



Madera County Short Term Rental Alliance
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Madera County Board of Supervisors
200 W. 4th Street
Madera, CA 93637

Subject: Urgent Need to Revise the Draft Short-Term Rental Ordinance (Chapter 18)

Dear Madera County Board of Supervisors,

On behalf of the **Madera County Short Term Rental Alliance (MCSTRA)**, a coalition of resident and non-resident owner-operators, service providers, and local businesses dependent on the short-term rental industry, we urgently request revision of the Draft Short-Term Rental Ordinance (Chapter 18). This draft contains numerous provisions that violate California state law, federal and state constitutional protections—including the Dormant Commerce Clause (Article I, Section 8, Clause 3)—and existing Madera County zoning ordinances.

The draft's restrictive permit rules, unreasonable quiet hours, and discriminatory requirements directly threaten property rights and the economic foundation of our mountain communities, where short-term rentals have underpinned the tourism economy for decades. Through nearly forty years of deliberate policy decisions, both county and state governments have shaped the mountain region into a tourism-dependent economy where second-home rentals represent the cornerstone of local economic vitality.

Implementation of this ordinance would cause immediate, irreversible damage to property values and destabilize our entire mountain economy. The impact would cascade beyond rental operators to affect all businesses and services reliant on visitor spending, ultimately eroding the property tax base that funds essential county services.

Alarming, the planning commission failed to consult key stakeholders—including Realtors, owners, and operators and related businesses like housekeeping and tradespeople, local shops and restaurants —during the drafting process. We require meaningful representation before any Board decision in July. More

balanced, collaborative approaches can address legitimate community concerns without endangering the tourism economy Madera County has intentionally cultivated.

We strongly urge proper consultation with stakeholders and correction of these issues within **21 days** to prevent severe legal challenges, HCD enforcement actions, economic damage, and unnecessary community division.

Violations of Law and Unlawful Provisions

The Draft STR Ordinance contains provisions that contravene statutory and constitutional mandates, as follows:

1. Violation of California Statutes:

- **Government Code Sections 65852.2 and 65852.22 (ADU/JADU Laws):** The ban on Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) as STRs (Section 18.XX.060(C)) lacks evidence-based justification, violating laws protecting short-term rentals. (*HCD ADU Handbook*, 2020).
- **Government Code Section 65583 (Housing Element Law):** The ordinance's restrictions deter ADU development, undermining housing mandates.
- **Government Code Section 51238 (Williamson Act):** The ban on STRs on Williamson Act properties (Section 18.XX.060(D)) restricts compatible uses, violating state law.
- **California Code of Civil Procedure Section 731.5:** The ID collection and Local Contact Person requirements infringe on privacy rights, lacking compelling justification.

2. Inadequate Grandfathering for Existing STRs:

- **Section 18.XX.100(B):** The one-year grandfathering for existing STRs fails to protect owners' vested rights, particularly those with investments in ADUs or second homes. Unlike San Diego, Santa Barbara, and Sonoma Counties, which permanently grandfather existing STRs, Madera's limit retroactively undermines reliance on prior permissions, risking legal challenges.

3. Overbroad and Onerous Insurance Requirement:

- **Section 18.XX.060(I):** The \$500-\$2,000 liability insurance mandate, with a vague "satisfactory" standard and the County as an additional insured, is overly burdensome and risks arbitrary enforcement, violating due process.

4. Invasive ID Collection Requirement:

- **Section 18.XX.090(H)(d):** Mandating collection, 12-month retention, and disclosure of renters' government-issued IDs violates the California Constitution (Article I, Section 1) and the California Consumer Privacy Act (Civil Code Sections 1798.100 et seq.) as well as the Fourth Amendment. A warrant would be required for law enforcement to collect this type of data from a STR owner. The lack of notice, opt-out rights, or security measures exposes operators to lawsuits, with damages up to \$750 per renter, and is highly threatening for small operators.

