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Board of Supervisors

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SEP 24 2019

Clerk of the Napa Superior Court

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Ryan Gregory
Chair

September 17, 2019

The Honorable Elia Ortiz
Presiding Judge
Superior Court of California, County of Napa
825 Brown Street
Napa, CA 94559

Mr. Kort van Bronkhorst
Foreperson
2018-19 Grand Jury
38 Lodestar Lane
Napa, CA 94558

Dear Judge Ortiz and Mr. van Bronkhorst:

Enclosed is the response to the Grand Jury's report "Enforcing Short-term Vacation Rental Codes in the Napa Valley."

The Board acknowledges the members of the 2018-2019 Grand Jury for the time they have devoted to the report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Gregory".

Ryan Gregory
Chair
Napa County

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NAPA COUNTY
RESPONSE TO THE GRAND JURY FINAL REPORT ON
ENFORCING SHORT-TERM VACATION RENTAL CODES IN THE NAPA VALLEY
September 17, 2019

Findings

Finding 1: Neither the County of Napa Code Compliance division nor the City of Napa Code Enforcement division have enough staff to manage all the code compliance and enforcement complaints they receive from the public on a timely basis.

Response, Director of Planning, Building, and Environmental Services: The Director disagrees partially with the finding, as it pertains to the County. The Board of Supervisors cannot respond on behalf of the City Council or their staff. Over the past five years, the County has taken significant strides towards enhancing the code compliance program. Since 2014, the number of County code compliance staff has nearly tripled, from three to eight. Over the past three years, Code Compliance has investigated 50 short-term rental cases and resolved half of them.

Previously, code compliance was a unit within the Building Division of the Planning, Building, and Environmental Services (PBES) Department. Two years ago, the County created code compliance as its own separate division within PBES and expanded its scope to include all code compliance within the department. Also in 2017, the County adopted its first major update to its code compliance manual in nearly 30 years. Code compliance has been and continues to be a top priority for the Board of Supervisors and for PBES. In addition, see response to recommendation 3 for actions to be taken to increase resources available for code compliance purposes.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Finding 2: Both the County and City of Napa Municipal Codes are outdated, unwieldy, and in need of revision. Officials recognize that the task is difficult with the current staff and violations cannot be completely remedied. This leaves code enforcement officers without sufficient resources to enforce the County/City codes for the benefit and protection of the citizens.

Response, Director of Planning, Building, and Environmental Services: The Director disagrees partially with the finding, as it pertains to the County. The Board of Supervisors cannot respond on behalf of the City Council or their staff. The Grand Jury did not make any specific recommendations for revising the current code as it relates to short-term rentals, instead using undefined terms such as "outdated," "unwieldy," and difficult to comprehend. The current code as written is similar to other city and county codes prohibiting short-term rentals. The challenge in prosecuting short-term rental violations is not that the code is out of date or ineffective. The County has successfully prosecuted short-term rental violations

in the past, working with the District Attorney, and Code Compliance has 17 short-term rental cases currently pending. The challenge is in investigating cases and collecting sufficient evidence to ensure a successful prosecution. A complaint from the public, by itself, is inadequate to obtain a court order. It is difficult to obtain a court order for advertising where property owners do not disclose the address of the rental property and/or only list the advertisements on evenings and weekends (as discussed in response to Finding No. 5, below).

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Finding 3: The County has an estimated 450 non-permitted STVRs within the unincorporated areas of the County. This not only deprives the County of much-needed housing stock for residents and workforce, but also denies revenue to hotels, as well as Transient Occupancy Taxes to the County and its cities. The number of non-permitted STVRs in the City of Napa is unknown.

Response, Director of Planning, Building, and Environmental Services: The Director agrees with the finding. Short-term rentals both reduce the available supply of housing for local residents and workers, as well as engage in unfair business practices, which harm existing hotels and consequently reduce revenues for the County, Cities, and Town. In addition, short-term rentals reduce public safety in communities, as there are fewer neighbors to watch for one another. Second and vacation homes mean that there are fewer resident students, which leads to declining enrollment in local schools and decreased funding for education. Fewer permanent residents also means that there are less customers for local serving businesses, requiring people to go out of town for basic goods and services. The multiple negative impacts of short-term rentals on community quality of life are why the County continues to prohibit their use. The County has reinforced this commitment in Action 10.d of the 2019-2022 Strategic Plan, which states: "Continue to enforce against illegal short-term rentals."

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Finding 4: Both the County of Napa Code Compliance officers as well as the City of Napa Code Enforcement officers have restricted work schedules that limit their ability to monitor STVR violations during peak evening and weekend hours when many violations occur.

Response, Director of Planning, Building, and Environmental Services: The Director disagrees partially with the finding, as it pertains to the County. The Board of Supervisors cannot respond on behalf of the City Council or their staff. While it is true that County code compliance officers work a regular 5-day week, in the past the Sheriff's Department has supplemented enforcement efforts to respond to complaints after hours and on weekends. However, Sheriff's staff have been reassigned to other priorities.

