

**Big Sur Land Use Advisory Committee
and
South Coast Land Use Advisory Committee
Joint Meeting
SPECIAL MEETING
AGENDA**

Monday, June 4, 2018

**9:30 AM at Pfeiffer Big Sur Lodge Conference Center Pfeiffer Big Sur State Park
47555 Highway 1, Big Sur, CA 93920**

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF MINUTES

4. SCHEDULED ITEMS

- A) Updated Consideration for Preliminary Consistency of Short Term Rental Ordinance Draft Consistency with the Big Sur Land Use Plan (Attachment Memo)

5. ADJOURNMENT

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Carl P. Holm, AICP, Director



LAND USE & COMMUNITY DEVELOPMENT | PUBLIC WORKS & FACILITIES | PARKS

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MEMORANDUM

Date: May 23, 2018

To: Big Sur and South Coast Land Use Advisory Committees

From: Melanie Beretti, RMA Property Administration/Special Programs Manager *MB*

Subject: Updated Considerations for Preliminary Consistency of Short-Term Rental Ordinance Draft Consistency with the Big Sur Land Use Plan (BSLUP)

cc:

At the April 19, 2018 meeting of the Big Sur Land Use Advisory Committee (Big Sur LUAC), Resource Management Agency (RMA) staff presented and the LUAC convened a discussion of the draft Short-Term Rental Ordinance (Attachment 1) and a preliminary analysis of the draft's consistency with the Big Sur Land Use Plan (BSLUP). Since then, staff has conducted further policy analysis and development to consider feedback received, specifically to address concerns raised about the draft ordinance as it relates to homestays, visitor serving units, and potential impactsⁱ. Based on further analysis, staff is seeking input on the following:

The following limits are under consideration for homestays (Countywide):

- Owner occupied while being rented (hosted), and must be the owner's principal residence
- Limited in frequency, considering up to 24 contracts per year, not more than 4 per month.
- Limit to the number of bedrooms that may be rented such that at least one bedroom is designated for the property owner and not more than 2 of the remaining bedrooms are eligible for homestay rental. One bedroom homes would not be eligible for homestays, and two bedroom homes would only be eligible to use 1 bedroom for homestay rental. (Note: Maximum occupancy to be calculated at not more than 2 persons per bedroom, so the maximum homestay occupancy based on a 2-room limit would be the owner(s) plus 4)

Draft preliminary consistency recommendations under consideration pertaining to types of short-term rentals:

- Homestays as limited above are consistent with the BSLUP and should be allowed;
- STRs that are defined as unhosted, "low-frequency STRs", may be rented up to 12 times per year and not more than 2 times per month. Low-frequency STRs in Big should be allowed only when they are the owner's principal residence;

- STRs that would require a Coastal Development Permit (equivalent to the “Use Permit” in the Draft Ordinance) should not be allowed.

Draft preliminary consistency recommendations under consideration pertaining to visitor serving unit caps in the BSLUP:

- For low-frequency STRs and homestays as limited above, staff is considering whether or not these types of STRs should be counted as visitor serving units and, therefore, subject to caps included in the BSLUP. And if they are counted as VSUs, staff would consider counting them as one VSU toward the BSLUP cap.

¹ Once the draft STR ordinances are acceptable to the Board of Supervisors but not yet finalized, the County will analyze the environmental impacts of the proposed ordinances (e.g. housing, traffic). Depending on the results of the environmental analysis, the draft ordinances may be further modified.

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**Amend Section 21.64.280 of Title 21 (Non-Coastal Zone) of the Monterey County Code
PRELIMINARY CONCEPTUAL DRAFT**

PURPOSE

This Section provides regulations, standards and circumstances under which short-term rentals may be allowed in certain residential areas of the County of Monterey. It is further the purpose of this Section to:

- Preserve and enhance the residential character of the zoning districts established in Title 21 and the sense of security and safety in stable neighborhoods of owner-occupied residences.
- Implement the provisions and advance the purposes and objectives of Title 21.
- Except as provided in this Section, restrict the short-term rental of residential properties, which use may be inharmonious with and injurious to the preservation of the character and environment of the various zoning districts in Title 21.
- Promote the public health, safety, and general welfare of the County

APPLICABILITY

This Chapter applies in the unincorporated inland area of the County of Monterey. Short-term rentals are allowed in some zoning districts that allow residential use: High Density Residential (HDR); Medium Density Residential (MDR); Low Density Residential (LDR); Rural Density Residential (RDR); Light Commercial (LC); Heavy Commercial (HC); Visitor Serving/Professional Office (VO); Light Industrial (LI); Heavy Industrial (HI); Resource Conservation (RC).

