

CAPISTRANO BAY DISTRICT
AGENDA REPORT
October 4, 2016

Old Business

ITEM 9b

Short Term Rentals (8 pages total)

In a recent final approval action by the Dana Point City Council, the previously prohibited short-term rental law has been amended and short-term rentals are now legal to operate in Dana Point.

The Board of Directors has a healthy concern for the expenses carried by the District to manage the short-term rental activity in our community. The Board has tried to reason with the City for a share of the proceeds from the rental fees collected to help offset the expense burden but so far there has been no show of willingness or understanding by the City. *It's worthwhile to note here that in the calendar year of 2015, the City collected a total of \$244,000 from Beach Road rental taxes alone.*

This unfairness, where the City keeps all the revenue but gives back very little in the way of hands-on management, gives rise to a sense of opposition by the Board to STR's in general. This opposition was evident in an email that was sent out to the community on September 21st, at the direction of Board President Masto. The content of the message was news of a referendum effort currently underway by a group of opponents to STR's, outside of Beach Road, to repeal the newly adopted rental law. This is a divisive issue for Beach Road as demonstrated by the attached email comments.

The following are copies of emails between the District and property owners, beginning with the notice of the referendum on the City Council action to pass STR's into law:

From Board to Manager 9/20/16 10:04 PM

Don, I would like to have this info disseminated on Beach Road so that the public is aware that there is a proposed referendum on the ordinance 5.38 that was passed by the City Council last week. There may be owners that would like to sign the proposed referendum by Oct 7 to qualify for the election ballot In Nov. Of course , all signers must be registered in D.P. Ambrose.
Sent from my iPad

From Toni Nelson of Capo Cares to Board Pres. Masto 9/21/16 6:28 AM

Thank you, Ambrose. Unfortunately, there likely won't be a way to "try again." A referendum has a 30 day window and if this is not repealed it will remain law in Dana Point. We will all be subject to unrestricted 2 to 29 day rentals throughout our residential areas. Wth any changes unlikely because they are now subject to Coastal Commission approval, and most neighboring cities banning or restricting this land use, Dana Point will likely experience a significant proliferation. Neighborhoods like yours and mine that enjoy panoramic views will be especially impacted. Toni Nelson
Sent from my iPad

From District to Community 9/21/16 8:17 AM

To All Beach Road Property Owners,

CBD Board President Ambrose Masto has requested the following information be circulated to the Beach Road community. The text of the message is from Toni Nelson and her organization outside of Beach Road called 'Capo Cares':

A citizens referendum is in process with the intention of repealing the short term vacation rental ordinance passed by Dana Point City Council on September 6th. Approximately 2100 signatures from Dana Point registered voters are required by October 7th to repeal the ordinance.

Council would have the option to either start over with a new ordinance that more appropriately reflects the desire of Dana Point residents to preserve the residential nature of their communities. They also have the option to hold a special election to try to pass the original ordinance (it is highly unlikely it would win a vote of the people).

Please let your residents know they can sign the referendum at Alan Bell's house, 35161 Camino Capistrano, just past Camino de Estrella traveling toward San Clemente, bluff side, 6PM to 8 PM every evening until October 6th.

Thank you, Toni Nelson
Capo Cares

From homeowner Murad Siam to Board 9/21/16 9:24 AM

Thanks

Please let Dr. Masto know that 35093 Beach Road does NOT support a repeal of said ordinance.

Also, why is the district and or the board on either side of this issue?

Is it not my right as an individual property owner to decide what is in my best interests?

What am I missing here? The District and Board should be neutral on this issue.

Thanks

From homeowner George Covic to Board 9/21/16 10:06 AM

Don, this is a no win situation. It will never happen. What needs to happen is to create a new ordinance about property management restrictions and put the responsibility back on to the listing agents and owners of the properties. The district has rules on parking, beach fires, etc. They can surely have rules on property management that can be enforced. The City of Dana Point will never shut down a money making opportunity like short term rentals. This citizens referendum is the wrong way of going about it. It's a waste of our time.

George

Sent from my iPhone

From homeowner Nancy Fugleberg to District Mgr 9/21/19 3:48 PM

Hi Don -

As a member of the Beach Road Homeowners Association, I am in favor of the continuation of the short term rental vacation ordinance. With that in mind, I would request that you disseminate the following information to all members in opposition to your previous emails in support of the repeal of the ordinance. As the Manager of the District, I believe that your duty is to represent ALL owners; not just some.

