



**NAPA COUNTY GRAND JURY
2018-2019**

**FINAL REPORT
June 24, 2019**

**Enforcing Short-term Vacation Rental
Codes in the Napa Valley**

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SUMMARY

The “sharing economy” has created unique opportunities for people to share assets, either for a fee or for free, using internet-enabled businesses such as ride-sharing and vacation rental services. Not surprisingly, this change in dynamics of business models has made it difficult on municipalities that have long-standing rules and regulations in place to manage these types of businesses. The City and County of Napa are no exceptions to this issue.

After receiving a complaint from a Napa County resident, the 2018-2019 Napa County Grand Jury (Jury) elected to compare and contrast how the County of Napa and the City of Napa each handle the challenges presented by short-term vacation rentals (STVRs).

The Jury found that both the County and the City acknowledge the difficulty of managing hundreds of non-permitted vacation rentals given their current staffing and resources. While STVRs are prohibited within the unincorporated County, the City allows a fixed number of short-term rentals (less than 30 days). Both areas allow rentals for periods longer than 30 days. Both County and City officials agree that non-permitted STVRs deprive Napa Valley residents of much-needed housing, as well as short-change local coffers when Transient Occupancy Taxes are not collected and remitted.

The Jury also found that STVR owners know how to sidestep the efforts of enforcement officials. Even when the County or the City is able to prove a violation has occurred, local officials prefer to work with offending STVR owners to resolve issues amicably rather than bring a lawsuit. This prevailing “resolution mentality” can lead to long drawn-out settlements of these violations, which can be frustrating to neighboring residents.

The Jury also found that while the City has some tools to help fight the battle against non-permitted STVRs, the County lacks similar resources to help put a significant dent in the STVR problem.

The Grand Jury recommends the County and the City review their staffing ratios and coverage plans with regard to code enforcement, and add evening or weekend coverage as opportunities allow. The Jury also recommends the County add the resources necessary to increase the enforcement effort toward non-permitted STVRs in the unincorporated areas of the County.

Finally, the Jury believes that non-enforcement of current codes only serves to invite violations. Codes should be enforced, eliminated, or changed to reflect current enforcement efforts. The Jury therefore recommends that both the County and the City make it a priority to update and simplify their local codes to bring them current and make them easier for residents to use.

GLOSSARY

CC	County of Napa Code Compliance Division (also sometimes called Code Enforcement on the County's website.)
CE	City of Napa Code Enforcement Division
STVR	Short-term vacation rental (less than 30 days)

BACKGROUND

The 2018-2019 Napa County Grand Jury received a complaint from a Napa County resident about a neighboring property that was continually being rented for weddings and other private events on a non-permitted short-term rental basis. The complainant was aware that Napa County prohibited STVRs, whether for weddings or any other reason, and attempted to work with County Code Compliance (CC) to enforce the regulations.

The complainant was told that the CC unit had followed up with the property owner, but that the owner had “lawyered up” and found ways to fight the County’s enforcement. Specifically, the owner claimed that all the weddings that took place on the property were for members of the owner’s extended family and thus a lawful use of the property. In other cases, the owners claimed that the renters had signed a 30+ day lease for the site (allowed under County law) and could therefore hold a wedding there if they so desired. Even though the original complainant provided evidence that refuted these claims, the County did not pursue the alleged violations any further, to the complainant’s—and the Jury’s—dismay.



Unedited screen capture of Bride and Groom’s website for a non-permitted wedding held at a non-permitted STVR site in unincorporated Napa County in the fall of 2018

Realizing that an investigation into a single non-permitted STVR parcel would not be prudent, the Jury decided instead to investigate STVRs as a whole, and compare and contrast how Napa County and the City of Napa handle this topic.

Both the County and the City have extensive lists of local rules and regulations governing almost all aspects of life for residents and businesses.

In the County, the Code Compliance Division of the Planning, Building, and Environmental Services Department is responsible for enforcing the State and County Codes, which include but are not limited to:¹

- Public Nuisances
 - Property maintenance
 - Excessive vehicles and/or vehicles parked in the front area of a yard in excess of three days
- Vehicle Abatement
- Zoning Code
 - Land use violations
 - Short term rentals
 - Winery compliance
- Conservation Violations
 - Creek/Stream setback
 - Vineyards
 - Vegetation and land clearing
- Building Code Violations
 - Construction without a building permit

The County has six full-time officers, managers and supervisors in Code Compliance (CC), which is one of six divisions within the Planning, Building, and Environmental Services Department. This team oversees code enforcement for approximately 8,000 parcels spread over more than 750 square miles. Short-term vacation rentals are prohibited in Napa County. Measures J and P, which formed and ratified the Ag Preserve, require a ballot initiative to change that rule. Only long-term rentals (30+ days) are permitted.

