

Court upholds short-term rental enforcement

MONTEREY

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MONTEREY >> A court ruling has upheld the way in which the city of Monterey goes about enforcing its prohibition on vacation rentals.

Last summer, Burlingame Investment Group, the owner of a vacation rental on Spray Street in Monterey, was fined by the city for violating its ordinance prohibiting vacation rentals, also known as short-term rentals.

Burlingame filed a lawsuit — technically an appeal of an administrative decision — against the city alleging Monterey's enforcement

process was flawed because Burlingame didn't actually rent the house yet. The city levied a \$10,000 fine

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on the firm. Vacation rentals are defined as houses that are rented for 30 days or less.

The city's ordinance was enacted because it says vacation rentals take units off the market that could otherwise house long-term renters.

"We're in the midst of a housing crisis and shortterm rentals are not helping us out," said Monterey City Manager Hans Uslar.

A city worker, posing as "Carmen," submitted a credit card to Airbnb — an online platform that connects property owners with visiting short-term renters. The card was accepted as a reservation for the 10-day rental for the property at 6 Spray Ave. Once the transaction was completed, providing evidence of the code violation, the city canceled the reservation.

But Burlingame's argument in court papers goes something like this: Even though we violated the ban against advertising for a short-term rental on Airbnb, and even though we accepted payment for a reservation in violation of a city ordinance, we shouldn't be on the hook because no one actually stayed in the residence.

It argues that if there had been no actual body spending the night in the residence, then the property was not "rented" since the city canceled the reservation as soon as Airbnb accepted the credit card payment.

Monterey County Superior Court Judge Marla Anderson disagreed with that argument in her decision handed down Feb. 19. She consulted the Merriam-Webster dictionary definition of the word "rental," and since part of the definition stated that a rental is "the act of paying for the use of something" she used Airbnb's own terms of service as evidence that the house was in fact rented even if the city

to go as far as waiting until a shortterm renter took occupancy then it would have a financial consequence.

"To give the term 'rental' within the context and intent of the ordinance a more restrictive meaning would create an absurd result that would require the city to permit the stay and lose city funds before it could issue a citation," Anderson wrote in her opinion.

"The fact that (the city) utilized an undercover sting to flush out a violator and then cancel the rental after issuing the citation does not provide (Burlingame) with safe harbor," she stated. "Even if the (city) cancelled the rental and then issued the citation the result is the same: the hirer of personal property paid funds to the owner ... in violation of the city's ordinance."

A voice message left for Derric Oliver with the Monterey office of Keller & Fenton, which argued the case for Burlingame Investments, was not immediately returned Wednesday.

Christine Davi, Monterey's city attorney, said Wednesday that the ruling upholds the way in which the city enforces its ban on short-term rentals. When a property is booked, then a transaction has occurred, she said. The oral arguments and brief filings were made by Assistant City Attorney Karen Salameh.

Since 2014, five citations for violating the city's prohibition on short-term rentals have been appealed to Monterey County Superior Court. The city prevailed in all five cases.

"The city will continue to vigorously enforce its code prohibiting short-term rentals," said Monterey City Manager Hans Uslar, "Short-term rentals contribute to a loss of housing stock in the city, and they affect the residential character of a neighborhood."

Anderson also upheld the \$10,000 fine against Burlingame.

immediately canceled the reservation.

Contact reporter Dennis L. Taylor at 831-229-9846.

“Upon receipt of a booking confirmation from Airbnb, a legally binding agreement is formed between you and your host,” Anderson noted in her fivepage written decision. If the city were required