



CITY OF BIG BEAR LAKE *California*

MEETING

DATE: January 11, 2021

TO: Honorable Mayor and Members of the City Council

THROUGH: Frank A. Rush, Jr., City Manager

FROM: Larry Vaupel, Director of Tourism Management

SUBJECT: Urgency Ordinance Approving Development Code Amendment 2020-103 Related to Transient Private Home Rentals, Adding Title 4, Section 1, to the Municipal Code Related to Vacation Rentals, and Finding the Action to be Exempt from the California Environmental Quality Act

BACKGROUND

Vacation rentals (transient private home rentals) have a long history in the City. The City was among the first municipalities in the State to adopt an ordinance regulating vacation rentals in 1999. This original ordinance, Ordinance No. 99-300, provided a means by which second homeowners could help cover the cost of ownership, maintenance, and repairs. In 2007, the City Council adopted Ordinance No. 2007-375 that specified the provisions for enforcing the regulatory rules surrounding vacation rentals. Combined, these two ordinances established Sections 17.03.310 and 17.03.315 of the Development Code.

The current state of the vacation rental market, a dramatic rise in the number of complaints about the behavior of vacation rental guests, and a need to improve enforcement is the impetus for adopting an urgency ordinance regulating vacation rentals. On March 12, 2020, there were 2,183 permitted vacation rentals in the City of Big Bear Lake. As of January 4, 2021, there are 2,304 permitted vacation rentals. While the number of vacation rentals has not risen dramatically this year (+5.5%), vacation rental occupancy rates have increased significantly, with more frequent use of vacation rentals in our community. During the ongoing COVID-19 pandemic, regionally based visitors have escaped their homes and locked-down communities to find retreat in vacation homes in the Big Bear Valley. With higher occupancy rates come more complaints, and over the summer and through the early winter, we experienced 4-5 times the number of complaints over the same period in 2019.

The City's current ordinance regulating vacation rentals intentionally places primary enforcement responsibility on vacation rental owners / managers, provides a one-hour response window for the owner / manager, and requires warnings for the initial offense. Overall, the enforcement protocols in the current ordinance rely on the ability of the owner / manager to resolve the concern, rarely result in punitive action against irresponsible owners / managers / guests, and do not promote consistent enforcement. Most importantly, these protocols have not been effective in preventing and resolving noise, parking, and other poor behavior issues by certain guests in recent months as the City has experienced higher occupancy rates.

DISCUSSION

The proposed urgency ordinance is presented primarily to implement an immediate change in the City's vacation rental ordinance enforcement protocols during our busiest season, but is also presented to a) intentionally simplify the City's ordinance regulating vacation rentals, b) provide a fresh starting point for discussion of any additional desired provisions to be included in a comprehensive new vacation rental ordinance to be discussed and adopted later this spring, and c) intentionally direct the City's focus on the guest behavior issues that generate the most frustration in our community.

Establishment of New Title 4 in Code of Ordinances, and Repeal of Existing Provisions in Development Code

The proposed ordinance would completely repeal the vacation rental sections of the Development Code, and would create a new Title 4 of the Code of Ordinances with new provisions to regulate vacation rentals. The provisions included in the new Title 4 are aimed at achieving the goals outlined above, and intentionally focus on regulating behavior rather than land use. Additionally, another reason for this change is to eliminate any confusion or claim that a land use entitlement is granted by the City with the issuance of a Vacation Rental Permit. Applicants would now be issued a "license" instead of a "permit".

While the restructuring of the proposed urgency ordinance does contain significant changes, they relate mainly to sharpening our focus on the key behavior issues, clarifying existing rules, and enhancing enforcement protocols. The urgency ordinance should not result in significant changes in operating procedures for current rule-abiding owners and agents, and City staff's intent for the urgency ordinance is not to harm any existing permit holders. Put simply, the proposed ordinance clearly defines our expectations and repeals the conflicting verbiage and ambiguity found in the existing ordinance.

Enforcement Protocols

As noted, the key provision of the proposed urgency ordinance is the way enforcement is administered. City staff will begin operating the complaint line and dispatching Code Compliance Officers to validate all complaints. By answering the complaint line, we can educate residents on the ordinance and what actions are in violation of the ordinance. This will help ensure that staff is only responding to actual violations and help residents understand what behavior constitutes a violation.

Starting on January 14, 2021, the city will terminate the outsourcing of the complaint line 866-CODE and begin answering the calls with City personnel. A team of three Code Compliance Officers will be on duty during periods of high call volume, including nights, holidays, and weekends. The County Sheriff's Office will be used during times that staff is not available. In the coming months, we will be launching a mobile application and online complaint reporting service that will allow residents to file complaints and track the progress as staff works to gain compliance. Additionally, online licensing and transient occupancy tax payments will be available to our owners and agents.

Code Compliance Officers will be immediately dispatched to all complaints received, and will be able to quickly assess if a violation exists and take the appropriate enforcement action. There will be no need for the cat and mouse games that currently result from ambiguous rules and prescribed warnings found in the current ordinance. Staff believes that strict enforcement and significant

penalties will entice agents and owners to be more proactive in their check-in and monitoring activities to prevent violations from occurring.

Many owners and agents have called for a more proactive enforcement protocol to create a level playing field for all. Most owners spend significant time and resources monitoring their properties to avoid violations, while others do nothing until they receive a call from the complaint line knowing that a warning is required prior to a citation being issued. This system has inadvertently placed the neighbors in charge of monitoring the vacation rentals around them. This is unacceptable. We hope to create a system that incentivizes those owners who monitor their own properties and punish those who rely on neighbors and the complaint line. At the same time, residents have rightfully complained about ineffective enforcement of vacation rental regulations, and this new approach should greatly enhance the City's effectiveness.

