



A Tradition of Stewardship
A Commitment to Service

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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Gitelman, Hillary - Director
Conservation, Development & Planning
REPORT BY: Hillary Gitelman, Director - 253-4805
SUBJECT: Vacation Rental Ordinance Policy Discussion

RECOMMENDATION

Director of Conservation, Development and Planning to summarize stakeholder meetings related to vacation rentals in unincorporated Napa County, including the exploration and analysis of alternatives to the existing prohibition, and to seek direction regarding next steps.

EXECUTIVE SUMMARY

On December 15, 2009, the Board of Supervisors adopted an ordinance amending Section 18.08.260 of Napa County Code defining "dwelling unit" and adding a new Section 18.104.410 prohibiting transient commercial occupancies of dwelling units. The ordinance was intended to clarify a longstanding prohibition on short term vacation rentals, increase penalties and improve enforcement. The Board's action made the new ordinance effective in 180 days (June 2010) and at the same time, the Board requested that planning staff meet with stakeholders who wanted to legalize vacation rentals and explore alternatives.

Planning staff hosted two stakeholder meetings, one in January and one in February, and has received substantial input and information from vacation rental advocates in support of their position. This agenda item is intended to provide a summary of the stakeholder process, including alternatives considered and issues raised, and to provide members of the public with an opportunity to address the Board on this subject matter. After public testimony, planning staff would like further direction on next steps.

PROCEDURAL REQUIREMENTS

1. Staff report
2. Public comments
3. Board of Supervisors discussion and direction to staff

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

At the Board of Supervisors' direction, planning staff hosted vacation rental stakeholder meetings on January 27 and February 24, 2010, inviting interested members of the public to share ideas and to explore alternatives to the ordinance adopted on December 15, 2009 (attached). A summary of these meetings is provided below, along with a summary of relevant policies and regulations, and possible next steps. Meeting handouts, public comments, and other relevant information received by staff during the stakeholder process have been organized in a binder of reference material and provided to the Clerk and members of the Board separately. (A copy is available for public review at the Clerk's office, 1195 Third Street, Suite 310, and at the Planning Department, 1195 Third Street, Suite 210.)

Vacation Rentals: Prevalence, Impacts and Benefits

Many other jurisdictions allow short term vacation rentals and regulate them, both in order to avoid impacts, and to assess a transient occupancy tax (TOT). Some sample ordinances were collected during the stakeholder process, including those from Mendocino County, El Dorado County, Maui, and the City of Napa. Sonoma County is currently going through a stakeholder process to establish regulations for vacation rentals with the intention of limiting their intensity of use to that of a traditionally occupied single family home, and collects an estimated \$2 Million in TOT from vacation rentals annually.

Napa County staff and vacation rental advocates have each tried to estimate the number of dwelling units in unincorporated Napa County that are currently being used as short-term rentals (i.e. for less than 30 days) in violation of County Code. Based on a review of common websites like Vacation Rental By Owner, staff believes there could be about 250 rentals, representing about 2.5% of the County's housing stock of 10,000 dwelling units. The precise number is difficult to determine because addresses are seldom given, making it difficult to identify rentals that are within unincorporated Napa County versus those that are in one of the cities (or even an adjacent county). Also, the number of rentals fluctuate over time as owners' situations change and as owners are contacted by code enforcement staff.

The characteristics of vacation rentals also vary greatly, with some multimillion dollar houses, and some smaller dwellings. Some rentals may be owned by corporations, but many are owned by individual property owners or families. In some cases, the owners use the house regularly and/or use another house on the same property, and in other cases, the house is only used as a short term rental.

There are three main downsides or impacts that are often ascribed to vacation rentals, including the following:

1. Vacation rentals can cause nuisance impacts related to noise, traffic, etc., that are incompatible with surrounding residential properties;
2. Vacation rentals can be considered commercial uses that are incompatible with agricultural zoning and land use designations; and
3. Vacation rentals can remove housing from the housing stock at a time when Napa County has unmet housing needs.

There are also upsides or benefits that are often ascribed to vacation rentals, including the following:

1. Vacation rentals are part of Napa County's economy, providing accommodations for patrons who support local restaurants, wineries, etc.
2. Vacation rentals provide a way for property owners to generate income so they can afford to live in Napa County;
3. Vacation rentals could generate substantial transient occupancy taxes (TOT) if they were legalized; and
4. Vacation rentals can sometimes have fewer impacts than full time residences if they are used less intensively.

