

ORDINANCE NO. 436

AN ORDINANCE OF THE CITY OF MALIBU ADDING CHAPTER 17.55 TO THE MALIBU MUNICIPAL CODE IMPLEMENTING REGULATIONS FOR THE SHORT-TERM RENTAL OF PROPERTY IN THE CITY

The City Council of the City of Malibu does hereby ordain as follows:

SECTION 1. Recitals.

A. While the City of Malibu allows residential property to be rented on a short-term basis for periods of 30 days or less, it has prohibited this practice in multifamily residential buildings where such use constitutes illegal hotel, motel or bed and breakfast inn use.

B. With the recent proliferation of short-term rental use due to the growth of internet portals that consolidate and facilitate the short-term rental of property, the City has seen increased violations of its prohibition against illegal hotel and motel use and an increase in short-term rental activity in the City. Owners of apartment complexes and other multifamily buildings have sought to convert their units to short-term rental use and created illegal hotel and motel uses in the City.

C. The removal of these multifamily units from the City's housing stock affects some of the most affordable housing options in the City and conflicts with the City's zoning and General Plan.

D. Code enforcement efforts to enforce the Malibu Municipal Code (MMC) have been resisted and challenged by operators. Clarification of the City's prohibition against these types of activities is needed. Additional regulation of short-term rental activity to limit the impact of short-term rentals on neighbors and the community, could also benefit the City.

E. On October 10, 2016, the City Council directed staff to research short-term rental of property and bring back an ordinance.

F. On May 23, 2017, the Zoning Ordinance Revisions and Code Enforcement Subcommittee of the City Council reviewed a draft ordinance (Zoning Text Amendment (ZTA) No. 17-002) and provided comments to staff.

G. On November 20, 2017, the Planning Commission held a duly noticed public hearing on ZTA No. 17-002, at which time the Planning Commission reviewed and considered the agenda report, reviewed and considered written reports, public testimony and other information in the record. The Commission discussed additional information they wished to receive and potential changes to the draft ordinance.

H. On May 7, 2018, the Planning Commission held a duly noticed public hearing on ZTA No. 17-002, at which the Planning Commission reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record and adopted Planning Commission Resolution No. 18-26 finding that the short-term rental of property is currently prohibited in all residential zones in the City and recommending that the City Council adopt an ordinance memorializing this prohibition.. The Commission further recommended that if, alternatively, the City Council adopts an ordinance that allows the short-term rental of property, that

the City Council conduct all necessary environmental review required by the California Environmental Quality Act.

I. On July 9, 2018, the City Council held a duly noticed public hearing on ZTA No. 17-002, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record. Council directed staff to revise the ordinance and return with additional information at the September 11, 2018, Regular City Council meeting.

J. The September 11, 2018 Regular City Council Meeting was cancelled.

K. On August 30, 2018, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties; homeowners associations on record with the City; regional, state and federal agencies affected by the amendment; local libraries and media; and the California Coastal Commission.

L. On September 26, 2018, the City Council held a duly noticed public hearing on ZTA No. 17-002, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

## SECTION 2. Zoning Text Amendments.

Title 17 of the Malibu Municipal Code is amended as follows:

A. MMC Section 17.02.060 (Definitions) is hereby amended by adding the following definition, inserted in alphabetical order:

“Short-term rental” of property shall mean the renting, or offer to make available, (by way of a rental agreement, lease, license or any other means, whether oral or written) for compensation or consideration, of residential property, a dwelling unit, or a portion thereof, for a period of thirty (30) consecutive days or less to a transient.

B. MMC Chapter 17.55 (Short-term Rental of Property) is hereby added to read as follows:

Section 17.55.010 Short-term Rental Permit Required.

- A. Short-term rental of property , is prohibited unless conducted in strict compliance with the requirements of this chapter by an owner who possesses a valid short-term rental permit. No person or entity shall collect a fee or any compensation in connection with reservation or payment services that facilitate the short-term rental of property in the city except for properties where the owner possesses a valid short-term rental permit that would allow the short term rental that is facilitated..
- B. A separate short-term rental permit is required for every legal lot or condominium unit (if a condominium unit is to be rented). An individual may not possess more than one active short-term rental permit.
- C. Application Contents. In addition to any other information prescribed by the City Manager, an application for a short-term rental permit shall include the following information:

1. Contact information for the owner of the property
  2. Contact information for the owner's agent with access to the dwelling unit, and authority to fix any problems or violations of this chapter, who is available twenty-four (24) hours a day, seven (7) days a week, at a phone number provided to both the City and any person staying at the property to answer calls from the City, an agent authorized by the City to make such calls, or a person who is renting the property.
  3. A copy of a valid OWTS permit for the property, or a copy of a City approved compliance agreement pursuant to Section 17.55.020(C) paired with an attestation that the applicant is in full compliance with the compliance agreement and not in default or breach.
  4. Attestation and agreement to comply with the requirements of this Chapter.
  5. Proof that the owner and operator of the rented property is in compliance with Chapter 3.24 of this code.
  6. The Uniform Resource Locator (URL) (i.e., the website address) for any and all advertisements of the short-term rental of the property.
  7. Attestation that short-term rental of the property is not prohibited by Covenants, Conditions and Restrictions (CC&Rs), or rules or restrictions of a homeowners association or similar association, and that applicant has notified such association that the property owner is applying for a short-term rental permit. Proof of notification must be retained for the duration that the applicant maintains a short-term rental permit for the property.
  8. The location of all rental units that will be rented on a short-term basis; no more than two rental units may be approved for short-term rental on a legal lot.
  9. The type of short-term rental permit sought: primary resident, non-primary resident, or multifamily.
  10. If seeking a primary resident short-term rental permit, proof of primary residency and attestation that the location is the applicant's primary residence, meaning that the applicant lives in a unit on the legal lot (or in the authorized condominium) as his or her primary residence for no less than 185 days of the previous calendar year; if the property was purchased less than 185 days from the end of the previous calendar year, an attestation that the unit is and will remain the applicant's primary residence for the duration of the permit shall suffice.
  11. If seeking a multifamily short-term rental permit, contact information, including phone number, for all tenants. Copies of the leases for all tenants, and proof of ownership of entire building must be provided within 10 days of a request for such information.
  12. Identification of all dwelling units that will be rented on a short-term basis.
- D. Review and Approval. Short-term rental permits shall be subject to the approval of the City the City Manager or her/his designee.
- E. Notice of Approval. The Planning Director shall provide, at the owner's expense, the contact information for the owner's agent identified in (C)(2) above to all dwelling units within five hundred (500) feet of the parcel boundary.
- F. Duration. Short-term rental permits shall be issued for one year and must be renewed annually.
- G. Fees. The amount of any fees to be collected pursuant to the provisions of this chapter shall be established by resolution of the City Council from time to time.

- H. Grounds for Denial or Revocation. The City Manager or her/his designee shall not approve an application for a short-term rental permit (or renewal of such permit), or may revoke such permit, if any of the following findings are made:
1. The applicant has not paid all transient occupancy tax due or is not in compliance with Chapter 3.24 of this code.
  2. The property has any outstanding code enforcement violations.
  3. The property does not comply with all applicable codes regarding fire, building and safety, and other relevant laws and ordinances.
  4. The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application, or in any report or statement required to be filed that is related to the application.
  5. The property that is the subject of the application is not in a condition where it may be immediately rented on a short-term basis consistent with the requirements of this chapter including, but not limited to, situations where the OWTS requirements of Section 17.55.020(C) have not been met.
  6. The property has received more than two citations for violation of the City's noise ordinance within a period of twelve (12) consecutive months.
- I. Nothing in this chapter shall limit the ability of a property owner, CC&Rs, or homeowners association or similar association from prohibiting or further limiting the short-term rental of property; such limitation shall be allowed.
- J. Nothing in this chapter shall prohibit the operation of a hotel, motel or bed and breakfast inn where such use is permitted

#### 17.55.020 Specific Requirements for Short-term Rentals.

- A. The following requirements shall be strictly adhered to by those conducting the short-term rental of property. In addition to all other penalties and remedies, a short-term rental permit application (or renewal application) may be denied or revoked where a holder of a Primary Resident Permit receives a total of three (3) citations for violation of any combination of the following requirements within a period of twelve (12) consecutive months, or where a holder of a Non-Primary Resident Permit or Multifamily Permit receives a total of two (2) citations for violation of any combination of the following requirements within a period of twelve (12) consecutive months.
1. All persons present at the property during a period when there is a short-term rental of a property must park all vehicles onsite; offsite or on-street parking shall only be allowed pursuant to a special event permit issued pursuant to Chapter 5.34 of this code. Properties that do not have onsite parking spaces are exempt from this requirement, but no more than one (1) vehicle may be parked on the street by persons present at the property during the short-term rental of the property.
  2. The owner's agent with access to the dwelling unit, and authority to fix any problems or violations of this chapter, must be available twenty-four (24) hours a day, seven (7) days a week, at a phone number provided to both the City and any person staying at the property. The owner's agent must be available to answer a call to this number from the City, an agent authorized by the City to make such calls or a person who is renting the property.
  3. Owner or owner's agent shall provide full access to the property, and documents related to compliance with this Chapter, during normal City Hall business hours or at

