



Legislation Text

File #: 2021-0501, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number: Gary Helfrich, 565-2404

Vote Requirement: Informational Only

Supervisorial District(s): Countywide

Title:

3:00 PM -Vacation Rental Ordinance Update

Recommended Action:

Conduct Vacation Rental Ordinance workshop, receive staff recommendations, and provide staff direction to update unincorporated area vacation rental regulations.

Executive Summary:

On March 15, 2016, the Board of Supervisors adopted Ordinance 6145, establishing the current regulations of vacation rentals in unincorporated Sonoma County outside of the Coastal Zone. Regulation of vacation rentals in the Coastal Zone would require amendments to the Local Coastal Plan and Coastal Zoning Ordinance. Ordinance 6145 also established the Vacation Rental Exclusion Combining District (X-Zone), which prohibits vacation rentals in certain areas to preserve housing stock, protect neighborhood character, and avoid adding vacation rentals to areas with access limitations and high fire severity.

On December 15, 2020, the Board of Supervisors adopted an urgency ordinance extending a more refined temporary cap on vacation rentals in specified locations within the unincorporated areas of the 1st and 5th Supervisorial Districts, as well as directed Permit Sonoma staff to return to the Board in June of 2021 with additional data and recommendations to improve the Vacation Rental program. The urgency ordinance expires on August 6, 2022, automatically terminating the temporary vacation rental cap. Furthermore, there are four wildfire perimeters subject to temporary wildfire disaster recovery regulations that are set to expire at the end of 2021 and at the end of 2022.

This report provides an overview of Sonoma County's vacation rental program and several recommendations to improve the vacation rental program: (1) A shift from a zoning permit to business license to administer the vacation rental program, (2) better tools for reporting and tracking complaints, and (3) land use regulations outside of the Coastal Zone that address concentration, proximity of rentals, public safety, road access, parking, water and wastewater capacity, and wildfire risk. Coastal Commission staff has indicated that a performance-based license would be consistent with the Coastal Act and the Local Coastal Program. This would allow a uniform program across all of unincorporated Sonoma County.

At the conclusion of this workshop, Permit Sonoma staff will conduct a series of public outreach workshops this summer, present to the Planning Commission before returning to the Board of Supervisors on October 19,

2021.

Discussion:

Background

A vacation rental is the rental of a private residence for periods of 30 days or less where the owner is not in residence. Vacation rentals do not include bed and breakfast inns (subject to a use permit), hosted rentals (subject to a hosted rental zoning permit), or occasional home exchanges (unregulated). As of February 1, 2021, there were 1,864 properties permitted as a vacation rental in unincorporated Sonoma County outside of the Coastal Zone. Based on the most recent webscrape data provided by LTAS Technologies, there are an estimated 483 unpermitted vacation rentals in unincorporated Sonoma County outside the Coastal Zone, and an additional estimated 581 vacation rentals registered for Transient Occupancy Tax in the Coastal Zone that do not require a vacation rental permit. During FY 2018-19 and 2019-20 approximately \$10 million and \$8 million, respectively, of Transient Occupancy Tax was collected from remitters identified as vacation rentals in unincorporated Sonoma County.

The Board of Supervisors adopted the initial Vacation Rental Code in November 2010. The regulations allowed vacation rentals with up to five guest rooms in most zoning districts, subject to issuance of a Zoning Permit. In March of 2016, Ordinance 6145 amended Section 26-88-120 of the Zoning Code to address concerns regarding enforcement of standards and concentration of vacation rentals (Attachment 1). Key provisions of 26-88-120 are:

- Defines “vacation rental” as the short-term rental of homes for less than 30 days at a time where the primary owner is not in residence;
- Establishes performance standards that include limits on occupancy and guestrooms; maximum number of guests and daytime visitors, parking, trash facilities, amplified sound, and neighborhood notification;
- Allows only one rental per parcel;
- Does not allow vacation rental permitting of accessory dwelling units, multi-family units, affordable housing units, farmworker housing, farm family units, or on lands under a Williamson Act contract;
- Tents, yurts, RVs, and other provisions intended for temporary occupancy are not allowed as a part of a vacation rental; and
- Rentals must have a certified property manager who lives within 30 miles of each rental and must respond to complaints within 60 minutes during the day and 30 minutes during quiet hours during any rental period.

Current fees for a vacation rental permit are \$638 with an annual monitoring fee of \$224. Property managers pay a onetime \$67 certification fee, and changes in property management is subject to an \$88 fee. Per County Municipal Code Section 12-11, permitted vacation rentals must remit payment of Transient Occupancy Tax, which is 12% of lodging revenue paid quarterly.

