



PLANNING COMMISSION STUDY SESSION

TO: Planning Commission

FROM: Kathleen Mallory, AICP, MA, LEED GA, Planning Director

DATE: May 23, 2017 (for June 1, 2017 Commission meeting)

SUBJECT: Study Session Regarding Short-Term Vacation Rental (STR) Regulations.

1) Recommendation: Receive a presentation on Planning Staff's prior work efforts regarding regulation of Short Term Vacation rentals and receive public and Planning Commission input on this topic. Input will be communicated to the City Council to assist in providing direction to address this issue.

2) Background:

a) Generally: Over the last few year, the success of online platforms has made it easier and more convenient for private residences to advertise the availability of their homes for what is commonly referred to as "vacation rentals" or "short-term rentals." As a result, the City of Oxnard, like many other cities along the coast, have seen an increase in the use of private residences for these purposes. The purpose of this staff report is to summarize staff's prior work efforts conducted in 2016 regarding this topic, report back on November 3, 2016 Planning Commission questions and comments pertaining to this issue, and to receive public and Planning Commission input on this topic. Input from the June 1st meeting will be transmitted to the City Council to assist the Council in formulating direction to address the issue of STRs.

Although short term rentals are not specifically indicated as an allowed use in the residential zones, short term rentals (rentals less than 30 days in duration) have occurred in the City of Oxnard for a number of years. Especially in the Coastal Zone (including the Channel Islands Harbor area), some owners use their homes as vacation homes and lease them out for part of the year – generally using a property management company to manage the rentals if they lived outside of the area. With, however, the advent of Internet rental services such as Airbnb, HomeAway and VRBO, the short term rental of homes, condominiums and apartments in Oxnard has substantially increased, with additional impacts on the neighborhood occurring – especially within the Coastal Zone.

b) California Coastal Commission: The California Coastal Commission (CCC) has provided guidance on the matter. In a letter dated December 6, 2016, the CCC recognizes vacation rentals as an important source of visitor accommodations while understanding legitimate community concerns associated with the use. The letter explains that the CCC has

not historically supported blanket vacation rental bans and has found such programs in the past to be inconsistent with the Coastal Act. The letter also highlights certain regulations that have been historically supported the Commission and provide guidance and direction on developing vacation rental regulations in the coastal zone (see Attachment “A”). A number of cities within the Coastal Zone are currently considering new regulations, or outright bans on short term rentals. However, the CCC has taken the position that – given that short term rentals have occurred in the Coastal Zone for a number of years – cities cannot ban short term rentals without an amendment to the Local Coastal Plan which addresses state policy concerning coastal access. Given the CCC position to date, it is unlikely that the CCC would allow an outright ban on short term rentals within the Coastal Zone. CCC staff have, however, expressed willingness for cities to adopt so-called “good neighbor” regulations on short term rentals.

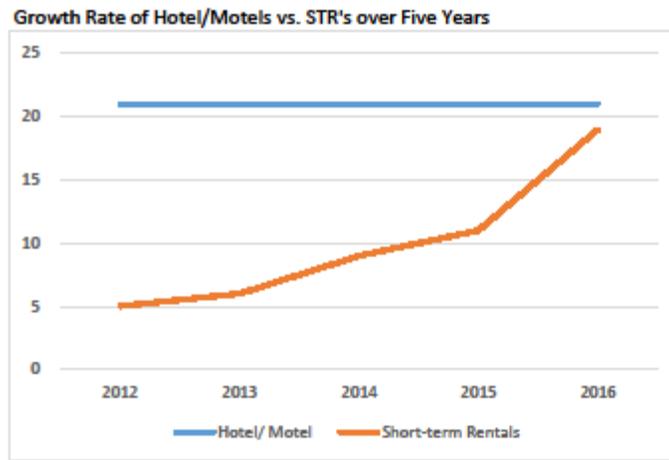
- c) Transit Oriented Tax (TOT):** The City's currently collects TOT hotels/motels and on those STRs that choose to pay it on a self-reporting basis (e.g., 30 days or less). The current TOT rate is 10 percent. Most of the local property management companies that manage the rental of homes collect TOT from that individuals renting the homes and transmit the TOT to the City of Oxnard. In 2012, the City received a little less than \$3.4 million in TOT taxes and in 2016, the City received a little less than \$5 million in yearly TOT tax. In four (4) years, STR TOT tax has increased by 56% while STR Hotel/Motel revenue has increased by 8% (1):

Year	TOT Hotel/Motel Revenue	Annual Growth Rate Hotel/Motel	TOT Short-term Rental Revenue	% Change in STR Revenue	Total TOT Revenue	% of overall TOT
2012	3,361,108.57		39,875.49		3,400,984.06	1.17%
2013	3,779,393.70	12%	46,934.10	18%	3,826,327.92	1.23%
2014	4,162,947.13	10%	61,638.33	31%	4,224,585.56	1.46%
2015	4,585,296.52	10%	69,080.17	12%	4,654,376.79	1.48%
2016	4,934,144.42	8%	107,513.61	56%	5,041,658.11	2.13%

Over the past five years, and based upon STRs that pay TOT, STRs have increased by 380% in the City:

Year	No. of Hotel/Motel	No. of Short-term Rentals	Growth rate over 5 yrs in STR's
2012	21	5	
2013	21	6	
2014	21	9	
2015	21	11	
2016	21	19	380%

1 Per fiscal year – July 1st – June 30th



d) Enforcement: STR complaints are filed with the Police Department. When a complaint is made, it is unknown if the complaint is related to an STR. When the Police Department investigates the call and completes their report, the police report is not correlated to the initial call. In other words, if the Police Department responds to a domestic dispute call and upon investigation determines that the call is STR related, there is no way in the current Police Department call and report summary software to go back and identify the call as an STR related call. It is possible to query Police Department calls by address. Due to staff resources and questions regarding the origins of the complaints, staff has not spent time doing this. City code enforcement staff periodically receive complaints regarding STRs; these typically occur on the weekend. Weekend code enforcement is limited to approximately 16 hours on Saturday and Sunday. Staff and Police resources to investigate these complaints is extremely limited.

e) Recent Legal Cases: Since the Planning Commission considered the STR issue in November 2016, there have been two Ventura County Superior Court decisions relating to short term rentals – *Greenfield v. Mandalay* and *Kracke v. City of Santa Barbara*.

In *Greenfield*, the plaintiff sued the Mandalay Shores Community Association (the “Association”) and sought a preliminary injunction to stop the Association from enforcing its ban on the short term rentals. The plaintiff argued that the limitation on the rental period is a “development” under the provisions of the California Coastal Act (Public Resources Code Section 30000 *et seq.*) and thus required a coastal development permit before the regulations could take place. (Under Public Resources Code Section 30106, a “development” includes a “change in the density or intensity of use of land”.)

The court declined to grant the preliminary injunction, finding that the ban on short term rentals by the Association was not a “development” since it did not change the existing zoning use for the property. The court, however, stated that the evidence in the case was

substantially in conflict and that the appropriate agency to address the issues raised by the case was the California Coastal Commission.

It is important to note that the California Coastal Commission and the City of Oxnard were not named as parties in the *Greenfield v. Mandalay* case. In addition, the action by the judge on January 5, 2017 was to deny the request for a preliminary injunction; there was no final judgment in the case. However, on March 3, 2017, the attorney for the plaintiff filed an appeal of the court's interim decision. The matter is now pending in the 2nd District Court of Appeal (Case No. B281089). No date has been set for briefing in this case.

The other case was *Kracke v. City of Santa Barbara*. While the case raised a number of procedural issues, the most relevant matters were a request by Petitioner Kracke for a preliminary injunction and writ of mandate to keep the City of Santa Barbara from enforcing certain of its municipal code provisions prohibiting short term rentals in specific residential zones. The court indicated that there were no cases holding that a governmental entity's zoning enforcement decision constituted a "development" under Public Resources Code Section 30106 (part of the California Coastal Act), which would require the issuance of a coastal development permit before the decision could be made.

The court's ruling was on March 10, 2017, however, that was not a final action in the case. A further hearing in the *Kracke* case has been set for May 25, 2017, with further action in the case possible after that date. Once the court takes a final action on that date, then the matter will be subject to appeal (see Attachment B).

- 3) Prior Planning Staff Work on STRs (Community Outreach and Public Input) and Planning Commission Input:** Because members of the Planning Commission have changed since 2016, this section of the staff report is provided to bring new Commissioners up to speed on Staff's prior work on the STR issue. This report also summarizes prior Planning Commission meetings on this topic.

Prior STR Work and City Meetings

- a) Online Survey:** The City hosted an online survey between March 21 and April 6, 2016 to solicit public opinion on STRs. The survey was completed by 840 people, 750 of whom either reside or own property within City limits. Although opinions expressed in the survey varied, there was consensus that STRs have the potential to negatively impact the community and should be regulated. The results of the online survey are included as Attachment "C" – see <https://www.oxnard.org/str/>
- b) August 16, 2016 Community Meeting:** On August 16, 2016, a community meeting was held to review the results of the online survey, provide an overview of STRs, best practices to regulate STRs, and discuss proposed standards for STRs; 157 people attended this meeting. Of the attendees, 86% of the participants represented coastal neighborhoods.

Following Staff's presentation, the public was asked to participate in an exercise to provide additional feedback on seven specific STR regulations (see Attachment "D" - <https://www.oxnard.org/str/> - scroll about half way down the page).

- c) November 2016 Planning Commission Public Hearing:** On November 3, 2016, the Planning Commission conducted a public hearing to receive public input on a specific series of STR performance standards. Staff provided a series of questions and comments intended to solicit input on best practices. The report identified staff recommended best practices for which there was consensus and best practices which needed further dialogue. The community and Commission discussed various concerns regarding the STR issue, but no clear policy direction was communicated. No clear consensus was gained from this meeting (see Attachment "E" - <https://www.oxnard.org/str/>). The Commission did ask a series of questions. Staff's response to these questions is contained in Attachment "F".
- d) General Community Input:** In addition to the online survey and the community meeting, Staff has established a dedicated email address (info.str@oxnard.org) and webpage (www.oxnard.org/str). To date, Staff has received approximately 200 e-mails, 200 phone calls and approximately 70 handwritten letters regarding STRs. The correspondences include suggested regulations, complaints of existing STRs and how the community is negatively affected, requests to allow, and requests to ban STRs in Oxnard.

4) STR Regulatory Options:

- a) Types of STRs:** Vacation rentals or STRs can be broken into two categories as described below:
1. **Whole House STRs** – A whole home is a dwelling unit that is occupied as a whole by transient for compensation for fewer than thirty consecutive days.
 2. **Home Sharing STRs** – Home sharing is an accessory use within a dwelling unit where the primary resident resides in the dwelling unit while providing accommodations to guests for compensation. The guest would not have free access to and use of all of the dwelling unit.
- b) Best Practices Applicable to Either Whole House or Home Sharing STRs:** Through Staff's research regarding this topic over the past two (2) years, Staff has identified the following best practices which should be universally applied to either whole house or home sharing STRs:
- STRs should be defined as the rental of a housing unit for less than 30 days.
 - Occupancy limits should be set at two people plus two additional people for each bedroom.
 - A responsible caretaker must respond to complaints within 30 minutes of the complaint being logged and transmitted to the caretaker.

- Trash cannot be left in public view, except in containers for collection between certain hours for collection.
- An STR must have a nuisance response plan approved by the City as part of the STR review and approval process.
- STR lease agreements shall include operating restrictions to address the public health, safety, and welfare.
- Operating restrictions shall be prominently posted inside the STR while it is rented.
- Advertisements must include a City permit number.
- Nearby residents and property owners must be notified of a new STR in their area and should be provided with caretaker's contact information.
- Due to City resources and the extensive number of hours and associated cost incurred to implement an STR program, a third-party compliance company should be utilized to verify compliance with best practices, permit conditions, and dispute resolution.

c) Regulations Suggested by Community Consensus: The 2016 survey and 2016 community meeting, indicated that there is overwhelming support from the community for the following regulations:

- Limit the number of visitors to an STR. A suggested limit is two daytime visitors, plus one additional visitor for each bedroom. Daytime hours were not specified by the community, but staff proposes 7:00 AM to 10:00 PM.
- An STR should be required to pay TOT.
- An STR should receive a permit to operate from the City of Oxnard.
- The minimum rental duration of STRs should be the same year round and not vary by season.

d) Staff Recommended Regulations: In addition to the identified best practices, and regulations suggested by community consensus, Staff recommends implementing regulations which specifically address STR issues expressed by members of the community, and which are unique to specific areas of the City. Staff recommends the inclusion of the following additional regulations:

- **Parking-Based Occupancy Limit:** Apply a parking-based occupancy limit to supplement the occupancy limit based on bedrooms. The lower of the two occupancy limits shall be established as the overnight occupancy limit. Staff recommends allowing a parking-based occupancy limit of four people for each vehicle parking space provided on the STR property.
- **STRs on Properties Built to Zero Property Lines:** A number of community members have expressed concern over the unique security and safety issues associated with the close proximity of properties where residences are constructed immediately adjacent to a property line; this is often characterized as condominiums, some small lot single-family subdivisions, and townhomes. Zero property line construction is common in the Channel

Islands and Oxnard Dunes neighborhoods. Staff recommends that in instances where residences are built to a zero property line, an STR must seek neighbor(s) approval from the immediately adjacent neighbor.

- **Require Posting of Contact Information for Operator/Owner:** At all times that the STR is being rented, a sign shall be posted outside of the STR with the name and contact information for the responsible caretaker as well as other pertinent information regarding operating restrictions. The sign shall be taken down when the STR is not being rented.

e) Regulations Without Community Consensus: Consensus has not been achieved for the following regulations being considered by Staff:

- **Minimum Rental Duration:** The community has been surveyed twice on this topic with responses being sufficiently varied. An excerpt from Attachments “C” (Online Survey) and “D” (Community Meeting) are contained below and show the breakdown of community input:

Online Survey			
What minimum rental duration should be established?			
1 night	123	17.5%	
2 nights	168	24%	
7 nights	196	28%	
14 nights	42	6%	
30 nights	172	24.5%	
Total Responses:	701	100.0%	

August 16, 2016 Community Meeting			
What minimum rental duration should be established?			
1 night	12	11.2%	
2 nights	14	13.1%	
3 nights	25	23.4%	
7 nights	22	20.6%	
10 nights	34	31.8%	
Total Responses:	107	100.0%	

The CCC has not approved a minimum rental duration of greater than seven nights for communities with recently established STR regulations. Staff recommends that the Commission consider what, if any, minimum rental duration is appropriate for the City of Oxnard. Based upon CCC decisions and community input, staff recommends either two, three, or seven nights.

- Maximum Total Number of Nights Rented Per Year:** Oxnard has historically been a place where long term residents share their neighborhood with people who own vacation homes, who visit those homes occasionally and rent them when not in use. Prior to the community meeting in August 2016, a concern expressed was that an increasing number of STRs are being operated by investors who have little connection with the neighborhood and have been unresponsive to neighbor concerns. At the community meeting, Staff asked for input from the community on this issue. However, as shown in an excerpt from Attachment “D” below, no clear direction was received:

August 16, 2016 Community Meeting		
Maximum Number of Nights Rented Per Year		
Should an STR be limited to a maximum number of rentals per year?		
No	60	46.9%
90	55	43.0%
120	4	3.1%
180	9	7.0%
Total Responses:	128	100.0%

Establishing a limit on the number of days per year an STR may be rented discourages the operation of STRs as investment properties and encourages their use by owners. The maximum nights rented per year is a limit on the total number of nights a STR may be rented in a calendar year, not necessarily consecutively. As an example, if the maximum number of nights is set at 90 the STR could be rented out nearly every day of the summer, but could not be used as an STR for the rest of the year. Alternatively, the STR could be rented out nearly every weekend for the entire year as there are approximately 104 weekend days in a year, but would need to be empty during the week. If a 7 day minimum were instituted, in addition to a 90 night maximum number of nights rented, STRs would be limited to 12 one-week rentals per year ($90/7 = 12.8$). As a reference, the City of Los Angeles Draft Ordinance, proposes a 120 day maximum number of nights per year. Staff would like the Commission to consider if a limit on the total number of nights an STR may be rented would be appropriate for the City of Oxnard.

- Homestays:** A homestay is when the property owner and/or a long-term tenant remains on the property while a portion of the housing unit is being rented; often a room. Homestays seek to address the negative impacts of STRs by ensuring that a caretaker is onsite to immediately address potential issues or violations. All facilities, including kitchens, are shared between the owner or long-term tenant and the short-term tenant as part of a homestay. Homestays also limit the feasibility of investor operated STRs. The City of Santa Monica and the City of Los Angeles (Draft Ordinance), do not allow short-term rental of a house unless it is operated as a homestay. The City of San Francisco has separate regulations for STRs where the homeowner is onsite versus when they are out of the home. Based on San Francisco’s experience, dual regulation for owners being onsite

/ offsite is nearly impossible to enforce. Staff would like the Commission to consider whether to require homestays. As shown in an excerpt of Attachment “D” the community was split on the issue of homestays:

August 16, 2016 Community Meeting		
Homestays Only (Property Owner Must Live On-Site While Rented)		
Should a property owner be required to be on-site while the unit is rented?		
No	69	51.5%
Yes	65	48.5%
Total Responses:	134	100.0%

5) Conclusion: The STR issue continues to be a significant public policy and planning issue for which policy-direction is needed. While Planning Staff has been evaluating options and tracking regulatory approaches, ultimately the decision on how to address the STR will be made by the City Council. Community and Planning Commission input on these important questions and regulatory approaches will help the City Council craft a regulatory approach which is suited for the City of Oxnard.

Attachments:

- A. December 6, 2016 California Coastal Commission Guidance on Short-Term Rentals
- B. Recent Legal Cases – Kracke and Greenfield
- C. Online Survey Results – See <https://www.oxnard.org/str/>
- D. August 16, 2016 Community Meeting Results – See <https://www.oxnard.org/str/>
- E. November 3, 2016 Staff Report – See <https://www.oxnard.org/str/>
- F. Staff’s Response to November 3, 2016 Commission Comments

Attachment A

December 6, 2016 California Coastal Commission
Guidance on Short-Term Rentals

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
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DEC 09 2016

PLANNING DIVISION
CITY OF OXNARD**(Sent Individually via US Mail)**

December 6, 2016

TO: Coastal Planning/Community Development Directors

SUBJECT: Short-Term/Vacation Rentals in the California Coastal Zone

Dear Planning/Community Development Director:

Your community and others state and nationwide are grappling with the use of private residential areas for short-term overnight accommodations. This practice, commonly referred to as vacation rentals (or short-term rentals), has recently elicited significant controversy over the proper use of private residential stock within residential areas. Although vacation rentals have historically been part of our beach communities for many decades, the more recent introduction of online booking sites has resulted in a surge of vacation rental activity, and has led to an increased focus on how best to regulate these rentals.

The Commission has heard a variety of viewpoints on this topic. Some argue that private residences should remain solely for the exclusive use of those who reside there in order to foster neighborhood stability and residential character, as well as to ensure adequate housing stock in the community. Others argue that vacation rentals should be encouraged because they often provide more affordable options for families and other coastal visitors of a wide range of economic backgrounds to enjoy the California coastline. In addition, vacation rentals allow property owners an avenue to use their residence as a source of supplemental income. There are no easy answers to the vexing issues and questions of how best to regulate short-term/vacation rentals. The purpose of this letter is to provide guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal zone areas moving forward.

