



February 10th 2021

San Juan County Council
Jamie Stephens
Christine Minney
Cindy Wolf

RE: Resolution No 03-2021

Dear County Council,

On behalf of The San Juan Building Association (SJBA) representing nearly 200 businesses in the homebuilding industry and its associates, we write to you with significant concern regarding Resolution No. 03-2021 which imposes a moratorium on the issuance of vacation rental permit processing. The moratorium is both illegal and bad policy for our community.

First, the moratorium is illegal. The emergency order is devoid any detail whatsoever justifying the draconian action taken by the Council. The moratorium was also passed with little to no meaningful notice and no public comment. The moratorium directly impacts the property rights of property owners on the island. Due process (including notice and an opportunity to be heard) are basic requirements of procedural due process and none was afforded before the county's implementation of the moratorium.

The United States Constitution guarantees that federal and state governments will not deprive an individual of "life, liberty, or property, without due process of law." U.S. CONST. amends. V, XIV, § 1. The due process clause of the Fourteenth Amendment confers both procedural and substantive protections. [Albright v. Oliver, 510 U.S. 266, 114 S.Ct. 575*575 807, 127 L.Ed.2d 114 \(1994\)](#). When a state seeks to deprive a person of a protected interest, procedural due process requires that an individual receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation. [Mathews v. Eldridge, 424 U.S. 319, 348, 96 S.Ct. 893, 47 L.Ed.2d 18 \(1976\)](#). The opportunity to be heard must be "at a meaningful time and in a meaningful manner," appropriate to the case. *Id.* at 333, 96 S.Ct. 893 (quoting [Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 \(1965\)](#)).

Here, the county deprived homeowners of any meaningful opportunity to be heard on a matter that eliminated a legal use of their property. To the extent that the Council may look to RCW 36.70.795

and 36.70A.390 for refuge for its action, we would note that these statutes are subject to constitutional challenge under the provisions and well-established precedents cited above. In short, there is a significant risk of litigation to the county for its illegal and unconstitutional actions which should cause the Council to consider carefully whether a temporary moratorium is worth it.

Second, the moratorium is unwise. The state is in the midst of a pandemic in which much of the business activities in our communities have been periodically shut down. At a time when employers and their employees in our county are just beginning to claw their way out of the economic effects, the moratorium serves to take away a potential source of income for cash-strapped families. We have already heard of the chilling effect the moratorium has had on real estate and construction projects in our county. In addition, there will undoubtedly be a ripple effect from restaurants, hotels and resorts, gas stations, and shops that are deprived of the revenue from tourism which is a major economic engine for the area – especially during the summer months.

Ultimately, all of this will lead to reduced revenue for our struggling residents and county government. The fees and taxes generated from tourism utilizing vacation housing and other businesses will lead to a hit the county's budget that will endanger crucial government services.

SJBA understands that construction, lodging, real estate services and retail revenues account for nearly 70% of the San Juan County economy <https://www.sanjuansedc.org/resources/industries/>. Curtailing vacation rental permits will most definitely have a negative impact on the economy of our County.

In addition, the commission's action is rife with potential unintended consequences and inequity. The current regulatory process in place in our county is well-considered, balanced, and allows for vacation rentals to potentially be permitted subject to certain reasonable conditions. The moratorium completely disregards this established process and instead uses the blunt instrument of prohibition. Unfortunately, a likely unintended consequence of this ill-conceived measure is to drive the vacation rental system underground, meaning that rentals are not likely to follow any of the reasonable restrictions and conditions currently required in the county's ordinances. Meanwhile, businesses and families who want to play by the rules are completely shut out of the market.

Respectfully, please consider repealing the moratorium to allow for time for sufficient public comment, discussion, and study so that you can better understand the economic and legal impacts from this policy.

Sincerely,

Michael W. Carlson,
President, San Juan Building Assn.