Regulations

Vacation Rental Exclusion Combining District

The Vacation Rental Exclusion Combining District or X Zone prohibits vacation rentals in the following areas outside the Coastal Zone:

- (a) Areas where there is inadequate road access or off-street parking;
- (b) Areas where the prevalence of vacation rentals is detrimental to the residential character of neighborhoods;
- (c) Areas where the residential housing stock is to be protected from conversion to visitor-serving uses;
- (d) Areas where, because of topography, access or vegetation, there is a significant fire hazard;
- (e) Areas where residential character is to be preserved or preferred; and
- (f) Other areas where the board of supervisors determines that it is in the public interest to prohibit the establishment and operation of vacation rentals.

(Sonoma County Code § 26-79-005)

Fire Perimeter Areas

There are four wildfire perimeters subject to temporary wildfire disaster recovery regulations. These temporary regulations prohibits the establishment and operation of new Vacation Rentals and prohibits the expansion of bedrooms in existing permitted Vacation Rentals. However, the establishment of new Hosted Rentals is allowed. The following table includes each fire perimeter area and its expiration date:

Fire Perimeter Areas	Expiration Date
2017 Sonoma Complex Fire	December 31, 2021
2019 Kincade Fire	December 31, 2021
2020 LNU Lightning Complex Fire	December 31, 2022
2020 Glass Incident	December 31, 2022

Coastal Zone

Based on TOT data from May 7, 2021, there are approximately 581 vacation rentals registered for TOT in the Coastal Zone, with two areas of concentration in The Sea Ranch (328 rentals) and Bodega Bay (205 rentals). The remaining rentals are in Jenner (33 rentals), Duncans Mills (14 rentals) and Timber Cove (1 rental). Staff recently conducted an internet search of active vacation rentals in the Coastal Zone and estimate at least 469 short term vacation rental listings. The discrepancy can be attributed to a number of issues from a drop in seasonal listings to a pandemic-induced drop in listings. Since the County of Sonoma currently does not regulate vacation rentals in the Coastal Zone, these are the best estimates that can be provided at this time.

Creating a non-land use permitting process would allow staff to better estimate a number of units, as well as a mechanism to enforce a set of performance standards in the Coastal Zone. Land use policy in the Coastal Zone is established by the Local Coastal Plan and implemented through the Coastal Zoning Ordinance.

The current County practice to regulate vacation rentals through land use would require amending the Local Coastal Plan and Coastal Zoning Code, then have these amendments certified by the Coastal Commission as being consistent with the provisions of the Coastal Act. The Coastal Commission considers lodging provided by vacation rentals to be an important component of coastal access, and Commission staff has indicated that a Coastal Zoning Code amendment restricting vacation rentals would be difficult to certify. Commission staff did indicate that a business license program establishing and regulating performance standards would likely be consistent with the Coastal Act, allowing inland performance standards to be applied in the Coastal Zone.

As there are not currently any provisions in the Coastal Zoning Ordinance regulating vacation rentals, the only requirement to operate a vacation rental in the Coastal Zone is to obtain a Transient Occupancy Tax certificate and pay taxes on a timely basis. The County has no other regulatory mechanism at this time in the Coastal Zone.

Coastal Commission staff has indicated that regulating the number or concentration of vacation rentals in the Coastal Zone would only be supported in specific areas where limits are necessary to protect coastal resources.

Urgency Ordinances in 2020

On December 15, 2020, the Board of Supervisors adopted an urgency ordinance (Ordinance 6332) that extended a temporary cap on vacation rental permits, limited to specified locations within the 1st and 5th Supervisorial Districts. Ordinance 6332 extended and amended Ordinance 6321, an urgency ordinance that was adopted August 6, 2020 to establish a countywide cap on vacation rentals and was initially extended by Ordinance 6326 on September 22, 2020 (Attachment 2).

The purpose of the urgency ordinances is to temporarily limit new vacation rental permits in unincorporated Sonoma County in order to provide reasonable time for staff to conduct detailed research and analysis on the effects that permitting additional vacation rentals have on housing stock, housing affordability and the impacts of vacation rental concentration in residential neighborhoods. The urgency ordinance will expire on August 6, 2022, at which time the caps will automatically expire if it has not already been terminated by action of the Board of Supervisors. The ordinance adopted two geographic caps. As permits expire, new applicants are able to apply up to the cap limits. The Lower Russian River area in District 5 has a cap of 299 rental permits, is currently 8 permits under the cap, and staff is processing new applications up to the cap limit. The Theodor Lane area in District 1 has maintained its maximum cap of 13 rental permits.