First, please note that vacation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.

The Commission has experience in this arena, and has helped several communities develop successful LCP vacation rental rules and programs (e.g., certified programs in San Luis Obispo and Santa Cruz Counties going back over a decade; see a summary of such LCP ordinances on our

website at:

https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals.pdf). We suggest that you pay particular attention to the extent to which any such regulations are susceptible to monitoring and enforcement since these programs present some challenges in those regards. I encourage you to contact your local district Coastal Commission office for help in such efforts.

Second, the Commission has not historically supported blanket vacation rental bans under the Coastal Act, and has found such programs in the past not to be consistent with the Coastal Act. In such cases the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act. However, in situations where a community already provides an ample supply of vacation rentals and where further proliferation of vacation rentals would impair community character or other coastal resources, restrictions may be appropriate. In any case, we strongly support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for vacation rentals, while providing appropriate regulation to ensure consistency with applicable laws. We believe that appropriate rules and regulations can address issues and avoid potential problems, and that the end result can be an appropriate balancing of various viewpoints and interests. For example, the Commission has historically supported vacation rental regulations that provide for all of the following:

- Limits on the total number of vacation rentals allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a vacation rental (e.g., disallowing vacation rentals in affordable housing contexts, etc.).
- Limits on maximum vacation rental occupancies.
- Limits on the amount of time a residential unit can be used as a vacation rental during a given time period.
- Requirements for 24-hour management and/or response, whether onsite or within a certain distance of the vacation rental.
- Requirements regarding onsite parking, garbage, and noise.
- Signage requirements, including posting 24-hour contact information, posting requirements and restrictions within units, and incorporating operational requirements and violation consequences (e.g., forfeit of deposits, etc.) in rental agreements.
- Payment of transient occupancy tax (TOT).
- Enforcement protocols, including requirements for responding to complaints and enforcing against violations of vacation rental requirements, including providing for revocation of vacation rental permits in certain circumstances.

These and/or other provisions may be applicable in your community. We believe that vacation rentals provide an important source of visitor accommodations in the coastal zone, especially for larger families and groups and for people of a wide range of economic backgrounds. At the same time we

also recognize and understand legitimate community concerns associated with the potential adverse impacts associated with vacation rentals, including with respect to community character and noise and traffic impacts. We also recognize concerns regarding the impact of vacation rentals on local housing stock and affordability. Thus, in our view it is not an 'all or none' proposition. Rather, the Commission's obligation is to work with local governments to accommodate vacation rentals in a way that respects local context. Through application of reasonable enforceable LCP regulations on such rentals, Coastal Act provisions requiring that public recreational access opportunities be maximized can be achieved while also addressing potential concerns and issues.

We look forward to working with you and your community to regulate vacation rentals through your LCP in a balanced way that allows for them in a manner that is compatible with community character, including to avoid oversaturation of vacation rentals in any one neighborhood or locale, and that provides these important overnight options for visitors to our coastal areas. These types of LCP programs have proven successful in other communities, and we would suggest that their approach can serve as a model and starting place for your community moving forward. Please contact your local district Coastal Commission office for help in such efforts.

Sincerely,

A handwritten signature in black ink that reads "Steve Kinsey". The signature is written in a cursive, slightly slanted style.

STEVE KINSEY, Chair
California Coastal Commission

Attachment B

Recent Legal Cases – Kracke and Greenfield

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 01/05/2017

TIME: 04:03:00 PM

DEPT: 21

JUDICIAL OFFICER PRESIDING: Kent Kellegrew

CLERK: Art Alvara

REPORTER/ERM:

CASE NO: **56-2016-00485246-CU-MC-VTA**

CASE TITLE: **Greenfield vs Mandalay**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the request for preliminary injunction under submission, now rules as follows:

The Court DENIES plaintiffs' request for a preliminary injunction. The plaintiffs' evidence demonstrates that granting injunctive relief would disrupt the status quo.

Background: Plaintiffs identify themselves as the owner of a house in Mandalay Shores. They say they have been renting the house to others beginning in July 2015. They say that the Board of Directors of Defendant Mandalay Shores Community Association passed resolution(s) on June 26 and June 29, 2016, prohibiting the rental of any property for a period of fewer than 30 days, effective August 20, 2016. They say they have (had) five rental parties booked after that period.

Mandalay Shores is within the **coastal zone** as defined in the California Coastal Act, Public Resources Code section 30000, et seq.

The Mandalay Bay HOA has defined a **Short Term Vacation Rental (STVR)** as any period fewer than 30 days. Mandalay's definition is consistent with the City of Oxnard's definition of short term rental. The Plaintiffs take exception to the HOA's restriction on the use of their property.

Grounds: Plaintiffs argue that the limitation on rental period is a "development," as that word has been defined, for purposes of the Coastal Act, Public Resources Code section 30106 (change in the density or use of land); (*Pacific Palisades Bowl Mobile Home Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 797 (mobile home park conversion was a "development" subject to permit requirements of Act, regardless of whether the project would have any impact on the density or intensity of land use).) They argue that Defendants were required to get a **coastal development permit** for this "development" from both the City of Oxnard (Pub. Resources Code, § 30600) and the California Coastal Commission (Pub. Resources Code, § 30601).

Plaintiffs argue Defendant's failure to obtain coastal development permits violates the Act and, therefore, they are entitled to relief under section 30803:

(a) Any person may maintain an action for declaratory and equitable relief to restrain **any violation of this division**, of a cease and desist order issued pursuant to Section 30809 or 30810, or of a restoration order issued pursuant to Section 30811. On a prima facie showing of **a violation of this**

division, preliminary equitable relief shall be issued to restrain any further violation of this division. No bond shall be required for an action under this section.

Opposition: Defendant Mandalay argues that the limitation is consistent with its CCRs and that it complies with the Oxnard zoning regulations, where Mandalay is located in an R-B-1 zone (single-family beach), which does not include transient occupancy as a permitted use. If a use is not specifically listed, it is presumed prohibited. Oxnard Zoning, Oxnard Ordinances section 17-5(l)[1]. By contrast, the CVC-Coastal Visitor-Serving Commercial subzone includes visitor-serving services: commercial recreation, skating rink, amusement center, campground, swim club, boat rentals, bike rentals, entertainment, theater, night-club, motor vehicle service station, tourist hotels, motels, convention and conference facilities, and vacation timeshare developments. (*Id.* at § 17-18(B)(1).) Defendant says a transient is defined in the general zoning section as a tourist or other person abiding in the city for a short period of time. (*Id.* at § 16-10(A)(140).)

Analysis: One issue is whether Mandalay Bay HOA violated the Act by failing to get a coastal development permit for its resolutions. Arguably, the HOA's restrictions impact the California coastal zone management. If the HOA's short-term vacation rental restriction is a "development," as defined by the Public Resources Code, this Court may be required to enjoin the Defendant. If the resolutions do not come within the definition of "development," then there is no violation.

A separate issue presented in this case involves conduct by individual homeowners. The evidence produced by the Plaintiffs in their moving papers establishes that the actions of individual homeowners are significantly increasing the use of the coastal zone. This Court must assess what constitutes the status quo and determine whether or not issuing an injunction will undermine or alter the status quo.

1. The Court is not engaged in a discussion of whether the 30-day rental limitation is a violation of the Act. The Superior Court is not the proper venue to assess whether or not Mandalay Bay HOA rules conflict with the Coast Commission goals and plans. The parties should take this dispute to the Coastal Commission which has the authority and resources to develop a comprehensive plan to regulate the limited coastal beach front state asset.

The evidence submitted to this Court reflects that while coastal commission decisions seem to reject outright prohibition of vacation rentals in coastal zones, the July 19, 2016, Coastal Commission packet of "Sample Commission Actions on Short Term Rentals" shows a continuum of approved nuanced local coastal plan amendments: limitation of the percentage of vacation rentals (15%); limitation of the number of guests (2 per bedroom); limitations to seven-day stays; allowing vacation rentals west but not east of 101 in Encinitas; and allowing short-term rental in C-1, C-2, and MU-2 zones, but not in residential zones (Imperial Beach).

Indeed, the Willis letter, dated August 26, 2016, sets forth the policy priorities of lower cost visitor and recreational facilities and concludes that the Mandalay Bay HOA Board's STVR ban affects an entire class of accommodations that provides widespread lodging opportunities that are varied in cost. Willis says this was a change in use requiring a development permit. He adds that the goal is some mutually agreeable resolution for **regulation** of short-term rentals, acknowledging residents concern about noise, special events, parking, litter, onsite management, etc. [2]

The Court is not in a position to tailor STVR rules (*e.g.*, no you can't have 30 days, but how about 7 days with the term commencing Sunday afternoon and ending Saturday morning – to address those weekend party rentals short term rental; maximum of two people per bedroom, *e.g.*, only six people in a three bedroom house, etc.). That should be left for the City, which is in the process of considering amending its coastal zoning section to specifically deal with STVR and the Coastal Commission, which reviews any proposed amendment to the local coastal plan.

The Court is persuaded that the evidence produced to date supports the conclusion that the resolutions are not a "development" because they do not change the zoned use of the Mandalay beach properties and Plaintiffs say they only began vacation rentals in 2015.

2. The Mandalay Bay Homeowners' Association Resolutions are not a development

because they do not change the existing zoning use for the R-B-1 zone, covering the Mandalay Shores homes. The Mandalay Bay HOA resolutions prohibit rentals for terms less than 30 days and are consistent with the use permitted by the Oxnard City Coastal Zoning Ordinance.

The R-B-1 zone (single-family beach) does not include transient occupancy as a permitted use. (See City of Oxnard Local Coastal Program Implementation Plan (Zoning Ordinance, SEC. 17-10(A).) If a use is not specifically listed, it is presumed prohibited. (Oxnard Zoning, Oxnard Ordinances § 17-5(I).)[3]

By contrast, the CVC-Coastal Visitor-Serving Commercial subzone includes visitor-serving services: commercial recreation, skating rink, amusement center, campground, swim club, boat rentals, bike rentals, entertainment, theater, night-club, motor vehicle service station, tourist hotels, motels, convention and conference facilities, and vacation timeshare developments. (*Id.* at § 17-18(B)(1).) A transient is defined in the general zoning section as a tourist or other person abiding in the city for a short period of time. (*Id.* at § 16-10(A)(140).)

The general zoning section also defines a bed and breakfast as "an establishment, originally built as a single-family residence, operated by a resident owner and containing three to five guest bedrooms, each of which is available for rent to the general public for up to 29 consecutive days." (*Id.* at § 16-10(a)(17).) This is not included as a permitted use in the R-B-1 zone, and notably is qualified by "29 days."

The Resolutions, thus, do not constitute a change in the use or density of land. (Pub. Resources Code, § 30106.)

3. The purpose of an injunction is to maintain the status quo until a complete adjudication can occur. The evidence in this case is substantially in conflict. Issuance of an injunction most likely will have the result of increasing the density and intensity of the coastal resource in question.

The Plaintiffs have submitted the declaration of Kristine Brooks-Brewer in support of their motion for preliminary injunction. Ms. Brooks-Brewer states,

The total number of rentals of Coastal Zone homes for less than 30 consecutive days from August 20 to December 31 has increased each year for the past five years. (Brooks-Brewer August 13, 2016, declaration, page 2, paragraph 8, lines 19-20.)

Accordingly, the Plaintiffs' evidence supports the conclusion that density and intensity of use will continue to increase if Mandalay Bay HOA's STVR prohibition is enjoined. The Plaintiffs' evidence demonstrates that conduct of individual homeowners who engage in STVRs is in fact creating a "development," as defined by the Public Resources Code.

The state of the evidence indicates that any action taken by the Superior Court will interfere with the authority of the Coastal Commission. If the Court grants the Plaintiffs' request for an injunction, the evidence supports the conclusion that density and intensity of use will continue to increase in the Mandalay Bay Homeowner's Association due to short-term vacation rentals. If the Court declines to issue an injunction, arguably the public will be restricted in its access to the coast.

The appropriate agency to address the issues raised by this case is the Coastal Commission. The Court is not persuaded that issuing an injunction will preserve the status quo. Accordingly, the request for injunctive relief is denied.

Clerk to provide notice.

[1] Uses not specifically permitted in stated sub-zones - If a proposed use is not listed as permitted or conditionally permitted, such use shall be assumed to be prohibited unless the city council determines, following recommendations from the commission and a public hearing, that the proposed use is substantially the same as a listed use.

[2] We are not in the halcyon days of the late 50s – 70s. We are not talking about middle class families who can only afford a week at the beach. We seem to have moved to the "special event" weekend rentals, as typified from the fact pattern of an earlier case:

This case involves a short term rental for a beach house. The rental agreement for August 30 – September 4, 2012, was executed by David Smith and Paul Davis, with a \$5,000 rental and a \$2000 security deposit, with a 15 person limit. Plaintiffs allege that they told Defendants that the house was precious, that they didn't rent to short-term tenants because they would not take care of the property. Defendants told them the property would be used by a few quiet people from the same church. Plaintiffs allege that to the contrary, Defendants had several large, loud parties with well over 50 people per party. Plaintiffs allege that Defendants left damages of at least \$47,500 (\$19,000 in physical damage and \$150 per person over the 15-person limit).

[3] Uses not specifically permitted in stated sub-zones - If a proposed use is not listed as permitted or conditionally permitted, such use shall be assumed to be prohibited unless the city council determines, following recommendations from the commission and a public hearing, that the proposed use is substantially the same as a listed use.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 03/10/2017

TIME: 10:19:00 AM

DEPT: 40

JUDICIAL OFFICER PRESIDING: Mark Borrell

CLERK: Denise Cervantes

REPORTER/ERM:

CASE NO: **56-2016-00490376-CU-WM-VTA**

CASE TITLE: **Kracke vs City of Santa Barbara**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Motion for Preliminary Injunction under submission, now rules as follows:

The Court, having previously taken the Special Motion to Strike under submission, now rules as follows:

The Court, having previously taken the Demurrer under submission, now rules as follows:

Defendant and respondent, City of Santa Barbara ("City"), moves to strike the petition and complaint ("petition") of Theodore P. Kracke ("Kracke") pursuant to Code of Civil Procedure section 425.16, known as the anti-SLAPP statute. The City also demurs to Kracke's petition. Additionally, Kracke moves for a preliminary injunction restraining the City from enforcing certain municipal codes as they relate to short term vacation rentals ("STVR"). Each of these matters is opposed. Both sides request an award of attorneys' fees under the anti-SLAPP statute.

Requests for Judicial Notice

The City requests that judicial notice be taken of (i) a certified copy of its City Council's Minutes for June 23, 2015 (see Request for Judicial Notice, Exh. A); (ii) a certified copy of the City Council's Agenda Report for June 23, 2015 (*id.* at Exh. A-1); (iii) a certified copy of the City Council's Minutes for August 11, 2015 (*id.* at Exh. B); and (iv) a certified copy of the City Council's Agenda Report for August 11, 2015 (*id.* at Exh. C). The court takes judicial notice of these public records pursuant to Evidence Code section 452, subdivision (c).

DATE: 03/10/2017

MINUTE ORDER

Page 1

DEPT: 40

Kracke requests that judicial notice be taken of a Policy Statement from California Coastal Commission Chair Steve Kinsey dated December 6, 2016. The court takes judicial notice of the letter itself pursuant to Evidence Code section 452, subdivision (c), but not the truth of factual statements set forth in the letter. (See, e.g., *Horne v. District Council 16 Internat. Union of Painters & Allied Trades* (2015) 234 Cal. App. 4th 524, 535.)

Shortly before the hearing on these matters, Kracke filed a supplemental request for judicial notice. He requested judicial notice of California Assembly Bill No. 663, introduced by Assembly Member Richard Bloom. The bill, if passed into law, would amend Public Resources Code section 30123 and repeal section 30500.1. Although the bill is the type of information of which the court could take judicial notice, the bill itself is irrelevant. The court is not required to take judicial notice of irrelevant matters. "There is ... a precondition to the taking of judicial notice in either its mandatory or permissive form—any matter to be judicially noticed must be relevant to a material issue." (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) The request for judicial notice is denied.

Special Motion to Strike (Code Civ. Proc., § 425.16)

Code of Civil Procedure section 425.16 provides, *inter alia*, that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (*Id.*, subd. (b)(1).) Such a motion is often referred to as an anti-SLAPP motion.

"The anti-SLAPP statute does not insulate defendants from any liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, meritless claims arising from protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.)

Public entity defendants, such as the City, are entitled to the protections of the anti-SLAPP statute to the same extent as a private individual. (See, e.g., *Vargas v. City of Salinas* (2009) 46 Cal. 4th 1, 17.)

"Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. We have described this second step as a 'summary-judgment-like procedure.' [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.]

'[C]laims with the requisite minimal merit may proceed.' [Citation.]" (*Baral v. Schnitt, supra*, 1 Cal.5th at pp. 384-85.)

Does the Anti-SLAPP Statute Apply?

Kracke contends that the causes of action set forth in his petition are not subject to the anti-SLAPP statute because he has brought them solely in the public interest, which is one of the statutory exceptions set forth in Code of Civil Procedure section 425.17, subdivision (b). The question of whether this exception to the anti-SLAPP process applies is a threshold issue which should be decided before the court determines the applicability of section 425.16 to Petitioner's action. (*People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal. App. 4th 487, 498.)

Subdivision (b) of Code of Civil Procedure section 425.17 provides that:

"Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

"(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

"(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

"(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter."

This exception should be narrowly construed. [Citation.]" (*Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal. 4th 309, 316.)

The parties dispute whether this action "is brought solely in the public interest or on behalf of the general public." Kracke contends it is because he only seeks (a) a writ of mandate enjoining the City from implementing the STVR enforcement program in the City's Coastal Zone; and (b) a writ of mandate commanding the City to comply with the Coastal Act and Santa Barbara Municipal Code ("SBMC") §28.44.150 by filing an application to amend its Local Coastal Program ("LCP") and obtain certification by the Coastal Commission.

Yet, Kracke admits in his declaration filed in support of his motion for preliminary injunction that he has a direct and substantial financial stake in the outcome of this action which is not shared by the general public. He avers:

"1. Since 2007, I have been the proprietor of Paradise Retreats World Class Vacation Rentals ('Paradise Retreats'), a local business engaged in operating, managing, and servicing vacation rentals in and around Santa Barbara.... Paradise Retreats currently operates twenty-seven rental properties within the CITY's limits, ten of which are located within the CITY's Coastal Zone....

2. Since October of 2012, I have owned real property located at 16 East Arrellaga Street in Santa Barbara ..., which I operated as a Short Term Vacation Rental until the CITY's implementation of Santa Barbara Municipal Code ... §28.04.395 (the 'Hotel Ordinance') to outlaw STVRs in the CITY's Coastal Zone.... [¶¶]

7. As a result of the CITY's ban on STVRs in the CITY's Coastal Zone, I have suffered and will continue to suffer economic harm in the form of lost revenue and forced lay-offs of employees in connection with the STVR that I own and those that Paradise Retreats services."

(Kracke Decl., ¶¶1, 2, 7.)

Because Kracke has a substantial personal financial stake in the outcome of this action, he has not shown that this action is brought **solely** for the public benefit. Consequently, he may not rely section 425.17, subdivision (b). (See, e.g., *Club Members for an Honest Election v. Sierra Club*, supra, 45 Cal.4th at pp. 316-317, 318; see also *Cruz v. Culver City* (2016) 2 Cal.App.5th 239, 250.)

