

Supplemental Staff Report - VDUs

December 3, 2015 Special Planning Commission Meeting

Overview

At the November 4, 2015 Planning Commission meeting, Commissioners requested additional information regarding VDU regulations. The requested information included: the legality of caps and bans, the Coastal Commission's stance of caps and bans, and examples of successful VDU regulations, including caps and bans in the Coastal Zone. This report is an attempt to provide that information. I also tried to address a few other issues and questions that came up. This is obviously a complex issue, and California has a large Coastal Zone. So I could not do an exhaustive compilation of all jurisdictions and regulations. However, I did try to include a variety of cases as well as those I have heard mentioned or cited. Trying to decipher the various regulations, particularly what is applicable in the Coastal Zone or not can be more difficult than it might seem. But I have included the most pertinent information I could find, and I think it provides a good cross section.

Legality

I have not gotten an official determination from the City Attorney. However, other cities in California have capped, banned, or partially banned VDUs, so there is a legal basis for this strategy. However, litigation over VDU restrictions, particularly bans, is very common. And there are a number of VDU groups / coalitions that will provide support to locals to litigate. Reasonable and well supported regulations, including caps and bans have stood up in court. However, it will likely take substantial resources to build a good case ('adequate factual basis'). I did include a memo written by the City of Bend's legal office. It includes a nice overview of how other communities have regulated VDUs and also covers some of the legal issues. While some of it is specific to Oregon, much of it is also applicable in California.

SB 593

This is a bill currently being considered by the State senate that would allow jurisdictions to pass ordinances that would require VDU hosting platforms (AirBnB, VRBO) to report specified information about rentals quarterly to jurisdictions so they can assess TOT and zoning compliance. Jurisdictions may also require the platforms to collect and remit TOT and would prohibit them from knowingly violating local ordinances. There are no state or federal laws that would restrict the City from regulating VDUs. As an interesting note, so many jurisdictions were banning and restricting VDUs in Florida that the State adopted legislation that prohibits local jurisdictions from unduly restricting VDUs.

Coastal Commission Stance

- Note that the Coastal Zone does not include the land around San Francisco Bay, which is regulated by the San Francisco Bay Conservation and Development Commission, so I did not include examples from this area.
- We know that the Coastal Commission has determined that VDUs are essentially a residential use, consistent with residential zoning. VDUs do not constitute an intensification of use such that a CDP would be required. Therefore, VDUs are assumed to be allowed in residential zones unless they are specifically prohibited by policy or regulations.

- From Solana Beach LCP Amendment Staff Report (May 2012): “*the Commission has typically taken the position that in the absence of a specific prohibition on short-term rentals, they should be considered permissible.*”
- The City inquired to Coastal Commission staff in 2005, during the first in depth discussions about VDUs, as to the legality of VDUs under the City’s existing LCP. Coastal Commission staff responded that they are considered a residential use (this was again confirmed in 2015). Coastal Commission staff stated that the City could not restrict or prohibit VDUs under current policies and regulations, and that new regulations would be needed.
- The Coastal Commission protects VDUs under Policies 30216 and 30222 as a high priority visitor serving use and lower-cost overnight visitor accommodations.
- From reading staff reports, it is clear that the Coastal Commission will want to see some hard evidence of the problems caused by VDUs and documentation of the alternatives for overnight visitor accommodations in the area.

Proposed Bans Overturned by CCC

Note that these communities do maintain a ban on VDUs in areas outside of the Coastal Zone.

- Encinitas
- Pismo Beach
- Carlsbad
- Others?

Examples of restrictions that have been approved by CCC

- Prohibition of rentals less than 7 days
- Caps on the total number of VDUs
- Caps by neighborhood
- Density and distance restrictions (e.g. no VDUs within 100 ft of another VDU)
- Prohibition in certain residential zones or certain areas in limited circumstances

Trinidad General Plan

- There are several references to protecting community character and emphasizing single-family, owner occupied residences. Policy 45 is the most explicit: *Trinidad’s role in the effort to provide adequate housing is focused on three areas: (a) attempting to keep the cost of existing moderate cost housing down so it can continue to be available to people with limited incomes who desire to live in Trinidad; (b) protecting the unique character of the city as a single family owner occupied fishing village; encouraging the county to allow a variety of housing types I the residential areas surrounding the city consistent with septic tank limitations.* This policy could be used to help support a limitation on VDUs. This is similar to the strategy used by the town of Mendocino to support a cap on VDUs (and now a proposed ban in residential areas).
- However, the general plan also recognizes the value of tourists and visitors to the community character and economy. The general plan’s description of the UR zone states: *Unobtrusive home occupations and limited rooming and boarding of non-related residents or visitors may be appropriate.*

- The draft general plan has not been fully reviewed and certainly not adopted or certified and so has no effect. However, in writing those policies, it was never suggested that there was any intent to prohibit VDUs.

Enforcement

There was a request for potential enforcement mechanisms that are not ‘complaint driven’ to take responsibility off the neighbors. I did brainstorm with a few people, and we could not come up with much. Enforcement of land use regulations tends to be entirely complaint driven because local governments do not have the resources to monitor all potential violations. The only realistic possibility would be for the City to do random spot checks. If there were 24 hour police presence or even other City employees that worked at night, this would be easier. But the City could provide a list or map of VDUs and ask the Deputy to occasionally patrol these and / or dedicate more evening and nightshift patrols to check on VDUs.

I think the existing ordinance does have some good tools, but they could possibly use some more detail or refinement to make enforcement clearer and easier. However, the City has not really had a chance to implement the existing ordinance yet. The possibilities of an owner or manager losing their VDU license or receiving fines gives them a very strong incentive to ensure their renters follow the rules through their own fines possibly. Also, having the local 24-hour contact person is a common requirement and has helped in other jurisdictions. One addition that could be made to the ordinance would be to require VDU owners or managers to submit monthly, quarterly or annual reports that include things like number of rentals, occupants and complaints.

VDU Numbers by Zoning

There were 38 VDU license applications that were submitted before the deadline of the moratorium. The zoning designations of those 38 are as follows:

- C – 2 (5%)
- PD – 3 (8%)
- SR – 6 (16%)
- UR – 27 (71%)

It also might be of interest that there are 21 PD zoned parcels that are developed. Many of these are utilized for small businesses, but most were once residences that could be converted to VDUs. There are also 3 vacant PD lots, all of which have some subdivision potential. Finally, there are 2 commercial lots with existing residences that could potentially be VDUs.

Carmel Example

Like Trinidad, Carmel is located completely within the Coastal Zone. Carmel has three residential zoning districts: R-1, R-4 (multi-family) and RC (residential and commercial). The exact prohibition of VDUs is unclear in their municipal code. I have seen several references to ordinance 89-17 which has been said to restrict short-term rentals (less than 30 days) in the R-1 zone but has also been stated to refer to all homes. General Plan policies only mention retaining the restriction in the R-1 Zone. However, there is another policy that existing hotels and motels were allowed to remain in these zones as a conforming use. According to the zoning ordinance, motels and hotels are allowed with a use permit in the R-4 and RC zones. A City-wide cap on the number of hotel / motel units was established at 948 units. This high number of hotel rooms was one of the factors considered by the Coastal Commission in approving the ban.

