

COUNTY OF SONOMA
PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

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DATE: April 21, 2009 at 9:30 a.m.

TO: Board of Supervisors

FROM: Jennifer Barrett, Deputy Director Planning
Ben Neuman, Code Enforcement Division Manager

SUBJECT: Transient/Vacation Rentals of Single Family Homes

BACKGROUND

Over the past few years, the County has received a number of code enforcement complaints related to the use of homes for transient use and, until recently, has not been successful in addressing the issues before the hearing officer. In response, Supervisor Brown convened a meeting with responsible departments including PRMD staff and the Sheriff to develop a more coordinated response. PRMD staff identified parties and events as the main complaint and agreed to forward the relevant sections of the zoning code to the Board of Zoning Adjustments for a more precise interpretation of existing regulations related to special events and the restrictions on special events in rural residential zones. The Sheriff's office agreed to note properties with repeated violations and to take more detailed incident reports to assist code enforcement staff. Despite these efforts, accurate documentation of the number of attendees has proven difficult in some circumstances.

Supervisor Brown requested that PRMD staff bring forward this issue as an informational item for policy discussion and possible direction from the Board. Staff has also met with representatives from Sonoma County Tourism Board, Sonoma Valley Visitors Bureau, vacation rental management companies and the Board of Realtors to discuss the compatibility issues and possible solutions. The Sonoma County Lodging Association is forming a task force to help address the concerns and assist with monitoring and enforcement of complaints.

KEY ISSUES

Code Enforcement regularly receives complaints related to the use of homes as vacation/transient rentals. Homeowners, particularly in rural residential areas, have complained of noise, traffic, parking, garbage, trespass, crime and other disruptive activities occurring on transient rental properties. Large homes made available as transient rentals have become popular for large gatherings, events, parties and special occasions. Residents in some neighborhoods with large home vacation rentals are also concerned about their property values and the safety of their children and property.

Many owners purchase homes for future retirement residences and put their homes in a rental program until they are ready to occupy them full-time. In this way, they can generate revenue to

help defray expenses and use the property much of the time themselves. The properties creating issues for code enforcement are often investment properties or fractional ownerships where the owners have no intent to occupy the property on a full-time basis. Regardless of ownership, many residents who live adjacent to vacation rentals feel that they are an intrusion of commercial activities into residential neighborhoods.

Code enforcement staff notes that complaints regarding transient rentals are seasonal, the majority of which come in during the summer at the rate of about one per week. The biggest issues are related to the number of people, including parking and disturbances from partying at night. Currently, there are six active code enforcement cases on transient rentals that are known event locations. All six locations are in the First District. Code Enforcement staff recall dealing with six other transient rental event center cases over the past two years, four of which have been in the Fifth District and two in the First District. The majority of the cases involve properties with large homes with more than four bedrooms.

Staff has attempted to address the issue of events in residential districts through the interpretation of the existing zoning code as discussed below. However, code enforcement staff has still had difficulty prevailing on recent cases due to the difficulty in documenting the number of participants on some rural properties (such as gated properties). Local residents in affected neighborhoods have also complained that the number of persons that triggers an event permit (35+ persons) is too high for transient rental properties in residential areas.

CURRENT REGULATIONS

Vacation Rentals/Transient Use

Certain zoning districts such as the R1, R2 and R3 districts are intended *“to stabilize and protect the residential characteristics of the district and to promote and encourage a suitable environment for family life.”* These urban residential zoning districts do not allow bed and breakfast inns or other types of visitor-serving uses, consistent with the intent of the district to *“protect the residential characteristics”*. The zoning code is a “permissive code” such that if a use is not expressly permitted, then it is not allowed. Vacation/transient rentals are not expressly allowed as a permitted use in the residential and agricultural districts. However, the County’s past practice has been to informally consider rentals as part of a single family dwelling’s use, without differentiating between transient or permanent residents.

In the rural residential and most agricultural zoning districts bed and breakfast inns are the only type of transient use allowed, subject to certain restrictions on the number of units and outdoor events/activities. Bed and breakfast inns also require the owner to be in residence. Non-commercial promotional and marketing accommodations for private guests are also allowed in the agricultural zones, but are specifically prohibited on any lands under a Williamson Act Contract.

