DATE: March 15, 2017

TO: Honorable Councilmember Barbara Bry

FROM: City Attorney

SUBJECT: Short-Term Vacation Rentals

You have asked whether “short-term vacation rentals” are permitted in single family residential zones under the City of San Diego’s current Land Development Code. The City has a “permissive zoning ordinance.” City Att’y MS-2016-23 (July 22, 2016). This means that any use that is not listed in the City’s zoning ordinance is prohibited. Id. Short-term vacation rentals are not specifically defined, expressly permitted, or listed in any of the zone use categories, including residential or commercial.¹

The residential use category “includes uses that provide living accommodations for one or more persons.” San Diego Municipal Code (Municipal Code or SDMC) § 131.0112(a)(3). The single dwelling unit subcategory consists of “[d]welling units where no more than one dwelling unit is located on a lot, usually detached, and occupied by a single household unit.” SDMC § 131.0112(a)(3)(D). Permitted uses in the RS (Residential-Single Unit) Zone include mobile home parks, single dwelling units, boarder and lodger, companion, employee housing of less than six employees, garage, yard, and estate sales, home occupations, housing for senior citizens, and residential and transitional care facilities. SDMC § 131.0422, Table 131-04B. “Within the residential zones, no structure or improvement, or portion thereof, shall be constructed, established, or altered, nor shall any premises be used or maintained except for one or more of the purposes or activities listed in Table 131-04B. It is unlawful to establish, maintain, or use any premises for any purpose or activity not listed in this section or Section 131.0422.” SDMC § 131.0420(b).

¹ The City’s zone use categories include open space, agriculture, residential, institutional, retail sales, commercial services, office, vehicle and vehicular equipment sales and services, distribution and storage, industrial, and signs. SDMC § 131.0112.
Permitted uses in the commercial services zone include “uses that provide for consumer or business services, for the repair and maintenance of a wide variety of products, and for entertainment.” SDMC § 131.0112(a)(6). Subcategories include building services; business support; eating and drinking establishments; financial institutions; funeral and mortuary services; instructional studios; maintenance and repair; off-site services; personal services; radio and television studios; tasting rooms; and visitor accommodations.\(^2\) \textit{Id.} Commercial services are generally not allowed in the RS Zone.

This Office appreciates that the Municipal Code, as currently written, does not allow the reasonable compromise our communities seek; a compromise respectful of those who wish to enjoy the quiet enjoyment of their homes and those who wish to take advantage of the innovation economy. We understand that the Planning Department will present options that provide a regulatory framework for short-term vacation rentals to the Smart Growth and Land Use Committee on March 24, 2017.\(^3\) We are optimistic that the Committee will make a recommendation that will result in the comprehensive amendments our neighborhoods seek. We look forward to assisting the department with drafting any Municipal Code amendments the Committee recommends.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Mara W. Elliott
Mara W. Elliott
City Attorney

MWE:vj
MS-2017-5
Doc. No.: 1462151
cc: Honorable Mayor and Councilmembers

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\(^2\) This Office previously opined that short-term vacation rentals are not “visitor accommodations.” City Att’y MS 2015-27 (Dec. 21, 2015).

\(^3\) It is our understanding that there are three options that would regulate short-term vacation rentals of whole homes and three options that would regulate short-term vacation rentals through home-sharing.