

**SANDPIPER FACT CHECK:  
Woodpecker's Claims on Short-Term Rentals  
Spotlight 9.2020**

We have fact-checked the Del Mar Woodpecker's "Spotlight 9.2020" entitled "WE GOT NOTHING FOR THE BIG BUCKS THAT THE CITY SPENT ON LITIGATION: Short Term Vacation Rentals – Wash, Rinse, Repeat." Here are the most egregious factual errors.

**BOTTOM LINE: The Woodpecker's Spotlight is chock-full of factual inaccuracies** – Del Mar in fact does have legal regulations for STRs; it is false to call those regulations a "ban" because they allow unlimited STRs in some zones and areas, and some STR use in all residential zones. 7/28 is not "dead," and no court has ruled against 7/28 on the merits. The Woodpecker's claim that the City missed out on the collection of sizable TOT revenues for STRs is baseless; a 2010 public vote, not a Council decision, precludes collection of this transient occupancy tax. Finally, the Woodpecker's listed supporters include people responsible for filing three STR-related lawsuits against the City or who are leading operators of STR businesses, so the Woodpecker's complaints about the City's legal bills are better directed to its own supporters.

**CLAIM #1:** "Del Mar has no legal regulations or standards for STRs."

**FACT: Del Mar has a balanced program of STR regulations and standards.**

- A. **The 7/28 STR program** was adopted by City Ordinance No. 934 in 2017. It was adopted by a 4-1 vote, including councilmember Druker voting "yes." It is in the City code today and not subject to any litigation. The legal challenge that was filed against 7/28 by STR proponents was dismissed. The 7/28 program applies to STR uses in the Residential zones (other than R-C), and allows homes or residential units to be rented on a short-term (under 30 day) basis for up to 28 days per year, in minimum 7-day increments. Rentals of 30+ days are allowed on an unlimited basis in the residential zones.
- B. **The City's Forbearance Period Resolution** was adopted in 2017 (Resolution 2017-71) and extended in 2018 (Resolution 2018-62). The Forbearance regulation of STRs in residential zones is in effect today. The rules prohibit all new STRs in residential zones except those that can prove operation pre-April 2016. There are approximately 29 STRs that have qualified under the forbearance period, and many attempts at new STRs in residential zones have been prevented. There is no litigation pending as to the Forbearance Period.
- C. **STRs are allowed and regulated by zoning free of the 7/28 rules in the Visitor, Commercial, and Residential-Commercial zones, as well as in Specific Plan and time share areas**, including the L'Auberge, 941, and Wave Crest. These allowed STR uses are regulated by existing zoning.
- D. **Bottom line:** STRs are allowed by zoning in most non-residential zones. In residential zones new STRs (post April 2016) are not allowed. The 7/28 ordinance is on the books but lacks Coastal approval to add it to the city LCP. The Forbearance rules are in effect.

**CLAIM #2: The city's ill-conceived 7/28 plan amounted to a virtual ban of short-term rentals (STRs).**

**FACT: STRs are NOT banned in Del Mar.** They are allowed in many zones as noted above and in time shares and specific plans. In the residential zones they are allowed for 7 day stays for a maximum of 28 days per year.

**COMMENT:** The Woodpecker and its pro STR supporters repeatedly and falsely claim Del Mar "bans" STRs. Del Mar doesn't "ban" STRs. It has a balanced program allowing unrestricted STRs in the commercial, residential-commercial, and visitor zones designed to accommodate visitors, allows them in specific plans and time shares, and limits them to 7/28 in the residential neighborhoods where we live. The Woodpecker creates a straw man "ban" and then shows it no mercy, avoiding addressing Del Mar's actual program.

**CLAIM #3: The fruitless pursuit of the 7/28 plan is now dead.**

**FACT: 7/28 is on the books in Del Mar.**

To be "dead" 7/28 would need to be repealed by council or declared invalid by a final court judgment. Neither has happened.

**CLAIM #4: "...the city did not benefit from Transient Occupancy Taxes (TOTs)..."**

**FACT: The voters rejected charging TOT on STRs in 2010's Prop J ballot measure.** It's true TOT is not collected, but that is due to voter action, not the city council. The Woodpecker's speculation that money could have been collected by TOT on STRs is baseless, since that is not allowed by the voter rejection of Prop J.

**CLAIM #5: "Worden/Haviland have now lost all STR lawsuits..."**

**FACT: Here is the accurate status on the lawsuits over STRs:**

- A. Challenge to the 7/28 ordinance brought by pro-STR operators: **dismissed in favor of the city.**
- B. Challenge to city compliance with the Public Records Act regarding STRs: **City prevailed;** fee award to petitioners based on a precedent for awarding fees to a "losing party" in some cases.
- C. Challenge to the City's Interpretation Resolution regarding STRs: **Dismissed by trial court pending CEQA review, no decision on the merits; settlement pending.**
- D. City case involving Coastal Commission, seeking clarification of zoning authority (the only case initiated by the City): **dismissed on a technicality as "moot," no decision on the merits; appeal filed but dismissed before significant costs were incurred.**

**CLAIM #6:** “The Superior Court ruled: *‘the Resolution (7/28) constitutes a project under CEQA and should have been reviewed accordingly.’*”

**FACT: The referenced court ruling addressed the city’s Interpretation Resolution, NOT the 7/28 ordinance.** It is the Woodpecker that added the erroneous parenthetical (7/28) which completely misrepresents the court’s CEQA decision as applying to the 7/28 Ordinance. **There is no court ruling that more CEQA review is required on the 7/28 ordinance.** CEQA review was completed on 7/28 at the time of its adoption in 2017.