

**Comments on Short Term Rentals**  
**(submitted by Betty Wheeler on 11/8/2015 for the Planning Commission meeting**  
**on 11/10/2015)**

**Conducting Business in Residential Zones**

Some short-term rentals may be occasional (e.g., only during race season), or occurring in a home used primarily as the owner's residence and taking place when the owner is present (i.e., a spare bedroom is rented), or temporarily away (e.g., on vacation). However, an increasing number of short-term rentals in Del Mar involve year-round rental of the entire house, frequently for very short periods with a high turnover rate, and with the owner permanently off-site. In these cases, the house is really no longer a residence at all, but rather, a business operation. I urge you to carefully consider the impact on residential neighborhoods of allowing business uses to take place that would not be permitted if they were any business other than vacation rentals. I also urge you to carefully consider the impact of short-term rentals on issues of affordability, civic engagement, and neighborhood quality.

Some key points:

The only differences between a B&B or small boutique hotel, neither of which is allowed in residential zones in Del Mar, and a short-term rental, are essentially negative -- there is no staff on site to monitor inappropriate guest conduct, to deal with complaints from neighboring properties, or to ensure compliance with occupancy limits or parking rules.

If short term rentals are allowed in a residential zone, the following incongruity would be introduced into Del Mar's zoning code: If I rent my entire 5-bedroom house on a short term basis, year round, it might be permissible for me to have up to 11 people using my property, with perhaps a different group of people checking in every few days, and a cleaning team coming by every few days to clean the property between rentals. However, if I wanted, instead, to use one of my rooms as an office for a home-based business, while continuing to use the majority of the property as my residence, I would not be allowed to have even a single person come to my property to work as my assistant (or even to have any other person in my employ), nor would I be able to have even one client come to my home-based office for a meeting, or have supplies delivered, based on the prohibition on generating pedestrian or vehicular traffic. Thus, I would be allowed to use my home as a very intensive business use as a short-term rental (10+ people on-site plus regular visits by a cleaning crew; significant pedestrian and vehicular traffic and parking; frequent turnover; absentee owner) that completely eliminates any use of my home as a residence. However, I would be in violation if I used even one room of my home for a much less intensive use as a home office ("home occupation"), if I received even an occasional client visitor or delivery, even though the primary purpose and use would be as a full-time residence for my family.

This is because "home occupations" are strictly regulated by the Municipal Code:

Home Occupation: An occupation or business conducted entirely within the main building by a member of a family residing therein, conducted as an incidental use to the primary residential use thereof, and in which there is no sign used; no display; no stock in trade or commodity stored, rented or sold upon the premises; no person employed other than the member of the resident family; no deliveries made or other pedestrian or vehicular traffic generated; no mechanical equipment used or kept on the premises except those customarily found in the home; no commercial vehicle used or kept on the premises in connection with such home occupation or business.

Perversely, this means that if I were an absentee owner, I could use my property intensively as a short-term rental, with 10-11 people plus cleaning crew coming and going at all hours, but as an owner residing on-site, I could not use a small portion of my home as an office for a low-key home-occupation, with only a part-time assistant or occasional business visitor or delivery, nor could I rent more than one room for residential purposes (as an accessory use), regardless of the size of my house or the amount of off-street parking I have.

This inconsistency, in my opinion, should be resolved in favor of the use that is best aligned with the stated goals of the Community Plan and the Zone in question.

### **Inconsistency with R1-10 Zone Characteristics and RC Zone Requirements**

The R1-10 Zone is described in Chapter 30.12 of the Municipal Code as follows:

"The R1-10 Zone is designed to provide for an area of one-family residential development at a density level consistent with the City Community Plan. The standards of the zone are intended to preserve an open and uncrowded character and protect the unique residential environment of Del Mar. The standards are intended to promote and protect those special amenities associated with a district of single-family homes."