The court now turns its attention to application of the anti-SLAPP statute to these facts.

First Prong

A party bringing an anti-SLAPP motion bears the burden of making "a threshold showing that the challenged cause of action is one 'arising from' protected activity." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76.) The anti-SLAPP statute describes what activities are protected. Generally, protected activity is "any act . . . in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (Code Civ. Proc., § 425.16, subd. (b)(1); also see *id.*, subd. (e).)

"[T]he statutory phrase 'cause of action ... arising from' means simply that the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free

speech." (*City of Cotati v. Cashman, supra*, 29 Cal.4th at p. 78.)

A determination as to whether a cause of action arises from protected activity necessarily involves a consideration of the allegations of the plaintiff's complaint. (See *City of Cotati v. Cashman, supra*, 29 Cal.4th at pp. 76-78 ["In deciding whether the 'arising from' requirement is met, a court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based' ".]) Therefore, the court summarizes the allegations of the plaintiff's petition.

Kracke's petition asserts causes of action against the City for (1) a writ of administrative mandate; (2) a writ of traditional mandate; and (3) civil fines under the California Coastal Act for Unpermitted Development.

According to the facts alleged, Kracke owns real property located at 16 East Arrellaga Street in Santa Barbara ("Property") which he operates as a STVR. Kracke and his family also have a separate primary residence in Santa Barbara where they reside on a full-time basis.

Since 2007, Kracke has been the proprietor of Paradise Retreats World Class Vacation Rentals ("Paradise Retreats"), a local business engaged in operating, managing, and servicing vacation rentals in and around the City. Paradise Retreats currently operates 27 rental properties within the City's limits, 10 of which are located in the City's Coastal Zone (as defined under the California Coastal Act).

STVRs are prevalent in many California beach communities, including Santa Barbara, where there is a high demand for a limited supply of affordable accommodations located near the coast. STVRs offer families and small groups a high degree of flexibility, convenience, and affordability which is notable absent from the traditional hotels and motels in the City's Coastal Zone. STVRs provide a lower-cost alternative to renting hotel or motel rooms for families and groups seeking coastal access. But for the existence of STVRs within the City's Coastal Zone, the segment of the public who use STVRs would be unable to access and enjoy the City's Coastal Zone, which would be contrary to the goals of the Coastal Act.

Some residents of Santa Barbara have complained to the City that the STVRs negatively impact neighborhood character, contribute to noise and on-street parking issues, and contribute to increased rents by reducing the amount of housing available to longer-term tenants. Such concerns are countered by recent studies that analyze the effect of STVRs within the City and conclude that (1) the operation of STVRs has created \$471 million in economic activity; (2) the operation of STVRs has created approximately 5,000 jobs; (3) the degree to which the long-term housing supply is impacted by STVRs is negligible; and (4) the presence of STVRs does not result in heightened nuisance issues in the residential neighborhoods, but may reduce the rate of nuisance complaints.

STVRs are the topic of national controversy. They are regulated, rather than prohibited, in other nearby

coastal communities such as Goleta, Ventura, Malibu, Santa Cruz, Morro Bay, San Luis Obispo, Carlsbad, Encinitas, Newport Beach, and Manhattan Beach. The Coastal Commission has provided its written opinion that a prohibition of STVRs is contrary to the California Coastal Act. According to the Coastal Commission, a fair and narrowly tailored approach to regulating STVRs will promote and expand affordable coastal visitor opportunities while addressing neighborhood concerns.

The Coastal Act requires local governments to develop local coastal programs, consisting of (i) a land use plan; and (ii) a set of implementing ordinances. Under the Coastal Act provision stating that authority for issuance of coastal development permits shall be delegated to local governments, the Coastal Commission's duty to cede permitting authority to local governments is conditioned on the local governments first establishing permitting procedures, adopting ordinances prescribing them, and informing the Commission. Central to a city's delegated authority under the Coastal Act is not merely the adoption of a local coastal plan ("LCP"), but enforcement of the policies set forth in its LCP when considering development permit applications.

The City's LCP was adopted by the City Council and certified by the Coastal Commission in 1971, when STVRs were virtually nonexistent. The City's Implementation Plan ("IP") was adopted by the City Council and certified by the Coastal Commission in 1986. After an LCP and IP are certified by the Coastal Commission, the development review authority is no longer exercised by the Coastal Commission but rather it is delegated to the local government that implemented the LCP and IP. In 2014, the Coastal Commission awarded the City a \$123,000 grant to update its LCP in order to address "the very old LCP policies and development standards." According to the City's website, it has not scheduled any public meetings about updating its LCP.

The City's LCP contains provisions and policies consistent with the goals under Chapter 3 of the Coastal Act. The LCP has the following policy requirements: (1) that visitor-serving commercial and recreational uses shall have priority over all other uses (except agriculture and coastal dependent industry); and (2) that lower cost visitor-serving uses shall be protected and encouraged. To comply with these policies, the City must ensure that existing visitor-serving opportunities are protected; that land use policies give priority to visitor-serving uses in new development decisions; and that lower cost visitor-serving uses are provided. In addition to visitor-serving recreational uses, preservation of lower cost lodging and restaurants is important.

For decades, STVRs operated undisturbed in the City. The City issued business licenses to STVRs and collected substantial Transient Occupancy Taxes.

Santa Barbara Municipal Code ("SBMC") Title 28 ("Zoning Ordinance") contains regulations related to the planning, zoning, and development review in the City. In 2015, the City Attorney determined that the STVRs constitute a "Hotel" pursuant to SBMC §28.04.395. SBMC §28.04.395 was drafted in 1954, was last amended in 1983, and does not specifically address STVRs. However, by classifying STVRs as "Hotels" under the SBMC, STVRs are prohibited everywhere in the City including the Coastal Zone, except in the City's Commercial and R-4 Zones. While the City ostensibly offers an approval process for

the legal conversion of residential homes to STVRs solely in limited commercially zoned areas, the restriction are so onerous as to effectively ban STVRs.

The City has determined that all STVRs in areas other than the Commercial and R-4 Zones are unlawful and that the vast majority of the STVRs in the Commercial and R-4 Zones are non-compliant. On June 23, 2015, a public hearing was held for the City Council to provide direction to City Staff regarding regulation and enforcement of STVRs outside of the designated Zones. The City Council unanimously approved a motion to "enforce existing regulations prohibiting Vacation Rentals" in "tiered" priority levels, with the goal that all STVR properties would be subject to enforcement by no later than January 1, 2017. Notwithstanding the City's claims that it was enforcing existing regulations, this vote was a fundamental change in policy that, essentially, would eliminate all STVRs within the City by January 1, 2017.

Kracke appeared at the June 23, 2015 City Council hearing and opposed the resolution to being enforcing the City's zoning ordinance against the STVRs.

On October 8, 2015, Kracke's business, Paradise Retreats, was subpoenaed by the City Attorney and ordered to release the names of every client whose rental property was managed by Paradise Retreats, for the purposes of enforcing the STVR ban. Paradise Retreats was forced to comply with the subpoena in order to avoid facing contempt charges and being levied with substantial fines.

In the past year, the City has issued 44 legislative subpoenas, entered into 32 settlement agreements with owners of STVRs (with another 10 in the process of being finalized), 19 enforcement cases have been closed, and 17 properties have voluntarily surrendered their business licenses without the threat of enforcement. As of September 19, 2016, the City is prosecuting 1,011 STVR enforcement cases. In June 2015 there were 349 registered STVRs operating within the City; as of September 23, 2016, there are 215 registered STVRs operating within the City. The City indicates that it intends to initiate enforcement action against any unpermitted STVR within its limits.

The City's implementation of the STVR Ban and its broad enforcement efforts change the density and intensity of use of land and the intensity of use of water, or of access. Therefore, it amounts to "development" under the Coastal Act and requires a CDP or, alternatively, an amendment to the City's certified LCP approved by the Coastal Commission. The City's decision to implement the STVR Ban is wholly inconsistent with the Coastal Act, does not conform to the City's certified LCP, and will unreasonably interfere with public access to valuable coastal resources, lower cost housing alternatives, and unique recreational opportunities.

The parties have also submitted declarations, which the court has read and considered.

Having summarized the allegations advanced by Kracke, the court now addresses whether Kracke's causes of action "[arise] from any act of that person in furtherance of the person's right of petition or free

speech under the United States or California Constitution in connection with a public issue." (See Code Civ.Proc., § 425.16, subd. (b)(1).)

Subdivision (e) of Code of Civil Procedure §425.15 enumerates certain categories of actions that are in furtherance of free speech/petition rights:

"As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue;' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

The City contends that Kracke's claims fall under subpart (e)(2) above, as they are based on statements made in connection with an issue under consideration or review by an official proceeding authorized by law. More specifically, the City contends that Kracke is not challenging the validity of the City's Hotel Ordinance, but instead challenges the City's discussions at the June 23, 2015 City Council meeting (the "official proceeding authorized by law") and the City's "informal minute order" which led to formal action at a later City Council Meeting at on August 11, 2015, to fund proactive enforcement of the Hotel Ordinance.

The City is correct that the statements made at the June 23, 2015 City Council meeting were made in connection a matter under consideration in an official proceeding authorized by law, because Subject No. 15 at the City Council meeting was "Council Direction on Short-Term Vacation Rental Regulations" (see City's Request for Judicial Notice, Exh. A [Minutes of June 23, 2015 City Council Meeting, p. 15]). It is beyond dispute that City Council meetings are official proceedings authorized by law.

Nevertheless, the City fails to carry its burden to demonstrate that this action arises out of protected activity. That is, the City does not establish that this action arises out of protected speech.

Initially, appellate courts have been reluctant to allow public entities to invoke the anti-SLAPP statute in cases involving petitions for writ of mandate and associated claims, under the theory that requiring petitioners seeking writs of mandate to make prima facie showings of merit up front would chill the right to seek judicial review of public agency proceedings:

"To decide otherwise would significantly burden the petition rights of those seeking mandamus review for most types of governmental action. Many of the public entity decisions reviewable by mandamus or

administrative mandamus are arrived at after discussion and a vote at a public meeting. (See generally 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, §§ 8–13, pp. 1061–1068 [Bagley-Keene Open Meeting Act]; id., §§ 15–24, pp. 1069–1079 [Brown Act].) If mandamus petitions challenging decisions reached in this manner were routinely subject to a special motion to strike—which would be the result if we adopted the Board's position in this case—the petitioners in every such case could be forced to make a prima facie showing of merit at the pleading stage. While that result might not go so far as to impliedly repeal the mandamus statutes, as the District contends, it would chill the resort to legitimate judicial oversight over potential abuses of legislative and administrative power, which is at the heart of those remedial statutes. It would also ironically impose an undue burden upon the very right of petition for those seeking mandamus review in a manner squarely contrary to the underlying legislative intent behind section 425.16."

(*San Ramon Valley Fire Protection Dist. v. Contra Costa County Employees' Retirement Assn.* (2004) 125 Cal. App. 4th 343, 357-358.)

Turning to the merits of the prong one analysis, the court is not persuaded that the City accurately characterizes Kracke's claims as arising from speech. The gravamen on Kracke's claims is not predicated on what was said by the City's representatives, but rather the action the City took following those statements – to wit: the City's alleged implementation of a ban on STVRs without following the required procedures under the Coastal. The harm of which Kracke complains flows from the City's actions and not its words. The speech was merely a necessary predicate to the action.[1]

Here, the essence of Kracke's petition is that the City was required to obtain the Coastal Development Permit ("CDP") or amend its Local Coastal Plan ("LCP") and obtain certification from the Coastal Commission before implementing its ban on SVTRs (excepting designated commercial and R-4 zones). This alleged conduct is not the kind of communicative conduct protected by the anti-SLAPP statute.

This conclusion is borne out by the reasoning expressed in *Graffiti Protective Coatings, Inc. v. City of Pico Rivera* (2010) 181 Cal. App. 4th 1207, 1224-1225. For that reason, it is quoted here at length:

"Here, assuming the claims against the City involve a public issue, we conclude that the City's petition and free speech rights are not implicated. GPC's claims for a writ of mandate and declaratory relief are not based on any communications between the City and others or on any petitioning activity by the City. Rather, the claims are based on competitive bidding laws found in the Public Contract Code and the City's municipal code. Those laws invite competition; guard against favoritism, improvidence, extravagance, fraud, and corruption; and secure the best work at the lowest price practicable. [Citations.]

"Although the City's communications may be of evidentiary value in establishing that it violated the law, liability is not based on the communications themselves. [Citations.] Just as the improper use of a competitive bidding process is not protected activity [citation], neither is the mistake of forgoing the

bidding process altogether. That City officials may have deliberated in deciding whether to invite bids in selecting GPC's successor does not mean the City exercised its right of petition or free speech. [Citation.] The substance of the City's decision was not protected activity. [Citation.]

"Were we to hold otherwise, we 'would significantly burden the petition rights of those seeking mandamus review for most types of governmental action. Many of the public entity decisions reviewable by mandamus or administrative mandamus are arrived at after discussion and a vote at a public meeting. ... If mandamus petitions challenging decisions reached in this manner were routinely subject to a special motion to strike-which would be the result if we adopted the [City's] position in this case-the petitioners in every such case could be forced to make a prima facie showing of merit at the pleading stage. While that result might not go so far as to impliedly repeal the mandamus statutes, ... it would chill the resort to legitimate judicial oversight over potential abuses of legislative and administrative power, which is at the heart of those remedial statutes. It would also ironically impose an undue burden upon the very right of petition for those seeking mandamus review in a manner squarely contrary to the underlying legislative intent behind [the anti-SLAPP statute].' [Citation.] The same may be said of a declaratory relief action that challenges the validity of governmental conduct. And the chilling effect of requiring the plaintiff in an action for a writ of mandate or declaratory relief to make a prima facie showing of merit at the pleading stage is of particular concern because a defendant who prevails on an anti-SLAPP motion is entitled to an award of attorney fees. (See § 425.16, subd. (c).)

"In closing, we note that suits brought by a governmental agency to enforce laws aimed at public protection are not subject to the anti-SLAPP statute. [Citations.] Similarly, GPC's suit to enforce the competitive bidding laws is outside the ambit of the statute. The City did not engage in protected activity by deciding whether those laws applied to a bus stop maintenance contract. [Citations.]

"Thus, the claims against the City are not based on any statement, writing, or conduct in furtherance of the City's right of petition or free speech. The trial court therefore erred in granting the City's anti-SLAPP motion. Because we conclude that the City did not satisfy its burden with respect to the first step of the anti-SLAPP analysis, we do not consider whether GPC met its burden of demonstrating it was likely to prevail on the merits of its claims. [Citations.]"

(181 Cal. App. 4th at p. 1224-1225.)

In its Moving Brief, the City cites two cases for the proposition that the anti-SLAPP statute is applicable here: *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Assn. of Governments* and *City of Montebello v. Vasquez*. However, both of these cases are distinguishable.

In *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Assn. of Governments*, the plaintiff's claims were based on communicative conduct: namely, the Santa Barbara County Association of Governments alleged advocacy in promoting a ballot measure for a sales tax extension. (See 167 Cal. App. 4th at pp. 1234-1235.) The Court of Appeal found that these allegations

fell within the ambit of the anti-SLAPP statute because public entities and employees have a First Amendment right to take positions on matters of public interest relating to their duties. (See 167 Cal. App. 4th at pp. 1237-1238.) In contrast, the allegations of the petition here are not explicitly based on advocacy, statements of position, or written communications.

In *City of Montebello v. Vasquez*, "The City of Montebello sued three of its former council members and a former city administrator, claiming they violated Government Code section 1090 by voting on a waste hauling contract in which they held a financial interest." (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 412-413.) The Supreme Court held that even if the council members' votes themselves were not protected by First Amendment rights, they were acts in furtherance of their First Amendment rights of advocacy and communication with their constituents and therefore fell within the scope of the anti-SLAPP statute. (See 1 Cal.5th at pp. 422-423.) *City of Montebello* is distinguishable in that the complaint was expressly based on communicative conduct itself (i.e., the casting of votes) and was held to be in furtherance of advocacy and communication of views by the council members. Here, as noted above, Kracke's action is not based explicitly on communicative conduct, but rather on a failure to comply with the claimed legal requirements for taking an enforcement action that substantially affects the Coastal Zone.

For these reasons, the court finds that the City has not carried its prong one burden. The special motion to strike, therefore, is denied.

Kracke seeks an award of attorney's fees and costs incurred in opposing the City's special motion to strike. Code of Civil Procedure section 425.16, subdivision (c)(1), provides, in pertinent part, that:

"If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5."

Here, the City's arguments in support of their motion are not "frivolous." Kracke's request for an award of attorneys' fees and costs is denied.

Demurrer

The City demurs to the first and second causes of action in petition on the ground that the facts stated therein fail to establish a basis for recovery. The demurrer is opposed.

First Cause of Action

The City contends that Kracke's first cause of action for administrative mandate is deficient on the ground that it is time-barred under the 60-day limitations period set forth in Public Resources Code section 30802.

A demurrer based on a statute of limitations only lies where the time-bar is clearly and affirmatively established on the face of the complaint or matters judicially noticeable. (See *Geneva Towers Ltd. Partnership v. City and County of San Francisco* (2003) 29 Cal.4th 769, 781.)

Public Resources Code section 30802 provides in part that:

"Any person, including an applicant for a permit or the commission, aggrieved by the decision or action of a local government that is implementing a certified local coastal program or certified port master plan, or is exercising its powers pursuant to Section 30600.5, which decision or action may not be appealed to the commission, *shall have a right to judicial review of such decision or action by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 60 days after the decision or action has become final.*" (Emphasis added.)

Here, the parties dispute whether this provision applies to Kracke's first cause of action for writ of administrative mandate. The City contends that this provision applies and that the first cause of action is time-barred because the City's final decision to enforce the alleged ban on STVRs was taken on August 11, 2015. The petition here was filed considerably more than 60 days later, on December 21, 2016.

Kracke contends that his first cause of action is not based implementation of the City's local coastal program and, therefore, is not subject to Public Resources Code section 30802. Rather, he asserts the applicable limitations period is Code of Civil Procedure section 1094.6 generally applicable to writs of administrative mandate. That statute establishes a 90-day limitations period "following the date on which the decision becomes final." The statute, however, requires the agency give notice of the decision to an affected "licensee." (Code Civ.Proc., § 1094.6, subd. (f).) Kracke argues that he was not given notice and, consequently, the limitations period had not run by the time he initiated this action.

The City has the better argument.

As his opposition to the motion to strike emphasizes, Kracke is complaining about "the decision or action of a local government that is implementing a certified local coastal program." (Pub. Res. Code, § 30802.) Specifically, he asserts, "On January 1, 2017, the CITY commenced enforcement of a ban on all STVRs of residential property in the CITY's Coastal Zone . . . The CITY's action to enforce the Hotel Ordinance against STVRs violates the . . . California Coastal Act of 1976 (Pub. Res. Code, § 30000, *et seq.*) . . . and the CITY's Local Coastal Program ("LCP")." (Opp. to Spec. Mtn. to Strike, at p. 1.)