It should also be noted that in all zoning districts, the code lists “residential uses” separately from the list of “non-residential uses” and bed and breakfast inns and guest accommodations are listed in the non-residential category, suggesting that transient use was not considered or intended as a residential use.

Cultural/Special Events

The zoning code allows “occasional cultural events” in all zoning districts with a zoning permit. The zoning permit process involves obtaining sign-off from various departments including Fire, Sheriff/CHP, Public Works, Public Health, and Planning.

The zoning code designates the Board of Zoning Adjustments (BZA) with the authority to interpret the zoning regulations with regard to allowed uses. In February 2008, PRMD staff requested an interpretation of the zoning ordinance definition of a “cultural event” in order to address numerous complaints of large single family homes becoming “event centers” for weddings, parties, reunions and other large group meetings. The primary concern raised was related to the use of homes in rural residential areas and the challenges Code Enforcement staff experienced in determining violations.

The term “cultural event” has been used interchangeably with the term “special event” and is defined in the code as follows:

“Cultural events means periodic special events such as parades, concerts, festivals, races and gatherings which attract, either by direct participation, or as spectators, a large gathering of people.

1. The following are not cultural events for the purposes of this chapter:
 - (a) Events conducted entirely within dedicated rights-of-way where event sponsors have secured necessary encroachment or other permits from the county surveyor and, if applicable, the California Department of Transportation;
 - (b) Events conducted entirely within a building for which all necessary county permits have been secured; provided, that the events are within the scope of the use for which the building was permitted;
 - (c) Events conducted at fairgrounds or events conducted at outdoor spectator facilities for which a Use Permit has been obtained, provided that the outdoor event is within the scope of the Use Permit;
 - (d) An event which has all of the following characteristics:
 - (1) Has no live amplified music,
 - (2) Does not involve an admission fee either for participants or spectators,
 - (3) Is a one (1) day event conducted between the hours of seven a.m. and eleven p.m.,
 - (4) Does not involve overnight sleeping of participants or spectators,
 - (5) Is not conducted more than one (1) calendar day in a thirty (30) day period,
 - (6) Is not accompanied by newspaper, radio or television advertising or printed leaflets distributed to the public at large, and

(7) *Does not involve the sale of food or beverages.*"

Based on the above definition of a cultural event, Code Enforcement considers any event with "a large gathering of people" and any one of the characteristics noted above to trigger a cultural event permit.

The BZA interpreted the zoning code provisions related to "cultural" or special events as follows:

1. As used in the definition of "cultural events" - a "large gathering of people" shall mean 35 or more people. This interpretation allows code enforcement staff to determine a violation if, in response to a complaint, the Sheriff's Office is able to document the number of persons at an event.
2. The BZA determined that in all zoning districts "occasional cultural events" are allowed with a zoning permit. "Occasional" was interpreted to mean no more than four times per year and/or no more than one year in a row. Owners of residential properties can have special events occasionally with a zoning permit, but owners who host events (that trigger any of the characteristics noted above) on a regular basis need to obtain a use permit if allowed by the underlying zoning district.
3. The BZA also determined that transient rental for large gatherings is similar to a Bed and Breakfast Inn and thus could be allowed with a use permit only as allowed by the underlying zoning district for the Bed & Breakfast Inn use. B&B's are not allowed to have "outdoor weddings, lawn parties and similar activities" in the Rural Residential (RR) zoning district, but such activities are permitted in the agricultural and residential (AR) district with a use permit.
4. Residential properties that are not transient or vacation rentals may host events once in a 30-day period without a cultural event permit. If more than once in a 30-day period then a cultural event zoning permit is required.

The BZA staff report, adopted resolution and minutes of the BZA meeting are attached.

