

RESOLUTION 2017-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR CONCERNING AN INTERPRETATION (I17-001) OF THE DEL MAR MUNICIPAL CODE REGARDING WHETHER SHORT-TERM RENTALS (STRs) ARE AN ALLOWED USE WITHIN THE CITY OF DEL MAR'S RESIDENTIAL ZONES.

WHEREAS, The Planning Director for the City of Del Mar requested that the Planning Commission interpret the Del Mar Zoning Code pursuant to Del Mar Municipal Code (DMMC) Section 30.01.020 to clarify whether Short-Term Rentals are an allowed use in residential zones under the DMMC; and,

WHEREAS, the Planning Commission is authorized to interpret the language of the Zoning Code and such interpretations control future development and land use within the City unless that interpretation is appealed to the City Council, in which case, the determination by the City Council is final and controlling; and,

WHEREAS, on February 14, 2017, the Planning Commission held a noticed public hearing on Interpretation I17-001, concerning application of the Zoning Code to Short-Term Rentals operating in residential zones within the City of Del Mar and determined that since STRs are not defined in the Zoning Code, no interpretation could be made; and,

WHEREAS, two interested parties appealed the Planning Commission's determination to the City Council and on March 20, 2017 the City Council voted to hear the appeal; and,

WHEREAS, on April 17, 2017, the City Council held a noticed public hearing on Interpretation I17-001, concerning application of the Zoning Code to Short-Term Rentals operating in residential zones within the City of Del Mar; and,

WHEREAS, at the public hearing, all persons desiring to be heard were heard by the City Council; and,

WHEREAS, the City Council considered the evidence submitted to it including without limitation:

- a. Information submitted by the public;
- b. Oral testimony from staff, the appellants, and the public;
- c. The record of the Planning Commission proceedings;
- d. Historical City documents;
- e. Staff reports, and a PowerPoint presentation, dated April 17, 2017, which, with their exhibits and attachments, are incorporated by this reference as though fully set forth herein; and
- f. Additional information submitted during the hearing.

WHEREAS, at said public hearing, the City Council discussed and considered the issues related to Short-Term Rentals including, but not limited to, the various types of short-term rental/vacation uses, the historical patterns of local transient and vacation rentals, the history and provisions of the Community Plan and the Zoning Code, the ranges of duration of stay, the allowed uses in the residential zones, the uses that share similarities with allowed residential, visitor serving or commercial uses, the definitions set forth in the DMMC, and other matters;

WHEREAS, The City Council received the advice of its City Attorney on the rules of statutory construction and on other legal matters relevant to the interpretation.

NOW THEREFORE, BE IT RESOLVED by the City Council of Del Mar, California as follows:

Section 1: City Council Findings

A legislative interpretation of the City Zoning Code by the City Council does not legally require formal findings. Nevertheless, the City Council desires to explain its reasoning on this matter. Accordingly, it sets forth the following principal findings, recognizing that these findings may not address all issues and contentions raised by proponents or opponents, and further recognizing that the City Council's final interpretations are based on its review of the available evidence and contentions submitted to it for consideration.

1. For purposes of this interpretation "Short-term Rentals" is the common term associated with the rental of a residential dwelling or residential accessory structure in a residential zone for fewer than 30 days catering to customers who are not dwelling in the residence on a permanent or regular basis, but utilizing it for vacation, transient, or temporary occupancy.
2. This code-interpretation process, as advised by the City Attorney, is a legislative function and not quasi-judicial. This is because this is a forward-looking interpretation of the existing Zoning Code as it applies to all residential zones rather than an application of the Code to a specific existing use or applicant. The City Council notes that there is no applicant before it or before any other City commission or department.
3. The task before the City Council is to interpret the Zoning Code as it applies to Short-term Rentals in all residential zones. Given the Zoning Code must by law be consistent with the Community Plan, and given that the expressed intent of the Zoning Code (Section 30.01.010B) is to implement the Community Plan, the City Council finds that reading the Community Plan and Zoning Code together as a whole is the appropriate way to render the required interpretation.

The Del Mar Community Plan sets its overall goal as: "Preserve and enhance 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."

