



8.12.2025

ALLIANCE COMMENTARY ON THE ORDINANCE OVERALL:

The County made very few substantial changes to the previous ordinance. Much of what is being proposed is arbitrary, capricious, lacks due process and any rational basis. There are no studies to base any of the actions on and the County has cherry-picked some regulations and made up its own. In practice these policies will hamper and significantly and negatively impact the industry.

PERMITTING

Most operational and safety standards (occupancy, trash, quiet hours, safety inspections) can already be enforced through the existing ordinances, the business license and TOT systems. Requiring a third “permit”—especially as it will involve application fees, yearly renewals, additional inspections, and/or subjective agency discretion—adds time, cost, and regulatory risk to hosting.

Legal and Policy Arguments Against Redundancy

- **Efficiency and Fair Notice:** California case law and good administrative practice support minimizing duplicative regulation. There is no statutory requirement for all three distinct steps unless specific local hazards require it and the county has not shown how STVRs cause more fires than regular residence especially given residents are still allowed to use charcoal barbeques and outdoor fire pits.
- **Due Process and Property Rights:** Courts may scrutinize multiple, overlapping approval requirements for arbitrary, capricious, or excessive burden—particularly if each step delays access to property rights or creates risk of conflicting agency decisions.
- **Equitable Enforcement:** Multiple requirements disproportionately affect small-scale or individual owners, reducing access and growth of local rental markets without clear public benefit.

National and Statewide Comparison

- Many counties and cities in California require either a business license and TOT certificate or a specialized STR registration/permit—but not always all three.
- Where a permit is required, best practice is for its process to be simple, consolidated, and non-duplicative (sometimes issued alongside the license).

Be on Notice: If this permitting process proves to be a barrier (“constructive denial”) or are clearly duplicative, the county is vulnerable to litigation and property holders have all the rights and abilities to litigate against the county to challenge them. Courts can be asked to examine whether this layer-upon-layer system is arbitrary, capricious, or unreasonably burdensome.

Further, requiring a business license, separate STVR permit, and a TOT certificate to host short-term rentals in Madera County is not mandated by state law. All it does is create redundancy and burdens for property owners. The right to use property for lawful residential purposes—including lawful rentals—is a fundamental stick in the “bundle of property rights.” A government cannot, under due process principles in the U.S. and California Constitutions, impose *unnecessary or duplicative* procedural and financial hurdles that effectively delay, chill, or block the use of that right.

When each layer is administered by a different office, or with inconsistent standards, owners can be trapped between conflicting conditions or interpretations—creating regulatory paralysis that is especially vulnerable to a due process challenge.

The Following Conditions must be incorporated into the Body of the Ordinance:

Protection Against Redundant or Arbitrary Approval Requirements

A. Due Process and Property Rights Guarantee

1. The County shall not impose multiple, overlapping, or duplicative licensing, permitting, or registration requirements for the operation of a lawful short-term vacation rental, except where each requirement is:
 - (a) clearly authorized by law; and
 - (b) demonstrably serves a distinct and legitimate public health, safety, or welfare purpose that is not already achieved by an existing requirement.
2. Any new or additional requirement must be accompanied by written findings identifying:
 - (a) the specific public interest served;
 - (b) the nexus between the requirement and that public interest; and
 - (c) why the requirement cannot be met through existing approvals, licenses, or certificates.

B. Prohibition on Redundant Conditioning

1. The County shall not require an STR operator to re-submit identical ownership, property, or safety compliance information in separate applications where the

information has been provided, verified, and approved in an existing valid license, permit, or certificate.

2. Licensing and taxation programs (including business license, short-term rental permit, and transient occupancy tax registration) shall, to the maximum extent practicable, be consolidated into a single application and renewal process.

C. Conflicting Agency Decisions

Where two or more required County approvals impose conflicting conditions, the most restrictive condition may not be enforced unless:

- (a) it is necessary to prevent a specific, imminent threat to public health and safety; and
- (b) the County issues written findings supporting the necessity and explaining why conflict resolution through administrative coordination is not feasible.