Carmel has a population of 3,722 and 3,417 total housing units. There are 948 authorized hotel / motel rooms and making the ratio of houses to hotel rooms very low at about 3. Housing vacancy rate for seasonal, recreational or occasional use was 924 units or 27.7% in 2000 (an indication that banning VDUs does not necessarily increase long-term residents). In 2010, the US Census lists 3,417 total housing units with 2,095 occupied and 1,063 vacant for seasonal use or 31% of housing units. The 2009-2013 ACS surveys puts the 2013 housing occupancy rate at less than 50%. The top two revenue sources for the City are property tax (29%) and TOT (28%) (LAFCo, 2011). And the City has more than 150 full-time employees.

Carmel sits at the southern end of a highly developed area with Monterey, Pacific Grove and Sand City just to the north on the southern end of the Monterey Bay. While Monterey has a similar ban on VDUs in residences, Pacific Grove and the County allow them on a minimum 7-day basis. Carmel is also surrounded by a Sphere of Influence (as approved / adopted by LAFCo) of mostly residential areas that would more than double its size and population where VDUs are currently allowed under the County regulations. This was another factor in allowing a ban.

City policies do not encourage additional visitor accommodations but do recognize their value and protect their existing levels and supporting their improvement, replacement or relocation as long as the absolute number stays the same. Carmel's general plan policies and zoning ordinances restrictions have been certified by the Coastal Commission. Carmel's ordinance prohibiting short-term rentals in the R-1 zone that was adopted in 1989 did stand up in court (but did not make it to either state or federal Supreme Court). VDUs and Short-term rentals are not specifically mentioned in the CCC staff report, but reference to the existing number of hotel/motel units and ratio to residences is mentioned as an important factor.

Note that Carmel is unique in that it was granted an exception from Coastal Commission permit authority within the original voter Proposition and then the Act itself (based on the fact that most of its ordinances were already consistent with Coastal Act policies). While the City attempted to get an LCP certified in the 1980's, it did not do so until 2002. Therefore, the 1989 ban on short-term rentals did not have to go to the Coastal Commission. The existing certified Land Use Plan (i.e. general plan) includes the following discussion:

To provide visitors with overnight accommodations, 50 percent of all commercially zoned land in Carmel-by-the-Sea has been developed and occupied by hotel and motel uses (mostly in R-4 and RC). A significant number of single-family residences also accommodate visitors on a monthly rental basis to augment commercial motel and hotel lodgings. Along with the City of Monterey, Carmel-by-the-Sea has the highest ratio of hotel/motel rooms to residential housing units of any City in Monterey County. There is approximately one hotel or motel room for every three residential dwelling units in the City.

Town of Mendocino

Mendocino has some of the most restrictive VDU regulations in the Coastal Zone (that I can find that have been certified). These are also some of the earliest restrictions on VDUs, certified by the Coastal Commission in 1992. The town of Mendocino is not actually an incorporated City, and so is within the County's jurisdiction. But the County has given the town a special designation with its own plan and its own set of land use regulations. Mendocino has

implemented a simple cap of one VDU for every 13 long term residential dwelling units. Also note that Mendocino's VDU regulations do not allow any kind of transferability of VDU permits and has a first-come-first serve waiting list of new VDU applications.

In speaking with Coastal Commission staff, I was informed that they are expecting an application for an LCP amendment for the Town of Mendocino that would ban VDUs in all residential zones by the end of the year. This will be an interesting case to watch and Coastal Commission staff are unsure of how or where it will go.

Mendocino was one of the first lumber towns on the north coast, and has been a major visitor destination since the mid 1900s. The town plan emphasizes and protects Mendocino's unique characteristics. In approving Mendocino's VDU regulations, the Coastal Commission cited Section 30253(e) of the Coastal Act which provide for the protection of certain special communities (*"New development shall... where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses."*). Part of the factual basis for this determination was the special designation and protections given the town by the County and certified as part of their LCP. In addition, the high number of existing commercial and visitor service uses was also cited (306 long-term residential uses, to 182 commercial uses and 274 visitor-service uses). The Coastal Commission did require modifications to the proposed amendment to ensure that the existing number of VDUs (at a ratio of 1 VDU to 7 long-term residential units at the time) were allowed to remain, and that the 1 to 13 ratio would only be implemented for new development.

Santa Cruz County

The County of Santa Cruz went through a similar process as Trinidad. The County's LCP did not specifically regulate them, so they were considered an allowable use. As the result of growing concerns over the impacts of VDUs, the County adopted regulations for VDUs in 2011, which were certified by the Coastal Commission. The regulations defined VDUs, allowed them in all residential districts, created a permitting / registration process, required payment of TOT and included performance standards and enforcement provisions. Within one particularly impacted neighborhood, the regulations also capped the total number of VDUs at 15% of the number of residences and 20% on any one block (within that same neighborhood). Those regulations were amended earlier this year to clarify some of the existing provisions, extend the cap to an additional neighborhood / area and prohibit VDUs in condos unless the adjoining neighbors have no objections. This amendment was also certified by the Coastal Commission.

Encinitas

Currently, the City of Encinitas has an ordinance similar to Trinidad's that regulates VDUs. In 2006, Encinitas submitted an LCP amendment to the Coastal Commission to prohibit short-term vacation rentals (less than 30 days) in all residential zones. The ordinance would still have allowed bed and breakfasts in residential zones with a use permit. In addition, existing VDUs in residential zones were allowed to continue as a non-conforming use (grandfathered). The Coastal Commission denied the amendment. The following are some excerpts from their January 25, 2006 staff report.

Staff is recommending denial of the LCP Amendment as submitted because the prohibition on short-term vacation rentals in all residential zones would significantly restrict lodging opportunities for coastal visitors and is in conflict with the LUP requirements for promoting access to the City's beaches. The City has documented that the demand for short-term vacation rentals is high especially in the residential areas west of Highway 101. Since the City has very few Visitor Serving Commercial designated properties west of Highway 101, allowing short-term rentals in the residential areas west of Highway 101 significantly contributes to the availability of coastal lodging near the shoreline. In addition, in approving the residential land use designations in the certified LCP Land Use Plan, the Commission would assume the residences could be rented as short-term vacation rental opportunities in residential areas, unless such use is specifically prohibited by policy or zoning.

"...the Commission was concerned with the minimal area of the City devoted exclusively to visitor serving uses." ... "In addition, short-term vacation rentals have been occurring openly for the past several decades and are widely advertised as available for public rental. ... Although the City has provided some anecdotal evidence of problems with short-term vacation rentals in residential zones, it has not established that short-term rentals significantly degrade the residential character of these residential neighborhoods and has not provided a detailed log or report of the various problems." ... "Until the City has had time to evaluate the effectiveness of the [new] regulations to control the problems that may exist with short-term vacation rentals, a ban on short-term vacation rentals is premature."

"In approving other Local Coastal Programs and Amendments in other communities, the Commission has found short-term vacation rentals in residential zones can be a valuable and necessary visitor serving asset. In each case, the Commission must evaluate the availability of existing hotel / motel accommodations in the near shore area, the historic pattern of short-term vacation rentals in the area, the specific visitor serving uses available, the services available to serve the proposed vacation rental use, and the impacts of such vacation rental use in the residential community."