With that being said, please let all homeowners know that there is a group that SUPPORTS short term rentals in Dana Point and the following personnel are heavily involved. Please disseminate my information

to all homeowners and allow the people whom I am sending to include you in more detailed information as I am not a Dana Point resident...But I have a home there...and have for almost 50 years.

Please see below. Thank you, Nancy Fugleberg, 35697

KEEP DANA POINT FRIENDLY

Attorney Deanna Slocum
djslocum@gmail.com

Jason Colasco
thecolascos@mac.com

Shevy Askason
shevy.askason@homesmartegr.com
949-769-1599

Below is a flyer submitted to the District by homeowner Murad Siam 9/21/16:



Keep Dana Point Friendly

Learn the facts before signing to overturn an ordinance that has been protecting Dana Point Homeowners for nearly 3 years.

1. This ordinance has been in place since April 2, 2013, the city has 5 documented complaints about vacation homes in 3 years.
2. Prior to this ordinance the city did not have the ability to regulate and police short term rentals.
3. Repealing this ordinance will put our city back 9 years, which is when we started working on the ordinance that was passed April 2, 2013
4. This ordinance allows HOA's to prohibit short term rentals, without it, the city does not have an enforcement mechanism.
5. Overturning it will cause our city to spend millions in lawsuits
6. May drive property owners to turn their properties into Sober Living Homes
7. Will create divide between our city and the Coastal Commission
8. Puts our city at odds with the tourists who visit our city every year.

Please visit www.keepdanapointfriendly.com to learn more about this important issue. Please don't sign any referendum until understanding the facts. Keep Dana Point Friendly!

Item 9b continued on next page

The following are complaints from a homeowner regarding parties in the rentals on both sides of his Beach Road home, and responses from the District and the rental property manager, Capistrano Realty:

From homeowner Frank Trimboli RE: Fourth of July 7/5/16 11:21 AM

Hi Don , I hope your 4th went well ? I would like to start with your security staff did excellent job on the 4th as I expected they would since they do day to day .

I had a bad situation was a very large party next store to me at 611 ,well over 100 guests from someone just renting for the 4th. As you know that many people can't fit on the deck or beach what there was of it with the high tide situation.

The time I hear of a party was when the renter notified us was the morning of the 4th. That when I first heard of a band would be playing on the deck.

I was informed there are no rules by security so there was really nothing I could do about a renter taking my 4th enjoyment away from my family and guests.

Its seems to me this kind of abuse from people who really don't care can be controlled with some rules and notifications. For a renter or a owner to have function of this size with unlimited guests and no notifications to its neighbors who's w greatly affected isn't right.

When you get a chance I would like to discuss this with you . I can be reached at 626-675 2578.

Thanks

Sent from my iPhone

Second complaint from Frank Trimboli RE: another party at rental 7/16/16 5:33 PM

Hi Don I just left a message for regarding renters next door . Sorry I know it's Saturday but it's like the 4th of July situation again .

I called the front gate and notified them of the situation of the renters next door there is at least 12 to 15 persons now and maybe more coming ?

The guard tell me they have their rights and doesn't know the city ordinance. If you could please check on this and let me know I would appreciate it .

Sent from my iPhone=

Email from Board to Mr. Trimboli RE: rental parties 8/1/16 4:39 PM

Dear Mr Trimboli,

At the District Board meeting Tues. July 26, your letters to the Board were reviewed and an investigation into the incidents you relayed is being carried out .

The Board is concerned about this matter and will review all the information that is pertinent. You will be kept informed on a timely basis and please do not hesitate to call us if necessary. Ambrose Mastro,
Board President,

Sent from my iPad

Email from Board to Capistrano Realty RE: rental parties 8/1/16 4:01 PM

Chris Jones. Capistrano Realty.

