



Pacific Beach Planning Group

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January 21, 2021

To: San Diego City Council President Jennifer Campbell

**Re: CAP BY DISTRICT: An Essential Revision to the Tier 3 Lottery
Under the Proposed Short Term Residential Occupancy Ordinance**

Dear Council President Campbell --

The Pacific Beach Planning Group ("PBPG") implores you to revise the proposed ordinance on Short Term Rentals to apply the "**CAP BY DISTRICT**" approach to the lottery for Tier 3, rather than using a citywide lottery, for the following reasons:

1. The SD Planning Commission's Approval Requires the Cap by District: The Planning Commission's December 3, 2020, motion recommending that the City Council adopt the proposed ordinance was specifically conditioned on the Tier 3 lottery being conducted using the Cap by District (or smaller area) approach. (See the attached unofficial transcript explaining the Commission's Motion). This specific condition by the Planning Commission should be faithfully heeded and not disregarded.

2 Cap By District Aligns the Interests of All Districts: STRs are now heavily concentrated in the Coastal Districts and around Balboa Park (D1, D2 and D3). These three districts want fewer STRs. In contrast, as Commissioner Boomhower noted, the other six districts do not share this perspective, and would actually prefer getting a bigger share of the tourist dollars that STRs bring to localities. The Cap by District approach aligns the interest of all nine districts, while a city wide lottery would perpetuate the current concentration disparity.

3. PBPG's Position Hinges on This Issue: PBPG has collectively dedicated thousands of hours analyzing this issue over the past 13 years. Our views should carry great weight. (See the attached History of STVR Issue). PBPG will vehemently oppose any proposed ordinance that fails to use the Planning Commission's Cap by District approach. Although PBPG believes there should be no "investor class" Tier 3 at all, in order to get effective enforcement rules in place, PBPG voted on January 13, 2021 that we could reluctantly support an ordinance if it contains the Planning Commission's Cap by District for Tier 3.

4. No Reason to Deny This: There is no legal impediment to using the Cap by District approach for the Tier 3 lottery. The Coastal Commission's approval certainly will not hinge on this issue. It is very workable administratively. In Section 510.0104(e)(4) of your proposal, simply replace the words "the City of San Diego" with "each respective City Council District." That will do it. The STR host platforms will almost certainly oppose a Cap by District. However, we believe you can and should stand up to the platforms on this, and do what is best for the residents Pacific Beach and all of San Diego.

It is our fervent hope that you will revise your proposed ordinance to make this change and abide by the SD Planning Commission's Cap by District approach.

Respectfully,

Karl Rand, Chair

Dividing the STVR Tier 3 Cap Equally by Council District: A Synopsis of the San Diego Planning Commission's Motion Conditionally Approving of the Proposed STR Ordinance

NOTE: This is an unofficial transcription of four excerpts from a video of the December 3, 2020 meeting posted on the Planning Commission's website. This unofficial transcription was prepared independently by Karl Rand. It was not requested or approved by the Planning Commission or the City of San Diego. Karl Rand has added emphasis using underlined italics. The four video excerpts below do not reflect the entire motion; they focus only on portions of the motion relating to the division of the Tier 3 cap equally among the Council Districts.

Excerpt Number 1 - [Video at 2:07:49 to 2:09:38]

Commissioner Boomhower: OK. Then what I'd like to do is move as follows: Recommend Council adopt the amendments to the City's Municipal Code and Local Coastal Program to impose a license requirement and operating regulations for short term residential occupancy, including hosting platforms, and repeal regulations for bed and breakfast and boarder lodging, with the following changes:

- Raise the cap rate for Tier 3 to one percent;
- Divide the cap rate for Tier 3 equally to each of the council districts or some other defined boundary while maintaining the carve out for Mission Beach as proposed in Tier 4;
- Include a requirement that license holders must provide their permanent address, and that address be used to verify that the short term property, short term vacation rental property address for Tier 1 and Tier 2 licenses match;
- Include noise restrictions and limitations similar to those in the neighborhood commercial zone to enable stricter enforcement of noise and other impacts to quality of life.

That's my motion. I am willing to consider friendly amendments to this as we move through the conversation.

Vice Chair Whalen: I second for discussion and I do have a few ideas.

