



Adjourned Meeting  
10-28-19  
**Item**  
**5.A.**

# Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Assistant to the City Manager

Approved by: Reva Feldman, City Manager

Date prepared: October 8, 2019 Meeting date: October 28, 2019

Subject: Short-Term Rentals

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**RECOMMENDED ACTION:** 1) Receive financial analysis on the implications and potential impacts of a ban on short-term rentals; 2) Discuss potential options and procedures for banning short-term rentals; 3) Discuss whether an amendment to the Local Coastal Plan is necessary for a short-term rental ban; 4) Discuss approaches of other coastal cities that have legislated short-term rentals and associated litigation in those cities; and 5) Provide direction to staff on a short-term rental ordinance.

**FISCAL IMPACT:** In Fiscal Year 2017-2018, the City collected \$2.42 million from transient occupancy tax of short-term residential rentals and in Fiscal Year 2018-2019, this revenue source generated \$2.46 million. Per the Council's direction on September 26, 2018, a financial analysis has been conducted to determine the financial impacts from a ban on short-term residential rentals. The financial analysis demonstrates that a ban will have a financial impact on the City's General Fund over the next ten years with a loss of approximately \$30 million.

**WORK PLAN:** This item was included as item 4D in the Adopted Work Plan for Fiscal Year 2019-2020.

**DISCUSSION:** On July 9, 2018, the Council held a public hearing on the regulation of short-term rentals. The agenda report (Attachment 1) summarized the Planning Commission's recommendation (including Planning Commission Resolution No. 18-26 as an attachment). The report also provided a draft ordinance prepared by staff based on previous direction from the Council, ZORACES and the Planning Commission proposing a short-term rental permit (STR) permit system. At the conclusion of its deliberations, the Council expressed consensus approving all but two of the 24 main points summarized in the agenda report regarding the proposed ordinance. Specifically,

the Council requested changes to the proposed parking regulations and the prohibition of short-term rentals in multifamily buildings. In addition, the Council requested that staff research and bring back options for establishing primary residence requirements, developing special exemptions from primary residence requirements, regulating rentals in condominiums, requiring Onsite Wastewater Treatment System (OWTS) operating permits for short-term rental properties, determining permit fees, processing permit applications, phasing in the permit system, and enforcement tools. The item was continued to September 26, 2018 with direction to staff to return with a revised ordinance.

On September 26, 2018, the Council was presented with a short-term rental ordinance (Attachment 2) that addressed all the concerns the Council raised and proposed to regulate short-term rentals in multifamily apartment buildings, set standards and requirements for the short-term rental of property to address the potential impacts of short-term rentals and preserve neighborhood character as directed by the Council on July 9, 2018.

The draft ordinance presented to the Council on September 26, 2018, proposed to create a STR permit system with three types of permits: primary resident, non-primary resident and multifamily with different permit requirements and permissions for each permit type that must be renewed annually. In general, the permit requirements and permissions proposed were stricter for non-primary resident permits and multifamily permits than primary residents to minimize impacts and preserve neighborhood character.

The following is a summary of the key points of the proposed ordinance and STR permit system:

- Limits individuals to one active STR permit
- Requires a 24/7 contact that can address STR issues
- Establishes maximum occupancy rates based on the number of bedrooms
- Establishes parking restrictions
- Requires a valid OWTS Permit for the property
- Establishes that permits may be denied or revoked if:
  - The property has received more than 2 citations for violation of the City's noise ordinance within a twelve-month period
  - The property has received more than 2 citations for violation of permit requirements within a twelve-month period
  - The property has outstanding code violations
  - The property doesn't comply with all applicable safety codes, laws or ordinances

- Requires that applicants provide proof to demonstrate primary residency and claim the property as a primary residence for at least 185 days per year

The ordinance also placed additional restrictions on non-primary residents and in multifamily properties including:

- Non-primary resident permits would only allow the short-term rental of property between April 1 and September 30
- Multifamily permits would allow a maximum of two units to be rented on a multifamily property but only if all other units are documented to be rented on a long-term basis
- Non-primary resident permits and multifamily permits can be revoked or denied for 2 citations/violations instead of 3

Under this system, if a permit is denied or revoked, the short-term rental of property must cease immediately and shall not be permitted for 12 months. The short-term rental of property during this period would result in additional penalties.

In response to the City's proposed ordinance, the California Coastal Commission (CCC) staff wrote a letter to the City dated September 20, 2018, stating that the "Commission staff views the City's proposed amendment as a supportable effort to provide for some regulatory controls and management provisions for short term rentals" (Attachment 3).

After discussion of the proposed ordinance, the Council directed staff to bring back an item with an analysis of: 1) potential options and procedures for banning short-term rentals in the City; 2) the implications and potential impacts of a ban, including financial analysis; 3) approaches to using the Local Coastal Program Amendment (LCPA) process; and 4) the approaches of other coastal cities to dealing with short-term rentals and the current state of litigation over those issues.

### **Background on Current STRs Regulations**

Proponents of a STR ban have asserted that STRs are not a residential use and, per the City's zoning code, should not be allowed in residential neighborhoods. The issue of whether or not STRs are a permissible use in residential zones is open to interpretation. Zoning ordinances prohibit all uses that are not listed. Since short-term vacation rentals are a more recent phenomenon that have taken root because of the internet-fueled "shared economy," that specific use is not listed in most older zoning ordinances, including the City of Malibu. Thus, the issue becomes whether that use is reasonably like a single-family home (because people use it for the same general purposes as permanent or long-term renters) or whether it is a whole new use (because it is transient and not residential in character). In Malibu, single family homes can be rented whether it is for a year, a month, or a weekend. The length of the rental is not regulated. The

length of the rental of a single-family residential property does not change the essential character of the “use” as the “rental of property.”

Starting in Fiscal Year 2008-2009, at the recommendation of the Administration and Finance Subcommittee, the City of Malibu began to enforce the transient occupancy tax (TOT) on the short-term rental of residential property. The City established a TOT registration fee as part of the adopted fee schedule and implemented a STR TOT registration program. Over the last decade, the City has collected TOT on STRs. In 2015, the City entered into an agreement with Airbnb and the company began collecting and remitting TOT for the properties in Malibu that are rented through its website. Ultimately, it is the responsibility of the Council to interpret zoning ordinances, and cities across California continue to interpret zoning codes differently.

The City could change its land use policy and distinguish between a “residential” use and a “transient” use based on the length of the tenancy. Transiency has a different effect on a neighborhood and, like other defined uses, may be regulated (or banned) in order to protect the characteristics of a residential neighborhood that promotes relative permanency and long-term social investment.

## **1. Financial Analysis**

On November 8, 2019, shortly after Council provided direction on STRs, the Woolsey Fire broke out destroying more than 480 residential structures in Malibu. To better understand the short- and long-term financial implications of a potential ban on STRs, as well as the financial impacts of the Woolsey Fire, staff issued a request for proposals for financial analysis services in March 2019. On June 24, 2019, the City entered into a Professional Services Agreement with Raftelis Financial Consultants for financial analysis services.

Raftelis Financial Consultants (Raftelis) conducted a thorough analysis of the City’s finances and developed a financial model. The model enables the City to create a ten-year forecast that reflects the financial impacts from a ban on short-term rentals and the financial impacts of the Woolsey Fire and associated rebuilding efforts, including unreimbursed expenses from past and potential winter rain events.

The customized financial model uses historical and current financial data to allow the City to analyze various financial scenarios. The model can be updated as needed as financial information changes and will be a valuable tool for the Council to evaluate financial and policy decisions moving forward. Raftelis input thousands of line items of revenue and expenses from the City’s past and current budgets as the basis of their financial model including taking into account the City’s General Fund Undesignated Reserve Policy (Attachment 4).

On October 3, 2019, the Administration and Finance (A&F) Subcommittee received a presentation from Raftelis that summarized the results of the financial modeling. The summary highlighted the financial strain the City is under after the Woolsey Fire, the subsequent storms, the waiving of fees and the addition of contract personnel to assist in the rebuilding efforts. The presentation also included the financial impact of a full ban of STRs, as well as what the financial impact would be with a 50 percent loss of STR revenue.

The analysis conducted by Raftelis highlighted the City's need to maintain a sizable General Fund undesignated reserve. The City has been committed to maintaining a substantial reserve to ensure financial sustainability and governmental continuity in a vulnerable and disaster-prone area as Malibu and has established a very conservative General Fund Undesignated Reserve Policy. The policy establishes that the City maintain a minimum General Fund Undesignated Reserve of 50 percent of the City's operating budget and, more recently, the Council set a goal of maintaining a 65 percent reserve. Both the City's reserve policy and goal far exceed the reserve levels of most municipalities.

By strictly adhering to the City's General Fund Undesignated Reserve Policy and achieving its reserve goal, the City was in a strong financial position at the beginning of Fiscal Year 2018-2019. On July 26, 2018, S&P Global Ratings assigned the City of Malibu an "AA+" rating and affirmed its "AA+" long-term rating and its "AAA" issuer credit rating (ICR) on the City. Years of conservative financial planning and Malibu's resulting fiscal strength has enabled the City to withstand the immediate financial impact of the 2018 Woolsey Fire.

However, the financial impact of the Woolsey Fire, the subsequent winter storms and the rebuilding process, including the waiving of fees for all rebuilding services and the addition of contract personnel to assist the community with rebuilding, have weakened the City's fiscal position. Looking ahead, this situation is made worse by a combination of an increase in debt service from the 2018 purchase of vacant land and the expected increase to City's contract with Los Angeles Sheriff's Department in Fiscal Year 2023. Taking into account the loss of revenue from a complete short-term rental ban or a 50 percent ban, further exacerbates the City's weakened financial position.

The A&F Subcommittee requested that the financial analysis presentation to Council include potential expenditure reductions that could offset loss of revenue from a partial ban or a full ban on short-term rentals as well as a consideration of the financial impact of a 25 percent ban.

Raftelis will be at the meeting to provide the Council with a revised presentation of the financial analysis derived from the financial model they developed for the City and answer questions. A draft copy of the presentation is included as Attachment 5.

Staff evaluated the City's current expenditures and identified the following short-term and long-term measures that could serve to reduce expenditures as well as some potential revenue generating measures. A combination of these efforts could offset the loss of revenue of a potential short-term rental ban estimated to be up to \$2.46 million in Fiscal Year 2020-2021 and escalated based on the Consumer Price Index. Additional measures will be needed to address anticipated increases in debt service and public safety costs.

Potential Short-Term Expenditure Reductions:

- Limit General Fund Capital Improvement Projects (CIPs)
- Reduce fire rebuild consultant expenses which will impact review and approval times for rebuilds (estimated at \$3.75 million between FY 2020-2021 and FY 2022-2023)
- Limit rebuild fees waivers to Fiscal Year 2019-2020
- Reduce debt service by selling vacant land
- Limit non-essential staff positions
- Limit homelessness services
- Reduce non-essential City programs and services

Potential Long-Term Expenditure Reductions:

- Limit non-essential General Fund CIPs identified in the 5-Year CIP Plan for 2019-2024 (estimated at \$2.5 million over the next 5 years)
- Reduce public safety expenses

Potential Revenue Increases (based on Fiscal Year 2019-2020 Adopted Budget and subject to fluctuation):

- Increase TOT for hotels and motels (currently 12%) - requires a vote of the people (Attachment 6)
  - 3 percent increase to 15% is estimated to generate an additional \$290,000 annually
  - 4 percent increase to 16% is estimated to generate an additional \$380,000 annually
- Increase Sales Tax (currently 9%) – requires a vote of the people
  - 1/2 percent increase to 9 1/2% is estimated to generate approximately an additional \$200,000 annually
- Install parking meters along select City streets

Upon direction from the Council on solutions to increase revenue or decrease expenses, staff can develop different financial scenarios using the model developed by Raftelis.

## **2. Options and Procedures for Regulating and Banning Short-Term Rentals**

It is established that California cities may regulate short-term rentals (STRs) through their constitutional zoning authority.<sup>1</sup>

A number of cities ban or limit STR activity within residential zones. For example, San Francisco only allows “permanent residents” (persons who spend at least 275 nights a year in a residential unit) to rent the units as STRs, subject to business registration and tax requirements. The City of Santa Monica only allows STRs that take the form of “home-sharing” (hosted rentals where residents remain on-site with guests) also subject to registration and payment of TOTs.

It is important to note that for cities such as Malibu that have historically taken steps that may be considered to legitimize STRs, such as the collection of TOT, the establishment of a TOT registration program, and agreements with various online STR platforms, it may be more difficult to enact a ban.

If the City were to enact a ban, the City would need to draft an ordinance banning STRs and establish a date by which all STRs must cease (allowing a reasonable amortization period), conduct required public hearings, adopt an ordinance banning STRs, provide notice to STR operators, hire additional code enforcement personnel to help enforce the STR ban and develop a STR ban monitoring program with the City’s STR monitoring consultant, Host Compliance. Due to the nature of vacation rental bookings, staff recommends that the effective date of the ordinance be a minimum of six months from the date of adoption.

In addition, in order to enact a full STR ban, the City would also need to amend its Local Coastal Program (LCP) as explained below.

## **3. California Coastal Commission and Local Coastal Plan Amendment Process**

Depending on the ordinance proposed, the City’s STR regulations may require an LCP amendment. Generally speaking, whenever the uses of property are changed, an LCP amendment would be required. CCC staff continues to assert that a LCPA is required for regulations limiting or banning STRs. In fact, in the letter to the City dated September 20, 2018, CCC staff expresses support for the City’s then-proposed ordinance regulating STRs, but also asserts that “we believe that vacation rental regulations in the coastal zone must occur within the context of the City’s LCP. We encourage the City to submit an LCP amendment to the Commission.” CCC staff has expressed the view that prohibiting or limiting the operation of STRs in the coastal zone represents a change of use that triggers the need for an LCP amendment. In a letter dated December 6, 2016, the Commission stated that it has “not historically supported blanket vacation rental

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<sup>1</sup> See *Ewing v. City of Carmel-By-The-Sea* (1991) 234 Cal.App.3d 1579, 1590.

bans under the Coastal Act, and it has found such programs in the past not to be consistent with the Coastal Act” (Attachment 7).

While the City Attorney advises that an LCPA is not necessary for the City to enact certain ordinances regulating the administration of the TOT required for STRs, the City Attorney also advises that an LCPA will be necessary in order for the City to enact a full ban of STRs, or certain ordinances that significantly regulate or change current STR use.

Therefore, if the Council decides to pursue a full STR ban, it would also need to direct staff to bring back a draft resolution to initiate an LCPA. After the Council adopts the initiation resolution, staff would draft an LCPA. The Draft LCPA would be presented to the Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) (unless directed otherwise) and the Planning Commission before being presented to the Council for approval. These hearings would be consolidated with the hearing on the ordinance amending the Malibu Municipal Code. If approved by the Council, the Draft LCPA would be submitted to the CCC for certification.

#### **4. Status of Current Litigation in Coastal Cities**

The impact of STRs in coastal areas is still being debated, and no appellate court has yet determined whether a city’s STR regulations constitutes a development within the meaning of the Coastal Act.

While the CCC has approved LCPAs that allow STRs (and has stated that bans or heavy regulation of STRs would not be approved), the threshold question of whether an LCPA is required for a coastal city to regulate STRs is the subject of pending action in California courts.

In *Greenfield v. Mandalay Shores Community Association*, the Court of Appeal invalidated a homeowners association’s ban on STRs holding that “STRs may not be regulated by private actors where it affects the intensity of use or access to single family residences in a coastal zone.” The court found that such regulation was a policy matter for the city and the CCC. In the pending cases, the courts address circumstances where the local government and the CCC may not agree on what the local policy should be.

The City of Del Mar is currently in litigation with the CCC over these issues. In 2017, Del Mar adopted a zoning ordinance allowing STRs in certain residential zones subject to a minimum stay of seven nights and a maximum STR use of twenty-eight days per calendar year. Like Malibu, Del Mar has a certified LCP. Del Mar submitted an LCPA to the CCC mirroring the zoning ordinance it adopted. The CCC rejected Del Mar’s LCPA, suggesting that certification would depend on modification of policy to allow STRs in residential zones in the coastal zone at a much higher intensity than Del Mar

had proposed (the CCC required an STR use with a three-night minimum stay for a maximum of 100 nights per year).

Del Mar sued the CCC asserting that such policymaking was outside of its legal jurisdiction. Del Mar also claims that the CCC requirements are arbitrary, and it has offered no evidence that the Coastal Act requires more intense STR use. Del Mar argues that the Coastal Act does not equate public access with overnight accommodations, and Del Mar already offers extensive overnight accommodations throughout the city. The court has yet to hear the matter, which the City Attorney's office continues to monitor.

The City of Santa Barbara is also challenging the status of STR regulations under the Coastal Act in a case against a resident-STR operator. In *Theodore P. Kracke v. City of Santa Barbara*, a resident sued the city for implementing a policy to remove large numbers of STRs from the city's coastal areas without obtaining a Coastal Development Permit (CDP) or an LCPA.

Santa Barbara treats STRs as hotels for purposes of its zoning ordinance, which broadly defines a hotel as any building occupied as temporary accommodations for less than thirty (30) consecutive days. Prior to 2015, however, Santa Barbara had an informal policy of generally allowing STRs throughout the city provided that: (1) the owner obtained a local business license and remitted TOT payments; and (2) neighbors did not complain. In the summer of 2015, the Santa Barbara City Council directed staff to regulate STRs as defined by local law and allocated funding (approximately \$180,000) to enable effective enforcement actions against unlawful operators. Unlike Del Mar, Santa Barbara did not amend its zoning ordinance; rather, it adopted policy direction to aggressively identify and prosecute operators under its existing zoning laws, regulating STRs as hotels, which are prohibited in Santa Barbara's residential zones and subject to numerous permitting requirements in commercial zones.

In litigation, Santa Barbara argued that it had not taken action that would implicate CDP or LCP requirements under the Coastal Act. The trial court disagreed. On March 8, 2019, the court issued a decision finding that: (1) an official change in enforcement policy (sanctioned by the Council) was equivalent to adopting an ordinance or a resolution for purposes of coastal "development;" and (2) even in the absence of evidence (the parties presented conflicting expert testimony), "it is clear that the availability of [STRs] affects the public's use of and access to the coastline."

Santa Barbara was thus ordered to regulate STRs as it did before the 2015 enforcement policy went into effect, until such time as Santa Barbara obtains a CDP or an LCPA. Santa Barbara has appealed the trial court's judgment, which may result in a binding appellate decision on the status of STR ordinances under the Coastal Act.

