



Zoning Ordinance
Revisions & Code
Enforcement
Subcommittee
Special Meeting
05-23-17

Item 2

Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) Agenda Report

To: Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES) Members Peak and Wagner

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Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: May 16, 2017

Meeting date: May 23, 2017

Subject: Short-Term Rental Ordinance

RECOMMENDED ACTION: Review the proposed amendments to the Malibu Municipal Code (MMC) regarding short-term rental of property in the City, and provide feedback to staff.

DISCUSSION: Short-term rental of residential property is currently allowed in single family homes in the City so long as such rental complies with the Malibu Municipal Code (MMC), the property is registered with the City, and Transient Occupancy Tax (TOT) is properly remitted. This includes the MMC regulations addressing parking, noise, special event gatherings (permit needed for events with 15 or more people) and nuisance issues. The City provides 24/7 on-call monitoring services of short-term rentals through SWS to ensure noise, parking and other MMC requirements are complied with.

On October 10, 2016, the City Council directed staff to research and bring back an ordinance that would potentially: 1) ban short-term rental properties with outstanding code enforcement violations (as well as the advertisement of such properties) with each violation of the ban resulting in the ban extending an additional six months from the date the enforcement violation is cured; 2) expand the definition of hotel/motel in the MMC; 3) ban short-term rental of multifamily housing, except for home-sharing (where the owner is present on the property during the stay); 4) limit the number of days a property can be rented; 5) require proof of primary residence at the property, or that the host live at the property for a certain number of days a year; 6) require rentals to meet certain standards, e.g. annual inspections, onsite parking for all guests, handicapped access on the property and in the home, compliance with all fire

safety and occupancy codes, requiring an onsite manager or that the manager is available 24/7; and 7) require Covenants, Conditions, and Restrictions (CC&Rs) for future developments and/or major remodels in the City to include provisions banning short-term rentals. The attached draft ordinance addresses this direction from the City Council.

Background

There are 177 properties that are currently registered as short-term rentals in Malibu and are remitting TOT on a regular basis. These properties have complied with the City's registration requirements and are subject to the City's 12 percent TOT. Over the past fiscal year, these short-term rentals have generated approximately \$1.35 million in tax revenue.

In April 2015, AirBnB began collecting and remitting TOT for properties in the City that were rented through its website; this includes approximately 200 properties that have registered through AirBnB, rather than individually. Since April 2015, the City has received approximately \$1.5 million in tax from AirBnB versus \$1.3 million from non-AirBnB short-term vacation rental properties. Of note is the fact that this revenue comes from non-residents and is not paid for by City residents.

While the City has received relatively limited complaints regarding short-term rental properties, the short-term rental industry is growing rapidly due to the growth of online rental platforms, such as AirBnB and HomeAway, which facilitate the short-term rental of property. Statewide, short-term rental listings have been increasing, and evidence suggests the practice of purchasing property with the purpose of solely renting it out on a short-term basis has also been increasing. To address these concerns, and at the direction of the City Council, staff has put together a draft ordinance (attached). This report will discuss the ordinance, considerations involved, and other options for addressing short-term rentals.

Draft Ordinance

Single Family Short-term Rental Regulations

The focus of the proposed ordinance is Section 17.xx.010. This section will limit short-term rental of property in residential zones to the following time periods: November 16 to January 14, and May 16 to September 29. Short-term rental of property will be prohibited at all other times. This section addresses the Council's direction to limit the number of days a property can be rented on a short-term basis. While staff considered limiting the total number of days a property can be rented, these types of limits are generally unenforceable. It is difficult for staff to ascertain how often a property is rented, and proving these types of violations will be very expensive. In addition, it is likely to discourage owners from registering their properties with the City and submitting the TOT they owe.

By limiting the times of year properties can be rented, enforcement will be easier. Instead of having to wade through documentation and evidence for 60 or more rental stays, a code enforcement officer will merely need to prove that a rental occurred during a period when short-term rentals are banned.

The time periods proposed by staff were chosen for two reasons: First, they reflect periods of time when many residents travel and are not using their home. Second, they reflect periods of time when there is higher demand for short-term rentals. This serves the dual purpose of limiting the impact of short-term rentals and also allowing residents who depend on short-term rental income to capitalize on the periods of time when there is greatest demand (and higher rates can be charged). Alternatively, the Council could elect to cap the number of days a property is rented or the number of stays (no limit on duration) allowed during a year.