Dear Chris,

The District Board has received two letters dated July 5 and July 16 from a Beach Rd. Owner who lives next to a rental property managed by your company. On July 4, having received no pre warning of any kind, the owner stated that the renters next door had a rather large party with 100 guests as well as a Live Band . This unauthorized huge party detracted from the enjoyment of the day by the owner and his guests. A few days later, a similar event occurred by renters next door who had a large gathering once again disturbing the owner and diminishing the enjoyment of his property. We request that you look into both of these rental events and issue a full report to the District Board. Previously ,you had assured the

Board that you carefully educate your clients and that they are well schooled in the rules and regulations of our District. Please coordinate your response to this inquiry with Don Russell. Thank You. Ambrose Masto, President, Capistrano Bay District Board.

Reply from Chris Jones/Capo Realty to District RE: renter complaint from Mr. Trimboli 8/9/16 2:27 PM

Don,

Several weeks ago, I met with Frank and Cathy Trimboli to discuss summer events at 35611 and 35601. I explained that Capistrano Realty is 100% sensitive to their location and that we explain the uniqueness of property lines, etc. to each renter checking in. They appreciated our conversation and explanation about moving forward. I explained that the 4th of July renter at 611, Ravi Jain, had misled us about his intentions and use of the home. Per Capistrano Realty and homeowners that we represent, I explained that he is no longer welcome to visit any of our homes on Beach Road. In addition, we have advised additional homeowners and representatives. Frank and Cathy have my contact information and are welcome to call me anytime they have a question or concern.

Here is the clause in our rental agreement;

WEDDING/EVENTS: No weddings, receptions, events, or large parties of any kind are to be held at the home, in the courtyard or on the beach. Capistrano Realty has the right to inspect the home and related property at any time during your stay to guarantee that this stipulation has not been violated. The city of Dana Point has an ordinance which prohibits a gathering of more than 20 people at a vacation rental home. This ordinance is strictly enforced. If violated, there are fines invoked upon the property owner and Capistrano Realty will retain the entire security deposit. Initial: _____

There were no violations at 35611.

This past Saturday, I once again chatted with Frank to confirm that the 4th of July renter was an isolated incident and that all was well. He agreed and all is well.

If you want to smile on a Saturday morning, take a Beach Road drive on a summer Saturday at 9:45 am and you'll see family members laughing and crying while saying goodbye to each other at their cars. We rent to families to create lifetime memories. Every summer, we witness the circle of life as parents return as grandparents. We take our renter vetting process very seriously and feel we are doing a very good job of it.

As always, feel free to reach out with any additional questions or concerns.
See you at the Beach,

Chris Jones

Capistrano Realty (Since 1963)

949-496-5353

www.socalvacation.com

***Manager's Note: There is nowhere in the language of the short-term rental law that allows for a gathering of up to 20 people, as stated in Chris Jones's email above. In fact, Chapter 5.38, section 080 of the code clearly states, "SHORT-TERM RENTALS SHALL BE USED ONLY FOR OVERNIGHT LODGING ACCOMMODATIONS. THEY MAY NOT BE USED FOR WEDDINGS, PARTIES, BACHELOR/BACHELORETTE PARTIES, CONFERENCES OR SIMILAR EVENTS.*

The content of the complaints above bears out that neither the City nor some rental property owners or managers are paying attention to the regulations.

Below is a brief listing of some short-term rentals by address that have exceeded either vehicle or occupancy limits or had large gatherings recently:

063/065	weekend of 9/24	32 guests	20 cars (duplex w/RR prking)
097 Wedding	weekend of 9/24	42 guests	not counted (cars prkd all over)
641	8/26		6 cars (home has only RR prkng)
725	8/26		6 cars (home has only RR prkng)
221	8/5		5 cars (has no RR prkng)
679	8/5		7 cars (has only RR prkng)
157	8/5		10 cars (duplex w/RR prking)
679	7/30		9 cars (has only RR prkng)
155	7/30		8 cars (duplex w/RR prkng)
065	7/30		8 cars (duplex w/RR prkng)
055	7/30		9 cars (duplex w/RR prkng)
155	7/23		8 cars (duplex w/RR prkng)
679	7/23		8 cars (duplex w/RR prkng)
601 Party	7/16	30+ guests	not counted (cars prkd all over)
155	7/16		9 cars (duplex w/RR prkng)
157	7/9		7 cars (duplex w/RR prkng)
155	7/9		8 cars (duplex w/RR prkng)
611 4 th of July Party w/band	7/4	75+ guests	not counted (cars prkd all over)

The District counts parked vehicles at short-term rental addresses each night at about 4:00 AM. If a car is there at that hour they are most likely spending the night so we can get a fair idea of occupancy directly related to the vehicle count. At most addresses listed above, there is a violation of the allowable # of cars and a possible over-occupancy violation as well. Some of the above addresses have very limited parking space. A duplex can have double the # of allowable cars but some of these either have NO RR parking or ONLY RR parking so the allowable space at these homes is very tight. Take for example 679 – there is NO parking on the house-side at this rental, just RR parking. On 7/30 there were 9 cars for that rental – there is not enough room in the RR parking for 679 to fit in 9 cars – this means the other cars just take whatever open space they see nearby, park and walk away.

