



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time Closed Session Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: October 25, 2016

SUBJECT: Revisit the County's 2006 decision to not allow short-term vacation rentals in Residential Zoning Districts.

RECOMMENDATION: Receive a presentation from staff regarding short-term vacation rentals in Residential Zones and provide input and direction on the future of this use.

SUMMARY DISCUSSION: In late 2005 the Planning Department received a complaint about people operating short-term vacation rentals on properties with residential zoning in Aspendell. Leslie Klusmire, the Planning Director at the time, prepared a director's decision indicating that this use is not allowed in the County's residential zones. A cease and desist order for the use and advertising of these vacation rentals was sent by Ms. Klusmire to the people who were engaged in it. The director's decision was appealed to the Planning Commission on January 25, 2006. The Planning Commission approved the appeal, effectively deciding that short-term vacation rentals are allowed in the single-family residential zones. In April of 2006, the Planning Commission's decision was subsequently appealed to the Board of Supervisors. The Board granted the appeal of the Planning Commission's decision that determined short-term vacation rentals in residential zoning districts was allowed. The Board's decision was approved with a finding that stated: "one family residential zone districts (R1) do not allow for short-term, transient accommodation uses as a primary permitted use, a conditional use or an accessory use; therefore, short-term transient accommodation uses in a R1 one family residence zones is in violation of the R1- One Family Zone District as set forth in the Inyo County Code Section 18.30." This decision has guided the Planning Department's dealings with short-term vacation rentals since, and as such, they are considered a zoning violation.

Since 2006, the introduction of renting single family homes or rooms out of single family homes, and other even more creative modes of renting properties in single family zoning districts, through on-line services was made, and over time, has become a very popular way for people planning a vacation to find lodging. Many jurisdictions, especially those with high tourist attraction have been, or are currently, working on ways to address this new phenomenon. Locally, planning and tax collector/treasurer staff have been getting inquiries from people in the public asking what they need to do to set up a vacation rental business legally and how to collect the appropriate taxes. Staff has also been receiving complaints about already existing vacation rentals by neighbors, and currently one complainant has filed an official zoning violation. The issues commonly cited in these complaints are traffic, noise, disrespect for other properties in the vicinity and the use of neighboring facilities' parking areas and trash cans. These factors have made it necessary for staff to bring this issue to the Boards attention, once again. The 2006 decision was based on the Planning Staff's (at the time) evaluation of the County's zoning districts. Current staff agrees with this evaluation – updated and provided below.

Evaluation of the Inyo County Code with regard to vacation short-term rentals

The County's residential zones are reserved for residential uses. Transient accommodation, such as short-term vacation rental, uses are considered commercial uses in the Inyo County Code. The One Family Residences Zones, allows a single-family dwelling on each parcel. State statutes also permit a second

dwelling unit (granny units) on these same parcels. A dwelling, or residence, is a place that is used as a home either on a year-round or seasonal basis. This interpretation is illustrated by the definition of “dwelling unit” in the Inyo County General Plan’s Housing Element that defines a ‘dwelling unit’ as: One or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the unit for the exclusive use of a single family maintaining a household. Further, it is defined the Inyo County Code Section 18.06.210: “Dwelling unit” means a room or suite of rooms designed for or used as a residence and constituting a separate and independent housekeeping unit including a kitchen or cooking facilities, but not including a boardinghouse or club, or a hotel or motel where less than twenty percent of the rental units have a kitchen or cooking facilities. Transient accommodation uses are included and allowed for in the commercial land use designations and zones. Residential zones are created, in part, to protect residential neighborhoods from the degradation resulting from incompatible commercial uses. Specifically, the Inyo County Zoning Ordinance states the purposes and allowed uses for the following residential zones:

Chapter 18.21

RR (RURAL RESIDENTIAL) ZONE - 18.21.010 Purpose.

It is the intent and purpose of this chapter to provide suitable areas and appropriate environments for low density, single family rural residential and estate type uses where certain agricultural activities can be successfully maintained in conjunction with residential uses on relatively large parcels. The RR (rural residential) zone is intended to be applied to the areas outside the urban communities of Inyo County which are without fully developed services and where individual residences are expected to be largely self-sustaining, particularly for water and sewage disposal.

18.21.020 Principal permitted uses.

The following are the principal permitted uses of the RR (Rural Residential) zone:

- A. One single-family dwelling on a lot, including single-family mobilehomes subject to the requirements of Section 18.78.350;*
- B. Orchards, vegetable and field crops, nurseries, and gardens.*

Chapter 18.22 - RR-0.5-STARLITE ESTATES ZONE

18.22.010 Purpose.

It is the intent and purpose of this chapter to provide suitable areas and appropriate environment for low density, single-family rural residential uses, where certain agricultural activities can be successfully maintained in conjunction with residential uses. The RR (rural residential) 0.5 acre-Starlite Estates zone is intended to be applied to the area known as Starlite Estates and adjoining private lands which may be without fully developed services.