D. Enforcement and Remedies

1. Any denial, delay, or conditioning of STR operation in violation of this section shall constitute an arbitrary and capricious act for purposes of Code of Civil Procedure §§ 1085 and 1086.
2. An affected property owner may seek:
 - (a) administrative appeal under this Chapter; and
 - (b) judicial relief, including but not limited to a writ of mandate compelling the County to process and issue the approval in compliance with this section.
3. For purposes of enforcement, “duplicative” means imposing substantially similar application content, review standards, or compliance obligations without a unique, substantiated, and non-redundant public purpose.

Here is a table summarizing items in the Madera County Short Term Rental ordinance that are redundant or duplicative of information already maintained in county records or required by other ordinances and permit systems:

Item/Provision	County Existing Source	Redundancy (Info already tracked or maintained)	Arbitrary Application to STVR Only	Suggested Action
Water/Sewer System Info	Building permits, Environmental Health records	Yes—already verified and tracked for all permitted	Yes—only STVR asked to re-certify or	Use existing records for all; remove duplicate

		residences	prove again	STVR requirements.
Plot/Site Map	Building permit application, site and parcel maps	Yes—supplied for every legally built property	Yes—only STVR must resubmit for use permit	Reference existing maps; require only if property config changes.
Parking Plan/Count	Zoning, building permits, prior site map	Yes—parking requirements imposed in initial permit	Yes—STVR must provide parking details and comply anew	Use prior approvals for parking; update only if substantially changed.
Fire Inspection/Certification	Required for business license/occupancy, regular enforcement	Yes—done for all businesses and new cottages/homes	Yes—repeat inspection or added standards for STVR	Accept recent/valid inspection for STVR licensure.
Trash/Bear-proof Compliance	Environmental Health code compliance, business license	Yes—required of all homes in bear zones, enforced countywide	Yes—STVR required to self-certify and document	Rely on area compliance standards for all; enforce only as needed.
Ownership/Emergency Contact Info	Business license data	Yes—for all businesses and rental properties	Yes—STVR must name “local contact” and submit ID	Assert updates only when business ownership/contact

			again	changes.
Event Restrictions (weddings, gatherings, camping, fireworks)	Nuisance, noise, and zoning codes	Already addressed by general residential nuisance codes	Yes—STVR banned from events allowed at regular homes	Apply nuisance/event standards equally to all residents.
Occupancy Limits	Building and fire codes	Already dictated by existing code and enforcement	Yes—special formulas and caps for STVR only	Only enforce statewide code-based occupancy; remove stricter STVR caps.
Guest ID Collection/Data Retention	Not required for regular residences	N/A	Yes—only STVR owners must request/retain guest ID	Omit requirement unless mandated by state/federal law for all rentals.
Special Utility/Water Board Veto	County Public Works, main permit process	Utility review applies for all new or changed use permits	Yes—applied only to STVR process for permit renewal	Make utility review/approval standard and non-discriminatory.
Permitting/Transfer Restriction on Sale	Business license, title records	Business licenses can change; permit transfer runs with property for other	Yes—STVR permit denied, must reapply after sale	Make permit transferable or renewal on sale like other legal uses.

		business types		
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Many of the STVR-specific provisions in the current ordinance are either redundant or arbitrarily applied only to STVR owners—not to regular residences with the same physical, safety, or community profile. Eliminating these would streamline process, reduce unfair burdens, and support due process and property rights.

How Arbitrary Enforcement Occurs

- STVR properties are singled out for additional permit steps, repeat certifications, stricter occupancy limits, extra inspections, more burdensome operational rules, and limitations on events—even where regular homes face only standard code compliance and basic nuisance laws.
- Enforcement or specific restrictions do not address unique risks for STVR: e.g., event bans for STVR but not regular homes, requiring guest ID retention, or refusing permit transfer on sale.

Recommendation

- The County should review and revise its ordinance to eliminate both redundancies and arbitrary, STVR-only requirements that go beyond what's required of regular residences or other lawful property uses.
- All rules regarding safety, occupancy, nuisance, or operational standards should apply equally and fairly.

The County can argue that Short-Term Vacation Rentals are businesses, while regular residences are not, and therefore warrant stricter enforcement. Here's a clear breakdown of both sides and how this distinction is generally treated under California law:

1. Regulatory Justification for Treating STVRs as Businesses

- STVRs are considered a commercial activity:
 - Renting out a property, or even a room, for less than 30 days is legally defined as “transient lodging” and a business use—even if operated by a homeowner in their primary residence.
 - California law (and most local ordinances) require a business license and collection/remittance of Transient Occupancy Tax (TOT) for such uses, similar to hotels and motels.
- Public interest rationale:
 - STVRs may bring increased traffic, noise, parking impact, and public safety concerns beyond what's typical of strictly residential use.
 - Enforcement and permit systems help ensure compliance with health,

safety, tax, and land-use standards expected of commercial lodging businesses.

