

Date: September 27, 2016

To: Mono County Board of Supervisors  
From: Larry K. Johnston, District 1 Supervisor  
Re: Alternative Transient Rental Neighborhood Designation Process

### SUMMARY

This approach is an option that is proactive in determining if and where additional single-family transient rentals should be allowed. It is focused on June Lake where a nexus appears present (via large scale resort facilities) to consider this expanded land use designation. Neighborhood and community preservation is given precedent over transient rental conversion though specific mapping of Neighborhoods and empowerment of present single-family owners to vote on whether their particular Neighborhood should be converted to a Single-Family Residential - Transient Rental area (SFR-TR). The final determination would be through a General Plan Amendment that requires Planning Commission recommendation to the Board of Supervisors and final action by the Board. In any Neighborhood that is revised to SFR-TR, a much simpler process to allow transient rentals would ensue, that is, only a Vacation Home Rental Permit would be needed. Finally, permit fees would include fees for enforcement activities associated with transient rentals.

### Background

In 2012, Chapter 25–Transient Rental Overlay District (TROD), was enacted by the County.<sup>1</sup> This was in reaction to several factors including dealing with issues of illegal transient rental occupancies (both for neighbors and County staff), evolving web-based rental opportunities (e.g., VRBO), reported economic opportunities (Transient Occupancy Taxes – TOT; June Mountain Ski Area sustainability, etc.), and added income for primary and second-home owners. Chapter 25 allowed the establishment of a TROD on any parcel or parcels throughout the county in districts designated SFR, ER, RR, MFR-L, or RMH. If a TROD were to be enacted in these districts, any single-family, multifamily residential or accessory dwelling unit may be rented on a transient basis (subject to requirements in 25.070 – vacation home rental permit). The process required a General Plan Amendment with Planning Commission recommendation and Board of Supervisors approval. Since 2012, 11 TROD applications were received and six (6) TRODs ultimately were approved (3 were withdrawn, 2 denied), all approved TRODs are in June Lake except one approved in Lundy Canyon.

### Moratorium Enacted

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<sup>1</sup> Resolution R12-90 and General Plan Amendment 12-004; Vote: 3 Yes (Bauer, Hunt, Hansen), 2 No (Hazard, Johnston)

In March of 2016 following a joint meeting with the Planning Commission, the Board of Supervisors enacted a moratorium on TROD processing, which has been extended to March 2, 2017. This moratorium came about primarily due to the rather contentious and continuing public reaction to TROD applications. Summarizing one letter received in this regard (Goodson/Malone, 9/14/2006), there has been discord in neighborhoods, pitting neighbor against neighbor, “breeding dishonesty and intimidation on the part of proponents.” The disharmony of neighborhoods has dragged on and on. Homeowners opposed to TROD establishment have been continuously on the defensive with respect to their zoning rights and expectations embodied in their home ownerships.

Incidentally, Measure Z within the Town of Mammoth Lakes was passed by almost 70% of the votes at a special election in October 2015. Measure Z requires the Town to obtain voter approval before allowing additional transient rental zoning. In essence, Measure Z took power from the Town Council to enact additional transient rental zoning and gave that power to the voters.

#### Planning Commission Reconsideration

At the request of the Board of Supervisors, the Planning Commission was asked to reconsider TROD implementation options. The Commission has since devised a modified proposal, which the Board considered on July 12, 2016. This Revised Chapter 25 proposal includes:

- Defining “Type I” daily rentals as owner-occupied properties and requiring a Use Permit for approval (only Planning Commission approval required vs. original Chapter 25 which required both Planning Commission and Board approval).
- Defining “Type II” daily rentals for “vacant” properties (such as second home properties) with off-site management, and requiring a General Plan Amendment process for approval (same process as original Chapter 25).
- Requiring a Vacation Home Rental Permit (same as original Chapter 25).
- Eliminating the encouragement of multi-parcel applications to establish a TROD.
- Focusing on lack of “reasonable opposition” by neighbors directly affected rather than neighborhood support (“reasonable opposition” undefined).
- Defining “neighbor” to be within 500 feet and setting an increased noticing period (20 days vs. original 10 days).

On July 12, the Board of Supervisors reviewed the draft Revised Chapter 25 and took the following Minute Order action:

“Direct staff to review the proposed revisions with applicable RPACs and the June Lake CAC, including extending the notice period to 30 days, and

waiving the appeal fee for Type I applications and initiate General Plan Amendment hearings.”<sup>2</sup>

Currently, the review of the Revised Chapter 25 is making its way through the applicable RPACs/CAC.

### Analysis

Albeit the Planning Commission and planning staff have endeavored to make the TROD more palatable to the general public, there remains the unresolved issue that neighborhoods and homeowners will need to continuously defend their inherent and expected single-family ownership rights versus commercialization and intrusion embodied in transient rentals.