This section does not apply to legally established bed and breakfast facilities, which are regulated by Section 21.64.100.

DEFINITIONS

For the purpose of this Chapter, unless the context otherwise requires, certain terms used in this Chapter shall be as defined below.

“Advertised Rental Rate” means the advertised nightly rate multiplied by the minimum number of nights required to rent the dwelling or part of the dwelling. The Advertised Rental Rate shall no include deposits or ancillary fees.

“Bedroom” means any room in the conditioned (heated) area of a dwelling unit which is: 1) seventy (70) square feet or greater in size; and 2) has an exterior door or window for egress meeting health and safety code standards; and 3) has a closing door that separates the room from other features of the dwelling. A guesthouse may be considered a bedroom, if it meets the criteria outlined above. The following shall not be considered a bedroom: Any interior room that must be passed through to access another bedroom; a hallway; bathroom; kitchen; living room; dining room; family room; breakfast nook; pantry; laundry room; or closet/dressing room opening off of a bedroom.

“Block” means a developed block as numbered by the Monterey County Assessor Parcel Maps in low density residential zones, moderate density residential zones, and high density residential zones. A block includes all properties located along one side of a street between two intersecting streets or between

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any combination of intersecting streets, railroad rights-of-way, watercourses or other features or natural barriers which permanently interrupt the continuity of development.

"Block Density" means the number of STRs on the block divided by the number of parcels, expressed as a percentage.

"Home Stay" means a short-term rental whereby the STR Operator rents bedrooms in his/her residence while the STR Operator is in residence.

"Principal Residence" means the residence or dwelling where the person lives the majority of the time during the year. At a given time, a person shall not have more than one principal residence. Principal residence is the legal residence of an individual as established for purposes of income tax calculation, voter registration, or driver's license.

"Residential property" means any single- or multiple- family dwelling units, duplexes, guesthouses, caretaker units, or other dwelling unit or structure located on one or more contiguous lots of record in any of the zoning districts in Title 21 which allow residential uses.

"Short-Term Rental Operator" or "STR Operator" means a person who owns or manages a short-term rental.

"Short Term Rental of Residential Property" or "Short-Term Rental" or "STR" means the use, by any person, of residential property for transient lodging uses where the term of occupancy, possession or tenancy of the property by the person entitled to such occupancy, possession, or tenancy is, except as provided herein, for thirty (30) consecutive calendar days or less, and only one (1) tenant or rental contract is allowed per STR at any given time. Short-term rental of residential property is not a bed & breakfast facility, hotel, motel, hostel, or inn.

"Short-Term Rental Occupant" or "STR Occupant" means a person who exercises occupancy of a short-term rental or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

"Visitor" means a person staying temporarily at an STR site, but that is not a STR occupant and not staying at the STR overnight.

REGULATIONS

- A. Permit Requirements: Except as provided in Section/Exceptions of this Chapter, short-term rental of residential property for overnight accommodations shall not be allowed in the unincorporated areas of Monterey County without first securing all permits, licenses, certificates or other entitlements required by County regulation.
1. Pursuant to Chapter 7.02, Business Licenses, of the Monterey County Code, a license shall be procured immediately from the Treasurer-Tax Collector before the commencement, operation or maintenance of a short-term rental.

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2. Prior to the approval or renewal of a STR business license, all real and personal property taxes currently due and payable, as linked to the property on which the STR is located, shall be paid in full to the Treasurer-Tax Collector.
3. Pursuant to Chapter 5.40, Uniform Transient Occupancy Tax, of the Monterey County Code each STR operator shall register with the Treasurer-Tax Collector and obtain a transient occupancy registration certificate with thirty days after commencing business.
4. For the first STR on a property:
 - a. A Land Use Clearance shall be required prior to issuance of a business license for STR that:
 - i. Meets California Building Code Title 24 standards for number of guestrooms (bedrooms) for Residential Group R-3; and
 - ii. Is a home stay; or
 - iii. Is rented twelve (12) times or fewer during a year, and two (2) times or fewer during any calendar month.
 - b. A Use Permit shall be required prior to issuance of a business license for STR that:
 - i. Meets California Building Code Title 24 standards for number of guestrooms (bedrooms) for Residential Group R-1; or
 - ii. Is rented more than twelve (12) times during a year; or
 - iii. Is rented more than two (2) times during any calendar month.
5. All Use Permits issued for Short Term Rental shall be subject to the following time limits:
 - a. The initial Use Permit shall not be issued for more than one year,
 - b. The second Use Permit shall not be issued for more than three years; and
 - c. The third and subsequent Use Permits shall not be issued for more than five years.