A longer list of potential impacts and benefits associated with vacation rentals was developed for one of the stakeholder meetings. (See reference materials.) Another list captured stakeholder ideas about permit conditions that could be applied to vacation rentals in order to address the downsides or impacts identified. These include possible limitations on the size of the parcel and the size of the house, with the thought that short term rental of large houses on large parcels would not impact neighbors or take affordable housing out of the housing stock. Other possible limitations on the list include a requirement for owner occupancy a certain percentage of the time.

Vacation rental advocates have suggested that there would be substantial economic impacts to the County if existing, illegal vacation rentals are forced to cease operation. Planning staff has neither confirmed nor disputed this suggestion, since to do so would require speculation about the alternative accommodations that guests of the existing rentals would use if the current rentals cease to exist.

Relevant Sections of Napa County Code

Since at least the late 1980s, the County has prohibited short term vacation rentals outside of commercial zoning districts by defining a dwelling unit as something that is for owner occupancy or rental on a monthly or longer basis (Section 18.08.26). The County has also had a strict definition of commercial use (Section 18.08.170), and has considered short term rentals (i.e. less than one month) to be a commercial, rather than a residential use.

Napa County Code provisions regarding home occupations (Section 18.08.310) and accessory uses (Section 18.08.020) have been interpreted narrowly, relying on terminology such as "[home occupations are] incidental to and subordinate to the use of the dwelling as a residence" and "[accessory uses are] subordinate to the main use and customarily a part thereof...clearly incidental, related and subordinate to the main use... cannot change the character of the main use." The full text of these and other relevant sections of County Code was included in a hand out distributed at the February 24th stakeholder meeting. (See reference materials.)

Relevant General Plan Policies

Vacation rental advocates have identified numerous policies in the Napa County General Plan in support of their proposal to legalize the use. These include policies in the Agricultural Preservation and Land Use Element and the Economic Development Element such as Policy E-2: "The County recognizes that tourism contributes to the economic viability of agriculture in Napa County and is an important part of the County's economy, generating jobs,

local spending, and tax revenues." (See reference materials.)

Nonetheless, General Plan, Policy AG/LU-33 clearly expresses the County's policy that short term tourist use of existing dwelling units is prohibited: "The County will promote development concepts that create flexibility, economy, and variety in housing without resulting in significant environmental impacts and without allowing residences to become timeshares, resorts, hotels, or similar tourist-type accommodations." There is also a program in the Housing Element (Program H-1c) that commits the County to "assign high priority to abatement of illegal vacation rentals, ensuring that existing dwelling units are used as residences, rather than tourist accommodations."

Other relevant sections of the General Plan include General Plan Policies AG/LU-20 and -21, regarding uses and intensities allowed in agricultural areas. These policies were enacted by the voters as Measure J (1990) and Measure P (2008) and generally limit uses to (a) agriculture and (b) one single family dwelling per parcel (except as specified in the Housing Element). There are a limited number of circumstances in which other uses are permitted in agricultural areas (e.g. legal non-conforming commercial uses), but unlike vacation rentals, these are generally articulated in other General Plan policies (e.g. Policy AG/LU-45 about legal non-conforming uses), allowing the plan to be interpreted as a whole to allow those other uses. The text of these and other relevant General Plan policies was included in a hand out distributed at the February 24th stakeholder meeting. (See reference materials.)

January 27, 2010 Stakeholder Meeting: Alternatives Exploration

The first stakeholder meeting provided an opportunity to brainstorm about possible alternatives to the "do nothing alternative" in which the County's prohibition on short term vacation rentals would stay in place, and the increased penalties adopted with the December 15, 2009 ordinance would take effect in June 2010. Stakeholders helped to identify a spectrum of possible alternatives in increasing intensity from "do nothing" to "anything goes."

Some of the interesting ideas that surfaced included the "Non-Ag Alternative," which would permit vacation rentals outside of areas designated for agriculture on the County's official land use map (General Plan Figure AG/LU-3), the "WDO Alternative," which would permit vacation rentals that are associated with a winery (on the same parcel or a different parcel), and the "Guest House Alternative," which would allow owners to rent guest houses, not dwellings. A full list of alternatives identified in the stakeholder brainstorming session was included in a hand out distributed at a small group meeting on February 17th, and at the February 24th stakeholder meeting. (See reference materials.)