A person who purchased a single-family home in a zoning district<sup>3</sup> in which single-family homes are permitted did so with the following General Plan assurance (Land Use Element, Land Use Designation Criteria, II-139):

*The land use designations described below were applied to private lands in the county based on an area’s suitability for certain uses. Each parcel or area was analyzed using the following criteria:*

- *Does the area include natural hazards that limit development, such as flood zones, Alquist-Priolo zones, unstable soils or steep slopes, etc.?*
- *Does the area include natural resources that limit development; e.g., wetlands, significant habitat, deer migration routes, etc.?*
- *What are the existing uses in the area?*
- *Is infrastructure available for development (i.e., sewer, water roads, fire protection)?*
- *What is the existing land division pattern in the area and what are the lot sizes?*
- *Does the area have open space value (e.g., visuals, wildlife habitat, agricultural preservation, cultural resources)?*
- *What is the community vision for the future of the area?*

This process helps assure a homeowner and neighborhoods that a systematic, thoughtful analysis led to the present land use designations. The last bullet point is particularly relevant in that the community vision was specifically considered in the existing land use district designation process. As an example, the June Lake Area Plan states in Objective K: “Retain the Down Canyon’s single-family residential character...”.

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<sup>2</sup> Alpers moved; Corless seconded; Vote: 4 yes (Alpers, Corless, Stump); 1 no (Johnston)

<sup>3</sup> Note that “zoning,” “zoning district,” “land use district,” etc., are use interchangeably throughout this report since Mono County does not have a separate Zoning Ordinance from the General Plan.

What occurred with the original Chapter 25 TROD process, and what is still embodied in the revised version currently under consideration, is that all land use designations that allow single family will have been *de facto*<sup>4</sup> rezoned to allow the potential for transient uses through an “overlay” approach. The current zoning does not allow this to happen (presumably because the current zoning was carefully considered when originally designated). Transient rentals are currently not listed, thus not permitted, as a compatible use in SFR, ER, RR, MFR-L, or RMH land use districts.

Both the original Chapter 25 approach and the more recent draft Revised Chapter 25 are flawed from a planning perspective; “planning” implies proactive consideration, not reactive deliberation. If Chapter 25 is enacted the battles of homeowner vs. homeowner, resident versus second homeowner, neighborhood preservation versus commercialization, will continue *ad infinitum*. Moreover, the proposal relies on the careful consideration of TROD applications by elected decision makers who, over time, may or may not be consistent in their TROD reviews (e.g., Board members are elected every two years which can result in inconsistent outcomes). Further, the parcel-by-parcel application process can lead to a series of “spot zoning”<sup>5</sup> designations, the antithesis of modern planning practice.

There are reasons to question the advisability of creating a “Type I” TROD approach as envisioned in the Planning Commission’s recommendation. First, it does nothing to stave off repeated TROD proposals in a neighborhood, potentially one after the other, placing those in opposition in constant defense. It also presumes, the Owner will be a responsible innkeeper, but there is no assurance that that will ensue. The loss of long-term affordable housing (granny units, rooms, etc.) is also of concern.

Promoting the concept that TRODs are ok if there’s no “reasonable opposition” is inconsistent with good planning principles. Land uses should be allowed on their merit as a public necessity in context to their setting, not whether or not enough people show up in opposition. At some point, people will just tire of coming to meetings and writing letters. Additionally, “reasonable opposition” is totally subjective and undefined.

The definition of a “neighbor” as someone within a certain distance of a TROD proposal, say 500 feet, is disingenuous to a functioning neighborhood.

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<sup>4</sup> *de facto* – meaning existing in fact, although perhaps not intended, legal, or accepted (Cambridge University Press).

<sup>5</sup> Spot zoning – the application of zoning to a specific parcel or parcels of land within a larger zoned area when the rezoning is usually at odds with a master plan or current zoning restriction. This may be ruled invalid as an “arbitrary, capricious and unreasonable treatment” of a limited parcel of land by a local ordinance. The defining characteristic of spot zoning is the unjustified nature of the benefit to the particular property owner, to the detriment of the general land use plan or public goals (State Standard Zoning Enabling Act)

Neighborhoods should be defined and notified as a whole, especially those threatened by piecemeal, spot zoning proposals that present little public good or which may require long term enforcement activity.

### Alternative Transient Rental Approach

An alternate approach is to proactively designate those areas that are suitable for Transient Rentals (TR) and zone them accordingly; not as a broad overlay covering the entire county. The approach suggested here would be a planning process to be conducted by the Mono County Planning Division to determine if there may be some current single-family zoned neighborhoods that could be rezoned to allow nightly transient rentals.