18.22.020 Principal permitted uses.

The following are the principal permitted uses of the RR (rural residential) 0.5 acre-Starlite Estates zone:

- A. One single-family dwelling on a lot, including single-family mobile homes subject to the requirements of Section 18.78.350;*
- B. Orchards, vegetable and field crops, nurseries and gardens.*

Chapter 18.30 - R-I DISTRICTS-ONE FAMILY RESIDENCES

18.30.010 Intent.

The one family residence district, designated herein by the primary symbol R-1, is intended to protect established neighborhoods of one family dwellings, and to provide space in suitable locations for additional development of this kind, with appropriate community facilities.

18.30.030 Permitted uses.

The following principal uses are permitted in an R-1 district:

- A. One single-family dwelling on a lot, including single-family mobilehomes subject to the requirements of Section 18.78.350;*
- B. Garden, orchard field crop; where no building is involved.*

Chapter 18.33 - R-2 DISTRICTS-MULTIPLE RESIDENTIAL

18.33.010 Intent.

The medium density multiple residence district, designated herein by the symbol R-2, is intended to protect established neighborhoods of such dwellings, and to provide space suitable in appropriate locations for additional housing developments of duplexes.

18.33.020 Permitted uses.

The following principal uses are permitted in an R-2 district:

- A. One single-family dwelling on a lot; two separate single family dwellings, including single-family mobilehomes subject to the requirements of Section 18.78.350;*
- B. Duplex, including two-family mobilehomes subject to the requirements of Section 18.78.350;*
- C. Garden, orchard, field crop; where no building is involved.*

Chapter 18.34 - R-3 MULTIPLE RESIDENTIAL ZONE

18.34.010 Purpose.

The purpose of this chapter is to provide a zone classification for those areas designated for multiple residential development beyond that permitted by the R-2 zoning district. It is intended to provide locations for multiple-housing developments such as apartments, townhouses, condominiums and mobilehome parks.

18.34.020 Principal permitted uses.

The following are the principal permitted uses in the R-3 zone:

- A. One single-family dwelling on a lot; two separate single family dwellings, including single-family mobilehomes subject to the requirements of Section 18.78.350;*
- B. Duplexes, including two-family mobilehomes subject to the requirements of Section 18.78.350;*
- C. Multiple-family dwelling(s). Number of dwelling units to be determined by the general plan
Maximum number of dwelling units permitted without a conditional use permit, fifteen;*
- D. Garden, orchard, field crop, grazing.*

Chapter 18.36 - RMH DISTRICTS-SINGLE RESIDENCE OR MOBILEHOME COMBINED

18.36.010 Intent.

The single residence and mobilehome combined district, designated herein by the primary symbol "RMH," is intended to protect established neighborhoods of one family dwellings (dwelling includes in its definition a mobilehome), and to provide space in suitable locations for additional development of this kind, with appropriate community facilities.

18.36.030 Permitted uses.

The following principal uses are permitted in an RMH district:

- A. One family dwelling on a lot (dwelling includes mobilehomes);*

B. Garden, orchard, field crop; where no building is involved.

The Inyo County Code does not include in any of these residential zones – accommodation uses. These uses are, however, included and allowed in the commercial zoning designations, specifically in:

**Chapter 18.48 - C-2 DISTRICTS - HIGHWAY SERVICES AND TOURIST COMMERCIAL
18.48.010 Intent.**

The highway services and tourist commercial or C-2 district, is established to provide space for highway and tourist related enterprises adjacent to major routes of travel, so regulated as to prevent the impairment of safe and efficient movement of traffic and to encourage attractive development, compatible with adjacent residential land uses.

18.48.020 Permitted uses.

The following principal uses are permitted in a C-2 district, when conducted entirely within a completely enclosed building:

. . . Motel, motor hotel; . . .

Chapter 18.54 - C-5 ZONE - COMMERCIAL RECREATION

18.54.010 Purpose.

The intent and purpose of this chapter is to provide a zone for commercially operated recreational activities, including resorts, lodges, motels, restaurants, general stores, campgrounds, mobilehome parks, service stations, dude ranches, and other uses oriented primarily to the traveler and tourist.

