

From: Gary Patton [<mailto:gapatton@mac.com>]

Sent: Thursday, July 16, 2015 11:04 AM

To: Novo, Mike x5192

Cc: Holm, Carl P. x5103; Lee, Kathleen M. 647-7755; Beretti, Melanie x5285; Spencer, Craig x5233; Swanson, Brandon xx5334; Lew Bauman; McKee, Charles J; Dan Carl; 100-District 1 (831) 647-7991; 100-District 2 (831) 755-5022; 100-District 3 (831) 385-8333; 100-District 4 (831) 883-7570; 100-District 5 (831) 647-7755

Subject: "Interpretation Request" Memo On Short-Term Rentals In The Coastal Zone  
Importance: High

Dear Mike Novo:

Members of the Board of Directors of my client, the Monterey County Vacation Rental Alliance (MCVRA), have sent me a copy of a recent memo signed by you. The memo is titled "INTERPRETATION REQUEST," and is dated July 9, 2015. I am attaching a copy for your convenience.

I am not certain who made a request for this interpretation of the Code provisions relating to short-term rentals for overnight accommodations, but I want to alert you to my very strong disagreement with one aspect of what (I think) you say in this recent memo. I am providing copies of this email to other persons who should also be concerned with this topic.

Specifically, your memo says, on Page 3: "In the Coastal Zone (Title 20 Zoning Ordinance), short-term rental for overnight accommodations for 30 days or less is not permitted, except as a permitted B&B." The memo also says: "Long-term rentals (greater than 30 consecutive days) are not regulated under the Monterey County Zoning Codes. Therefore, long-term rentals are all allowed without a permit ... "

Your statement that "short-term rental for overnight accommodations for 30 days or less is not permitted..." (in the Coastal Zone), could be accurate, if what you mean is that there is no permit system in place that would govern such short-term rentals in the Coastal Zone. That, of course, is completely correct.

However, the implication of your memo is that a short-term rental of residential property in the Coastal Zone is in some way a violation of the County's set of land use regulations. **THIS IS EMPHATICALLY NOT TRUE.** The Code contains absolutely no prohibition or restriction related to short-term rentals of residential properties in the Coastal Zone. You cite to no Code reference that would indicate that there is such a prohibition of a short-term rental in the Coastal Zone, and I believe that this is because there isn't such a provision in Title 20.

There are two different systems in effect in Monterey County, relating to short-term rentals. In the inland areas, governed by Title 21, the County Code specifically says that a short-term rental is prohibited unless the property owner undertaking such a short-term rental has obtained a permit. The permit system established in Title 21 is in effect in inland areas that are **OUTSIDE THE COASTAL ZONE**. There is absolutely no comparable system that regulates or prohibits short-term rentals **INSIDE THE COASTAL ZONE**.

Very frankly, my clients are tired of being harassed by people who have gotten the impression from the County that short-term rentals inside the Coastal Zone are "illegal," or "unauthorized," or "unpermitted," or "unallowed," or are, in some other way, improper. The fact is, the County adopted an ordinance in 1997 that was intended to regulate both areas, but the County never obtained

Coastal Commission certification for the application of the ordinance inside the Coastal Zone. Because the County chose not to establish a permit system for the Coastal Zone, and has not taken any other affirmative action to prohibit or regulate short-term rentals within the Coastal Zone, there is NO restriction that applies to a short-term rental of a residential property inside the Coastal Zone.

From 1997 until about 2013, the County acted in a way that recognized this distinction. County officials made no efforts to try to penalize persons who were renting residential properties within the Coastal Zone on a short-term basis, and the County collected Transient Occupancy Taxes (TOT) from those who did so (as the County Code definitely does require). Since about 2013, however, the County has sporadically taken the position, not based on any affirmative Code provision, that short-term rentals in the Coastal Zone are, somehow, a "violation" of the County's land use regulations. Again, there is no justification for this claim, because the County currently has a system that differentiates between residential properties inside the Coastal Zone, and those located outside the Coastal Zone. The short-term rental of properties located outside the Coastal Zone is regulated. The short-term rental of properties located inside the Coastal Zone is NOT regulated.