In the City of Napa Code Enforcement (CE) Division, common types of violations that are enforced include, but are not limited to:²

- Building Code violations
- Fence/hedge/wall height and location

¹ Source: <https://www.countyofnapa.org/1888/Code-Enforcement>

² Source: <https://www.cityofnapa.org/244/Code-Enforcement-Division>

² Source: <https://www.cityofnapa.org/244/Code-Enforcement-Division>

- Garage sales (excessive)
- Land use violations (includes rentals)
- Licensing for home-based businesses
- Number of dwelling units on a property
- Property maintenance (public nuisances)
- Property maintenance (storage of solid waste and garbage)
- Recreational vehicles (living in vehicle)
- Setbacks and height violations
- Signage (un-authorized)
- Vehicle repair on private property

The City of Napa has three full-time officers in the CE Division. One officer oversees all properties north of Lincoln Avenue, as well as STVRs, while another oversees properties south of Lincoln as well as sign violations. One of these officers also provides contracted CE coverage to Yountville four hours per week. A third officer solely covers the utilities department (including recycling and solid waste).

The City allows property owners to rent their homes on a short-term basis if they obtain a necessary permit. The City allows 60 homes to be rented out on a hosted basis (renting out a room or rooms while the owner is on premises) and 41 homes to be rented out in their entirety without the owner present (non-hosted), all on a short-term basis. Anyone advertising a STVR must list the City permit number in their online ad. There is no limit on the number of homes that can be rented out for more than 30 days, and no permits are necessary for this.

Permits for STVRs in the City of Napa cost \$594 and are good for one year. Non-hosted permits are transferable and are apparently quite valuable. This advertisement in the May 26, 2019 Napa Register shows one non-hosted permit owner advertising the permit as part of the sale. According to VRBO.com, this home usually rents for \$695/night, not including 12% Transient Occupancy Tax (soon to be 13%).



METHODOLOGY

The Jury Investigative Committee interviewed multiple senior staff members of the County Code Compliance Division as well as multiple senior staff members of the City Code Enforcement Division. In addition, the Jury reviewed the County and City websites pertaining to municipal codes and ordinances. Finally, the Jury reviewed a number of articles about Code Compliance and Code Enforcement efforts that appeared in the Napa Register over the past three years. (See Bibliography at the end of this report).

DISCUSSION

When comparing and contrasting the County's and the City's respective enforcement efforts, the Jury decided first to look at the similarities between the two groups.

Through interviews with local officials, the Jury learned that both the County and City largely rely on complaints from the public in order to learn about possible code violations. Rather than proactively hunting for infractions, the departments are reactive in nature. This is largely due to the limited staffing resources that each team has with which to enforce the codes that apply throughout the County and City. Both County and City officials admitted to the Jury that they are "understaffed" when it comes to CC/CE, which limits their ability to follow up on complaints in a timely or thorough manner.

To further illustrate this point, the Jury was informed that the City has "one-half of one person" dedicated to STVR enforcement. In addition, the City acknowledged in a February 2019 article in the Napa Register that it had worked on 382 cases involving STVRs in 2018.³

A second area of commonality is that both the County and the City emphasize compliance over punishment. Both groups share a goal of working with property owners to bring code violations into compliance, rather than resort to litigation to resolve a matter. Officials realize that this may not sit well with complaining neighbors, who would prefer a faster resolution. However, officials stress that taking property owners to court can be a far lengthier and more expensive process, and there is no guarantee of winning every case. Therefore, officials choose to try to "work things out" with code violators, even though this may require patience for all parties involved.

Ultimately, both County and City utilize litigation as a last resort, when negotiations fail.

³ https://napavalleyregister.com/news/local/city-hundreds-of-napa-residents-rent-vacation-stays-illegally/article_f1330632-f8a4-5287-b42c-358568fddd5d.html

An example of the drawn-out resolution process was chronicled in the Napa Valley Register with several stories about a well-known non-permitted STVR in Browns Valley.^{4,5} Numerous neighbors lodged complaints against the property owner on Linda Mesa Way, and the City spent over two years citing the owner for repeated violations, with fines eventually totaling \$204,000. The owner was eventually jailed before the City and the owner settled and the owner was compelled to sell the house. The City only collected \$25,000 of the fines and legal fees that had been levied.