The purpose of these time limits is to provide adequate on-going review of the STR to assure that the use continues to meet the standards of this Section, that the nature of the area has not changed sufficiently to cause the use to be detrimental to the area, and to review the conditions of the prior Use Permit to determine their continuing adequacy.

B. Regulations for Short-Term Rentals: Short-Term Rentals shall meet the following minimum requirements:

1. Short-term rentals shall only be allowed in a single-family dwelling (SFD) or multi-family dwellings (MFD) and a legally established guest house. A guest house shall not be rented independently of the SFD or MFD. Short-term rentals shall not be permitted in non-habitable structures. Short-term rentals shall not be permitted within accessory dwelling units or in structures or dwellings with county covenants or agreements restricting their use including but not limited to affordable housing units, agricultural employee units, farm worker housing, or lands under a Williamson contract. Tents, yurts, Recreational Vehicles (RVs) or other provisions intended for temporary occupancy are not allowed as a part of a short-term rental.
2. Only one (1) STR unit shall be allowed per lot. This limit shall apply to any multi-family dwelling (e.g. duplex). It shall not apply to a property governed by the duly adopted bylaws of a County-

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approved homeowners' association (HOA), or to properties held as tenants in common. The limit shall not apply to commercially zoned properties.

3. Any short-term rentals must be in legally permitted structure.
4. As part of issuance, RMA shall calculate the maximum overnight occupancy for each short-term rental unit. The calculation shall be based on the following criteria:
 - a. In accordance with Monterey County Code Section 21.61.280 and the 1997 Uniform Housing Code, no more than one (1) person for each 70 square feet of bedroom for the first two (2) persons in that bedroom, and one (1) person per 50 sq. ft. for each additional person beyond two (2) in that bedroom; and
 - b. No more than two (2) times the total number of bedrooms.
5. As part of issuance, RMA shall calculate the maximum number of persons, including STR occupants plus visitors, allowed at any time in a single STR. Visitors shall not be on the property during quiet hours. The calculation shall be based on the following criteria:
 - a. No more than one and one-half (1.5) times the maximum overnight occupancy
6. STRs must provide at least one (1) off-street parking space for every two (2) bedrooms allowed in the STR or as required for the dwelling type by Monterey County Code 21.58.040, whichever is more. STRs with one (1) or two (2) bedrooms must provide at least one (1) off-street parking space; STRs with three (3) or four (4) bedrooms must provide at least two (2) off-street parking spaces; and STRs with five (5) bedrooms must provide at least three (3) off-street parking spaces. The off-street parking space(s) shall be entirely on the STR site. Off-street parking requirements may not be met using public right-of-way (street) spaces.
7. The STR shall comply with Monterey County Code Chapter 10.60 Noise Control and Chapter 8.36 Nuisance and Nuisance Animals. Quiet time for the STR is between 10:00 p.m. and 7:00 a.m. and the STR shall adhere to Monterey County Code Section 10.60.040 Regulation of nighttime noise. Outside amplified sound shall not be allowed at any time associated with the STR.
8. All STRs operating within unincorporated Monterey County must have a property manager who is available twenty-four (24) hours per day, seven (7) days per week during all times that the property is rented or used on a transient basis. Property managers may be professional property managers, realtors, property owners, or other designated persons. The property manager must be available to respond to complaints and arrive at the STR site within 30 minutes at all times during the rental period.
9. The source of water that serves an STR shall meet bacteriological and primary drinking water standards. Prior to approval of an STR application, the applicant shall provide comprehensive water quality analysis to the Monterey County Environmental Health Bureau, pursuant to Monterey County Code Chapters 15.04 and 15.08 and Titles 17 and 22 of the California Code of Regulations. If the STR meets the definition of a water system, then an application shall be submitted to the Monterey County Environmental Health Bureau for issuance of a water system permit prior to approval of a STR application. A comprehensive water quality analysis is required to be completed at least every five (5) years. Bacteria (total coliform and E. coli) and any constituent that was 50% or more of the maximum contaminant level shall be tested annually and