The City Attorney's office continues to monitor these issues.

## **Litigation and Enforcement Issues Cities Face When Regulating STRs**

The challenge for most cities has been enforcement. As a result, most of the recent litigation over STR ordinances concerns the limits of local enforcement measures, particularly the limits on government regulation of the online platforms facilitating rentals.

### *Platform Liability*

To better enforce local regulations, San Francisco and Santa Monica adopted ordinances that imposed legal liability on platforms for publishing listings of potentially illegal rentals. These ordinances held platforms criminally and civilly liable for facilitating (including advertising) any unauthorized rental activity. The platforms sued under the federal Communications Decency Act (CDA). The CDA provides that an online service provider may not be treated as "the publisher" of information furnished by a third-party content provider and immunizes platforms from liability under any inconsistent state or local law.

In response, San Francisco and Santa Monica amended their ordinances. For example, Santa Monica's amended ordinance provides that platforms may not complete "booking transactions" for unlicensed STRs, but no longer imposes liability on platforms for publishing advertisements. The platforms again sued, and on March 13, 2019, the Ninth Circuit Court of Appeal upheld Santa Monica's amended ordinance. In *HomeAway.com, Inc. v. City of Santa Monica*, the court found that Santa Monica's STR regulations did not require companies to monitor or edit the content of any listings provided by hosts and thus did not regulate "publication" activities within the meaning of the CDA.

Ordinances that require platforms to disclose transaction information about rentals for code enforcement purposes have also faced legal challenge, particularly under the Stored Communications Act (SCA). The SCA limits the government's ability to compel the disclosure of consumer information from internet service providers. Absent platforms' consent, courts have held that cities may only require companies to disclose transaction records by means of a subpoena (or similar legal process) that is narrowly designed to identify illegal activity and affords platforms a meaningful opportunity to challenge the reasonableness of the requested information.

## **5. Provide Direction to Staff**

The following are options for the Council to consider:

- Direct staff to initiate the process to enact a full STR ban and provide direction to staff on how to address the fiscal impact of a full STR ban
- Direct staff to return the draft ordinance presented on September 26, 2018, for Council consideration
- Direct staff to draft a new STR ordinance for Council consideration and provide direction regarding regulatory items to be included
- Direct staff to return to Council with additional options for regulating STRs

### ATTACHMENTS:

1. July 9, 2018 City Council Staff Report
2. September 26, 2018 City Council Staff Report
3. September 20, 2018 Letter from California Coastal Commission Staff
4. City of Malibu's General Undesignated Fund Reserve Policy
5. Draft Financial Analysis Presentation Prepared by Raftelis Financial Consultants
6. Transient Occupancy Rates in Cities Throughout California
7. December 6, 2016 Letter from California Coastal Commission



# Council Agenda Report

To: Mayor Mullen and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Assistant to the City Manager

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager 

Date prepared: June 28, 2018 Meeting date: July 9, 2018

Subject: Short-Term Rental Ordinance

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**RECOMMENDED ACTION:** 1) After the City Attorney reads the title, introduce on the first reading Ordinance No. 435 (Attachment 1) determining the project is categorically exempt from the California Environmental Quality Act, amending Title 17 of the Malibu Municipal Code (MMC) and adding Chapter 17.55 (Short-term Rental Ordinance) to MMC Title 17 (Zoning) to establish provisions to regulate short-term rentals of property citywide; and 2) Direct staff to schedule second reading and adoption of Ordinance No. 435 for the July 23, 2018 Regular City Council Meeting.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action.

**DISCUSSION:** The proposed Short-Term Rental Ordinance is intended to clarify the existing prohibition on short-term rentals in multifamily buildings, set minimum standards and requirements for the short-term rental of property and preserve neighborhood character. The ordinance was drafted based on direction provided by City Council and has been revised through the legislative process to reflect the comments received from the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES), the Planning Commission and members of the public, while keeping to the original Council direction.

This report provides a brief background on short-term rentals in Malibu, provides data on the current short-term rental market, presents the Planning Commission's recommendation from the May 7, 2018 Planning Commission Meeting, addresses the concerns raised by the Planning Commission, provides an overview of the draft ordinance, and discusses potential implementation and enforcement of the proposed ordinance.

## Background

Short-term rental of residential property is currently allowed in single-family homes in the City so long as such rental complies with the MMC, the property is registered with the City, and Transient Occupancy Tax (TOT) is properly remitted.<sup>1</sup> This includes MMC regulations addressing parking, noise, special event gatherings (permit needed for events with 15 or more people) and nuisance issues.

Short-term rental of residential property has long been a practice in Malibu and predates the City's incorporation in 1991. For many years, rentals were handled directly by owners or with the assistance of real estate agents or brokers. With the rise of internet platforms such as Airbnb, VRBO, Homeaway and others in the last decade, the short-term rental process has become more convenient, efficient and robust and, as a result, property is rented on a short-term basis more frequently.

The MMC includes Chapter 3.24 titled "Uniform TOT Ordinance of the City of Malibu." In 2009, the City began the collection of TOT on the short-term rental of private homes in accordance with Chapter 3.24. A short-term rental is generally described in MMC Chapter 3.24 as the rental of a structure for 30 consecutive calendar days or less. This includes any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, rental unit, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof, and shall further include any trailer court, camp, park or lot where trailer spaces, or combinations of such spaces and trailers, including mobilehomes, are occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes.

In April 2015, Airbnb began collecting and remitting TOT for the properties in the City that are rented through its website, some of which are also registered directly with the City.

## Current Market Landscape

There are currently a total of 408 properties that are remitting TOT for short-term rental of property. Of the 408, 220 are registered directly with the City and 188 are registered through Airbnb.

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<sup>1</sup> MMC Chapter 3.24 requires owners and operators of short-term rental properties to register their property with the City and remit TOT on a quarterly basis. It also authorizes the City to collect TOT when a hotel, motel or residential home is occupied for 30 consecutive calendar days or less. The tax rate is 12 percent of the amount charged. Registration is a one-time \$25 fee and taxes are collected on a quarterly basis. If an owner or operator fails to remit TOT as required the City may impose interest and penalties on the amount owed.

In Fiscal Year 2016-2017, the City received \$1.8 million in tax revenue from short-term residential rentals. In Fiscal Year 2017-2018, the City expects to receive \$1.8 million.

Given the rapid growth of online rental platforms which facilitate the short-term rental of property, it is highly likely that there are properties in Malibu that are used for short-term rental that are not registered with the City or with Airbnb.

In order to gather more accurate data and gain better oversight of short-term rentals, the City issued a Request for Proposal for short-term rental administration in winter 2017. On February 13, 2018, the City entered into a contract with Host Compliance (Host). Host has a proprietary software service that collects data weekly across the top 50 short-term rental listing sites. All the data collected on short-term rental listings, including reviews, calendar information and photos, is then aggregated, de-duplicated and documented by the Host program. Host has been collecting information on short-term rentals in Malibu for the past several months. From the information gathered thus far, Host has developed some preliminary data on the current Malibu short-term rental market which it can compare to some historical data points and provide a fuller context with which to understand current dynamics and review potential policy changes.

Many owners advertise their short-term rental units on multiple websites. Owners can change their listings at any time and, to address this, Host updates its data on a weekly basis and is regularly tracking market trends. As of June 22, 2018, Host identified 945 listings in Malibu. Of the 945 listings, Host identified 522 unique rental units.<sup>2</sup> This data suggests over a hundred rental units are currently not registered with the City. Monitoring by Host will facilitate identification of unregistered owners and increase compliance.

Data from Host indicates the majority of Malibu's short-term rentals are large, single family homes. Approximately 94 percent of the City's short-term rentals are for entire homes<sup>3</sup> and approximately 74 percent are for single family residences. Approximately 62 percent of the City's entire home short-term rental units are three bedrooms or more. In fact, approximately 20 percent are five bedrooms or more. The majority of the City's short-term rentals rent for over \$400 a night. The relatively unique composition of Malibu's short-term rental housing stock has less of an impact on affordable housing than in other communities that have more diversified listings at lower average costs.

To provide a broader context for the current figures on short-term rentals, staff researched the total number of housing units in the City. Where the General Plan estimated that there were over 4,000 single-family homes in Malibu, the California

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<sup>2</sup> Units in multifamily buildings are counted as separate and distinct units.

<sup>3</sup> This includes instances when homeowners rent out accessory dwelling units, duplex units, etc. (where the unit is listed as an "entire home" rental) but the homeowner is actually next door for the duration of the stay.

Department of Finance estimates that there were 6,907 total housing units in Malibu as of January 1, 2017, of which 5,373 were single-family homes (including detached and attached).

### Legislative Review

On November 9, 2015, in response to complaints from residents regarding a particular single-family home being used for short-term rental, the Council directed staff to develop options for regulating short-term residential rental property owners who misuse the property or cause a nuisance in the neighborhood.

On February 8, 2016, the Council reviewed a range of enforcement mechanisms from a ban of all short-term residential rentals to limits on rentals, such as restricting the number of days per year a property can be rented, or instead, strictly enforcing noise and nuisance ordinances already on the books to deal with problem rental properties. The Council voted not to ban short-term rentals, but rather to allocate more resources to help prosecute violations of the MMC, and particularly the City's noise ordinance, special events permit requirements, and parking codes and authorized a contract for on-call monitoring services of short-term residential rentals with SWS, Inc.

On June 16, 2016, the Council received an update on issues related to short-term residential rentals. Council directed staff to bring back an item exploring ordinances regulating short-term rentals, including primary residency requirement of hosts, code violation consequences, licensing of short-term rentals, occupancy limits, fines structure and methods of enforcement.

On October 10, 2016, the Council reviewed options for regulating short-term residential rentals and directed staff to bring back a draft ordinance that included:

1. A ban on 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;
3. A ban on the short-term rental of multifamily housing, except for home sharing (where the owner is present on the property during the stay), which prevents this housing from being converted to hotel/motel use;
4. A limit on the number of days a property can be rented;
5. Requirement of proof of primary residence at the property, or that the host live at the property for a certain number of days a year;

6. A requirement that rentals 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 onsite manager or that the manager is available 24-7; and
7. A requirement that CC&Rs for future developments and/or major remodels in the City to include provisions banning short-term rentals.

Staff drafted an ordinance based on the direction provided by Council and presented it to ZORACES (Attachment 3) for discussion and feedback.

On May 23, 2017, ZORACES discussed the proposed ordinance and recommended that staff draft an ordinance to include the following:

1. Prohibition of short-term rentals and home sharing in the Multi-Family Residential zone for complexes with three or more units;
2. A requirement for signage indicating 24 hours per day, seven days per week contact information for a designated manager, visible to the public at all times;
3. A requirement for compliance terms to be met or revocation of rental privileges be imposed for six months, to be increased upon lack of further compliance, which could lead to criminal penalties if compliance is ultimately not met; and
4. A requirement that homeowners attest when they register that their homes have smoke detectors with an inspection provision;

The Subcommittee also recommended that staff research:

- Covenants, conditions, and restrictions of homeowners associations that could provide examples for communities that would like to create privately enforceable restrictions;
- Whether the owner should be allowed to be the designated manager;
- Examples of types of contact information signage used in other communities;
- The cost to fund one or two full-time positions related to enforcement;
- The need for an inspection program for wastewater treatment systems; and

- Hosting guidelines that could be provided to TOT registrants, similar to the Filming Code of Conduct for film permits.

Staff revised the proposed ordinance based on the recommendations provided by ZORACES and presented it to the Planning Commission at a duly noticed public hearing. On November 20, 2017, the Planning Commission reviewed and made comments on the draft short-term rental ordinance; however, the Planning Commission did not make a motion or reach consensus at the meeting.

Staff categorized all the comments received by the Commissioners, prepared responses to address all Commissioners' comments by category and made adjustments to the proposed ordinance (Attachment 3). On May 7, 2018, the Planning Commission held a public hearing to review the revised ordinance and made two motions as follows:

- Directed staff to prepare a resolution stating that the Planning Commission recommends that the City Council find that the short-term rental of property is currently prohibited in all residential zones in the City and adopt an ordinance memorializing that prohibition; and
- Directed staff to include in the resolution a recommendation that if a ban on the short-term rental of property was not put in place, a CEQA environmental study be prepared if necessary.

Planning Resolution No. 18-26 is attached (Attachment 2).

Below, staff has categorized comments received from the Planning Commissioners and members of the public and prepared the responses below.

#### May 7 Planning Commission Meeting Comments

##### *Commercial Use of Property in Residential Zones*

Concerns were raised about whether short-term rentals constituted a commercial use in residential zones. The justification for allowing short-term rental of property in a residential zone is that like long-term rental of property, money is collected in exchange for allowing occupancy of a dwelling unit. In that way, long-term rental of property is a revenue-generating use of property just like short-term rental. Also, similar to a long-term rental, the property owner or manager may or may not be onsite or local. Both long-term and short-term rental of residential property is currently allowed in Malibu. The primary difference is the length of time the occupants stay in the dwelling unit. Under the proposed ordinance, restrictions on short-term rental units would be greater than those for dwelling units occupied on a permanent or longer term basis in order to address

concerns that have been expressed about short-term occupancy. For example, unlike units occupied by long-term tenants, for short-term rental properties:

- Contact information for the owner or owner's agent must be provided to the City and neighbors within 500 feet, and will be made available to Host so they can notify the owner of complaints
- The owner or owner's agent must be available 24 hours a day, seven days a week while the unit is in use as a short-term rental
- Parking must be onsite. For long-term occupied units, there are no restrictions on parking.
- Occupancy by more than 14 people requires a special event permit (SEP). For a long-term occupied unit, there is no limit on occupancy and a SEP is only needed for an event with 100 or more attendees.

#### *Corporate Ownership of Residential Homes*

Concerns were raised about the potential for corporations, investment groups or individuals to buy properties for the sole purpose of short-term rental. The extent to which this is currently occurring is unknown. However, based on registration data, it does not appear to be a widespread local phenomenon. As Host continues to monitor short-term rentals and refine its data, the City will have better information regarding this topic which can be reported to City Council and used to guide future policy. If corporate ownership is determined to be a problem, there are a number of policies that the City could consider adopting that could potentially inhibit the growth of short-term rental investment properties. These policy options include, but are not limited to, requiring that only individuals can register for short-term rental and putting a limit on the number of properties a single person or entity can register for short-term rental. Research shows that many of these regulatory policies are difficult to enforce and there are many ways in which corporate entities or individuals can work around these regulations. Depending on further direction from City Council, the City could evaluate these policies for implementation if needed in the future.

#### *Definition of Multi-Family Residence*

Questions were raised as to why the ordinance defines multi-family residence as a building with three or more dwelling units. This definition of multi-family residence is already established in MMC Chapter 17.02.060. The proposed ordinance is designed to clarify and be consistent with existing codes and thus relies on the existing definition of a multi-family residence. Based on this language, short-term rentals could occur at single-family and duplex properties only. The Council could choose to change this definition for purposes of the STR ordinance. For example, several owners of multi-family buildings asked that the definition be changed to increase the number of units to more than four. Other types of definitional changes suggested would allow some short-term rental within multi-family buildings. Such changes would make the proposed ordinance less restrictive

than the City's current ban on multi-family unit rentals but would put the City's affordable housing at greater risk.

#### *Primary Residence Requirement*

A primary residence requirement on short-term rentals was suggested by some in an effort to limit the number of short-term rentals in the City. This requirement was included in the original draft of the proposed ordinance that was presented to ZORACES on May 23, 2017. During the discussion at the May 23, 2017 ZORACES meeting, it was determined that this requirement was problematic due to the number of Malibu residents who own more than one home. At the recommendation of the Subcommittee, the primary residence requirement was removed from subsequent drafts of the proposed ordinance.

#### *Permitting System*

Use of a permitting system, rather than a registration program, was suggested to strengthen the City's ability to regulate short-term rentals and revoke rental privileges. The draft ordinance has been revised to incorporate a permitting system. Further discussion of the proposed permitting system will be included in the next section of the report.

#### *Occupancy Rates*

The proposed ordinance establishes a maximum number of occupants based on the number of bedrooms in a rental unit. One of the major reasons that occupancy limits are being proposed is so existing onsite septic systems designed for single family residences are not overwhelmed by the number of occupants in a short-term rental. The presence of children and babies increases demands on septic systems.

#### *Short-Term Rental Code of Conduct*

A Code of Conduct has been developed to provide short-term renters rules and regulations associated with short-term rentals (Attachment 4) including:

- *Emergency Concerns:* Short-term renters may be unaware of Malibu's fire dangers, emergency protocols and evacuation routes. Additional emergency information will be included in the Short-Term Rental Code of Conduct.
- *Septic System Concerns:* Short-term renters may be unaware of septic system requirements. Additional information on septic systems will be included in the Short-Term Rental Code of Conduct.

#### *Noise and Neighborhood Nuisance Issues*

The ordinance has been revised to include several provisions to ensure that neighbors' concerns are addressed more quickly and that violations of noise and other regulations can result in the revocation and denial of a short-term rental permit for an extended period of time.

### *California Environmental Quality Act*

The Planning Commission expressed concern about potential impacts of short-term rentals and recommended that if a ban were not put in place, that CEQA analysis be required for the proposed ordinance to analyze these effects depending on what ordinance was put in place. At the direction of Council, any such issues could be more fully explored in studies not limited to the areas of concern under CEQA, but staff's analysis of the proposed ordinance is that it is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines as 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 those that would apply to owners and long-term renters. For example, when not in use as a short-term rental, a three-bedroom house could be occupied by any number of tenants and its tenants and guests could park any number of cars on the street. It would not be limited to eight tenants, as a short-term rental would be, nor would it be constrained to parking on the property. The proposed ordinance does not expand the ability to rent property on a short term basis; it does the opposite, so any environmental impacts related to short-term rentals would be reduced by this ordinance, not increased.

### Draft Ordinance

The ordinance was drafted based on direction provided by the City Council and has been revised through the legislative process to reflect the comments received from ZORACES, the Planning Commission and members of the public, while keeping to the original Council direction. Throughout the process, the intent of the ordinance remained the same: to clarify the existing prohibition on short-term rentals in multifamily buildings, set minimum standards and requirements for the short-term rental of property and preserve neighborhood character. The main points of the draft ordinance (Attachment 1) are summarized here.