A small boutique hotel is not permitted in the R1-10 Zone. A bed-and-breakfast business is not permitted in the R1-10 Zone. Even renting out a room to more than one person is not allowed, since the allowable accessory use is described as follows:

"The renting of not more than one room to not more than one person, or the providing of table board to one person, or both." (Section 3.12.040B)

Yet, if short-term rentals are allowed in the R1-10 Zone, then the number of rooms and the number of people to whom rooms can be rented will increase significantly for every

house in the R1-10 Zone -- increasing from the currently allowed one room/one person (as an accessory use) to up to ten (10) or even more, assuming the allowable number is based on two persons per bedroom plus one.

Often, homes in the R1-10 Zone that are used as a family home for full-time residence are occupied by a smaller number of residents than would be allowed under proposed short-term rental regulations. For example, a 4-bedroom home might be occupied by an adult couple and two children. Short-term rentals often advertise and book at much higher densities -- two-plus persons per bedroom, and the rental group often includes 2 families sharing the vacation rental. This significantly increased density has a negative impact on neighborhoods and on the intended R1-10 Zone character, which is one-family residential, with an uncrowded character.

A similar analysis should apply to other Zones; the one above applies to the zone applicable to my residence.

**RC Zone** -- It is particularly instructive to look at the current zoning regulations with respect to the Residential-Commercial (RC) Zone, which explicitly allows for commercial use in what is otherwise a residential zone. Specifically:

- The RC Zone recognizes the importance of a transition between residential and commercial activities, with a maximum of 40% of the total floor area allowable for commercial use.
- In contrast, conversion of a residential property to a short-term rental business use allows for 100% of the total floor area to be used for commercial purposes. This provides for no transition between residential and commercial activities, nor would there be an overall limit on how many properties in the zone could be converted to this commercial, non-residential use.
- The RC Zone requires payment of a Housing Reduction Mitigation Fee if the project reduces the number of dwelling units on a property.
- In contrast, conversion of a residential property to a short-term rental business use does not require payment of a mitigation fee -- yet, a property used for short-term rental is no longer a true "dwelling unit" any more than a hotel room is considered to be a "dwelling unit." In fact the Code's definition of "dwelling" explicitly excludes "hotels, boardinghouses, [and] lodginghouses" (Section 30.04.040).

It would be incongruous to allow a more intensive commercial use in the R1-10 Zone than is currently allowed in the RC Zone.

## **Inconsistency with Affordable Housing and Density Bonus Goals**

The City has been struggling to comply with affordable housing mandates, and has established density bonuses to increase the stock of affordable housing in Del Mar. (This is especially significant because, at the time the Community Plan was adopted, Del Mar was characterized by a large population of UCSD students, as well as professors and other academics, relying on a supply of more affordable housing that existed in Del Mar at that time.) Though properties used for short-term rentals were typically constructed as full-time residences without a density bonus, they are effectively allowed a density bonus in a key way, because of the greater number of people who are using the property as a short-term rental -- and they have this benefit even as the economics of short-term rental make housing in Del Mar significantly less affordable.

Furthermore, when a house is converted to short-term rental use, it is no longer available to meet full-time residential needs, contributing to the loss of residential housing stock in Del Mar, and driving up the cost of the remaining housing stock. It is evident that the market rate for short term rental of a property is substantially higher than for a long-term lease of the same property. While it may be the case that none of the residential properties involved would have rental rates that make them affordable to lower-income households, it is certainly the case that the economics of short-term rentals have a negative impact on would-be residents who are moderate-income families, seniors, or first-time house buyers, all of whom are the intended beneficiaries of density bonuses.