- any time the dwelling unit is rented immediately upon request by the City Manager or her/his designee for purposes of inspection or audit.
4. Owner or owner's agent shall provide all persons staying at the property with the Short-term Rental Code of Conduct, which shall be developed by the City Manager, and post the same on the inside of the main entrance door to the dwelling unit rented, or on the wall adjacent thereto.
  5. The maximum occupancy of a short-term rental property shall be limited to two (2) people more than twice the number of bedrooms listed on City or County records up to a maximum of fourteen (14) people, unless a special event permit is obtained pursuant to Chapter 5.34 of this code.
  6. The short-term rental permit number must be prominently posted on all advertisements for the short-term rental of the property.
- B. No person shall offer, facilitate an offer, or allow short-term rental of property in any location not specifically identified and approved on a short-term rental permit or in a location not approved for use as a dwelling unit including, but not limited to, any vehicle, trailer, tent, storage shed or garage. In addition to all other remedies, violation of this requirement shall provide grounds for denial or revocation of a short-term rental permit, or the renewal of such permit.
- C. Short-term rental of property is prohibited on any property unless the owner of the property (1) has obtained a valid OWTS operating permit for the property pursuant to Chapter 15.44 or (2) has entered a compliance agreement with the City excusing such compliance, and is in compliance with the compliance agreement and not in default or breach. In addition to all other remedies, a violation of this requirement shall provide grounds for denial or revocation of a short-term rental permit, or the renewal of such permit.

#### 17.55.030 Types of Short-term Rental Permits

Only a natural person may obtain a short-term rental permit, and that person may only possess one short-term rental permit. Possessing short-term rental permits for more than one legal lot or condominium, even if the permits are of a different type, is prohibited. The types of short-term rental permits available in the City shall be limited to the following:

- A. **Primary Resident Permit.** A primary resident owner may obtain this type of permit which allows short-term rental of residential property, in compliance with this chapter, during the period that the permit is valid. To be eligible for this type of permit the primary resident owner applicant must provide proof of primary residency in a form acceptable to the City Manager and an attestation, under penalty of perjury, that the location to be permitted is the owner's primary residence. Multifamily residential buildings containing three (3) or more dwelling units (including, but not limited to, triplexes, condominiums, stock cooperatives, apartments, and similar developments) are not eligible for this type of permit, with the exception that primary resident owners of condominiums may obtain this type of permit for the unit where he or she has established his or her primary residence.
- B. **Non-Primary Resident Permit.** An owner may obtain this type of permit which allows short-term rental of residential property, in compliance with this chapter, during the period that the

permit is valid even if the permitted location is not the owner's primary residence. Property subject to this type of permit may only be rented on a short-term basis during the period between April 1 and September 30 each year. Multifamily residential buildings containing three (3) or more dwelling units (including, but not limited to, triplexes, condominiums, stock cooperatives, apartments, and similar developments) are not eligible for this type of permit, with the exception that owners of condominiums may obtain this type of permit.

- C. Multifamily Permit. Owners of entire multifamily residential buildings containing three (3) or more dwelling units (including, but not limited to, triplexes, condominiums, stock cooperatives, apartments, and similar developments) may obtain this type of permit which allows the short-term rental of up to two (2) units in the building so long as all other units are rented for a period of one year or more. A unit that serves as the primary residence of the owner and a unit which is rented on a month-to-month basis to a tenant who has occupied the unit for more than one year shall qualify as a unit that is rented for a period of one year or more even though the lease specifies a shorter term.

#### 17.55.040 Renewal of Short-term Rental Permit.

- A. Renewal Application Deadlines. An application to renew a short-term rental permit must be received by the City Clerk not less than thirty days prior to the expiration of the short-term rental permit. Applications received after the deadline but before expiration of the permit may be accepted at the discretion of the City Manager or her/his designee.
- B. Applications for renewal must shall be in a form required by the City Manager and include updates of all information required or submitted for the permit.
- C. No permit shall be renewed unless all city fees and taxes owed by the applicant are paid in full, including the renewal fee.

#### 17.55.050 Effect of Denial or Revocation of Short-term Rental Permit.

- A. If an application for a short-term rental permit (or an application for renewal of such permit) is denied, the City Manager or her/his designee shall not approve a new application for that applicant and location for a twelve month period after the denial unless the City Manager or her/his designee determines that the reason for the denial has been cured and no longer exists. If the reason for denial is due to (1) the applicant knowingly making any false, misleading or fraudulent statement of material fact in the application, or in any report or statement required to be filed that is related to the application, (2) violation of Section 17.55.020, (3) more than two (2) citations for violation of the City's noise ordinance in a period of twelve (12) consecutive months for holders of a Primary Resident Permit, or (4) more than one (1) citation for violation of the City's noise ordinance in a period of twelve (12) consecutive months for holders of a Multifamily or Non-Primary Resident Permit, a new application shall not be approved for a period of at least twelve (12) months from the date of the last violation or short-term rental of the property, whichever is later.
- B. If a short-term rental permit is revoked the short-term rental of the property must cease immediately and shall not be permitted for a period of twelve (12) months from the date of revocation.
- C. The short-term rental of property (or advertisement or offer of such rental) after denial or revocation of a short-term rental permit shall result in the property and applicant being

ineligible to conduct the short-term rental of property (or apply for a short-term rental permit) for an additional six month period for each such rental; such period is in addition to the prohibitions listed in sections (A) and (B) above.