TRANSIENT OCCUPANCY TAX

Sonoma County has several areas that were developed as resort communities including The Sea Ranch, Bodega Bay, and most of the lower Russian River area. Sonoma County tax records show that the lion's share of transient occupancy taxes collected from single family homes are from the Fifth District (79 percent) with 14 percent from the First District. Over 1,000 homes, including all Bed and Breakfast Inns, are registered for the transient occupancy tax, which collectively generate over \$2 million in TOT revenue (approximately 20% of the total TOT revenues). An estimated 12 reported code enforcement cases represents only a very small proportion of these properties having complaints related to special events. Complaints related to parking, noise and non-event issues are not recorded as violations, but staff believe that the majority of complaints received relate to several "problem" properties in residential neighborhoods that are either not suitable for transient use or are not managed effectively.

This data indicates that transient rentals are a significant segment of the local tourism economy and the vast majority of these units operate without a problem.

Approximately 83 percent of those paying TOT are managed through professional property management agencies and 17 percent are managed by owner. Staff notes that all of the code enforcement cases involve properties that are managed by individual owners, rather than professional property management companies and all of the cases occur in the rural residential zoning district. Professionally managed properties typically include provisions in their rental agreements that prohibit large parties, unregistered guests or events. Moreover, professionally managed properties are monitored by the rental company and reported problems are usually addressed by the management company privately without involving code enforcement.

There are also a large number of vacation rentals by owners (VRBO's) that are advertised on websites, but which are not registered to pay transient occupancy taxes. Sonoma County Lodging Association and County staff estimate around 200 vacation rental properties do not pay TOT. Local property management companies have complained that these VRBO's create unfair competition and generate problems for the tourism industry. They recommend that staff work with their professional organizations to provide outreach to these owners and assistance in enforcement of TOT and compliance with standards.

POLICY OPTIONS/ALTERNATIVES

Staff believe that there are two separate and distinct issues involving transient rentals. First is the lack of limitations on the number of persons allowed in a vacation rental, particularly in the residential zoning districts. Second is the use of transient rentals for special events, like weddings, lawn parties, reunions or other large gatherings that involve more commercial activities such as caterers, equipment rentals, music/entertainment, and other deliveries. Options for regulating transient rentals and the pros and cons of each approach are described below. These options could be considered separately or in combination.

Prohibit Transient Occupancy in Residential Districts. The zoning code could be amended to expressly prohibit transient occupancy in certain zoning districts (such as the rural residential districts) where compatibility concerns are significant. Existing transient rentals would be grandfathered as legal non-conforming uses, such that this approach would not address current "problem properties". Another approach to prohibit transient occupancy is to make an interpretation of the existing regulations. The term "residential use" as used in the zoning code could be interpreted as permanent residency over 30-days which would not allow transient occupancy in the residential districts, except as provided with a use permit for bed and breakfast inns. This approach is typical for urban residential districts in most communities with large tourism industries. The cities of Healdsburg, Sonoma and Napa currently interpret their zoning regulations to prohibit transient rentals in residential zoning districts, except with a use permit for bed and breakfast inns. This approach would immediately apply to existing problem properties, but would also severely restrict a significant component of Sonoma County's tourism industry and impact potential TOT revenues, unless other code provisions are adopted concurrently to enable transient use by permit. These approaches to add provisions to the code would require substantial staff resources and public involvement.

Interpretation of the Hotel Definition. A hotel is currently defined in the code as *“any building or portion thereof containing six (6) or more guest rooms each used, designed or intended to be used, let or hired out for occupancy for one (1) or more guests”*. The Board could interpret the hotel definition to apply to any single family home with six (6) or more bedrooms, lofts, or other areas suitable for sleeping that is rented on a transient basis for less than 30-days. A hotel or lodging is allowed with a use permit only in the K and RRD zoning districts and would not allow large homes with six or more bedrooms/sleeping areas to be used as vacation rentals in the rural residential or agricultural districts. This approach would apply immediately to existing problem properties, but may create additional violations with other large homes that are currently used as vacation rentals. With this interpretation, existing large vacation homes could only be legalized through a use permit if they qualify as a bed and breakfast inn, which are limited to five guest rooms and require an owner in residence. The use permit process would allow the Board of Zoning Adjustments to determine if the use is appropriately sited and has adequate access, parking, trash/recycling and noise buffers. A survey of properties advertised on-line reveal 14 properties currently advertised with six or more bedrooms, some of which appear to be located within commercial districts or are historic and legal non-conforming.