Regulation in other jurisdictions

With the 16 jurisdictions reviewed by staff, regulations range from a complete ban (Napa County) to the Sonoma Coast (no regulation beyond paying transient occupancy tax). In general, most jurisdictions that allow vacation rentals apply progressive fines with revocation as a final penalty. Most jurisdictions also require a property manager to be the initial point of contact with follow up by code enforcement or law enforcement (See Attachment 3 for a complete list). Staff considers the County of Marin's Vacation Rental program as a best

practice.

Sonoma County's enforcement requires a neighbor to go to the Vacation Rental Complaint website and use the permit lookup history tool to find the permit associated with the vacation rental property. If there is no permit on file, the neighbor is directed to the Sherriff's Office non-emergency number to report the problem and submit a Code Compliance complaint. If there is a permit, the neighbor must look up the permit and get the property manager contact information from the project description. If the property manager fails to correct the problem within the required time, the neighbor is directed to submit a complaint using a vacation rental specific online form. The complaint form is assigned to a code enforcement inspector who will gather facts regarding the violation by contacting the reporting party, property manager and owner. A notice of violation is then sent to the property owner officially notifying them that a complaint has been received, the violation, and that further violations could result in their VR zoning permit being revoked.

In contrast to Sonoma County's enforcement practice, Marin County requires a sign posted at all vacation rentals, visible from the street, providing property manager contact information and the phone number and website for the Marin County Short Term Rental Hotline. The Short Term Rental Hotline serves as a central contact point for all short term rental complaints and provides a simple easy to use reporting system. This hotline is staffed 24/7 by Host Compliance, a contractor who is funded by Transient Occupancy Tax funds.

A system similar to Marin County that is connected to a semi-automated reporting data base would simplify the complaint process for neighbors and could be integrated into a semi-automated reporting database for responding to and reporting complaints. The reporting database could create an online resource that is accessible by County staff and the public at any time, improving transparency, verification of complaints, and compliance with standards.

Enforcement

Since 2015, 5.0% of permitted parcels have violated the conditions of operation for a vacation rental, 3.1% of permitted parcels have had one violation of operating conditions, and 1.9% have had two or more violations. Enforcement is based on the performance standards codified in Section 26-88-120(f) of the Sonoma County Zoning Code (Attachment 4).

Permit Sonoma and the Auditor-Controller-Treasurer-Tax Collector's Office (ACTTC) work together to coordinate its enforcement and regulatory efforts. The Vacation Rental Enforcement Program is composed of three components:

- Complaint response refers actions taken following a complaint. Vacation Rental complaints are usually received over the weekend or on a Monday morning and typically allege excessive noise, parking issues, number of guests, etc. Whenever the property manager is notified of a violation, they are required to file a report with Permit Sonoma code enforcement. Violations typically result in administrative fines ranging from \$100 to \$500. In addition to fines, repeat violators may be referred to Permit Sonoma planning section for permit revocation.
- Industry self-regulation is enforcement actions conducted by the certified property manager. The property manager is responsible for contacting renters to correct violations within 60 minutes, or 30 minutes during quiet hours and reporting the violation to Permit Sonoma within 24 hours.

Proactive Enforcement is a program contracted through a 3rd party vendor to obtain vacation rental marketing information and verify that listings are permitted, and registered with the Auditor-Controller-Treasurer-Tax Collector (ACTTC). This program has identified 438 unpermitted vacation rentals since 2016 and assessed \$1.3 million in penalties, permit fees, and back taxes.

The Permit Sonoma Vacation Rental Enforcement Program has evolved since the adoption of regulations in 2010. The result is a multi-pronged approach to enforcement using traditional response to complaints, industry self-regulation, and pro-active enforcement. This has led to prompt, consistent, and reliable responses to neighborhood concerns by Permit Sonoma code enforcement. On-going outreach and education for property owners, property managers, neighbors, and tenants is needed to support the continued effectiveness of this enforcement program.

Separately, as it relates to tax collection tracking, the County of Sonoma has a Voluntary Collection Agreement with Airbnb that allows the ACTTC to audit Airbnb once every 4 years. We are in the 5th year of the agreement and this will be the first opportunity to audit Airbnb is in compliance with the county's TOT tax collection ordinance. The ACTTC has contracted with Pimenti & Brinker LLP to conduct the audit, and initial findings will be completed in July of 2021. The ACTTC anticipates the engagement will be completed by July 31, 2021; however, this timeline is subject to change depending on discoveries during and potential findings. The ACTTC will present the audit report to the Board of Supervisors at the earliest opportunity and anticipates this will occur by October 2021.

