinance serves as a temporary urgency measure to prohibit a use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the County is considering.

Adverse impacts resulting from the transient use of residential properties may include, but are not limited to, increasing levels of commercial and residential traffic, parking demand, light and glare, and loud detrimental to the surrounding residential uses and the general welfare of the County. In addition, such use appears to create additional demands for public services, including but not limited to, police, fire and medical emergency services. Should the Board of Supervisors find that there is a current and immediate threat to the public health, safety and welfare, and the processing and approval of administrative permits and entitlements permitting to the transient use of residential properties the interim ordinance would avoid such impact.

HCD is preparing an environmental impact report (“EIR”) related to new draft coastal and inland short term rental ordinances. This proposed interim ordinance would temporarily prohibit the ability of the public to obtain an Administrative Permit under Section 21.64.280 while the County proceeds with its EIR and consideration of the draft short term rental ordinances. The rationale is to enable the County to avoid the grant of permits or entitlements that may end up being inconsistent with the contemplated regulations.

An interim ordinance could take effect immediately and be in effect for 45 days pursuant to Government Code section 65858 upon a four-fifths vote. After proper notice and public hearing, the Board of Supervisors may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension also requires a four-fifths vote for adoption. Not more than two extensions may be adopted. If the Board of Supervisors considers and adopts the draft the short term rental ordinances during this time period, the interim ordinance would be terminated.

Government Code section 65858 also requires that ten days prior to the expiration of an interim ordinance or any extension, the legislative body must issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

Staff supports the interim ordinance and recommends that the Board of Supervisors direct staff to return with a draft interim ordinance for its consideration and complete this referral upon its consideration.

Estimated Project Cost: The County will not incur any costs beyond staff time to assess and report on this referral. If the interim ordinance is adopted, staff would refund all pending applications which would be a reduction in revenue of approximately \$170,000.

Staffing Level Estimate: The preparation of an interim ordinance will require HCD and County Counsel staff time. The benefit of an interim ordinance would be a substantial reduction in Planning staff hours processing pending Administrative Permit applications providing capacity for staff to work on other priority projects. The interim ordinance coupled with only processing code compliance cases for those unauthorized operations not paying transient occupancy tax would also benefit staff levels within the department.

Departmental Challenges: HCD has the capacity to provide staff support related to preparing an interim ordinance and the continuing of the code compliance efforts. Future challenges will be based upon the recommendations and suggestions that come out of the Board of Supervisors discussion and direction.

Proposed Response Date: If the Board of Supervisors directs staff to draft an interim ordinance for its consideration, staff foresees that the interim ordinance could prepare and present the draft interim ordinance for its consideration by its April 25, 2023 meeting.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Administering short term rental regulations and managing enforcement efforts supports the Board of Supervisors Strategic Initiatives by enhancing the health and safety of Monterey County residents and visitors.

Mark a check to the related Board of Supervisors Strategic Initiatives

☐ 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 A - Board Referral 2023-05

Attachment B - Monterey County Code Section 21.64.280

Attachment C - Approved and pending STRs and Bed and Breakfast applications.