

Monterey County's Inconsistent Short-Term Rental Policy

By Richard Matthews, Managing Director, MCVRA

July 23, 2017

Background

The current County enforcement against short-term rentals (STRs) in the coastal zone is inconsistent with the County's past policy. This current enforcement is based upon the County's "Interpretation Request" dated July 9, 2015. That "interpretation" was myopic. It may have considered current County code but it failed to consider the policies and even the legal actions of previous County management. [Click here](#) for that "interpretation" or go to:

<http://www.mcvra.org/Mike%20Novo's%20Interpretation%20of%20Short-Term%20Rental%20Regulations.pdf>

I have owned a home in Monterey County for exactly 41 years so I have observed past actions and inactions by the County relative to STRs. I am also a director in the Monterey County Vacation Rental Alliance (MCVRA).

For decades the County has behaved in a manner that condoned STRs. Even neighbors opposed to STRs agree with this. The County happily collected TOT and made no attempt to stop the activity. Each quarter the County Tax Collector received information confirming exactly what each STR owner had done and the property address where it had occurred. Might I suggest the County is complicit in this "illegal" activity?

Over all those years, I do not believe the County ever issued a public notice that STRs were prohibited in the coastal zone. Prohibition might have been the internal position of County staff but how was an owner, property manager or realtor to know this? The County has stated that there were a few enforcement actions in the past but these individual actions were not a public disclosure that coastal STRs were prohibited. Not until the release of the "Interpretation Request" was this position made public. This came as a huge shock to me and other owners. It is absolutely inconsistent with the past behavior and policies of the County.

Prior Legal Action

I will refer to the 1992 case of the County of Monterey vs. William R. Jelavich. The charge was that Mr. Jelavich was conducting commercial activities in a residential area; that the totality of STRs promoted for seminars and conferences, the available use of the community clubhouse, and catering constituted a commercial activity. The simple act of STRs was not challenged nor was it banned in the ultimate settlement agreement. I refer to case #89655 in the Superior Court of California, Monterey County and the August 28, 1992 settlement conference.

The County made no attempt before the case, during the case, or after the settlement of the case to stop STRs by Mr. Jelavich or by the approximately 50 owners he represented. This illustrated the County's policy on STRs in 1992. STRs along the coast were NOT prohibited!

Failed Past Action

The current ambiguous situation in the coastal zone has been caused by the County. The County could have implemented the ordinance that was passed by the Board of Supervisors in 1997 but it failed to work with the Coastal Commission. It was not the Coastal Commission that

killed this ordinance; it was the failure of the County to modify the ordinance as requested in the November 17, 1997 letter from Charles Lester, District Manager, California Coastal Commission. This failure to work with the Coastal Commission is documented in Carl Holm's March 27, 2014 letter to the Board of Supervisors, "Best I have been able to determine is that there was a good amount of opposition to allowing this use (STRs) so the planning management at that time (1997) set the ordinance aside." How could the County staff have simply ignored the Supervisors' intent to permit STRs?

If STRs were not prohibited in 1992 and since no intervening ordinance has been enacted since then, how can the County now "interpret" this activity to be prohibited?

The California Coastal Commission Disagrees

The County "interpretation" came under fire by the California Coastal Commission (CCC) when it wrote in a letter dated June 23, 2016 to the County. The letter reads, "At this juncture it is our (CCC) opinion that vacation rentals are allowable in Monterey County's coastal zone under the LCP (Local Coastal Plan), and we highly recommend that instead of attempting to suggest they are prohibited or pursuing (citing) such prohibitions, that Monterey County instead work with us to develop regulations that serve to ensure Coastal Act-required protections are in place to address any potential concerns..." The letter further states "...efforts along these lines were undertaken by the County back in 1997, but those efforts were apparently discontinued. We would suggest that now is an appropriate juncture to restart that effort." [Click here](#) for that letter or go to:

<http://www.mcvra.org/Coastal%20Commission%20Letter%20to%20Carl%20Holm.pdf>

So on September 20, 2016 the County revised the "interpretation." The original "interpretation" states coastal STRs are not permitted but conveniently the revised version states, "Rental for 30 days or less may be permitted in the Coastal Zone with an approved Coastal Development Permit based on a determination by the Planning Commission that the proposed use is of a similar character, density and intensity to those listed in the applicable zoning code sections if determined to be consistent and compatible with the intent of the applicable Chapter of the zoning code and the applicable land use plans." [Click here](#) for the revised "interpretation" or go to:

<http://www.co.monterey.ca.us/home/showdocument?id=13599>

It is MCVRA's opinion that this is the County's smoke screen for the Coastal Commission by trying to say there is no County ban on coastal STRs. Two STR owners have inquired about getting a "similar use" BnB type permit and were told the application fee would be \$9,000 - \$11,000. And BnB permits require the owner or a manager be on site. The County has admitted that no such "similar use" permits have been issued for STRs.

Solution Needed

The "interpretation" has also caused an unworkable situation. How can STR owners work with the County on a new ordinance while risk being cited? An owner cannot make a presentation in a public hearing without fear of being turned into Josh Bowling, Code Enforcement the next day. And why would members of the opposition agree to any compromise whatsoever in a proposed new ordinance? They love the outright ban on STRs in the coastal zone that the "interpretation" has created.

The County is treating owners like criminals. The resolution is obvious. Expedite the development of a fair ordinance and suspend unwarranted citations in the meantime.