Of particular note, the Municipal Code's Density Bonus provisions (Chapter 30.90) require a determination by the City Council that inclusion of commercial uses will result in restricted (affordable) housing, and are compatible with existing development in the area, before a commercial use can be included in a housing development project:

[T]he concessions/incentives that may be granted for a Density Bonus Project include, but are not limited to the following: . . . Approval of mixed-use zoning in conjunction with the housing project if the City Council, in its review of a proposed Density Bonus Project, determines that inclusion of the commercial, office, industrial, or other land uses would result in identifiable, sufficient, and actual cost reductions that would make it financially feasible for the applicant to construct a Density Bonus Project with restricted housing units and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the project will be located.

Yet, allowing short-term rentals in residential-zoned areas effectively converts the entire property to a commercial use (if the property is a full-time short term rental) or to a mixed commercial-residential use (if the property is used for both residential use by the owner and short-term rentals), without the individualized Council review and findings that would be required to allow mixed-use zoning as a density bonus even where affordable housing goals are advanced by the mixed use.

### **Distinguishing between significantly different types of uses**

If it is possible to codify short-term rental regulations that treat significantly different types of uses appropriately (that is, consistent with the stated Zone characteristics and key neighborhood quality of life), then I would support codifying and regulating short-term rental uses appropriate to the Zone, while clearly disallowing short-term rental uses that are not appropriate to the Zone. This would make it clearer what is allowed and what is a violation; it would facilitate enforcement of appropriate regulation through business licensing, TOT collection, and enforcement actions; and it would allow short-term rentals while still protecting fundamental neighborhood characteristics as envisioned by the Community Plan and the Municipal Code. In my opinion, key distinctions that support different treatment include:

- Whether or not the owner is on-site during the rental;
- whether the rentals are occasional or booked on a year-round basis;
- the minimum duration for any rental (or the maximum allowable number of rentals per 30-day period);
- whether commercial use is generally allowed in the relevant Zone;
- whether off-street parking is available to support the occupancy that is advertised for the property (and note that a high occupancy rate for short-term rentals may call for more off-street parking than is generally required for currently allowed primary residences, accessory uses or secondary dwellings).

There are no doubt other factors which have a significant impact on the neighborhood and on the intensity of use, and all such factors should be carefully considered in any regulatory scheme for short-term rentals, and in delineating where short-term rentals are allowed or disallowed.

Similarly, the following factors should be carefully considered in establishing regulations and enforcement mechanisms that will protect neighbors and neighborhoods from negative impacts:

- specific provisions regulating noise, parking, maximum occupancy (including day visitors), etc.;
- requirement that the above provisions be included in the contract with renters;
- creation of "good neighbor" guidelines that must be distributed to renters;

- specific and progressive fines and other penalties, including loss of business license, for violations of provisions regulating noise, parking, maximum occupancy, etc.;
- security deposit from property owner that can be forfeited for violations of regulations;
- mandatory business licensing, with a specific provision for notice to neighbors before license renewal, to allow the license renewal to be contested based on past violations or problems that have a negative impact on the neighborhood;
- collection of TOT for short-term rentals, with collected funds used for monitoring and enforcement of applicable regulations, including a "hot line" that neighbors can call to report noise or parking problems, violation of regulations, etc., with sufficient staffing for prompt response;
- payment of a Housing Reduction Mitigation Fee, as is required in the RC Zone, based on the fact that conversion of a residential property to short-term rental use reduces the number of "dwelling units" on a property, given that a short-term rental is the functional equivalent of a hotel use, and does not provide a "dwelling unit" as that term is defined in the Code, which explicitly excludes "hotels, boardinghouses, lodginghouses..." from the definition of "dwelling."

Many of these concerns are addressed in the draft provided for your consideration by staff, and I think it is important to carefully consider each one, both in terms of regulation and enforcement.

### **Meeting requirements applicable to zoning changes**

In my opinion, allowing short-term rentals in zones where they are not already clearly allowed is effectively a zoning change, which should occur only in compliance with the requirements for any other type of zoning change, including specific written findings with respect to the following:

1. That there are changed conditions since the previous zoning became effective to warrant other or additional zoning;
2. That the granting of such zoning will be in the interest or furtherance of the public health, safety, comfort, convenience and general welfare, and will not adversely affect the established character of the surrounding neighborhood, nor be injurious to other properties in the vicinity in which the rezoned property is located;

3. That the granting of such zoning conforms to the general purpose, planned use, and intent of the adopted Community Plan, or any ordinance, regulation, or plan in effect to implement said Community Plan.