"In the City of Imperial Beach, the Commission rejected an LCP amendment to ban vacation rentals in all residential zones in 2002 finding that the proposal was excessively restrictive and discouraging toward tourist related uses and visitor accommodations. In 2004, the Commission approved an amendment to the City of Imperial Beach's LCP to add short-term rentals as a permitted use in the Commercial and Mixed Use zones adjacent to the shoreline and to phase out any short-term vacation rentals in the residential zone (R-1500) along the shoreline. These Commercial and Mixed Use zones adjacent to the shoreline contained existing residential units. In addition, the phase out of vacation rentals in the residential zone adjacent to the shoreline was found to have an insignificant affect on the supply of short term vacation rentals (9 affected residences). Unlike the first LCP amendment, the [approved] request did not include an explicit prohibition of short-term vacation rentals in all residential zones throughout the City. In contrast, this City of Encinitas request involves a prohibition of short-term vacation rentals in all residential zones. In addition, unlike Imperial Beach, most of the land use designations along the shoreline in Encinitas are residential, and the prohibition of short-term vacation rentals would have a significant impact on the supply of visitor serving accommodations in nearshore areas."

In summary, the proposed LCP Amendment raises serious concerns relating to the supply of current and future visitor-serving uses within the City, particularly those near the shoreline. As proposed, the prohibition on short-term vacation rentals in all residential zones and the application of nonconforming use regulations for those that will be allowed to continue as a legal nonconforming use will have a significant adverse impact on visitors and would set an adverse precedent for balancing the needs of residents and visitors. Therefore, as proposed, the amendment cannot be found in conformance with and adequate to carry out, the certified land use plan, and must be denied.”

Solana Beach

Solana Beach prohibits VDUs of less than 7 days, and regulates VDUs of between 7 and 30 days. I have included an excerpt from the May 2012 staff report (revised findings) on a Solana Beach LCP update that discusses VDUs. Coastal Commission staff’s recommendation was to remove Solana Beach’s prohibition of rentals of less than 7 days. However, during the hearing that recommendation was changed by the Commission. I think both the discussion and the nature of the revisions provide important information that is relevant to Trinidad. The introduction to the revised findings includes the following summary:

“At the Commission hearing, revisions were made the staff recommendation, thus requiring revised findings. The revisions consist of deleting Suggested Modifications #129 and #130, which would have revised the proposed length of short-term rentals from a minimum of 7 days to 1 day. The Commission found that the near shore housing stock of Solana Beach consists of large single-family residences and multi-unit condominium structures in a residential neighbor [sic] without the services and activity typically associated with a vacation destination. Solana Beach is a small city, and there area surrounding hotels located only minutes from Solana Beach that serve as a reservoir of overnight accommodations. While the restriction on short-term rentals to a minimum of 7 days could limit their use by vacationers who cannot afford the time and expense of a weekly rental, a 7 day minimum still ensures some vacation rental opportunities in Solana Beach.”

SLO County

San Louis Obispo County’s VDU ordinance served as the model for the original regulations proposed by the Trinidad VDU Committee in 2010. Those regulations emphasized performance standards similar to Trinidad’s current ordinance. SLO County revised their coastal regulations were revised to include distance between VDU restrictions (less than 100 or 50 ft.) for certain zones in certain communities (Cambria, Cayucos and Avila Beach). Exceptions to these distance restrictions can be granted by a use permit. These revisions were proposed after a 5-year review of the original ordinance was completed. The Coastal Commission certified both sets of regulations.

Pismo Beach

From the summary of the November 17, 2011 CCC staff report recommending denial of Pismo Beach’s proposed ban on VDUs in residential zones:

“The City of Pismo Beach, located in southern San Luis Obispo County, has submitted the above-referenced Local Coastal Program (LCP) Implementation Plan (IP) amendment request

which would define vacation rentals and limit where they would be allowed in the City. The amendment would prohibit vacation rentals in all residential districts (R-1, R-2 and R-3), and would allow them in the commercial/visitor-serving districts, specifically as principally permitted uses within the Hotel-Motel and Visitor Serving (R-4) and Resort Residential (R-R) districts, and as a conditionally permitted use in the Retail-Commercial (C-1) districts. Currently, vacation rentals are not explicitly addressed by the LCP. Rather, they can be allowed in the above-referenced LCP districts based on LCP's broad categories of allowed use in each case; including, for residential districts, the allowed use category of 'any other use deemed compatible'. Thus, the proposed amendment would reduce areas where vacation rentals are allowed in the City, including entirely foreclosing the possibility of vacation rentals in residential areas.

Vacation rentals in Pismo Beach have raised issues similar to other areas with vacation rentals in California's coastal zone. These issues range from resident concerns that the presence of such rentals can lead to problems (undue noise, cars, garbage, etc.) that can negatively impact residents and communities, to local official concerns that such issue unduly burden already strained city services. In general, these same issues are cited by the City of Pismo Beach in this submittal. At the same time, vacation rentals provide an important visitor function that allows groups and families another option for overnight accommodations near the beach and shoreline, including in areas without significant commercial overnight options where residential communities flank the immediate shoreline. Such is particularly the case in the City's residential neighborhoods to the north-west of downtown and extending toward Avila Beach. Instead of providing for rules and standards for vacation rental operations, as many other local governments have done, the City instead has chosen to propose a prohibition in residential areas in this LCP amendment.

The prohibition on vacation rentals in the City's residential zones would significantly restrict the potential for alternate lodging opportunities for coastal visitors in these areas and is in conflict with the LCP Land Use Plan (LUP) requirements for promoting access to the City's beaches and shoreline access areas. Because the City has large areas along the coast zoned residential, particularly in its north-western half, prohibiting vacation rentals in these areas of the City limits the availability of alternate coastal lodging near the shoreline. Although it is true that Pismo Beach includes a range of visitor-serving overnight accommodations, the options for near-shore lodging in the north-western portion of the City are generally limited to a series of large and more expensive hotels, of which only three are located north of Dinosaur Caves Park extending toward Avila Beach.

Staff discussed these issues with the City, encouraging the City to work with staff to develop an alternate LCP amendment that avoids a vacation rental ban and instead focuses on standards and regulations for vacation rental operations. The City informed staff that it understood and appreciated the issues raised, but still wanted to propose the current residential ban approach. Thus, staff is recommending that the Commission deny the amendment as submitted, with direction to the City to work towards a more thoughtful vacation rental regulation process, particularly as it relates to residential stock in the City. The prohibition of vacation rentals in residential districts raises potential conflicts with Coastal Act and LUP policies, and the range of possible options to revise the submittal to address these concerns and those of the community

are best addressed at the local level through a revised planning process and LCP amendment. In other jurisdictions, vacation rental regulations have been developed that allow vacation rentals to effectively co-exist in coastal residential areas with better clarity on use parameters to ensure that they do not become problematic. Staff believes that appropriately regulating vacation rentals in a manner that allows an important overnight visitor function at the same time as protecting coastal resources, including access and recreational opportunities and community character, better addresses competing objectives consistent with protecting visitor-serving access per the Coastal Act and LCP.

In summary, the proposed request to ban vacation rentals in City residential zones is inconsistent with LUP policies protecting public recreational and visitor-serving access. Staff recommends that the Commission find the proposed amendment inconsistent with and inadequate to carry out the policies of the LUP, and that the Commission deny the IP amendment as submitted. The motion and resolution are found on page 3 below.”

Hermosa Beach, Santa Monica and Manhattan Beach

These are three more cities that I have seen cited as having bans on VDUs. However, it is unclear how these bans apply in the Coastal Zone. All of the coastal planners in our local North Coast District Office of the Coastal Commission are out this week for training (and most were also out much of last week). Therefore, I was not able to get some of my questions answered about the existing VDU bans in these cities and their relation to the Coastal Zone. It appears that these cities are in some kind of limbo without complete, certified Local Coastal Programs. And possibly because they do not have certified zoning ordinances, they also did not submit their VDU bans to the Coastal Commission. I don't know what kind of enforcement action, if any, the Coastal Commission could take. But I don't think these situations are applicable or possible for Trinidad at this point. Developers and residents of these cities are at a pretty significant disadvantage because the City can not issue CDPs, and have to be applied for directly through the Coastal Commission.