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prior to renewal of an STR permit and business license. This requirement shall not apply to STR that receive potable water service from a publicly-owned and operated water company

10. For STRs on septic/onsite wastewater treatment system (OWTS), prior to approval of an STR application, the applicant shall complete a performance evaluation of the OWTS completed by a qualified professional and provide evidence that the septic tank and dispersal system are functioning properly.
11. STR occupants shall be advised that excessive water use and disposal of unsuitable materials through sinks and toilets are prohibited to minimize potential negative impacts to the OWTS. The STR rental agreement shall include an OWTS education section and corresponding informational signs shall be posted at each sink and toilet.
12. The STR shall comply with Monterey County Code Chapter 10.41 Solid Waste Collection and Disposal and, prior to STR approval, the applicant shall provide evidence that adequate solid waste services are in place. STR shall have garbage service from franchise waste hauler; no garbage service exemptions shall be allowed for STRs. All solid waste and recycling must be contained within appropriate receptacles with lids. Waste receptacles must be stored out of site unless in conformity with neighborhood standards.
13. Outdoor fire areas, when not prohibited by state or local fire bans, may be allowed but shall be limited to three (3) feet in diameter shall be located on a non-combustible surface, shall be covered by a fire screen, and shall be extinguished as soon as it is no longer in use or by 10:00 p.m., whichever is earlier. No fire or fire area shall be located within twenty-five (25) feet of a structure or combustible material.
14. For STRs not accessible directly from a public road, then the STR application is subject to Monterey County Code Section 21.64.320 Regulations relating to applications involving use of private roads. STRs are not exempt under 21.64.320.
15. The operator of any STR located behind a locked gate or within a gated community shall provide gate code or a lockbox with keys ("Knox Box" or similar) for exclusive use by the sheriff and emergency or fire services departments.
16. The use of a residential unit for a short-term rental shall not violate any applicable conditions, covenants, or other restrictions on real property.
17. Each contract that enables STR use shall be in writing and identify thereon the name, address, phone number and e-mail contact information of the STR Operator, the property manager and at least one responsible STR occupant eighteen (18) years or older who shall be responsible for all the regulations in this section.
18. A copy of the STR permit and license and all applicable rules and regulations shall be included with the STR rental contract and posted within the STR unit in a prominent place within six (6) feet of the front door of the unit.
19. All contracts, advertisements and listings for the STR shall include the following:

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- a. Transient Occupancy License Number for that particular STR
 - b. Maximum occupancy – nighttime occupants and total daytime limits
 - c. Maximum number of vehicles
 - d. Notification of quiet hours
 - e. Advertised Rental Rate
20. The STR Operator shall maintain clear and adequate records and documentation of the short-term rental operation, that shall at a minimum make a record of the following for each short-term rental occupancy: name, address, phone and e-mail contact of at least one responsible tenant; number of occupants; motor vehicle license number of each motor vehicle used by occupant at the site. The County shall have the right to examine, monitor, and audit such records and documentation, which shall be made available to the County upon request.
21. All STR Operators and their respective STRs, authorized by the County for STR purposes by issuance of required land use permit and business license, shall be listed on a Short-Term Rental Registry created by the County and updated periodically by the County. The County shall publish the STR Registry, and a copy shall be sent electronically to any person upon request.
22. No person or entity, including but not limited to the STR Operator, shall maintain any advertisements of rental prohibited by this Chapter.
23. In the following areas, the following limitations shall apply: *[not yet determined; e.g. restrictions based on adopted land use plan]*

APPLICATION REVIEW AND REQUIREMENTS

1. Application Requirements. An applicant shall provide the following for each STR unit with any application, and an application will not be deemed complete until the information or documentation required is provided:
 - a. Completed Application Form
 - b. Property Manager Contact Information including name, address, phone number and email address
 - c. Affidavit of Residency
 - d. One (1) Set of Plans drawn to scale and labeled, in the form and manner required by the Chief Planning Official, including but not limited to:
 - i. Site Plan including locations and dimensions of all property lines, rights-of-ways, vehicular easements, edge of pavement, driveways and on-site parking areas, and existing buildings
 - ii. Floor Plan showing all rooms, including windows and doors
 - e. Copy of the STR rental contract, including but not limited to:
 - i. Transient Occupancy License Number for that STR
 - ii. Maximum occupancy – nighttime occupants and total daytime limits
 - iii. Maximum number of vehicles
 - iv. Notification of quiet hours
 - v. OWTS education section
 - f. An inspection report that provides and verifies information, in the form and manner required by the Chief Building Official, to ensure the property is safe and habitable for