### **Economic and Aesthetic Ripple Effects of Short-Term Rentals**

There are significant impacts of short-term rentals that are not mitigated simply by regulating these rentals to minimize immediate negative impacts on neighbors and neighborhoods. These include:

- To the extent that houses are converted to short-term rental use, housing stock and housing affordability decline for permanent residents (or would-be permanent residents) -- specifically, making it less possible for moderate-income families to live in Del Mar, which has a disproportionate impact on families with children, as well as academics and others associated with UCSD who have historically been residents of Del Mar, and who have contributed enormously to our civic, intellectual and cultural life. See the Community Plan's "Del Mar in the Present" section, for instance, for its recognition of the role of UCSD students and employees in our city.
- While rising property values benefit current residents if and when they sell their property, there are notable differences that flow from different causes of those property value increases. Historically, I believe that our property value trends have been essentially rooted in the what the Community Plan identified as the "special character of Del Mar, the elements of which are a village-like community of substantially single family residential character, a picturesque and rugged site, and a beautiful beach..." (Community Plan, page 20), and everything we have done as a community since the adoption of the Community Plan to protect and preserve our village-like character, our neighborhood quality of life, our open spaces, and environmental amenities. In other words, our property values traditionally have been rooted in Del Mar being a great place to live, NOT because our properties are a source of profit as rental properties.
- In contrast, property value increases that are inextricably linked to rental profits should not be seen in a positive light, because degradation of residential quality of life is an almost inevitable trade-off. With the significant growth of short-term rentals in Del Mar, that growth certainly spikes property values, but it comes at the expense of Del Mar's single family residential character, the un-crowded nature of our neighborhoods and "the special amenities associated with a district of single-family homes" that are occupied by full-time residents who have a stake in our civic, intellectual, and cultural life.

- The impact of short-term rental growth is greater and more negative than that from the parallel trend in recent years of increased house sales to seasonal residents. In those instances, homes are often unoccupied for large portions of the year, which has a negative impact on the "feel" of our neighborhoods, but seasonal residents at least define themselves as residents, rather than visitors, and are much more inclined to want to get involved in Del Mar's community life than transient, short-term renters. Also, they often end up living here full-time after retirement, which makes them more fully involved as voters, volunteers, and residents active in our civic, intellectual and cultural life.
- As more houses are converted to short-term rentals, we are experiencing a profound change from true neighborhoods, where neighbors know each other, watch out for each other, and maintain peace and quiet as a mutually beneficial characteristic, to an area increasingly dominated by transient use, with increased traffic, noise, "vacation" or "party" mentality, and less incentive to be a good neighbor.
- Houses purchased for short-term rental use are more likely to produce different design and remodel choices that further separate these houses from true residential properties. Short-term rental owners are motivated to increase the number of people who can be accommodated, and in a location like Del Mar, to add outdoor amenities that facilitate and increase large-group uses of outdoor spaces. Classic Del Mar cottages and historic homes are likely to be viewed as less significant or worthy of protection by absentee owners whose primary motivation is profit. These differences have an impact on the overall neighborhood character, and incrementally change the residential qualities of our neighborhoods. An absentee owner who is remodeling primarily for financial benefit simply does not have the same stake in neighborhood character as a resident who lives in the neighborhood and has a shared interest in the overall feel of the neighborhood, and in good neighborhood relationships.

I hope you will consider all the above factors in considering how short-term rentals should be treated in Del Mar, and above all, that you keep the values of the Community Plan at the forefront as you evaluate these issues.

Respectfully submitted,  
Betty Wheeler