Compliance officers do more than perform field investigations. Staff are regularly required to testify in court, work with County Counsel to manage cases, and coordinate with the

District Attorney when there are criminal violations. They also have to consult with staff in the other PBES divisions regarding technical matters in interpreting the code. Dedicating one or more officers to evening and weekend work would limit the ability of the division to perform other functions, often in concert with County departments and courts that operate on a 5-day workweek.

The first priority for code compliance is to abate immediate threats to public health and safety, as well as the environment. Short-term rentals can affect public health and safety, as the County does not inspect them for fire and building code compliance. However, they do not present the same potential for risk to people or the environment, compared to other violation investigations. The regulations prohibiting short-term rentals will continue to be actively enforced, however workloads have not been redistributed to specifically prioritize short-term rental complaints. See response to recommendation 3 for actions to be taken to increase resources available for code compliance purposes.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Finding 5: STVR owners are aware of the resource limitations faced by City and County enforcement teams, and are thus adept at avoiding detection and/or prosecution.

Response, Director of Planning, Building, and Environmental Services: The Director disagrees partially with the finding. Staff has noted that on-line advertising for short-term rentals has evolved in recent years. Vendors are no longer using specific addresses, but instead rely on general areas, so that it is harder to identify violating properties and their owners. Advertising tends to be more robust in the evenings and on weekends when staff is not generally available. Vendors also increasingly require that rentals be made by appointment, or ask the customer to call for further information to minimize the amount of information they put on the website. The County remains actively committed to successfully prosecuting short-term rental violations, however, the underground economy makes investigation and compliance a more intensive effort.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Finding 6: The County CC officer is a potentially dangerous occupation. Officers are issued bulletproof vests, but are not supplied the appropriate tools, such as pepper spray, to defend themselves.

Response, Director of Planning, Building, and Environmental Services: The Director disagrees partially with the finding. All code compliance staff go through Penal Code 832 Training, and receive additional annual safety training as a part of their certification. The department has provided each code compliance officer with a bulletproof vest. In addition, Sheriff's deputies often accompany code compliance staff when there is a suspected threat. However, there are unexpected situations where suspected violators can be hostile and law enforcement is not present. Compliance staff should have necessary protection available in circumstances where additional defensive measures are required.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Recommendations

The 2018-19 Napa County Grand Jury recommends that:

***Recommendation 1:* Both the County of Napa Code Compliance division and the City of Napa Code Enforcement division evaluate their staffing ratios versus complaints received and cases investigated. This should be completed by December 31, 2019.**

Response, Director of Planning, Building, and Environmental Services: The recommendation will not be implemented by the County because it is not warranted. The Board of Supervisors cannot respond on behalf of the City Council or their staff. Not all complaints are valid and cases vary in their degree and complexity. Some violations are resolved quickly, while others can take years to complete. The number of complaints received is not an appropriate means for determining the level of compliance staffing required.

The first priority for code compliance is to abate immediate threats to public health and safety, as well as immediate threats to the environment. Short-term rentals can affect public health and safety, as the County does not inspect them for fire and building code compliance. However, they do not present the same potential for risk to people or the environment, compared to other violation investigations. While PBES will continue to actively enforce the County Code regarding short-term rentals, it should not base staffing or budgeting decisions on this one activity. See response to recommendation 3 for actions to be taken to increase resources available for code compliance purposes.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

***Recommendation 2:* Both the County of Napa and the City of Napa complete a revision to their respective Codes, by June 30, 2020. These revisions should remove outdated codes which are no longer enforced, as well as make it easier for residents to find answers to the most common code questions.**

Response, Director of Planning, Building, and Environmental Services: The recommendation will not be implemented by the County because it is not warranted. The Board of Supervisors cannot respond on behalf of the City Council or their staff. The section of the County Code that specifically addresses short-term rentals is brief and easily identified. The applicable section in its entirety is as follows:

18.104.410 - Transient commercial occupancies of dwelling units prohibited.

- A. Transient commercial occupancies of dwelling units are prohibited in all residential and agricultural zoning districts within the county.

B. Definitions. Unless otherwise defined in Chapter 18.08, the following definitions shall apply to this section:

1. "Commercial use" shall have the same meaning as commercial use in Section 18.08.170, except it shall not include house exchanges, where owners or occupants swap homes for vacation purposes.
2. "Occupancies" means the use or possession or the right to the use or possession of real property or a portion thereof, including any dwelling unit, single family dwelling unit, guest cottage, or second unit, for dwelling, lodging or sleeping purposes. The right to use or possession includes any nonrefundable deposit or guaranteed no-show fee paid by a person, whether or not the person making the deposit actually exercises the right to occupancy by using or possessing any property or portion thereof.
3. "Transient commercial occupancies of dwelling units" means any commercial use of a dwelling unit for a period of time less than thirty consecutive days. It does not include occupancies associated with farm labor camps, residential care facilities, family day care homes, or legally permitted bed and breakfast establishments, hotels or motels.