- 1) Institutes a permit system where the owner of a short-term rental property must possess a valid Short-Term Rental Permit (STR Permit). Each permit will be assigned a unique number, and a separate permit application is required for every rental unit.
- 2) The STR Permit Application shall include contact information for the owner or owner's agent. The owner or owner's agent must be available to answer calls from the City and deal with any problems at the short-term rental property twenty-four hours a day, seven days a week.

- 3) The STR Permit Applicant shall attest that they are in compliance with all requirements of the Short-Term Rental Ordinance, MMC Chapter 3.24, including compliance with all applicable codes regarding fire, building and safety and other relevant laws, as well as the requirement that there are no outstanding code violations on the property.
- 4) The STR Permit is valid for one year and must be renewed annually.
- 5) The contact information for the owner or owner's agent shall be provided to all properties within 500 feet of the parcel boundary at the owner's expense. This is intended to provide neighbors a point of contact to informally raise or resolve concerns. This requirement was included in lieu of signage due to potential security risks associated with identifying a property as a rental.
- 6) 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. If street parking for more than two vehicles is necessary, a special event permit (SEP) must be obtained. This requirement is designed to limit overflow on-street parking as the SEP would count against the maximum of four events allowed each year per residential parcel.
- 7) Owner or owner's agents is required to grant City representatives access to the property and records if needed for inspection or audit.
- 8) The owner shall provide a Short-term Rental Code of Conduct prepared by the City, intended to provide important information, including rules and expectations for conduct, to all guests and post it inside the entrance to the dwelling. A draft Code of Conduct is included as Attachment 3.
- 9) The maximum occupancy of short-term rental units is designed to coincide with the number of bedrooms in the dwelling unit. The maximum occupancy is limited to two people more than twice the number of bedrooms of record, up to 14 people max. This is consistent with the requirement of MMC Section 5.34.020(C) to obtain a special event permit if a short-term rental is proposed to accommodate 15 people or more.
- 10) The STR Permit Number shall be displayed on all short-term rental advertisements. This will facilitate monitoring and enforcement of short-term rentals.
- 11) The STR Permit can be denied or revoked if the applicant is found to have knowingly made false statements in the application.

- 12) The STR Permit can also be denied or revoked if the property is found to have not paid TOT due, has outstanding code violations, does not comply with all applicable codes, is not in the condition to be rented on a short-term basis or if the property has received more than two citations for noise violations within a consecutive twelve month period.
- 13) The STR Permit can also be denied or revoked if a total of three citations for violation of any combination of the following requirements occur within a consecutive twelve month period: parking, responsiveness, access, posting of the Code of Conduct, maximum occupancy and listing the permit number on all advertisements.
- 14) Short-term rental of any vehicle, trailer, tent, storage shed, garage, or other such premises is explicitly prohibited. This provision specifically clarifies the existing ban on individuals offering Airstreams, tents and similar places as vacation rentals.
- 15) A ban on short-term rentals in multifamily buildings containing three or more units, except for home sharing (where the owner is present on the property during the stay).
- 16) If an application for a STR Permit is denied, a new application cannot be approved for that applicant and location for a twelve month period.
- 17) If a STR Permit is revoked the short-term rental of the property must cease immediately and shall not be permitted for a period of twelve months from the date of revocation.
- 18) The short-term rental of property or the advertisement of property for short-term rental after denial or revocation of a STR Permit shall result in the property and the applicant being ineligible to conduct short-term rental of property for an additional six month period for each such rental.
- 19) It establishes an appeal process for the denial or revocation of a STR Permit and prohibits the appellant from the short-term rental of property when the appeals process is pending.
- 20) The appeals process includes a hearing to be scheduled before the Planning Commission. The decision of the Planning Commission shall be appealable to the City Council.
- 21) Violations are subject to fines of \$1,000 per day or violation.
- 22) The STR Permit holder shall be responsible for administrative citations for violations of the municipal code committed by guests at the property.

- 23) Any violation of this ordinance shall be considered a separate offence for each and every day the violation occurs or persists.

#### Implementation and Enforcement of the Proposed Ordinance

The City has already taken significant steps to increase enforcement resources. The City now has three full-time code enforcement officers available to address short-term rental issues along with other code violations. In addition, the City has contracted with Host to assist with monitoring and enforcement of short-term rentals. The Host software will enable the City to easily and accurately identify properties that list short-term rentals and work with owners to come into compliance. The system includes a robust hotline and web portal that will enable community members to register complaints at any time and upload photos and video files, and document and track all complaints received for City staff.

If the draft ordinance is approved with the proposed twenty-four hour, seven days a week contact person, Host's hotline system can generate a call to the responsible party on file to alert them of issues at the rental property.

City staff contacted representatives from a wide range of municipalities in popular tourist destinations currently grappling with short-term rentals regarding staffing and enforcement protocols. Based on those discussions, staff believes that the City's current staffing levels with augmentation from Host are sufficient to address short-term rental compliance at this time given the current scale of short-term rentals and the ordinance provisions proposed.

Once Host's comprehensive system is fully up and running and tracking all the short-term rental data and complaints received, the City will have more information to inform staffing and enforcement needs going forward.

PUBLIC NOTICE: On June 14, 2018, a one-quarter page Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu, display ads were published in the local newspapers, and was mailed to all interested parties; and all owners/operators currently registered with the City's Transient Occupancy Tax Program (Attachment 5).

SUMMARY: Staff recommends that the City Council introduce the draft ordinance on first reading and direct staff to schedule the second reading, or provide direction on changes to the ordinance to be reviewed at a future hearing.

#### ATTACHMENTS:

1. Draft Ordinance
2. Planning Commission Resolution No.18-26

3. May 7, 2018 Planning Commission Staff Report – available online at [www.malibucity.org/STR](http://www.malibucity.org/STR)
4. Short-Term Rental Code of Conduct
5. June 14, 2018 Public Hearing Notice

ORDINANCE NO. 435

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.

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

Section 17.55.010 Short-term Rental Permit Required.

- A. Short-term rental of property (or the advertisement, offer, or facilitation, of such rental), is prohibited unless conducted in strict compliance with the requirements of this chapter by an owner who possesses a valid short-term rental permit.
- B. A separate short-term rental permit is required for every rental unit.
- 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 and owner’s agent operating the rented 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 guest staying at the property. The owner’s agent must be available twenty-four (24) hours a day, seven (7) days a week to answer calls from the City, an agent authorized by the City to make such calls, or a guest when there is a guest renting the property.
  3. Attestation and agreement to comply with the requirements of this Chapter.
  4. Proof that the owner and operator of the rented property is in compliance with Chapter 3.24 of this code.
  5. The Uniform Resource Locator (URL) (i.e., the website address) for any and all advertisements of the short-term rental of the property.

- 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 (B)(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 (e.g. a property with outstanding code violations may not be rented).
  - 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, Covenants, Conditions and Restrictions (CC&Rs), or homeowners association or similar association from prohibiting or further limiting the short-term rental of property.

#### 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 total of three (3) citations for violation of any combination of the following requirements (and/or the requirements of 17.55.030(B)) occur 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 two (2) vehicles 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 guest 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 guest when there is a guest 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 guests 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 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.

#### 17.55.030 Short-term Rentals in Multifamily Housing.

- A. Short-term rental of property is prohibited in multifamily residential buildings containing three (3) or more dwelling units (including, but not limited to, triplexes, condominiums, stock cooperatives, apartments, and similar developments):
1. No person or entity shall offer, advertise, or facilitate the short-term rental of such properties.
  2. No person shall occupy a residential dwelling, a dwelling unit or a portion thereof for a period of thirty (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. Section 17.55.020(A) does not apply to the short-term rental of a dwelling unit in a multifamily residential building if the unit owner: (1) lives in the dwelling unit throughout the visitor's stay, and is present in the unit for at least eight (8) hours a day, (2) complies with the requirements of 17.55.010, and (3) if contacted by City staff, the owner appears within ninety (90) minutes in person at the property.
- C. Nothing in this chapter shall prohibit the operation of a hotel, motel or bed and breakfast inn where such use is permitted.

#### 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, or (3) more than two (2) citations for violation of the City's noise ordinance in a period of twelve (12) consecutive months, 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, offer, or facilitation, 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. 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(G) 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 guests at the property.
- 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. Zoning Text Amendment No. 18-xxx.

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.

APPROVED AS TO FORM:



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CHRISTI HOGIN, City Attorney

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 18-26

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE MEMORIALIZING THAT THE SHORT TERM RENTAL OF PROPERTY IS PROHIBITED IN ALL RESIDENTIAL ZONES OF THE CITY

The Planning Commission of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

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

B. 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.

C. On October 26, 2017, a one-quarter page Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. Display ads were also published in local newspapers. A public hearing notice was also mailed to all interested parties, regional, state and federal agencies affected by the amendment, local libraries and media, the California Coastal Commission, and all parties registered with the City for payment of transient occupancy tax.

D. On November 20, 2017, the Planning Commission held a duly noticed public hearing on the draft ordinance, at which time the Planning Commission reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record. The Commission discussed additional information they wished to receive and changes to the draft ordinance.

E. On April 12, 2018, a one-quarter page Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. Display ads were also published in local newspapers. A public hearing notice was also mailed to all interested parties, regional, state and federal agencies affected by the amendment, local libraries and media, the California Coastal Commission, and all parties registered with the City for payment of transient occupancy tax.

F. On May 7, 2018, the Planning Commission held a duly noticed public hearing on the draft ordinance, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record.

SECTION 2. Zoning Text Amendment Recommendations

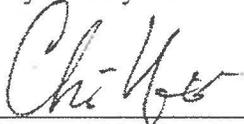
Pursuant to MMC Section 17.74.040, the Planning Commission makes the following recommendations.

A. The Planning Commission hereby finds that the short-term rental of property is currently prohibited in all residential zones in the City and recommends that the City Council adopt an ordinance memorializing this prohibition.

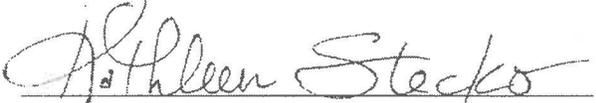
B. If, alternatively, the City Council adopts an ordinance that allows the short-term rental of property, the Planning Commission recommends that the City Council conduct all necessary environmental review required by the California Environmental Quality Act.

SECTION 5. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 7<sup>th</sup> day of May 2018.

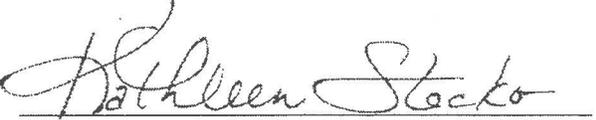
  
CHRIS MARX, Planning Commission Chair

ATTEST:

  
KATHLEEN STECKO, Recording Secretary

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 18-26 was passed and adopted by the Planning Commission of the City of Malibu at the Special meeting held on the 7<sup>th</sup> day of May 2018 by the following vote:

AYES:	3	Commissioners:	Mazza, Uhring, Marx
NOES:	1	Commissioner:	Jennings
ABSTAIN:	0		
ABSENT:	1	Commissioner:	Pierson

  
KATHLEEN STECKO, Recording Secretary

Welcome to the City of Malibu. It is the goal of the City that all visitors and residents are able to enjoy Malibu's natural environment while maintaining its rural residential character. Our Code of Conduct is a way to assist us toward this goal.



## RESOURCES

### SHORT-TERM RENTAL HOTLINE

XXX-XXX-XXXX

### CITY CODE ENFORCEMENT

310-456-2489, ext.484

### LOS ANGELES COUNTY SHERIFF DEPARTMENT

818-878-1808

### LOS ANGELES COUNTY FIRE DEPARTMENT

310-317-1802

### MALIBU EMERGENCY & TRAFFIC HOTLINE

310-456-9982

## CONTACT US



23825 Stuart Ranch Rd  
Malibu, CA 90265



310-456-2489

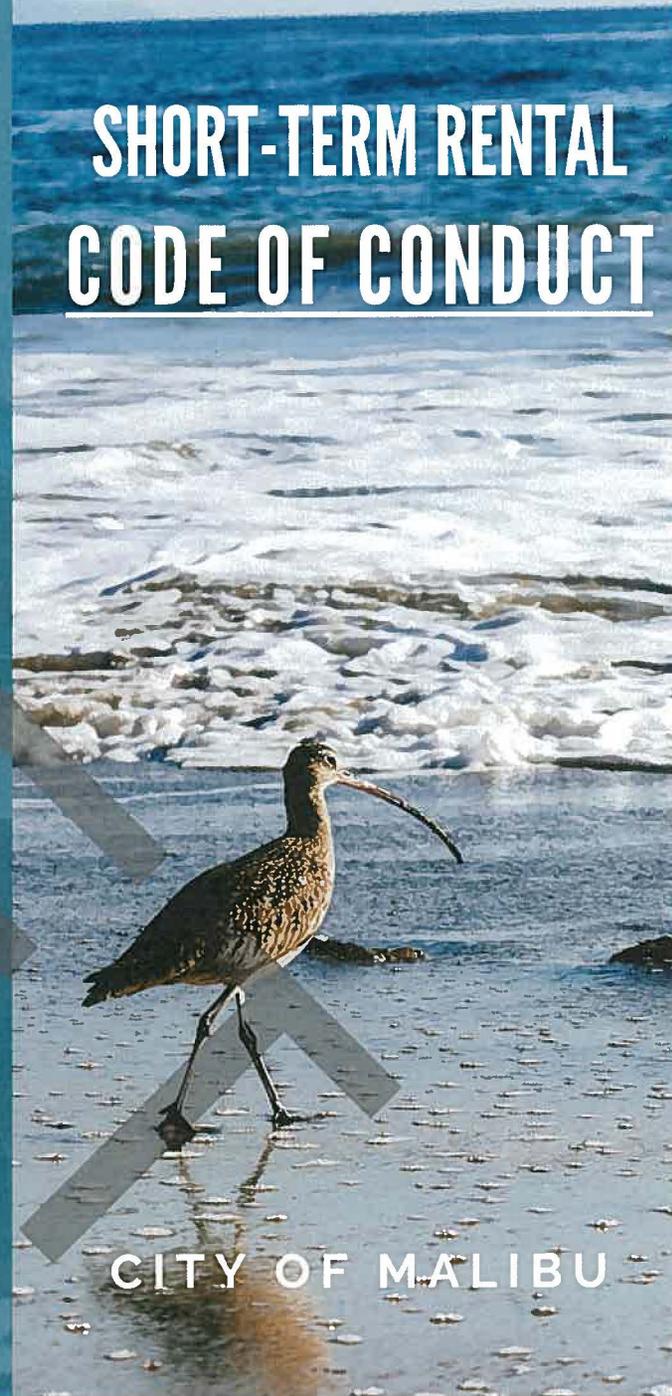


MalibuCity.org/STR



CITY OF MALIBU

# SHORT-TERM RENTAL CODE OF CONDUCT



CITY OF MALIBU

## NEIGHBORHOOD IMPACTS

### **Occupancy:**

The maximum occupancy of the short term rental property is limited to two people more than twice the number of bedrooms of record up to 14 people.

### **Noise:**

Please keep all noise levels to a minimum. (MMC Chapter 8.24)

### **Trash:**

Please keep trash and recycling containers out of public view until pick-up day and remove all containers from the street and sidewalk no later than 8 PM on collection day. Place containers on the street and sidewalk no sooner than 5:30PM the day before your scheduled collection. (MMC Section 9.28)

### **Parking:**

All guests shall park onsite. Garages are required to be available for guest parking. If the property does not have onsite parking no more than two vehicles may be parked on the street.

### **Special Events:**

A Special Event Permit is required in conjunction with a short-term rental if 15 or more people are anticipated to attend. (MMC Section 5.34.020(C))

### **Fines:**

Any violation of Malibu Municipal Code Title 17 Chapter 55 is subject to a fine of \$1,000 per day or violation.

# SHORT-TERM RENTAL CODE OF CONDUCT

Please refer to Malibu Municipal Code (MMC) Title 17 for more details regarding the City's Short-Term Vacation Rental Ordinance.

## ENVIRONMENTAL REGULATIONS

### **Plastic Bag Ban:**

The City of Malibu has banned the distribution of plastic bags for groceries, pharmacies, restaurants, and retail stores. Please help us to ensure that plastic bags do not end up on the beaches and in the ocean. (MMC Section 9.28)

### **Polystyrene Foam Ban:**

The City of Malibu has banned the sale and distribution of foam packaging, food ware, beach toys, ice chests or coolers made from polystyrene. Please refrain from using these polystyrene foam products to help preserve the natural environment. (MMC Section 9.24)

### **Plastic straws and cutlery:**

The City of Malibu has banned the sale and distribution of plastic straws and cutlery for groceries, pharmacies, restaurants, and retail stores. Please help us to ensure that plastic straws and cutlery do not end up on the beaches and in the ocean. (MMC Section 9.28)

### **High Risk Fire Hazard Severity Zone:**

Malibu is in a very high fire hazard severity zone. Please exercise extreme caution. Get to know your evacuation routes and be prepared to evacuate on short notice in case of wildfire.

### **Onsite Wastewater Treatment:**

Most homes in Malibu rely on onsite wastewater treatment systems (septic systems) rather than traditional sewer systems. Please be mindful of this during your stay.

- Minimize use of garbage disposals
- Use a drain catch and put food waste in the garbage
- Never dispose of the following down the drain: kitty litter, feminine hygiene products, paper towels, diapers, cigarettes, drugs, cooking oil, and grease
- Never dispose of household chemicals into the septic system

**NOTICE OF PUBLIC HEARING  
CITY OF MALIBU  
CITY COUNCIL**

The Malibu City Council will hold a public hearing on **MONDAY, July 9, 2018, at 6:30 p.m. in the Council Chambers, Malibu City Hall, 23825 Stuart Ranch Road, Malibu, CA**, for the project identified below.

**SHORT-TERM RENTAL ORDINANCE**

ZONING TEXT AMENDMENT NO. 17-002 – The Malibu City Council will consider amendments to Title 17 (Zoning Ordinance) of the Malibu Municipal Code and the Planning Commission's recommendations regarding short-term rental of property (also known as vacation rentals) in residential and multi-family zones

Applicant: City of Malibu  
Location: Citywide  
Case Planner: Bonnie Blue, Planning Director  
(310) 456-2489, extension 258  
bblue@malibucity.org

The draft ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The Planning Director has determined under Section 15061(b)(3) of the State CEQA Guidelines the draft 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.