- D. No fee refunds shall be issued to any permittee whose short-term rental permit is revoked.

#### 17.55.060 Revocation.

A short-term rental permit may be revoked if a preponderance of the evidence demonstrates that the property or permit holder is in violation of Section 17.55.010(H) or 17.55.020.

#### 17.55.070 Appeals.

- A. The denial of an application for a short-term rental permit, the renewal of such permit, or the revocation of such permit may be appealed by submitting a written appeal form detailing the basis for the appeal and any additional documentation the appellant would like to be considered.
- B. The completed appeal form must be delivered to the City Clerk within thirty (30) calendar days from the date the letter denying the application (for short-term rental permit or renewal thereof) or revoking the short-term rental permit was sent.
- C. Failure to deliver the completed appeal form as required by section (B) above the denial or revocation shall be deemed final.
- D. While the appeals process is pending, the appellant is prohibited from the short-term rental of property and the short-term rental permit at issue shall not be valid.
- E. Once a timely and complete appeal form has been received by the City Clerk a hearing on the matter shall be scheduled before the Planning Commission in accordance with the procedure detailed in Section 17.04.220 of this code. The decision of the Planning Commission shall be appealable to the City Council in accordance with the procedure detailed in Section 17.04.220 of this code.

#### 17.55.080 Enforcement, Violations and Penalties.

- A. In addition to the other penalties and remedies available to the City, violations of this Chapter shall be subject to the administrative citation provisions of Chapter 1.10, except that any violation of this Chapter shall be subject to a fine of \$1000 per day or violation.
- B. The short-term rental permit holder shall be held responsible for administrative citations for violations of the municipal code committed by persons at the property during a period when the property is rented on short term rental basis.
- C. Any violation of this Chapter shall constitute a separate offense for each and every day the violation occurs or persists.
- D. These penalties and remedies are cumulative and in addition to any other penalties and remedies available to the City.

### SECTION 3. Text Amendments.

Title 15 of the Malibu Municipal Code is amended by adding Section 15.44.030(C)(7) as follows:

7. With any application by the owner (or owner's agent) for a short-term rental permit pursuant to Chapter 17.55. The application for the operating permit shall be prior to or concurrent with the application for a short-term rental permit. An operating permit will be issued when the work is complete and the system has been determined to be functioning in compliance with all applicable requirements.

### SECTION 4. Zoning Text Amendment Findings.

The City Council hereby finds that ZTA No. 17-002 is consistent with the General Plan and Local Coastal Program (LCP). The ordinance would support the objectives and policies of the General Plan intended to concentrate commercial uses in certain areas and prevent sprawl throughout the City [General Plan LU Objective 4.2], regulate hotel development to ensure development compatible with a rural residential community [General Plan LU Policy 4.4.3], and conserve affordable housing in the Coastal Zone [General Plan Housing Policy 1.4].

ZTA No. 17-002 will support these policies by clarifying the City's prohibition against illegal hotel, motel and bed and breakfast inn use and introducing regulations to reduce the impact of short-term rentals on neighbors and the community.

The proposed ordinance does not authorize a use other than that already designated in the LCP and MMC as a permitted or conditionally permitted use in the zone. The proposed ordinance is consistent with the Coastal Act and the LCP because it protects, maintains and enhances the overall quality of the coastal zone environment. The proposed ordinance will not alter the utilization or conservation of coastal zone resources, impede public access to and along the coastal zone, or interfere with the priorities established for coastal-dependent or coastal-related development. The proposed ordinance facilitates enforcement of the MMC and LCP and takes steps to limit the impacts from the short-term rental of property.

### SECTION 5. Environmental Review.

The City Council has analyzed the proposed project in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. The ordinance will impose regulations that limit the environmental impacts of residential use of property compared to those currently in place and that of owners and long-term renters.

### SECTION 6. Severability.

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or

constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 7. Effectiveness.

This Ordinance will become effective on April 1, 2019, following its passage and adoption.

SECTION 8. Certification.

The City Clerk shall certify to the passage and adoption of this ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of October 2018.

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RICK MULLEN, Mayor

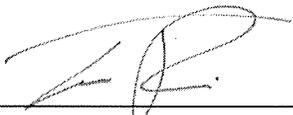
ATTEST:

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HEATHER GLASER, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:



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CHRISTI HOGIN, City Attorney