

Transient Rental Controls - Proposal

1 PURPOSE

The recent special Council Meeting covering where we stand, as a community, on Transient Rental Controls was enlightening. Ron Brean, our Mayor, requested ideas from the audience. Most of the testimony offered was from non-resident owners or agents of Transient Rental properties offering somewhat emotional pleas about why nothing should be done and to maintain the status quo. The common theme was that additional controls would force housing prices down and cause people to lose their second homes, due to an inability to cover the costs of ownership. Many of the speakers seemed to believe that the large increase in the number of Transient Rental Licenses was due to the recession.

2 EXECUTIVE SUMMARY

This proposal links the existing zoning definitions in the Yachats Municipal Code to the issuance of Transient Rental Licenses, changes the reporting frequency and implements usage controls covering the number of nights that a property can be used as a Transient rental.

Specifically, this proposal will:

- Limit Transient Rental Licenses to properties located in residential Zones R-1 through R-4;
- Change Transient Rental Tax Reporting from quarterly to monthly;
- Increase Revenue by standardizing deductions with current Oregon procedures
- Limit the number of nights of usage to 105, annually, as reported on the Tax Report;
- Allow owners to recover up to 75% of ownership costs;
- Mitigate the impact to "character of the neighborhood" issues caused by heavy usage;
- Apply the power of the Conditional Use Permit process to Transient Rental properties

3 BACKGROUND

Housing prices were discussed by many of the attendees at the Special Meeting. Most speakers seemed to believe that if the City of Yachats restricted, or capped, the number of Transient Rentals, housing prices would fall or continue to be depressed.

Most impartial analysis of housing prices concludes that there are a variety of factors that contribute to the value of any particular piece of residential property. Location, condition, demand, interest rates, demographics, confidence in the future, confidence in the economy, personal financial situation and housing alternatives, among factors, all contribute to what a single property may be worth. Since there

are very few employment opportunities nearby at wages that would allow for obtaining a traditional mortgage, most of the buyers here will be relocations, retirements or second homes for vacation/future retirement purposes. Selecting one attribute of the value equation, a possible restriction on the potential to generate Transient Rental Income, as the driver of value, seems to be a stretch. If the restriction were indeed the major force in determining the value of a home in Yachats, we would have experienced bidding wars and a significant increase in prices realized on sales of properties holding Transient Rental permits. I do not believe that has been the case in Yachats, having noted the "For Sale" signs hanging perpetually on some of these residences. Under this proposal, continuing the opportunity to recover most of the costs of ownership each year should mitigate any claims that we are impairing value of these properties in the R-1 through R-4 Zones.

The second major theme was that the increased number of Transient Rentals was a direct result of the need for people to save their homes from potential foreclosure caused by the recession. While difficult to prove or disprove, I would like to offer Shell Street as an example of how properties have changed in the last several years. My wife and I relocated to Yachats in January of 2000. On Shell Street/Mitchell Lane, there were NO transient rentals and 1 B&B. The B&B operated as a business and had obtained a Conditional Use Permit for the R-1 zone. Fast forward to 2014. The B&B has been sold and no longer operates, having been converted to an owner-occupied single family residence. There are 6 Transient Rentals that have commenced operations since 2000. The ownership characteristics are: 1 – retired teachers from Northern California who have rarely visited here and started Transient Rentals immediately after construction; 2 – a commercial real estate professional from Sacramento who purchased a home and immediately added it to the Transient Rental Pool; 3 – an owner from Washington who acquired our former Mayor's home and immediately placed it in the Transient Rental inventory; 4 – a couple who lives in Yachats at another location, converting their initial Yachats home into a rental upon acquiring their second home; 5 – a farmer/rancher from Monroe who converted the home to a rental when his wife passed away, having no interest in living here on anywhere near a permanent basis and finally, 6 – a couple from the Valley who started renting their home a few years ago after several years of using it as a second home.

I do not know if Shell Street/Mitchell Lane is typical of the market but 5 of the 6 properties were converted to rentals due to family changes or acquired as rentals and have nothing to do with the recession.

4 STATISTICS AND OTHER DATA

Transient Rental Income is important to the City of Yachats, funding the operating costs of City Hall, the Library, the Little Log Church and Museum, street repairs, visitor amenities, marketing, the Visitor's Center and all sorts of other civic programs. Yachats chose not to assess a Property Tax in earlier years, under Measure 7, as the Transient Rental Tax was sufficient to fund our activities. We only collect sufficient Property Tax to repay public debt, which is about 17 cents per thousand of Assessed Value. The Finance Committee has analyzed Transient Rental Tax Collections from 2006/2007 to now. In the 8 years since the analysis started, Transient Rental Tax generated from individual homes has doubled from \$65,000 per year to \$130,000 per year. Hotels/Motels increased at a much more modest rate, climbing from \$364,000 to \$376,000. It is clear where our revenue growth has come from. The increased number of Individual Transient Rental Licenses has necessitated adding a Code Enforcement Officer,

along with additional operating costs, to manage the growth, respond to issues and to help maintain the "Character of the neighborhood".