Indeed, the petition goes on at length about the City's LCP. In particular, Kracke alleges that (a) the LCP was adopted by the City Council and certified by the Coastal Commission in 1981 (see Petition, ¶14); (b) due to the certification of the LCP, the City was ceded permitting/development review authority in the Coastal Zone by the Coastal Commission (*id.*, at ¶14); (c) in 2014, the Coastal Commission awarded the City a \$123,000 grant to update its LCP, which the City has not yet done – but should have in order to address STVRs (*id.*, at ¶14); (d) Chapter 28.44 of the SBMC was "established for the purposes of implementing the Coastal Act and to ensure that all public and private development in the City's Coastal Zone is consistent with the City's LCP and the Coastal Act" (*id.*, at ¶15); (e) that the decision to enforce the alleged STVR ban by the City was a "development" in the Coastal Zone and that the City therefore violated SBMC §28.44.040 by failing to obtain a coastal development permit ("CDP") before making its decision (*id.*, at ¶18); (f) that the City's LCP establishes policy requirements that contradict the City's alleged STVR ban, including "that visitor-serving commercial and recreational uses shall have priority over other uses (except agriculture and coastal dependent industry)" and "that lower cost visitor-serving uses shall be protected and encouraged," and that the City's STVR ban violated these policies and therefore does not conform to the LCP (*id.*, at ¶¶22, 29). Simply stated, the City's LCP is at the heart of Kracke's allegations and he alleges the City has violated, improperly failed to update, and acted contrary to its LCP.

Kracke argues that the "decision or action of a local government that is implementing a certified local coastal program" does not apply because the petition is:

"not based on the implementation of its local coastal program ('LCP'), which was implemented by the CITY and certified by the Coastal Commission in 1981. Rather, the Petition is premised on the CITY's failure to abide by various provisions of the Coastal Act, the Santa Barbara Municipal Code and its total disregard of the CITY's LCP when it took action to ban STVRs in the Coastal Zone."

(Opposition Brief, 2:26-3:3.)

However, Kracke's argument is based on too narrow a construction of the word "implementing." His argument assumes that "implementing" as used Public Resources Code section 30802 is synonymous with "establishing." This construction appears to be incorrect, because section 30802 has been applied to permitting/development decisions made by the local government after the LCP was established. (See, e.g., *City of Half Moon Bay v. Sup. Ct.* (2003) 106 Cal. App. 4th 795, 804 [holding that a denial of a CDP was subject to §30802].)

Pursuant to Public Resources Code section 30802, Kracke was required to bring his mandamus petition within 60 days after the decision or action became final. As indicated above, the City's decision to start enforcement of its alleged STVR ban became final no later than August 11, 2015. As a result, the 60-day period expired no later than October 12, 2015. The petition was filed on December 21, 2016 and is therefore time-barred on its face.

Even assuming that Kracke is correct, and that his first cause of action is governed by the general limitations for administrative mandate set forth in subdivision (b) of Code of Civil Procedure §1094.6, his first cause of action would still be time-barred on its face.

That subdivision provides, in pertinent part, that:

"Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced."

Contrary to Kracke's assertion, the application of this provision to his first cause of action is not defeated by the notice requirement of Code of Civil Procedure section 1094.6, subdivision (f). That subdivision only applies to "decisions" as defined in subdivision (e) of the statute. "As used in this [section 1094.6], decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, denying an application for a permit, license, or other entitlement, imposing a civil or administrative penalty, fine, charge, or cost, or denying an application for any retirement benefit or allowance."

The petition does not seek writ review of a "decision" falling within this meaning.

For these reasons, the demurrer to the first cause of action is sustained. Leave to amend is granted.

Second Cause of Action

The City contends that the second cause of action for traditional mandate is deficient on the grounds that (i) Public Resources Code requires that the actions of the City complained about here be reviewed pursuant to section 1094.5 of the Code of Civil Procedure; and (ii) Kracke has not alleged the failure to perform any purely ministerial duty on the part of the City. The City contends that any enforcement decisions made by the city attorney are discretionary.

For purposes of ruling on this demurrer, the court assumes that traditional mandate is available for a local government entity's violation of the Coastal Act. (See *Hagopian v. State of California* (2014) 223 Cal. App. 4th 349, 373.) However, a traditional writ of mandate is only "available where the petitioner has no plain, speedy and adequate alternative remedy; the respondent has a clear, present and usually ministerial duty to perform; and the petitioner has a clear, present and beneficial-or in this case statutory-right to performance." (*Id.*)

Ordinarily, a writ of traditional mandamus will only lie to compel performance of a mandatory or ministerial duty, or to prevent an abuse of discretion. (See, e.g., *Common Cause v. Board of*

Supervisors (1989) 49 Cal.3d 432, 442; *Linder Co. v. Board of Permit Appeals of City and County of San Francisco* (1943) 23 Cal.2d 303, 315.) Here, Kracke's theory that the City had a mandatory duty goes like this: (1) under the Coastal Act and the SBMC the City's decision to ban STVRs constituted "development," and (2) because the City's action constituted a "development," the City had "a clear legal duty to submit an application for a CDP to the Planning Commission or the Staff Hearing Officer in order to obtain approval of the STVR ban." (See Petition, ¶¶36, 37; see also ¶¶17, 18 [discussing the broad definition of "development"].)

The allegations in the petition that the City had "a clear legal duty to submit an application for a CDP" before deciding to ban STVRs is one which the court is not required accept as true for the purposes of ruling on a demurrer. (See *Linda Vista Village San Diego Homeowners Assn., Inc. v. Tecolote Investors, LLC* (2015) 234 Cal.App.4th 166, 173-174.) The question presented is, therefore, whether the well pled facts of the petition establish a mandatory duty on the City to apply for a CDP before changing its enforcement practices of the "Hotel Ordinance" to, according to Kracke, ban STVRs.

The resolution of this issue requires the court to consider whether Kracke has pled facts showing the City's decision constituted a "development" within the meaning of Public Resources Code section 30106. He contends he has. The court thinks otherwise.

Section 30106 defines "development" as follows:

" 'Development' means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

"As used in this section, 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." [Emphasis added.]

As to this issue, Kracke has made these allegations:

"29. The CITY's implementation of the STVR Ban and its broad enforcement efforts change the density and intensity of use of land and the intensity of use of water, or of access. Therefore, it amounts to 'development' under the Coastal Act and requires a CDP or, alternatively, an amendment to the CITY's certified LCP approved by the Coastal Commission...."

This allegation does little but recite the words of the statute. And although Kracke is not required to plead evidentiary facts, the court is not required to accept Kracke's conclusory allegations.

Kracke has not presented the court with, and the court has been unable to locate, any case holding that a governmental entity's zoning enforcement decision constituted a "development" within the meaning of section 30106. Although Kracke is correct that the definition of "development" is to be read broadly (see *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 796), he would have the court adopt an interpretation which would encompass virtually all of the City's decisions having some impact the "intensity of use of land" no matter how attenuated. The court is not persuaded that a decision to appropriate funds to support the city attorney's election to step-up enforcement of an existing municipal laws constitutes a "development" within the meaning of section 30106, even if it does have some unintended, minor, indirect and unquantifiable impact on the intensity of use of land.

For these reasons, Kracke's theory of mandatory duty is without merit.

As a result, Kracke fails to allege facts showing that the City had a mandatory duty to obtain a CDP prior to making its decision regarding STVRs. Accordingly, the City's demurrer to the second cause of action is sustained. Leave to amend is granted.

Motion for Preliminary Injunction

Kracke moves for a preliminary injunction restraining the City from enforcing the Hotel Ordinance in a manner which restricts the operation of STVRs. Because Kracke has not alleged facts stating a basis for this relief, the motion for preliminary injunction is denied.

Conclusion

The City's special motion to strike is DENIED.

The City's demurrer to the first and second causes of action of the petition is SUSTAINED. Kracke may file an amended petition within 20 days of the date of posting of this minute order.

Kracke's motion for preliminary injunction is DENIED. The motion may be renewed if and when a cause of action is stated.

The clerk is directed to give notice.

/n
[1] *The City admits that:*

"The crux of [Petitioner's] claims is alleged in Paragraph 29 of the Petition/Complaint: 'The CITY's implementation of the STVR Ban and its broad enforcement efforts change the density and intensity of the use of land and the intensity of use of water, or of access. Therefore, it amounts to 'development' under the Coastal Act and requires a CDP or, alternatively, an amendment to the CITY's certified LCP approved by the Coastal Commission. The CITY's decision to implement the STVR Ban is wholly inconsistent with the Coastal Act, does not conform to the CITY's certified LCP (including its policy requirements), and will unreasonably interfere with public access to valuable coastal resources, lower cost housing alternatives, and unique recreational activities.'"

(City's Moving Brief, 4:22-5:4.)

Attachment C

Online Survey Results – See <https://www.oxnard.org/str/>

Attachment D

August 16, 2016 Community Meeting Results –
See <https://www.oxnard.org/str/>

Attachment D

November 3, 2016 Staff Report – See <https://www.oxnard.org/str/>

Attachment E

Staff's Response to November 3, 2016 Commission Comments

SHORT-TERM RENTALS (STRs) UPDATE
Response to November 3, 2016 Planning Commission Study Session
Staff Responses are Contained in Italics

1. Provide a copy of the California Economic Forecast “The Effect of Short Term Rentals on Neighborhood Nuisance Complaints Along the Central Coast.” *Copy of the Economic Forecast is attached.*
2. How do we address the STRs already operating?
 - a. *Assuming implementation of best practices as part of a future City Ordinance, existing STRs would be required to follow occupancy, noticing, and licensing requirements etc...*
 - b. *Assuming the City adopts STR regulations, how would the City address existing STR’s which may be unable to comply with operating regulations? This issue would be addressed as part of a future STR ordinance. A non-comprehensive list of options includes:*
 - i. *Creation of an amortization period – use ceases after a specified period of time (e.g., 6 months - 2 years); timeframes to be established as part of an ordinance.*
 - ii. *Granting non-conforming rights to all STR owners who are able to provide Transit Occupancy Tax (TOT) receipts prior to a specific period of time.*
 - iii. *In the instance of density restrictions, or caps on the number of STRs, an annual lottery system could be implemented.*
3. If STR is not addressed in the code, why is it not prohibited?
 - a. *The ability to rent a residence to tenants is generally considered a residential use consistent with a single-family dwelling.*
4. Detail the enforcement process for illegal STRs, monitoring regulations.

There are a few options to ensure compliance or address illegal STR’s which could be implemented as part of a future STR ordinance.

 - a. *One option is to utilize code enforcement to address neighbor complaints. Our existing code enforcement staff focuses on health and safety enforcement issues and is directed to targeted areas; the additional of STR cases would negatively impact the ability of Code staff to address these issues.*
 - b. *Other options which are being considered in other communities involves utilizing a third party company to achieve compliance. Host Compliance is an outside contractor who can assist with monitoring STR operations and TOT collection. With approximately 200 STRs within the City Host Compliance would charge \$14,630 (approximately \$75 per STR) per year for their complete suite of services. Scope and budget can be adjusted depending upon the City. Host Compliance offers a staffed 24/7 hotline for neighbors to make non-emergency reports regarding problematic STR operations. The reports are logged and staff reports are prepared daily or weekly for City Staff review and action.*

5. Will the Local Coastal Program (LCP) be updated to address this issue?
 - a. *The LCP update will include language specifically discussing STR regulations. In December 2016, the California Coastal Commission issued a policy memo to advise coastal communities on how to address the STR issue. This policy memo is summarized and attached within staff's June 1st staff report.*
6. Does the Oxnard Shores Settlement Agreement provide sufficient beach access to prevent additional access requirements such as STRs?
 - a. *The Coastal Commission is regularly involved in exactions and legal settlements to expand coastal access. The existence of the settlement agreement does not exempt Oxnard Shores from providing coastal access in line with the California Coastal Commission's (CCCs) current position that STRs provided affordable access to the beach.*
7. Does the presence of Hotels and Motels mitigate the CCC concern regarding public access?
 - a. *The CCC has acknowledged that hotels close to the beach do provide access. However, Oxnard has only one beachfront hotel and two hotels in the coastal zone. The two coastal beaches may not provide sufficient access to comply with the CCC requirements. The hotels are:*
 - i. *Hampton Inn in the Harbor*
 - ii. *Embassy Suites south of the Oxnard Beach park*
8. What is the Ordinance Santa Barbara uses to ban STRs?
 - a. *Santa Barbara does not have a separate ordinance discussing STRs. Santa Barbara is able to treat STRs as hotels partly because even with their ban on STRs in most residential zones, there is sufficient opportunity to develop hotels and STRs within the coastal zone; see attached Santa Barbara vacation rental handout.*
9. What do Ordinances of Carpinteria, Ventura, and the County of Ventura look like?
 - a. *Carpinteria has created four (4) zones west of the 101 freeway each with a cap on the total number of STRs allowed within that zone. The maximum number of STRs specified in the ordinance is slightly more than the existing number of STRs for a slight increase in STRs in the future. A copy of the Ordinance is attached.*
 - b. *Ventura has an existing STR ordinance which limits rentals to a minimum of 7 days during the summer and 2 days for the rest of the year. The ordinance requires that neighbors be noticed of STR permit requests and that a caretaker is available to respond to complaints. At present the City of Ventura is looking into modifying the ordinance. A copy of the Ordinance is attached. The business licensing office at the City is currently updating the ordinance.*
 - c. *The County of Ventura is evaluating the issue and will use 2017 to develop regulations to address STR's by area. Specifically the areas being evaluated include (unincorporated portions of Ventura County): Ojai; North & South Coastal Areas; and Central Coast Area*

Attachments:

1. *California Economic Forecast*
2. *City of Santa Barbara Vacation Rental Handout*
3. *Carpinteria Ordinance*

The Local Economic Impact of Short Term Rentals in The City of Oxnard, California



TXP, Inc.
1310 South 1st Street #105
Austin, Texas 78704
www.txp.com

Overview

Short term rentals (STR) are an increasingly popular lodging choice for travelers in almost all communities in the United States. With the growth of online reservation systems such as HomeAway and AirBnB, visitors are better able to select the accommodation style that fits their needs. At the same time, many communities in California, and around the country, are wrestling with how they can best incorporate STRs into their existing regulatory framework. The most effective regulation of STRs creates certainty for both home owners and guests, maximizes the benefits of tourism spending in the local economy, and recognizes the impact of STRs on the demand for local housing.

A friendly, seaside city with miles of uncrowded beaches for oceanfront recreation and relaxation, Oxnard has a long history of local vacation and second homes. Many of these properties have been rented by short-term guests for decades. This impact analysis is meant to inform the continued discussion of STR regulation in the City of Oxnard. For the purpose of this study, STRs are defined as residential properties that are available to be rented for a period of less than 30 days. This study collected data on STR properties located in the City of Oxnard. Any properties self-identifying as a short term or vacation rentals, (including those listed on major short term and vacation rental websites), were included.

The report that follows provides an overview of recent trends in the Oxnard area tourism and housing sectors, the specific characteristics of the local STR market, and a discussion of the methodology, findings, and conclusions of the economic impact analysis. The economic impact of STRs in the City of Oxnard is estimated at the Oxnard-Thousand Oaks-Ventura metropolitan statistical area (MSA) level, as the indirect and induced effects of STR activity in the city limits ripple out throughout the region.

STRs are a significant contributor to the Oxnard area economy. Spending by guests staying in STRs in the City Oxnard created more than \$48.9 million in total annual activity and nearly 500 permanent jobs in the local economy.

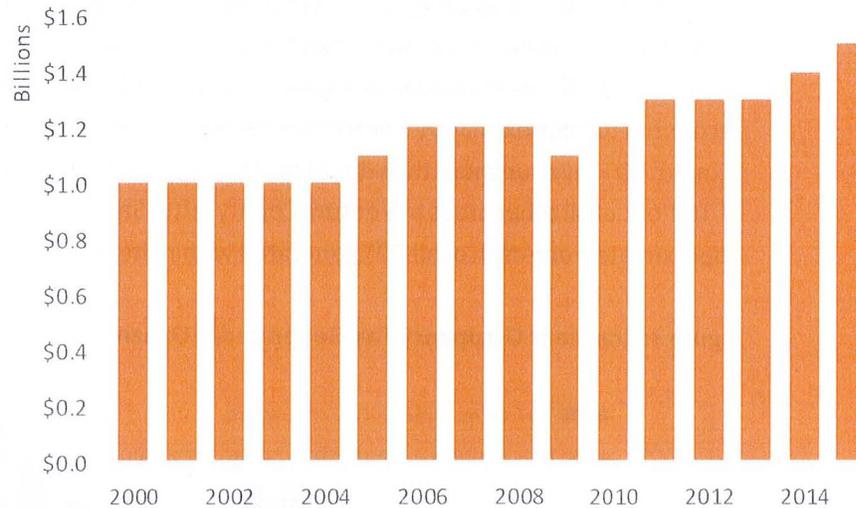
The Oxnard Area Economy

Tourism in Oxnard

The City of Oxnard is a popular destination for tourists and tourism is a vital part of the local economy. Approximately an hour's drive north of Los Angeles in Ventura County, Oxnard offers uncrowded beaches and popular annual events including the Dallas Cowboys Training Camp, the California Strawberry Festival, and the Oxnard Salsa Festival, which draw hundreds of thousands of visitors each year. The nearby Channel Islands National Park also offers the opportunity for day trips filled with hiking and natural beauty.

Tourist spending in Ventura County exceeded more than \$1.5 billion in 2015 and generated \$480 of local and state tax revenue per household. This record visitor spending is a 50 percent increase over levels in 2000 and a 3 percent increase from the previous year. With the exception of a decline in recession year of 2009, tourist spending in Ventura County has seen year over year growth for the past decade.

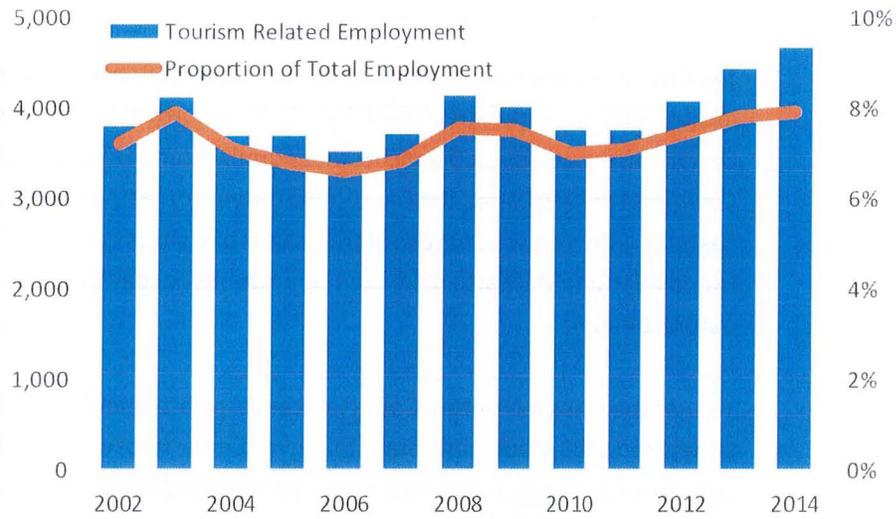
Figure 1: Total Visitor Spending in Ventura County



Source: Dean Runyan for Visit California; TXP, Inc.

Employment by tourism-related industries is a significant part of the Oxnard area job market. In 2014, the most recent year for which there is good data, businesses in the Arts, Entertainment, and Recreation and the Accommodation and Food Service industries accounted for nearly 5,000 jobs or 7.9 percent of all jobs in the City of Oxnard. These industries are the most impacted by direct visitors spending. Since 2002, this sector of the economy has added nearly a thousand new jobs and held steady at accounting for approximately 1 out of every 12 jobs in Oxnard.