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- its intended use, including but not limited to: verification of adequate egress from sleeping quarters and common areas; installation of accessible fire extinguishers; a carbon monoxide alarm on each level; and that the property exists in accord with appropriate land use and building permits
- g. Comprehensive Water Quality Analysis in the form and manner required by the Environmental Health Bureau, if applicable
 - h. Septic/OWTS Performance Evaluation Form in the form and manner required by the Environmental Health Bureau, if applicable
 - i. Copy of OWTS informational signs
 - j. Evidence of Adequate Solid Waste Services
 - k. Transient Occupancy Tax Registration Certificate
2. Upon submittal of an application, the Director of the Resource Management Agency or his designee shall classify the project according to the following categories:
- a. Short-Term Rental Operator Residence
 - i. The STR unit is the STR Operator's principal residence.
 - ii. The STR unit is not the STR Operator's principal residence
 - b. Home Stay
 - i. A short-term rental whereby the STR unit is the STR Operator principal residence, and the STR Operator resides at the STR site while it is occupied by short-term renters.
 - ii. Un-Hosted Short-Term Rental or Un-Hosted STR: A short-term rental whereby the STR Operator does not reside at the STR site while it is occupied by short-term renters.
 - c. Short-Term Rental Frequency
 - i. Twelve (12) separate rental contracts per year or fewer, and not more than two (2) separate contracts per calendar month
 - ii. More than twelve (12) separate rental contracts per year or more than two (2) separate contracts per calendar month.
 - d. Number of Bedrooms in Short-Term Rental
 - i. California Building Code Title 24 standards for use and occupancy class Residential Group R-3
 - ii. California Building Code Title 24 standards for use and occupancy class Residential Group R-1
 - e. Maximum Daytime Visitors of Short-Term Rental

GROUND FOR SUSPENSION OR REVOCATION

1. A STR business license may be suspended, revoked or prohibited by a hearing officer pursuant to Monterey County Code Chapter 1.22. Criteria to be used when considering suspension, revocation and/or prohibition of a STR business license include, but are not limited to:
 - a. More than two documented violations in a twelve-month period. Evidence of documented violations includes but is not limited to copies of citations, written warnings or administrative violations, or other documentation filed by County staff or law enforcement; and/or
 - b. Nature and severity of the violations.
2. A STR Use Permit shall be subject to suspension or revocation, based on substantial evidence and following notice and public hearing pursuant to Monterey County Code Chapters 21.74 and 21.78.

ENFORCEMENT

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The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

- A. It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Chapter. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Chapter shall be guilty of an infraction. No proof of knowledge, intent, or other mental state is required to establish a violation.
- B. Any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for penalty pursuant to Chapters 1.22 of this Code, and any other action authorized by law.
- C. Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the Monterey County Code or otherwise authorized by law. Additionally, as a public nuisance, any violation of this Chapter shall be subject to injunctive relief, disgorgement of any payment to the County of any and all monies unlawfully obtained, costs of abatement, costs of restoration, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The County may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the short-term rental activity or persons related thereto, or associated with, the short-term rental activity.

For violations of short term rental codes, an Enforcement Official may issue to a responsible person an administrative citation that imposes:

- 1. A fine not exceeding four-hundred percent (400%) of the Advertised Rental Rate per day per violation or one thousand dollars (\$1000.00) per day per violation for short term rentals without an Advertised Rental Rate for a first violation;
- 2. A fine not exceeding six-hundred percent (600%) of the Advertised Rental Rate per day per violation or two thousand five hundred dollars (\$2500.00) per day per violation for short term rentals without an Advertised Rental Rate for a second violation of the same ordinance within one year; and
- 3. A fine not exceeding eight-hundred percent (800%) of the Advertised Rental Rate per day per violation or five thousand dollars (\$5000.00) per day per violation for short term rentals without an Advertised Rental Rate for each additional violation of the same ordinance within one year of the first violation.