A written staff report will be available at or before the hearing. All persons wishing to address the Council will be afforded an opportunity in accordance with the Council's procedures. Information about the draft ordinance and previous public meetings can be found on the City's website at [malibucity.org/STR](http://malibucity.org/STR).

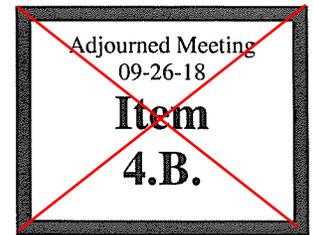
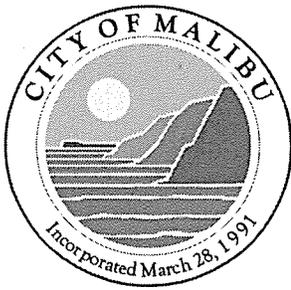
Copies of all related documents are available for review at City Hall during regular business hours. Written comments may be presented to the City Council at any time prior to the beginning of the public hearing.

**IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.**

If there are any questions regarding this notice, please contact Bonnie Blue, Planning Director, at (310) 456-2489, extension 258.

  
\_\_\_\_\_  
Bonnie Blue  
Planning Director

Publish Date: June 14, 2018



# Council Agenda Report

To: Mayor Mullen and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Assistant to the City Manager

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager 

Date prepared: September 6, 2018 Meeting date: September 26, 2018

Subject: Short-Term Rental Ordinance (Continued from July 9, 2018)

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**RECOMMENDED ACTION:** 1) After the City Attorney reads the title, introduce on first reading Ordinance No. 436 (Attachment A) determining the project is categorically exempt from the California Environmental Quality Act, amending Title 17 of the Malibu Municipal Code (MMC) and adding Chapter 17.55 (Short-term Rental Ordinance) to MMC Title 17 (Zoning) to establish provisions to regulate short-term rental of property citywide; and 2) Direct staff to schedule second reading and adoption of Ordinance No. 436 for the October 8, 2018 Regular City Council Meeting.

**FISCAL IMPACT:** In Fiscal Year 2016-2017, the City collected \$1.8 million from transient occupancy tax of short-term residential rentals. In Fiscal Year 2017-2018, this revenue source generated \$2.3 million (unaudited). It is likely that this tax revenue source will be negatively impacted by the proposed ordinance, but the extent of this decrease cannot be determined at this time. If additional law enforcement resources are approved, a budget amendment in the amount of \$66,000 will be needed and brought back to Council as part of the mid-year budget review.

**DISCUSSION:** This item was continued at the July 9, 2018 Regular City Council Meeting with direction to staff to return with a revised ordinance. The proposed Short-Term Rental Ordinance clarifies the extent of the existing prohibition on short-term rentals in multifamily buildings and sets standards and requirements for the short-term rental of property to address potential impacts of short-term rentals and preserve neighborhood character.

This report provides a brief background on short-term rentals in Malibu, addresses the concerns raised by the Council at the July 9, 2018 Regular City Council Meeting, provides an overview of the updated draft ordinance, and discusses implementation and enforcement of the proposed ordinance. Specifically, this report provides information on the following items requested by the Council:

- limiting on-street parking;
- an option allowing rental of two units in multifamily buildings and information on the characteristics of the City's multifamily unit inventory;
- regulation options for condominiums and communities with Covenants, Conditions and Restrictions (CC&Rs);
- issuing permits to individuals rather than corporations;
- a primary residence requirement and potential exemptions;
- an onsite wastewater treatment system permit requirement;
- permit fees and processing, including a phasing-in period; and
- ordinance enforcement.

## Background

Short-term rental of residential property is currently allowed in single-family homes in the City so long as such rental complies with the MMC, the property is registered with the City, and Transient Occupancy Tax (TOT) is properly remitted.<sup>1</sup> This includes MMC regulations addressing parking, noise, nuisance issues and special event gatherings. A Special Events Permit is needed for events with 15 or more people taking place in a short-term rental.

Short-term rental of residential property predates the City's incorporation in 1991. For many years, rentals were handled directly by owners or with the assistance of real estate agents or brokers. With the rise of internet platforms such as Airbnb, VRBO, Homeaway and others in the last decade, the short-term rental process has become more convenient, efficient and robust and, as a result, short-term rental activity has increased. In April 2015, Airbnb began collecting and remitting TOT for the properties in the City that are rented through its website, some of which are also registered directly with the City.

There are currently 414 properties that are remitting TOT for short-term rental. Of the 414, 226 are registered directly with the City and 188 are registered with Airbnb. In

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<sup>1</sup> MMC Chapter 3.24 requires owners and operators of short-term rental properties to register their property with the City and remit TOT on a quarterly basis. It also authorizes the City to collect TOT when a hotel, motel or residential home is occupied for 30 consecutive calendar days or less. The tax rate is 12 percent of the amount charged. Registration is a one-time \$25 fee and taxes are collected on a quarterly basis. If an owner or operator fails to remit TOT as required, the City may impose interest and penalties on the amount owed.

Fiscal Year 2016-2017, the City received \$1.8 million in tax revenue from short-term residential rentals. In Fiscal Year 2017-2018, the City received \$2.3 million in tax revenue from short-term residential rentals.

Given the rapid growth of online rental platforms, which facilitate the short-term rental of property, it is highly likely that there are properties in Malibu that are used for short-term rental that are not registered with the City or with Airbnb. In order to gather more accurate data and gain better oversight of short-term rentals, the City entered into a contract with Host Compliance (Host) in February 2018. Host has a proprietary software service that collects data weekly across the top 50 short-term rental listing sites. All the data collected on short-term rental listings, including reviews, calendar information and photos, is then aggregated, de-duplicated and documented by the Host program. Data from Host collected in recent months has been used to provide context, understand current dynamics and review potential policy changes.

As of August 15, 2018, Host identified 925 listings in Malibu across 50 sites. Of the 925 listings, Host identified 523 unique rental units.<sup>2</sup> This data suggests over a hundred rental units not registered with the City. Monitoring by Host will facilitate identification of unregistered owners and increase compliance. The California Department of Finance estimates that there were 6,907 total housing units in Malibu as of January 1, 2017, of which 5,373 were single-family homes (detached and attached).

Data from Host indicates the majority of Malibu's short-term rentals are large, single-family homes. Approximately 94 percent of the City's short-term rentals are for entire homes<sup>3</sup> and approximately 74 percent are for single family residences. Approximately 62 percent of the City's entire home short-term rental units are three bedrooms or more. In fact, approximately 20 percent are five bedrooms or more. The majority of the City's short-term rentals rent for over \$400 a night.

### July 9, 2018 Council Meeting

On July 9, 2018, the Council held a public hearing on the regulation of short-term rentals. The agenda report (Attachment B) summarized the Planning Commission's recommendation (including Planning Commission Resolution No. 18-26 as an attachment). The report also provided a draft ordinance prepared by staff based on previous direction from Council, ZORACES and the Planning Commission proposing a short-term rental permit (STR Permit) system. At the conclusion of its deliberations, Council expressed consensus approving all but two of the 24 main points summarized in the agenda report regarding the proposed ordinance. Specifically, Council requested

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<sup>2</sup> Units in multifamily buildings are counted as separate and distinct units.

<sup>3</sup> This includes instances when homeowners rent out accessory dwelling units, duplex units, etc. where the unit is listed as an "entire home" rental while the homeowner is next door for the duration of the stay.

changes to the proposed parking regulations and the prohibition of short-term rentals in multifamily buildings. In addition, Council requested that staff research and bring back options for establishing primary residence requirements, developing special exemptions from primary residence requirements, regulating rentals in condominiums, requiring Onsite Wastewater Treatment System (OWTS) operating permits for short-term rental properties, determining permit fees, processing permit applications, phasing in the permit system, and enforcement tools. Additional information is provided for each of these topics below, followed by a summary of the updated draft ordinance.

## Analysis of Issues Raised by Council

### *Parking Requirements*

The previous draft ordinance required all parking to be accommodated onsite, except where a short-term rental property did not have any onsite parking. In those instances, a maximum of two vehicles could be parked on the street. The purpose of this allowance was to accommodate a small number of properties that were built without garages. Such properties are almost exclusively legal non-conforming homes on the ocean side of Pacific Coast Highway (PCH) in the east portion of Malibu where the original onsite driveway parking was absorbed by highway expansion over the years.

At the direction of Council, the updated draft ordinance requires that all guests park onsite, except properties that do not have onsite parking may park one vehicle on the street. Staff researched properties in east Malibu to identify the number of properties which lack onsite parking and found approximately 38 such parcels. Approximately 16 of these parcels are conducting short-term rentals, based on registrations, TOT payments or online listings.

### *Multifamily Units*

MMC Section 17.02.060 defines a multifamily residence as a building with three or more dwelling units. Multifamily residences can be in the form of an apartment building or complex, in which a single property owner owns the entire property and rents out the individual units, or in the form of condominiums which are individually owned dwelling units located on a single parcel owned in common by all the unit owners. The previous draft ordinance prohibited short-term rentals in multifamily buildings, including condominiums, except for homesharing, where the owner is present in the dwelling unit at the time of the rental.

In response to public comment, Council requested additional information on the City's multifamily residential housing stock and options for regulating short-term rentals in

multifamily apartments and multifamily condominium properties, and specifically an option that allowed the short-term rental of up to two units in a multifamily building.

- *Location of Multifamily Units*

Staff researched both City zoning maps and data from the County of Los Angeles Office of the Assessor (County Assessor) to identify multifamily (apartment and condominium) development in the City. A map identifying all parcels zoned for multifamily and commercial uses is provided in Attachment C. The map shows that the multifamily zoned parcels are generally concentrated in a few areas throughout the City, primarily in eastern Malibu along PCH.

While most multifamily units are located in multifamily zoned parcels, it is important to note that there are some exceptions. The County Assessor classifies properties based on the development on the site, not the property's zoning. According to the County Assessor, approximately 21 of the City's 94 multifamily apartment parcels are located in Single-Family Residential Zones. Of the 21 multifamily apartment parcels in Single-Family Residential Zones, only three parcels consist of five or more units. There are also approximately 30 condominium complexes in the City most of which are located in multifamily residential zones.

- *Multifamily Units - Apartments*

Council received public comment from a number of multifamily apartment property owners and long-term tenants who presented arguments in favor of allowing short-term rentals in apartment buildings.

According to the County Assessor, the City has approximately 94 parcels containing roughly 473 total apartment units (note each parcel may contain more than one building). Analysis of this data shows approximately 50 percent of all apartment units are located in properties with five or more units, approximately 32 percent of units are located in quadraplexes and approximately 18 percent of units are located in triplexes.

Multifamily apartments diversify Malibu's housing stock and make up a major proportion of its affordable long-term rental housing. In an effort to balance short-term rentals and long-term rental housing stock, staff is recommending that short-term rentals be limited to two units per multifamily apartment property, regardless of the total number of units on the property. For example, if an apartment complex has three units, at most two could be used for short-term rentals, and if an apartment complex has 20 units, only two could be used for short-term rentals.

This proposed short-term rental unit cap for multifamily apartment properties will be easier to enforce than limitations based on a percentage of rental units within a building and will also ensure that more units overall are preserved for long-term rental. These regulations would strongly discourage corporations, investment groups or individuals from buying multifamily properties for the sole purpose of short-term rental or converting apartment or condo complexes into “short-term rental hotels/motels.”

The ordinance also proposes to require the multifamily building owner to rent all other units in the complex on a long-term basis, unless the unit is occupied by the property owner. This requirement has many benefits. First, it will make the two-unit cap enforceable as the owner will not be able to illegally rent out additional units because they will be occupied. Second, it will provide an incentive to building owners to charge reasonable or low rent to long-term renters in order to ensure they maintain those tenants and the ability to rent units on a short-term basis.

- *Multifamily Units - Condominiums*

Condominiums are generally, but not always, located in multifamily configurations of three or more dwelling units per building. Staff estimates that there are roughly 1,118 condominium units spread out over approximately 30 different complexes throughout the City. Staff recommends treating condominiums the same as single-family residences for the purposes of short-term rental as long as the condominium’s CC&Rs do not prohibit short-term rental. As part of the STR Permit application, an applicant seeking a permit for the short-term rental of a condominium unit will be required to attest that the condominium’s CC&Rs do not prohibit short-term rental of units, and that he or she has notified the condominium owners’ association (COA) of the STR Permit application and retained proof of the notification.

Under the proposed system, if a unit owner has obtained a STR Permit in a condominium where short-term rentals are prohibited or is not be able to provide proof of COA notification, the City could revoke the STR Permit and impose penalties.

### *STR Permit Holders*

Staff recommends issuing one permit per individual, regardless of the number of properties the individual may own. In other words, a person and not a corporation, trust or other entity would have to apply for and obtain the permit. The permit would be associated with one specific property. This permit would allow the individual’s property to be listed and used for homesharing, renting the primary dwelling unit, renting an accessory dwelling unit or renting the whole property. Any violation that occurs on the property, regardless of how it is rented (i.e., whole property or some portion), would count against the individual’s STR Permit. In the case of owners of multifamily

apartment properties, the property owner (individual) would be allowed to rent a maximum of two units in the apartment complex under a multifamily STR Permit. Similar to single-family residences, any violation that occurs on the multifamily apartment property would count against the individual's STR Permit.

### *Primary Residency Requirements*

Primary residency requirements have been used by other municipalities as a way to curb the practice of acquiring properties solely for the purpose of renting them on a short-term basis. The draft ordinance proposes to require the property to be the owner's primary residence where they live for no less than 185 days of both the previous calendar year and the calendar year during which the STR Permit is active.

STR Permit applicants can demonstrate primary residency by providing copies of three of the following documentation types: a Driver's License, State Identification Card, Motor Vehicle Registration, Property Tax Bill, Tax Documents, Utility Bills, and Bank Statements. Most ordinances do not specify the documentation type. Rather, the options are listed on the permit application form as is proposed here.

### *Primary Residency Requirement Exemptions*

Council received public comments from a number of property owners who presented arguments against a primary residency requirement, including situations where a property is inherited by siblings who share the property and thus cannot establish primary residency at the property. Council requested that staff research options for exempting certain applicants or properties from primary residence requirements.

Staff reached out to a number of cities currently grappling with short-term rentals but was unable to identify any effective exemptions that are currently in place. Ulrik Binzer, the CEO of Host, who advises cities throughout the country on short-term rental policy, warns against establishing any exemptions because they are susceptible to abuse. Instead of developing exemptions, staff recommends creating a two-tier permit system, as discussed below.

### *Separate Permits for Primary Residents and Non-Primary Residents*

The two-tier STR Permit system would establish one tier for documented primary resident property owners and another for non-primary resident property owners. Under this permitting system, non-primary residents would be held to a stricter standard of operation and the penalty for violations would be greater. For example, while a STR Permit issued to a primary resident can be denied or revoked if the owner receives more than **two** citations, a STR Permit issued to a non-primary resident can be denied

or revoked if the owner receives more than **one** citation. This bifurcated system is intended to correct for the fact that primary residents are likely to be more responsive to complaints and limit impacts on the neighborhood as they live there themselves.

In addition, while primary residents would be permitted to conduct short-term rentals throughout the year, non-primary residents would only be permitted to conduct short-term rentals **between April 1 and September 30 each year**. This limitation will discourage corporate owners, investment groups or individual investors from buying properties for the sole purpose of renting a property on a short-term basis because the financial return would be limited to only half of the year. At the same time, longtime property owners with divided family interests where no one claims the property as a primary residence will still be able to generate seasonal income to help maintain their ownership. A seasonal limitation is also easier to enforce than a cap on the number of days a property can be rented. Concentrating the availability of short-term rentals in the summer months also provides a source of visitor-serving accommodations during the period of greatest demand at a time when the City will have maximum code enforcement resources deployed.

#### *Onsite Wastewater Treatment System (OWTS) Operating Permits*

The City currently manages OWTS through an operating permit program. As of 2008, all commercial and multifamily residences, including condominiums, are required to have a valid OWTS Operating Permit (operating permit). Single-family residences are currently required to obtain an operating permit upon the sale of the property, major remodel or expansion or replacement of OWTS components. Operating permits must be renewed regularly. For a conventional residential OWTS, the operating permit must be renewed every five years, while the permit for an advanced OWTS must be renewed every three years.

To obtain an operating permit, a property owner must complete the Operating Permit Application, have the OWTS inspected by a City-registered inspector, and pay a fee. The inspection may result in a "pass," a "conditional pass," or a "fail." The inspection generally costs between \$400 and \$1,000 depending on the type of system and accessibility to the system. If the system passes inspection, the OWTS operating permit fee is currently \$463. If the system receives a conditional pass, the applicant will be required to perform some remedial work on the OWTS in order to receive an operating permit, at which time the operating permit fee would be paid. The cost for these remedial repairs to residential OWTS generally varies from \$1,000 to up to \$20,000 in some cases.

If the system fails inspection, the applicant must enter into a compliance agreement with the City which sets forth a timeline for correction of the system deficiencies. The

compliance agreement requires that the applicant submit an application to install a new OWTS, usually within six months, install the new OWTS usually within one year after the application submittal, and adhere to specific interim measures established by the City, such as a routine inspection and pumping schedule for the duration of the compliance period. The cost to install a new system depends on several factors including but not limited to system type and size. Generally, pumping costs range from \$600 to \$900 per occurrence while the installation of a new OWTS can cost \$60,000 or more.

Staff estimates that currently, approximately 33 to 50 percent of all Malibu households have obtained an operating permit and, of the properties currently registered for TOT, approximately 50 percent have obtained an operating permit.

Staff recommends adding short-term rental of property to the existing property milestones (e.g., point of sale or major renovation) that trigger an owner to obtain an operating permit.<sup>4</sup> This requirement is likely to result in a number of property owners needing to upgrade or repair their OWTS. This may cause enrollment for some property owners in the operating permit program sooner than otherwise would have been required. This is beneficial in the case of short-term rentals as it decreases the likelihood that visitors to the property who may not be familiar with septic systems would overburden a system or experience system failure. This requirement also aligns with the City's water quality protection goals by expediting system upgrades and repairs. Allowing property owners to continue to rent their properties during the compliance period would help offset costs and would be consistent with the current operating permit policy which allows owners to stay in their homes for the duration of the compliance period when the systems are being pumped.

Staff also recommends including in the Short-term Rental Code of Conduct a requirement that informational material must be presented to all renters to familiarize them with the fact that the residence is connected to an OWTS, what precautions must be utilized to protect the OWTS, and how the misuse of the OWTS may cause health risks and have significant impacts of the environment. A contact number for service for the OWTS system in the event of problems would also be included.