Enforcement in other jurisdictions

Jurisdictions that permit vacation rentals using business licenses generally have two enforcement mechanisms. The first involves violations associated with operating an unlicensed short term rental, failure to notify neighbors, and failure to pay TOT. In Marin County, for example, violations are subject to citation with progressive penalties that increase with each violation. Violations are administrative citations issued by the County's Community Development Agency.

The second category of violation is non-compliance with performance standards, including failure of the property manager to correct non-compliance. These involve violating standards for noise, parking, and occupancy. Violations are treated as a nuisance abatement and subject to civil penalties of up to \$2,500 per violation per day and summary revocation of the license for repeat offenders or conditions that create a threat to public safety.

Policy Analysis:

1. Administration of the program

Objective: Streamline administration and efficacy of the program

Permitting Mechanism

Sonoma County is the only jurisdiction in the Bay Area that does not use a business license to administer its vacation rental program. Because the County does not have a business license program, vacation rentals are regulated by land use through issuance of a zoning permit. Attachment 3 provides a table comparing

regulations and permitting requirements in surrounding counties and cities. Revoking a license based on violation of standards can be streamlined.

As a land use entitlement, enforcement of standards and revocation for violation of these standards requires an investigation by Code Enforcement and is subject to the administrative and revocation procedures of Article 92 of the Sonoma County Zoning Code. A licensing program could allow for administrative revocation for non-compliance rather than requiring a public hearing associated with a zoning permit. If a business license program is put in place, it is anticipated that existing vacation rental permits be converted to business licenses as active permits expire.

Staff recommends a shift from a Zoning Permit to a Business License in administering the county's Vacation Rental Program and apply the licensing and applicability of Performance Standards to vacation rentals in the Coastal Zone.

Tracking and reporting of complaints

In our county, we rely on an industry self-regulation method of enforcement where a property manager is required to be the 1st step of complaint response. The County requires that all property managers be certified by Permit Sonoma and must be available during all times when the property is rented. When a complaint is received by a property manager, the property manager is also responsible for reporting to Permit Sonoma staff within 24 hours of the occurrence. Failure to respond to complaints or to report complaints to Permit Sonoma staff is considered a violation of the Vacation Rental Code, and may be cause for revocation of property manager certification status and/or the Vacation Rental permit itself.

Repeat violations of performance standards typically result in administrative citations being issued. The first offense penalty is \$100, second violation is \$200, and the third is \$500. In 2017, due to an uptick in vacation rental complaints, code enforcement sent notice to all VR permit holders and property managers notifying them that repeat violators of performance standards would be referred to Planning for review of permit revocation. Three properties were referred to Planning and a revocation hearing was held in front of the Board on Zoning Adjustment. One of those property owners voluntarily relinquished their permit. The other two property owners plead their cases to the Board and were given additional time to show compliance. No further complaints have been received on these properties. To date, 483 potential unpermitted vacation properties have been identified. Each property requires staff to investigate each case. Some result in a No Violation, while others are assessed a penalty, typically based on length of violation history. Those that are eligible to hold a vacation rental permit are directed to submit an application. Overall, Permit Sonoma has assessed approximately \$1.3M, and have received \$890,000 from 2015 to present.

In addition, staff has secured services from LTAS Technologies, at an annual cost of approximately \$30,000 to identify potential rentals operating without a permit. If a property does not have a current permit, it constitutes the basis for a violation determination and automatic imposition of a civil penalty (currently up to \$6,380).

Regardless of a shift to a business license, staff recommends codifying new Performance Standards below that permit holders must abide by to maintain a vacation rental permit.

- Establish an automated complaint system that will accept timestamped complaints and forward them

to the property manager.

- Post permit number and complaint hot line number in a prominent location visible from the public road.
- Require that all guests be provided with a rule book explaining regulations and their responsibilities to be good neighbors.

2. Regulation of vacation rentals

Objective: Address commercialization of residential neighborhoods

Limiting vacation rentals / concentration

Rental of homes that are normally vacant for seasonal or recreational use would not have a significant impact on housing, while conversion of homes that would normally be rented for housing would reduce housing stock and may have a number of impacts. A study was commissioned by the County of Sonoma in 2015 to better understand this impact (Attachment 5). Through a Department Head authorization, staff has selected the services of Robert Eyler to conduct a study of the impact of vacation rentals on the County's housing stock. This econometric consultant will provide the study to the attached scope of work in September 2021 (Attachment 6). **While staff recommends better understanding the impacts before making any policy decisions, there are tools that other jurisdictions have explored such as:**