- Courts have upheld separate rules for STVRs:
 - Provided the rules are rationally related to legitimate government interests and do not violate constitutional rights (due process, equal protection), local governments can treat STVRs differently than residences that are not being used for business or commercial purposes.

2. Arguments Against Overly Burdensome and Arbitrary Enforcement

- Limits of “business” distinction:
 - **Not all “business” regulations are automatically reasonable. If enforcement goes beyond what is necessary to protect health, safety, or welfare, or imposes arbitrary or excessive burdens, it can be challenged as a violation of property rights or due process.**
- Potential for arbitrary rules:
 - Some ordinance provisions—**such as requiring re-submission of water/sewer** information, event bans, or limiting permit transferability—do not always address actual business-related risks unique to STVR operation and may simply duplicate requirements already enforced via licensing or building permits.
- Best practices:
 - **Regulations should directly address legitimate public concerns and not subject STVRs to redundant or arbitrary rules not based on real differences in risk or impact.**

3. Legal Framework and Principles

- Rational Basis Standard:
 - Courts generally uphold distinctions between business and non-business uses as long as rules are rationally related to public interest and not wholly arbitrary.
- Burden must be justified:
 - Each additional layer of compliance should be supported by findings on what distinct risk or community impact STVRs create.
- Efficiency and fairness:
 - If health, safety, and nuisance controls are already achieved through business licensing and general code enforcement, adding further separate requirements or duplications for STVRs is less likely to be justified.

Summary Table

Residence Type	Regulation (Standard)	Regulation (STR)	Legal Justification	Risks of Overreach
Regular Home	Building Code, Zoning, Nuisance Law	—	Property is not operated as a business	Imposing business-like controls may be arbitrary
STVR	Building Code, Zoning, Business License, TOT, STR Ordinance	Fire, water, parking, permit, etc.	Lodging business subject to more regulation	Additional burdens must serve public interest

The county can treat STVRs more like businesses and apply extra regulatory scrutiny, **but only insofar as the additional requirements serve a legitimate public purpose and do not create unnecessary or arbitrary burdens.** Enforcement should target actual risks or impacts unique to lodging businesses—not duplicate requirements or regulate simply for the sake of regulation. If STVR rules are shown to be excessive, owners and advocates can argue for reforms or challenge the regulations for lack of rational basis.

It is entirely reasonable to expect that once a property owner has gone through the screening process, provided all information (site map, parking, septic/water, fire inspection, etc.), and the County has certified the unit as compliant for STR use, the owner should not have to start over every year, or worse, every time the property changes hands.

That’s exactly how most other land-use entitlements work:

- A building permit doesn’t have to be re-applied for every year.
- A certificate of occupancy is typically permanent until the structure changes.
- Zoning entitlements “run with the land.”

From an administrative efficiency and due process perspective, requiring repetitive re-application is not only burdensome but creates needless cost for owner *and* County.

The County should issue a “STR certification” tied to the Assessor’s Parcel Number (APN) and recorded it in the property record:

- It becomes part of the property record the County already maintains (similar to variances, easements, or special use permits).
- It automatically transfers with the title, so the new owner steps into the same rights/obligations.

- This eliminates unnecessary re-application while still allowing the County to verify compliance at sale or transfer.

In many respects, an STR permit has characteristics of an intangible asset:

- Transferable value: Enhances the market value of the property because it allows a revenue-generating use.
- Identifiable rights bundle: It is a government-issued entitlement that increases utility of the property.
- Saleability impact: Taking it away can directly lower sale price or marketability.

California courts have recognized similar licenses/permits (liquor licenses, operational licenses, certain use permits) as having economic value – even if not “property” in the narrow constitutional sense – especially when they can be transferred or are tied to a specific location.

BE ON NOTICE: If the STR approval is truly tied to the property (not just the person), then refusing to allow it to transfer upon sale does start to resemble a taking or impairment of vested rights, because:

- The owner invested to meet standards.
- The approval increases property value.
- The County is removing a beneficial use without cause.