Our Zoning would seem to allow Transient Rentals, but with a slant towards a Conditional Use, rather than as a Permitted Use. Zones R-1 through R-4 allow Bed & Breakfast operations as a Conditional use. A Transient Rental is likely more similar to a B&B in characteristics and neighborhood impact than owner-occupied single family residences. We require that a B&B obtain a Conditional Use permit under our municipal code, but we have no requirements covering Transient Rental properties.

One of our City Council members has stated that the Oregon Supreme Court has determined that a Transient Rental is not a business. The case in question was *Yogman vs. Parrott* and was decided in 1997. The case was essentially about CC&R's and included a covenant that no commercial enterprise shall be constructed or permitted on any property within the boundaries of the CC&R's. The Court addressed the specifics of the case, noting that the rental transactions did not occur on the premises, payment is made elsewhere, renters use their own linens, do their own cleaning and the owners provide no goods, staff or services at the house. Other facts included the evidence at hand did not demonstrate a profit motive or business organization. The Court found that the language in the CC&R's was ambiguous and stated that, in a case involving differently worded covenants, the outcome could be different. The property rights in front of them were neither clearly permitted nor clearly forbidden. The Court seems to imply that the profit motive is defined by the types of services that are provided to renters. Yachats use of management companies, on-call help, provided linens, cleaning services, shopping and other services would tend to lean towards concluding that this is a commercial endeavor. I don't think that many impartial observers would disagree that once a property owner has recovered all of the ownership costs for the year, a commercial enterprise is at hand. The question is where is that point? I recommend 105 nights a year. That level of activity would recover approximately 75% of the annual costs of ownership and be below the level that creates a commercial enterprise. Under this proposal, a property owner, when filing their Transient Rental Tax Return, would report monthly the number of nights a property was occupied in that month, along with the Year-to-Date tally. It should be noted that the Tax Report is currently signed under penalty of perjury.

Properties rented in excess of the imposed limit would require a Business License, rather than a Transient Rental License. A Business License application may trigger a need for a Conditional Use Permit. We may need a penalty for excess nights while the Conditional Use process proceeds.

5 PROPERTIES WITH COVENANTS, CONDITIONS AND RESTRICTIONS

There are a few neighborhoods in Yachats that are governed by Covenants, Conditions and Restrictions (CC&R's) providing rules, controls and usage requirements over Transient Rentals within their boundaries. Overleaf Village and KOHO are examples of neighborhoods that have language governing Transient Rentals within their CC&R's. Under this proposal, CC&R's created or modified after the *Yogman* case (1997) and containing language dictating how properties can be used as Vacation Rentals should be exempt from the usage restrictions in this proposal. Owners of these properties were made aware of the restrictions at the time of purchase and should not have those CC&R's trumped or trampled by a revised City Ordinance. Such properties will still be required to comply with inspections, parking, Tax Reporting and other components of our City's Municipal Code.

6 COMPLIANCE

This proposal will require owners or management companies to self-report usage nights on the new Monthly Tax Report. A possible design of the new report is attached for your consideration. I do not believe that compliance will be complex and further believe that a number of tools are available to facilitate remote auditing (reviews) of the data submitted. As a companion activity to the re-design of the Tax Report, we should eliminate the deduction of credit card fees and reduce the administrative deduction from 7-1/2% to 5%. These changes will make our local fees consistent with the way that the State of Oregon manages its Tax on Transient Rentals.

7 POTENTIAL NEW TAX REPORT FORM

City of Yachats

Transient Room Tax Return

Tax return for Month and Year	
Gross Rent	\$ XXXXX.XX
Less Allowable Deductions	
Rent by Month	-XXX.XX
Credit Card Discounts	<u>-XXX.XX</u>
Taxable Rent	XXXXX.XX
7% of Taxable Rent	XXX.XX
Collection Fee	
(7.5% of tax calculated above)	<u>-XX.XX</u>
Total Tax Due	<u>\$ XXX.XX</u>
TR Usage for the month	XX
Owner Usage for the month	XX
See instructions below for calculations of penalties and interest for late returns	

Yachats Municipal Code restricts usage under a Transient Rental License to 105 days.		
	TR	Owner
<u>Month</u>	<u>Usage</u>	<u>Usage</u>
January	XX	XX
February	XX	XX
March	XX	XX
April	XX	XX
May	XX	XX
June	XX	XX
July	XX	XX
August	XX	XX
September	XX	XX
October	XX	XX
November	XX	XX
December	<u>XX</u>	<u>XX</u>
YTD	<u>XXX</u>	<u>XXX</u>

Signature and declaration section

8 OTHER PERTINENT DATA

According to Google Earth, there are 47 homes that are on Ocean View Drive, 26 of which have Transient Rental Licenses. Ocean View Drive may be a good location for a Special Transient Rental Zone, exempting these properties from the usage component of the proposed Ordinance. The Planning Commission could take this on as a land use issue, hold appropriate hearings and make a recommendation to the Council on a possible special zone.

There are no other streets in Yachats with such a cluster of Transient Rental licenses.

Calculation of the Costs of Ownership –

\$300,000 home with a \$200,000 Mortgage at 5%

Mortgage Interest -	\$10,000
Property Taxes -	3,000
Insurance-	1,000
Maintenance -	<u>3,000</u>
Annual Cost of Ownership	<u>\$17,000</u>

\$17,000 divided by \$120 net revenue per night equals 140 Nights.

75% of 140 nights is 105 nights.