The City's code, as currently written, allows for a maximum of 2 cars per rental so a duplex could have 4. There is, however, a provision in the code that permits, on a case by case determination, a greater # of vehicles per rental, at the discretion of the Director of Community Development.

To follow up on this provision, the District has twice inquired of the City for their list of allowable car counts by address so that our security could make better sense of the data being collected. To date, there has been no response. Such non-responses usually mean they don't have an answer. Presumably the City has not bothered to address this element of their own code.

It appears that the City has adopted a 'complaint-driven' enforcement policy regarding the STR Code. Unless someone calls the City they have no idea of what's going in with the rentals. A real fallacy with such a policy is that most impacted owners are very reluctant to call the cops due to a healthy concern that the violator next door will come over and cause them trouble after the police leave.

The City's own STR Code Enforcement Officer, Ted Harris, works a regular Mon-Fri schedule and is not even present for phone call complaints during the hours when most rental violations will be occurring: after hours and on weekends.

It doesn't seem too difficult to reason that if the City would get moving on a very proactive program of monitoring the after-hours and weekend rental activity in real time and not chasing after-the-fact complaints the following week, violations like over-occupancy and parties would come to a quick end. A portion of the City's rent tax could be directed to hiring a real proactive go-getter who has police powers and authority to call in backup help when a party, day or night, has to be shut down and people removed right on the spot.

The following page is the District's ongoing compilation of the number of vehicles passing into the community each month plus some data on frequency of renter-related phone calls and patrol officer responses. The information helps to quantify certain impacts to our community due to short-term rental activity. There is a LOT going on regarding rentals and it would be great to have the right kind of help from the City.

VEHICLE ENTRY COUNT... RENTER-RELATED DATA

* 2015 *

MONTH	RESIDENT	GUEST	SERVICE	RENTER RELATED	VEHICLE TOTAL
JAN	4,248	1,727	3,775	2,767	12,517
FEB	2,744	1,768	3,586	2,374	10,472
MAR	4,586	2,12	3,986	3,534	14,278
APR	4,274	2,131	4,181	3,135	13,701
MAY	4,402	2,266	3,440	2,708	12,816
JUNE	4,718	2,285	4,285	3,922	15,208
JULY	4,770	3,167	4,384	6,245	18,566
AUG	4,504	2,735	3,876	4,945	16,060
SEPT	4,057	2,348	3,921	2,820	13,146
OCT	4,281	2,161	4,218	2,411	13,051
NOV	4,176	1,851	3,842	2,093	11,962
DEC	4,190	2,029	4,092	2,223	12,534
TOTAL	50,928	28,640	47,588	39,177	184,311

Ren/Rent'd Calls	Ren/Rent'd Pat. Activity
171	31
148	24
304	41
293	25
220	42
334	47
539	89
622	106
317	57
242	49
211	48
170	45
3,571	624

August 2016

* 2016 *

MONTH	RESIDENT	GUEST	SERVICE	RENTER RELATED	VEHICLE TOTAL
JAN	3,914	1,421	4,087	1,916	11,438
FEB	3,720	1,535	4,191	2,113	11,579
MAR	4,126	2,010	4,392	2,499	13,027
APR	3,807	1,845	3,715	1,915	11,382
MAY	4,671	2,422	4,752	1,819	13,664
JUNE	4,473	2,538	6,040	2,410	15,761
JULY	5,273	3,454	4,799	4,499	18,020
AUG	3,827	2,684	4,457	3,649	14,617
SEPT					
OCT					
NOV					
DEC					
TOTAL					

Ren/Rent'd Calls	Ren/Rent'd Pat. Activity
171	38
280	53
238	67
219	40
109	40
188	54
329	73
200	57