4. The City Council finds that this overall goal, as well as the other goals and objectives of the Community Plan, read in their entirety and in context, make it clear that Short-Term Rentals are appropriate uses in the visitor serving areas and in some commercial areas but not in the residential areas. The historical acknowledgement in the Community Plan that some transient use was existing in the Beach Colony area does not change this conclusion.
5. The City Council finds that the Community Plan has many goals and programs to separate residential areas from visitor serving and commercial areas, including but not limited to, a stated goal to preserve the character of the City's residential neighborhoods as residential areas and to adopt controls to prevent commercial development, which is incompatible with residential uses.
6. The Del Mar Zoning Code is structured as a permissive zoning ordinance. Only those uses expressly authorized, or found to be authorized by formal interpretation, are considered allowed. The City Council finds that its Zoning Code has consistently been interpreted and applied as a permissive code over its history. The City Council further notes that the advice of its Planning Department and City Attorney are that the Del Mar Zoning Code is permissive, and that the structure of the Code itself indicates it is permissive.
7. The definitions and other provisions of the Zoning Code applicable to the residential zones, when read in their entirety and in context, make it clear that Short-Term Rentals are not allowed in the residential zones, except in the Residential Commercial (RC) Zone. The definitions distinguish between residential and visitor serving uses. Among other provisions of the Zoning Code the City Council notes that a "Dwelling" is defined in the Del Mar Zoning Code as a "building or portion thereof used exclusively for residential purposes, including one-family, two-family, and multiple dwellings, but not including hotels, boardinghouses, lodginghouses and all forms of vehicles including immobilized vehicles."
8. The Del Mar Zoning Code identifies 11 residential zones (very low density residential to high density mixed residential), all of which allow single and/or multi-family dwelling units for residential purposes as an explicitly allowed use, but not transient or visitor-serving commercial uses.
9. The regulatory framework contained in the Zoning Code does not expressly or impliedly allow Short-Term Rentals in residential zones and the most logical overall reading of the Code is that Short-Term Rentals are not an allowed use in

the residential zones as a principal use, as an accessory use, or as a Home Occupation.

10. The Del Mar Zoning Code identifies a Residential-Commercial Zone (RC Zone), designed to be used as a transition between commercial and residential activities with allowed uses of residential and retail office activities. The City Council finds that Short-Term Rentals are an allowed use in the RC Zone due to its commercial nature.
11. The use of residential dwellings as Short-Term Rentals is transient in nature and more similar to a visitor serving commercial use such as a hotel, motel, lodging house, or boardinghouse, or other commercial use than to a residential use.
12. There are important distinctions between residential uses as allowed in the residential zones and "Visitor uses" not allowed in those zones but which are allowed in the Visitor Commercial (VC) and some other commercial zones. Both the Community Plan and the City's Zoning Code draw this distinction and assign these uses to different areas and zones. These distinctions include but are not limited to:
 - a. A resident is someone who has some or all of the following characteristics:
 - i. Owns the property, or is a long term tenant with the intent to occupy longer than 29 days;
 - ii. Considers the dwelling home;
 - iii. May register to vote at the address;
 - iv. Is likely to engage in community activities such as neighborhood watch, the local school system, City committees, etc.;
 - v. As a renter, is entitled to protection as a tenant under California law and can only be removed through eviction proceedings;
 - vi. Is a "neighbor" forming part of, and contributing to, the fabric of a residential neighborhood.
 - b. A visitor is someone who has some or all of the following characteristics:
 - i. Does not own the property and intends to occupy for less than 30 days;
 - ii. Is visiting or on vacation and has a home elsewhere;
 - iii. As a short-term visitor is not qualified to vote at this address;
 - iv. May engage in his/her home community elsewhere, but does not meaningfully engage in the Del Mar community while visiting Del Mar;
 - v. Is not protected by the provisions of California law protecting tenants, but can be removed without eviction proceedings, and has only licensee rights to the STR property;
 - vi. Is a temporary visitor and not a neighbor to others in the residential area.

13. The City Council finds that a neighborhood of residents, be they owners or tenants (renting 30 days or more), is different from a neighborhood of short-term visitors. The City Council further finds that the distinction is important, that both the Community Plan and the Zoning Code, read together as a whole, draw this distinction, and for reasons of good planning and protection of the community's health and welfare assign these different uses to separate areas and zones.
14. The City Council has considered the arguments made in support of the position that Short-Term Rentals are an allowed principal or accessory use in the residential zones, but finds them unpersuasive. These arguments include but are not limited to the following:
 - a. **Lack of Enforcement creates a right to Short-Term Rentals.** The City Council notes the difference between mere lack of enforcement and a consistent administrative interpretation and application of code language. Mere lack of enforcement does not create a right to continue violations, nor does it provide evidence of the City's administrative construction and application of the code provisions at issue. Therefore, evidence of mere lack of enforcement does not aid in this formal zoning interpretation. The City Council further finds that there is no consistent history in Del Mar of an administrative interpretation or application of the Community Plan or DMMC that Short-Term Rentals are allowed in residential zones.
 - b. **Proposition J.** The City Council has fully considered the 2009-2010 City proceedings leading up to the placing of Proposition J on the ballot in 2010. The City Council finds that the Proposition J effort was comprised of three components (1) the ballot measure proposing to impose a tax on vacation rentals (a ballot measure was required by state law to impose the tax) (2) An ordinance amendment to, for the first time, expressly allow Short-Term Rentals in residential zones (ballot approval not required) (3) An ordinance to impose a regulatory framework, for the first time, allowing and regulating Short-Term Rentals (ballot approval not required). The City Council notes that the ballot Measure was voted down and that the other two ordinance amendments were never adopted. The draft ordinances and accompanying staff reports, minutes, and discussion as reflected in the record make clear that at the time it was acknowledged that Short-Term Rentals were not allowed in the residential zones and that the ordinance amendments were needed to allow them.
 - c. **Drawing a line at 30 days is arbitrary.** The City Council finds that an essential part of zoning is "line drawing" which is found in other zoning aspects such as height limits and setbacks. Distinguishing between Short-Term Rentals for fewer than 30 days and long-term rentals for 30 days or more is reasonable and rational. This 30-day distinction is used in other

contexts, including in the City's tax code and in state and federal landlord and tenant law.