The second part of the proposed ordinance details the requirements for anyone who desires to rent their property on a short-term basis. These include:

- (1) The owner registers with the City and pays TOT. This provision provides an essential point of contact for the City with the property owner, allowing the City to contact the owner regarding short-term rental issues and monitor short-term rental activity in the City. It also ensures that renters contribute to the improvement of the City through the payment of TOT.
- (2) The owner must prove the property is a primary residence or that the owner has lived on the property for at least 100 days during the previous calendar year. While this provision may reduce situations where investment properties are bought in Malibu for short-term rental purposes, it may also cause unintended impacts as many residents of Malibu have more than one home. If the proposed limits on short-term renting are implemented, this provision may no longer be necessary as the limits on when a property can be rented will significantly impact the profitability of such investment properties. Alternatively, the Council could elect to only allow rental of a primary residence or increase the residency requirement.
- (3) The property must have onsite parking for all guests, unless the property does not have onsite parking, in which case guests are limited to parking two vehicles on the street. Some homes in Malibu do not have any onsite parking, so a requirement to park onsite would effectively ban those properties from short-term rentals. Language could also be added that requires all parking designated on a property's coastal development permit (CDP) is available (e.g., a garage could not contain items that would prevent guests from parking there).
- (4) The property shall not have any outstanding code violations, and any violations on the property shall have been cured for a period of six months prior to any

short-term rental. This will avoid situations where guests are staying at a property where violations exist. The Council may consider shortening the no-rental period after a violation has been cured to avoid abuse of the code enforcement system or harassment of a property owner.

- (5) The property complies with all applicable codes regarding fire, building and safety, and other relevant laws and ordinances. This requirement will help prevent unsafe properties from being rented.
- (6) A 24/7 manager must be available to deal with any problems at a short-term rental property. This requirement allows problems to be addressed in real time. It should be noted that if an owner is unable to serve as the manager, this requirement may be costly and difficult to set up for individuals who only occasionally rent their property.
- (7) Finally, a property owner is required to grant City representatives access to the property and documents if needed for inspection or audit.

Multifamily Short-Term Rental Regulations

Short-term rentals are currently prohibited in multifamily housing buildings, but the proposed ordinance will clarify this ban, which will aid enforcement action. The City has a limited multifamily rental housing stock, and this stock is generally more affordable than single-family units and helps diversify the range of housing options available locally. Effective conversion of apartment buildings to motels and hotels by renting out the units on a short-term basis would reduce this limited inventory and could displace permanent residents. This practice is currently banned in the City, but the City has seen interest from individuals in taking such action.

While the proposed ordinance clarifies the ban on short-term renting of multifamily housing, it does allow home-sharing in such units. Home-sharing is the practice of allowing a guest to stay in a dwelling where a host is also living. The proposed ordinance requires the owner to live in the dwelling unit throughout the visitor's stay. This requirement could be expanded to allow non-owners (such as a long-term renter) to home-share, if such rental is allowed by a lease – or if the long-term renter obtains permission from the landlord. Home-sharing will be subject to the same regulations (and time periods for rental) as single family homes.

Ensuring home-sharing units are not being rented as regular short-term rentals can be difficult as it is hard to discern and prove that the owner is living in a dwelling unit at the time it is rented. Enforcing the home-sharing requirement may be difficult and costly.

Enforcement

The proposed ordinance includes fines of \$1000 per day or violation. Due to the expensive rates some properties rent for in the City, a significant financial penalty is required to aid compliance. More importantly, the proposed ordinance bars those who violate the ordinance from renting on a short-term basis for a period of six months. This may lead to individuals illegally renting property during the six-month ban period, but if they are caught, an additional six-month ban will be added.

This proposed system will incentivize owners to comply with the ordinance, register with the City, and help stop problem properties from operating in the City. The Council may want to consider delaying the start of such bans for a period of time after a violation occurs as these properties are booked out months in advance and it may be difficult to cancel reservations. It also punishes future guests who may have made expensive plans to visit Malibu.

Other Considerations

Other Options

Instead of, or in addition to the above described proposed approach, the City could also expand the definition of hotel/motel in the MMC. Hotel/motel use is already prohibited in many zones, and clarifying the language could be used to ensure creative developers do not convert multifamily housing into short-term rental hotels.

The City could also limit short-term rentals to certain zones in the City. Some zones may be more compatible to short-term rental operations, but limiting the zones may also lead to over-concentration of short-term rental activity in those areas.