Deputy City Attorney Heather Ferbert: Commissioner, may I clarify two things: First, can we make the motion subject to legal review please, where legally permissible, so that we have the opportunity to look into how to divide that cap equally? I noted that you made that flexible for the Councilmember's office and staff to determine the best way to do that between council districts or otherwise, but can we also please make that subject to legal review?

Councilmember Boomhower: Yes.

Excerpt Number 2 [Video at 2:33:16 to 2:33:55]

Commissioner Moden: So, I'm totally supportive of the one percent. And back to the lottery system, this is something I feel really passionate about, and how we can create certain, you know, allotments per neighborhood. I think council district is still too large. You know I don't know if it can be done on a community planning group basis based off of pro rata share of population, but I think that's really critical. So that's something I really hope we can figure out, and I know that our motion is going to be reviewed by the City Attorney, so I am hoping there could be a way we can figure that out.

Excerpt Number 3 [Video at 2:58:14 to 3:00:41]

Chair Hofman: ... So I'd like to first of all say I can support the motion, but I do have some questions on the, some of the provisions. And let me start with just one actually. I support everything there except I would like, if Commissioner Boomhower, would you mind explaining maybe a little more depth the, number two, dividing the City equally by district. How do you see that working and are we talking about a specific proposal we're giving to the Council on that, or are we asking the Council that we'd like them to consider that?

Commissioner Boomhower: Well, I think as Deputy Ferbert mentioned, I tried to build a little flexibility in there because I know that what I am trying to do is one thing, what is going to be possible is another, and there is obviously going to need to be a legal review with this. But my concern is this: we know that there are certain neighborhoods in this City that are more popular for Airbnb hosts and [gap] more with short term vacation rental users. But I want to make sure that we're not inadvertently creating a situation where certain council districts that may be less economically affluent or politically active or engaged, where we stand on losing out on the ability to participate in this. And so while I recognize that the lottery process is random by nature, I want to make sure that Council is at least looking at this and giving, having the ability to consider how we make sure we are distributing the lottery chances equitably across all San Diegans and not just allowing it to be gobbled up by folks that have the good fortune to own property in our coastal beach neighborhoods, and maybe not in other places.

Excerpt Number 4 [Video at 3:10:51 to 3:11:18 – Note: As Chair Whelan attempted to repeat the entire motion, he asked Commissioner Boomhower to repeat the wording of change number three.]

Commissioner Boomhower: Um, sure. Before we do that, lets go back to point two because I think it is important that we note that the motion was to divide the cap rate for Tier 3 equally to each of the council districts or some other defined boundary while maintaining the carve out for Mission Beach as proposed in Tier 4.

Chair Hofman: OK.

History of Short Term Vacation Rental Issue and PBPG Positions

2007

- May – PBPG sends letter to D2 Councilmember Faulconer
 - Requests STVRs be regulated
- Sep - City Attorney Aguirre issues Memo
 - Says SD Code is unclear on legality of STVRs

2014

- Nov – PBPG forms STVR subcommittee

2015

- Jan - PBPG STVR Subcommittee meets, formulates recommendations
- Mar – Special Meeting of PBPG on STVRs
 - No STVRs in Single Family Residence Zones
 - Restrictions on STVRs in other zones
 - Permit System with specific operating requirements
- Apr -- PB Town Council adopts one PBPG position (STVR ban in SFR zones)
- Mo? -- Save San Diego Neighborhoods formed
 - Supports enforcing existing total ban on STVRs -- No new ordinance

2016

- Mar - Henish Pulickal becomes PBPG Chair, Karl Rand becomes CRMS Chair
- All -- Henish & Karl meet with Zapf reps, Coastal Commission, other groups
 - Coalition of planning groups with MB, OB, Peninsula, LJ meets regularly but eventually disbands
- Nov - Election of Elliot as City Attorney, Councilmember Bry in D1

2017

- Mar - City Attorney Elliot Memo says STVRs are simply illegal
- Mar - Mayor Faulconer announces no enforcement until City Council acts
- All year - Henish & Karl continue to work on STVR issues

2018

- Early – Zapf announces STVR position = minimum number of days (5,7,or 10)
- Early - STVR Community “Working Group” forms -- works with Bry
 - Home sharing and “Primary only”
 - Permit required to operate STVR
 - Detailed rules and enforcement scheme
- Mar – Working Group presents to PBPG -- Ann Kerr Bache seeks support
 - SSDN opposes – PBPG takes no position
- Jun - Mayor Faulconer proposes comprehensive ordinance on STVRs
 - Limit “Hosts” to one STVR plus a primary (“primary +1” misnomer)
 - Permits required, enforcement rules
 - City Council Vote scheduled for July 16

