

Comments on the Local Coastal Plan Update – 7/26/2021

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These comments concern issues discussed at the Board of Supervisors’ Workshop on Vacation or Short-Term Rentals held on 7/20/2021. A request for data is also made that will assist all decision makers in determining what type of housing exists, or should exist in the coastal zone.

Business License Model

I am sure many comments will be made on this change: how much will this cost annually, what are the steps for renewal, will existing STR operators be “grandfathered”. I am sure the county will explain the details in time.

It should be made clear to the public that the “business” allowed on a residential property is akin to the current zone permitting allowing a home to be rented short-term and is a legal use of a residential property. There are those that will immediately accuse STR owners of being a business, and not be allowed in a residentially zoned area or in a homeowners association.

The majority of STR homes in the coastal zone are in one of the four coastal HOAs, the largest being The Sea Ranch and Bodega Harbour with an estimated 533 (out of 581) of STR homes in the coastal zone. These HOAs all have restrictions on the operation of a “business” in a residential home. Clarity in exactly what the “business license” means will be helpful.

Permit Sonoma does not intend to change the zoning or use of residential homes operating as STRs. It would be helpful to STR coastal zone owners if Permit Sonoma could make this crystal clear so STR operators do not need to hire an attorney to explain this change to their HOA.

Marin County Short Term Rental (STR) Model

Marin County is considering an update on their 2018 STR program. Public Sonoma has indicated an interest in following the “Marin County model” that, among other things, adopts a business license requirement rather than a zoning permit model as currently used in Sonoma County.

The business permit model is considered to be more efficient as the license is attached to the individual and not the land, as with a zoning permit. It may be more efficient for the county but it is a “take-away” from property holders. This take-away may be reasonable if Sonoma County actually followed the rest of the Marin County model. Otherwise, if Permit Sonoma plans to require more STR rules than Marin County requires, it would be unfair to current VR operators.

Proposed Sonoma County “Rule Book”

Permit Sonoma is proposing a Rule Book for STR guests and their owners. The current VR Ordinance has plenty of rules already. How many more will be needed to create a “book”? It should be noted that coastal zone STRs who engage a local property manager for their STR home already present guests with a 3 ring binder that includes local HOA rules, as well as restaurant information and nice places to visit. Owners who handle their own STR bookings may need guidance but perhaps something less than a book will suffice.

For example, Marin County’s current STR Ordinance program “rules” are one half page long (in the ordinance) and do not need a rule book to explain. I include them here:

Marin County essentially asks STR owners and guests to follow the county law. The Marin County STR Notification Ordinance, in the “Tenant Notification of County Rules” says:

- A. Loud and Unnecessary Noises (Marin County Code 6.70.030) Between 11:00 and 7:00am:
 - a. No operation of any noise generating instrument (e.g. television, radio, loudspeaker, musical instrument) that generates noise audible 50 yards from the building.
 - b. No yelling, shouting, whistling, or singing on public roads.
- B. Parking (Marin County Code 24.04.340)
 - a. Typically, two off-street parking spaces shall be provided for each residence. However, where on street parking is limited, four off-street parking spaces are required.
- C. Emergency Access (California Fire Code 503.4 referenced)
 - a. Parking shall not obstruct roadways less than 20 feet wide.
- D. Garbage (Marin County Code 7.00.0200)
 - a. Garbage placed outside shall be in a suitable covered container.

The brevity of these ‘rules’ is refreshing. Permit Sonoma, if they intend to follow the Marin County model, is wise to adopt the above rules and not provide so many rules that they may go unread.

It should also be noted that, unlike Sonoma County:

- Marin County chose 11:00pm and not 10:00pm as the beginning of quiet time for STRs.
- “Noise” in that county is considered noise that “generates noise audible 50 yards from the building; and no yelling, shouting etc. in the roads (and not a decibel count for noise).
- Parking is straightforward and according to county law (and not based on the number of rooms).
- The same applies to Emergency Access (state law) and Garbage (county code).

Permit Sonoma appears to be cherry picking from the balanced Marin County STR Program and selecting those aspects of that STR Program that make it easier for the county to remove a license from Sonoma County property owners, but may be adopting STR rules that go beyond Sonoma county requirements for all residents. A balanced, easy-to-understand set of rules will go far in assuring they can be implemented. All parties will welcome this.

Automated Complaint Process

The AI complaint process may be a boon to county staff, getting them out of the middle of neighbor disputes, but it may not be beneficial to STR operators. Query whether the filing of a complaint online is a “formal complaint” and the beginning of a potential penalty against the STR operator?

Where is the “contact your neighbor for resolution” component that is currently the first step in Permit Sonoma’s VR Ordinance complaint process? Has that been eliminated? Many coastal zone community residents know, or should know, how to contact their neighbors – unless that neighbor has recently moved in to the home.

Residents may not like this first step and want to push forward into a full blown “complaint”, but that removes an important first step of neighborly communication when a STR owner can resolve a matter quickly. This change would be unfair to STR operators. Owners of STR homes, or their managers, should be given a reasonable amount of time to resolve a complaint.

Does Marin County count the clock in their STR Ordinance and require resolution in 30 or 60 minutes? I did not see it described in their Ordinance. This is not a battle between neighbors as some neighbors would see it. Instead it is adult owners working together to address problems. The STR owner isn’t the only owner who should be acting responsibly. The complainant has a duty to also be responsible. Both owners have a right to a reasonable use of their property.