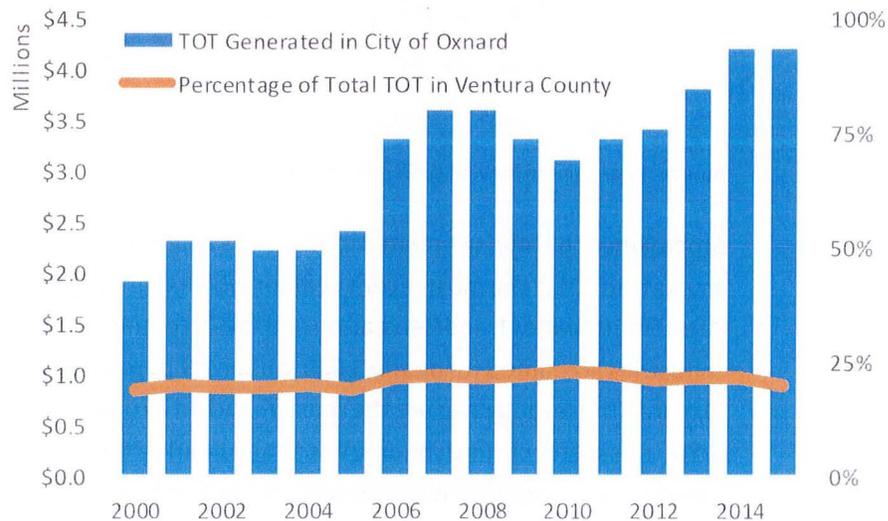
Figure 2: Employment in Tourism-Related Industries in Oxnard, CA



Source: US Census Bureau; TXP, Inc.

Taxes assessed on tourists spending, both sales tax and transient occupancy tax (TOT) i.e. a lodging tax, are an important source of income for the City of Oxnard. An 8 percent sales tax and 10 percent TOT tax is assessed by the City of Oxnard. The City of Oxnard's TOT revenue has grown steadily from its recession-related low of \$3.1 million in 2010. In 2015, the City of Oxnard generated a record high \$4.2 million in TOT, which accounted for approximately 3 percent of the total tax revenue for the City. Since 2000 Oxnard's TOT revenue more than doubled. Oxnard generates the second largest volume of TOT out of all other areas in Ventura County, after San Buenaventura, and represents approximately one-fifth of all TOT generated within the county.

Figure 3: Transient Occupancy Tax Generated in Oxnard



Source: Dean Runyan for Visit California; TXP, Inc.

The strength of the Oxnard area’s tourism sector can also be seen in its hotel sector’s occupancy and daily rates. Ventura County’s hotel occupancy rates at the beginning of 2016 have exceeded those of the State of California and the US as a whole. The high occupancy rate and increasing average daily rate indicate that demand for hotel rooms in the Oxnard area is strong. Furthermore, the Hilton Mandalay Beach Resort is the only beachfront hotel property in the City of Oxnard. Even with room-rates starting at over \$200 per night, this hotel is at near capacity occupancy year-round. This high-end luxury resort caters to a different market segment, including business travelers and affluent couples, than do local STRs. The demand for budget-friendly, beachfront accommodation drives Oxnard’s STR market as this need is not filled by the options available in the city’s hotel sector.

Figure 4: Hotel Industry Statistics

	Occupancy		ADR		RevPAR		Hotels
	2015	2016	2015	2016	2015	2016	
Ventura County	73.6%	79.4%	\$120	\$133	\$88	\$106	86
California	74.2%	75.2%	\$146	\$156	\$108	\$117	5,572
United States	65.0%	65.1%	\$119	\$123	\$78	\$80	54,262

Source: Dean Runyan for Visit California

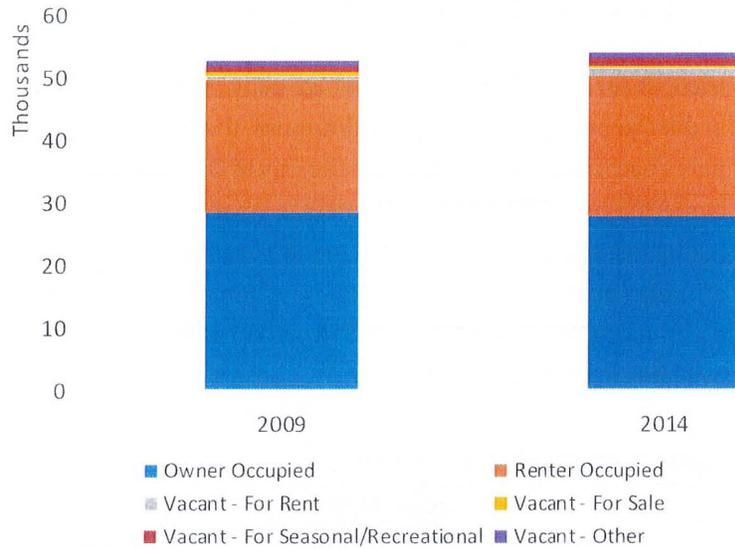
Note: Data includes only January through June for both 2015 and 2016.

Housing in Oxnard

Between 2009 and 2014, the City of Oxnard saw a 2.5 percent increase in the total number of housing units but only a 1.5 percent increase in the number of resident households. Overall, the vacancy rate held steady with approximately 7 percent of all housing units in Oxnard identified as vacant. A property is designated as vacant by the US Census Bureau if it has not been occupied for two consecutive months.

The overwhelming majority of net new units added to the Oxnard housing stock are vacant properties that are identified as either “for rent” or “for seasonal, recreational, or occasional use,” which increased 36.5 percent and 37.9 percent respectively over this five-year period. A property rented as an STR appears as one of these two categories in the Census Bureau’s typology. Over this same period, there was a significant decline in the proportion of properties in Oxnard available for sale.

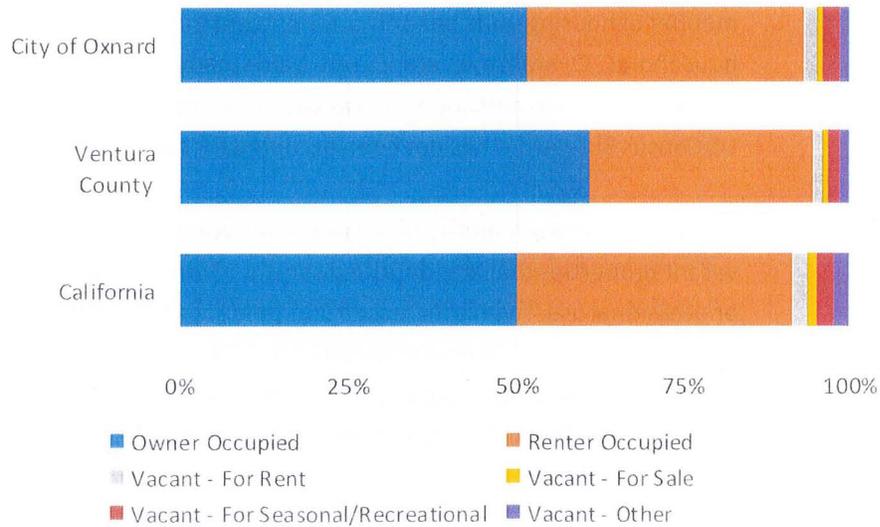
Figure 5: Total Housing Units by Type in the City of Oxnard



Source: American Community Survey, US Census Bureau; TXP, Inc.

Compared to Ventura County, the City of Oxnard has proportionally fewer owner-occupied homes. It looks much more similar to the state of California as a whole. Oxnard’s seasonal residency and strong tourism sector contribute to a higher proportion of vacant units than other parts of Ventura County. However, Oxnard has proportionally greater renter-occupied housing units than the state overall.

Figure 6: Relative Proportion of Housing Unit Types in the City, County, and State



Source: American Community Survey, US Census Bureau; TXP, Inc.

Short Term Rentals in Oxnard

The City of Oxnard has a long history of seasonal residency and vacation home rentals. Homeowners and property management companies have been renting properties in Oxnard for decades. These properties contribute to the diversity of lodging options available in Oxnard. The beachfront areas of both Oxnard and Ventura County have the densest concentration of STR properties; however, there are some STR properties in more urban area and the Ojai Valley. Currently, no city rules govern STRs in Oxnard.

Throughout Ventura County, the regulation of STRs differs dramatically depending on the county or municipal code. Only three cities in Ventura County explicitly regulate their STR properties:

- **The City of Fillmore** allows STRs but a conditional use permit, in addition to a business license and remittance of TOT, is required. Additionally, STRs are allowed only in single-family residential units. Specific STR-specific regulations including building inspections, parking requirements, occupancy limits, and renter acknowledgement of STR ordinance requirements are also mandated.
- **The City of Ojai** voted to enforce its existing ban on STRs at the beginning of 2016. All STRs are entirely prohibited within the city limits.
- **The City of Ventura** allows STRs, provided that register with the city, obtain a business license, and remit the appropriate TOT. The City of Ventura has an annual permitting and review process for all STRs. The City also has a number of STR regulations aimed at preventing potential problem guests from renting in Ventura including minimum night stays, occupancy limits, quiet hours, and renter acknowledgement of STR ordinance requirements. It also requires that 24-hour contact information be provided to neighbors for someone able to address nuisance complaints. The business license of an STR can be revoked if problems are not addressed in a timely manner. City staff has stated that this system has proven effective in reducing nuisance problems and has also not created any significant enforcement costs for the city.

Ventura County's Board of Supervisors is currently exploring regulating STRs. In December 2015, the Board of Supervisors directed its staff to identify and evaluate issues pertaining to STRs within the County and options for potential regulation. At the end of 2015, the Ventura County Office of the Treasurer-Tax Collector had 114 STR properties located in unincorporated parts of the County registered to remit TOT.

It is also important to note that in California's beachfront communities, the California Coastal Commission has oversight of use and public access in the coastal zone. The coastal zone in Oxnard encompasses the vast majority of the area in which STRs are clustered. This quasi-judicial regulatory agency has been outspoken in its support for STRs as essential for maintaining public access to the coastline. The Coastal Commission has emphasized that the lower cost of STRs allow for more, and more diverse, groups of people to enjoy access and recreation at the coast. It maintains that outright bans on STRs is inconsistent with the public access policies set forth in the Coastal Act.

The Oxnard Shores neighborhood has become the flash point for the discussions of how to appropriately regulate STR activity in the City of Oxnard. This neighborhood comprises approximately 1,400 homes and condos. The area's small lots sizes and resulting close proximity have increased tensions between neighbors. It is estimated that 20 percent of these are occupied by full time residents and that 66 homeowners who are not full-time residents also rent their homes as STRs. These ownership demographics are consistent with the findings from a survey conducted for this impact assessment.

Survey information was collected from 28 properties located in the City of Oxnard, or slightly more than 10 percent of all Oxnard STRs. Of these survey respondents, 87.5 percent indicated that the property they rented as a STR was not their primary residence. Only 12.5 percent indicated that their STR property had been available for long-term rental at any point in the past 10 years. Nearly two-thirds of survey respondents indicated that they would try to sell their property if it could no longer be rented as an STR; only a single respondent indicated that they would consider renting their property to long term residents if it could not be rented as an STR. Several respondents specifically mentioned that a number of their guests are repeat visitors to Oxnard and that several indicated later that their experience as an STR guest in Oxnard led them to purchase their own vacation or second homes in Oxnard.

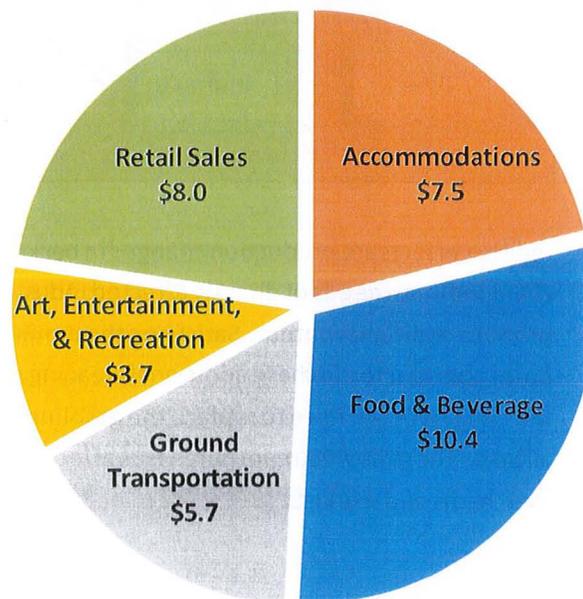
Economic Impact Calculations

The 2015 economic impact of STRs in Oxnard was calculated by first estimating the direct accommodations spending of visitors using STRs. Next, the direct STR accommodations spending figure was used as the basis of calculating the STR guest direct spending on other tourism purchase categories. Using these figures, specific multipliers provided by the US Bureau of Economic Analysis RIMS II model for the Oxnard-Thousand Oaks-Ventura MSA were applied to estimate the ripple effects of the induced and indirect impacts. The total economic impact combines the direct spending with these ripple effects.

Direct STR-Related Spending Estimates

Using a combination of data provided by STR property owners/managers and vacation rental websites, the aggregate direct spending on lodging by STR guests in the City of Oxnard totaled \$7.5 million in 2015. As a part of the study, survey data were collected from property owners and managers for 28 local properties. HomeAway provided data for the properties listed with their family of websites within the City of Oxnard. Information was also collected from other websites used for advertising and renting STRs, including AirBnB, Craigslist, and FlipKey. All survey respondents indicated using multiple websites to advertise and rent their properties, therefore efforts were made to eliminate duplicative data. The estimated 2015 total revenue for STRs was validated using local stakeholder information, as well 2015 estimates made by Ventura County.

Figure 7: 2015 Total Direct STR Visitor Spending in the City of Oxnard (\$millions)



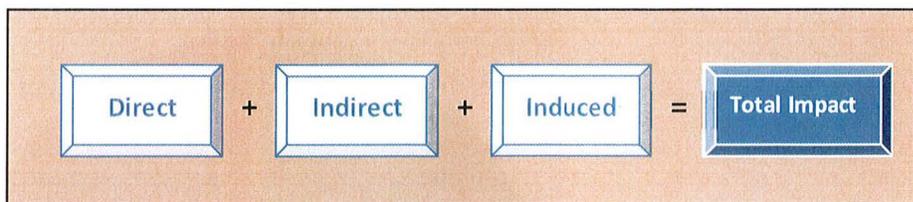
Source: US Bureau of Economic Analysis; Dean Runyan; TXP, Inc.

Using data from the 2015 California Travel Impacts report produced by Dean Runyan Associates and other analysis conducted by Convention and Visitors Bureaus throughout Ventura County, it was possible to determine the proportion of tourism spending attributable to lodging in Oxnard. This ratio was then applied to the amount spent by guests at STRs to calculate the total direct spending by STR users in 2015. This ratio of direct spending in different industry categories (i.e. lodging, food and beverage, recreation, retail, and transportation¹) was validated using 2014 data from the US Bureau of Economic Analysis' Travel and Tourism Satellite Accounts dataset. Visitors to Oxnard spend proportionally more on food and beverage purchases, but less on entertainment and local transportation, during their stay than the national average. For every \$100 spent on lodging, STR visitors spent an additional \$140 on food, \$76 on local transportation, \$49 on entertainment and recreation activities, and \$107 on retail shopping in the local economy. As a result, the 2015 total direct spending by STR visitors to the City of Oxnard is estimated at \$30.2 million.

Economic Impact Methodology

The economic impacts extend beyond the direct activity outlined above. In an input-output analysis of new economic activity, it is useful to distinguish three types of expenditure effects: direct, indirect, and induced. Direct effects are production changes associated with the immediate effects or final demand changes. The payments made by a visitor to a hotel operator or taxi driver are examples of a direct effect.

Figure 8: The Flow of Economic Impacts



Indirect effects are production changes in backward-linked industries caused by the changing input needs of directly affected industries – typically, additional purchases to produce additional output. Satisfying the demand for an overnight stay will require the hotel operator to purchase additional cleaning supplies and services, for example, and the taxi driver will have to replace the gasoline consumed during the trip from the airport. These downstream purchases affect the economic status of other local merchants and workers.

¹ Local transportation spending includes vehicle rentals (cars, bikes, boats, etc.), taxis, public transportation, gasoline, parking fees, roadway tolls, etc.

Induced effects are the changes in regional household spending patterns caused by changes in household income generated from the direct and indirect effects. Both the hotel operator and taxi driver experience increased income from the visitor's stay, for example, as do the cleaning supplies outlet and the gas station proprietor. Induced effects capture the way in which this increased income is spent in the local economy. Once the ripple effects have been calculated, the results can be expressed in a number of ways. Four of the most common are "Output," which is equivalent to sales; "Value-Added," which is sales minus the cost of goods sold; "Earnings," which represents the compensation to employees and proprietors; and "Employment," which refers to permanent, full-time jobs that have been created in the local economy.

The interdependence between different sectors of the economy is reflected in the concept of a "multiplier." An output multiplier, for example, divides the total (direct, indirect and induced) effects of an initial spending injection by the value of that injection – i.e., the direct effect. Larger multipliers mean greater interdependence among different sectors of the economy. An output multiplier of 1.4, for example, means that for every \$1,000 injected into the economy, another \$400 in activity is produced in all sectors.

Economic Impact Results

The direct spending by STR visitors to the City of Oxnard created total economic activity of \$48.9 million, earnings of \$13.5 million, and nearly 500 jobs in the local economy. The table on the following page details the total industry-level impact of STRs in the City of Oxnard in 2015. Further benefits accrue to the City of Oxnard, Ventura County, and the State of California in the form of taxes assessed on direct spending by these visitors, as well as revenues generated by the ripple effects of that spending.

Figure 9: Total Economic Impact of Short Term Rentals in the City of Oxnard, CA

Industry	Output	Value-Added	Earnings	Jobs
Ag., forestry, fishing, & hunting	\$107,644	\$43,657	\$35,627	1
Mining	\$160,989	\$111,543	\$23,433	0
Utilities	\$828,495	\$441,738	\$108,056	1
Construction	\$379,670	\$203,999	\$103,428	2
Manufacturing (durable)	\$714,133	\$287,569	\$123,617	2
Manufacturing (nondurable)	\$1,129,704	\$380,655	\$184,591	4
Wholesale trade	\$1,693,599	\$1,148,443	\$454,090	7
Retail trade	\$6,196,633	\$4,031,148	\$1,833,020	72
Transportation & warehousing	\$6,390,641	\$2,969,467	\$2,560,825	86
Information	\$1,205,916	\$697,999	\$202,567	3
Finance & insurance	\$2,953,487	\$1,609,607	\$581,395	9
Real estate, rental, & leasing	\$5,176,835	\$3,625,828	\$676,659	26
Prof., scientific, & tech. services	\$1,321,745	\$828,284	\$493,859	7
Management of companies	\$557,082	\$334,253	\$199,801	2
Admin. & waste manag. serv.	\$1,199,064	\$762,506	\$439,451	13
Educational services	\$212,529	\$129,110	\$90,682	3
Health care & social assistance	\$2,207,654	\$1,325,803	\$877,984	19
Arts, entertainment, & rec.	\$3,888,852	\$2,166,196	\$952,123	49
Accommodation	\$187,181	\$118,666	\$45,139	1
Food services & drinking places	\$11,310,097	\$5,962,113	\$3,177,439	160
Other services	\$1,101,400	\$611,662	\$355,279	9
Households	n/a	\$26,963	\$26,963	2
TOTAL	\$48,923,352	\$27,817,208	\$13,546,026	478

Source: TXP

Conclusions

The economic impact of STRs in Oxnard is significant. In 2015, spending by guests staying in STRs in the City of Oxnard created \$48.9 million in economic activity and nearly 500 jobs. Recent increases in STR activity have coincided with growth in tourism and visitor spending in the Oxnard area. The historically high county-wide hotel occupancy rates indicate STRs are complementary, rather than substitute, goods in the local accommodations market. As such, STRs are a vital component of the overall local lodging portfolio. Moreover, the growth of the STR market in Oxnard has allowed individuals who own second homes in the area to rent out their properties during times in which they would otherwise be standing vacant.