### *STR Permit Fees*

The Council requested information regarding the potential fee that could be set for the new STR Permit. All permit fees must be based on an analysis of actual costs to process the permit and enforce the permit requirements. These costs include staff time and overhead to administer the program, the City's contract with Host, and the cost to

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<sup>4</sup> This change would be accomplished by amending MMC Chapter 15.44, which was adopted by City Council (Ordinance No. 435) on August 27, 2018 and does not yet appear in the online version of the MMC.

provide additional law enforcement personnel to monitor short-term rentals. Various City personnel are needed to administer the Host contract, monitor the Host system, review permit applications, track TOT, and address code enforcement issues. Based on an analysis of all the associated costs, staff recommends charging \$400 for STR Permits.

According to data compiled by Host Compliance, the majority of Malibu's short-term rentals are listed for over \$400 per night. Thus, the cost of the proposed permit fee can be quickly recouped and is not likely to discourage property owners from obtaining a STR Permit. A fee that is too high is likely to lead to individuals renting their properties illegally or more often in order to recoup the money spent on the fee. To get an understanding of established STR Permit fee rates and provide a benchmark for discussion, staff researched STR Permit fees in municipalities throughout the country and found that STR Permit fees typically range from \$25 to \$949 annually - although fees in the upper tier often involved significantly more staff time than the proposed draft ordinance before the Council. The City's proposed STR Permit fee falls well within this range.

#### *Processing STR Permit Applications*

In its deliberations, Council discussed whether all STR Permit applications should have a single annual application and renewal date, or whether applications and renewals would be more easily handled on a rolling basis throughout the year. Staff recommends that permit applications be submitted and approved on a rolling basis. This will help minimize the additional work involved with implementing the permit system by spreading application review and processing out throughout the year. The Host system can track the annual term of an individual's permit, including any citations and tax remittance, on a rolling basis.

#### *Phasing in the Permit System*

In recognition of the fact that short-term rentals are often booked far in advance and in order to give people enough time to prepare their STR Permit Applications, staff is recommending that the ordinance go into effect six months after final adoption. This means that within six months of the final ordinance adoption date, any individual conducting short-term rental of property must obtain a STR Permit. Similarly, any individual conducting short-term rental of property who fails to obtain a STR Permit must cease the short-term rental of the property within six months. During the six-month period, the City will conduct outreach to hosts and those registered for TOT about the new ordinance and will work with Airbnb and other platforms to notify their hosts.

## Draft Ordinance

Following is a summary of the changes incorporated into the draft ordinance (Attachment A) at Council's direction following the July 9, 2018 meeting.

- 1) All guests must park on site, unless the property does not have onsite parking, in which case guests are limited to parking one vehicle on the street. If street parking for more than one vehicle is necessary, a special event permit (SEP) must be obtained.
- 2) Creates 3 types of permits: primary resident, non-primary resident and multifamily.
- 3) A multifamily permit allows a maximum of two units to be rented on a multifamily property, but only if all other units have been rented on a long-term basis.
- 4) A non-primary resident permit only allows the short-term rental of property between April 1 and September 30 each year and may be revoked or denied for two citations/violations instead of 3.
- 5) Condominiums shall be eligible for primary resident/non-primary resident permits, but not multifamily permits, if such use is allowed by the community's CC&Rs.
- 6) To demonstrate primary residency an applicant must provide proof he or she lives on the property and claims it as a primary residence for at least 185 days per year.
- 7) All short-term rental applicants shall be required to acquire an OWTS operating permit if the property does not already have a permit or be in compliance with an approved compliance agreement.
- 8) Creates a violation for fee-collecting platforms that facilitate illegal short term rentals.
- 9) Requires attestation that the short-term rental of property is not prohibited by CC&Rs/HOA, and that the applicant provide notice to the HOA that the property will be rented on a short-term basis.
- 10) The STR Permit fee shall be \$400.
- 11) STR Permit applications shall be processed on a rolling basis throughout the year.
- 12) The ordinance will go into effect six months after final adoption.

## Implementation and Enforcement of the Proposed Ordinance

The City has already taken significant steps to increase enforcement resources but will increase enforcement and education efforts with the implementation of the new ordinance. An array of tools and resources will be used, depending on the nature of the activity. These tools and resources include:

- City Code Enforcement Staff. The current enforcement structure includes three full-time code enforcement officers available to address short-term rental issues along with other code violations. With Host's software system in place, the City's code enforcement officers can effectively monitor and enforce short-term rental rules. Host's system can accurately identify properties that list short-term rentals so that staff can work with owners to come into compliance. This work would generally occur during business hours. A specific Code Enforcement Officer will be the designated point of contact for short-term rental issues.
- Host Compliance System. The system includes an automated hotline and web portal that will enable community members to register complaints at any time, upload photos and video files, and document and track all complaints received for reporting to City staff. Each STR Permit holder will provide a twenty-four hour, seven days a week contact person that will be registered with Host's online system. When a complaint is submitted to Host either online or through its phone system, Host's hotline system will generate a call to the responsible party on file to alert them of issues at the rental property. Failure to answer the call would be a violation of the ordinance subject to penalties.

It is expected that since such a violation would count against the limits of the property owner's STR Permit that can trigger revocation, property owners will be incentivized to answer the call and quickly address any problems at the property. The Host system gives callers the option to request a call back within 30 minutes so they can comment on whether the situation has been resolved. If the situation has not been resolved within 30 minutes, the caller may request to be connected with the local non-emergency police line and a record of the complaint will be sent to the City's Code Enforcement staff to follow up during normal business hours.

If the complaint results in the issuance of a police or code enforcement officer citation, a violation will be recorded and would count against the limits of the property owner's STR Permit that can trigger revocation.

- Platforms may not profit from facilitating illegal short term rentals. The ordinance now creates a violation for fee-collecting platforms if they facilitate illegal short

term rentals. Such platforms will be subject to penalties if they violate the ordinance by allowing an illegal rental to be booked through their platform.

- Sheriff STR Team. After discussions with the Sheriff's Department, it was determined that short-term rental issues related to loud, unruly, late-night parties, noise violations and similar issues which are likely to occur outside of normal business hours are best handled by local law enforcement. Law enforcement personnel receive extensive training on handling potentially volatile situations, making them better suited than City Code Enforcement staff to address any such issues that may arise outside of normal business hours.

Sheriff deputies are not only the most appropriate personnel to handle these situations but also the most cost effective. Assigning Sheriff deputies to perform late night and weekend patrol would be less expensive than hiring additional City Code Enforcement personnel to be available during weekend evenings. Staff is proposing that the City incorporate an additional patrol unit on designated, but unpublished, weekends and weekday nights to focus on short-term rentals, particularly during periods when significant short-term rental activity is anticipated.

The STR patrol would consist of two Sheriff deputies in a dedicated patrol car with additional training and focus on short-term rental, special event permit and noise ordinances. This will ensure that law enforcement is available to respond to short-term rental complaints during the City's peak rental period. The cost to provide this additional patrol unit is estimated to be approximately \$66,000 and would be funded with the proceeds from the STR Permit fees. If approved, an amendment to the Fiscal Year 2018-2019 expenditure budget will be necessary and an item will be included in the mid-year budget amendments.

City staff contacted representatives from a wide range of municipalities in popular tourist destinations currently dealing with staffing and enforcement protocols for short-term rentals. Based on those discussions, staff believes that the City's current staffing levels with augmentation from Host and the Sheriff's Department are sufficient to adequately address short-term rental compliance and enforcement needs at this time given the current scale of short-term rentals and the ordinance provisions proposed.

Once Host's comprehensive system is fully up and running and tracking all the short-term rental data and complaints received, the City will have more information which can be used to inform staffing and enforcement needs going forward.

PUBLIC NOTICE: On August 30, 2018, a one-quarter page Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and was

mailed to all interested parties; and all owners/operators currently registered with the City's TOT Program (Attachment D). In addition, posts were made on the City's social media platforms and print ads were published in the local newspapers.

SUMMARY: Staff recommends that the City Council introduce the draft ordinance on first reading and direct staff to schedule the second reading or provide direction on changes to the ordinance to be reviewed at a future hearing.

ATTACHMENTS:

- A. Proposed Ordinance No. 436
- B. July 9, 2018 Council Report
- C. Multifamily and Commercial Zoning Map
- D. Notice of Public Hearing

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

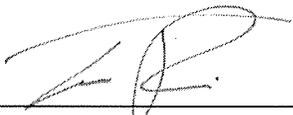
ATTEST:

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HEATHER GLASER, City Clerk

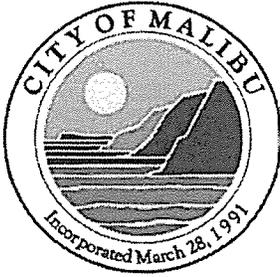
Date: \_\_\_\_\_

APPROVED AS TO FORM:



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CHRISTI HOGIN, City Attorney



# Council Agenda Report

To: Mayor Mullen and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Assistant to the City Manager

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager 

Date prepared: June 28, 2018

Meeting date: July 9, 2018

Subject: Short-Term Rental Ordinance

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**RECOMMENDED ACTION:** 1) After the City Attorney reads the title, introduce on the first reading Ordinance No. 435 (Attachment 1) determining the project is categorically exempt from the California Environmental Quality Act, amending Title 17 of the Malibu Municipal Code (MMC) and adding Chapter 17.55 (Short-term Rental Ordinance) to MMC Title 17 (Zoning) to establish provisions to regulate short-term rentals of property citywide; and 2) Direct staff to schedule second reading and adoption of Ordinance No. 435 for the July 23, 2018 Regular City Council Meeting.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action.

**DISCUSSION:** The proposed Short-Term Rental Ordinance is intended to clarify the existing prohibition on short-term rentals in multifamily buildings, set minimum standards and requirements for the short-term rental of property and preserve neighborhood character. The ordinance was drafted based on direction provided by City Council and has been revised through the legislative process to reflect the comments received from the Zoning Ordinance Revision and Code Enforcement Subcommittee (ZORACES), the Planning Commission and members of the public, while keeping to the original Council direction.

This report provides a brief background on short-term rentals in Malibu, provides data on the current short-term rental market, presents the Planning Commission's recommendation from the May 7, 2018 Planning Commission Meeting, addresses the concerns raised by the Planning Commission, provides an overview of the draft ordinance, and discusses potential implementation and enforcement of the proposed ordinance.

### Background

Short-term rental of residential property is currently allowed in single-family homes in the City so long as such rental complies with the MMC, the property is registered with the City, and Transient Occupancy Tax (TOT) is properly remitted.<sup>1</sup> This includes MMC regulations addressing parking, noise, special event gatherings (permit needed for events with 15 or more people) and nuisance issues.

Short-term rental of residential property has long been a practice in Malibu and predates the City's incorporation in 1991. For many years, rentals were handled directly by owners or with the assistance of real estate agents or brokers. With the rise of internet platforms such as Airbnb, VRBO, Homeaway and others in the last decade, the short-term rental process has become more convenient, efficient and robust and, as a result, property is rented on a short-term basis more frequently.

The MMC includes Chapter 3.24 titled "Uniform TOT Ordinance of the City of Malibu." In 2009, the City began the collection of TOT on the short-term rental of private homes in accordance with Chapter 3.24. A short-term rental is generally described in MMC Chapter 3.24 as the rental of a structure for 30 consecutive calendar days or less. This includes any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, rental unit, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof, and shall further include any trailer court, camp, park or lot where trailer spaces, or combinations of such spaces and trailers, including mobilehomes, are occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes.

In April 2015, Airbnb began collecting and remitting TOT for the properties in the City that are rented through its website, some of which are also registered directly with the City.

### Current Market Landscape

There are currently a total of 408 properties that are remitting TOT for short-term rental of property. Of the 408, 220 are registered directly with the City and 188 are registered through Airbnb.

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<sup>1</sup> MMC Chapter 3.24 requires owners and operators of short-term rental properties to register their property with the City and remit TOT on a quarterly basis. It also authorizes the City to collect TOT when a hotel, motel or residential home is occupied for 30 consecutive calendar days or less. The tax rate is 12 percent of the amount charged. Registration is a one-time \$25 fee and taxes are collected on a quarterly basis. If an owner or operator fails to remit TOT as required the City may impose interest and penalties on the amount owed.

In Fiscal Year 2016-2017, the City received \$1.8 million in tax revenue from short-term residential rentals. In Fiscal Year 2017-2018, the City expects to receive \$1.8 million.

Given the rapid growth of online rental platforms which facilitate the short-term rental of property, it is highly likely that there are properties in Malibu that are used for short-term rental that are not registered with the City or with Airbnb.

In order to gather more accurate data and gain better oversight of short-term rentals, the City issued a Request for Proposal for short-term rental administration in winter 2017. On February 13, 2018, the City entered into a contract with Host Compliance (Host). Host has a proprietary software service that collects data weekly across the top 50 short-term rental listing sites. All the data collected on short-term rental listings, including reviews, calendar information and photos, is then aggregated, de-duplicated and documented by the Host program. Host has been collecting information on short-term rentals in Malibu for the past several months. From the information gathered thus far, Host has developed some preliminary data on the current Malibu short-term rental market which it can compare to some historical data points and provide a fuller context with which to understand current dynamics and review potential policy changes.

Many owners advertise their short-term rental units on multiple websites. Owners can change their listings at any time and, to address this, Host updates its data on a weekly basis and is regularly tracking market trends. As of June 22, 2018, Host identified 945 listings in Malibu. Of the 945 listings, Host identified 522 unique rental units.<sup>2</sup> This data suggests over a hundred rental units are currently not registered with the City. Monitoring by Host will facilitate identification of unregistered owners and increase compliance.

Data from Host indicates the majority of Malibu's short-term rentals are large, single family homes. Approximately 94 percent of the City's short-term rentals are for entire homes<sup>3</sup> and approximately 74 percent are for single family residences. Approximately 62 percent of the City's entire home short-term rental units are three bedrooms or more. In fact, approximately 20 percent are five bedrooms or more. The majority of the City's short-term rentals rent for over \$400 a night. The relatively unique composition of Malibu's short-term rental housing stock has less of an impact on affordable housing than in other communities that have more diversified listings at lower average costs.

To provide a broader context for the current figures on short-term rentals, staff researched the total number of housing units in the City. Where the General Plan estimated that there were over 4,000 single-family homes in Malibu, the California

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<sup>2</sup> Units in multifamily buildings are counted as separate and distinct units.

<sup>3</sup> This includes instances when homeowners rent out accessory dwelling units, duplex units, etc. (where the unit is listed as an "entire home" rental) but the homeowner is actually next door for the duration of the stay.

Department of Finance estimates that there were 6,907 total housing units in Malibu as of January 1, 2017, of which 5,373 were single-family homes (including detached and attached).

#### Legislative Review

On November 9, 2015, in response to complaints from residents regarding a particular single-family home being used for short-term rental, the Council directed staff to develop options for regulating short-term residential rental property owners who misuse the property or cause a nuisance in the neighborhood.

On February 8, 2016, the Council reviewed a range of enforcement mechanisms from a ban of all short-term residential rentals to limits on rentals, such as restricting the number of days per year a property can be rented, or instead, strictly enforcing noise and nuisance ordinances already on the books to deal with problem rental properties. The Council voted not to ban short-term rentals, but rather to allocate more resources to help prosecute violations of the MMC, and particularly the City's noise ordinance, special events permit requirements, and parking codes and authorized a contract for on-call monitoring services of short-term residential rentals with SWS, Inc.

On June 16, 2016, the Council received an update on issues related to short-term residential rentals. Council directed staff to bring back an item exploring ordinances regulating short-term rentals, including primary residency requirement of hosts, code violation consequences, licensing of short-term rentals, occupancy limits, fines structure and methods of enforcement.

On October 10, 2016, the Council reviewed options for regulating short-term residential rentals and directed staff to bring back a draft ordinance that included:

1. A ban on 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;
3. A ban on the short-term rental of multifamily housing, except for home sharing (where the owner is present on the property during the stay), which prevents this housing from being converted to hotel/motel use;
4. A limit on the number of days a property can be rented;
5. Requirement of proof of primary residence at the property, or that the host live at the property for a certain number of days a year;

6. A requirement that rentals 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 onsite manager or that the manager is available 24-7; and
7. A requirement that CC&Rs for future developments and/or major remodels in the City to include provisions banning short-term rentals.

Staff drafted an ordinance based on the direction provided by Council and presented it to ZORACES (Attachment 3) for discussion and feedback.

On May 23, 2017, ZORACES discussed the proposed ordinance and recommended that staff draft an ordinance to include the following:

1. Prohibition of short-term rentals and home sharing in the Multi-Family Residential zone for complexes with three or more units;
2. A requirement for signage indicating 24 hours per day, seven days per week contact information for a designated manager, visible to the public at all times;
3. A requirement for compliance terms to be met or revocation of rental privileges be imposed for six months, to be increased upon lack of further compliance, which could lead to criminal penalties if compliance is ultimately not met; and
4. A requirement that homeowners attest when they register that their homes have smoke detectors with an inspection provision;

The Subcommittee also recommended that staff research:

- Covenants, conditions, and restrictions of homeowners associations that could provide examples for communities that would like to create privately enforceable restrictions;
- Whether the owner should be allowed to be the designated manager;
- Examples of types of contact information signage used in other communities;
- The cost to fund one or two full-time positions related to enforcement;
- The need for an inspection program for wastewater treatment systems; and

- Hosting guidelines that could be provided to TOT registrants, similar to the Filming Code of Conduct for film permits.

Staff revised the proposed ordinance based on the recommendations provided by ZORACES and presented it to the Planning Commission at a duly noticed public hearing. On November 20, 2017, the Planning Commission reviewed and made comments on the draft short-term rental ordinance; however, the Planning Commission did not make a motion or reach consensus at the meeting.

Staff categorized all the comments received by the Commissioners, prepared responses to address all Commissioners' comments by category and made adjustments to the proposed ordinance (Attachment 3). On May 7, 2018, the Planning Commission held a public hearing to review the revised ordinance and made two motions as follows:

- Directed staff to prepare a resolution stating that the Planning Commission recommends that the City Council find that the short-term rental of property is currently prohibited in all residential zones in the City and adopt an ordinance memorializing that prohibition; and
- Directed staff to include in the resolution a recommendation that if a ban on the short-term rental of property was not put in place, a CEQA environmental study be prepared if necessary.