Under California and U.S. takings law:

- A regulatory taking can occur when government action removes “all economically beneficial use” of property or significantly impairs a vested property right.
- Even if not a full taking, it can violate due process if it’s arbitrary – e.g., no link between denying transfer and legitimate public safety/welfare.

Courts have also recognized that when government imposes a permitting regime and the permit significantly enhances property value, stripping it away without due process or a health/safety rationale can be challengeable.

Refusing to let the permit transfer—absent a clear health, safety, or compliance violation—can be challenged as arbitrary, capricious, or a possible regulatory taking if it diminishes the usefulness or market value of the property.

When a county establishes a permitting regime for short-term rentals (STRs), property owners often invest significant resources—upgrades, safety features, landscaping, compliance costs—to meet those standards. These investments are made with the reasonable expectation that, once the property is certified and permitted, the benefits of STR operation will increase the property’s value and utility—*not just for the current owner, but for future owners as well.*

Courts recognize these as investment-backed expectations, a concept integral to

property law and the “regulatory takings” doctrine. If the government later strips away the permit (especially on a change of ownership) without due process or a clear health/safety rationale, it can be challenged as arbitrary, capricious, and possibly unconstitutional—because the owner is deprived of the value added by those investments without fair justification.

2. Why the Permit Should Run with the Land

- **Economic Value:** The STR permit is not simply a personal privilege; it actually becomes an attribute of the property—akin to a variance, zoning entitlement, or easement.
- **Ensures Fair Reliance:** Owners invest and comply with requirements expecting that the permit stays valid unless they violate health/safety rules—not that it disappears every time the title changes.
- **Prevents Arbitrary Loss:** Making permits non-transferable on sale—when all operational standards remain met—can function as an arbitrary confiscation of a property right, because it destroys a predictable, marketable benefit that was paid for and earned.

3. Legal Support

- **Regulatory Takings Doctrine:**
 - In California, an entitlement tied to a property (approved use, permit, variance) that confers market value can be considered a “property interest.”
 - If government action destroys that value without procedural fairness or a true public health/safety need, courts may find a regulatory taking (see cases like *Town of Tiburon v. Bonander*, 180 Cal.App.4th 1057).
 - Owners can seek relief on grounds of due process, equal protection, or takings.
- **Due Process Requirement:**
 - Government must provide notice, a hearing, and clear, fact-based reasons if it seeks to revoke or deny transfer of an STR permit.
 - Blanket, automatic denial (simply on change of ownership) without case-by-case assessment is susceptible to challenge.

4. Best Practice: Permit Tied to Property

Ordinance language and real estate practice in California strongly favor tying such permits to the property (the APN and recorded title), allowing transfer unless there is a documented violation or risk. This supports:

- Stability of local markets
- Property owner investments
- Administrative efficiency
- Legal certainty

5. Bottom Line

If a property owner invests in upgrades and meets all STR permit requirements, that permit should be tied to the property and transferable to future owners, absent any new compliance or safety issues. Stripping it away upon sale is not justified without cause and can be challenged for violating property rights and fair reliance.

Here's an overview of the applicable building, fire, and environmental health codes for property septic, water, and fire safety capacity for Short-Term Vacation Rentals (STVR) in Madera County:

Building Codes

- California Building Standards Code (Title 24) & California Plumbing Code
 - Septic tank capacity is determined by the number of bedrooms or apartment units; minimum capacities are spelled out in Code tables (e.g., a 4-bedroom home requires a minimum 1,500-gallon septic tank, with additional gallons required for larger units).
 - Site plans, water supply sources, and plumbing fixture units are reviewed and recorded at time of original building permit—this info is maintained by county records.
- Permitting:
 - Any construction or modification must comply with local and state building codes, including code-compliant water/sewer systems.

Fire Codes

- California Fire Code (2022) & Related NFPA Standards
 - Requires all properties to have access to an approved water supply capable of supplying required fire flow for fire protection.
 - Fire safety systems (smoke/CO detectors, fire extinguishers, egress) must be present and routinely inspected—these inspections are part of or incorporated into the County's business licensing process.
 - Residential properties must ensure fire department access and may be subject to site-specific fire safety review per building and occupancy classification.