- d. **The right to rent one's home short-term is a protected property right that must be allowed in residential zones.** The City Council finds that renting one's home for 30 days or longer is a residential use allowed in the Residential zones, while hiring out one's house for 29 days or fewer is a commercial, transient use which, is not allowed in the residential zones. The City Council further finds that Short-Term Renting is a business, as defined by the Code, and is not allowed in the residential zones.
- e. **Code language allowing rentals in some circumstances implies Short-Term Renting is allowed.** The City Council finds that the Zoning Code does in some circumstances allow "the renting of not more than one room to not more than one person" as an accessory use, and in some zones the renting of an allowed second unit. The relevant zones where these provisions apply are set forth in the staff reports contained in the record. The City Council further finds that the most logical interpretation of the language allowing renting of a second unit is that such renting must be 30 days or longer. Such long-term renting is residential in nature and is an allowed use in the residential zones consistent with the Community Plan and the purposes of the residential zones. Short-Term Renting for 29 days or less is not residential in nature, but rather is visitor serving/commercial, a different use not allowed in residential zones, except in the RC zone.

Language allowing the renting of "one room to not more than one person" as an accessory use in some zones with no length of time specified is most logically interpreted as also calling for long-term renting of 30 days or more. Such long-term renting is a residential use while Short-Term Renting is a visitor serving/commercial use not consistent with the intent and purpose of the Community Plan and Zoning Code for an accessory use in these residential zones. The City Council further notes that the Code's express language allowing the renting of not more than one room to not more than one person in some zones is most logically read under rules of statutory construction to exclude other types of non-expressed rental arrangements. The Council further notes that the renting of one room to one person would not accommodate the vast majority of Short-Term Rentals which typically cater to more than one person at a time and involve more rooms or the entire house.

- f. **Where day care and similar uses are allowed in residential zones it is logical that Short-term Renting would also be allowed.** The City Council finds that "Care Facilities," including day care facilities serving not more than 6 persons, are allowed by state law in residential zones, and that the Del Mar Zone Code's allowance of such uses is required to

implement this controlling state law. In contrast, there is no equivalent state law directing that Short-Term Rentals must be allowed.

- g. **Short-Term Rentals are occurring without harm to neighborhoods, provide important alternative accommodation opportunities, and bring economic benefits to the City and its residents.** The City Council finds that its task in rendering an interpretation of the Zoning Code is limited to discerning the meaning of the Code as currently written, relying on the plain meaning of the code language where possible, and considering the applicable rules of statutory construction to discern the intent behind the words where needed. The City Council finds that the policy considerations regarding the arguments, pro and con, concerning Short-Term Rentals are generally not relevant to rendering the required interpretation.
- h. **The California Coastal Act and the Coastal Commission require that Del Mar allow Short-Term Rentals in its residential zones.** The City Council finds that the City of Del Mar has a fully approved Local Coastal Program ("LCP") certified by the Coastal Commission in compliance with the Coastal Act. The City Council further notes that the relevant provisions of Del Mar's Community Plan and Zoning Code are contained in that certified LCP. The certified LCP does not designate Short-Term Rentals as an allowed use in the residential zones. As such, interpretation of the Zoning Code is a local, legislative function neither in violation of the City's certified LCP nor in need of a Coastal Development permit or an LCP Amendment.

Section 2: Pursuant to the above findings, the City Council of the City of Del Mar interprets I17-001 based on the deliberations of April 17, 2017, and determines that Short-Term Rentals are not an allowed use in the R1-40, R1-14, R1-10, R1-10B, R1-5, R1-5B, RM-East, RM-West, RM-Central, RM-South and R2 Zones. The City further determines that Short-Term Rentals are an allowed use in the RC Zone.

PASSED, APPROVED AND ADOPTED by a majority of the City Council, vote of four to one, at a Regular Meeting of the City Council of the City of Del Mar, held on the 1st day of May, 2017.


Terry Sinnott, Mayor
City of Del Mar

APPROVED AS TO FORM:

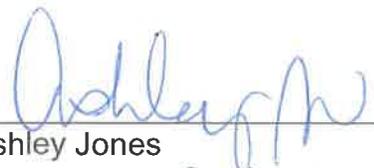


Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, Ashley Jones, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2017-29, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the this 1st day of May 2017, by the following vote:

AYES:	Deputy Mayor Worden, Council Members Druker, Haviland, and Parks
NOES:	Mayor Sinnott
ABSENT:	None
ABSTAIN:	None



Ashley Jones
Administrative Services Director/City Clerk
City of Del Mar