

# **11 Vacation Rental Ordinance Policy Positions for The Sonoma County Planning Commission**

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THE SONOMA COAST VACATION RENTAL OWNERS  
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**FROM:** SONOMA COAST VACATION RENTAL OWNERS  
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## **Introduction**

We are Sonoma County's three leading vacation rental owner groups and premier vacation rental agency, representing a broad spectrum of hundreds of owners and supporters across the county, and we are concerned with the recent policy proposals regarding the regulation of vacation rentals.

We believe the Sonoma County Planning Commission should carefully consider the following 11 policy positions when recommending any modification of any vacation rental ordinance to the Sonoma County Board of Supervisors.

These policy positions include these areas:

Appropriate License Naming, Parcel Limits Not Rental Day Limits, 90 Day Limits, Policy Backed By Data, Protect Owners From Harassment, No Complaints During Unrented Periods, No Restriction of Day Guests, No 3 Strikes Standard for Property Managers, No Non-Resident Restrictions, and Prevent Cancellation of Coastal Bookings.

## **Conclusion**

We thank you for the opportunity to provide input into this important process. We commend Permit Sonoma staff and their willingness to share the status of their regulations and allow for ample public comment.

## **Respectfully Submitted By**

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**For a complete list of SCCH policy positions, please visit our [regulations page](#)**

**1. Appropriate License Naming** - The “license” to operate Vacation Rentals should be called a Vacation Rental License

PRMD staff appropriately recommend the term “Vacation Rental License” as the term to use in the Vacation Rental (vacation rental) Ordinance. Permit Sonoma, through land use zoning provisions, requires a “permit” in the existing vacation rental program. In granting a permit and/or a vacation rental License, the county planning department is allowing the *use of a residence* (single family dwelling-SFD) for a limited business use.

The home is still used as a residence and does not become a commercial business when an owner rents the home either long-or short-term. This is similar to the “Home Occupational Permit” that allows owners to work out of their SFD. The use of a SFD for limited business purposes does not change the zoning of the home from “residential” to “commercial”. Commercial enterprises consist of businesses like: gas stations, retail stores, drug stores, etc. Therefore, the use of “Vacation Rental License” is accurate.

**2. Percentage of Parcel Limit Instead of Proximity, Density or Rental Day Limits** - There should be no proximity, density or “Rental Day Limit” in historically tourist areas.

The only permit limitation that has been shown to be fair to existing vacation rental owners and other residents is a “percentage of parcel limit” based upon a percentage of current parcels that vacation rentals presently represent in a given district. This limit preserves the investment vacation rentals have made in their property, the expected revenue these business owners have planned as well as preserving housing stock for non short term rental and long term owner occupied housing.

We recommend no limit on the number of rental days per year where tourists have historically visited for the following reasons.

Any vacation rental day limit in the coastal zone will result in a reduction of visitors and public access to the coast. Similarly, the Russian River area will be impacted. The county has presented no data and no rationale for this limit as applied to coastal zone vacation rental homes, or to inland county vacation rental homes. This limitation would be catastrophic for the local economy that depends on tourism, and limit the public’s coastal access to hundreds of vacation rental homes in the coastal zone. It would also severely impact Transient Occupancy Tax revenue the county currently receives.

County staff mentioned that there is a 90-day rental limit in San Francisco and Contra Costa County. Those are very different geographical areas than Sonoma County or the coast area. San Francisco is densely populated and has many long-term rentals and a housing shortage. Contra Costa has many residential areas and has no obligations under the Coastal Act. Both of these areas are unlike Sonoma County or the Russian River area, and should not be used to support a rental day limit in areas where tourists have visited for decades.

In contrast, Los Angeles and Redwood City allow for 120 rental days. The County of San Mateo allows up to 180 days. It should be noted that the majority of jurisdictions have *no day limit* for many reasons, not the least of which it is a difficult prohibition to monitor, e.g., Santa Cruz, Encinitas, Humboldt, City of Imperial Beach, San Luis Obispo County, Capitola, *have no day limit* among others. Many of these areas are in the coastal zone and appropriately have no cap on vacation rental rental days.