It does not appear that the Hermosa Beach Municipal Code is available online. Their website states that VDUs are not allowed, apparently at all. Hermosa Beach does have a certified Coastal Land Use Plan (analogous to a general plan), but its Implementation Plan (e.g. zoning ordinance) was never certified. Therefore, for any projects inside the City that require a CDP, developers must first get City approval, and then get the CDP approval through the Coastal Commission. No LCP amendment to ban VDUs was submitted to the Coastal Commission, because the ordinances were never certified in the first place. And the Coastal Commission does not require a CDP to establish a VDU in an existing residence, so no applications would go to them.

Santa Monica is in essentially the same situation as Hermosa Beach, with a certified Land Use Plan, but no certified Implementation Plan. Santa Monica has a ban on VDUs consisting of entire dwellings, but does allow home-sharing, or room rentals when the owner is onsite.

Manhattan Beach, which has a ban on VDUs, is even more confusing. It appears that their Implementation Plan only consists of a single, simple set of regulations dealing with only Coastal Permit Procedures. But it does not have its own zoning or land use regulations; it seems

to just add a layer of permit requirements to the City's existing, apparently uncertified, zoning ordinance.

Santa Barbara

The City of Santa Barbara has banned VDUs in many residential zones, but still allows them in 10 other zones, including 3 that are specifically geared towards hotel uses. Even so, the City has just beefed up enforcement of VDUs in areas where they are not allowed; the City recognizes that most existing VDUs are in the residential zones, even though they are allowable in many other areas. The City is also working on new regulations for home stays, where the owner is present. The City adopted a resolution recognizing the benefits of this type of use (sharing economy, visitor good-will, lack of many of the VDU problems because of the onsite owner).

Summary / Conclusion

I don't usually make recommendations as to what direction the Planning Commission should take in this kind of situation, since it should be a City decision. But it is a complex issue, and some staff guidance is likely helpful. At this point, I would suggest focusing on a cap that includes some density or distance restrictions by street or neighborhood. This is largely based on the direction given by the City Council, which voted 5-0 to pursue a cap. I think their decision should be given considerable weight and be deviated from only with very good cause. My recommendation is also a result of the research and information presented above. Based on past Coastal Commission decisions, staff reports and discussions, I don't think a ban in the UR and SR zones will be able to achieve certification in Trinidad. There just are not enough alternative overnight visitor accommodations in the area (at least hotel type units, there may be enough campgrounds and RV parks). I also think that a ban in just the UR zone would be an uphill battle for the City. It may be possible, but a lot of additional work would be required in order to justify it. And while I am not an attorney, any kind of ban would be a riskier proposition in terms of potential litigation than a cap. If the Commission does want to propose a ban on VDUs in any zone or area, I would suggest that you make that recommendation to the City Council for further input and guidance prior to drafting an ordinance.



ATTORNEY CLIENT MEMORANDUM

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TO: PLANNING COMMISSION, CITY COUNCIL
FROM: MARY WINTERS, GARY FIRESTONE
SHARON MURRAY-ROBERTS
SUBJECT: VACATION HOME RENTAL REGULATION
DATE: AUGUST 20, 2014

This Memorandum discusses the effect of regulating vacation rentals, the potential for legislative pushback, current prohibitions/restrictions in other Oregon cities, and the vacation home rental process of other tourist destinations in the United States. It also covers "moratorium" risks/benefits, the need for Measure 56 Notice, and the critical role of supporting data for any action taken. It is intended to convey our research and recommendation based on a review of the approach taken by other jurisdictions.

I. Nonconforming Use

A. Existing Vacation Home Rentals

If Council adopts an ordinance amending the Bend Development Code that restricts or prohibits vacation home rentals in Bend, unless specifically made retroactive, existing vacation home rentals at the time of adoption could continue under the nonconforming use provision of the code.¹ BDC Section 5.2.100 allows the continuation of land uses

¹ 5.2.100 Nonconforming Uses.

Where, at the time of adoption of this code, a use of land exists that would not be permitted by the regulations imposed by this code and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful, provided:

- A. Expansion Prohibited. No such nonconforming use shall be enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this code. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land.
- B. Location. No such nonconforming use shall be moved in whole or in part to any portion of its lot, or any other lot, other than that occupied by such use at the effective date of adoption or amendment of this code, unless such move would bring the use into conformance with this code.
- C. Discontinuation or Abandonment. The nonconforming use of land shall not be discontinued for any reason for a period of more than 12 months. For purposes of calculating the 12-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
 1. On the date when the use of land is physically vacated;
 2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
 3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or
 4. On the date a request for final reading of water and power meters is made to the applicable utility districts.
- D. Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason for a period of more than 12 months, any subsequent use of the land shall conform to the applicable standards and criteria specified by this code for the land use district in which such land is located.
- E. Nonconforming street access connections that exist prior to the adoption of this code and that do not conform with standards in BDC Chapter 3.1 shall be brought into compliance when the following conditions exist:
 1. When a new access permit is requested for the subject property; or
 2. When a building permit or land use application is submitted that results in an increase of trip generation by 20 percent and 100 average daily trips (ADT). [Ord. NS-2016, 2006]

that were lawful when established, but which have become nonconforming due to a code change. Limitations on nonconforming uses include the inability to expand, move locations, or discontinue/abandon the use. If the City prohibited or restricted existing vacation home rentals, Council must amend BDC 5.2.100 to create an exception for vacation home rentals (so the nonconforming use provision no longer applied), which is legally risky.

B. Future Vacation Home Rentals

Nonconforming use is not a concern for future vacation home rentals as it only applies to land uses that were conforming when established, a non-issue if the vacation home rental prohibition/restriction is prospective only. However, BDC 3.5.200(L) would need to be changed as it allows for vacation home rentals "within all Residential Districts," with minor parking and occupancy requirements.²

II. Examples of Prohibitions/Restrictions on Vacation Home Rentals in other Oregon Cities

Quite a few Oregon cities restrict or prohibit vacation home rentals in specified zones:

- The City of Ashland does not allow the rental of homes (or even a room in a home) for a period of less than 30 days if the home is in Ashland's Single-Family residential zones. See Ashland, Or. Municipal Code § 18.22.020.³ This past month, the City of Ashland directed City staff to draft an ordinance to loosen its current restrictions on homeowners who rent out space to tourists for short stays. Changes under consideration include: allowing vacation home rentals in single-family zones if owners are on site, allowing only one tourist accommodation of one to two bedrooms per home, requiring the tourist space to be within the home or attached to the home, and barring the provision of separate kitchen facilities.
- In Manzanita, vacation home rentals are permitted everywhere, but in certain residential areas rental density is capped to 17.5 percent of homes.⁴
- In Depoe Bay, in 1996 the City banned vacation home rentals altogether and gave existing rentals a four-year grace period to "wind down." The City allows vacation home rentals in commercial zones and in twelve oceanfront houses specially rezoned to allow limited commercial use. *Id.* On May 6, 2014, the Depoe Bay City councilors voted 6-0 to not pursue expanding the vacation home

² **3.6.200(L) - Vacation Home Rental.** The use of a residential dwelling for vacation rental occupancy is permitted within all Residential Districts subject to a Type I land use application and applicable fee when the following operational standards are met:

1. Occupancy. The maximum occupancy for the dwelling shall be two persons per bedroom plus two additional persons. For example, a two-bedroom dwelling would have a maximum occupancy of six persons.
2. Parking Minimum. One parking space per bedroom in accordance with BDC Chapter 3.3.
3. Prohibited Use. No recreational vehicle, travel trailer, or tent or other temporary shelter shall be used in conjunction with vacation home rental.
4. Monitoring. All vacation homes shall register with the City of Bend for Transient Room Tax and must maintain a guest logbook. It must include the names and home addresses of guests, guests' license plate numbers if traveling by car, dates of stay and the room number of each guest. The log must be available for inspection by City staff upon request.

