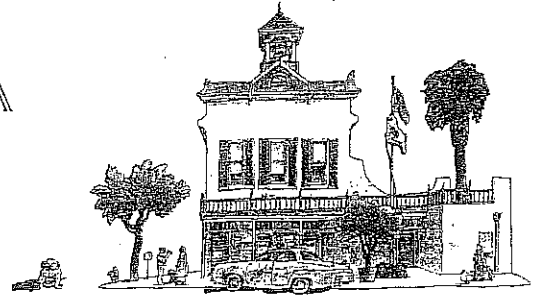


# CITY OF CALISTOGA

1232 Washington Street • Calistoga, CA 94515  
707.942.2800



April 8, 2010

Diane Dillon, Chair of the Board  
Napa County Board of Supervisors  
Napa County Administration Building  
1195 Third Street, Suite 310  
Napa, CA 94559

Re: Vacation Rental Proposal

Dear Honorable Chair and Board of Supervisors:

Public concern was expressed at the April 6, 2010 Calistoga City Council meeting (see attached letter which was presented to the City Council) regarding the recently adopted Ordinance No. 1332 which changes regulations regarding dwelling units in the unincorporated area of Napa County. It is our understanding that this new ordinance will become effective in June 2010. At the same time, the Board requested that the planning staff meet with stakeholders who would like to authorize pre-existing and perhaps illegal vacation rentals in the unincorporated area.

Charlene Gallina, Calistoga's Planning & Building Director has been monitoring this issue and will present a recommendation to our Planning Commission on April 14, 2010 and subsequently to the Calistoga City Council on April 20, 2010 for direction on a comment letter for transmittal to the Board of Supervisors for your meeting of April 27<sup>th</sup>.

In the meantime, the City Council has directed me to forward our initial objection to any change in County regulations which would increase the ability to establish vacation rentals in the unincorporated area. We note that:

- The cities and the County have agreed through mutually supportive General Plans that development belongs in the cities and the primary purpose of the unincorporated area is for agriculture.
- Vacation rentals of residences are in direct competition with the lodging industry critical to the economic wellbeing of the Napa Valley cities.
- Conversion of residences to lodging facilities will result in a loss of permanent housing in the County.
- Conversion of residences to lodging facilities will create service jobs and create the need for housing, particularly affordable housing.

- Conversion of residences to lodging facilities will have an overall impact on existing infrastructure systems such as streets, water, sewer and/or septic systems thereby create the need for infrastructure expansion to accommodate increased service demands.

Given our concerns and those expressed by other Napa Valley communities, we request that the Board of Supervisors move forward in enforcing regulations which prohibit illegal vacation rentals and delay any action to expand the ability to establish vacation rentals in the unincorporated areas until such time as discussions with City representatives can occur on this topic.

Please do not hesitate to contact me at (707) 942-2805 if you have any questions about our correspondence. Thank you very much.

Sincerely,



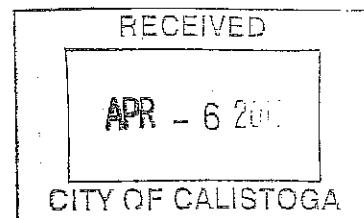
James C. McCann  
City Manager

Attachment

cc: County Planning Commission  
Nancy Watt, County Executive Officer  
Hillary Gitelman, Director  
City Council  
Planning Commission  
Chris Canning, Calistoga Chamber of Commerce  
Charlene Gallina, Planning & Building Director

6 April 2010

Mayor Gingles and Members  
Calistoga City Council



re: ILLEGAL SHORT-TERM RENTALS IN AP

On December 15, 2009 the Napa County Board of Supervisors approved Ordinance #1332 (*attached*) to clarify the longstanding prohibition on short-term vacation rentals on agricultural land, increase penalties and improve enforcement. The new ordinance was made effective June, 2010.