Environmental Health Codes

- Madera County Environmental Health Division & State Water Board Regulations
 - Regulates adequacy and permitting of septic systems and potable water supply (compliance and capacity check, record-keeping, permit issuance).
 - Trash and bear-proofing rules, refuse disposal standards, and enforcement of public health practices apply to all residential properties—not just STVRs.
 - Waste Discharge Requirements (WDRs) are overseen by environmental

health and regional water boards, including groundwater protection and capacity verification.

- The county maintains and enforces code records for septic, water, and environmental compliance.

Summary Table

Code Area	Main Requirement(s)	How Enforced/Verified
Building Code	Septic tank, water system, construction per Title 24 & CPC	Building permit, site map, records maintained by County
Fire Code	Adequate fire flow, safety systems, inspections	California Fire Code inspection and business license review
Environmental Health	Septic/water adequacy, waste disposal, bear-proofing	County Health, State/Regional Water Boards, permit process

Key Takeaway:

Capacity and compliance for septic, water, and fire safety is already tracked and enforced via the County's standard building, health, and fire codes—and information is maintained in construction/permitting records and updated through routine inspections. The property owner's permitting for STVR use should reference and rely on these existing codes and records, not require duplicate submissions, unless substantial use or physical changes are proposed.

Policy & Legal Argument Memo Regarding Permits

Regulatory Efficiency, Property Rights, and Transferability of Short-Term Rental Permits in Madera County (For Presentation to County Staff, Board of Supervisors, and Legal Counsel)

Executive Summary

The MCSTR Alliance urges Madera County to adopt a Short-Term Rental (STR) ordinance that ties STR permits to properties (APNs) and allows them to transfer with ownership. This approach is supported by California law, prevailing land use practice, and constitutional principles. Requiring repetitive, duplicative permitting or refusing permit transfer absent actual safety/compliance violations is an arbitrary burden and risks deprivation of a valuable property right and economic asset.

Key Arguments & Supporting Law

1. Efficiency & Due Process: Limit Duplicative Requirements

- Regulatory Best Practice: A property owner who completes the STR permitting process—including provision of site maps, parking info, utility/septic data, and safety certification—should not have to repeat this process with every renewal or at each transfer of title.
- California Permit Streamlining Act: Gov. Code §§65941–65956 require local permitting processes to be timely, clear, and non-duplicative; permits must issue when requirements are met, and new layers or delays are discouraged.
 - Citation: Gov. Code §65956 (“...the agency’s discretion is limited, and the permit must issue.”)

2. Recordation & Market Certainty: Tie Permit to the APN

- Property-Based Approach: Most California land use entitlements (variances, conditional use permits, zoning approvals) “run with the land” and are recorded on the property roll, ensuring continuity and reliability for homeowners and buyers.
 - Citation: See *Town of Tiburon v. Bonander*, 180 Cal.App.4th 1057 (2009) (utility assessment tied to APN).
- Market Value: STR certification increases property value and utility; tying the permit to APN creates predictable marketable rights without impairing County oversight.

3. Regulatory Takings & Investment-Backed Expectations

- Investments Are Protected: Owners invest in upgrades, safety, and compliance with the expectation that the STR permit will remain valid and transferable as

long as standards are met.

- Citation: *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992) (takings doctrine: deprivation of all economically beneficial use requires compensation); *City of Fremont v. Fisher*, 2 Cal.App.4th 1429 (1992) (permit rights may be property interest).
- Arbitrary Revocation: Stripping the permit on sale—without health/safety rationale or due process—constitutes arbitrary deprivation of a beneficial right and may rise to the level of a compensable regulatory taking.

4. Due Process & Fair Reliance

- Procedural Protection: The County must provide notice, a hearing, and fact-based rationale for any denial of transfer; the right to operate STRs after due investment and compliance is a legitimate expectation.
- Equal Protection: Blanket, automatic permit denial upon sale—without case-specific risk or violation—could violate equal protection by treating compliant properties differently without justification.