- Limiting the number of days that a home can be rented as a short-term vacation rental (e.g. can only be rented out 50% of the year)
- Adopting a separation criteria between vacation rentals (e.g. 500-1,000 feet)
- Implementing a cap on number of vacation rentals based on a number of strategies
 - By areas of concentration (e.g. Urban Service Area, Supervisorial District, etc...)
 - A countywide cap similar to the initial urgency ordinance cap of 1900

Coastal Zone

Any method of limiting the number of vacation rentals in the Coastal Zone would need to be done once the Local Coastal Plan update is adopted. The Local Coastal Plan is currently being updated and includes a land use program to address vacation rentals in the Coastal Zone. The Local Coastal Plan is scheduled for adoption by the Board of Supervisors later this fall, with certification by the Coastal Commission at its November 2021 meeting.

Maintain and evaluate existing Exclusion Overlay Zones (X-Zone)

Staff recommends doing additional outreach and analysis to better understand the impacts that expanding the X-Zone may have to the community before expanding the program. Staff could analyze the impact would

be to look at real estate transactions in and surrounding the X-Zone areas. Staff could also target community outreach in existing X-Zone areas to better understand the impact.

Continue to limit in Fire Exclusionary Zones

The temporary wildfire disaster recovery area regulations are set to expire on 12/31/21 for the 2017 and 2019 fires, and on 12/31/22 for the 2020 fires. **Staff recommends the Board of Supervisors continue to prohibit new vacation rentals by directing staff to develop a moratorium in the existing wildfire disaster recovery areas that are set to expire on 12/31/21 as fire rebuilds continue. Staff also recommends the provisions below be incorporated into the Vacation Rental Ordinance to apply in these areas.**

- Restrict time of use in high fire severity areas and flood zones.
- Require evacuation of vacation rentals at the evacuation warning level, and all rentals shall be cancelled in areas that are under evacuation warnings or mandatory orders. Failure to follow evacuation order is subject to revocation of license or permit and property manager certification.
- Prohibit on-street parking on roadways less than 20 feet wide.
- Require that evacuation plan be prepared and supplied to guests.
- Restrict outdoor fires including limits on BBQ facilities.

Conclusion

Permit Sonoma staff recommends that an update to the vacation rental program include a business license program to administer vacation rentals in all parts of unincorporated Sonoma County. Should the Board of Supervisors direct staff to develop a business license program, Permit Sonoma would work collaboratively with the Auditor-Controller-Treasurer-Tax Collector's office to develop a draft business license program for vacation rentals to be considered by the Board at a later date.

Regarding the regulation of vacation rentals, Permit Sonoma staff has included a summary of options to facilitate the policy discussion at this workshop (Attachment 7). Based on the discussion and direction from the Board today, staff will conduct a comprehensive engagement and outreach effort that will include meetings with industry and stakeholder groups, public workshops with local Municipal Advisory Councils and online surveys. A webpage will be developed to inform the public about the Vacation Rental Ordinance update, and opportunities for public participation.

Staff is scheduled to return to the Board on October 19, 2021 as an Item of Significant Interest. At that time, staff will provide a final report on creation of a business license program and preferred policy options for amending the current Vacation Rental Ordinance. Depending on the direction the Board provides at this workshop, staff could also take a more measured approach in updating the current ordinance, with fewer outreach meetings, and bring back an update to the current ordinance that excludes the Coastal Zone.

Prior Board Actions:

1. Ordinance 6332 (December 15, 2020) Extending Ordinance No. 6321 in certain parcels in the First and

Fifth Supervisorial Districts until August 6, 2022.

2. Ordinance 6326 (September 22, 2020) Extending Ordinance No. 6321 until December 31, 2020.
3. Ordinance 6321 (August 18, 2020) Adoption of Urgency Ordinance No. 6321 to Cap Vacation Rentals at August 18, 2020 levels.
4. Ordinance 6145 (March 15, 2016) Established current vacation rental regulations and performance standards, special use standards for hosted rentals and bed and breakfast inn, and created the Vacation Rental Exclusion ("X") Combining District.

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

There's no fiscal impact to the department.

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Att 1: Ordinance 6145 - Vacation Rental Ordinance (March 15, 2016)

Att 2: Urgency Ordinances 6321 (August 18, 2020), 6326 (September 22, 2020), and 6332 (December 15, 2020)

Att 3: Table of vacation rental regulations in surrounding local jurisdictions

Att 4: Section 26-88-120

Att 5: 2015 Housing Study Report by EPS

Att 6: Scope of Work for Robert Eyster (2021)

Att 7: Table of Policy Options

Att 8: Staff presentation

Related Items "On File" with the Clerk of the Board:

N/A