Short-term rentals (less than 30 days) on lands not appropriately zoned have been clearly illegal in Napa County since at least the 1980's. The county's legal counsel agrees they are a violation of the county General Plan, the Agricultural Preserve and voter-supported Measures J and P. Being illegal, they have not contributed a dime to TOT. They may not even report this illegal revenue for income tax purposes, either. Who knows?

However, owners of these approximately 300+ illegal rentals cried "foul!" at the Board's action. They don't want to lose this illegal, untaxed rental income and now refer to themselves as "stakeholders". They are not stakeholders. They have clearly broken the law. Law breakers are criminals. Therefore, they are criminals - not stakeholders.

These property owners knew when they planned their financial endeavors that such use of their property was illegal. To complain about pending financial hardship if the law is enforced is like the crack dealer complaining that he can't make his car payment if you bust him. Oh, well - it's the law.

Moreover, these illegal rentals openly advertise and have been stealing visitors and income away from LEGAL rentals located where appropriately zoned - mostly within city limits. These legal rentals have obtained necessary permits, collect and remit TOT; they probably pay Workman's Comp and other costs associated with operating a business within the law.

The overriding principle of Napa Valley's land use policy has been that commercial activity belongs in the city limits - not on county ag lands. This has served all of us well over the 40+ years of the Agricultural Preserve. Any expansion of commercial activities in the county - be it weddings, dinners and corporate events at wineries or the legalization of clearly illegal rentals - steals income away from those inns and restaurants that operate legally within the cities.

As reported in the media, illegal operators of county short-term rentals themselves estimate that if they paid TOT as they should, they would add an additional \$1.45 MILLION to hotel tax revenues. Based on that figure, they are annually siphoning over \$12 MILLION in room rents away from legal operators. This should not be allowed to continue. It is hurting your businesses and your budget.

You are now being asked to support an additional 2% TOT, via the TBID, to help your legal innkeepers fill their rooms while the county is being pressurized to legalize illegal rentals that funnel business away from them. There is a gross contradiction here. You must ask yourselves why legal operators should be forced to pay even more in these hard economic times. If the law was enforced, maybe you wouldn't need this TBID.

I have spoken with several innkeepers - many have already lowered their rates or offer specials but still cannot fill their legal rooms. They may not be able to add the 2% to the visitor's bill - they may have to lower their rates even further to cover it. This must be carefully considered within the context of the potential legalization of \$12 MILLION of illegal rentals.

In light of the proliferation of these illegal rentals and the harm they are doing to legitimate innkeepers, the Board of Supervisors was correct in acting and requiring increased penalties and strict

enforcement. They will meet again to discuss this issue on April 27, 2010.

The City of Calistoga owes it to its law-abiding innkeepers to take action to support the December 15, 2009 decision of the Board of Supervisors to enforce the county's laws and clean up these illegal rentals that have been sucking income away from your businesses. Please take action to stop the legalization of these illegal rentals that are harming all of us.

Thank you,



Norma J. Toianelli  
1001 Dunaweal Lane  
Calistoga, CA 94515

ORDINANCE NO. 1332

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING SECTION 18.08.260 DEFINING DWELLING UNIT AND ADDING A NEW SECTION 18.104.410 PROHIBITING TRANSIENT COMMERCIAL OCCUPANCIES OF DWELLING UNITS TO THE NAPA COUNTY CODE

WHEREAS, under the Napa County General Plan, amended June, 2008, two overriding goals of Napa County are to preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County, and to concentrate urban uses in the County's existing cities and town and urbanized areas (Goal AG/LU-1 and 2); and

WHEREAS, in support of these goals, the General Plan contains numerous policies which direct that agriculture is the primary land use in the County, minimize conflicts arising from encroachment of urban uses into agricultural areas, limiting new non-agricultural uses or developments, concentrate urban uses and residential growth in the incorporated cities and town which can provide necessary and expected public services and not conflict with the agricultural heritage of the County (Policy AG/LU-1, 3, 12, 22, 23); and