³ <http://www.mailtribune.com/apps/pbcs.dll/article?AID=/20140705/NEWS/407050303>

⁴ http://www.thenewsguard.com/news/article_400827c4-c85d-11e0-95ee-001cc4c002e0.html.

rental ordinance due to public opposition.⁵

- The City of Garibaldi does not allow vacation home rentals in its residential zones.⁶
- The City of Seaside has carved out designated neighborhoods to remain free of short term rentals. Other neighborhoods require planning commission review where over 20% of the properties within 100 feet are already used as short-term rentals. *Id.*
- Rather than prohibit vacation home rentals, Cannon Beach has capped the number of rentals at 92 (the number that existed in 2004—the year the cap went into effect). When a property owner applies for a permit, which allows five years of unlimited rental, the owner goes onto a waiting list to wait for a permit to expire or for a rental property to change hands. Shortly after the ordinance was passed, it was put to a public vote and upheld by a slim margin. *Id.*
- In Tillamook County, commissioners adopted an ordinance that imposed regulations on garbage removal, quiet hours, maximum occupancy and parking.
- The City of Portland disallows short term vacation home rentals in residential zones.⁷ However, on July 30, 2014, the Portland City Council approved an ordinance to legalize one and two bedroom short-term rentals in privately owned homes—a service largely run by the company Airbnb.⁸ The property owner must get an inspection of the property, notify neighbors and purchase a permit for \$180. Airbnb collects an 11.5% tax on the short-term rentals (6% city lodging tax and 5.5% Multnomah County tax).⁹
- Lincoln City, with a population of only 8,000, has over 500 vacation home rental homes. It is struggling to find a compromise between its vacation home rental property owners and its year-round residents. The issues at the center of the problem are where the vacation properties should be located, limits on how many days they can be rented, and reasonable safety requirements for rental properties.¹⁰ The planner for Lincoln City told Sharon that Lincoln City Council is looking at creating a new zone that will permit vacation home rentals as an outright permitted use (currently it is an “accessory use” in the R1 zone). This is all potential as the Council has not acted yet. He added that the City Attorney is concerned about “partial takings” claims if any restrictions are passed. One idea proposed in 2013 was to create “yes and no zones” within residential areas. A yes zone would allow unlimited short-term rentals and a no zone would restrict the number of short-term rental days. The proposal would have grandfathered in existing rental properties in the no zones with the caveat that upon the sale or death of the current owner, the new owners must comply with the rental restrictions. The proposal raised questions about whether the city could be sued by home owners in the no zone for devaluing their properties.

⁵ <http://lincolncountydispatch.com/index.php/news/item/2166>. Last accessed August 1, 2014.

⁶ http://www.thenewsguard.com/news/article_400827c4-c85d-11e0-95ee-001cc4c002e0.html.

⁷ <http://www.portlandoregon.gov/bds/article/226140>.

⁸ The City of Bend currently has 333 rentals listed on Airbnb.

⁹ <http://mashable.com/2014/07/23/portland-airbnb/>

¹⁰ <http://www.statesmanjournal.com/story/news/2014/05/13/lincoln-city-grapples-renter-resident-property-issues/9062151/>

III. Examples of Restrictions/Prohibitions and Process in other Tourist Destinations

- **Palm Springs, California**¹¹ The City of Palm Springs is trying to find a balance between tourists and locals. The City expects to bring in \$4 million in transient occupancy tax in 2014. Concerns over noise, parking and standard of living are at the center of the ongoing debate. The City has put in new restrictions: an age minimum of 25 for the renter, requiring two members of the ownership to be on call on the weekend, a ban on any amplified music from a rental's property line, and a new hotline for complaints which puts the onus on property owners instead of the police department.
- **Indian Wells, California**¹² On May 5, 2014, the City of Indian Wells adopted a 45-day moratorium on any residential rentals less than 30 days in length, in response to input from residents about short-term rental properties disrupting neighborhood quality of life. On June 5, 2014, the moratorium was extended through May 5, 2015, changing the prohibition to rentals of less than 7 days in length. The moratorium does not apply to legal vacation home rentals for which taxes are current and there were no citations or notices of violation of code on the property. The City will host a public study session at which time City staff will present their findings of research of best practices, and receive input from the public.
- **Durango, Colorado**¹³ The City of Durango has a moratorium on issuing new vacation home rental permits. No new applications are being accepted and previously-submitted applications are on hold until the moratorium is lifted. Only one vacation home rental on a street segment is allowed, which prevents "clustering." A second vacation home rental can be located on the street segment if it meets specific criteria and obtains a Conditional Use Permit. An amendment is in process that will limit the total number of vacation home rentals in certain zones.
- **Austin, Texas**¹⁴ In Austin, short terms rental owners must obtain an operating license by City Council resolution. A short-term rental is defined as the rental of a residential unit or accessory building for less than 30 consecutive days. To obtain an operating license, a short-term rental property owner must submit an application, pay a \$285 fee, and show proof of property insurance, payment of Hotel Occupancy Tax and a Certificate of Occupancy or Certified Inspection. Austin also has a cap on the number of short-term rentals allowed in each census tract of the city.

¹¹ <http://www.kesq.com/news/palm-springs-looks-to-balance-vacation-rental-restrictions/26875842>

¹² <http://www.cityofindianwells.org/civicax/filebank/blobdload.aspx?blobid=15991>

¹³ <http://www.durangogov.org/index.aspx?NID=800>

¹⁴ <http://www.austintexas.gov/str>

IV. Legislative Pushback

Based on the experience of at least one other state, the potential exists for legislative pushback if cities pass prohibitive or restrictive vacation home rental legislation. The State of Florida, in June 2011, passed a law which “preempted vacation home rental regulation to the State, and prevented local governments from enacting any new law, ordinance, or regulation that restricted or prohibited the use of vacation home rentals based on classification, use, or occupancy,” prior to June 1, 2011.¹⁵ Prior to this law being passed, several municipalities had enacted vacation home rental regulations that were very restrictive—one such ordinance “effectively prevented new vacation home rentals from opening within the city” by prohibiting vacation home rental stays of “less than 30 days.”

The same scenario could play out in Oregon; however, thus far, there has been no official move in Oregon to preempt local vacation home rental legislation, although there is at least one blog raising concerns over vacation home rental restrictions.

V. Adequate Factual Basis

ORS 227.186 provides that all legislative acts relating to the comprehensive plan, land use planning or zoning adopted by a City “shall be by ordinance.” Under Statewide Planning Goal 2, land use planning decisions must have an adequate factual basis. The Goal 2 requirement for an adequate factual basis applies regardless of the legislative or quasi-judicial nature of a comprehensive plan or land use regulation amendment. *Rea v. City of Seaside*, 27 Or LUBA 443 (1994). Even the decisions that have upheld a restriction on vacation home rentals (such as in Seaside and Lincoln City) have reviewed the City’s findings and specific reasons for the restriction (compatibility discussion, needed housing for tourist statistics, etc.)—the kind of information that staff is proposing to gather. We strongly advise having this kind of data in the record before any type of limitation on issuing permits is considered by council, to form a basis for findings and an adequate factual basis, along with comprehensive plan policies, etc.

