

CITY OF PALM DESERT STAFF REPORT

MEETING DATE: May 9, 2024

PREPARED BY: Richard D. Cannone, AICP, Development Services Director

REQUEST: APPEAL OF THE DEVELOPMENT SERVICES DIRECTOR DETERMINATION THAT A LIVING ROOM CANNOT BE COUNTED AS A BEDROOM FOR PURPOSES OF A SHORT-TERM RENTAL

RECOMMENDATION:

1. Find that this report, including attachments, and any additional evidence provided at the hearing provides satisfactory evidence that the Development Services Director's determination was correct.
2. Adopt a Resolution entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, UPHOLDING THE DEVELOPMENT SERVICES DIRECTOR DETERMINATION THAT A LIVING ROOM CANNOT BE COUNTED AS A BEDROOM FOR PURPOSES OF A SHORT-TERM RENTAL AND MAKING FINDINGS IN SUPPORT THEREOF."

BACKGROUND/ANALYSIS:

APPLICANT'S INITIAL REQUEST

On March 5, 2024, the Development Service Director ("Director") sent an email (see Attachment 2) to Ms. Carrie Kropfl of Casa Monterey 239, LLC ("Owner") clarifying that a living room cannot be used as a bedroom for purposes of Short-Term Rental ("STR"). The Director included the following interpretation of a bedroom for purposes of a STR:

For purposes of the short-term rental regulations, I have interpreted bedroom to mean a private room intended for sleeping that is separated from other rooms by a door, having at least one window that meets the egress/rescue requirements, has a closet/storage area, and is accessible to a bathroom without crossing into another bedroom. This is based in part on the city's ordinance allowing for on-site and off-site owners. On-site means they are present and must stay at the property and the intent would be that a guest would have a private room. If you wish to convert your living room to a bedroom, Jason [Finley] can assist with what permits would be needed.

Prior to this date, and up to Director's determination letter provided on March 25, 2024, there were numerous emails and phone calls with staff and the Owner requesting that the Property be permitted as a three-bedroom STR unit.

SHORT-TERM RENTAL (STR) PERMIT HISTORY

In November 2021, the Owner purchased a condominium unit at 239 Serna Drive in Palm Desert (“Property”). In January 2022, the Owner applied for and was issued a STR Permit for a three-bedroom unit. In 2023, the Owner renewed their STR Permit for a three-bedroom unit. Beginning in July 2023 the Development Services Department created internal procedures with staff to ensure that the regulations adopted by City Council were being enforced when applications were submitted, including renewals of STR permits.

On January 24, 2024, the Owner applied to renew their permit for a 3-bedroom STR unit. Consistent with new procedures, staff confirmed the number of bedrooms through the Riverside County Assessor and separate property details available to staff from RealQuest and Lawyers Title (see Attachment 3) which showed a 2-bedroom unit for this Property. Staff also reviewed building permit records and there were no building permits for a bedroom addition.

On February 1, 2024, the Owner revised their renewal request for a 2-bedroom STR unit and staff approved and issued a renewal of STR Permit NO. STR2022-0020.

It should also be noted that the Riverside County Assessor (“Assessor”) records for the Property showed the unit as having 2-bedrooms and a den/family room when the application for renewal was reviewed. However, on March 4, 2023, at the Owners request, the Assessor changed the property record to reflect 3-bedrooms and with no den/family (see Attachment 4).

These facts are contrary to the Appellants statement that *“Nothing has changed during the decades where the Property was classified as a three-bedroom condo. The city should continue to recognize the Property as a three-bedroom condo and allow the Kropfl's to market and rent it as a three-bedroom.”*

DIRECTOR’S DETERMINATION/INTERPRETATION

On March 25, 2024, the Owner sent an email clarifying that they would like to submit an appeal on three items (see Attachment 5). Pursuant to PDMC § 2.72.020 the Director provided a written decision (see Attachment 6) to the Owner on March 25 for the following three requested items:

1. Can you continue to use the third bedroom (den), based on the floor plans provided?
2. Can you use the living room as a bedroom to sleep two additional guests for a Short-Term Rental?
3. Can up to four overnight guests per bedroom be permitted for a Short-Term Rental?

Included in that written decision was the response to each of the three questions, the authority for that determination/interpretation (Director or Building Official), and the appeal process/body for each.

Request 1. The determination for Request #1 was made by the Building Official as authorized by the California Building Code.