2018 Continued

- Jun - Bry offers position via proposed “amendments” to Mayor’s proposal
 - Generally reflects Working Group positions
- Jun – PBPG meeting considers STVR positions
 - Tom Coat presents Working Group positions to PBPG
 - Brian Curry presents Save San Diego Neighborhood position
 - Scott Chipman presents his positions and handout
 - PBPG votes (1) to support Working Group positions
 - PBPG votes (2) to support Working Group negotiations going forward
 - PBPG votes (3) against supporting Save San Diego Neighborhoods
- Jun - Henish & Karl sign Working Group materials showing PBPG support
 - Also LJTC, MBTC, OBTC, Clairemont TC, University City TC, Tom Coat and Chris Brewster
- Jul - City Council votes against the Mayor’s proposal and for Bry’s proposals
 - All day marathon Council session
 - 6-3 Vote was very unexpected (Chris Ward changed position)
 - PBPG position prevails!
 - “Carve out” amendment for Mission Beach rejected by Zapf (and Bry)
- Aug – VRBO begins petition drive to delay ordinance until 2020 election
 - Over 30,000 signatures due to misinformation campaign by VRBO
 - VRBO says Mission Beach is key
- Sep - VRBO petition had sufficient signatures, so ordinance was put on hold
- Oct - City Council voted 8-1 to rescind ordinance
 - Prevents having 2½ years of no regulation of STVRs
 - Rescission allows new ordinance to be introduced in 12 mos (2019)
- Nov - Councilmember Campbell elected to replace Zapf in D2

2019

- Jan - Bry announces run for mayor
- Jan – MB Town Council leadership changes from Wonacott to Gardiner
 - Shift to a more pro-STVR position
- Feb - AB 1731 introduced in California Assembly
 - Would limit listings to 30 days for each platform (VRBO, AirBnB, +++)
 - No limits on number of STVRs for owners or hosts
- Jun - Mission Beach Town Council votes (94-34) to go above “primary only” up to a 30% Cap with grandfathering of TOT compliant STVR operators.
- Jun - Working Group incorporates MB Town Council position for Mission Beach only. Other Working Group positions (primary only) remain unchanged except for refinement of enforcement measures.

2020

- Jul - Campbell presents MOU proposal between HERE and Expedia
 - Four Tier categories
 - Tier 1 = STVR less than 20 days/yr (e.g., Comicon) – no cap
 - Tier 2 = Primary Residence - no cap on number of licenses
 - Tier 3 = Investors - number capped at 0.70% of housing stock
 - Tier 4 = Mission Beach specific rules and 30% cap for investors
- Sep - Draft Ordinance presented via SD Planning Commission agenda
 - Same 4 Tiers as MOU proposal
 - Tier 3 cap increased from 0.70% to 0.75%
- Oct - SD Planning Commission initial meeting to review draft ordinance
 - PC asks for more details, postpones vote to Dec 3 meeting
- Nov - Election of new Mayor and City Council members
- Dec - SD Planning Commission endorses draft (7-0) with specified changes:
 - **Tier 3 cap set at 1.0% of housing stock**
 - **Tier 3 cap limits by Council District instead of Citywide limit**
 - See unofficial transcript prepared by KAR
 - Residency verification, nuisance standards, curfew, etc.
- Dec. - Five new Council Members and new Mayor Gloria take office
 - Campbell elected Council President (5-4)

2021

- Jan - PBPG Meeting on Jan 13 to review proposed STR ordinance
 - Voted to vehemently oppose citywide lottery for Tier 3
 - Could reluctantly support an ordinance with Cap by District.

FOR MORE INFORMATION:

- LJ Town Council Website -- STVR Working Group Information
<https://www.lajollatowncouncil.org/short-term-vacation-rentals>
- Save San Diego Neighborhoods Website
<https://savesandiegoneighborhoods.org>
- PBPG Website materials on STVR Subcommittee 2015 meetings:
<https://www.pbplanning.org/subcommittees/adhoc/>

Prepared by Karl Rand for PBPG July 2019 Meeting
Updated for PBPG January 2021 Meeting