Planning Resolution No. 18-26 is attached (Attachment 2).

Below, staff has categorized comments received from the Planning Commissioners and members of the public and prepared the responses below.

#### May 7 Planning Commission Meeting Comments

##### *Commercial Use of Property in Residential Zones*

Concerns were raised about whether short-term rentals constituted a commercial use in residential zones. The justification for allowing short-term rental of property in a residential zone is that like long-term rental of property, money is collected in exchange for allowing occupancy of a dwelling unit. In that way, long-term rental of property is a revenue-generating use of property just like short-term rental. Also, similar to a long-term rental, the property owner or manager may or may not be onsite or local. Both long-term and short-term rental of residential property is currently allowed in Malibu. The primary difference is the length of time the occupants stay in the dwelling unit. Under the proposed ordinance, restrictions on short-term rental units would be greater than those for dwelling units occupied on a permanent or longer term basis in order to address

concerns that have been expressed about short-term occupancy. For example, unlike units occupied by long-term tenants, for short-term rental properties:

- Contact information for the owner or owner's agent must be provided to the City and neighbors within 500 feet, and will be made available to Host so they can notify the owner of complaints
- The owner or owner's agent must be available 24 hours a day, seven days a week while the unit is in use as a short-term rental
- Parking must be onsite. For long-term occupied units, there are no restrictions on parking.
- Occupancy by more than 14 people requires a special event permit (SEP). For a long-term occupied unit, there is no limit on occupancy and a SEP is only needed for an event with 100 or more attendees.

#### *Corporate Ownership of Residential Homes*

Concerns were raised about the potential for corporations, investment groups or individuals to buy properties for the sole purpose of short-term rental. The extent to which this is currently occurring is unknown. However, based on registration data, it does not appear to be a widespread local phenomenon. As Host continues to monitor short-term rentals and refine its data, the City will have better information regarding this topic which can be reported to City Council and used to guide future policy. If corporate ownership is determined to be a problem, there are a number of policies that the City could consider adopting that could potentially inhibit the growth of short-term rental investment properties. These policy options include, but are not limited to, requiring that only individuals can register for short-term rental and putting a limit on the number of properties a single person or entity can register for short-term rental. Research shows that many of these regulatory policies are difficult to enforce and there are many ways in which corporate entities or individuals can work around these regulations. Depending on further direction from City Council, the City could evaluate these policies for implementation if needed in the future.

#### *Definition of Multi-Family Residence*

Questions were raised as to why the ordinance defines multi-family residence as a building with three or more dwelling units. This definition of multi-family residence is already established in MMC Chapter 17.02.060. The proposed ordinance is designed to clarify and be consistent with existing codes and thus relies on the existing definition of a multi-family residence. Based on this language, short-term rentals could occur at single-family and duplex properties only. The Council could choose to change this definition for purposes of the STR ordinance. For example, several owners of multi-family buildings asked that the definition be changed to increase the number of units to more than four. Other types of definitional changes suggested would allow some short-term rental within multi-family buildings. Such changes would make the proposed ordinance less restrictive

than the City's current ban on multi-family unit rentals but would put the City's affordable housing at greater risk.

#### *Primary Residence Requirement*

A primary residence requirement on short-term rentals was suggested by some in an effort to limit the number of short-term rentals in the City. This requirement was included in the original draft of the proposed ordinance that was presented to ZORACES on May 23, 2017. During the discussion at the May 23, 2017 ZORACES meeting, it was determined that this requirement was problematic due to the number of Malibu residents who own more than one home. At the recommendation of the Subcommittee, the primary residence requirement was removed from subsequent drafts of the proposed ordinance.

#### *Permitting System*

Use of a permitting system, rather than a registration program, was suggested to strengthen the City's ability to regulate short-term rentals and revoke rental privileges. The draft ordinance has been revised to incorporate a permitting system. Further discussion of the proposed permitting system will be included in the next section of the report.

#### *Occupancy Rates*

The proposed ordinance establishes a maximum number of occupants based on the number of bedrooms in a rental unit. One of the major reasons that occupancy limits are being proposed is so existing onsite septic systems designed for single family residences are not overwhelmed by the number of occupants in a short-term rental. The presence of children and babies increases demands on septic systems.

#### *Short-Term Rental Code of Conduct*

A Code of Conduct has been developed to provide short-term renters rules and regulations associated with short-term rentals (Attachment 4) including:

- *Emergency Concerns:* Short-term renters may be unaware of Malibu's fire dangers, emergency protocols and evacuation routes. Additional emergency information will be included in the Short-Term Rental Code of Conduct.
- *Septic System Concerns:* Short-term renters may be unaware of septic system requirements. Additional information on septic systems will be included in the Short-Term Rental Code of Conduct.

#### *Noise and Neighborhood Nuisance Issues*

The ordinance has been revised to include several provisions to ensure that neighbors' concerns are addressed more quickly and that violations of noise and other regulations can result in the revocation and denial of a short-term rental permit for an extended period of time.

### *California Environmental Quality Act*

The Planning Commission expressed concern about potential impacts of short-term rentals and recommended that if a ban were not put in place, that CEQA analysis be required for the proposed ordinance to analyze these effects depending on what ordinance was put in place. At the direction of Council, any such issues could be more fully explored in studies not limited the areas of concern under CEQA, but staff's analysis of the proposed ordinance is that it is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines as 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 those that would apply to owners and long-term renters. For example, when not in use as a short-term rental, a three-bedroom house could be occupied by any number of tenants and its tenants and guests could park any number of cars on the street. It would not be limited to eight tenants, as a short-term rental would be, nor would it be constrained to parking on the property. The proposed ordinance does not expand the ability to rent property on a short term basis; it does the opposite, so any environmental impacts related to short-term rentals would be reduced by this ordinance, not increased.

### Draft Ordinance

The ordinance was drafted based on direction provided by the City Council and has been revised through the legislative process to reflect the comments received from ZORACES, the Planning Commission and members of the public, while keeping to the original Council direction. Throughout the process, the intent of the ordinance remained the same: to clarify the existing prohibition on short-term rentals in multifamily buildings, set minimum standards and requirements for the short-term rental of property and preserve neighborhood character. The main points of the draft ordinance (Attachment 1) are summarized here.

- 1) Institutes a permit system where the owner of a short-term rental property must possess a valid Short-Term Rental Permit (STR Permit). Each permit will be assigned a unique number, and a separate permit application is required for every rental unit.
- 2) The STR Permit Application shall include contact information for the owner or owner's agent. The owner or owner's agent must be available to answer calls from the City and deal with any problems at the short-term rental property twenty-four hours a day, seven days a week.

- 3) The STR Permit Applicant shall attest that they are in compliance with all requirements of the Short-Term Rental Ordinance, MMC Chapter 3.24, including compliance with all applicable codes regarding fire, building and safety and other relevant laws, as well as the requirement that there are no outstanding code violations on the property.
- 4) The STR Permit is valid for one year and must be renewed annually.
- 5) The contact information for the owner or owner's agent shall be provided to all properties within 500 feet of the parcel boundary at the owner's expense. This is intended to provide neighbors a point of contact to informally raise or resolve concerns. This requirement was included in lieu of signage due to potential security risks associated with identifying a property as a rental.
- 6) 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. If street parking for more than two vehicles is necessary, a special event permit (SEP) must be obtained. This requirement is designed to limit overflow on-street parking as the SEP would count against the maximum of four events allowed each year per residential parcel.
- 7) Owner or owner's agents is required to grant City representatives access to the property and records if needed for inspection or audit.
- 8) The owner shall provide a Short-term Rental Code of Conduct prepared by the City, intended to provide important information, including rules and expectations for conduct, to all guests and post it inside the entrance to the dwelling. A draft Code of Conduct is included as Attachment 3.
- 9) The maximum occupancy of short-term rental units is designed to coincide with the number of bedrooms in the dwelling unit. The maximum occupancy is limited to two people more than twice the number of bedrooms of record, up to 14 people max. This is consistent with the requirement of MMC Section 5.34.020(C) to obtain a special event permit if a short-term rental is proposed to accommodate 15 people or more.
- 10) The STR Permit Number shall be displayed on all short-term rental advertisements. This will facilitate monitoring and enforcement of short-term rentals.
- 11) The STR Permit can be denied or revoked if the applicant is found to have knowingly made false statements in the application.

- 12) The STR Permit can also be denied or revoked if the property is found to have not paid TOT due, has outstanding code violations, does not comply with all applicable codes, is not in the condition to be rented on a short-term basis or if the property has received more than two citations for noise violations within a consecutive twelve month period.
- 13) The STR Permit can also be denied or revoked if a total of three citations for violation of any combination of the following requirements occur within a consecutive twelve month period: parking, responsiveness, access, posting of the Code of Conduct, maximum occupancy and listing the permit number on all advertisements.
- 14) Short-term rental of any vehicle, trailer, tent, storage shed, garage, or other such premises is explicitly prohibited. This provision specifically clarifies the existing ban on individuals offering Airstreams, tents and similar places as vacation rentals.
- 15) A ban on short-term rentals in multifamily buildings containing three or more units, except for home sharing (where the owner is present on the property during the stay).
- 16) If an application for a STR Permit is denied, a new application cannot be approved for that applicant and location for a twelve month period.
- 17) If a STR Permit is revoked the short-term rental of the property must cease immediately and shall not be permitted for a period of twelve months from the date of revocation.
- 18) The short-term rental of property or the advertisement of property for short-term rental after denial or revocation of a STR Permit shall result in the property and the applicant being ineligible to conduct short-term rental of property for an additional six month period for each such rental.
- 19) It establishes an appeal process for the denial or revocation of a STR Permit and prohibits the appellant from the short-term rental of property when the appeals process is pending.
- 20) The appeals process includes a hearing to be scheduled before the Planning Commission. The decision of the Planning Commission shall be appealable to the City Council.
- 21) Violations are subject to fines of \$1,000 per day or violation.
- 22) The STR Permit holder shall be responsible for administrative citations for violations of the municipal code committed by guests at the property.

- 23) Any violation of this ordinance shall be considered a separate offence for each and every day the violation occurs or persists.

Implementation and Enforcement of the Proposed Ordinance

The City has already taken significant steps to increase enforcement resources. The City now has three full-time code enforcement officers available to address short-term rental issues along with other code violations. In addition, the City has contracted with Host to assist with monitoring and enforcement of short-term rentals. The Host software will enable the City to easily and accurately identify properties that list short-term rentals and work with owners to come into compliance. The system includes a robust hotline and web portal that will enable community members to register complaints at any time and upload photos and video files, and document and track all complaints received for City staff.

If the draft ordinance is approved with the proposed twenty-four hour, seven days a week contact person, Host's hotline system can generate a call to the responsible party on file to alert them of issues at the rental property.

City staff contacted representatives from a wide range of municipalities in popular tourist destinations currently grappling with short-term rentals regarding staffing and enforcement protocols. Based on those discussions, staff believes that the City's current staffing levels with augmentation from Host are sufficient to address short-term rental compliance at this time given the current scale of short-term rentals and the ordinance provisions proposed.

Once Host's comprehensive system is fully up and running and tracking all the short-term rental data and complaints received, the City will have more information to inform staffing and enforcement needs going forward.

PUBLIC NOTICE: On June 14, 2018, a one-quarter page Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu, display ads were published in the local newspapers, and was mailed to all interested parties; and all owners/operators currently registered with the City's Transient Occupancy Tax Program (Attachment 5).

SUMMARY: Staff recommends that the City Council introduce the draft ordinance on first reading and direct staff to schedule the second reading, or provide direction on changes to the ordinance to be reviewed at a future hearing.

ATTACHMENTS:

1. Draft Ordinance
2. Planning Commission Resolution No.18-26

- 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, or (3) more than two (2) citations for violation of the City's noise ordinance in a period of twelve (12) consecutive months, 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, offer, or facilitation, 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. 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(G) 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 guests at the property.
- 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.

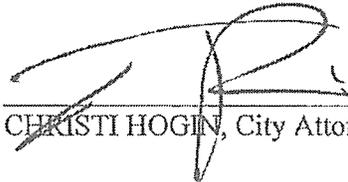
Section 3. Zoning Text Amendment No. 18-xxx.

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.

APPROVED AS TO FORM:



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CHRISTI HOGIN, City Attorney

CITY OF MALIBU PLANNING COMMISSION  
RESOLUTION NO. 18-26

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE MEMORIALIZING THAT THE SHORT TERM RENTAL OF PROPERTY IS PROHIBITED IN ALL RESIDENTIAL ZONES OF THE CITY

The Planning Commission of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

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

B. 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.

C. On October 26, 2017, a one-quarter page Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. Display ads were also published in local newspapers. A public hearing notice was also mailed to all interested parties, regional, state and federal agencies affected by the amendment, local libraries and media, the California Coastal Commission, and all parties registered with the City for payment of transient occupancy tax.

D. On November 20, 2017, the Planning Commission held a duly noticed public hearing on the draft ordinance, at which time the Planning Commission reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record. The Commission discussed additional information they wished to receive and changes to the draft ordinance.

E. On April 12, 2018, a one-quarter page Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu. Display ads were also published in local newspapers. A public hearing notice was also mailed to all interested parties, regional, state and federal agencies affected by the amendment, local libraries and media, the California Coastal Commission, and all parties registered with the City for payment of transient occupancy tax.

F. On May 7, 2018, the Planning Commission held a duly noticed public hearing on the draft ordinance, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record.

SECTION 2. Zoning Text Amendment Recommendations

Pursuant to MMC Section 17.74.040, the Planning Commission makes the following recommendations.

A. The Planning Commission hereby finds that the short-term rental of property is currently prohibited in all residential zones in the City and recommends that the City Council adopt an ordinance memorializing this prohibition.

B. If, alternatively, the City Council adopts an ordinance that allows the short-term rental of property, the Planning Commission recommends that the City Council conduct all necessary environmental review required by the California Environmental Quality Act.

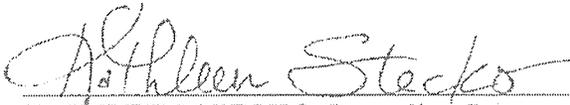
SECTION 5. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 7<sup>th</sup> day of May 2018.



CHRIS MARX, Planning Commission Chair

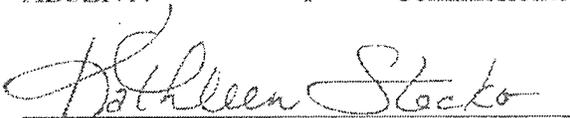
ATTEST:



KATHLEEN STECKO, Recording Secretary

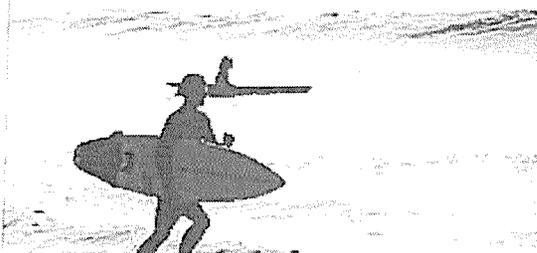
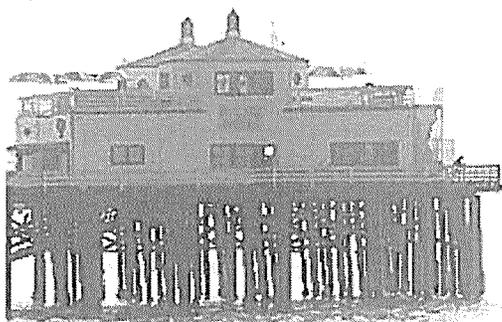
I CERTIFY THAT THE FOREGOING RESOLUTION NO. 18-26 was passed and adopted by the Planning Commission of the City of Malibu at the Special meeting held on the 7<sup>th</sup> day of May 2018 by the following vote:

AYES:	3	Commissioners:	Mazza, Uhring, Marx
NOES:	1	Commissioner:	Jennings
ABSTAIN:	0		
ABSENT:	1	Commissioner:	Pierson



KATHLEEN STECKO, Recording Secretary

Welcome to the City of Malibu. It is the goal of the City that all visitors and residents are able to enjoy Malibu's natural environment while maintaining its rural residential character. Our Code of Conduct is a way to assist us toward this goal.



## RESOURCES

### SHORT-TERM RENTAL HOTLINE

XXX-XXX-XXXX

### CITY CODE ENFORCEMENT

310-456-2489, ext.484

### LOS ANGELES COUNTY SHERIFF DEPARTMENT

818-878-1808

### LOS ANGELES COUNTY FIRE DEPARTMENT

310-317-1802

### MALIBU EMERGENCY & TRAFFIC HOTLINE

310-456-9982

## CONTACT US



23825 Stuart Ranch Rd  
Malibu, CA 90265



310-456-2489



MalibuCity.org/STR



CITY OF MALIBU

# SHORT-TERM RENTAL CODE OF CONDUCT



CITY OF MALIBU

## NEIGHBORHOOD IMPACTS

### **Occupancy:**

The maximum occupancy of the short term rental property is limited to two people more than twice the number of bedrooms of record up to 14 people.

### **Noise:**

Please keep all noise levels to a minimum. (MMC Chapter 8.24)

### **Trash:**

Please keep trash and recycling containers out of public view until pick-up day and remove all containers from the street and sidewalk no later than 8 PM on collection day. Place containers on the street and sidewalk no sooner than 5:30PM the day before your scheduled collection. (MMC Section 9.28)

### **Parking:**

All guests shall park onsite. Garages are required to be available for guest parking. If the property does not have onsite parking no more than two vehicles may be parked on the street.

### **Special Events:**

A Special Event Permit is required in conjunction with a short-term rental if 15 or more people are anticipated to attend. (MMC Section 5.34.020(C))

### **Fines:**

Any violation of Malibu Municipal Code Title 17 Chapter 55 is subject to a fine of \$1,000 per day or violation.

# SHORT-TERM RENTAL CODE OF CONDUCT

Please refer to Malibu Municipal Code (MMC) Title 17 for more details regarding the City's Short-Term Vacation Rental Ordinance.