5. Unlawful Limits on STR Permits:

- **Sections 18.XX.100(C) and (D):** Capping STR permits at five per person and one per legal parcel lacks evidence-based justification, conflicting with Government Code Sections 65852.2, 65852.22, and 65583 by restricting ADU STRs. Unlike San Diego’s flexible approach, these caps infringe on property rights, risking takings, due process, and equal protection violations. The County cannot lawfully limit property ownership under the California Constitution (Article I, Section 1) and the Fifth Amendment and these use restrictions are similarly arbitrary.
- 6. Discriminatory Local Contact Person Requirement:**
- **Section 18.XX.090 (Local Contact Person):** Requiring a local contact person to reside within 35 driving miles of the STR unit, be available 24/7, and manage complaints or emergencies disproportionately burdens non-resident owners. Unlike residents, who can self-manage or designate local contacts at low cost, non-residents must hire managers (costing 20 - 30% of gross revenue), creating a discriminatory effect on interstate commerce under the Dormant Commerce Clause. The lack of evidence justifying the 35-mile limit, coupled with nondiscriminatory alternatives (e.g., remote 24/7 contacts, platform verification), mirrors the unconstitutional resident-favoring exception in South Lake Tahoe’s Measure T (*South Lake Tahoe Property Owners Group v. City of South Lake Tahoe*, El Dorado County Superior Court, March 13, 2025). The requirement also risks equal protection violations by arbitrarily distinguishing between resident and non-resident owners.
- 7. Unreasonable and Discriminatory Quiet Hours Requirement:**
- **Section 18.XX.090(F) (Quiet Hours):** Mandating quiet hours from 9:00 p.m. to 8:00 a.m., during which “no sound from the short-term vacation rental shall be audible from the parcel line,” imposes an infeasible and overly restrictive standard not found in existing Madera County ordinances, such as Title 9, Chapter 9.58 (50 dBA nighttime limit, 10:00 p.m. to 7:00 a.m.) or Title 18, Chapter 18.11. The absolute “no sound” requirement is impractical, prohibiting normal activities (e.g., conversations, TV at low volume), and its vagueness risks arbitrary enforcement, pits neighbors against neighbors and violates due process under the Fourteenth Amendment and California Constitution (Article I, Section 7) (*Grayned v. City of Rockford*, 408 U.S. 104 (1972)). By applying only to STRs, it discriminates against STR owners compared to other residential uses, violating equal protection.
- 8. Unlawful STR Permit Expiration and Revocation:**
- **Section 18.XX.100 (Permit Expiration):** Requiring the STR permit to expire annually with the Business License (Section 5.04.100), with potential denial or revocation for vague “standards and policies,” threatens our property rights by undermining the STR permit’s value as an asset integral to property value. The permit, enabling income generation (e.g., \$10,000-\$500,000 or more per short term rental *annually* depending on the owner and property), significantly enhances property marketability in the mountain area’s tourism market, constituting a protected property interest. The total cost could be in the hundreds million range when adding in the impact on resale values. Annual expiration and

arbitrary denial risk a regulatory taking by destroying substantial property value without compensation, violating the Fifth Amendment and California Constitution. The provision's vagueness invites arbitrary enforcement, violating due process, and its selective application to STRs lacks a rational basis, violating equal protection. By burdening ADU STRs, it conflicts with Government Code Sections 65852.2 and 65852.22, risking HCD enforcement, and disproportionately impacts non-residents, violating the Dormant Commerce Clause.

9. Unlawful STR Permit Non-Transferability:

- **Section 18.XX.100 (Permit Non-Transferability):** Prohibiting the STR permit from transferring upon property sale, requiring new owners to apply for a new Business License and permit, severely undermines the permit's value as an intangible asset integral to property value. The permit's economic benefit (e.g., \$10,000-\$500,000+ annually depending on the property) enhances property marketability by 20-30% in the mountain area's tourism market, constituting a protected property interest (*Coe v. City of San Diego*). Non-transferability risks a regulatory taking by permanently severing this value upon sale, reducing sale prices without compensation, **stranding current owners with properties they cannot sell** at full value constituting a significant economic deprivation and violating the Fifth Amendment and California Constitution (Article I, Section 19). The provision's vague approval standards for new permits risk arbitrary denial, violating due process, and its selective application to STRs lacks a rational basis, violating equal protection.