Legal Disclaimer

TXP reserves the right to make changes, corrections and/or improvements at any time and without notice. In addition, TXP disclaims any and all liability for damages incurred directly or indirectly as a result of errors, omissions, or discrepancies. TXP disclaims any liability due to errors, omissions or discrepancies made by third parties whose material TXP relied on in good faith to produce the report.

Any statements involving matters of opinion or estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that such opinions or estimates will be realized. The information and expressions of opinion contained herein are subject to change without notice, and shall not, under any circumstances, create any implications that there has been no change or updates.



City of Santa Barbara

VACATION RENTALS

Please be advised that the following information is subject to change.

The conversion of an existing residence to a vacation rental is considered by the Planning Division to be a change-of-use from a *residential use* to a *non-residential use* and will require compliance with the following standards described below. A “vacation rental” is a hotel when any building, group of buildings, or portion of a building is occupied for overnight stay by individuals for less than 30 consecutive days (See the definition of “hotel” at [SBMC §28.04.395](#)).

Please refer to the table below **and** general standards on page 2 for relevant requirements. A project **must comply with all general standards** in addition to the project components to qualify the level of review outlined below. Please refer to the Planning Division handouts at www.SantaBarbaraCA.gov/PlanningHandouts for submittal requirements. Additional information may be found on the [Vacation Rental](#) webpage.

Planner Consultations or a Pre-Application Review Team (PRT) submittal are highly recommended for projects subject to Staff Hearing Officer or Planning Commission review.

Planning Process for Conversion of Residential Unit to a Vacation Rental		
Number of Existing Residential Units to be Converted	Project Components to Determine Level of Review	Highest Level of Review*
1 Residential Unit	<ul style="list-style-type: none"> No exterior changes Converting less than 1,000 s.f.** to the non-residential use (excluding garages and carports) 	Staff
	<ul style="list-style-type: none"> Exterior changes proposed or Converting between 1,000 - 3,000 s.f.** to a non-residential use (excluding garages and carports) 	Architectural Board of Review or Historic Landmarks Commission <i>(Design Review Body)</i>
	<ul style="list-style-type: none"> Project located in the Coastal Zone (which requires a Coastal Development Permit) and Converting less than 3,000 s.f.** to the non-residential use (excluding garages and carports) Modification required 	Staff Hearing Officer <i>(In addition to design review if required and if no other approval is required by the Planning Commission)</i>
	<ul style="list-style-type: none"> Converting more than 3,000 s.f.** to the non-residential use (excluding garages and carports) 	Planning Commission <i>(In addition to design review if required)</i>
> 1 Residential Unit	<ul style="list-style-type: none"> Hotel Conversion Permit required*** 	Planning Commission <i>(In addition to design review if required)</i>

*The level of review may vary from this chart depending on additional site specific information or constraints.

**Please refer to the Nonresidential Growth Management Program Ordinance [SBMC §28.85](#) for more information on limitations.

***Planner Consultation recommended prior to any formal submittal.

The following are General Standards that apply to all vacation rental applications.

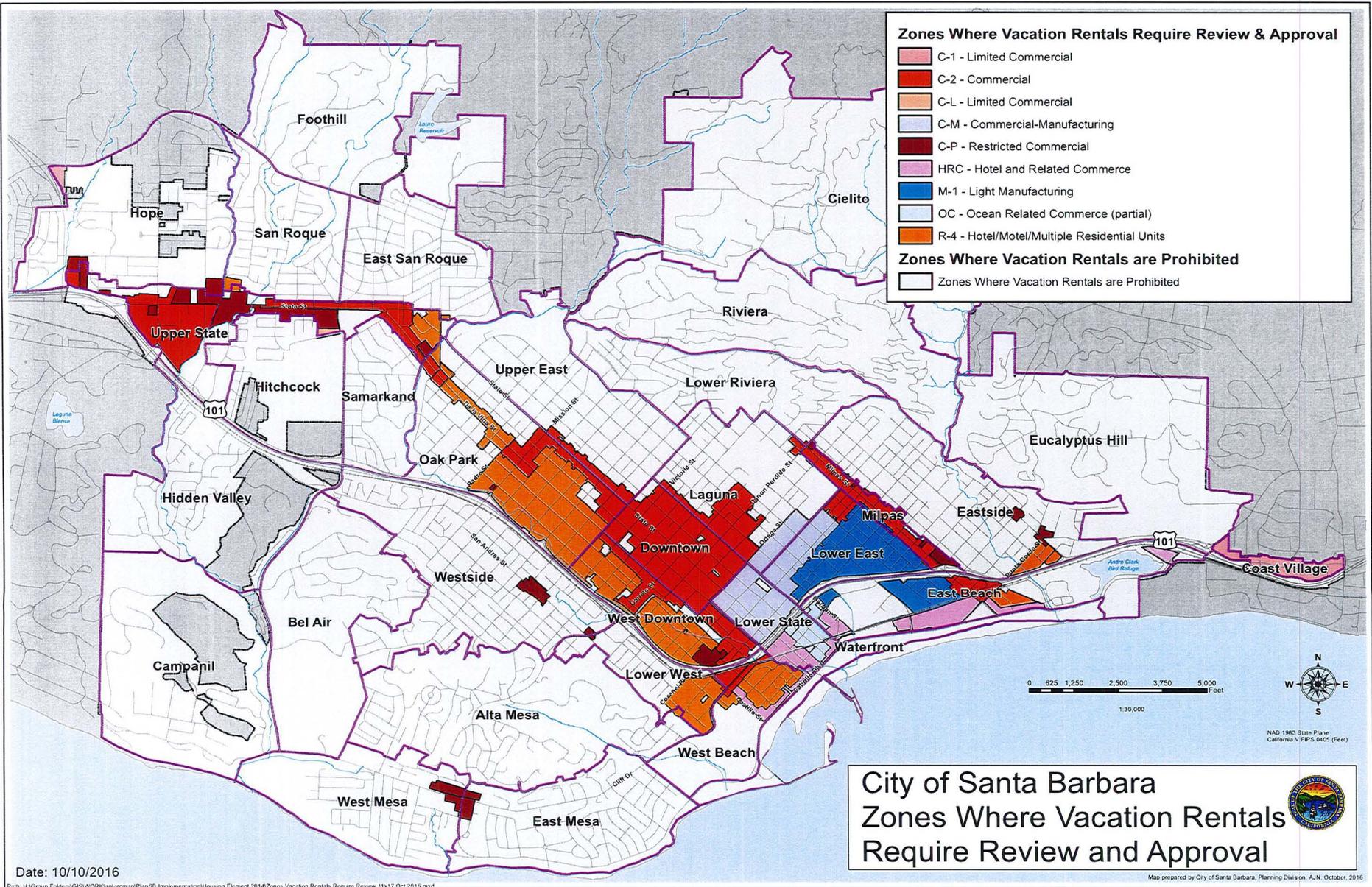
GENERAL INFORMATION

1. **ALLOWED ZONES.** Vacation rentals are allowed in all zones in which hotels are allowed: R-4, C-L, C-P, C-1, C-2, C-M, HRC-1, HRC-2, HRC-2/OC and M-1 Zones. If the property is not located in one of these zones, a vacation rental is not an allowed use in that zone and cannot be permitted.
2. **BUSINESS LICENSE.** The City of Santa Barbara requires that every person, firm, corporation, partnership or other business organization conducting business within the City obtain a business license. Vacation rental operators must have a business license and pay transient occupancy taxes (TOT). For additional information see <http://www.santabarbaraca.gov/business/license/tot/>
3. **GROWTH MANAGEMENT PLAN MINOR AND SMALL ADDITIONS.** All legal lots that existed as of December 6, 1989 can be allocated up to 1,000 square feet from the Minor Addition category. Only legal lots that are located within the **Downtown Development Area** can apply for square footage from the Small Addition category for 1,000 up to 3,000 square feet.
4. **PARKING.** The parking requirement for a vacation rental is the same as that for hotels: one parking space per sleeping unit ([SBMC §28.90.100.J.10](#)). In the case of vacation rentals, a bedroom is considered a sleeping unit. Additional parking may be required if the project is located in the C-P Zone, S-D-2 Overlay Zone, or the Central Business District. Contact Planning Staff for assistance with this determination.
5. **RESIDENTIAL PERMIT PARKING PROGRAM.** If a residential unit (or portion thereof) is converted to a vacation rental, that unit (or portion thereof) will no longer be eligible to be part of the Residential Permit Parking Program.
6. **SETBACKS.** Buildings must comply with the required setbacks. Non-conforming buildings require approval of zoning modification(s) for a change-of-use in the setbacks.
7. **TENANT DISPLACEMENT ASSISTANCE ORDINANCE (SBMC §28.89).** Proposals that are limited to the conversion of only one existing residential unit shall comply with the provisions in the Tenant Displacement Assistance Ordinance (TDAO). A sixty (60) day Notice of Intent must be provided prior to filing any application and certification of displacement assistance to all eligible resident households must be provided prior to the issuance of a permit.

Projects that involve more than one unit are subject to the Hotel Conversion Ordinance and must comply with the Tenant Protection Provisions outlined in [SBMC §28.88](#).
8. **WATER USAGE.** A separate water meter may be required for vacation rentals. Commercial rates will apply to water and sewer usage. Please contact Water Resources Staff for more information.
9. **OTHER DEPARTMENTAL REVIEW.** The conversion of existing residential units to a vacation rental may require additional upgrades, permits, or review from the City Building and Safety Division, the Fire Department, or Public Works Department. Review all proposals with the Building and Safety Division and Fire Department for any code related questions and requirements, such as fire partitions between sleeping units.
10. **ADDITIONAL LIMITATIONS.** Be advised that additional limitations may apply related to project location and development history. Please review all records, documents, agreements, associated with your existing site.

DISCRETIONARY REVIEW INFORMATION

1. **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).** CEQA may apply to your project. Projects subject to design review, Staff Hearing Officer or Planning Commission review are discretionary projects subject to CEQA.
2. **COASTAL ZONE.** Projects located in the Coastal Zone (SD-3 Zone) will require a [Coastal Exemption](#) or a [Coastal Development Permit](#) and be subject to those submittal requirements. Contact Planning Staff for assistance with this determination.
3. **DESIGN REVIEW.** Design review approval by either the Architectural Board of Review (ABR) or the Historic Landmarks Commission (HLC) is required for any exterior alterations to existing or proposed non-residential buildings. *Examples include new parking spaces, changes to doors and windows, landscape, building colors, etc.*
4. **DEVELOPMENT PLAN APPROVAL.** The conversion of residential units to vacation rentals requires the allocation of non-residential square footage as described in [SBMC §28.85](#). The cumulative allocation of more than 1,000 square feet requires Development Plan Approval as outlined in [SBMC §28.85](#). Please refer to the [Nonresidential Growth Management Program \(GMP\) – Common Questions](#) handout for additional guidance with the applicability of the Nonresidential Growth Management Program (GMP). Be advised that additional limitations may apply related to project location and development history. Projects which require allocation in excess of what is allowed on the site, will need to obtain additional square footage allocation as outlined in [Transfer of Existing Development Rights \(TEDR\) SBMC §28.95](#).
5. **HOTEL CONVERSION PERMIT.** All projects proposing to convert two or more units are subject to compliance with the [Hotel Conversion Ordinance SBMC §28.88](#) and require the issuance of a Hotel Conversion Permit. Please refer to the ordinance for additional standards, application, and submittal requirements.
6. **MAILED NOTICING REQUIREMENTS.** Ministerial permits do not require mailed noticing to neighbors. A 10-day notice will be provided to neighbors if required under [SBMC §22.68.040.A](#) or [SBMC §22.22.132.A](#), for projects subject to design review. A 10-day notice will be provided to the neighbors for all projects subject to review by the Staff Hearing Officer or Planning Commission review and approval.
7. **STAFF HEARING OFFICER OR PLANNING COMMISSION APPROVALS.** Refer to the [Development Application Review Team \(DART\) Informational and Submittal Packets](#) for information on the process and submittal requirements. Refer to the [Modification and Performance Standard Permit Submittal Process](#) handout for projects which only require a zoning modification. Once a complete application is submitted, the project will be placed on agenda to be reviewed by either the Planning Commission or Staff Hearing Officer. **Note:** *If the project consists of a zoning modification only, a pre-consultation is required prior to submittal.*
8. **STORM WATER MANAGEMENT PROGRAM (SWMP).** Discretionary projects must comply with Storm Water Management Program requirements, if applicable.



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**Exhibit 3
LCP-4-CPN-16-0024-1
Carpinteria City Ordinance
No. 708**

Received

MAY 17 2016

California Coastal Commission
South Central Coast District

ORDINANCE NO. 708

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA,
CALIFORNIA, AMENDING TITLE 14 (ZONING) OF THE CARPINTERIA
MUNICIPAL CODE TO CREATE THE VACATION RENTAL OVERLAY DISTRICT
AND ADDING AND AMENDING ZONING REGULATIONS PERTAINING TO THE
ESTABLISHMENT AND OPERATION OF SHORT-TERM RENTALS.**

WHEREAS, due to the growth in the number of residential units being converted to short-term rentals throughout the City of Carpinteria ("City") and concern over identified negative impacts associated with short-term rental use, on August 10, 2015, the City Council initiated an amendment to the Carpinteria Municipal Code pertaining to short-term rental use; and

WHEREAS, the City Council has determined that short-term rentals are having negative impacts on the quality and character of the City's residential neighborhoods and on the availability and affordability of housing; and

WHEREAS, protection of the City's housing stock for long-term residency is important to local workforce housing supporting the City's economy, including the hospitality and agricultural industries; and

WHEREAS, the City Council has determined that short-term rentals serve as an important lodging resource in the City, by providing an expandable lodging inventory, contributing to growth in the retail/restaurant business sector of the local economy and associated tax revenues; and

WHEREAS, the City Council's consideration of Project 15-1785-LCPA/ORD reflects the Council's commitment to maintaining a balance between preserving the availability of long-term rental housing for the local workforce and promoting appropriate opportunities for visitor-serving accommodations within the Coastal Zone, consistent with Coastal Act Section 30213 and 30222; and

WHEREAS, because Title 14, Zoning, of the Carpinteria Municipal Code does not clearly state that short-term rentals are permitted uses within neighborhoods designated for multi-family residential uses, the City Council wishes to clearly delineate the zones within which short-term rentals are authorized in order to maintain the balance referenced above; and

WHEREAS, pursuant to its police powers, the City has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

WHEREAS, the regulation of short-term rental use is consistent with both State law, which recognizes the vital role local governments play in the supply and affordability of housing, and City Housing Element policies, which, in part, call for maintenance and preservation of the City's residential housing stock; and

WHEREAS, the establishment of an appropriate City regulatory program can best address negative impacts being experienced in the City due to short-term rentals; and

WHEREAS, the establishment of an appropriate City regulatory program preserves opportunities for public access to Carpinteria as a visitor destination; and

WHEREAS, the City has licensed 218 vacation rentals, as of the date of this Ordinance, which operate legally in the Planned Residential Development Zone District. The City estimates that up to 50 vacation rentals and home stays operate illegally, some of which are located in the Single-Family Residential Zone District. The City's Code Compliance Division has sent seven property owners letters regarding compliance concerns for unpermitted vacation rentals in the Single-Family Residential Zone District. Concerns regarding neighborhood compatibility of vacation rentals has been raised in the Single-Family Residential Zone District; and

WHEREAS, the City Council adopted Urgency Ordinances 705 and 706 implementing and extending a moratorium on issuance of licenses for new short-term rentals in order to study, develop and consider regulations for short-term rental uses in the City; and

WHEREAS, on December 7, 2015 and January 4, 2016, the Planning Commission of the City of Carpinteria ("Planning Commission") heard a report from City staff and reviewed draft short-term rental regulations that would establish geographic boundaries and a quantitative cap, limiting the location and maximum number of short-term rentals that may be permitted, and that would establish permitting and operating standards for short-term rentals; and

WHEREAS, on February 8, 2016, the City Council of the City of Carpinteria ("City Council") heard a report from City staff and reviewed draft short-term rental regulations that would establish geographic boundaries and a quantitative cap, limiting the location and maximum number of short-term rentals that may be permitted, and that would establish permitting and operating standards for short-term rentals. The City Council gave staff direction to return to the Planning Commission for further deliberation on the geographic boundary, quantitative cap, amortization period, and home stay occupancy and parking limits; and

WHEREAS, on March 2, 2016 and March 21, 2016, the Planning Commission of the City of Carpinteria ("Planning Commission") heard a report from City staff and reviewed draft short-term rental regulations that would establish geographic boundaries and a quantitative cap, limiting the location and maximum number of short-term rentals that may be permitted, and that would establish permitting and operating

standards for short-term rentals. The Planning Commission considered modifications to the geographic boundary, quantitative cap, amortization period, and home stay occupancy and parking limits. The Planning Commission recommended denial of the draft short-term regulations and stated that they supported a larger overlay boundary and expressed concern about the number of non-conforming vacation rentals; and

WHEREAS, on April 25, 2016, the City Council of the City of Carpinteria heard a report from City staff and reviewed draft short-term rental regulations that would establish well-defined geographic boundaries within which short-term rentals would be authorized and a quantitative cap, limit the location and maximum number of short-term rentals that may be permitted, and establish permitting and operating standards for short-term rentals. The City Council considered the comments and concerns of the Planning Commission and the public; and

WHEREAS, after a duly noticed public hearing on April 25, 2016, the City Council recommended approval of Ordinance 708; and

WHEREAS, it has been determined that regulating short-term rental use as included in this ordinance is consistent with the City's General Plan and Coastal Land Use Plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARPINTERIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS

The City Council hereby finds and determines that the foregoing recitals, which are incorporated herein by reference, are true and correct.

SECTION 2. ADOPTION OF VACATION RENTAL OVERLAY DISTRICT MAP

Pursuant CMC 14.04.070, Exhibit 1, attached to and made a part of this ordinance, delineates the boundaries of the Vacation Rental Overlay District.

SECTION 3. AMENDMENT OF TITLE 14 OF CARPINTERIA MUNICIPAL CODE

Chapter 14.04, of Title 14 of the Carpinteria Municipal Code is hereby amended (in part) to read as follows:

14.04.060 - Overlay districts.