## ENVIRONMENTAL REGULATIONS

### **Plastic Bag Ban:**

The City of Malibu has banned the distribution of plastic bags for groceries, pharmacies, restaurants, and retail stores. Please help us to ensure that plastic bags do not end up on the beaches and in the ocean. (MMC Section 9.28)

### **Polystyrene Foam Ban:**

The City of Malibu has banned the sale and distribution of foam packaging, food ware, beach toys, ice chests or coolers made from polystyrene. Please refrain from using these polystyrene foam products to help preserve the natural environment. (MMC Section 9.24)

### **Plastic straws and cutlery:**

The City of Malibu has banned the sale and distribution of plastic straws and cutlery for groceries, pharmacies, restaurants, and retail stores. Please help us to ensure that plastic straws and cutlery do not end up on the beaches and in the ocean. (MMC Section 9.28)

### **High Risk Fire Hazard Severity Zone:**

Malibu is in a very high fire hazard severity zone. Please exercise extreme caution. Get to know your evacuation routes and be prepared to evacuate on short notice in case of wildfire.

### **Onsite Wastewater Treatment:**

Most homes in Malibu rely on onsite wastewater treatment systems (septic systems) rather than traditional sewer systems. Please be mindful of this during your stay.

- Minimize use of garbage disposals
- Use a drain catch and put food waste in the garbage
- Never dispose of the following down the drain: kitty litter, feminine hygiene products, paper towels, diapers, cigarettes, drugs, cooking oil, and grease
- Never dispose of household chemicals into the septic system

**NOTICE OF PUBLIC HEARING  
CITY OF MALIBU  
CITY COUNCIL**

The Malibu City Council will hold a public hearing on **MONDAY, July 9, 2018, at 6:30 p.m. in the Council Chambers, Malibu City Hall, 23825 Stuart Ranch Road, Malibu, CA**, for the project identified below.

**SHORT-TERM RENTAL ORDINANCE**

ZONING TEXT AMENDMENT NO. 17-002 – The Malibu City Council will consider amendments to Title 17 (Zoning Ordinance) of the Malibu Municipal Code and the Planning Commission's recommendations regarding short-term rental of property (also known as vacation rentals) in residential and multi-family zones

Applicant: City of Malibu  
Location: Citywide  
Case Planner: Bonnie Blue, Planning Director  
(310) 456-2489, extension 258  
bblue@malibucity.org

The draft ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The Planning Director has determined under Section 15061(b)(3) of the State CEQA Guidelines the draft 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.

A written staff report will be available at or before the hearing. All persons wishing to address the Council will be afforded an opportunity in accordance with the Council's procedures. Information about the draft ordinance and previous public meetings can be found on the City's website at [malibucity.org/STR](http://malibucity.org/STR).

Copies of all related documents are available for review at City Hall during regular business hours. Written comments may be presented to the City Council at any time prior to the beginning of the public hearing.

**IF YOU CHALLENGE THE CITY'S ACTION IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY, AT OR PRIOR TO THE PUBLIC HEARING.**

If there are any questions regarding this notice, please contact Bonnie Blue, Planning Director, at (310) 456-2489, extension 258.



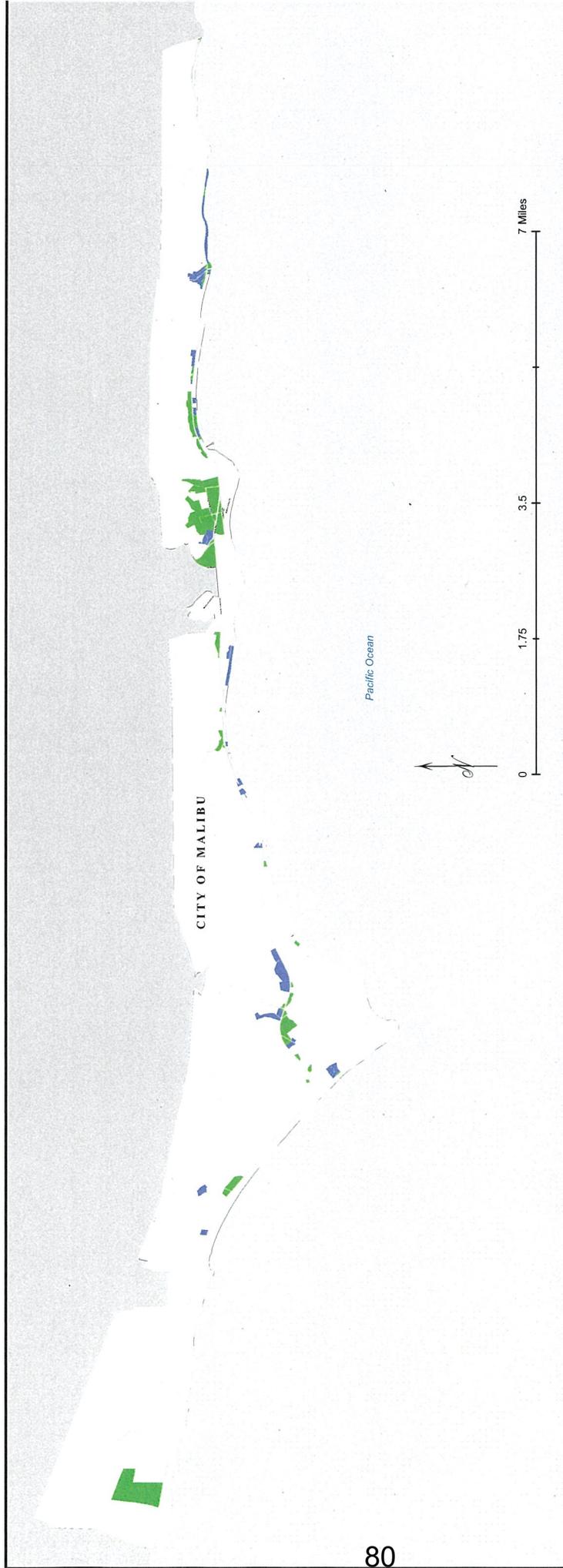
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Bonnie Blue  
Planning Director

Publish Date: June 14, 2018



# Map of Parcels Zoned Multifamily or Commercial

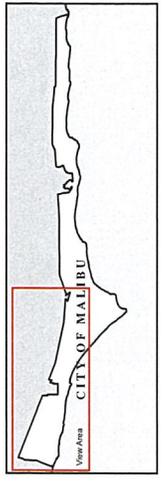
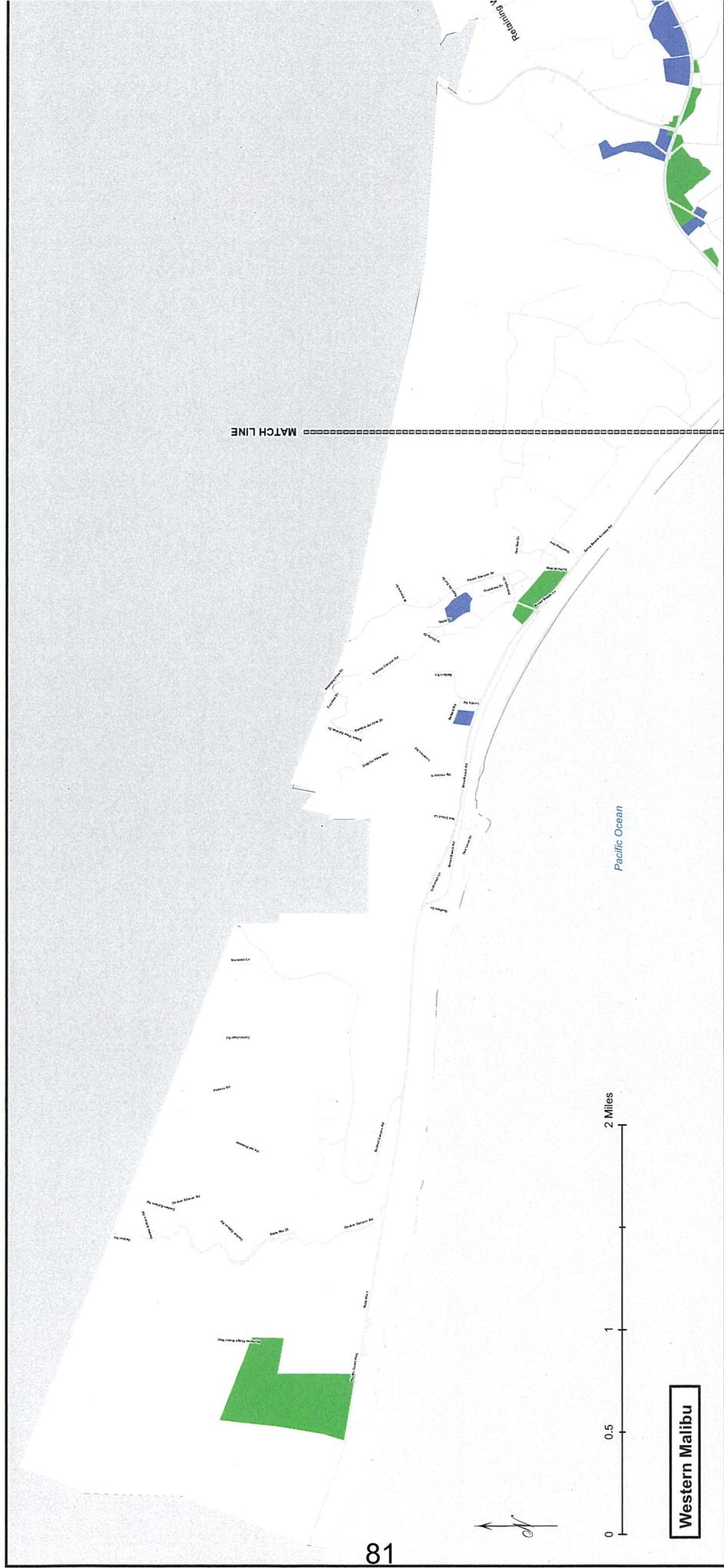


## Legend

-  Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)
-  Multifamily Residential Zones (MF and MIFBF)



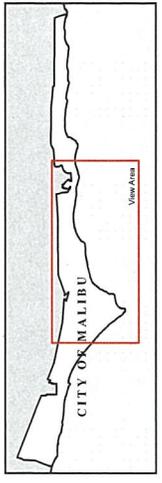
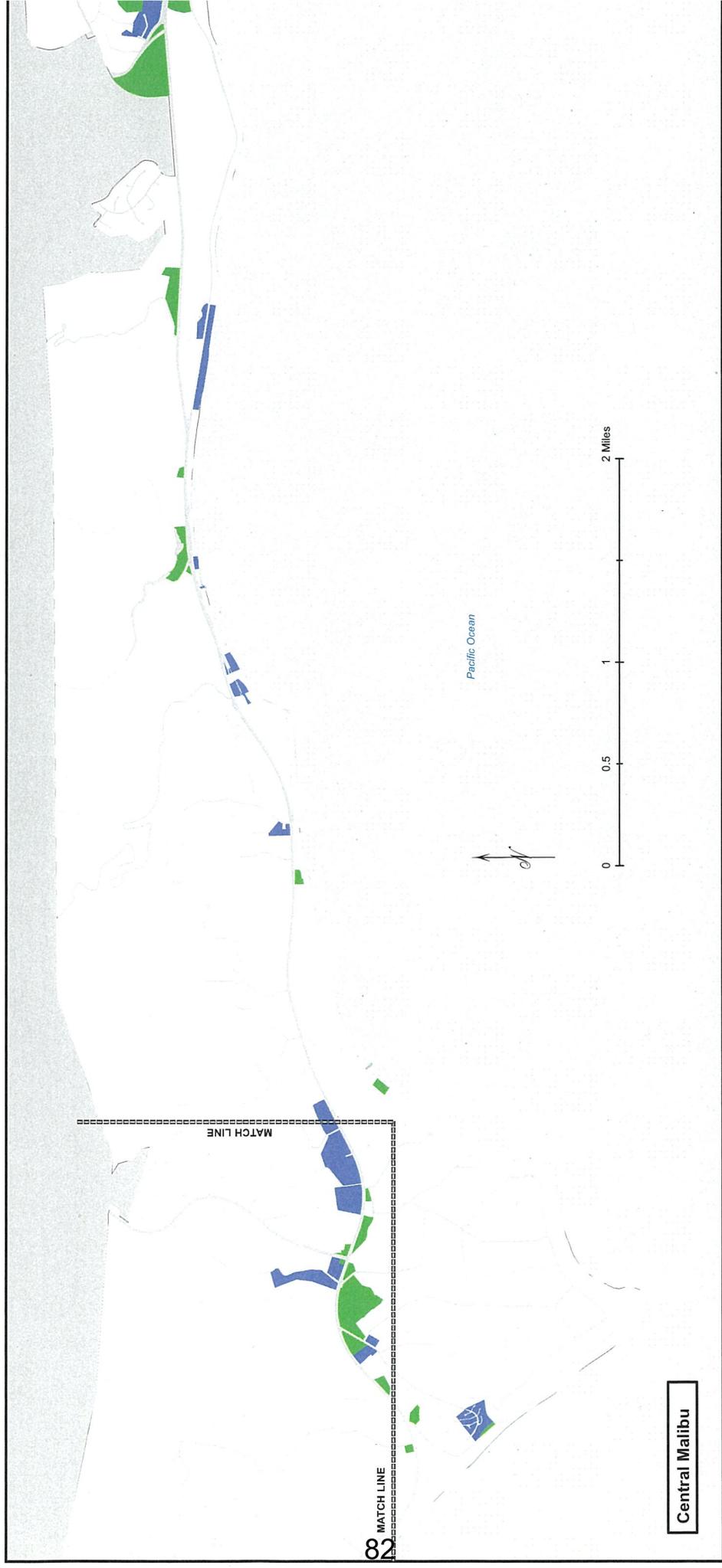
# Map of Parcels Zoned Multifamily or Commercial



- Legend**
- Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)
  - Multifamily Residential Zones (MF and MFBF)



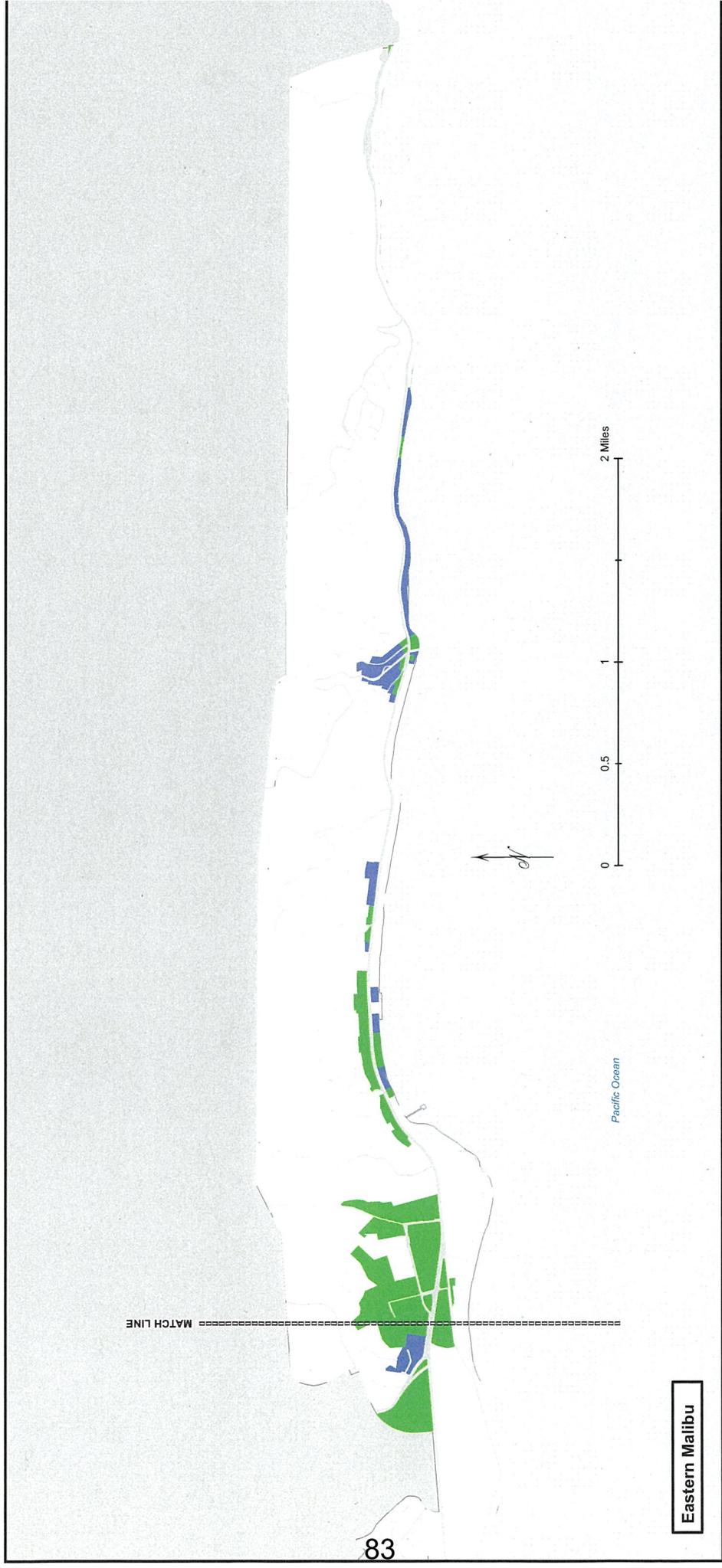
# Map of Parcels Zoned Multifamily or Commercial



- Legend**
- Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)
  - Multifamily Residential Zones (MF and MFBF)