This email is my request that you and other County staff members cease and desist from trying to prevent property owners from undertaking short-term rentals of their residential properties within the Coastal Zone, unless and until the County Board of Supervisors has adopted affirmative provisions in the Code that either prohibit or regulate such short-term rental uses (and unless and until the system adopted by the Board has been certified by the Coastal Commission). There is currently no basis in the County Code for any effort by the County to prevent property owners inside the Coastal Zone from entering into short-term rental arrangements for their properties.

In previous correspondence between me and Michael A. Rodriguez, the County's Chief Building Official (I am referring to a letter from Mr. Rodriguez dated March 13, 2014, also attached for your convenience), Mr. Rodriguez claimed that language in County Code Section 20.02.040 amounts to a "prohibition" of short-term rentals of residential property within the Coastal Zone. Mr. Rodriguez made this claim because Section 20.02.040 says that any use not specifically identified as permissible within the coastal zoning districts is, by virtue of the fact that it is not specifically listed, "prohibited." In other words, Mr. Rodriguez suggests that short-term rental uses, because they are not specifically identified within the coastal zoning districts as permissible uses, are thereby "prohibited."

This claim that the County has "regulated" and/or "prohibited" short-term rentals simply by the fact that the County has not specifically said that such short-term rental uses are "permitted" is essentially a claim to have "regulated" short-term rentals by "not regulating" them. Not only would this approach to "regulation by non-regulation" be unfair, this is not, in fact, the position that the County has taken with respect to many other uses that are not affirmatively listed as "permitted." Lots of activities that are normal uses of residential property are not listed as specifically permitted in the coastal zoning districts, and yet they are obviously not treated as "prohibited" by the County. Backyard barbecues could be one example. Probably more relevant and more telling is the fact that long-term rentals of residential properties inside the Coastal Zone are not listed as specifically "permitted" or "allowed," either.

In your "Interpretation Request" memo you say that "long-term rentals (greater than 30 consecutive days) are not regulated under the Monterey County Zoning Codes." Therefore, you say, "long-term rentals are all allowed without a permit ..." On what basis can you claim (inside the Coastal Zone) that short-term rentals and long-term rentals are somehow different, since they are both treated in just the same way in the County Code? Neither short-term nor long-term rentals of residential properties are specifically listed as permitted in the coastal zoning districts, and yet the County

comes to the conclusion that short-term rentals are “prohibited,” because they are not specifically permitted, while long-term rentals, also not specifically permitted, are somehow just fine. This is not a legally sustainable basis for the disadvantageous and discriminatory way that the County is treating short-term (as opposed to long-term) rentals of residential property.

The County COULD regulate short-term rentals of residential properties, within the Coastal Zone, just as it has chosen to regulate short-term rentals outside the Coastal Zone. But from 1997 to date, the County has not chosen to regulate short-term rentals inside the Coastal Zone. Not enacting a regulation that it could enact is not a basis for saying that a normal residential use of property is thus “prohibited.” This is particularly true, as a matter of equal protection, since the County’s Title 20 zoning regulations treat the short-term and long-term rental of residential properties in the Coastal Zone in exactly the same way, yet the County discriminates against short-term rentals.

In his letter to me, Mr. Rodriguez also cited Section 20.70.120, which provides a list of projects that are “exempted” from coastal development permits. He claimed that since short-term rental uses of residential properties are not specifically “exempted” from the need to get a coastal development permit, any such short-term rental is therefore prohibited. This is the same argument just discussed with respect to Section 20.02.040, but applied to a different section of the code. In addition, virtually all the listed “projects” in Section 20.70.120 are “development” projects, and the rental of residential property is not “development.” Thus the section is not pertinent in the first place, but even if Section 20.70.120, relating to “development,” were somehow relevant to the rental of residential property, this section also does NOT list either “long-term” or “short-term” rentals of residential property as “projects” exempt from the need to get a coastal development permit. Again, there is no basis to differentiate long-term and short-term rentals based on Section 20.70.120, since the code treats them identically.

As you quite properly say in your memo, long-term rental of residential real property is “not regulated” by the County, and thus there is no prohibition to any such long-term rental. Within the Coastal Zone, the same exact situation exists with respect to short-term rentals. They are “not regulated,” and thus there is no prohibition to any such short-term rental within the Coastal Zone.