Legal Citations

- Permit Streamlining / Duty to Issue When Requirements Met
 - Gov. Code §§65941–65956; see League of California Cities, *Permit Streamlining Act Guide* (2012)
- Vested Property Rights, Transferability, Regulatory Takings
 - *Town of Tiburon v. Bonander*, 180 Cal.App.4th 1057 (transfer of entitlement tied to land)
 - *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (regulatory takings, expectation from investment)
 - *City of Fremont v. Fisher*, 2 Cal.App.4th 1429 (permit as property interest)
- Due Process / Equal Protection
 - *Cal. Building Indus. Assn. v. City of San Jose*, 61 Cal.4th 435 (arbitrary/unduly burdensome land use controls subject to scrutiny)
- CA Code of Civil Procedure (for challenges)
 - CCP §§1085–1086 (traditional writ of mandamus; arbitrary/capricious agency action)

Recommendation

- Tie STR permits to the property (APN), record with the County, and make them transferable upon sale—subject only to ongoing compliance and remedying any actual health/safety violations.
- Eliminate duplicate permit steps and focus enforcement on substantive violations, not procedural recurrence.
- Maintain and enhance due process protections: advances County goals of fairness, administrative efficiency, and market reliability.

Conclusion

This approach maintains legitimate public oversight while respecting fundamental property rights, investment-backed expectations, and legal fairness. Failure to follow these principles may expose County ordinances to legal challenge for arbitrariness, regulatory takings, or violation of due process. The MCSTR proposal aligns with California law and sound public policy.

OCCUPANCY

As stated, the current draft of the ordinance regarding Occupancy is an inequitable provision in the proposed Short-Term Vacation Rental ordinance.

The current draft imposes a strict limit of only two occupants per bedroom for STVRs, capping a 5-bedroom home at just 10–12 guests—even if that home has additional legal sleeping areas such as lofts, dens, or living rooms that meet California Building Code requirements for safe occupancy. Children are counted in the same way as adults, further depressing allowable guest numbers.

This restriction is not applied to regular private residences in Madera County—whether owner-occupied or rented long-term. For those homes, occupancy is governed exclusively by basic building, fire, and health codes, which:

- Determine safe capacity based on room size, egress, ventilation, fire safety, and septic/water capacity
- Do not impose a fixed two-person per bedroom formula
- Do not require an additional zoning permit merely to use legitimate sleeping areas

This creates an arbitrary and discriminatory double standard:

- Two identical houses—one as a long-term residence, the other as a licensed STVR—are treated very differently under the same structural and safety conditions.
- The STVR is penalized with added bureaucracy (including the extra zoning permit process) and reduced capacity, even though both properties are equally safe under state codes.
- This has no rational connection to public health or safety, since existing building and fire code standards already ensure safe occupancy limits for any dwelling.

We recommend the following correction:

1. Apply the same occupancy determination for STVRs as for all residences—based on California Building Code, California Fire Code, and Madera County Environmental Health septic/water capacity.
2. Recognize legal sleeping areas (bedrooms, lofts, dens, family rooms) when calculating occupancy.
3. Differentiate children in occupancy formulas, so families are treated fairly.
4. Remove the requirement for a separate zoning permit to approve safe, code-compliant occupancy above the arbitrary 2-per-bedroom limit.

Why This Matters:

- Ensures fairness and parity between property uses.
- Maintains safety as the controlling factor—rather than an inflexible formula.
- Eliminates unnecessary bureaucracy for homeowners and County staff.
- Upholds due process and avoids regulatory treatment that could be deemed arbitrary or capricious.

A home's safe occupancy should be determined by its design, code compliance, and infrastructure—not by who is sleeping there or how long they are staying.

Below is a direct comparison chart illustrating the differences in occupancy regulation for regular residences versus Short-Term Vacation Rentals (STVRs) under the proposed ordinance. This makes clear how STVRs are subject to arbitrary restrictions and added bureaucratic hurdles not present for other homes:

Category	Current Residential Rules	Proposed STVR Rules
Occupancy Counting Method	Based on applicable building, fire, and health codes considering all legal sleeping areas (bedrooms, lofts, dens, living rooms)	Rigid 2-person per bedroom limit; excludes lofts and other functional sleeping spaces
Treatment of Children	Children counted separately with reasonable allowances; occupancy determined by overall safe capacity	Children counted same as adults reducing allowed guests

Exceptions Process	No special permits required for exception or increased occupancy	Requires zoning permit to exceed occupancy limit, adding another bureaucratic layer
Safety and Capacity Basis	Occupancy based strictly on California Building Code, Fire Code, and Environmental Health standards	Occupancy limits fixed by bedroom count, not fully integrated with safety/capacity codes
Administrative Burden	No additional permits or bureaucratic process for occupancy adjustments	Requires additional zoning permit for occupancy exceptions causing delays and costs

Policy & Legal Argument Memo Regarding Occupancy

Executive Summary

The MCSTR Alliance respectfully requests that Madera County revise its Short-Term Vacation Rental (STVR) ordinance to eliminate arbitrary occupancy restrictions and align STVR occupancy rules with the safety-based standards used for regular residences. The current approach—limiting STVR occupancy to two persons per bedroom, excluding legal sleeping areas, and requiring additional zoning permits for reasonable exceptions—is unsupported by building and fire codes, creates administrative burdens, and risks violating due process and property rights.