Guiding principles include:

- A. The preservation of resident occupied, community-oriented single-family neighborhoods and associated zoning protections from non-neighborhood uses are paramount.
- B. People who live in or purchase single family homes in neighborhoods zoned for single family have inherent rights that include long term expectations that single family zoning prohibits uses such as transient nightly rentals or blanket overlays that potentially allow nightly rentals.
- C. Buying or owning an existing single-family home does not bestow rights beyond that empowered in the current zoning.
- D. The reported demand for single-family homes as transient rentals does not supersede the inherent rights of current single-family zoning.
- E. The advent of web-based transient rental businesses does not require the need to change single-family zoned neighborhoods to accommodate such business.
- F. The potential for increased tourism or the potential for increased transient occupancy taxes (TOT) are not sufficient reasons, absent other considerations, to allow nightly transient rentals in single-family zoned areas.
- G. Poor enforcement or lack of enforcement of illegal transient rentals, are not sufficient reasons, absent other considerations, to allow nightly transient rentals in single-family zoned areas.
- H. Supplemental homeowner income is not a sufficient reason, absent other considerations, to rezone single-family homes to allow nightly rentals.
- H. There may be some currently zoned single-family areas that could be re-zoned to allow nightly transient rentals.
- I. If decision makers (or those who make recommendations regarding this process to decision makers) own transient commercial properties, have transient rentals, are connected to businesses that would stand to profit from transient rentals, or desire transient rentals on their single family private property, then these individuals should not participate in the process as there may be a perceived lack of objectivity if not direct conflict of interest.

## Proposed Planning Division Process

- A. Focus Initial Planning Process to Single Family Areas of June Lake. Since the hot spot for current TROD proposals is June Lake, the June Lake resort area should be addressed first; this is an important nexus if additional consideration of single-family transient rentals is justified. Also, it is an important change from the countywide Chapter 25 overlay option, which *de facto* rezones the entire county.
- B. Draft “Neighborhood Maps.” The planning staff would develop criteria to establish specific maps of single-family Neighborhoods; such criteria would include proximity to public services, management agencies, topographic features, major roadways, private roads, water ways, subdivision layout, snow removal considerations, HOA restrictions, etc. As examples, the Highlands area of June Lake could likely be considered a Neighborhood, the single family areas on the east side of Hwy 158 could be considered a Neighborhood, the Peterson Tract could likely be considered a Neighborhood, etc. This would involve basic proactive planning and mapping work.
- C. Public Input on Draft Neighborhood Maps via the CAC or Other Means. This would involve seeking public input on the Draft Neighborhood Maps created by the Planning staff. Review by the CAC in a workshop setting would be one review option but at least two public meetings should be held. Included in this review would be the Planning Division’s professional assessment of whether or not a mapped Neighborhood should be considered for further evaluation. This would be presented to the CAC and the recommended Neighborhood Maps would be forwarded to the Planning Commission, which would hold at least two public hearings before adopting a Final set of Neighborhood Maps in June Lake.
- D. Neighborhood by Neighborhood Advisory Voting. For those Neighborhoods found by the Planning Commission to be eligible for further consideration, ballots would be devised that would be used by Neighborhood parcel owners to vote on whether to recommend their Neighborhood for potential rezoning to allow transient nightly rentals. There would be one vote per parcel and each ballot would have to be signed by the property owners. The Ballot might read:

**Would you favor transient rentals in your neighborhood?**

**A “Yes” vote would advise the Planning Commission and Board of Supervisors to consider changing the zoning of your Neighborhood (defined by Map X) to “SFR-TR” which could allow any single family home in your Neighborhood to have nightly transient rentals.**

**A “No” vote would advise the Planning Commission and Board of Supervisors to not allow transient rentals in your Neighborhood and keep the present zoning.**

- E. It is proposed that an affirmative 4/5 vote<sup>6</sup> would be required in each voting Neighborhood to proceed further; that is, it would take at least 80% of the parcels in a Neighborhood to vote in the affirmative to forward a recommendation to the Planning Commission and Board to consider changing the zoning, by General Plan Amendment, to allow transient rentals in a designated Neighborhood. (Note: as with any General Plan Amendment, hearings would be held and the outcome would not be certain.)
- F. If a defined Neighborhood is designated through a General Plan Amendment to be SFR-TR, then a simplified approval process would ensue where a proposed transient rental home would only require a Vacation Home Rental Permit (versus a subsequent Use Permit or other permit action).
- G. Land Use designations of ER, RR, MFR-L, or RMH would not be considered for TR designations.
- H. Transient Occupancy Taxes would have to be paid by each Vacation Home Rental Permit holder.
- I. A yearly permit fee would be established for all Vacation Home Rental Permit holders to help fund transient rental enforcement activities.

Attachments:

Original Chapter 25

Draft Revised Chapter 25

Chapter 26 (Transient Rental Standards & Enforcement)

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<sup>6</sup> A 4/5 vote is required by some Board of Supervisors actions, such as allocation of Reserve funds. This 4/5 “super majority” requirement helps assure that such actions are clearly a public necessity.