

June 8, 2019

Attn: Amador County Planning Commission

From: Therese F. Sweet

Re: June 11, 2019 hearing, Agenda item G.2 Short-Term Rental Ordinance (proposed)
(4 pages)

Below are my comments on the Amador County Planning Department staff report and proposed ordinance. I'm not trying to stop the ordinance, I just want to preserve the permissions I already have. People have been lawfully operating Short-Term Rentals for years. Not only did the County not contact owners when this discussion began months ago, it did not include them in the ordinance development, and it gave them only one week to respond to the proposed new law. This appears to be bad faith behavior.

Summary:

- I) County is not enforcing existing laws that regulate short-term rentals, abate a public nuisance, prohibit a paid event without a permit, or residing in a trailer. There are no unregulated STRs. 2.06 provide the enforcement mechanism for 3.16.
 - II) Currently registered Short-Term Rentals permitted and registered under 3.16 should be listed under Exemptions, unless the use is discontinued for two years. They are lawful, permitted operations with vested property rights. Relying on County permissions and in good faith, owners spent substantial funds and committed to various contractual obligations. 3.16 contains no provision for revocation.
 - III) Under "Purpose, there is no evidence to support the statement that short-term rentals create greater problems and/or burdens than long-term rentals, owner-occupied properties, or hotels. No General Plan policies are shown that would enable the Ordinance.
 - IV) Ordinance as written is unconstitutional.
1. Background, par. 1, "a specific Short-term Rental" is stated as the cause for initiating an ordinance, although neither the address nor the problems are enumerated. There were already remedies to abate this problem within the County's power, without having to enact a new ordinance, but the County did not use them. (California Penal Code 372 & 373a, and Amador County Code 19.48.135) Before the County considers enacting a new ordinance with duplicative provisions, it should exhaust its existing legal remedies.
 2. "Recommended Findings" lists only an exemption from CEQA.
 - a. There is no substantial evidence given, and there are no findings made, to establish the need for a new ordinance to restrict short-term rentals.

- b. Because the Amador County General Plan does not address rental restrictions, what General Plan Policies authorize the Ordinance?
 - c. What is the legal basis for establishing regulations on rentals of residential private property in the County?
- 3. Under "Possible Updates or Changes to County Code," the staff report acknowledges that short term rentals are already operating lawfully with full zoning clearance.
 - a. "...as indicated by current Code, Short-Term Rentals are currently regulated in Title 3 Revenue and Finance under Chapter 3.16 Uniform Transient Occupancy Tax..."
 - b. "County Code Section 3.16 clearly delineates parameters for lawful operation of Short-Term Rentals."
 - c. If a Use Permit is required to permit a use that would otherwise not be permitted as a matter of right, why do we need a Use Permit since we already are operating as a matter of right?
 - d. Current operators have established a vested property right to continue operation without newly imposed discretionary review, new rules, new conditions, and new fees – unless the use is discontinued for two years.
- 4. Staff notes there is significant evidence of unregulated Short-Term Rentals operating throughout the County, necessitating a Code change. This is not the case. County Code 2.06 already covers enforcement of code violations. Unregistered Short-Term Rentals are violating Code 3.16. Why has the County not used existing law to bring them into compliance? Can the County justify a duplicative new ordinance when it is not enforcing underlying statutes?
- 5. There was one specific property on Emily Way complained about at the April 23, 2019 meeting, and one complaint from the Elliotts on April 22, 2019. Both of these could have been abated by the County under existing laws. Other complaints are general in nature, not specific. Based on the evidence presented, current laws are adequate to regulate Short-Term Rentals but the County is not enforcing them.
- 6. The last paragraph of the staff report mentions "concerns regarding health, safety, community, property values, code consistency, and other factors influenced by Short-Term Rental operation but where is the evidence to support findings for an ordinance? Where are the facts to support the "concerns?" Whose concerns are they? This appears to be an irrational fear coupled with a desire to over-regulate and impose additional restrictions and fees on existing lawful operations.
- 7. The proposed ordinance "Chapter 19.48.2
 - a. 19.48.203(A) Is the County here requiring that Short-Term Rental owners' revenue has to be spent a certain way?
 - b. 19.48.203(A) Short-Term Rentals provide owner-occupants an added sense of security, especially if the property is remote (see also CA Govt Code Sec 65852.150(a)(3)).