The County of Napa has also faced similar situations recently with STVRs. Another Napa Register story from December 27, 2018, recounted the almost two-year-long enforcement efforts of a known non-permitted STVR in St. Helena.⁶ In that article, a Napa County Compliance Supervisor was quoted as saying “We have so many cases we’re working on that we’re not able to chase them down all the time.”

In the same article, the reporter wrote “(Supervisor Ryan) Gregory would like the county to have more enforcement to uncover the non-permitted rental operations. ‘Just time on the Internet,’ Gregory said. ‘You can really find a lot of them.’”

Both County and City officials told the Jury that, when a resident files a complaint, the appropriate enforcement group will research the alleged violation, which often involves visiting the property in question and making a visual inspection from the street. If a code violation is apparent, both the County and the City try to resolve the situation amicably by taking a friendly “did you know?” approach with property owners. Officials estimate that up to 80% of the time owners will acknowledge the problem and make attempts to remedy the situation. That usually ends the case.

For those property owners who disagree with the violation claim, officials estimated that approximately 10% will fight the County or City for awhile before finally fixing the problem, while up to 10% will take the matter all the way to court.

Both the City and County can and do fine residents for all types of code violations, depending on severity. Fines can range from \$100 to \$1,000, and can escalate over time and with successive violation notices. The City acknowledged that officers can waive fines for residents who ultimately make a concerted effort to comply with the code.

⁴ https://napavalleyregister.com/news/local/operator-of-notorious-napa-vacation-rental-settles-case-with-city/article_6df6700f-1afa-562d-8383-13ab72a983fd.html

⁵ https://napavalleyregister.com/news/local/illegal-napa-vacation-rental-shuts-down-put-up-for-sale/article_6e5a8b6d-3885-5cf2-939a-9a01d21fb6dd.html

⁶ https://napavalleyregister.com/news/local/napa-county-takes-vacation-rental-to-court/article_0911657a-f37e-5d23-8f24-839237cb9f51.html

County and City officials both admitted to the Jury that many current civil codes are outdated, as well as difficult for the average resident to comprehend. The term “unwieldy” was used by one official to describe the current codes. Separately, officials noted it is often difficult for residents to find the code they are seeking, or to determine which department to call to complain about neighborhood nuisances, learn what hours construction is permitted, etc.

Both County and City officials agree that the growing number of STVRs is harmful to the residents of the Napa Valley. They point out that not only do these non-permitted rentals decrease the number of housing units available to residents, but these rentals also deprive the County and cities of much needed Transient Occupancy Tax dollars, which fuel much of the County’s economy and municipal budgets. Officials also informed the Jury that these rentals reduce the number of students in our schools as the homes are not occupied full-time by families, which decreases funding for the school district. It was further pointed out that many of these rentals are not ADA-compliant and may lack safety features that renters should expect from a properly-licensed property.

While officials do what they can to stem the tide of non-permitted rentals, they acknowledge that property owners are one step ahead of the enforcement teams. Owners know that, with rare exceptions, both County and City enforcement offices only work Monday-Fridays from 8am-5pm. According to officials, many savvy STVR owners only advertise their properties during nights and weekends. Owners also hide their exact locations, and only provide exact addresses just before the reservation date, or use other maneuvers to avoid detection. The County has discussed changing its coverage hours to include at least some weekend coverage, but has not made a decision to move forward with any changes. The City acknowledges the coverage shortfall, but says they are bound by local union rules, unless specific hires are made for nights or weekends.

While the County and City share many common characteristics in terms of enforcing codes, there are also several notable differences.

One County official, for example, sees Code Compliance as “being similar to law enforcement, and becoming more so.” Upon receipt of a complaint, an officer visits the site, without a warrant. The officer cannot enter the property without a warrant, so can only visually inspect the situation from the street in most cases. County CC officers must take Code Compliance Certificate Training, and learn evidence-gathering and self-defense tactics. Officers are issued ballistic vests, owing to the dangerous nature of these positions, and given that they are often out in remote portions of the unincorporated County. While officers do not carry weapons, the County is working on a policy to allow them to carry pepper spray. Officials told the Jury that Code Compliance has morphed from a “casual and informal group to being much more formal today.”

The City, meanwhile, does not require the same level of protective gear, although CE officers will sometimes be joined by members of the Police Department or other agencies depending on the nature of the complaint.

A consultant hired by the County, iCompass, performed an extensive online search of vacation rental properties in Napa County. This stealth survey turned up approximately 450 non-permitted STVR listings in the County. While the County attempts to control this non-permitted activity, it admits it will never shut them all down. The Jury was told by a County official that the County is unwilling to prosecute offenders unless it can obtain hard evidence of a violation. Such evidence might include a rental contract from the homeowner in question. Those contracts are generally not sent to renters until after a credit card deposit is processed.