The general data collection being proposed includes the following for the vacation home rentals currently operating in Bend: **TRT, business licenses, and planning approvals.**

Staff will start with the following data to identify where there are complaints with vacation home rentals: **police call/crime data, code enforcement complaints, noise complaints, and nuisance complaints.**

To provide an adequate factual basis in addition to comprehensive plan policies and community values, the City can use this to create a series of maps and charts to describe the “current situation” on the Vacation Home Rentals, *i.e.*, the location,

¹⁵ See Florida House of Representatives Final Bill Analysis. <http://www.flsenate.gov/Session/Bill/2014/0307/Analyses/h0307z1.BPRS.PDF>.

frequency, type of complaints, and a validation of the complaints, analyze the existing situation and describe possible solutions for the “problems” shown with the data.

VI. Moratorium or Ordinance Disallowing Vacation Home Rentals Pending Further Regulation.

We found no Oregon cities that have a moratorium on vacation home rental permits. Commissioner Wagner thought that Lincoln City had a moratorium, but we called and spoke to the Lincoln City planning department and there isn't a moratorium and never has been.

While the term “moratorium” has been used to describe a “pause” in issuing permits for vacation home rentals, such action does not fall under Oregon’s moratorium statute. By its express terms, the moratorium statute applies only to “construction and land development.” ORS 197.520. The statute requires notice to DLCD and express findings related to the estimated capacity of public facilities, that the moratorium be limited in area to where shortages occur or be based on compelling need (and other findings related to buildable land), and be limited in duration to 120 days, with six month extensions only after a public hearing.

As a result, there is no statute that allows moratorium in issuing vacation home rental permits, but neither is there a statute that disallows such a pause. A Washington State law review article speaks to the issue of municipalities having the power to implement moratoria without an express grant from the legislature. *Chinks in the Armor: Municipal Authority to Enact Shoreline Permit Moratoria*, 31 Seattle U.L. Rev. 177 (2007). Some states, such as California, have found sufficient authority for municipality-enacted moratoria in the “home rule” provisions. *Miller v. Board of Public Works of Los Angeles*, 234 P. 381, 388 (Cal. 1925). Other states, like Minnesota, have held that under general principles conferring broad police powers upon municipalities, municipalities have authority to adopt moratorium ordinances of limited duration, provided they are enacted in good faith and without discrimination.” *Almquist v. Town of Marshan*, 245 N.W.2d 819, 825 (Minn. 1976). However, in Pennsylvania, the Supreme Court held that a municipality’s power to impose a moratorium on subdivision approvals while revising its comprehensive zoning plan was invalid, as it was neither implicitly granted nor incidental to the powers expressly conferred under the planning enabling act in force. *Naylor v. Twp. of Hellam*, 773 A.2d 770, 775 (Pa. 2001); see also *Lancaster Dev. Ltd v. River Forest*, 228 N.E.2d 526, 529 (Ill. App. Ct. 1967) (holding invalid a temporary zoning measure that prevented the issuance of a permit until three months after the question of amending the zoning ordinance was referred to the zoning board of appeals).

So far, Oregon courts have not spoken to this particular issue. Accordingly, to implement a moratorium or pause on issuing vacation home rental permits is not without risk. A relatively short duration, strong factual basis (assuming it exists), along with balanced findings, reduces the risk. Any ordinance to limit or restrict vacation home rentals would require an ordinance with findings, and a full land use process including

Ballot Measure 56 notice prior to public hearings before the Planning Commission and City Council.

VII. Measure 56 Notice

Under ORS 227.186, any substantive change other than procedural to either BDC 5.2.100 or 3.5.200(L) requires Measure 56 notice. The statute requires that “[a]t least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.” ORS 227.186(4). The term “rezone” as used in this statute includes both changes in the “base zoning classification of the property” and “[a]dopt[ion] or amend[ment of] an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.” ORS 227.186(9)(a)&(b). The “notice of land use change . . . shall be approved by the city and shall describe in detail how the proposed ordinance would affect the use of the property.” ORS 227.186(5). The statute prescribes the wording and layout of the notice.

Under ORS 227.186, in our opinion, Measure 56 Notice would likely also need to be provided if the City wants to stop issuing vacation home rental permits while it considers further regulation. Such a pause would “limit or prohibit land uses previously allowed in the affected zone.” Therefore, the safest course would be to send out the notice prior to any hearing to temporarily restrict permits, the same as regulations designed to consider more permanent restrictions.

VIII. Recommendation

First, one point of clarification—the City’s audit revealed that most vacation home rental owners pay the room tax, and those that didn’t ended up paying fairly promptly. We do have a land use process for approval—the fee is \$454 (not too different from Sisters), and we have parking requirements—one off-street parking space per bedroom. Everyone currently has to comply with the noise ordinance.

Many issues are considered by jurisdictions as they make this decision—tourism, economic development, real estate and property rights, business support, neighborhood livability, market expectations, community values, etc.. As seen above, regulatory options include a discussion of where vacation properties should be located, should there be limits be on how many days they can be rented, capping the number of rentals and instituting a permit system, treating areas equally and fairly, distinguishing between the kind of rentals, perhaps a system for violators of the permit system, more neighborhood input for compatibility, to name some of the approaches other jurisdictions have taken. This should be a comprehensive discussion, with the many stakeholders involved at the table.

However, one path to consider is to create incentives and disincentives rather than regulation. The list of what City Council could do to curb the concerns about Vacation home rentals includes but is not limited to:

1. Increase enforcement – when a complaint is called into the Police, police could contact the property owner/manager immediately and require that the owner/property manager arrive on scene with the police;
2. Tax or impose fees on Property Management companies that operate Vacation home rentals;
3. Tax or impose fees on all vacation home rental owners;
4. Increase the Business License Fee for Vacation Home Rentals;
5. Tax or impose fees on Vacation Home Rental owners for each verified complaint/code enforcement violation;
6. Establish a licensing program for Vacation Home Rentals. Multiple violations of established rules result in revocation of the license. The licensing fee can pay the cost of the program;
7. Develop a density ratio limit for Vacation Home Rentals by neighborhood. Work with individual neighborhoods to develop 'codes of conduct' for the neighborhoods;
 - a. What is happening?
 - b. How do we know that this is what is happening?
 - c. How are we dealing with complaints?
 - d. Is the enforcement working?
8. Questions to consider:
 - a. How do we create disincentives to deter the behavior neighbors complain about?
 - b. How do we increase the responsibility of owners/property managers of VR tenant actions?
 - c. How do we estimate staff time required for proper enforcement of existing policies and procedures?
 - d. Should we increase staff time directed to enforcement? How do we pay for it?

Staff will be prepared to present data as described above at the September 17 meeting for a better informed discussion. Please let us know if you have additional data requests or questions, which we are happy to answer.