Chapter 2.18 of the PDMC establishes a Building Board of Appeals (“Board”) to hear appeals regarding the interpretation of the California Building Code by the Building Official. The appeal of this request is scheduled to be considered by the Board on May 23, 2024.

The Board’s decision may be appealed to the City Council and therefore the specifics of this request should not be discussed or considered at this time.

Request 2. The determination for this request was made by the Development Services (Community Development) Director under the authority granted by PDMC Chapter 2.12.

The Director’s determination was related to PDMC Chapter 5.10, which is under Title 5 Business Taxes, Licenses, and Regulations which is NOT part of the City’s Zoning Code. As a result, an appeal of the Director’s determination/interpretation is considered by the City Council in accordance with PDMC Chapter 2.72.

After extensive research, the Director issued his determination based on two factors:

- 1) The Director concluded that based on the language contained in PDMC §5.10.090(G) which establishes that the maximum number of overnight guests shall not exceed two persons per bedroom coupled with fact that on-site STR owners must occupy at least one bedroom, which shall diminish the number of bedrooms for overnight guests. In other words, a one-bedroom unit CANNOT be issued an On-Site Short Term Rental Permit, because the On-Site Owner must be present and must stay at the property in a bedroom; not a living room or having the ability to share the rented bedroom.
- 2) Due to the lack of a definition of a bedroom and for purposes of Chapter 5.10 Short Term Rentals, the Director interpreted a bedroom room to mean:

A private room intended for sleeping that is separated from other rooms by a door, having at least one window that meets the Emergency Escape and Rescue Opening requirements of the California Building code, has a closet/storage area, and is accessible to a bathroom without crossing into another bedroom.

Request 3. PDMC §5.10.090(G) explicitly states that the maximum number of overnight guests shall not exceed two persons per bedroom. This was not a matter of interpretation, but a strict code requirement. As such, there is no right to appeal because it does not involve the exercise of administrative discretion or personal judgment (see PDMC §2.72.010(B)).

LETTER OF APPEAL

On April 4, 2024, an appeal was filed (see [Attachment 7](#)) by Mr. Shaun Murphy, of Slovak Brown Empey Murphy & Pinkney LLP (“Appellant”), on behalf of the Owner for the following:

1. Whether the Kropfl's may continue to use the third bedroom (den) for short-term rentals.
2. Whether the Kropfl's may use their code compliant living room as an additional sleeping room to accommodate two more guests.

DIRECTOR'S RESPONSE TO APPEAL LETTER

The following are specific responses to each issue submitted by the Appellant.

1. Whether the Kropfl's may continue to use the third bedroom (den) for short-term rentals.

As stated above, this appeal is based on a determination made by the Building Official from the California Building Code and pursuant to PDMC must be heard by the City's Building Board of Appeals. This appeal hearing is scheduled for May 23, 2024.

The Board's decision may be appealed to the City Council and therefore the specifics of this request should not be discussed or considered at this time.

2. Whether the Kropfl's may use their code compliant living room as an additional sleeping room to accommodate two more guests.

The Appellant incorrectly states in the appeal letter that this determination was made by the Building Official, when the Director's written determination provided on March 25, 2024, clearly states that this determination was made by the Director.

The Appellant states that it is “puzzling” and believes the reference to PDMC §5.10.090(G) is irrelevant to defining the term “bedroom”. PDMC §5.10.090(G) includes the following language:

If the use is on-site owner short-term rental, the owner shall be deemed to occupy at least one bedroom, which shall diminish the number of bedrooms for overnight guests accordingly...

Based on this limitation imposed and the Director's experience, this language aided in his determination that if it was City Council's intent to allow an owner to stay in a room, other than a bedroom, then City Council would have not included this limitation.

The Appellant further disputes the Director's interpretation that a bedroom must have a door and believes this interpretation is arbitrary. The Appellant's basis is derived from the definition of “bedroom” from Merriam-Webster, Cambridge Dictionary, and Britannica Dictionary, and as stated in the appeal letter, “all which referenced a room for sleeping with no mention of a door.” The Appellant also conjectures in a footnote wondering how parents would react after learning that removing the door to their teenager's bedroom, for whatever reason means that the room is no longer a bedroom.