I hope you will consult with the RMA Administration, and the County Counsel, and amend your “Interpretation” memo to reflect the fact that short-term rentals are not regulated within the Coastal Zone, and thus that there is no prohibition to any such short-term rental within the Coastal Zone.

If you disagree with this analysis, or if you can cite to some Code section of which I am unaware, and that does regulate or prohibit short-term rentals inside the Coastal Zone, please promptly advise me, so I can relay that information to my client.

Thank you for your attention to this very important matter.

Very truly yours,  
Gary A. Patton, Attorney at Law  
P.O. Box 1038  
Santa Cruz, CA 95061  
Telephone: 831-332-8546  
Email: [gapatton@gapattonlaw.com](mailto:gapatton@gapattonlaw.com)  
Website: [www.gapatton.net](http://www.gapatton.net)

Copies:

CAO, County Counsel, Board of Supervisors, Coastal Commission, Carl Holm, Melanie Beretti, Brandon Swanson, Kathleen Lee, Craig Spencer



In the Inland areas, certainly, short-term rentals are prohibited, unless a permit is obtained. The original idea was that a similar system would apply in the Coastal Zone, but the County, in fact, never followed through. At some point, apparently, the County decided that it could have the benefit of a regulation of short-term rentals in the Coastal Zone without actually taking the trouble to enact an ordinance to regulate them. This is legally unsupportable - and is actually kind of outrageous.

My client is a "group," and the members of the group that I have talked to, some of them professionals who were involved in the development of the 1997 ordinance, say that the County's attempt to prohibit short-term rentals in the Coastal Zone is relatively recent. I don't really know when such enforcement activities commenced, and if I am incorrect about past enforcement practices, I would definitely defer to your experience. Of course, that makes no difference on the legal point. If the County doesn't have any legal basis to prohibit short-term rentals in the Coastal Zone, a past practice of telling property owners that short-term rentals are prohibited doesn't provide the County with any authority to continue that practice. The County needs to cite an actual code section that says that short-term rentals in the Coastal Zone are regulated, or it's clear that they are not (any more than long-term rentals are).

The Monterey County Vacation Rental Alliance has been trying to work, through Supervisor Potter's office, to help develop an ordinance that could pass muster with the Coastal Commission, that would be fair, and that would regulate short-term rentals in both inland and Coastal areas in an effective way. Until the County has developed such an ordinance, and has obtained Coastal Commission certification, MCVRA is requesting that the County take the following actions: (1) stop telling members of the public that persons entering into a short-term rental of residential property in the Coastal Zone are doing something "illegal;" (2) stop the County's so-called "enforcement" activities against property owners who are undertaking short-term rentals in the Coastal Zone. If short-term rentals in the Coastal Zone are associated with nuisance conditions, the County can enforce its ordinances against nuisances; if property owners are undertaking short-term rentals but are not complying with the County's TOT ordinance, the County can prosecute them for that.

What the County cannot do (legally) is to seek to enforce a set of regulations that don't exist. Short-term rentals in the Coastal Zone are "not regulated." They are just the same as long-term rentals in that respect. As far as I can tell (and I do ask that the County provide me with a citation to any authority that I may have missed) there is NO basis in the County Code for the County to seek to impose penalties on persons who engage in short-term rentals in the Coastal Zone, simply because somebody in the County has decided that they don't like short-term rentals. The County needs to operate according to a "rule of law." In 1977, the County adopted a law on short-term rentals, but they did not take the steps necessary to make that law extend into the Coastal Zone. The County sent their ordinance to the Coastal Commission, and the Commission staff asked the County to consider some changes, and the County just dropped its efforts.

Eighteen years have passed, and the County still doesn't have an ordinance for properties in the Coastal Zone. Until the County has such an ordinance, please stop pretending that the County can regulate or prohibit short-term rentals in the Coastal Zone without actually doing the work necessary to enact the required regulations!

Best to you.

Gary A. Patton, Attorney at Law  
P.O. Box 1038  
Santa Cruz, CA 95061  
Telephone: 831-332-8546

Email: [gapatton@gapattonlaw.com](mailto:gapatton@gapattonlaw.com)

Website: [www.gapatton.net](http://www.gapatton.net)