The City also could create a license system that limits the number of properties that can be rented on a short-term basis. This type of system will be difficult to enforce, particularly given the reluctance of hosting platforms to require license information be listed on their websites. A licensing system will also attract more professional operators and discourage the owners that only occasionally rent, or rent on a short-term basis only due to special circumstances (e.g., family or work issues that require travel, renovation, or construction activity, etc.).

Enforceability of Ordinance

In examining this ordinance, one of the most important problems to consider is whether the ordinance will be enforceable. Enforcement of short-term rental regulations is difficult and expensive as there is no easy or low-cost way for the City to determine whether a property is rented on a short-term basis. Even if a short-term rental use is suspected, it is difficult to prove that individuals occupying a property paid to stay there, and are not relatives or friends of the owner. Individuals have no obligation to answer the door, provide access to the property, or speak with code

enforcement officers. Even if a short-term renter admits the nature of the arrangement, the renter often lives far from the property making it difficult and expensive, if not impossible, to obtain sworn testimony in court.

If the ordinance is not enforceable or if it is overly burdensome, it will discourage owners from registering with the City and complying with the ordinance. It is anticipated that the more difficult the ordinance is to comply with, the more property owners will take steps to disguise the rental of their property and avoid contact with the City. Currently, most properties that allow short-term rentals register with the City, which aids the City's ability to monitor and communicate with owners. Maintaining or increasing this compliance should be considered when evaluating this ordinance.

If compliance decreases, the City will have to enlist expensive "sting-" type operations, and additional code enforcement resources will be required to effectively enforce the ordinance. These additional resources would have a fiscal impact.

Central Complaints Related to Short-term Rentals

In general, the central complaints related to short-term rentals relate to nuisance issues, decrease in long-term rental stock, and damage to neighborhood character. Since the implementation of 24/7 monitoring by SWS, the City has received relatively few nuisance complaints related to short-term rental properties. MMC Chapter 8.24 defines the City's noise ordinance and prevents unreasonable noise. MMC Chapter 17.48 assures the provision of adequate off-street parking facilities for residential properties. MMC Chapter 5.34 limits the number of special events that may be held at a residential property, such as weddings or parties, and allows the City to condition such events to minimize impacts on neighboring properties. These provisions have allowed code enforcement staff to effectively address the code violations that have been identified.

In Malibu the most significant threat to long-term rental stock is the conversion of multifamily housing to short-term rental use. As a result, this ordinance seeks to clarify the ban on short-term rental use of such properties to aid enforcement action. While the Council has indicated it would like to allow home-sharing in such properties, ensuring that the owner is living at the property will be difficult and expensive to enforce.

Many of the provisions of the draft ordinance have been drafted in an effort to preserve neighborhood character and avoid "professional" operations where properties are purchased to be used solely for short-term rental use. The limits on times of year when properties may be rented and new penalty provisions provide strong financial incentives against such action. Other provisions, such as the parking, code compliance, property manager and primary resident requirements, also seek to ensure that owners of properties rented on a short-term basis are good neighbors and do not negatively impact the neighborhood.

Other Impacts of Ordinance

The City currently has 177 registered short-term rental properties that report their activities to the City and comply with the City's municipal code and rentals registered with AirBnB. The City also was the first small city for which AirBnB agreed to collect TOT. Changes to the way the City regulates short-term rentals may impact both the willingness of short-term rental property owners to comply with the City's requirements and AirBnB's collection of TOT for the City.

Changes to the City's existing ordinance also may draw the attention of the California Coastal Commission. The CCC "strongly encourages" vacation rental regulation to be pursued through a LCP amendment. Of central concern to the CCC is increasing public coastal access, especially low-cost visitor serving uses and accommodations. The City may implement more restrictive regulations that do not conflict with the Coastal Act and do not change the land uses themselves.

It should also be noted that the lodging options for visitors to Malibu are limited. Lodging options for visitors to Malibu are limited to six hotels and motels, plus the Malibu Beach RV Park.¹ Demand for lodging in the City is likely to continue to outstrip the ability of hotels/motels to supply that lodging. As a result, demand for short-term rental options in the City is likely to continue to grow, especially because many families prefer to rent a home rather than rooms in a hotel. Providing a structure that accounts for this demand, while limiting the negative impacts of short-term renting, will be successful if the structure is easy for owners to understand and comply with. If the structure is difficult to understand or comply with, short-term rental owners may abandon the system and take their rental activity underground, aggravating negative effects on the City.

STAFF FOLLOW-UP: Staff requests that ZORACES provide comments and recommendations on the proposed ordinance.