Importantly, the proposed ordinance levels significant fines for those owners who are operating without a license and not paying transient occupancy taxes. Staff estimates that there are 200 +/- properties being used as vacation rentals without approval. There is no excuse for this blatant disregard of the regulations in place. Fines for operating without a license will be \$5,000 (1st offense) and \$10,000 (2nd offense). Additionally, the owner and property will be banned from the vacation rental program. People who believe the rules do not apply to them, knowingly operate in violation of the law, and avoid paying taxes that help offset the community costs of their operation are not the types of owners we want in our program.

Ordinance Clearly Addresses Issues of Noise and Parking

The proposed urgency ordinance clearly defines a noise violation as amplified music being heard at the property line. This is a clear and simple method of determining if a violation exists. Additionally, the ordinance requires that outdoor activity that creates noise cease at 10:00 p.m. The use of decks and outdoor spas at night generates numerous complaints. Even a seemingly quiet conversation carries through our forest and canyons and throughout our neighborhoods. We believe that by clearly defining what actions constitute a violation, our guests will better understand our expectations and our staff will have clear direction when enforcing the rules.

The ordinance requires all vehicles associated with vacation rentals to always be parked on the property. This clarifies some conflicting interpretations in the existing ordinance that seems to allow an unlimited number of cars to be parked on the street until 11:00 p.m. The proposed ordinance clearly limits vacation rental occupancy even during the daytime and requires that daytime guests also park on the property. The daytime occupancy issue is another source of confusion that exists in our current ordinance that will be clarified under the new rules.

“Brick and Mortar” Management Requirement Not Included at This Time

The proposed urgency ordinance does not require owners to hire a local full-service agency as proposed in the draft ordinance presented to Council on November 9, 2020. This provision would be a significant change to the current ordinance and was opposed by many self-managed vacation rental owners. Adopting this provision requires additional public input and a more deliberate process, and will be discussed over the next few months as the City Council finalizes a comprehensive new vacation rental ordinance.

COVID-19 Stay-at-Home Order Restrictions

Since the city became subject to the Governor's Regional Stay-at-Home Order on December 7, 2020, the city has focused enforcement on vacation rentals that operate outside of the following parameters:

1. One household per unit,
2. Two cars per unit,
3. No loud noise, music, or parties,
4. Guests practice appropriate social distancing and other COVID-19 safety protocols,
5. Owners remit timely payments of TOT.

Enforcement of these restrictions has led to 7 evictions and 16 citations totaling \$8,500 in fines. These restrictions will remain in place until the Regional Stay-at-Home Order has been lifted. The urgency ordinance being considered will go into effect immediately upon passage by the City Council. However, the stricter provisions listed above apply until the Governor modifies his order.

As outlined above, the urgency ordinance strengthens and clarifies parts of the vacation rental regulations beyond the five areas covered by the Stay-at-Home restrictions, such as providing a measurement for noise violations and clarifying parking restrictions. Combined, the COVID-19 restrictions and urgency ordinance provide a clear and simple regulatory framework that can be more easily understood by owners and guests and more effectively enforced by staff.

Conclusion

The dramatic rise in occupancy rates in vacation rentals during the COVID-19 crisis has led to a dramatic increase in complaints from residents. While following up on these complaints, staff has identified several issues in the existing ordinance that make it difficult to resolve complaints and hold violators accountable. The winter season has historically brought the City heavy amounts of tourism. For staff to adequately address the concerns from residents and to preserve the integrity of our residential neighborhoods, staff recommends approval of the proposed urgency ordinance regulating vacation rentals. The proposed urgency ordinance will remove ambiguity in the code, set clear expectations for behavior, and provide staff with the tools needed to enforce the regulations fairly and consistently.

It is important to note that, while this ordinance will serve the community well during our busy season, the City will proceed with the development of a new vacation rental ordinance with an inclusive process as soon as it is safe to do so. The envisioned process will include public hearings at Planning Commission and City Council, special meeting(s) specifically for public input, as well as the receipt of public comments via email. The approval of the proposed urgency ordinance is not meant to circumvent a rigorous public debate and discussion around the operation of vacation rentals in our community, and we will be making special efforts to ensure significant public input on the ultimately adopted new vacation rental ordinance in the coming months. This process will begin as soon as the COVID-19 situation allows us to host public meetings safely, hopefully within the next month, and it is anticipated that the ultimately adopted new vacation rental ordinance will be adopted by City Council later this spring.

ENVIRONMENTAL CONSIDERATIONS

The proposed urgency ordinance is not subject to the California Environmental Quality Act (CEQA) under Section 15061(b)(3), the general rule that states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. The proposed urgency ordinance does not have the potential to cause a significant effect on the environment.

FISCAL IMPACT

There is no fiscal impact associated with the adoption of the proposed urgency ordinance. The City will continue to incur currently budgeted expenses for City staff involved in managing and enforcing the City's vacation rental program.

The total FY 2020-21 budget for the management and enforcement of the vacation rental program is approximately \$1.1 million, and is primarily supported by vacation rental permit fees. In the future, City Council will be asked to increase the vacation rental license fee from \$279 per unit to approximately \$500 per unit to enable permit fees to cover 100% of program expenses.

ATTACHMENT

1. Ordinance No. 2021-xxx
2. Current Ordinance – Municipal Code Section 17.03.310