# Staff Report

Meeting Date: November 14, 2023

To: Siskiyou County Board of Supervisors

From: Hailey Lang, Planning Director

Subject: Presentation and Discussion on draft Zoning Ordinance Update regarding Vacation Rentals

## Discussion

At the September 5, 2023, Board of Supervisors meeting, staff presented final policy matrix to the Board regarding the personalized regulations of vacation rentals throughout the County.

The final regional policy recommendations are as follows:

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| **Policy Matrix: Vacation Rental Policy Recommendations** |
| *Region* | *2.5-acre minimum* | *CUP or Activity Permit* | *Inspection* | *Cap on Permits\** |  |
| McCloud | Yes | Activity Permit \*\* | Every 3 years | No |  |
| South County: Dunsmuir/Mount Shasta, Weed/Lake Shastina | Yes | Activity Permit \*\* | Every 3 years | 5% |  |
| North County: Yreka, Happy Camp/Seiad Valley Klamath River/North Yreka, Scott Valley, Butte Valley | No | Activity Permit\*\* | Every 3 years | No |  |

\*Vacancy rate caps will be reviewed every 5 years

\*\* An “activity permit” is an administratively issued permit by staff if the proposed property meets objective requirements for use as a vacation rental.

The Board ultimately decided to forgo the 2-year residency requirement due to a recommendation from County Counsel based on a very recent decision of *South Lake Tahoe Property Owners Group v. City of Lake Tahoe* (2023) 92 Cal.App.4th 735, the City of South Lake Tahoe enacted an ordinance by initiative (“Measure T”) that required the City to cease issuing new or additional permits for vacation rentals. The court held that the residency exception represented discrimination against non-residents and was unconstitutional on the grounds it violated the interstate commerce clause because Measure T was discriminatory. The court stated that “the mere fact of non-residence unlawfully forecloses out-of-state owners from accessing the residential vacation rental market in South Lake Tahoe and directly competing against City residents who let their homes as vacation rentals.”

Additionally, the Board will not be requiring property owners with valid Use Permits to operate a vacation rental to come into compliance with the new vacation rental process. Should a Use Permit be revoked, than the property owner will be required to come into compliance with the new process.

**The New Process for Obtaining a Vacation Rental**

Property owners will be required to obtain an administrative permit issued by the Community Development Department. This permit is ministerial, meaning that if a property owner meets the requirements of the vacation rental ordinance, the property owner will be granted the permit. This permit is different than a typical land use entitlement (i.e., discretionary permit), such as a Conditional Use Permit, which is a permit that runs with the land, not the property owner.

Ministerial Permit:

A ministerial permit is a permit that is granted based upon determinations that the proposed project complies with established standards set forth in the Zoning Code. These determinations are arrived at objectively, involve little or no personal judgment, and are issued by the Planning Director or his/her designee. This type of permit is commonly referred to as an “over the counter” approval.

*"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee. Cal. Code Regs. Tit. 14, § 15369*

Discretionary Permit:

In contrast, discretionary approvals are those that involve judgment or deliberation, allow a county to use discretion to decide whether to issue the approvals and how best to shape or condition those approvals to avoid environmental issues and are often issued by an appointed or elected decision-making body. Discretionary Permits and processes are required when developments may impact the surrounding area due to a proposed use, design feature or project location. Discretionary approvals require a decision-maker to exercise judgment and deliberation, such as granting a Conditional Use Permit. A discretionary permit is a permit that requires the exercise of discretion by a decision-maker based on written findings supporting their decision. Some discretionary permits require public notice (notification to your neighbors and in the newspaper) or a public hearing. Examples of discretionary permits are variances, coastal permits, and subdivisions. Discretionary permits must be completed before a building permit can be issued.

*"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards. The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c). Cal. Code Regs. Tit. 14, § 15357*

It is the wish of the Board to create a process that does not include a land use entitlement process, such as obtaining a Conditional Use Permit, which means that the permit will be non-transferrable, will not “run with the land”, meaning that it will also be ministerial permit. It is also the wish of the Board to still include the public in the process, meaning that the public can still comment on the project and/or be notified of a potential vacation rental in their respective neighborhood, which typically is only done during a discretionary permit process. This has led to staff creating a hybrid process that meets the wishes of the Board but also simplifies and streamlines the process for the public and for staff.

The hybrid process to obtain a vacation rental permit is outlined below:

**Part One (Ministerial Approval)**

1. The owner applies for an administrative permit to operate a vacation rental.
2. Staff determines if the application is complete.
3. If the application is complete, staff analyzes the application to see if it meets the criteria and requirements to operate a vacation rental.
4. As part of the application requirements, staff sends out notice of the potential vacation rental to neighboring properties within 300 feet.
5. If less than 50% or more of the noticed residents submit a protest letter (i.e., a letter of opposition), the application is approved if it meets all of the criteria and requirements.

**Part Two (Discretionary Approval)**

1. If 50% or more of the noticed residents submit a protest letter (i.e., a letter of opposition), the application is elevated to a discretionary permit and the permit goes to the Board of Supervisors for a hearing for approval.
2. If the application is elevated to a discretionary permit, the Board of Supervisors must make the required findings.
3. If the findings are met, the permit is approved. If the findings are not met, the permit is not approved.

## Public Comment

Since the October 17, 2023, meeting, no additional public comment has been received.

## Attachments

1. Draft Zoning Ordinance