- c. 19.48.203(B) What complaints? What necessitates a countywide ordinance? Are the complaints proportionately more frequent for Short-Term Rentals than for long-term rentals, owner-occupied properties, or hotels?
- d. 19.48.203(C) Where is the record of Short-Term Rentals necessitating police, fire, paramedic and other public personnel response? Is it disproportionately higher than for long-term rentals, owner-occupied properties, or hotels?
- e. 19.48.203(D) Where is the evidence that Short-Term Rentals created a greater burden or impact on public services in residential neighborhoods? One example how they lessen the burden, is the renters do not use our school system, the most expensive public service of all. They use all County services far less because they are here only part-time. Long-term renters often use our school system.
- f. 19.48.204(B) States the chapter “is not intended to affect any existing private conditions, covenants, and restrictions that may prohibit the use of such property for Short-Term Rental purposes.” Is the chapter also not intended to affect any existing CC&Rs that allow the use of property for Short-Term rentals?
- g. 19.48.205(A)(E) “Transient” means temporary; it refers to the occupancy, not to the person. The County is taxing the occupancy, not the person. The word “transient” should not be applied to the person who is a guest or a renter. Per State Code, a “transient” is a person who has no residence which does not apply to short-term renters. California Revenue and Tax Code uses “transient” to describe the type of lodging, not the person, guest, renter.
- h. 19.48.206 Exemptions.
 - i. Registered properties lawfully operating under County Code 3.16 should be exempt from the new ordinance. Not to do so would be fundamentally unfair. They are a permitted use and do not require a use permit. It would be arbitrary interference with the lawful and legitimate use of private property. All existing statutory requirements have been complied with. If the County does not exempt properties regulated under 3.16, how will the County demonstrate how depriving one of property interest through previously advanced public interest does not do so now?
 - ii. Owner-occupied properties should be exempt from the new ordinance.
 - iii. What is the evidence, and what are the findings to exempt Kirkwood?
- i. 19.48.209(C) Occupancy.
 - i. Occupancy should be flexible, based on home size, number of bedrooms and bathrooms, parking, neighborhood characteristics, and septic system capacity. Why should Short-Term Rentals have more restrictive limits than long-term rentals, owner-occupied properties, or hotels (one Plymouth hotel sleeps 3 in a 355sf room)? An ordinance should not subject rental owners to discrimination charges, for example, should a couple with a minor child or disabled persons with a helper, be prohibited from renting a unit.

- ii. Fire and Life Safety requirements are duplicative of State laws.
 - iii. Outdoor fire pits should be prohibited from May 1 to October 31.
 - iv. Noise, disturbance, etc. rules are duplicative of State and County laws.
 - j. 19.48.211(J) The County can't require as a condition of permit approval advance consent to search or inspect a property. This is a violation of the U.S. Constitution, Fourth Amendment and the California Constitution, Article 1, section 13 (see *Camara v. Municipal Court* 387 U.S. 523 (1967)).
 - k. 19.48.211(K) Short-Term Rentals currently operating under 3.16 should not be subject to neighbor review. Neighbors have already had time to comment, if they had a cause for complaint.
 - l. 19.48.213 (C)(6) Notification that occupants shall not engage in "disorderly conduct." This reads like a manual for a juvenile delinquency detention center. Our guests agree to the policies at the time they make a reservation. They have paid in advance for the kind of quality lodging that is appealing. No one should be required to post this offensive statement in their rental unit.
8. The draft Ordinance appears to be unconstitutional per:
- a. U.S, Fourth Amendment
 - b. U.S. Fifth Amendment
 - c. U.S. Fourteenth Amendment
 - d. California, Article 1, Sections 1, 7, 9, 13 & 19

I wouldn't have bought this property if short-term rentals were not allowed. Not having one would cause a severe economic hardship for my husband and me. Relying on County permissions, we incurred significant debt knowing we could pay it off with the rental income. My husband has a major life-threatening illness and I need to be close by him. For that reason neither of us can work away from home.

This ordinance seems to have been promulgated because of a singular property. If so, the ordinance would be unnecessary if the County had enforced the laws abating a public nuisance.

County Code requires that ordinances promote justice.

Therese F. Sweet