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AGENDA ITEM NO.: 7

PLANNING COMMISSION MEETING DATE: February 22, 2017

SUBJECT: Workshop – Short Term Vacation Rentals

PROJECT INFORMATION

Supervisory District: Countywide

Recommended Action: Receive a presentation from staff; provide comments; and, a recommendation to the Board of Supervisors for staff to begin a public outreach effort.

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BACKGROUND

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 the one family residence zones is in violation of the One Family Zone Districts 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 zoning violations.

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 four official zoning violations complaints have been filed. Two people have also stated that they plan to turn in every short term vacation rental they find on a website for zoning violations. 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. 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-1 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 and Vacation Rentals by Owner (VRBO) to see how many of these types of businesses are advertised for the County. Staff found between the two (duplicates removed) there are:

- Bishop, 16-houses, 1-RV
 - Wilkerson, 1-house
 - Big Pine, 12-houses
 - Independence, 5-houses
 - Lone Pine, 4-houses
 - Tecopa, 8-houses, 2-RVs
 - Furnace Creek, 1-house
- Total, 47-houses, 3-RVs**

Some of the ads are just offering a room(s); others are offering the full house or RV. 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.

OPTIONS FOR INYO COUNTY

Zoning Basics

A jurisdiction’s zoning ordinance regulates the land uses within it. It assigns each piece of property to a zone that describes the parameters for how the land in it may be used. Zoning classifications, such as "R-1" for single-family residences, provide the means to achieve the goals and policies for land use as set forth in the General Plan and the zoning regulations must be in compliance with it. Typically, zoning ordinances describe the principle permitted, conditional and accessory uses for each of the zoning classifications in the jurisdiction, as well as, the development standards. Each of the zones includes allowable uses and standards such as, minimum lot size, maximum building height, and minimum yard setbacks. In most local ordinances, Inyo County’s included, the development of principle permitted uses per the Zoning Code, do not require a public hearing.

Zoning Designations and Short-Term Vacation Rentals

Although the County could update the zoning code for short-term vacation rentals to be an allowed use in all of the residential zones, generally these more controversial uses are best addressed by a process that requires a public hearing and is decided by the body responsible for making zoning decisions, primarily the Planning Commission. This way, the people in the surrounding community or neighborhood can weigh in on whether they think an application should be approved and can express any concerns they have about it. The application is also reviewed and evaluated by staff and presented to the Planning

Commission. The most common way this type of process is conducted is with a conditional use permit.

Conditional use permits must be applied for and currently the County requires a \$1,490 fee deposit. Staff analyzes the proposed use against specific findings' requirements and presents this information and a recommendation to the Planning Commission. The required findings for a conditional use permit are that it:

1. Meets the provisions of the California Environmental Quality Act.
2. Is consistent with the Inyo County General Plan.
3. Is consistent with the Inyo County Zoning Ordinance
4. Is necessary or desirable.
5. Properly relates to other uses and transportation and service facilities in the vicinity.
6. Would not, under all the circumstances of the case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.
7. Is necessary for the operating requirements of the site.

Staff also presents any conditions of approval that are deemed necessary for the use permit. This includes indemnification language for the County and any other requirements specific to the proposed use. In the case of short-term vacation rentals, if specific requirements are not identified in the zoning code, they can be added within the conditional use permit's approval. The Planning Commission considers these findings and conditions and any public comments in making their decision.

In the context of short-term vacation rentals, a wide range of issues could be addressed with built in regulations or added as conditions of approval on a case by case basis. This can include, but is not limited to:

- parking
- noise
- quiet hours
- vehicle trips
- number of days per year a home can be used as a vacation rental
- limit to only rooms out of a house, with property manager/owner present and not the whole house
- owner verifications that building and safety standards are being met
- signage
- limitations on the number of guests allowed per visit
- trash removal
- compliance with all required taxes
- proof of adequate insurance
- home and yard maintenance
- neighborhood disturbance prevention
- requirements for responsible parties to provide contact information for property management issues and complaints

If the County chooses to allow for short-term vacation rentals as a conditional use, it will first need to decide which zoning districts it wishes to allow the use in. A zone text amendment would need to be prepared to add short-term vacation rentals as a conditional use in the chosen zones. Within the zone text amendment process the County could also decide to add requirements to address issues such as those listed above. This way, these issues potentially would not have to be added as conditions of approval on each proposed short-term vacation rental.

Zoning Overlays

Overlay zones provide an additional layer of standards to the zoning code. They are often set up to protect specific features such as natural and cultural areas, but they can also be used as an addition to the underlying zoning to allow and/or regulate a specific use. In any case, the underlying zoning remains intact. Any standards or protections set forth by an overlay zone must also comply with and not contradict the underlying zoning.

There are a couple of ways that an overlay zone could be used by the County to regulate short-term vacation rentals. Either way would require a text amendment to the County Zoning Ordinance to include the allowance of the use and establish regulations for the use. A map amendment would also be required to illustrate where the overlay zones are. One way to implement this would be to determine where the County would allow short-term vacation rentals and show these areas on a map. This would require extensive public outreach to determine the areas to apply the overlay and ideally would require agreement from all of the property owners within a proposed overlay. These areas could be identified by starting with requests from people or groups who wish to establish them on their property or groups of properties. Once the overlay zones are determined and adopted, short-term vacation rental use would be allowed within them. The overlay areas should also include regulations that could include those relating to the issues listed above.

Another way to implement short-term vacation rental overlays would be to establish regulations for the use and then require anyone who wishes to have the overlay on their property apply for an overlay. This could be set up to allow applications for overlays on a parcel by parcel basis or require that they be done in groups, blocks or neighborhoods, etc.

Either method of applying overlay zones would require a text amendment to include short-term rental overlays and regulations for the use, along with map amendments identifying where the overlays are located. This process would also require a public hearing with the Planning Commission and two public hearings with the Board of Supervisors, which would provide several opportunities for public input on where they can be located and what will be allowed within them. With either method the County could also limit or require a minimum number of parcels included within each overlay.

Another way the County could allow and regulate short-term vacation rentals in residential zones, would be to require both an overlay zone and a use permit approval. The overlay zones could be developed as described above. Once a property is included within an overlay the owner could apply for a use permit to operate a short-term vacation

rental within it. Having provisions for both the overlay and use permit would provide for more scrutiny on this use and allow for more public input.

Potential Health and Safety Issues

Although, County Environmental Health and Public Works staffs have indicated they currently have no issues with short-term vacation rentals with regard to the health and safety regulations they are responsible for overseeing, language that requires applicants for short-term vacation rental uses provide verification that their properties meet building safety and health requirements.

NEXT STEPS

At the December 13, 2016 Board of Supervisors meeting, the Board directed staff to carefully prioritize the Short Term Vacation Rental issue due to current low staffing levels. They also agreed with the staff recommendation that the next step should be a public outreach campaign to find out the level of interest either for or against the use and collect ideas from the public on what will be best for Inyo County. Since December 2016, more complaints and interests have been voiced to the Planning Department and to Planning Commissioners as well as members of the Board of Supervisors. Staff is requesting that the Planning Commission provide a recommendation to the Board to have staff begin public outreach as soon as time allows for.