ATTACHMENTS: Draft Ordinance

¹ The Malibu Motel, Malibu Beach Inn, Surfrider Inn (under construction), Malibu Riviera Motel, Nobu Ryokan (not yet open, formerly the Casa Malibu Inn), and Malibu Country Inn.

Amend 17.02.060 (Definitions)

Add Chapter 17.xx

Short-Term Rental of Property

17.xx.010 Short-Term Rentals in Residential Zones

(A) In the Rural Residential, Single Family Residential, Multiple Family Residential, Multifamily Beach Front, Mobilehome and Planned Development Districts, during the following periods of time (1) no person or entity shall offer, advertise or make available for rent, or rent (by way of a rental agreement, lease, license or any other means, whether oral or written) for compensation or consideration a residential dwelling, a dwelling unit or a room in a dwelling unit for a period of thirty (30) consecutive days or less, and (2) no person shall occupy a residential dwelling, a dwelling unit or a room in a dwelling for a period of (30) consecutive days or less pursuant to a rental agreement, lease, license or any other means, whether oral or written) for compensation or consideration:

January 15 through May 15, September 30 through November 15.

(B) Single-Family Dwellings may be rented for a period of thirty (30) consecutive days or less from May 16 through September 29 and November 16 through January 14 subject to the following requirements:

1. The owner and operator of the rented property registers with the City, timely pays all transient occupancy due, and is in compliance with Chapter 3.24 of the Malibu Municipal Code
2. The owner of the property provides proof to the City sufficient to prove the property is the owner's primary residence or that the owner lived on the property for at least 100 days during the prior calendar year.
3. The property provides onsite parking for all guests; offsite or on street parking shall only be allowed pursuant to a special event permit. Properties that do not have onsite parking are exempt from this requirement, but guests of such properties may not park more than two vehicles on the street.
4. The property shall not have any outstanding code violations, and any violations on the property shall have been cured for a period of six months prior to any rental of the property.
5. The property complies with all applicable codes regarding fire, building and safety, and other relevant laws and ordinances.
6. A manager shall be available twenty-four hours a day, seven days a week, at a phone number provided to both the City and any guest

staying at the property. This number must accept voicemail messages. A phone call to this number from the City or a guest must be returned within one hour.

7. Owner shall provide full access to the property, and documents related to compliance with this Chapter, during normal business hours immediately upon request by the City Manager or his/her designee for purposes of inspection or audit.

17.xx.020 Short-term Rentals in Multifamily housing

(A) Short-term rental of property is prohibited in multiple-family residential buildings (including, but not limited to, duplexes, condominiums, stock cooperatives, apartments, and similar developments):

1. No person or entity shall offer, advertise or make available for rent, or rent (by way of a rental agreement, lease, license or any other means, whether oral or written) for compensation or consideration a residential dwelling, a dwelling unit or a room in a dwelling unit for a period of thirty (30) consecutive days or less in such buildings.
2. No person shall occupy a residential dwelling, a dwelling unit or a room in a dwelling for a period of (30) consecutive days or less pursuant to a rental agreement, lease, license or any other means, whether oral or written) for compensation or consideration in such buildings.

(B) Notwithstanding, section 17.xx.020(A), a dwelling unit owner may rent the owned dwelling unit in a multiple family residential building for a period of thirty consecutive days or less when the owner (1) lives in the dwelling unit throughout the visitor's stay, and complies with the requirements of 17.xx.010(B), including the dates such rentals are allowed. If contacted by City staff, the owner must appear within ninety minutes in person at the property.

17.xx.030 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) For any property that violates any provision of this chapter, no person or entity shall offer, advertise or make available for rent, or rent (by way of a rental agreement, lease, license or any other means, whether oral or written) for compensation or consideration a residential dwelling, a dwelling unit or a room in a dwelling unit at that property for a period of thirty (30) consecutive days or less, and (2) no person shall occupy a residential dwelling, a dwelling unit or a room in a dwelling for a period of

(30) consecutive days or less pursuant to a rental agreement, lease, license or any other means, whether oral or written) for compensation or consideration. This prohibition shall extend for a period of six months from the date the City sends a notice of violation to the listed property owner and/or the address of the property. An additional six-month restriction period will be imposed for each subsequent violation. .

(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 ____. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and her certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

PASSED, APPROVED AND ADOPTED THIS ____ day of _____, 2017.

MAYOR

ATTEST:

City Clerk