The rationale for rental day limits in other jurisdictions has been preservation of neighborhood character in neighborhoods that did not historically attract many transient visitors. In the coastal zone, and many Russian River communities, the character of the neighborhoods historically includes a significant number of second and vacation homes with transient visitors. The coastal zone has a large contingent of these homes that the Census considers “vacant” - where no permanent residents reside. The majority of coastal homes are in The Sea Ranch and Bodega Harbour where over 50% of the homes are vacant. This has been true for decades. There is little evidence that the number of visitors coming to these communities has changed much over recent decades - as is clearly shown by comparing Transient Occupancy Tax revenue with the Consumer Price Index.

Sonoma County vacation rental owners should be allowed to offer their homes without proximity or density limitation, unless the county can show a clear nexus between vacation rental operations and the impact on housing before such a limit can be imposed.

**3. No 90 Day Limits** - We understand the 90 day limit may be applied to “dual use” where the owner uses the home as a primary residence and occasionally rents short-term. This may be a reasonable application of a VR day limit. However, a 90 day VR rental day limit is excessive if applied to all Sonoma County VR operators.

There should be no land use restriction of a day limit for vacation rental operators in the county’s tourist zones. Many vacation rental owners have indicated the reduced revenue will require them to either increase overnight fees, or to sell their home. Many vacation rental owners often pay 33% for property management, and have additional costs with utilities, mortgage and insurance; it is misleading to believe that the entire rental amount is the income made by owners.

Creating a 90-day limit countywide **would represent an extreme restraint of trade** for owners of these small home-based businesses with unknown impact on the long term health and affordability of the profitable overnight visitor segment. This overnight visitor segment generates significant employment and sales tax revenue for other restaurant, retail and entertainment businesses.

**No other county hospitality business such as hotels, motels, or resorts have such an annual room night limit. We view this limitation as arbitrary and unfair and strongly oppose its implementation.**

**4. Create Policy Backed by Data** - All county decisions regarding land use restrictions to limit or regulate vacation rentals should be backed by data.

Nearly all vacation rental owners agree that “performance standards” that follow county law are reasonable and will benefit the community. “*Land use restrictions*” like density, proximity, or use, go beyond performance standards and should be supported by research and data to show they are necessary and proportionate and do not infringe on the owners’ rights.

Several vacation rental operators in the unincorporated county area favor a percentage limit rather than proximity or day limits. Any percentage limit chosen by the county should be based on clear, specific factors why there is a need for such a limit.

Governmental agencies have a limit on their power and authority. The establishment of vacation rental laws is justified in circumstances where it can be shown there is a need to maintain residential character, or when it can be shown that short-term rentals take away from housing stock. Any regulation beyond performance standards, that is consistent with county law, must be shown to be necessary *for public purposes*. The county has used anecdotal resident complaints as a hammer to create the most extreme land use limits in the current or proposed vacation rental Ordinance (X-Zones, caps, limits). Data showing neighborhood transitions and negative impact on neighborhoods (reduction in rentals, impact on low-income homes, etc.), because of recent vacation rental home proliferation is a prerequisite to the establishment of vacation rental use limits.

We support the decision to not use these caps, density limits, or X-Zones in areas where tourists have historically visited such as the Coastal Zone. These restrictions would limit public access to the coast in contravention of The Coastal Act. We recommend no limits in areas that have historically served tourists, like the Russian River area.

**5. Protect Owners from Harassment** - Vacation rental owners must be protected from repeat or harassing complainants.

Vacation rental owners are concerned that any automated complaint process can be abused by

complainants who can confidentially complain about the operation of a vacation rental home. There appear to be no consequences for bad actors who falsely accuse, or make repeated false complaints. Harassment of vacation rental guests or vacation rental owners should be prohibited.