Key Arguments & Supporting Law

1. Safety and Building Codes Should Control Occupancy, Not Arbitrary Formulas

- California Building and Fire Codes (Title 24, CBC, CFC) set housing and egress standards, requiring every legal sleeping space (bedrooms, lofts, dens, living rooms, etc.) to meet minimum size, egress, and safety. These codes—not formulaic room counts—are the well-established and objective standard for determining safe occupancy.
- Best Practice: Most California cities/counties determine occupancy based on total compliant sleeping areas, not just bedrooms, ensuring flexibility for larger homes and family accommodations.

2. Disparity and Arbitrary Enforcement

- Madera County’s draft applies strict 2-per-bedroom occupancy to STVRs only; regular residences are governed by general building/fire/health codes, which allow all safe sleeping areas to count for occupancy.
- Children are not reasonably accommodated; some county language fails to differentiate children from adults, reducing allowed guest numbers and penalizing families.
- For any home with lofts, dens, or family rooms, STVR occupancy limits are significantly lower than equally safe private residences—without a rational health/safety basis.

3. Bureaucratic Burden and Unnecessary Permit Layers

- To exceed these arbitrary STVR limits, owners must secure a zoning permit under Chapter 18.93—an extra approval not required for regular homes—delaying access and creating compliance risk for no added public benefit.

4. Due Process, Equal Protection, and Property Rights

- The U.S. and California Constitutions require regulations to be rationally related to legitimate public purposes; unnecessary or excessive limits—and duplicative permitting—are subject to legal scrutiny.
 - *Citation:* Cal. Building Indus. Assn. v. City of San Jose, 61 Cal.4th 435 (arbitrary, unduly burdensome land use controls are vulnerable).
- If regular homes and STVRs with identical size, layout, and safety are treated differently, this raises potential equal protection and property rights concerns.
 - Courts have invalidated regulatory disparities without a rational connection to actual risk or public health/welfare.

Summary Table: Problems and Recommended Reforms

Issue	Current County Draft	MCSTR Alliance Proposal	Public Benefit
Occupancy counting	Bedrooms only (2/person)	Count all legal sleeping areas (incl. lofts, dens)	Fair to larger homes; real capacity
Children	Not clearly differentiated	Count children separately; allow reasonable child occupancy	Family-friendly; parity
Exception process	Extra zoning permit required	Auto-approval if code/safety satisfied; no added bureaucracy	Efficiency; reduces burden
Safety basis	Fixed formula, not capacity	Capacity determined by fire/building/health codes	Safe, non-arbitrary limits

Policy Recommendation

1. Occupancy for STVRs should be based on all code-compliant sleeping areas: bedrooms, lofts, dens, living rooms, game rooms—aligned with CBC/CFC standards.
2. Children should be counted separately, with a reasonable ratio per sleeping area.
3. No additional zoning permit should be required for exceeding arbitrary limits—only for projects exceeding health/safety or code-based safe capacity.
4. All homes—long-term and STVR—should be governed by the same occupancy determination process, with public health and safety as the ultimate standard.

Legal Citations

- California Building Standards Code, Title 24: Room size, egress, occupancy, use definitions.
- Cal. Fire Code: Safety systems, occupant load standards, fire exit requirements.
- Cal. Building Indus. Assn. v. City of San Jose, 61 Cal.4th 435 (land use regulations must be rational, non-arbitrary).
- CA Constitution (Due Process, Equal Protection).

Conclusion

Occupancy rules should be consistent, fair, and grounded in objective code-based safety standards. Arbitrary bedroom-only limits and extra permits penalize safe, code-compliant STVRs, harm families, and undermine property rights. Madera County should adopt a revised occupancy standard that promotes safety and efficiency for all homes, supporting both community welfare and constitutional protections.