WHEREAS, additionally the General Plan contains policies which direct the County to promote development concepts that create flexibility, economy, and variety in housing without resulting in significant environmental impacts and without allowing residences to become commercial short-term guest accommodations (Policy AG/LU-1, 3, 12, 22, 23, 33, Action Item 33.1); and

WHEREAS, the commercial use of dwelling units on an overnight transient basis of less than 30 days occupancy is a commercial activity often incompatible with maintaining the agricultural nature and rural ambiance of the County, and those areas devoted to rural residential use, and may create adverse impacts on surrounding residential uses including, but not limited to, increased demand for public services because of higher densities than would otherwise likely occur, the likelihood of late night noise and glare emanating from parties, increased visitor traffic on narrow roadways exceeding

their capacity and the need to drive long distances to obtain visitor serving needs, and removes such dwellings from the potential of providing needed available housing stock for County residents; and

**WHEREAS**, the commercial use of dwelling units on an overnight transient basis of less than 30 days occupancy is currently a violation of the uses allowed in all zoning districts in Napa County, unless specifically stated otherwise in Title 18 of the Napa County Code; and

**WHEREAS**, this ordinance is declaratory of existing law with respect to commercial transient occupancies of dwelling units and will specifically enumerate and clarify in the County Code that commercial transient occupancies of dwelling units continue to be prohibited in all residential and agricultural zoning districts within the county, which is consistent with the objectives of the General Plan; and

**WHEREAS**, the Board of Supervisors determines that the enactment of this ordinance will ameliorate the above noted deleterious effects associated with transient commercial occupancies of dwelling units, and will advance and promote the health, safety, and general welfare of the County and its inhabitants.

**NOW, THEREFORE**, the Board of Supervisors of the County of Napa, State of California, ordains as follows:

**SECTION 1.** Section 18.08.260 (Dwelling unit) of Chapter 18.08 (Definitions) of the Napa County Code is amended to read in full as follows:

**18.08.260 Dwelling unit.**

A. "Dwelling unit" means a room or connected rooms constituting a separate, independent housekeeping establishment for owner occupancy or rental or lease for a period of thirty days or longer, physically separated from other rooms or dwelling units in the same structure, and containing independent cooking and sleeping facilities.

B. "Dwelling unit" does not include those commercial timeshare or vacation ownership arrangements as more specifically defined in Section 11212 of Chapter 2 of Part 2 of Division 4 of the Business and Professions Code, including a dwelling unit owned by a corporation or club, including arrangements commonly referred to as corporate club memberships, private residence clubs, vacation home partnerships, vacation clubs, destination clubs, or condohotels, and used by individual shareholders or members by advance reservation or arrangement for a period of less than thirty consecutive days, and also does not include arrangements involving a parcel of real property with more

than twelve fee owners per legal dwelling unit where any fee owner is entitled to exclusive occupancy of the dwelling unit or units for a period of less than thirty days in a given calendar year.

**SECTION 2.**

A new Section 18.104.410 (Transient commercial occupancies of dwelling units prohibited) is added to Chapter 18.104 (Additional Zoning District Regulations) of the Napa County Code to read in full as follows:

**18.104.410 Transient commercial occupancies of dwelling units prohibited.**

A. Transient commercial occupancies of dwelling units are prohibited in all residential and agricultural zoning districts within the county.

B. Definitions. Unless otherwise defined in Chapter 18.08, the following definitions shall apply to this section:

1. "Commercial use" shall have the same meaning as commercial use in Section 18.08.170, except it shall not include house exchanges, where owners or occupants swap homes for vacation purposes.

2. "Occupancies" means the use or possession or the right to the use or possession of real property or a portion thereof, including any dwelling unit, single family dwelling unit, guest cottage, or second unit, for dwelling, lodging or sleeping purposes. The right to use or possession includes any nonrefundable deposit or guaranteed no-show fee paid by a person, whether or not the person making the deposit actually exercises the right to occupancy by using or possessing any property or portion thereof.