Zone. The figures are based on experience with the existing 153-bed, HI-San Diego Downtown Hostel. Both models include construction costs for rehabilitation of an existing structure. The difference in the two models is that one includes the costs of purchase of the land and the other is based on operating a leased facility. Both models include “Hard” and “Soft Costs” and start up costs, but not operating costs. “Hard” costs include, among other things, the costs of purchasing the building and land and construction costs (including a construction cost contingency and performance bond for the contractor). “Soft” costs include, among other things, closing costs, architectural and engineering costs, construction management, permit fees, legal fees, furniture and equipment costs and marketing costs. Based on these figures, the total cost per bed for the two models ranges from \$18,300.00 for the leased facility to \$44,989.00 for the facility constructed on purchased land.

In looking at the information provided by HI, it should be noted that while two models are provided, the model utilizing a leased building is not sustainable over time and thus, would likely not be implemented by HI. In addition, the purchase building/land model includes \$2,500,000.00 for the purchase price. Again, this is not based on an actual project, but on experience from the downtown San Diego hostel. The actual cost of the land/building could vary significantly; as such, it makes sense that the total cost per bed price for this model could be too high. In order to take this into account, the Commission finds that a cost per bed generally midrange between the two figures provided by HI is most supportable and likely conservative.

This payment (i.e. \$30,000 in 2007) is to be adjusted annually to account for inflation according to increases in the Consumer Price Index – U.S. City Average. The purpose of the account shall be to establish lower cost overnight visitor accommodations, such as new hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of North San Diego County, with priority given to developments within the City of Solana Beach.

It is the Commission’s expectation that the Implementation Plan will provide more detail on how the monies and accrued interest will be authorized and dispersed. For example, all development funded by such an account should receive review and approval by the Executive Director of the Coastal Commission, and requires a coastal development permit if in the coastal zone. In addition, a plan for alternative dispersion of the monies should be developed in the event that no lower cost overnight visitor accommodation projects can be funded within 10 years of collection of the mitigation payment. For example, any portion of the monies that remain after ten years could be donated to one or more of the State Park units or non-profit entities providing lower cost visitor amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the City and Executive Director.

Vacation Rentals

The subject of short-term, or “vacation” rentals in the City of Solana Beach has a long, and often controversial history. Prior to incorporation, Solana Beach was part of the County of San Diego. The County had an LCP approved by the Commission, but it was

never effectively certified and the County never took permit issuing authority in part because shortly after approval of the LCP, the Cities of Solana Beach and Encinitas incorporated, removing the bulk of Coastal Zone land from the County. The County's LCP is silent on the subject of short-term rentals, and the Commission has typically taken the position that in the absence of a specific prohibition on short-term rentals, they should be considered permissible. At some point after incorporation, the City of Solana Beach adopted an ordinance that defined and regulated short-term vacation rentals, and prohibited rentals of less than 15 consecutive days. This occurred without benefit of a coastal development permit, although such a prohibition is considered a change in intensity of use of land and is therefore "development" under the Coastal Act.

In 2003, after numerous public hearings over the course of year, the City of Solana Beach introduced an ordinance amending the municipal code to allow vacation rentals for a minimum 7-day period and adopting a strict permit process for vacation rentals. There was considerable public interest in the action, with many residents concerned that vacation rentals, even at a weekly minimum, would bring overcrowding, excessive noise and disorderly conduct to residential areas. Other commenters took the position that the definition of transient occupancy should be less than seven days, since a longer minimum stay hurts owners who want to use their properties for rental income.

Ultimately, the City approved an ordinance prohibiting rentals for less than 7 consecutive calendar days in all residential zones. Short-term rental permits are available for stays between 7 and 30 days, with penalties for owners whose guests create unreasonable noise or disturbances of any kind. The City did not obtain a coastal development permit for the change in short-term rental policy. The subject LUP ~~similarly~~ prohibits short-term rentals ~~less of fewer~~ than 7 days in length.

~~The Commission is well aware that short-term rentals can, when not adequately regulated and enforced, result in impacts to the quality of life for permanent residents. Vacationers do not always have the same goals and incentives to be good neighbors as do long-term residents. However, while the strict prohibition on short-term rentals to a minimum of 7 days (7 days minimum) is could be prohibitive for many vacationers who cannot afford the time and expense of a weekly rental, and cannot really be called "short term," and the City's policy eliminates a significant potential source of overnight visitor serving accommodations in a City that already has a very limited supply of overnight accommodations 7 days still offers a potential vacation opportunity for some people, and is certainly an improvement over a 15 day minimum.~~

Section 30221 of the Coastal Act requires that oceanfront land be used for recreational-related uses whenever feasible. The City has reported some anecdotal evidence about problems with short-term rentals; it has not established that short-term rentals significantly degrade the residential character of residential beachfront areas. Short-term rentals occur all along the California coastline. Problems with noise and parking issues associated with short-term vacation rentals can be addressed through strict regulations and enforcement. In the City of San Diego, the beachfront communities of Mission Beach, Pacific Beach, and Ocean Beach have very limited hotel/motel accommodations, but residential short-term rentals make up for this limitation.

Short-term rentals are a particularly attractive option for families with children because they include kitchen facilities, and multiple rooms. While there is little expectation that a weekend rental of an oceanfront residential unit in the City of Solana would be considered “low-cost” (currently, a weekly rate for a two-bedroom condominium is in the vicinity of \$1,500 a week), it can be a lower-cost alternative to a beachfront hotel when shared among a group. ~~Clearly~~ Although, a weekend rental would be more affordable than a 7-day rate, a weeklong vacation rental does still provide an attractive alternative to a hotel for overnight accommodation. ~~In any case, a~~ Allowing vacation rentals significantly increases the potential pool of overnight accommodations in an area that is currently lacking in such opportunities. As noted above, there are only two hotels/motels in the City, both of which front on Highway 101. There are no commercial recreational facilities of any kind on the shoreline in Solana Beach; the entire shoreline, with the notable exception of Fletcher Cove beach, is occupied by private residential development. There are no options for oceanfront overnight accommodations in Solana Beach, except through private residences. In addition, as discussed above, other than the two existing hotels in the City, there are not many options for other land areas in the City likely to provide additional overnight accommodations in the future. The City’s residential stock is really the only potential the City has to increase the availability of visitor accommodations in the foreseeable future.

The Commission is aware that vacation rentals can be a highly contentious issue, and that significant public input at the local level led to the City’s decision to prohibit rentals for less than seven days. However, the Commission’s perspective must be to consider the statewide demand for overnight accommodations on California’s shoreline. Visitors looking for weekend accommodations on Solana Beach’s scenic shoreline are not represented at the City’s local hearings on vacation rentals. There is abundant evidence that short-term rentals can be compatible with stable, well-maintained residential neighborhoods, and the small beach oriented town character of a city, particularly in high density zoned areas along the shoreline. Other California cities, including Imperial Beach and Encinitas that have placed some restrictions on short-term vacation rentals, typically allow them to occur somewhere in the City, rather than putting a blanket prohibition on them. In February 2004, the Commission approved restrictions on vacation rentals in some residential areas of the City of Imperial Beach, because they are allowed in the City’s visitor-serving designated area (the Seacoast Commercial Zone), and in the residential units located in the Seacoast commercial area (LCPA #1-03). Short-term rentals are also allowed in the City of Imperial Beach’s General Commercial zone. In November 2006, in response to a proposal to prohibit vacation rentals in all residential zones, the Commission allowed the City of Encinitas to prohibit vacation rentals only in the portion of the City east of Interstate 5.

More recently, in December 2011, the Commission found in the City of Pismo Beach, an outright ban on vacation rentals was not consistent with the Coastal Act (LCPA PSB-1-10). In July 2011, the Commission determined that allowing vacation rentals with strict regulations on the implementation and number of rentals in Santa Cruz County would not unduly restrict or prohibit the availability of overnight visitor-serving accommodations (LCPA SCO-1-11).