**6. No Complaints During Unrented Periods** - The complaints process should exclude complaints when the property is not let.

Many, if not most, Vacation Rental homes are frequently used by their owners, friends and relatives outside of the rental program. Such use is not subject to supervision by property managers and cannot be subject to regulation by the county (other than for regulations that apply to all residences). Complaints that are received during such use should be dealt with in the same way as a complaint against any ordinary residence and not be recorded or routed through the County vacation rental system.

**7. No Restriction of Day Guests** - The maximum occupancy during the day should *allow guests*.

Overnight maximum occupancy rates are reasonable. But to disallow daytime guests, as was suggested at the 11/18/21 vacation rental Workshop, is not reasonable. Non-vacation rental owners can have guests during the day, as can residents and long-term renters. It appears everyone but a vacation rental owner can have guests visit their home during the day. This appears to be blatantly discriminatory. The county has not shown any rationale for such a requirement limiting vacation rental owners only. We oppose any day guest limitation that is less than the current "6" (six) allowed in the vacation rental Ordinance.

**8. No 3 Strikes Standard** - Property Manager decertification for failure to maintain standards should not use the "3 strikes" standard.

The current vacation rental Ordinance has a "3 strikes provision". This means a single home, with a single owner, may face removal from the vacation rental program after 3 strikes. We would presume some discretion in the county's enforcement of this penalty because it would be extremely unfair to decertify a vacation rental owner or a property manager for a mere garbage infraction, or for parking a car in the street.

Many coastal zone vacation rental homes are managed by professional property managers, often a small business staffed by a handful of people who manage dozens of homes. It would seem unfair to apply "strikes" from any of those homes, cumulatively, when deciding to decertify a property manager. It could be that a single vacation rental home in their vacation rental stable of homes is a "bad actor". The decertification of a professional property manager will have reverberations across the dozens of homes they manage and will hurt vacation rental owners, and limit the public's coastal access.

Please provide clarity when describing the penalty you will propose, and take into consideration that many homes in the coast are owned by out-of-area owners who cannot suddenly be faced with the decertification of a manager who may need to close down his or her business. Please allow for vacation rental owners or property managers to be represented in their appeals, and provide sufficient time for appeals when owners may live elsewhere. Allowing remote appeals (via Zoom if requested) should be allowed to enable an owner to participate in an appeal.

**9. No Non-Resident Owner Restrictions** - Any prohibition of vacation rental operation for non-residents of the county is unconstitutional.

Prohibiting vacation rental owners from participating in the county vacation rental program because they are not residents of Sonoma County is illegal and unconstitutional as County Counsel Kuteira advised at the 11/18/21 Workshop. She was correct to advise that the U.S. Constitution's "dormant commerce clause" bars state protectionism and prohibits state legislation that discriminates against interstate commerce. If a state statute is discriminatory, such as a prohibition of out of county owners to operate vacation rental homes, the state, or in this case the county, has the burden to justify both the local benefits flowing from the statute and to show the state (or county) has no other means of advancing the legitimate local purpose.

**Coast Zone Positions - In addition to the above:**

**10. Coastal 180 Day Grace Period** - A 180-day grace period in the Coastal Zone is recommended.

Coastal Zone vacation rental operators will be new to the vacation rental regulation process and a grace period will assist in their transition to the new county performance standards and Hotline. It is recommended there be no de-certifications of vacation rental property managers or owners during the grace period.

**11. Prevent Cancellation of Coastal Bookings** - Coastal zone owners should not be required to cancel bookings made before the ordinance takes effect.

Vacation Rental bookings in the coastal zone are often made as much as a year in advance, especially for holidays. Owners should not be required to cancel bookings that were legally made before the ordinance comes into effect. Such cancellation and the necessity to rebook at much shorter notice is expensive for guests and comes with significant risk of poor reviews and consequent loss of future revenue for owners. Such costs are not justified by the desire to introduce the standards marginally faster.