18.54.020 Principal permitted uses.

The following are the principal permitted uses of the C-5 zone:

- A. Hotel, lodge or motel;
- B. Dude/fishing ranch;

Based on the County's code short-term rental businesses are a commercial use. The persons who rent properties for short-term stays are not using the properties to create domestic households or homes. Although the code contains no specific definition of accommodation uses, land use laws distinguish between short term transient occupancy and household/dwelling uses. Generally, most counties and cities informally consider a rental of 30-days or less as transient occupancy accommodations. The 30-days as definition of transient occupancy is supported by California Tax Law that states: ***Revenue and Taxation Code - § 7280 (a) - The legislative body of any city, county, or city and county may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days. The tax, when levied by the legislative body of a county, applies only to the unincorporated areas of the county***".

The fact that the County has made it clear that there is no room within the Zoning Code, as currently written, to allow for short-term vacation rentals in residential zones, changes would have to be made to it for short-term rental use to be allowed legally. This is not a unique situation. Many jurisdictions across the Country have been grappling with the same issues as the increase of homeowners advertising short-term vacation rentals on websites like Air B&B has come to the forefront. Staff checked Air B&B for accommodations in the County for a random week (September 24–30, 2017). There are 29 lodging possibilities during that week through Air B&B including:

- Bishop, 9 houses and 1 Recreational Vehicle (RV)

- Big Pine, 4 houses
- Independence, 2 houses
- Lone Pine, 2 houses
- Tecopa, 7 houses, 2 RVs and 1 tent
- Furnace Creek, 1 house.

Some of the ads are just offering a room(s); others are offering the full house. The availability and type of accommodation choices is not static, so this is just one snapshot in time. It is enticing to homeowners to rent out their house when they will be away or a room while they are there to make some money off their property. Air B&B had an advertisement out on their website as staff looked up accommodations that said: “You could earn \$309 sharing your home in Bishop in a week – Become a Host”. This is a truly free market phenomenon that local jurisdictions must find a way to balance with local regulations.

Other jurisdictions in California have used various approaches to the issue. The City of Santa Monica prohibits short-term rentals of entire residential units within its city borders. As far as short-term rental of spare rooms, they allow it if the owner/host complies with licensing requirements and pays the City’s occupancy tax like hotels, motels, etc. do. The Cities of Anaheim and Malibu allow short-term rentals provided that the hosts register and pay taxes like other businesses offering lodging. Many jurisdictions require a use permit and have very well defined regulations for short-term rentals, such as Sonoma and Siskiyou Counties. Closer to home, Mono County has come up with a two-fold process for short-term rentals. An overlay zone must first be established, and then a use-permit must be obtained. All of the examples that staff reviewed also had provisions for the appropriate tax collection avenues for these businesses. This was generally the same taxes paid by motels and hotels within the jurisdiction.

Potential Health and Safety Issues

County Environmental Health and Public Works staffs have no issues with short-term vacation rentals with regard to the health and safety regulations they are responsible for overseeing.

Tax Issues – Inyo County Treasurer Tax Collector

If your Board decides to pursue allowing short-term rentals within the unincorporated areas of Inyo County, it is recommended, by the Tax Collector Treasurer that any and all participants are then subject to Inyo County Code Section 3.20 et seq. as all other short-term rental operators are. This will require an update of the referenced code section to incorporate the online hosting environment.

ALTERNATIVES:

1. Your Board could decide to leave the County’s short-term vacation rentals status quo. This would mean that these uses would continue in the County illegally and could potentially cause more Zoning Violation cases. It should be noted that if your Board decides to leave short-term rentals an illegal use, it would be beneficial to update the Code to clearly reflect this.
2. Allow short-term rentals in any residential district, but only as a conditional use. Conditional use permits require a noticed Planning Commission hearing, allowing for neighbors to comment. It would also require compliance with the California Environmental Quality Act. Within in the Conditional Use Permit conditions of approval could be required for various issues specific to the neighborhood such as for noise and parking.

3. Allow only short-term rentals of a room or rooms in an occupied home and prohibit the short-term rental of full houses, in any residential district, and only as a conditional use.
4. Prohibit short-term vacation rentals in residential zones in specific residential zones or areas (Aspendell etc.) and allow for them as a conditional use in all other residential zones.
5. Create an overlay district or a new zoning district that could be applied to appropriate individual neighborhoods to allow short-term rentals in that district, and to only allow short-term rentals as a conditional use in that district.
6. Develop neighborhood specific zoning to allow neighborhoods to define their own unique use mix for the neighborhood. This would entail agreement by all property owners in the neighborhood requesting such zoning.

NEXT STEPS: Staff will use the Boards direction to continue work on the issue of short-term vacation rentals in the County’s residential zoning districts.

OTHER AGENCY INVOLVEMENT: Inyo County Tax Collector Treasurer, Inyo County Assessor, Inyo County Environmental Health and Public Works Departments and the County Sheriff.

FINANCING: General fund resources are utilized to review and update the County’s Zoning Code.

<u>APPROVALS</u>	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i>

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

_____ Date: _____