While the Appellants statements in general may seem reasonable, the fact is what is being considered is a dwelling that is being used for lodging purposes less than 27 consecutive days that must be licensed to do so. While the Appellant tries to provide an example in a “typical” family setting with parents and teenagers, the unit is question is NOT typical and the Owners are seeking a permit for the unit to be rented to a Transient¹ that is required to pay a Transient Occupant Tax (TOT) and a Tourism Business Improvement District (TBID) assessment. “Typical” residential properties are not required to be licensed or required to pay TOT or TBID. Only transit uses i.e. hotel, motel, bed and breakfast, and short-term rentals pay the TOT and TBID.

The Appellant provides the definition of “bedroom” but chooses to omit the definition of “living room.” Using the Appellant’s same references:

Merriam-Webster defines living room as, “*a room in a residence used for the common social activities of the occupants.*”

Cambridge Dictionary defines living room as “*the room in a house or apartment that is used for relaxing in and entertaining guests.*”

Britannica Dictionary defines living room as “*a room in a house for general family use — usually singular.*”

NOTE: None of the definitions define a living room as a room used for sleeping.

Additionally, these three dictionary references used by the Appellant provide for definitions for hotel, motel, and bed and breakfast; the transient uses the Director references and are defined as:

Merriam-Webster

- *Hotel - an establishment that provides lodging and usually meals, entertainment, and various personal services for the public.*
- *Motel - an establishment which provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area.*
- *Bed and Breakfast - an establishment (such as an inn) offering lodging and breakfast.*

Cambridge Dictionary

- *Hotel - a building where you pay to have a room to sleep in, and where you can sometimes eat meals.*
- *Motel - a hotel for people travelling by car, usually with spaces for cars next to each room.*
- *Bed and Breakfast - a room to sleep in for the night and a morning meal, or a private house or small hotel offering this.*

¹ PDMC § 5.10.030 Definitions. “Transient” means any person who seeks to rent or who does rent a privately-owned residential unit for a period less than twenty-seven consecutive days.

Britannica Dictionary

- *Hotel - a place that has rooms in which people can stay especially when they are traveling: a place that provides food, lodging, and other services for paying guests.*
- *Motel - a place that is next to a road and that has rooms for people to stay in especially when they are traveling by car.*
- *Bed and Breakfast - a house or small hotel in which someone can rent a room to sleep in for a price that includes breakfast the next morning.*

Furthermore, the term “room” was a consistent term used in the definition to describe bedroom, living room, and within the three transient use types. Again, the Appellant’s referenced sources define a “room” as:

- Merriam-Webster: Room - *a partitioned part of the inside of a building especially such a part used as a lodging.*
- Cambridge Dictionary: Room - *a part of the inside of a building that is separated from other parts by walls, floor, and ceiling.*
- Britannica Dictionary: Room - *a part of the inside of a building that is divided from other areas by walls and a door and that has its own floor and ceiling.*

Of the three “room” definitions, the **Britannica Dictionary does explicitly include a door** in their definition.

It should be further noted that the definitions of the three transient uses define it as a “room to stay”. What those transient uses definitions do not include is that the room has a door. However, when staying at any transient use, whether that be a hotel, motel, bed and breakfast, or short-term rental, there is an expectation of privacy, and that form of privacy always involves a door to that room where a guest is staying. One could wonder how parents would react if they stayed with their teenager, or even staying alone in a hotel room, motel room, or short-term rental without a door.

CONCLUSION/RECOMMENDATION

Based on the Director’s determination provided on March 25, 2024, and the additional information provided in response to the Appellant’s letter, a living room cannot be counted as a bedroom for short-term rental.

Furthermore, it is reasonable to conclude that there is implied privacy when sleeping in any room, whether that be a hotel room, motel room, bedroom in a bed and breakfast, or bedroom in a short-term rental, and that implied privacy, while not always explicit (except for the definition of “room” from Britannica Dictionary) includes a door.

Legal Review:

This report has been reviewed by the City Attorney’s office.

FINANCIAL IMPACT:

There is no financial impact associated with the item.

ATTACHMENTS:

1. Draft City Council Resolution
2. March 5, 2024, email to C. Kropfl from R. Cannone
3. Property details from RealQuest and Lawyers Title
4. Copy of Riverside County Assessor Audit Trail
5. March 25, 2024, email to C. Kropfl from R. Cannone
6. March 25, 2024, Director's Written Determination
7. April 4, 2024, Appeal of determination submitted by S. Murphy, Esq.
8. PowerPoint Presentation