3. "Transient commercial occupancies of dwelling units" means any commercial use of a dwelling unit for a period of time less than thirty consecutive days. It does not include occupancies associated with farm labor camps, residential care facilities, family day care homes, or legally permitted bed and breakfast establishments, hotels or motels.

C. Liability and Enforcement.

1. Any property owner, or authorized agent thereof, who uses or allows, or who knowingly arranges or negotiates for the use of, transient commercial occupancies of dwelling units in violation of this section shall be guilty of either an infraction or a misdemeanor.

2. Any property owner, or authorized agent thereof, who prints, publishes, advertises or disseminates in any way, or causes to be printed, published, advertised or disseminated in any way, any notice or advertisement of the availability of transient commercial occupancies of dwelling units as prohibited by this section, shall be guilty of either an infraction or a misdemeanor.

3. In addition to the penalties set forth in subsections (C)(1) and (2) above, violators of this section may be subject to a public nuisance abatement action brought under the provisions of Chapter 1.20 and the civil penalty provisions of up to one thousand dollars per violation per day as provided in subsection (B) of Section 1.20.155 and subject to an unfair competition action brought pursuant to Business and Professions Code Section 17200 et. seq and up to two thousand five hundred dollars per violation civil penalty allowed thereunder.

4. Any person who uses, or allows the use of transient commercial occupancies of dwelling units prohibited by this section shall also be liable for the transient occupancy tax that would have been owed under Chapter 3.32 had the occupancy use been legal, including the penalty and interest provisions of Section 3.32.080.

5. The civil remedies and penalties provided by this subsection are cumulative to each other.

**SECTION 3.** The Director of Conservation, Development and Planning has determined that this ordinance would not have a significant effect on the environment and is exempt from the California Environmental Quality Act [See guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15061(b)(3)]. The project also will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, will not cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 5 (“Minor Alterations in Land Use Limitations”) which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15305; see also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

**SECTION 4.** Pursuant Chapter 4, Title 7, commencing with Section 65800, of the California Government Code, this ordinance is consistent with the following goals and polices of the 2008 General Plan: Agricultural Preservation and Land Use Goals AG/LU-1, 2, 5 and Policies AG/LU- 1, 3, 12, 20, 21, 22, 26, 32, 33, 34, and 35; Circulation Policy CIR-1; Community Character Goal CC-6 and 8 and Policies CC-31 and 36.

**SECTION 5.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

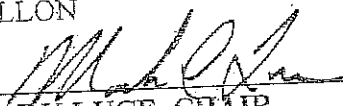


SECTION 6. This ordinance shall be effective one hundred eighty (180) days from and after the date of its passage.

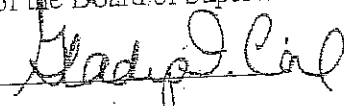
SECTION 7. A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing ordinance was introduced and public hearing held thereon before the Napa County Conservation, Development and Planning Commission at a regular meeting of the Commission on November 18 and December 2, 2009, and was passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 15th day of December, 2009, by the following vote:

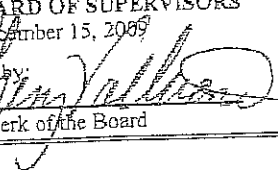
AYES:	SUPERVISORS	CALDWELL, WAGENKNECHT, DODD and LUCE
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	DILLON

  
\_\_\_\_\_  
**MARK LUCE, CHAIR**  
Napa County Board of Supervisors

ATTEST: GLADYS I. COIL  
Clerk of the Board of Supervisors

By: 

APPROVED AS TO FORM  
Office of County Counsel  
By: Rob Paul (by e-signature)  
Deputy County Counsel  
By: Sue Ingalls (by e-signature)  
County Code Services  
Date: December 15, 2009

APPROVED BY THE NAPA  
COUNTY  
BOARD OF SUPERVISORS  
Date: December 15, 2009  
Presented by:   
Deputy Clerk of the Board