However, the County CC team does not have access to an anonymous credit card in order to secure such reservations and signed contracts, which would serve as evidence to prove a violation had occurred. The County also knows that property owners often issue multiple 30-day contracts within the same month in order to circumvent the STVR policy. But unless the County can catch them doing so, the owners continue to violate the county codes.

The City of Napa has a contract with Host Compliance LLC, a company that helps municipalities track the online presence of STVRs from sites like VRBO, Airbnb, Craigslist and others. Host Compliance works with over 150 client cities around the country, including a number of vacation destination communities like Napa (Truckee, Carlsbad, and Jackson Hole among them) that have similar STVR challenges⁷.

According to a February 21, 2019 article in the Napa Register, the City handled almost 400 cases of non-permitted STVRs in 2018 alone.⁸ Once the City has identified a non-permitted property, they have a credit card they can use to try to secure a contract from the owner and prove a violation has occurred.

The County, on the other hand, says it cannot employ the services of Host Compliance to help manage non-permitted STVRs. According to County officials, this is because the large vacation rental companies are litigious when it comes to jurisdictions like Napa County that completely prohibit short-term rentals. According to County staff, Airbnb has a long history of filing suit against jurisdictions that ban STVRs, claiming this denies property rights to land owners. Since the City of Napa does allow a fixed number of STVRs, the City believes it does not face the same legal risk that the County does.

⁷ <https://www.sfchronicle.com/travel/article/Lake-Tahoe-houses-sit-vacant-while-locals-13601651.php?psid=axJKV>

⁸ https://napavalleyregister.com/news/local/city-hundreds-of-napa-residents-rent-vacation-stays-illegally/article_f1330632-f8a4-5287-b42c-358568fddd5d.html

FINDINGS

The 2018-2019 Napa County Grand Jury finds that:

- F1. Neither the County of Napa Code Compliance division nor the City of Napa Code Enforcement division have enough staff to manage all the code compliance and enforcement complaints they receive from the public on a timely basis.
- F2. Both the County and City of Napa Municipal Codes are outdated, unwieldy, and in need of revision. Officials recognize that the task is difficult with the current staff and violations cannot be completely remedied. This leaves code enforcement officers without sufficient resources to enforce the County/City codes for the benefit and protection of the citizens.
- F3. The County has an estimated 450 non-permitted STVRs within the unincorporated areas of the County. This not only deprives the County of much-needed housing stock for residents and workforce, but also denies revenue to hotels, as well as Transient Occupancy Taxes to the County and its cities. The number of non-permitted STVRs in the City of Napa is unknown.
- F4. Both the County of Napa Code Compliance officers as well as the City of Napa Code Enforcement officers have restricted work schedules that limit their ability to monitor STVR violations during peak evening and weekend hours when many violations occur.
- F5. STVR owners are aware of the resource limitations faced by City and County enforcement teams, and are thus adept at avoiding detection and/or prosecution.
- F6. The County CC officer is a potentially dangerous occupation. Officers are issued bulletproof vests, but are not supplied the appropriate tools, such as pepper spray, to defend themselves.

RECOMMENDATIONS

The 2018-2019 Napa County Grand Jury recommends that:

- R1. Both the County of Napa Code Compliance division and the City of Napa Code Enforcement division evaluate their staffing ratios versus complaints received and cases investigated. This should be completed by December 31, 2019.
- R2. Both the County of Napa and the City of Napa complete a revision to their respective Codes, by June 30, 2020. These revisions should remove outdated codes which are no longer enforced, as well as make it easier for residents to find answers to their most common code questions.
- R3. When staff turnover allows, both the City and County of Napa consider an alternative workweek for new CE officer hires that would allow for evening and/or weekend coverage.
- R4. The County explore ways to reduce the number of non-permitted STVRs in the unincorporated areas of the county by June 30, 2020.
- R5. The County authorize and train CC officers to be armed with pepper spray, by June 30, 2020.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows:

From the following within 90 days:

- Napa County Board of Supervisors (F1-F6 and R1-R5)
- Napa City Council (F1-F5 and R1-R3)

INVITED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury invites responses as follows:

From the following within 60 days:

- Director, Napa County Planning, Building and Environmental Services (F1-F6 and R1-R5)
- Napa City Manager (F1-F4 and R1-R3)

COMMENDATIONS

- C1. The Napa Valley Register has recently reported that the City and County CC/CE teams have taken legal action against several non-permitted STVRs and the Grand Jury strongly supports those actions and the accompanying public show of enforcement.

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Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
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