1. In addition to the regulations governing the foregoing districts, the following overlay districts and the symbols used to represent them on the official zoning maps are established as follows:

Coastal Appeals Area	CA
Ellinwood Parcel	Ellinwood
Environmentally Sensitive Habitat	ESH
Flood Hazard Area	FH
Residential	R
Specific Plan	S
Transportation Corridor Wetland	TCW
Vacation Rental	VR
Visitor-Serving/ Highway Commercial	V
Whitney Site	Whitney

2. The regulations of the overlay district shall apply to the land in the same manner as specific district regulations. Overlay regulations shall apply wherever the symbol and the boundaries of the area are shown on the official zoning maps. When a symbol for an overlay district is added to a district symbol, the provisions of the overlay district shall be effective in addition to the applicable district regulations. If any of the provisions of the overlay district conflict with provisions of the specific district regulations, the provisions which are most restrictive shall govern.

Chapter 14.47 Vacation Rental Overlay District, is hereby added to Title 14 of the Carpinteria Municipal Code to read as follows:

CHAPTER 14.47 – Vacation Rental Overlay District

- 14.47.010 Purpose and Intent**
- 14.47.020 Applicability**
- 14.47.030 License Required**
- 14.47.040 Permitted Uses**
- 14.47.050 Location Criteria**
- 14.47.060 Applicability of Underlying Residential District**
- 14.47.070 Application Requirements**
- 14.47.080 Operating Standards**
- 14.47.090 Grounds for Issuance / Denial of a License**
- 14.47.100 License Form and Periods of Validity**
- 14.47.110 License Issuance and Non-transferability**
- 14.47.120 Terms of License: Expiration**
- 14.47.130 License Renewal**
- 14.47.140 Cessation of Use of a Residential Unit as a Vacation Rental**
- 14.47.150 License Revocation**
- 14.47.160 License Revocation – Hearing Required**
- 14.47.170 Appeal from Denial or Revocation of License**
- 14.47.180 License Application Fee**
- 14.47.190 Amortization of Nonconforming Vacation Rentals**
- 14.47.200 Violations**
- 14.47.210 Penalties**

- 14.47.220 Requirements Not Exclusive**
- 14.47.230 Private Action to Enforce**
- 14.47.240 Administrative Policy**

14.47.010 Purpose and Intent

The purpose of the vacation rental overlay district is to establish vacation rentals as a permitted use in the vacation rental overlay district, to specify that they are only allowed in the vacation rental overlay district, and to provide opportunity for owners of residential units to be used as vacation rentals, as defined by Carpinteria Municipal Code Section 14.08. The intent is to provide adequate transient occupancy uses in areas serving the beach and downtown and to insure that such uses are appropriately integrated with residential and commercial needs of the community. The vacation rental overlay district will allow owners of residential units to obtain a license to operate a vacation rental.

14.47.020 Applicability

The requirements of the vacation rental overlay district, as set forth in this chapter, shall apply to those parcels designated in the vacation rental overlay district, as shown on the adopted zoning map.

14.47.030 License Required

No person shall rent, offer to rent, or advertise for rent a residential unit to another person or group for a vacation rental without a license approved and issued in a manner provided for by this Chapter. Only owners of a residential unit are eligible to apply for and receive a vacation rental license. Licenses for operation of a short-term rental will be issued pursuant an administrative policy developed by the City Manager and/or his designee.

14.47.040 Permitted Uses

Uses permitted in the vacation rental overlay district are as follows:

- a. Vacation rentals;
- b. Uses, buildings and accessory structures customarily incidental to the above uses; and
- c. All other uses as defined in the underlying zoning district.

14.47.050 Location Criteria

The provisions of the vacation rental overlay district shall apply to any parcel(s) subject to the vacation rental overlay district, as shown on the City's official zoning maps.

14.47.060 Applicability of Underlying Residential District

All of the standards of the underlying residential district shall also apply to the vacation rental overlay district.

14.47.070 Application Requirements

Prior to renting, offering to rent or advertising the rental of a residential unit for a vacation rental, the property owner shall make an application to the City on a form provided by the City. The application shall be filed by the owner and include the following information:

- a. The full true name under which the business will be conducted.
- b. The address and assessor parcel number where the vacation rental is to be conducted. Where multiple units are located on the same parcel, each unit's address shall be provided on a separate application.
- c. The owner's full, true name, mailing address, email address and telephone number.
- d. In the case that a separate management company or person shall assume responsibility of the vacation rental for the owner, the management company or contact person's name, phone number, mailing address and email address shall be provided in addition to the owner.
- e. A description of any other business to be operated on the same premises, or on adjoining premises, owned or controlled by the owner and/or applicant.
- f. Certificate of insurance evidencing that the residential unit being used as a vacation rental is covered by adequate and appropriate, including and not limited to fire, hazard and liability insurance.
- g. Vacation rentals proposed on parcels with no live on-site manager, shall furnish the City with mailing labels of all neighboring owners and occupants addresses within 100 feet (neighboring residents) of the parcel boundaries of the proposed vacation rental, in a format provided by the City. Upon issuance of a vacation rental license, the City will send a written notice to neighboring residents notifying them that the premises will be used as a vacation rental and will provide the name, address, and telephone number of both the owner and the person or property manager responsible for managing the vacation rental.

- h. An affidavit stating that the residential unit meets all applicable building, health and safety standards. The affidavit shall be on a form provided by the City and shall be signed by the owner of the residential unit.

14.47.080 Operating Standards

The following minimum requirements shall apply to the operation of all vacation rentals:

- a. The owner or property manager must live or work within thirty (30) miles of the premises and be able to respond to tenant and/or public concerns about the vacation rental at all times during which a residential unit is being rented as such.
- b. All advertisements for the vacation rental shall list the City's vacation rental license number and the current transient occupancy tax rate which applies to the rental of the unit.
- c. The owner shall maintain adequate and appropriate, including and not limited to fire, hazard and liability insurance.
- d. The property shall be provided with adequate waste collection facilities at all times. Waste bins and refuse shall not be left within public view, except in proper containers for the purpose of collection on the scheduled collection day(s). The waste collection schedule and information about recycling and green waste separation and disposal shall be included in the rental agreement and posted conspicuously in the rental unit.
- e. The residential unit shall not be rented or used for events, e.g., weddings, commercial activities or sales events.
- f. Occupants of the vacation rental shall be prohibited from creating unreasonable noise or disturbances, engaging in disorderly conduct or violating provisions of federal, state or local law.
- g. At all times a unit is in use as a vacation rental, the owner's or property manager's contact information shall be posted on the outside wall near the entrance of the unit, in a format provided by the City.
- h. At all times a unit is in use as a vacation rental, a notice shall be posted on the interior of the front door of the vacation rental, in a form approved by the City, which notes the vacation rental license number, transient occupancy tax rate, property owner or property manager contact information, and any additional information as required by the City as a part of the vacation rental license.

- i. The owner shall maintain an active business license, transient occupancy tax certificate and any other applicable licenses and permits, in addition to the vacation rental license, pursuant to Carpinteria Municipal Code, at all times that the residential unit is used or advertised as a vacation rental. A copy of the business license shall be posted on the interior of the front door of the residential unit.
- j. The maximum occupancy of a vacation rental shall be determined by the City and not exceed two occupants per unit, plus two occupants per bedroom. A bedroom is a room that is designed to be used as a sleeping room and for no other primary purpose and must meet the requirements of the Carpinteria Municipal Code for such. The vacation rental license shall specify the maximum number of occupants allowed at the vacation rental.
- k. The owner shall by written agreement, limit the number of vehicles of occupants to the number designated in the vacation rental license issued by the City; the number of vehicles shall be determined by the City at the time of application, taking into consideration the number of available parking spaces on the site.
- l. A home occupation may not be conducted in any residential unit for which a license has been issued to use the residential unit as a vacation rental.
- m. The owner shall ensure that the vacation rental complies with all applicable codes regarding fire, building and safety, and all other relevant federal, state and local laws and ordinances.
- n. Availability of the rental unit to the public shall not be advertised on the premises.
- o. The City Manager shall have the authority to impose additional operating standards, applicable to all vacation rentals, as necessary, to achieve the objectives of this title. A list of all additional standards shall be maintained and on file in the Office of the City Clerk and such offices as the City Manager designates.
- p. Upon reasonable notice, each owner and agent or representative of any owner shall provide access to each vacation rental and any records related to the use and occupancy of the vacation rental to the City Manager at any time during normal business hours, for the purpose of inspection or audit to determine that the objectives and conditions of this chapter are being fulfilled.

14.47.090 Requirements for License Issuance

The City shall consider the information included in a complete application in order to determine whether the issuance of the license for the vacation rental is consistent with

the provisions of this chapter. Upon determination by the City that the following criteria have been met, the City shall approve the license:

- a. The number of licensed vacation rentals within the vacation rental overlay district do not to exceed the following area limits:
 - i. Area A, as identified on the vacation rental overlay district map adopted as part of Ordinance 708 on (date): Fifty five (55) vacation rentals;
 - ii. Area B, as identified on the vacation rental overlay district map adopted as part of Ordinance 708 on (date): One Hundred Fifteen (115) vacation rentals;
 - iii. Area C, as identified on the vacation rental overlay district map adopted as part of Ordinance 708 on (date): Thirty (30) vacation rentals;
 - iv. Area D, as identified on the vacation rental overlay district map adopted as part of Ordinance 708 on (date): Eighteen (18) vacation rentals.
- b. A license for a vacation rental use for the residential unit has not been revoked in the prior twenty-four (24) month period;
- c. The premises or residential unit is not currently the subject of an active compliance order or administrative citation for a violation of the Carpinteria Municipal Code;
- d. An administrative citation has not been issued, regarding a violation on the site, in the past twelve (12) months;
- e. The property owner has demonstrated, through an application filed to the City, the ability to meet the requirements outlined in this chapter.

14.47.100 License Form and Period of Validity

All licenses for vacation rental uses shall be made on forms furnished by the Finance Department and shall be issued for one (1) year. Licenses shall be issued for the period of time beginning on July 1st of each year and concluding on June 30th of the following year. Applications made during the year shall be issued for a prorated period to conclude on June 30th.

14.47.110 License Issuance and Non-transferability

The vacation rental license issued under this chapter shall be issued to the owner of record of the residential unit and no license may be assigned, transferred or loaned to any other person, entity, location or establishment.

14.47.120 Term of License: Expiration

The vacation rental license shall be personal to the applicant/owner and shall automatically expire upon sale or transfer of the premises or residential unit, or if not

renewed pursuant to Municipal Code Section 14.47.130. The license may be revoked for failure to comply with adopted standards, subject to the administrative and revocation procedures outlined in Section 14.47.150, unless otherwise specified by this chapter.

14.47.130 License Renewal

The vacation rental license shall automatically renew upon payment of the business license tax renewal fee and all required transient occupancy tax remittance documents associated with the vacation rental license. Non-renewal prior to the expiration date will result in expiration of the vacation rental license and will require that a new application be made subject to Sections 14.47.070 and 14.47.090 and all other requirements of this code.

14.47.140 Cessation of Use of a Residential Unit as a Vacation Rental

- a. Where the owner of a premises or residential unit used and occupied as a vacation rental pursuant to a vacation rental license approved and issued in the manner provided by this chapter, fails to remit transient occupancy tax for a period of twenty-four (24) consecutive months or greater as determined by the City, vacation rental license shall be deemed to have automatically expired and shall be forfeited.
- b. Where the owner of a premises or residential unit used and occupied as a vacation rental pursuant to a license approved and issued in the manner provided by this chapter intends to cease such use and abandon the vacation rental license for the residential unit, the owner shall promptly cause a notice of cessation to be filed with the City. The vacation rental license for the unit shall expire immediately upon receipt by the City of the notice of cessation.

14.47.150 License Revocation

A vacation rental license issued under the provisions of this chapter may be revoked by the City Manager or his/her designee after notice and hearing, as provided in Section 14.47.180 below, for any of the following reasons:

- a. Fraud, misrepresentation or false statement contained in the application;
- b. Fraud, misrepresentation or false statement made in the course of carrying on a vacation rental as regulated by this chapter;
- c. Any violation of any of the provisions of this chapter or of any other provision of this code; or
- d. Any violation of any provision of federal, state or local laws.

14.47.160 License Revocation - Hearing Required

Before revoking a vacation rental license, the City Manager or his/her designee shall give the owner reasonable notice in writing of the proposed revocation and of the grounds thereunder, and also of the time and place at which the holder of the vacation rental license will be given a reasonable opportunity to show cause why the vacation rental license should not be revoked. The notice may be served personally upon the owner or may be mailed, postage prepaid, to the owner, at the last known address or at any address shown upon the application, at least ten (10) days prior to the date of the hearing. Upon conclusion of the hearing, the City Manager or his/her designee may, for any of the grounds set forth in Section 14.47.150, shall revoke the license.

14.47.170 Appeal from Denial or Revocation of License

Any person whose application has been denied by the City Manager or his/her designee or any person who has had a vacation rental license revoked by the City Manager or his/her designee shall have the right to an administrative appeal before the City Manager or his/her designee. Any unfavorable decision by the City Manager may be appealed in writing, in a form provided by the City, stating the grounds therefor, within ten days of the decision, to the Planning Commission. The Planning Commission shall hold a hearing thereon within a reasonable time and the decision of the Planning Commission shall be final. Appeals shall be filed as outlined in Carpinteria Municipal Code Section 14.78.

14.47.180 License Application Fee

No application shall be processed and no vacation rental license shall be issued under the provisions of this chapter unless the applicant has paid, unless exempted, the fees as set forth in the schedule of fees established by resolution of the City Council.

14.47.190 Amortization of Nonconforming Vacation Rentals

A nonconforming vacation rental is a vacation rental licensed by the City that is located outside of the vacation rental overlay district and was lawfully established in the PRD Planned Residential Zone District prior to the effective date of this Chapter. Notwithstanding any other law or provision of the Carpinteria Municipal Code, nonconforming vacation rentals shall terminate automatically within five (5) years of the effective date of Chapter 14.47 of the Carpinteria Municipal Code. A nonconforming vacation rental shall be subject to and shall follow the licensing provisions of this Chapter with the exception of Section 14.47.090(a).

To qualify as a nonconforming vacation rental, all of the following shall be satisfied:

- a. The owner demonstrates, with financial evidence acceptable to the City, that the residential unit has been used regularly and continually as a vacation rental in the twenty-four (24) months prior to October 26, 2015;
- b. The owner demonstrates, with financial evidence acceptable to the City, that s/he has successfully transmitted all transient occupancy taxes and business license fees to the City in the twenty-four (24) months prior to October 26, 2015; and
- c. The property had been continually licensed with the City as a vacation rental over the twenty-four (24) months prior to October 26, 2016.

14.47.200 Violations

All violations of this chapter may be filed as either a misdemeanor or infraction, as determined by the City Attorney, pursuant to Municipal Code Section 1.08.010.

14.47.210 Penalties

Violations of this chapter shall be punishable as provided under Chapter 1.08 of the Carpinteria Municipal Code.

14.47.220 Requirements Not Exclusive

The requirements of this chapter shall be in addition to any license, permit, or fee required under any other provision of this code. The issuance of any permit pursuant to this chapter shall not relieve any person of the obligation to comply with all other provisions of this code pertaining to the use and occupancy of the vacation rental unit or the property on which it is located.

14.47.230 Private Action to Enforce

Any person who has suffered, or alleges to have suffered, damage to person or property because of a violation of this chapter may bring an action for money damages and any other appropriate relief in a court of competent jurisdiction against the party alleged to have violated this chapter. Nothing herein shall be deemed or construed to create any right of action against the city or any of its officers, employees, or agents. The sole purpose and intent of this section is to create a right of action between private parties, entities and interests, which are or may be impacted or affected by various aspects of vacation home rentals within the city.

14.47.240 Administrative Policy

The City Manager or his designee, shall have the authority to develop administrative policies to implement the intent of this Chapter. The City Council may, from time to time, consider modifications to the administrative policies.

Chapter 14.52 Home Stays, is hereby added to Title 14 of the Carpinteria Municipal Code to read as follows:

CHAPTER 14.52 - Home Stays

- 14.52.010 Purpose and Intent**
- 14.52.020 Applicability**
- 14.52.030 License Required**
- 14.52.040 Applicability of Underlying Base Zoning District**
- 14.52.050 Application Requirements**
- 14.52.060 Operating Standards**
- 14.52.070 Grounds for Issuance / Denial of a License**
- 14.52.080 License Form and Period of Validity**
- 14.52.090 License Issuance and Non-Transferability**
- 14.52.100 Term of License: Expiration**
- 14.52.110 License Renewal**
- 14.52.120 Cessation of Use of Property as a Home Stay**
- 14.52.130 License Revocation**
- 14.52.140 License Revocation – Hearing Required**
- 14.52.150 Appeal from Denial or Revocation of License**
- 14.52.160 License Application Fee**
- 14.52.170 Violations**
- 14.52.180 Penalties**
- 14.52.190 Requirements Not Exclusive**
- 14.52.200 Private Action to Enforce**
- 14.52.210 Administrative Policy**

14.52.010 Purpose and Intent

The purpose and intent of the home stays chapter is to adopt regulations pursuant to the police powers of the City for the purpose of requiring the owner(s) of a residential unit that is used as a home stay, as defined by Section 14.08 of the Carpinteria Municipal Code, to apply for and secure a home stay license authorizing use of the residential unit as a home stay in the manner provided for by this chapter. The intent of this chapter is to establish home stays as an allowed use in the R-1 Single-Family Residential, Planned Unit Development, and Planned Residential Development Zone Districts.

14.52.020 Applicability

This chapter applies to the licensing of home stays in residential zoning districts as outlined in Sections 14.12, 14.14, and 14.16 of the Carpinteria Municipal Code.

14.52.030 License Required

No person shall rent, offer to rent, or advertise for rent a home stay to another person or group without a license approved and issued in a manner provided for by this chapter. Only owners of a residential unit are eligible to apply for and receive a home stay license. Licenses for operation of a home stay will be issued pursuant an administrative policy developed by the City Manager and/or his designee.

14.52.040 Applicability of Underlying Residential District

All of the standards of the underlying residential district shall also apply to home stays.

14.52.050 Application Requirements

Prior to renting, offering to rent or advertising the rental of a home stay, the owner shall make an application for a home stay license to the City on a form provided by the City. The application shall be filed by the owner and include the following information:

- a. The full true name under which the business will be conducted.
- b. The address and assessor parcel number where the home stay is to be conducted.
- c. The owner's full, true name, mailing address, email address and telephone number.
- d. An affidavit stating that the residential unit meets all applicable building, health and safety standards. The affidavit shall be on a form provided by the City and shall be signed by the owner of the residential unit.

14.52.060 Operating Standards

The following minimum requirements shall apply to the operation of all home stays:

- a. The owner shall reside in the residential unit during all overnight rental periods.
- b. All advertisements for the home stay shall list the City's home stay license number and the current transient occupancy tax rate which applies to the rental of the unit.

- c. At all times a unit is used as a home stay, a notice shall be posted on the interior of the front door of the home stay, in a form approved by the City, which notes the home stay license number, transient occupancy tax rate, property owner contact information, and any additional information as required by the City as a part of the home stay license.
- d. The owner shall maintain an active business license, transient occupancy tax certificate and any other applicable licenses and permits, in addition to the home stay license, pursuant to Carpinteria Municipal Code, at all times that the residential unit is used or advertised as a home stay. A copy of the business license shall be posted on the interior of any bedroom door rented as part of a home stay.
- e. The maximum occupancy of a home stay shall be limited to no more than four (4) home stay guests per home stay.
- f. The owner shall by written agreement, limit Home Stay occupants to no more than one vehicle.
- g. Availability of the rental unit to the public shall not be advertised on the premises.
- h. The City Manager shall have the authority to impose additional operating standards, applicable to all home stays, as necessary, to achieve the objectives of this title. A list of all additional standards shall be maintained and on file in the Office of the City Clerk and such offices as the City Manager designates.
- i. Upon reasonable notice, each owner and agent or representative of any owner shall provide access to each residential unit used as a home stay and any records related to the use and occupancy of the home stay to the City Manager at any time during normal business hours, for the purpose of inspection or audit to determine that the objectives and conditions of this chapter are being fulfilled.