10. Unlawful and Discriminatory Exterior Lighting Requirements:

- **Section 18.XX.090 (Exterior Lighting):** Requiring exterior lighting to be fully shielded, downward facing, not located at the property periphery, not reflective off structures, with security lighting limited to motion-sensor activation and prohibitions on flood lights and uplights, imposes overly restrictive and vague standards not applied to all homes in Madera County. No equivalent ordinance exists in Title 18, Chapter 18.11, Title 9, Chapter 9.58, or other sections of the Madera County Code, making this requirement unique to STRs and discriminatory, violating equal protection under the Fourteenth Amendment and California Constitution, Article I, Section 7. The vague terms (e.g., "no reflection off structures") risk arbitrary enforcement, violating due process. The provision's compliance costs (e.g., \$500-\$2,000 for new fixtures) and aesthetic restrictions reduce compromise safety and aesthetic considerations.

11. Conflicts with Zoning Ordinances:

- **Title 18, Chapter 18.11 (Residential Zoning Districts):** Permits rentals and ADUs in zones like R-1 and R-A, supporting STRs in the mountain area. The Draft STR Ordinance's ADU ban, STR caps, insurance, ID collection, and Local Contact Person requirements conflict with this allowance, violating zoning principles.
- **Chapter 18.104 (Accessory Dwelling Units):** Supports ADU rentals, but the Draft STR Ordinance's ban contradicts this, breaching state law.

- **Other Ordinances:** Chapters 3.20 (TOT), 3.24 (Tourism Assessment), 5.04 (Business Licenses), 6.36 (Bear Measures), 7.24 (Solid Waste), 7.26 (Weed Abatement), 9.32 (Fire), 9.58 (Noise), and 11.04 (Traffic) impose indirect restrictions through taxes, licenses, and operational rules. The Draft STR Ordinance's stricter standards amplify these, creating excessive burdens that deter STRs in permitted zones.

12. Violation of Constitutional Rights:

- **Dormant Commerce Clause (U.S. Constitution, Article I, Section 8, Clause 3):** The ADU ban, STR caps, ID collection, and Local Contact Person requirement disproportionately burden non-resident owners, discriminating against interstate commerce without evidence-based justification or nondiscriminatory alternatives, as in Measure T (*South Lake Tahoe Property Owners Group*).
- **Fifth Amendment (Takings Clause):** The ADU ban, Williamson Act restrictions, STR caps, insurance requirement, and short grandfathering may constitute regulatory takings, depriving owners of viable uses without compensation (*Penn Central Transportation Co. v. New York City*, 397 U.S. 104 (1978)).
- **Fourteenth Amendment (Due Process):** Vague permit denials (Sections 18.XX.070, 18.XX.102), insurance, ID, and Local Contact Person standards risk arbitrary enforcement, violating procedural due process (*Grayned v. City of Rockford*, 408 U.S. 104 (1972)). Retroactive restrictions violate substantive due process (*Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005)).
- **Fourteenth Amendment (Equal Protection):** Discrimination against ADU/JADU, condominium, multi-STR, and non-resident owners lacks a rational basis (*Village of Willowbrook v. Olech*).
- **California Constitution (Article I, Sections 1, 7):** The ordinance infringes on property and privacy rights, particularly in the mountain area's STR tradition.

13. Lack of Evidence-Based Justification:

- The ordinance's purpose (Section 18.XX.010) lacks data showing that ADU/JADU STRs, multiple STRs, existing STRs, or non-resident operations pose unique harms. Less restrictive measures could achieve public goals without violating rights.

Actions Required to Address Unlawful Provisions

The MCSTRA strongly engage more robustly with stakeholders and revise the ordinance within **21 days** to address these unlawful provisions and prevent severe consequences. Failure to act will compel us to pursue remedies to halt the ordinance's adoption and, if necessary, challenge its enforcement.