I HATE NOISE

Noise and nuisance is a major problem for some owners. But what constitutes an actionable noise complaint that can result in another owner’s penalty? For example, is a complainant who insists on “quiet” when s/he has an open window or door reasonable? The courts have said no:

In Schild v. Rubin (CA Court of Appeal, 1991) “two neighbors, who happen to be lawyers, ...bounced their unfortunate dispute from a basketball court into the courts of law”. This case has been cited in hundreds of cases and law reviews. The problem arose when noise resulted when a teen played basketball several hours a day after school in his driveway. The complaining neighbor alleged the noise penetrated the air, offended their senses and invaded their peace and quiet and interfered with their comfortable enjoyment of life and property. The sound of a basketball interfered with the complainants ability to rest, sleep, relax, read, watch television and eat in their home and to converse in their backyard.

The court said, even generously inferring from the facts, for the sake of argument that the complainants emotional distress was substantial,

“we conclude that the basketball playing in the time, place and manner as described which occurred...would not “cause a *reasonable person* to suffer substantial emotional distress” (citations omitted). A reasonable person must realize that complete emotional tranquility is seldom attainable, and some degree of transitory emotional distress is the natural consequence of living among other people in an urban or suburban environment. (Citation omitted). A reasonable person must expect to suffer and submit to some inconveniences and annoyances from the reasonable use of property by neighbors, particularly in the sometimes close living of a suburban residential neighborhood.”

The court held for the basketball playing owner concluding it was a “reasonable use of their property”. The playing was “not so outrageous, extreme, intense or enduring as to come within the scope of injunctive relief for willful harassment...”

On “nuisance” the court noted that “excessive an inappropriate noise may under certain circumstances constitute an interference with the present enjoyment of land amounting to a nuisance” and detailed the circumstances where a nuisance is found:

- Noise from a steel fabricating plant adjacent to residences of retirees
- Noise from a rock quarry near residences
- Barking dogs in a dog hospital adjacent to a motel

The court concluded that “not every activity which is offensive to the senses and interferes with the comfortable enjoyment of life is a nuisance.”

Owners of STRs should be responsible. Guests may have children who are boisterous, and a birthday party may be part of the reason to get together. But these are normal situations that may happen in any community. Keep in mind that an owner living next to a STR may have *no one at the home for days on end* and gets used to the “quiet” surroundings then is disturbed when the owner or guests arrive at the house. A vacant home is not the norm, and complete quiet is not achievable as the court case above noted. Noise will happen. The county should be responsible in their “noise” standard. Marin County’s noise standard is reasonable and should be followed by Permit Sonoma.

SIGNAGE

Marin County’s STR Ordinance requires that the “public shall be notified that a Short Term Rental is available on a particular property...” It allows TWO methods for the notice:

1. Each STR “shall be identified with a single exterior sign”...
2. OR “Written notification shall be provided to all properties within a radius of 300 feet of the property...” (types of notice are suggested as a letter or door handle hanger).

The above two options are reasonable. Owners should be given the option for either notice method. Many owners will naturally shy away from putting a sign on a home that may invite burglaries at the home. This is especially true for homes owned by seniors or single women who may stay at the home when it is not rented. Safety and security is important for all owners.

COASTAL ZONE DATA

Permit Sonoma staff have stated that an Exclusion Zone is not likely in the coastal zone. I suggest that no cap or STR limit or spacing is appropriate in the coastal zone as that area has historically been for vacation, and second home owners, with full time residents being a minority. There are many reasons for this, including the lack of jobs or transportation in the area, and the sheer remoteness of many coastal destinations.

The county must provide some demographic data to support any coastal zone regulations that infringe on coastal zone owners’ property rights. I understand the county has engaged a consultant to provide more STR data and this is wise – although it is putting the cart after the horse and the coastal zone “regulations” are very likely already in final draft form before any data information or consultation.

An important area in which to obtain coastal zone data is not just the “population” that has been in the Local Coastal Plan, but also whether homes have residents or are considered by the Census to be “vacant” or “vacant due to seasonal, recreational or occasional use”. The information derived from the Census is astounding because it shows that nearly 50% of the coastal zone homes are vacant - mostly due to the “use” of the homes as STRs or second homes.

While the number of “vacant” homes in California is 7.6% (2010 Census), and in Sonoma County it is 9.3%, and Santa Rosa - 6.7%, the coastal zone data shows:

- Bodega Bay, population 1,077, 1060 housing unit, **50.5%** vacant

- The Sea Ranch, population 1,305, 1818 housing units, **62.7%** vacant

The remaining 7 coastal zone communities have similar “vacant” housing rates, for example: Salmon Creek **62.1%**, Jenner **50%**, Timber Cove **54.3%**, Sereno DelMar **46.1%**.

CONCLUSION

The Sonoma County coastal zone is rural, and not densely inhabited. Less than 3500 people permanently reside there – less than a fraction of a percent of the county population of about 493,000.

Of course we feel we are special. The many STR guests and tourists feel the same way too as our STR operators have provided essential coastal access to millions over the years.

Thank you for the opportunity to comment. I look forward to Permit Sonoma’s future STR proposals for STRs in the coastal zone.