14.52.070 Requirements for License Issuance

The City shall consider the information included in a complete application in order to determine whether the issuance of a home stay license is consistent with the provisions of this chapter. Upon determination by the City that the following criteria have been met, the City shall approve the license:

- a. The City has not revoked a license for home stay use for that residential unit within the prior twenty-four (24) month period;

- b. The premises or residential unit is not currently the subject of an active compliance order or administrative citation for violation of the Carpinteria Municipal Code;
- c. An administrative citation has not been issued, regarding a violation on the site, in the past twelve (12) months;
- d. The property owner has demonstrated, through an application filed to the City, the ability to meet the requirements outlined in this chapter.

14.52.080 License Form and Period of Validity

All licenses for home stay uses shall be made on forms furnished by the Finance Department and shall be issued for one (1) year. Licenses shall be issued for the period of time beginning on July 1st of each year and concluding on June 30th of the following year. Applications made during the year shall be issued for a prorated period to conclude on July 1st.

14.52.090 License Issuance and Non-transferability

The home stay license issued under this chapter shall be issued to the owner of record of the residential unit and no license may be assigned, transferred or loaned to any other person, entity, location or establishment.

14.52.100 Term of License: Expiration

The home stay license shall be personal to the applicant/owner and shall automatically expire upon sale or transfer of the premises or residential unit or if not renewed pursuant to Municipal Code Section 14.52.110. The license may be revoked for failure to comply with adopted standards, subject to the administrative and revocation procedures outlined in Section 14.52.130, unless otherwise specified by this chapter.

14.52.110 License Renewal

The home stay license shall automatically renew upon payment of the business license tax renewal fee and all required transient occupancy tax remittance documents associated with the home stay license. Non-renewal prior to the expiration date will result in expiration of the home stay license and will require that a new application be made subject to Section 14.52.050 and all other requirements of this code.

14.52.120 Cessation of Use of a Residential Unit as a Home Stay

- a. Where the owner of a premises or residential unit used and occupied as a home stay pursuant to a home stay license approved and issued in the manner provided by this chapter, fails to remit transient occupancy tax for a period of twenty-four (24) consecutive months or greater, as determined by the City, home stay license shall be deemed to have automatically expired and shall be forfeited.

- b. Where the owner of a premises or residential unit used and occupied as a home stay pursuant to a license approved and issued in the manner provided by this chapter intends to cease such use and abandon the home stay license for the residential unit, the owner shall promptly cause a notice of cessation to be filed with the City. The home stay license for the unit shall expire immediately upon receipt by the City of the notice of cessation.

14.52.130 License Revocation

A home stay license issued under the provisions of this chapter may be revoked by the City Manager or his/her designee after notice and hearing, as provided in Section 14.52.140 below, for any of the following reasons:

- a. Fraud, misrepresentation or false statement contained in the application;
- b. Fraud, misrepresentation or false statement made in the course of carrying on a home stay rental as regulated by this chapter;
- c. Any violation of any of the provisions of this chapter or of any other provision of this code; or
- d. Any violation of any provision of federal, state or local laws.

14.52.140 License Revocation - Hearing Required

Before revoking a home stay license, the City Manager or his/her designee shall give the owner reasonable notice in writing of the proposed revocation and of the grounds thereunder, and also of the time and place at which the holder of the home stay license will be given a reasonable opportunity to show cause why the home stay license should not be revoked. The notice may be served personally upon the owner or may be mailed, postage prepaid, to the owner, at the last known address or at any address shown upon the application, at least ten (10) days prior to the date of the hearing. Upon conclusion of the hearing, the City Manager or his/her designee may, for any of the grounds set forth in Section 14.52.130, shall revoke the license.

14.52.150 Appeal from Denial or Revocation of License

Any person whose application has been denied by the City Manager or his/her designee or any person who has had a home stay license revoked by the City Manager or his/her designee shall have the right to an administrative appeal before the City Manager or his/her designee. Any unfavorable decision by the City Manager may be appealed in writing, in a form provided by the City, stating the grounds therefor, within ten days of the decision, to the Planning Commission. The Planning Commission shall hold a hearing thereon within a reasonable time and the decision of the Planning Commission shall be final. Appeals shall be filed as outlined in Carpinteria Municipal Code Section 14.78.

14.52.160 License Application Fee

No application shall be processed and no home stay license shall be issued under the provisions of this chapter unless the applicant has paid, unless exempted, the fees as set forth in the schedule of fees established by resolution of the City Council.

14.52.170 Violations

All violations of this chapter may be filed as either a misdemeanor or infraction, as determined by the City Attorney, pursuant to Municipal Code Section 1.08.010.

14.52.180 Penalties

Violations of this chapter shall be punishable as provided under Chapters 1.06 and 1.08 of the Carpinteria Municipal Code.

14.52.190 Requirements Not Exclusive

The requirements of this chapter shall be in addition to any license, permit, or fee required under any other provision of this code. The issuance of any permit pursuant to this chapter shall not relieve any person of the obligation to comply with all other provisions of this code pertaining to the use and occupancy of the home stay unit or the property on which it is located.

14.52.200 Private Action to Enforce

Any person who has suffered, or alleges to have suffered, damage to person or property because of a violation of this chapter may bring an action for money damages and any other appropriate relief in a court of competent jurisdiction against the party alleged to have violated this chapter. Nothing herein shall be deemed or construed to create any right of action against the city or any of its officers, employees, or agents. The sole purpose and intent of this section is to create a right of action between private parties, entities and interests, which are or may be impacted or affected by various aspects of vacation home rentals within the city.

14.52.210 Administrative Policy

The City Manager or his designee, shall have the authority to develop administrative policies to implement the intent of this Chapter. The City Council may, from time to time, consider modifications to the administrative policies.

Chapter 14.08 Definitions, of Title 14 of the Carpinteria Municipal Code is amended (in part) to include the following:

14.08.312 - Home stay.

"Home stay" means a type of short-term rental where the owner remains in the residential unit during the entire rental period. A home stay does not include the hosting of personal guests, home exchanges or vacation rentals. Tents, yurts and RVs are not allowed as a part of a home stay rental.

14.08.541 – Residential unit.

"Residential unit" means a building or portion thereof designed for or occupied in whole or in part, as a home, residency, or sleeping place, either permanently or temporarily, and containing not more than one kitchen per residential unit, but not including a hotel or boarding house, lodging house or motel. For the purposes of this Code residential unit includes the term dwelling unit and housing unit. See also Carpinteria Municipal Code 14.08.190 "Dwelling".

14.08.562 – Short-term rental.

"Short-term rental" is defined as the rental of a residential unit for a period of thirty (30) consecutive calendar days or less, subject to all applicable city land use regulations, permit/licensing requirements, and payment of fees and/or taxes, including transient occupancy tax as defined in Chapter 3.20 of this Code. Short-term rentals include both vacation rentals and home stays. Tents, yurts and RVs are not allowed as a part of a short-term rental.

14.08.627 – Vacation rental.

"Vacation rental" means a type of short-term rental where the owner of the residential unit does not remain in the residential unit during the entire rental period. Vacation rentals typically include the rental of an entire dwelling or premises. For the purposes of this Code, a vacation rental does not include time shares, home stays or home exchanges. Tents, yurts and RVs are not allowed as a part of a vacation rental.

Chapter 14.12 R-1 Single-Family Residential District, of Title 14 of the Carpinteria Municipal Code is amended (in part) to read as follows:

14.12.030 - Uses permitted by right.

Uses permitted by right in the R-1 district are as follows:

1. One single-family dwelling per legal parcel;
2. Uses, buildings, and structures customarily incidental to single-family dwellings, for exclusive use of the residents of the site, and not involving the maintenance of a commercial enterprise on the premises;
3. Home occupations subject to the provisions of Section 14.50.030;
4. Golf courses and country clubs operated in connection with the single-family residential development, but not including commercial driving tees, ranges, putting courses, or miniature golf courses;
5. Orchards, truck and flower gardens, and the raising of field crops; provided there is no sale on the property of the products produced;
6. Nurseries and greenhouses used only for the propagation and cultivation of plants, provided no advertising sign, commercial display room, or stand is maintained in connection therewith, and provided further that the aggregate

square feet of floor area or ground area of all such building shall not exceed three hundred (300) square feet;

7. The keeping of animals and poultry as provided in Sections 6.04.390 and 6.04.420;
8. Public parks, playgrounds, and community centers;
9. Child day care use; provided such use does not detrimentally change the residential appearance of the property or neighborhood;
10. Small family care homes, as defined in Chapter 14.08;
11. Home stay, as provided in Chapter 14.52.

Chapter 14.14 PRD Planned Residential Development District, of Title 14 of the Carpinteria Municipal Code is amended (in part) to read as follows:

14.14.030 - Uses permitted subject to development plan approval.

Permitted uses subject to development plan approval are as follows:

1. Single-family, duplex, and multifamily dwelling units, including developments commonly known as townhouses, condominiums, cluster, and community apartment projects;
2. Accessory uses and structures incidental to permitted uses, i.e., laundry and storage rooms, garages, carports and parking lots, bus shelters, and bike racks, but not including retail commercial uses;
3. Child day care use, provided such use does not detrimentally change the residential appearance of the property or the neighborhood;
4. Public parks, playgrounds, and community centers;
5. Home occupations, as provided in Section 14.50.030;
6. Vacation rentals, within the vacation rental overlay district, as provided in Chapter 14.47;
7. Home stays, as provided in Chapter 14.52.

Chapter 14.16 PUD Planned Unit Development District, of Title 14 of the Carpinteria Municipal Code is amended (in part) to read as follows:

14.16.040 - Uses permitted subject to development plan approval.

Permitted uses subject to development plan approval in the PUD district are as follows:

1. Residential units, either attached or detached, including single-family dwellings, rowhouses, townhouses, apartments, condominiums, modular homes, and mobile homes on a permanent foundation; provided, that the units are clustered to the maximum extent feasible; for modular/mobile home PUD's, see Chapter 14.17;

2. Recreational facilities, including but not limited to, tennis courts, swimming pools, playgrounds, and parks for the private use of the prospective residents, provided such facilities are not operated for remuneration;
3. Commercial recreational facilities that are compatible with the residential units;
4. Community center facilities, i.e., day care center, laundromat, meeting rooms, for use by residents of the development;
5. Visitor-serving commercial facilities, i.e., a motel or restaurant; provided, that the planning commission may reduce the residential density otherwise permitted to accommodate facilities that provide overnight lodging, based on a determination that the increased density caused by the overnight lodging facility would have an adverse effect on prospective residents or on the surrounding environment; examples include an adverse effect on an environmentally sensitive habitat, major views to the ocean or foothills, and public access to the shoreline;
6. Convenience establishments of a commercial and service nature such as a neighborhood store designed and built as an integral part of the development and providing facilities primarily designed to serve the needs of prospective residents may be permitted, subject to the finding that such commercial use would not be materially detrimental to existing commercial development in the downtown area;
7. Open space uses such as parks, viewing areas, hiking, biking, and equestrian trails;
8. Uses, buildings and structures incidental, accessory and subordinate to permitted uses, subject to the provisions of this zoning district;
9. Home stays, as provided in Chapter 14.52.

14.16.041 – Administrative Policy

The City Manager or his designee, shall have the authority to develop administrative policies to implement the intent of this Chapter. The City Council may, from time to time, consider modifications to the administrative policies.

SECTION 5. Effective Date

This Ordinance shall be in full force and effect thirty (30) days following certification as an amendment to the City's Local Coastal Program by the California Coastal Commission; and before the expiration of fifteen (15) days following passage, this Ordinance shall be published once with the names of the members of the City Council voting for and against the same in The Coastal View, a newspaper of general circulation, published in the City of Carpinteria.

SECTION 6. CEQA Exemption

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 5060(c)(3) (the activity is not considered a project as defined in Section 15378), and 15061(b)(3) (the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA).

SECTION 7. Severability

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 8. Publication

The City Clerk shall certify as to the passage of this Ordinance and cause the same to be published and posted in the manner prescribed by California law.

PASSED, APPROVED AND ADOPTED this ____th day of _____ 2016, by the following called vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBER(S):
ABSENT: COUNCILMEMBER(S):

Mayor, City of Carpinteria

ATTEST:

City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the ___ day of _____ 2016.

City Clerk, City of Carpinteria

APPROVED AS TO FORM:

Jena Acos, Legal Counsel
Brownstein Hyatt Farber Schreck, LLP,
Acting as City Attorney

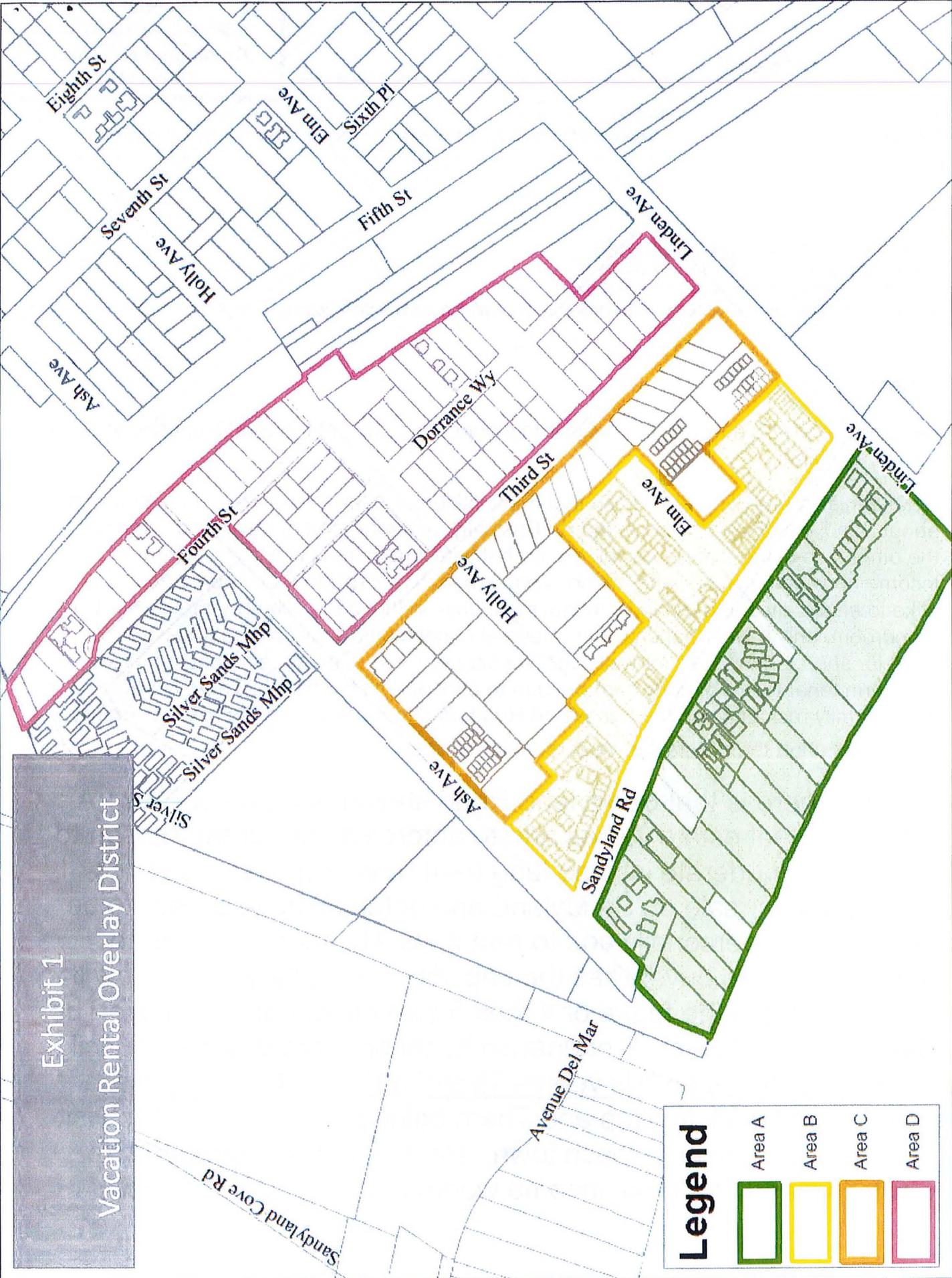
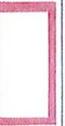


Exhibit 1
Vacation Rental Overlay District

Legend

	Area A
	Area B
	Area C
	Area D

Grace, Jordan@Coastal

To: EileenMira
Subject: RE: Carpinteria Short Term Rental Ordinance December Agenda & Staff Report

From: EileenMira [mailto:eileenmira@aol.com]
Sent: Tuesday, November 15, 2016 12:34 PM
To: EMSCPASBCA@aol.com; Grace, Jordan@Coastal
Subject: Re: Carpinteria Short Term Rental Ordinance December Agenda & Staff Report

Hi Jordan,

I also spoke to you a month or so ago and would like a copy of the Staff Report when you have it available.

I'll take this time to also remind you that most citizens of Carpinteria are very concerned about Sandyland Road Areas A and B. Basically, oceanfront Sandyland and 2nd row, the other side of the street. As you are probably aware there is NO true Moderate income housing on Sandyland, which is prime beach real estate for owners and users alike to enjoy. I want to remind you that most units in that zone, whether they are a 1 or 2 bedroom, only have 1 parking spot. Several condos on Sandyland Road have been used for short term rentals for well over 50 years or more. The street is not set up for long term tenants. It's already hard enough to park and hit the beach. There is only 1 single family residence on the Sandyland Road, and that belongs to the Roberts Family, it also, is a short term rental I have personally rented.

My point here is that Sandyland Road should not have a CAP. A Cap hurts real estate values and to enforce a cap for the reason to have more moderate income long term renters makes no sense. I have a unit for sale on Sandyland and potential buyers want to be able to use it personally and to rent it weekly here and there to offset costs. No buyer likes the cap idea cause they don't know if they can rent in the future or if their future buyer can. I believe The Sandyland Cap is in the ordinance because there is a city council member who has an "Us versus Them" attitude. Us being those that live and work in Carp and Them being those that come to visit and enjoy this unique beach town. He wants this to stop and he wants low and moderate income workers to take up our beach

housing. He actually said this at a council meeting. People have been coming to Carp year after and enjoying our vacation rentals on the sand and across the street. The demand is so high there's no vacancy at all most summer months. A cap would be detrimental to visitors and to owner's rights and it's NOT needed. Most owners don't rent at all and never will. Also, there's not been any complaints on the street, and most large complexes have onsite managers. I can see a cap in a residential zone of single family residences a block or so back, but Sandyland Corridor is condos, duplexes, triplexes and 5 units and above. I hope you can please consider where myself and so many others are coming from on this issue. **NO CAP ON SANDYLAND ROAD, PLEASE!**

Thanks so much,

Eileen

Owner of currently 3 condos in Carp and have owned in Carp over a 25 year period, I live in Santa Barbara.

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