Remedies to Prevent Enactment

To prevent the ordinance's passage and mitigate the severe legal, economic, and social consequences outlined below, we are prepared to pursue the following remedies:

1. **Threat of Pre-Enactment Litigation (Temporary Restraining Order):** We will file a complaint in Madera County Superior Court seeking a Temporary Restraining Order (TRO) and preliminary injunction to enjoin the ordinance's adoption, citing imminent violations of California state law (Government Code Sections 65852.2, 65852.22, 65583, 51238), federal constitutional protections (Dormant Commerce Clause, takings, due process, equal protection), and state constitutional protections (California Constitution, Article I, Sections 1, 7, 13). A TRO will halt the legislative process pending judicial review, preventing irreparable harm to our members' property rights, income, and privacy, as demonstrated by the ordinance's non-transferability, permit caps, and quiet hours provisions (*Code of Civil Procedure Sections 526, 1060; South Lake Tahoe Property Owners Group v. City of South Lake Tahoe*, El Dorado County Superior Court, March 13, 2025).
2. **Public Advocacy and Comment:** We will mobilize MCSTRA members and supporters to deliver public comments at hearings, highlighting the ordinance's violations of state law, constitutional rights, and zoning ordinances, as well as its economic harm to the mountain area's tourism economy. These comments will build a record for potential legal challenges and pressure you to revise or abandon the ordinance (*Government Code Section 65009*).
3. **HCD Pre-Enforcement Review:** We will submit a complaint to HCD, requesting urgent review of the ordinance's ADU/JADU ban, permit caps, expiration, non-transferability, and quiet hours for violating Government Code Sections 65852.2 and 65852.22. HCD's advisory action could compel revisions to avoid decertification (*Government Code Section 65852.2(h)*).
4. **Petition for Reconsideration:** We will file a petition with the Community and Economic Development Department and Board of Supervisors, demanding reconsideration of the ordinance's flaws and a delay in voting until revisions address our concerns (*Government Code Section 65009*).
5. **Lobbying and Coalition Building:** We will lobby supervisors through meetings, letters, and media campaigns, partnering with tourism boards, realtors, and residents to highlight the ordinance's fiscal and legal risks. Public pressure will underscore the need for revision (*Government Code Section 54950*).
6. **Ballot Initiative or Referendum Threat:** We will prepare a referendum to repeal the ordinance if passed or an initiative for a fair STR policy, signaling our readiness to mobilize voters and deter enactment (*Elections Code Sections 9100 et seq.*).

These remedies aim to compel revision or withdrawal of the ordinance, protecting our members' rights and mountain area's economy.

Consequences of Passing the Ordinance

If the ordinance is passed in its current form, the following consequences will result:

1. **Writ of Mandate (Code of Civil Procedure Section 1085):** Property owners may seek a writ to compel repeal of unlawful provisions, as they violate ministerial duties under Government Code Sections 65852.2, 65852.22, 65583, and 51238. Courts are likely to

order revisions, as seen in *City of Los Angeles v. State of California* (2021), with legal costs and attorney's fees imposed under Code of Civil Procedure Section 1021.5.

2. **Federal and State Lawsuits:** Owners may file lawsuits for violations of federal and state constitutional rights, seeking damages for lost STR income, particularly in the mountain area, where historical investments are at risk. These include:

- **42 U.S.C. § 1983 Actions:** For Dormant Commerce Clause, takings, due process, and equal protection violations, with damages commensurate with historic revenue and future losses (e.g., \$1,000,000 - \$10,000,000 or more per owner), injunctive relief, and attorney's fees under 42 U.S.C. § 1988.
- **California State Law Actions:** Paired with § 1983 claims, owners and renters may pursue remedies under California law, amplifying liability:
 - **California Tort Claims Act (Government Code Sections 810 et seq.):** Allows claims against Madera County for violations of California constitutional rights (Article I, Sections 1, 7, 13), such as property deprivations (ADU ban, STR caps), privacy violations (ID collection), and due process/equal protection violations (vague standards, non-resident discrimination). Requires a pre-suit claim within six months, with damages for economic losses (e.g., lost STR income) and injunctive relief. Can be paired with § 1983 for federal claims, covering both state and federal violations (*Katzberg v. Regents of the University of California*, 29 Cal. 4th 300 (2002)).
 - **California Constitution (Article I, Sections 1, 7, 13):** Permits direct actions for property (Section 1), privacy (Section 1), due process (Section 7), equal protection (Section 7), and search/seizure (Section 13) violations, with damages for privacy harms and injunctive relief to halt enforcement. Complements § 1983 by addressing state-specific rights, with attorney's fees under Code of Civil Procedure Section 1021.5 (*Roy v. Superior Court*, 127 Cal. App. 4th 337 (2005)).
 - **California Civil Code Section 52.1 (Bane Act):** Allows suits for coercive interference with federal (Dormant Commerce Clause, takings) or California (property, privacy, due process, equal protection) rights, such as through fines or permit revocations. Offers treble damages, injunctive relief, and attorney's fees, enhancing § 1983's remedies for coercive enforcement (*Shoyoye v. County of Los Angeles*, 203 Cal. App. 4th 947 (2012)).
 - **Declaratory Relief (Code of Civil Procedure Section 1060):** Permits declarations that the ordinance violates federal or California rights, halting enforcement and clarifying legal duties. Complements § 1983's injunctive relief, with attorney's fees under Section 1021.5.
 - **Code of Civil Procedure Section 526a (Taxpayer Actions):** Enables taxpayers to sue to restrain illegal government actions (e.g., enforcing an unconstitutional ordinance), seeking injunctive relief to prevent public fund waste. Pairs with § 1983 to protect public interest, as in Measure T's collective challenge.

- **Government Code Section 815.6 (Mandatory Duty Liability):** Imposes liability for failing to perform mandatory duties (e.g., approving ADU STR permits under Section 65852.2), offering damages for statutory violations, complementing § 1983's federal statutory claims.

Total costs could reach millions, with legal fees and reputational damage.

3. **Preliminary Injunction:** We may seek a preliminary injunction to immediately enjoin enforcement of the ordinance pending resolution of legal challenges, as in South Lake Tahoe's Measure T case (2018 injunction, *South Lake Tahoe Property Owners Group*). A court may grant an injunction if we show:
 - **Likelihood of Success on the Merits:** The ordinance's violations of the Dormant Commerce Clause, state law (Government Code Sections 65852.2, 65852.22, 65583, 51238), and constitutional protections (takings, due process, equal protection), supported by zoning conflicts (Title 18, Chapters 18.11, 18.104), make success likely.
 - **Irreparable Harm:** Owners, operators, real estate agents, house cleaners, handyman, local businesses etc face immediate loss of STR income, particularly non-residents burdened by the Local Contact Person requirement, and renters face privacy violations, with no adequate remedy at law.
 - **Balance of Equities:** The harm to owners and renters outweighs the County's interest in enforcing an unlawful ordinance, as public safety can be addressed through nondiscriminatory alternatives.
 - **Public Interest:** An injunction serves the public by preserving the mountain area's tourism economy and property rights.
An injunction could halt permit denials, enforcement actions, or compliance requirements, with defense costs and lost revenue impacting the County.
4. **Class Action Lawsuits:** Multiple property owners, particularly ADU/JADU owners, multi-STR operators, and non-residents affected by the Local Contact Person requirement, may join in class action lawsuits against the County. These suits could arise under:
 - **42 U.S.C. § 1983:** For Dormant Commerce Clause, takings, due process, and equal protection violations, with damages for lost income (e.g., \$10,000-\$500,000 or more property and per owner) and attorney's fees escalating to millions for a class of 50-100 owners.
 - **California Consumer Privacy Act (Civil Code Sections 1798.100 et seq.):** For ID collection violations, with statutory damages of \$100-\$750 per renter per incident. A class action involving, for example, 500 renters could result in \$50,000-\$375,000 in damages, plus legal fees.
 - **California Constitution (Article I, Section 1):** For privacy invasions and property deprivations, with potential damages for economic harm from permit non-transferability, expiration, local contact provisions and/or quiet hours enforcement. The ordinance's discriminatory effects, as in Measure T, make class actions highly likely, amplifying financial and reputational damage (*City of Santa Monica v. Stewart*, 126 Cal. App. 4th 43 (2005)).