The January 27th stakeholder meeting also included a discussion about concerns that have been expressed about vacation rentals and potential benefits of legalizing them, and possible permit conditions that could be put in place to ensure vacation rentals are compatible with agricultural and residential uses in the vicinity. The group overwhelmingly agreed that if vacation rentals are legalized, they should be required to pay TOT, and many suggested that private homeowners should be allowed to rent their homes part of the time, while corporations or "resorts" should be precluded from purchasing dwelling units and using them as short term rentals if feasible.

February 24, 2010 Stakeholder Meeting: Alternatives Evaluation

The second stakeholder meeting provided an opportunity to discuss potential regulatory and policy changes that would be needed to implement the alternatives identified in January. The group spent considerable time focusing on relevant General Plan policies, and staff presented an analysis of four alternatives, including sections of Napa County Code that would have to be revised to implement each alternative, the scope of required General Plan amendments, and the likelihood that approval from the voters would be required under Measure P (2008). Conclusions can be summarized as follows:

- | All alternatives analyzed -- except for the "do nothing" alternative and the "guest house" alternative -- would raise concerns for affordable housing advocates and would require an amendment to the Housing Element to eliminate Program H-1c, in addition to changes to General Plan Policy AG/LU-33 and Action Item AG/LU-33.1.
- | The "guest house" alternative would require changes to Napa County Code Sections 18.08.300 and 18.104.080 about guest cottages, and all other alternatives analyzed -- except the "do nothing" alternative -- would require changes to sections of Napa County Code about dwelling units (Section 18.08.260), accessory uses (18.08.020), and/or home occupations (Sections 18.08.310 and 18.104.090).
- | All alternatives analyzed -- except for the "do nothing" alternative and the "non-ag" alternative -- could require approval from the voters under Measure P (2008), since the zoning and General Plan changes might result in inconsistencies with the "intent" of the Agricultural Resource and Agriculture, Watershed and Open Space designations as defined in General Plan Policy AG/LU-20 and 21.

The group spent some time discussing how an ordinance could be crafted to address concerns about affordable housing by (a) prohibiting short term vacation rentals of smaller homes and (b) requiring the owner to live on the property for a percentage of the time, and whether there was a limited rental program that could qualify as a legal, accessory use of a single family home. Staff described the low threshold that the County has historically maintained for requiring a Measure P vote (e.g. selling sandwiches at the Pumpkin Patch produce stand), and indicated that only the "Non-Ag" alternative would avoid the question entirely.

Possible Next Steps

At the close of the February 24, 2010 stakeholder meeting, staff invited attendees to participate in the presentation to the Board scheduled for March 23, 2010, and indicated that there were probably two courses of action for vacation rental advocates: (1) develop an ordinance allowing short term vacation rentals with reasonable restrictions county-wide and put that ordinance before the voters; and (2) develop an ordinance with a very restrictive program and make the legal and political argument that voter approval would not be required for an accessory use that is "incidental and subordinate" to a single family home. As a hybrid, someone also suggested (3) adoption of an ordinance allowing short term vacation rentals with reasonable restrictions in Non-Ag areas for a "test" period, before proceeding with option (1) or (2).

Planning staff is seeking Board of Supervisors direction on next steps, and would particularly like Board of Supervisors input on whether they would be willing to entertain a limited program like the one suggested in item (2), above. Specifically, would the Board like to consider amendments to the General Plan and zoning regulations to allow vacation rentals as an accessory use within single family homes above a certain size when that home is occupied by the owner for a certain percentage of the year? And if the Board of Supervisors is interested in considering such an ordinance, would they be willing to do so without putting the question before the voters pursuant to Measure P based on an argument that the proposed General Plan changes (see the first bullet above) do not result in the various policies of the General Plan being internally inconsistent? A copy of Measure P is attached for reference.

SUPPORTING DOCUMENTS

- A . Ordinance Adopted December 15, 2009
- B . List of Meeting Handouts & Stakeholder Input
- C . Measure P (2008)

CEO Recommendation: Approve

Reviewed By: Helene Franchi