However, the City of Imperial Beach's Seacoast District, and the City of San Diego communities of Mission Beach, Pacific Beach, and Ocean Beach, are dense, urban-oriented communities with a long history of offering short-term vacation rentals. In contrast, the near shore housing stock of Solana Beach consists of large single-family residences and multi-unit condominium structures in a residential neighborhood without the services and activity typically associated with a vacation destination.

Short-term rentals can, when not adequately regulated and enforced, result in impacts to the quality of life for permanent residents. Vacationers do not always have the same goals and incentives to be good neighbors as do long-term residents. While the restriction on short-term rentals to a minimum of 7 days could limit their use by vacationers who cannot afford the time and expense of a weekly rental, a 7 day minimum still ensures some vacation rental opportunities in Solana Beach.

Furthermore, visitors to Solana Beach are not required to stay within the City limits, of course. There are approximately twenty other hotels available within convenient driving distance of Fletcher Cove, including a range of low, moderate, and high end accommodations in the Cities of Encinitas to the north, and Del Mar, to the south. However, it is likely that visitors staying in these locations will likely visit the adjacent beaches in the cities of Encinitas and Del Mar, not Solana Beach, but they are also able to visit Solana Beach's amenities. Preferably, cities should would ensure that visitors are able to spread out along San Diego County's beach communities, with convenient accommodations and access to each of the region's beaches and tourist amenities. When local land use policies discourage visitors, it results in tourists concentrating in the communities that do provide visitor-accommodations and potentially overtaxing local natural resources, while leaving other beaches as mainly resident amenities. Alternatively, it results in more vehicles on the roadway, as visitors are forced to stay in one community while driving to other beaches. However, Solana Beach is a small city, and these surrounding hotels are only minutes from Solana Beach. Thus, they do serve as a reservoir of overnight accommodations.

The Commission is aware that vacation rentals can be a highly contentious issue, and that significant public input at the local level led to the City's decision to prohibit rentals for less than seven days. However, the Commission's perspective must be to consider the statewide demand for overnight accommodations on California's shoreline. Visitors looking for weekend accommodations on Solana Beach's scenic shoreline are not represented at the City's local hearings on vacation rentals. There is abundant evidence that short term rentals can be compatible with stable, well-maintained residential neighborhoods, and the small beach oriented town character of a city, particularly in high density zoned areas along the shoreline. Other California cities, including Imperial Beach and Encinitas that have placed some restrictions on short term vacation rentals, typically allow them to occur somewhere in the City, rather than putting a blanket prohibition on them. In February 2004, the Commission approved restrictions on vacation rentals in some residential areas of the City of Imperial Beach, because they are allowed in the City's visitor serving designated area (the Seacoast Commercial Zone), and in the residential units located in the Seacoast commercial area (LCPA #1-03). Short term

~~rentals are also allowed in the City of Imperial Beach's General Commercial zone. In November 2006, in response to a proposal to prohibit vacation rentals in all residential zones, the Commission allowed the City of Encinitas to prohibit vacation rentals only in the portion of the City east of Interstate 5.~~

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~~In Solana Beach, prohibiting short term residential rentals throughout the City excludes 100% of the City's residential beachfront housing from merely having the potential to be available to visitors. This would place a significant restriction on the availability of a potential source of lower cost, overnight visitor serving accommodations. By prohibiting vacation rentals throughout the City, the proposed LUP would not allow oceanfront land to be used for recreational related uses whenever feasible, as required by Section 30221 of the Coastal Act.~~

~~If the City had proposed a narrowly crafted policy that prohibited residential rentals in low density areas that are removed from the beach, or perhaps placed an upper limit on the number or percentage of vacation rentals in residential areas, the impact to low cost visitor serving accommodations would be limited and perhaps could be found consistent with the Coastal Act. However, As described above, Policy 2.33 requires that the City work to maintain the City's existing stock of low and moderate cost hotel units, and provides for a mitigation fee when necessary to replace units that are lost. Therefore, the City's existing supply of formal overnight accommodations should be protected. The LUP does allow 7-day minimum vacation rentals to take place in the residential areas of the City, so oceanfront land will provide some overnight accommodations as mandated by Section 30222.~~

~~Finally, the Commission notes that the ubiquity of on-line services offering short-term vacation rentals (or just "couch-surfing" facilities), makes any restriction on time or place of rentals difficult to enforce. Despite the actions of either the City or the Commission, if there is a demand for overnight rentals in the City of Solana Beach, it likely that people will find a way to offer them, and visitors will utilize them.~~

~~Thus, as proposed, the prohibition 7-day minimum for on short-term rentals would not have a significant adverse impact on visitors and would set an adverse precedent for balancing the needs of residents and visitors inconsistent with the public access and recreation policies of the Coastal Act public access and recreation because of the unique circumstances present in Solana Beach.~~

~~Therefore, suggested modifications revise Policy 5.31, which defines short term vacation rentals as rentals between 7 and 30 days, to define short term vacation rentals as rentals between 1 and 30 days. Policy 5.32, which prohibits short term vacation rentals for less~~

~~than 7 days, has been deleted. Only as modified can the LUP be found consistent with the public access and recreation policies of the Coastal Act.~~

Parking

The City has incorporated parking standards from their Municipal Code (SBMC) into the LUP, but there are still several references to SBMC policies in the LUP, which is not the standard of review for coastal development permits. Suggested modifications have been made to the parking matrix on Pages 20-23 of Chapter 2, Policy 2.39, and Policy 5.16 to remove references to the SBMC. Policy 2.36.5 has been added to include the shared parking provisions of the SBMC, and the fractional space policy of the SBMC has also been added, both of which are referenced in the submitted LUP.

As submitted, the City included policies allowing the public use of private parking facilities underutilized on weekends, but only west of Highway 101. However, the railroad bridge crossings from Cedros Avenue to the east side of Highway 101 present opportunities for providing parking reservoirs for coastal visitors, and these should be made available when feasible. Therefore, Policy 5.24 has been modified to allow such public use of underutilized parking where feasible within ¼ mile of the beach. In addition, suggested modifications revise Policy 2.30 to make development of a program to utilize existing parking facilities for office and commercial development located near beaches for public access parking a requirement for the City, not a suggestion, as proposed in the LUP.

As submitted, the LUP requires that a minimum of one on-site or on-street parking space be provided for any second residential unit, unless approved by the City Council pursuant to the City's Affordable Housing policies. However, the single family residential neighborhood located west of Highway 101 and North of Plaza street is within walking distance of the public beach accessways at Fletcher Cove and Tide Beach Park, and street parking in this area provides an important public parking reservoir that could be significantly impacted if second dwelling units were allowed to use on-street parking. Thus, as submitted, this portion of the LUP is inconsistent with Coastal Act access and recreation policies and must be denied. Suggested modifications require that in this limited area, on-site parking is required, ensuring that this policy can be certified, as modified, as consistent with Chapter 3.

As submitted, Policy 2.27 of the LUP allows restrictions on public parking, which would impede or restrict public access to beaches, trails or parklands, where "the restrictions have the effect of improving access to parking for coastal visitors." Suggested modifications delete this exemption, as there should not be any circumstance where restricting public parking would improve access to parking.

Suggested modification also correct or revise Policy 2.28, which, as submitted, would allow restrictions on access where there is substantial evidence that prescriptive rights exist.