5. **HCD Enforcement:** The California Department of Housing and Community Development may issue a notice of violation for the ADU/JADU ban, STR caps, insurance, ID collection, and Local Contact Person requirement, risking housing element decertification and loss of state grants, such as Affordable Housing and Sustainable Communities funds (*City of Santa Cruz*, 2021). Decertification could cost millions and trigger further legal action by the Attorney General under Government Code Section 65585(j).
6. **Economic and Political Fallout:** Reduced STR activity could lower Transient Occupancy Tax revenue, harming tourism-dependent budgets and business and lowering overall property values and damaging resell opportunities throughout the Mountain Area. Provisions like the quiet hours' provision with its totally infeasible "no sound" standard could pit neighbors against neighbors wasting already limited law enforcement resources as residents may report minor noises (e.g., conversations, TV), escalating community conflict and increasing the risk of litigation against STR owners for alleged violations and further deterring and prejudicing STR operations. Community backlash from owners and businesses may also fuel recall campaigns (Elections Code Section 11020).

Constructive Recommendations

To avoid these consequences and uphold your constitutional oath (California Constitution, Article XX, Section 3), I urge you to:

1. **Economic Impact Studies:** Madera County shall commission studies to quantify the ordinance's harm to TOT revenue, property values, and tourism jobs, local businesses and tradespeople and presenting findings to stakeholders (*Government Code Section 65008*).
2. **Revise the Ordinance:**
 - Repeal the ADU/JADU ban (Section 18.XX.060(C)).
 - Permanently grandfather existing STRs (Section 18.XX.100(B)), following San Diego and Sonoma Counties.
 - Eliminate STR permit caps (Sections 18.XX.100(C), (D)).
 - Eliminate the insurance requirement and County inclusion (Section 18.XX.060(I)).
 - Remove ID collection requirements as they violate guest privacy and fourth amendment protections, put small operators and the county at risk and would require a warrant to obtain (Section 18.XX.090(H)(d)).
 - Eliminate the 35-mile Local Contact Person requirement ensuring no discriminatory burden on non-residents.
 - Replace the "no sound audible" quiet hours mandate (Section 18.XX.090(F)) with a measurable standard (e.g., 50 dBA, aligned with Chapter 9.58) to ensure feasibility and non-discrimination.
 - Lighting and other adherence to building codes should not be applied retroactively on previous licensees.

- Revise the permit expiration rule (Section 18.XX.100) to provide multi-year validity (3-yrs at minimum) or automatic renewal absent clear violations, with clear, non-arbitrary standards for denial or revocation.
 - Eliminate the non-transferability rule (Section 18.XX.100) to allow STR permits to transfer with property sales, subject to basic compliance checks, preserving property value.
 - Ban corporate or foreign conglomerates like Blackrock from purchasing property in Madera County.
3. **Align with Zoning:** Ensure consistency with Title 18, Chapters 18.11 and 18.104, supporting STRs in residential zones.
 4. **Streamline Compliance:** Consolidate TOT (Chapter 3.20), Business License (Chapter 5.04), and STR permit requirements to reduce burdens.
 5. **Commission Studies:** a complete and multi year analysis of housing, economic, zoning, and interstate commerce impacts, particularly in mountain communities, must be done in order to to provide a rational basis for and to justify restrictions.
 6. **Properly cite all laws and case precedent used:** Presumably this draft ordinance is based on law. Please fully cite codes, statutes and case precedent that is pursuant to the California and United States Constitution that you are using to draft this ordinance.
 7. **Engage HCD and Stakeholders:** Consult HCD and STR owners to balance public welfare with property rights, avoiding Dormant Commerce Clause violations.

Request for Response and Commitment

The MCSTRA respectfully requests a written response within **21 days** outlining your commitment to revise the ordinance and address these violations. We are prepared to engage constructively through public comment periods, stakeholder consultations, and HCD coordination to ensure a fair and lawful STR policy. However, failure to act will compel us to pursue all available remedies to prevent the ordinance's enactment and, if necessary, challenge its enforcement to protect our members' rights and the mountain area's tourism economy. Please contact us at [your contact information] to confirm receipt and discuss next steps.

Sincerely,

Madera County Short Term Rental Alliance

cc: Madera County Community and Economic Development Department
California Department of Housing and Community Development