Develop standards and permit requirements. Many communities with large tourism industries require permits for transient occupancy that establish standards addressing noise, parking, garbage, numbers of persons, and rules of conduct to be included in rental agreements. This approach would involve amendments to the existing zoning code to require a zoning permit for transient occupancy in rural residential and agricultural areas and distinguish between transient use and permanent/long-term rentals. The zoning permit would be issued administratively, similar to home occupation permits, with the owner signing an affidavit agreeing to abide by the conditions. This approach could be applied in the Coastal Zone or allow for different provisions in the Coastal Zone. The advantage of this approach is that it would enable transient occupancy that meets the adopted standards, while providing greater assurance of neighborhood compatibility. The disadvantage of this approach is that existing “problem properties” would be grandfathered as legal non-conforming uses, unless the Board made an interpretation of the existing code provisions as noted above. In addition, amending the zoning code as a separate ordinance would involve substantial staff effort that is not in the Work Plan adopted by the Board. This approach could be included in the work plan that is currently underway to update the Development Code, but it would add significantly to that effort as well since staff anticipates substantial public interest in this specific issue.

Zoning Overlay to Target Specific Areas. One suggestion made by industry representatives is to develop an overlay zoning district that would prohibit or allow transient occupancy only in certain areas. This overlay zone could be applied to targeted neighborhoods that should be retained for residential use. The advantage of this approach is that it can be limited to only certain areas where compatibility problems are anticipated. The disadvantage is that it would involve a major code amendment and rezoning process.

Require a business license. Another suggestion made by industry representatives is to require a business license. This could be used on conjunction with or as an alternative to the

zoning permit approach for implementing standards for transient rentals. Many communities require a business license that is renewed annually and requires that the business have the appropriate permit(s) and/or clearance(s) and register with the Tax Collector for payment of applicable business taxes (in this case TOT) prior to issuance of the license. Currently most cities require a business license and some cities and counties use the business license as a means of regulating vacation rentals, mobile vendors, taxi companies and other uses or activities that occur in public rights of way or that should be reviewed annually. Business licenses can be a proactive way to ensure that businesses comply with a wide range of local regulations from public health, fire, zoning, building, and tax collection. Business licensing is generally anticipated by new businesses and the issuance of such licenses typically requires sign-off from various departments to ensure compliance with applicable local regulations. With regard to transient occupancy, business licenses can be used to ensure compliance with operational standards established in the code such as occupancy limits, parking standards, quiet hours, trash management and other issues. An advantage of the business license approach is that it could apply operational standards uniformly to all similar businesses without creating legal non-conforming status for existing uses. Business licensing could also reduce costs associated with code enforcement activities by notifying businesses of the applicable requirements prior to their establishment. This approach would require a code amendment and could have a much larger scope than addressing transient rentals. A business license program would be a major policy change and would require substantial staff effort to implement. Since business licenses are not typically administered by planning and permitting departments, staff anticipates that another department would take the lead in establishing such a program, with assistance from PRMD in developing appropriate standards.

Industry-sponsored programs. Industry representatives have suggested sponsoring a vacation rental ombudsman that would respond to complaints related to noise, traffic and parking violations and has expressed interest in assisting the County with monitoring and enforcement activities funded through permit fees. This approach could be in combination with a requirement for a business license and/or zoning permit. A portion of the fee attached to the license or permit would be used to fund monitoring and enforcement activities. The advantage of this approach is that it would transfer responsibility for responding to complaints from the Sheriff's Office to a qualified local property manager who would be on-call on weekends and evenings. It is anticipated that this approach would be less expensive and more effective than our current practice of having the Sheriff respond, file incident reports, and then going through the abatement process. This approach would involve the establishment of permit standards, fees and penalties or other means of providing for enforcement.

CONCLUSION

This is an informational report. Staff recommends that the Board take testimony from the public on the compatibility issues of transient rentals and provide direction to staff as the Board deems appropriate. It should be noted that some of the approaches described above will require significant staff resources that would require diversion of resources from other work programs.

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List of Attachments:

BZA Staff Report dated 2/28/08
Minutes from 2/28/08

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