C. Liability and Enforcement.

1. Any property owner, or authorized agent thereof, who uses or allows, or who knowingly arranges or negotiates for the use of, transient commercial occupancies of dwelling units in violation of this section shall be guilty of either an infraction or a misdemeanor.
2. Any property owner, or authorized agent thereof, who prints, publishes, advertises or disseminates in any way, or causes to be printed, published, advertised or disseminated in any way, any notice or advertisement of the availability of transient commercial occupancies of dwelling units prohibited by this section, shall be guilty of either an infraction or a misdemeanor.
3. In addition to the penalties set forth in subsections (C)(1) and (2) above, violators of this section may be subject to a public nuisance abatement action brought under the provisions of Chapter 1.20 and the civil penalty provisions of up to one thousand dollars per violation per day as provided in subsection (B) of Section 1.20.155 and subject to an unfair competition action brought pursuant to Business and Professions Code Section 17200 et seq. and up to two thousand five hundred dollars per violation civil penalty allowed thereunder.
4. Any person who uses, or allows the use of transient commercial occupancies of dwelling units prohibited by this section shall also be liable for the transient

occupancy tax that would have been owed under Chapter 3.32 had the occupancy use been legal, including the penalty and interest provisions of Section 3.32.080.

5. The civil remedies and penalties provided by this subsection are cumulative to each other.

One area where the County could update the code, to assist County staff in their investigations, is to require on-line platforms (AirBnB, VRBO, etc.) to provide regular reports on the short-term rentals advertised on their websites within a jurisdiction. Both San Francisco and Santa Monica have been able to impose this requirement successfully on internet companies, which the courts have upheld. However, these efforts occurred only after lengthy and expensive court cases, and would likely require a significant commitment of time and cost by the County to achieve.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Recommendation 3: When staff turnover allows, both the City and County of Napa consider an alternative workweek for new CE officer hires that would allow for evening and/or weekend coverage.

Response, Director of Planning, Building, and Environmental Services: The recommendations will not be implemented by the County because it is not reasonable. The Board of Supervisors cannot respond on behalf of the City Council or their staff. Instead, the Director recommends the use of an outside consultant to monitor short-term rentals, and assist the County with evidence collection by providing affidavit and expert witness services. The consultant would be able to provide services on weekends and after hours, when the County needs additional monitoring outside of the regular workweek. They can also provide an anonymous 24-hour hotline to receive complaints. The estimated cost of these services is less than \$30,000. PBES could absorb this cost without any additional General Fund allocation, with the expectation that the County would recover most of the cost from violators.

In the interim, County staff will provide weekend coverage regarding code compliance issues during the next two months. Staff will be on-call during this time, to respond to short-term rental concerns and other complaints on as-needed basis. In addition, by December 2019, PBES will evaluate contracting with a private service to investigate code compliance complaints after hours and on the weekends, on an on-call basis. Once the outside consultant is under contract, they will provide the means for monitoring short-term rentals on the weekend and after-hours.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Recommendation 4: The County explore ways to reduce the number of non-permitted STVRs in the unincorporated areas of the county by June 30, 2020.

Response, Director of Planning, Building, and Environmental Services: The recommendation requires further analysis. Code compliance has two components: enforcement and education. Penalties and disincentives can discourage violations, but by themselves cannot change social behavior to reduce the number of people violating the law. Similarly, education about the law and alternative approaches allowed within the code can help reduce the number of potential problems, but cannot prevent someone whose intent is to violate the code. Both components are critical to effectively reducing short-term rental violations. Contracting with an outside consultant to improve the effectiveness of investigations, as well as an increased public awareness campaign that County prohibits most short-term rentals in the unincorporated area, should begin to show reductions in the number of violations. However, both efforts are going to take time to have an impact. Staff will report on the effectiveness of short-term rental compliance towards the end of calendar year 2020.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Recommendation 5: The County authorize and train CC officers to be armed with pepper spray, by June 30, 2020.

Response, Director of Planning, Building, and Environmental Services: The recommendation has not yet been implemented. The Director will work with the Director of Human Resources to develop an appropriate protocol by December 2019 to allow pepper spray, but limit the use to trained code compliance officers. The two departments will jointly develop a protocol after consulting with all relevant interests, to ensure consistency with practices throughout the County and to address any legal and/or liability concerns.

Response, Board of Supervisors: The Board of Supervisors agrees with the Director.

Commendations

Commendation 1. The *Napa Valley Register* has recently reported that the City and County CC/CE teams have taken legal action against several non-permitted STVRs and the Grand Jury strongly supports those actions and the accompanying public show of enforcement.

Response, Board of Supervisors: The Board of Supervisors appreciates the Grand Jury commending enforcement staff's efforts.