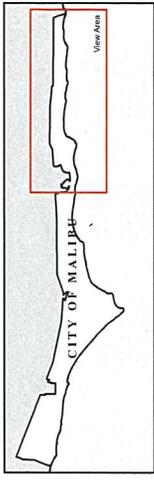


# Map of Parcels Zoned Multifamily or Commercial



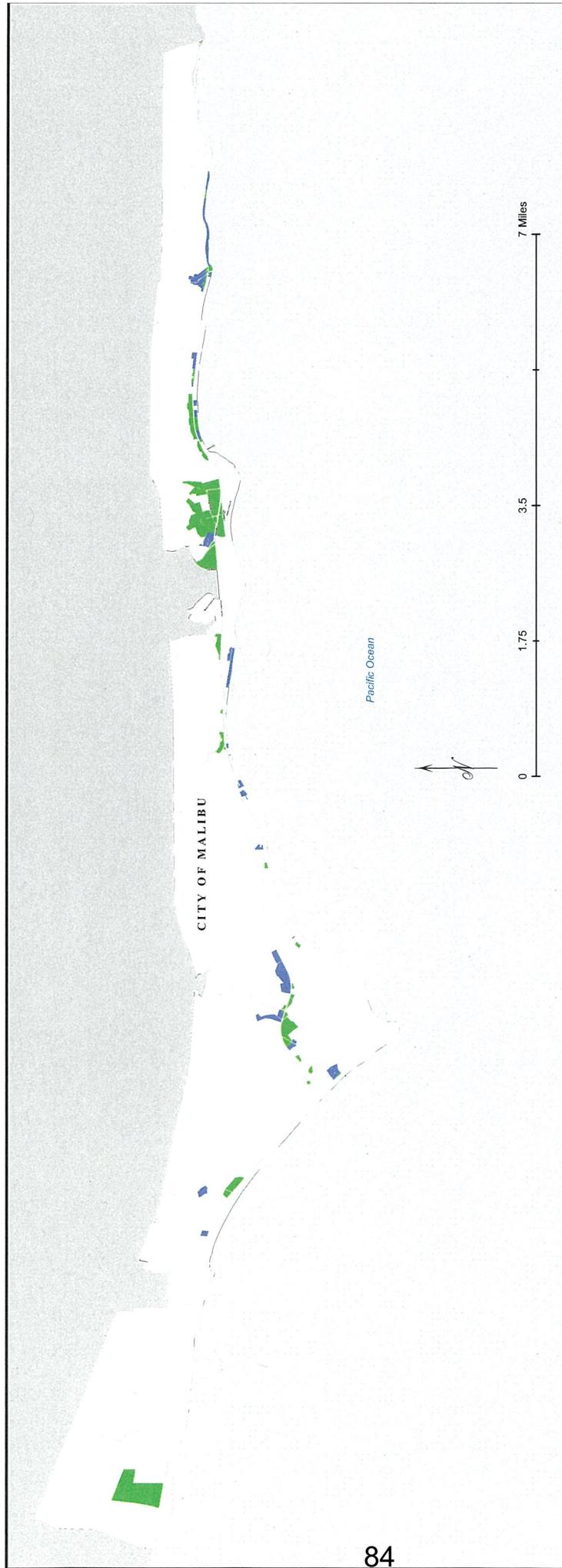
Eastern Malibu

- Legend**
- Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)
  - Multifamily Residential Zones (MF and MFBF)





# Map of Parcels Zoned Multifamily or Commercial



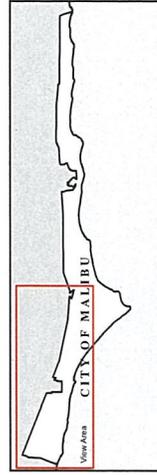
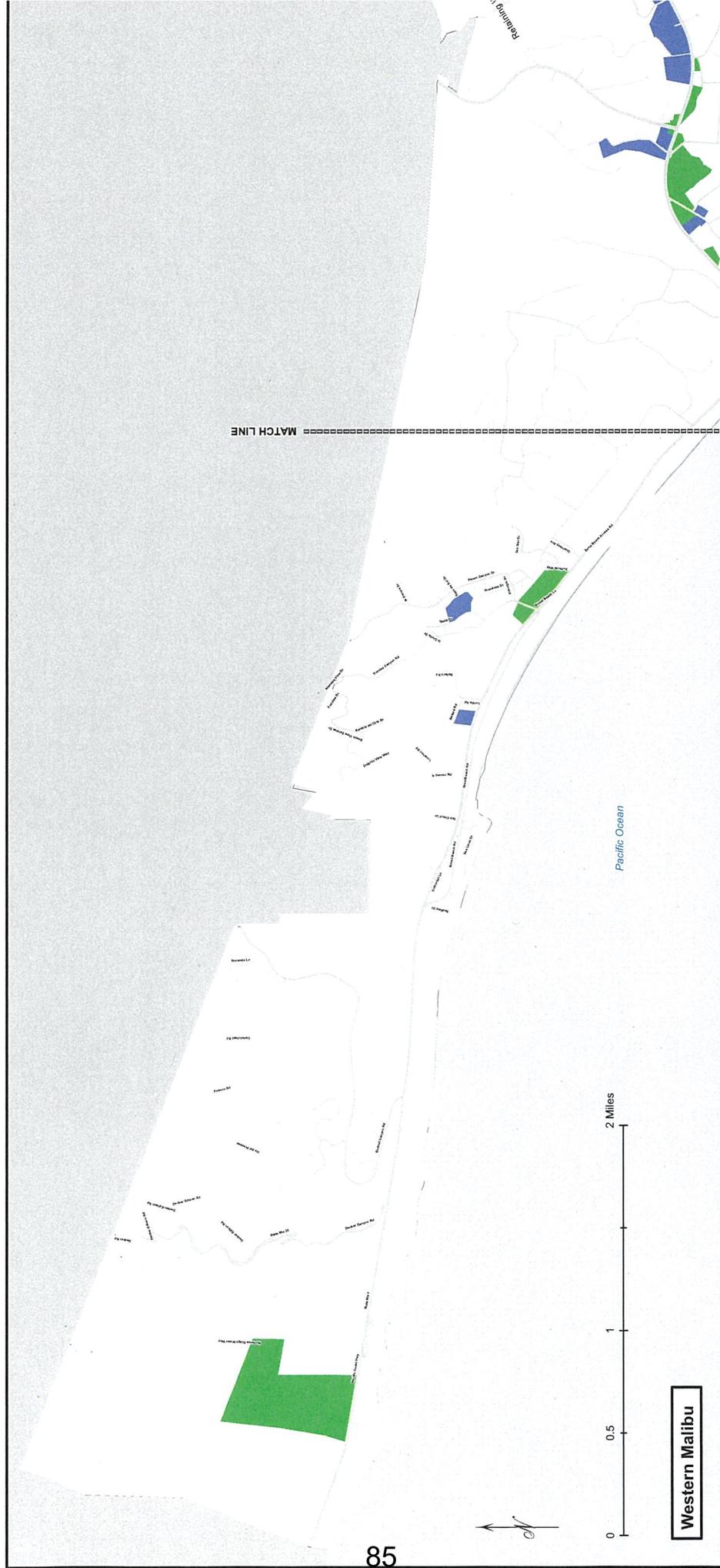
## Legend

 Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)

 Multifamily Residential Zones (MF and MFBF)



# Map of Parcels Zoned Multifamily or Commercial

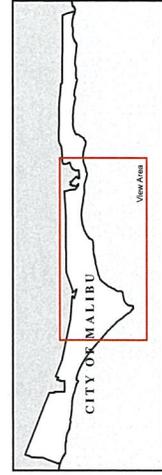
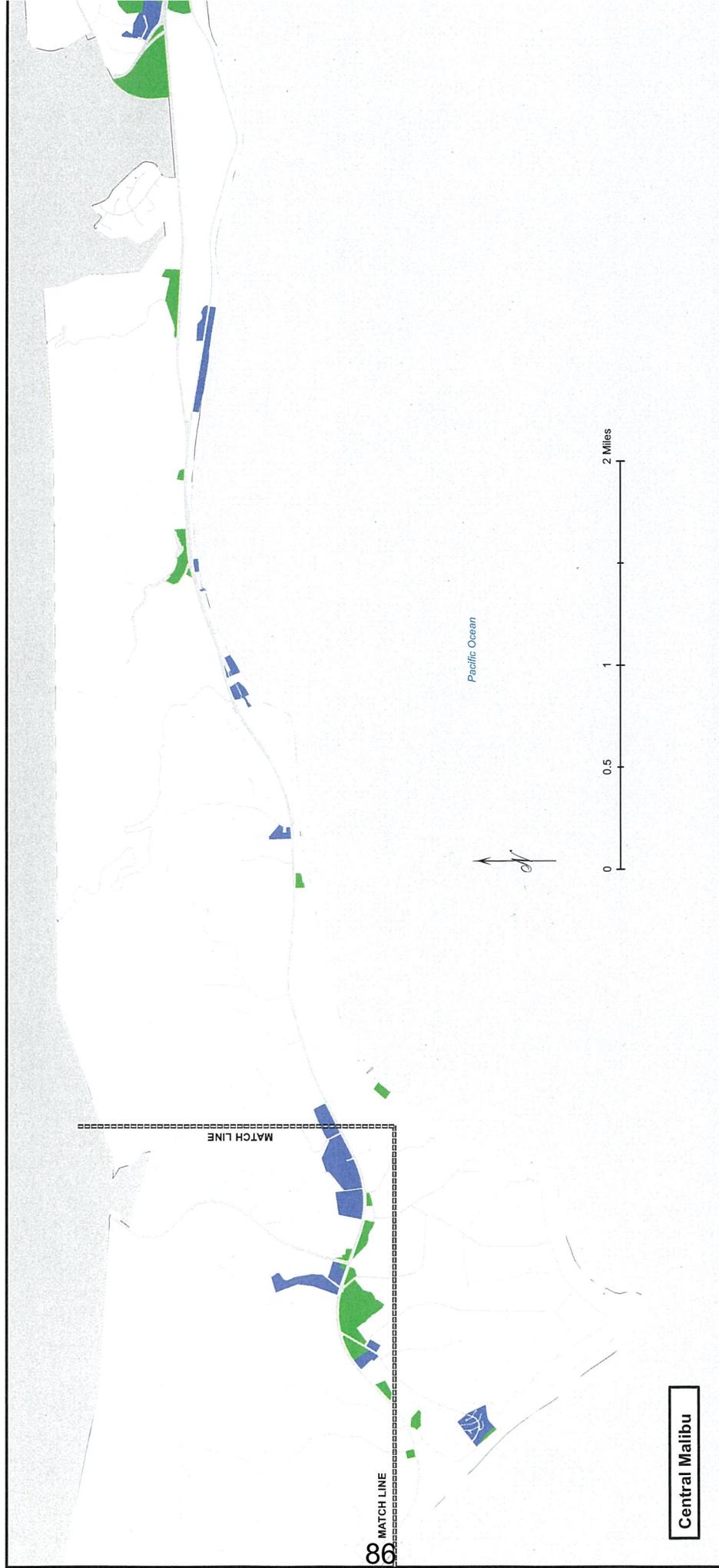


## Legend

- Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)
- Multifamily Residential Zones (MF and MFBF)



# Map of Parcels Zoned Multifamily or Commercial

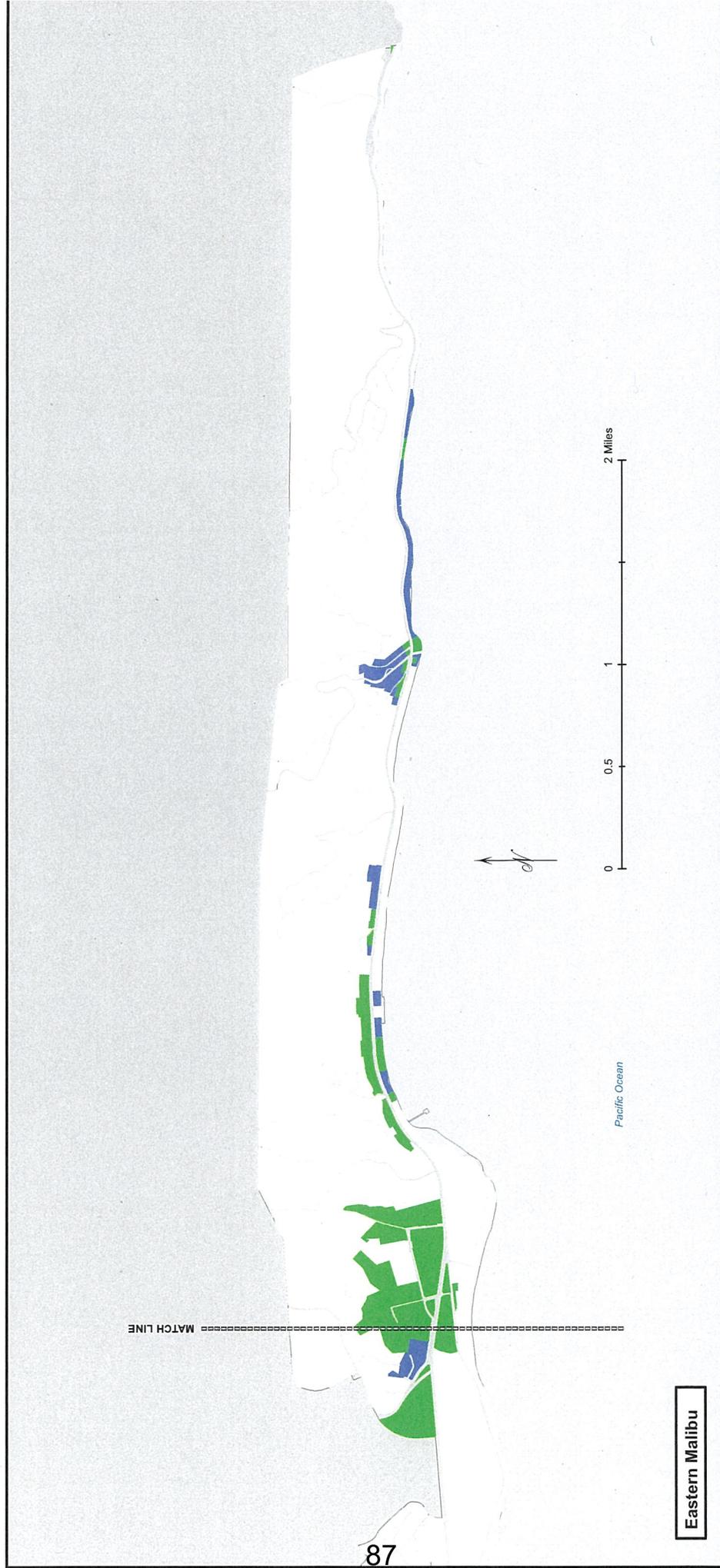


## Legend

- Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)
- Multifamily Residential Zones (MF and MFBF)



# Map of Parcels Zoned Multifamily or Commercial

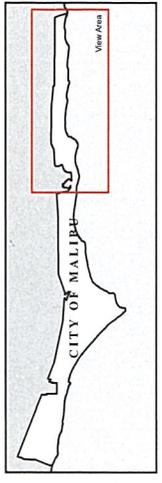


87

Eastern Malibu

### Legend

- Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)
- Multifamily Residential Zones (MF and MFBF)



Date Prepared: 9/7/2018

**NOTICE OF PUBLIC HEARING  
CITY OF MALIBU  
CITY COUNCIL**

The Malibu City Council will hold a public hearing on **WEDNESDAY, September 26, 2018, at 5:00 p.m. in the Council Chambers, Malibu City Hall, 23825 Stuart Ranch Road, Malibu, CA**, for the project identified below.

**PLEASE NOTE: This hearing was originally scheduled for the September 11, 2018 City Council meeting which has been cancelled.**

**SHORT-TERM RENTAL ORDINANCE**

ZONING TEXT AMENDMENT NO. 17-002 – On July 9, 2018, the Malibu City Council considered amendments to Title 17 (Zoning Ordinance) of the Malibu Municipal Code and the Planning Commission’s recommendations regarding short-term rental of property (also known as vacation rentals) in residential and multi-family zones. At the conclusion of the hearing, Council requested changes to the draft ordinance and some additional information, including but not limited to options for making primary residency a requirement; limiting the number of short-term rental permits to one per individual, property or assessor parcel number; allowing some portion of a multi-family building to be used for short-term rental; and options for requiring a wastewater system operating permit. This information and a revised draft ordinance will be presented at a new public hearing on September 26, 2018.

Applicant: City of Malibu  
Location: Citywide  
Case Planner: Justine Kendall, Assistant Planner  
(310) 456-2489, extension 301  
jkendall@malibucity.org

The draft ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The Planning Director has determined under Section 15061(b)(3) of the State CEQA Guidelines the draft 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.

A written staff report will be available at or before the hearing. All persons wishing to address the Council will be afforded an opportunity in accordance with the Council’s procedures. Information about the draft ordinance and previous public meetings can be found on the City’s website at [malibucity.org/STR](http://malibucity.org/STR).

Copies of all related documents are available for review at City Hall during regular business hours. Written comments may be presented to the City Council at any time prior to the beginning of the public hearing.

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If there are any questions regarding this notice, please contact Bonnie Blue, Planning Director, at (310) 456-2489, extension 258.

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Bonnie Blue  
Planning Director

Publish Date: August 30, 2018

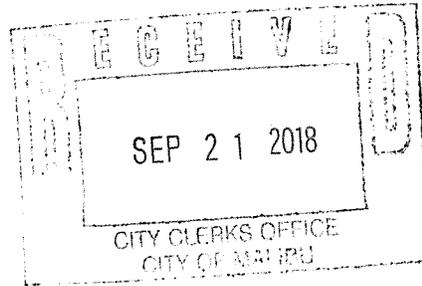
## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800



September 20, 2018

Bonnie Blue, Planning Director  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265



Subject: Short-term Rental Ordinance

Dear Ms. Blue:

Commission staff has reviewed the September 6, 2018 staff report regarding the subject proposed Malibu Municipal Code (MMC) amendment to establish provisions to regulate short-term rental of property citywide that is scheduled to be considered by the Malibu City Council at its September 26, 2018 hearing. We appreciate the opportunity to provide the following comments.

Based on a review of the draft ordinance language and the City's staff report, it is Commission staff's understanding that the City is considering the adoption of an ordinance that would allow for the continuance of short-term rental of residential property in single-family homes in the City and allow for the rental of a maximum of two units per multifamily apartment property within the City; would create a new permitting system where the owner of a short-term rental property must possess a valid Short-Term Rental Permit (STR Permit) and Onsite Wastewater Treatment System Operating Permit; establish limits on the number of operating permits a natural person may be issued; requirements regarding onsite parking; and enforcement protocols.

Commission staff views the City's proposed amendment as a supportable effort to provide for some regulatory controls and management provisions for short term rentals. However, we believe that vacation rental regulations in the coastal zone must occur within the context of the City's LCP. We encourage the City to submit an LCP amendment to the Commission that includes policies and provisions that reflects the subject MMC amendment regarding short-term rentals. We are happy to coordinate with City Staff and provide comments on specific LCP amendment language once it is developed.

Thank you for your attention to this matter. We appreciate the City's consideration of our comments. Please feel free to contact me if you have any questions.

<b>FILED</b>	
City of Malibu Office of the City Clerk	
Meeting Date	<u>9/26/18</u>
Agenda Item #	<u>4B</u>

Sincerely,

Denise Venegas  
Coastal Program Analyst

cc: Reva Feldman, City Manager, City of Malibu

ATTACHMENT 3

CC: Council; CM; CA; PL; Ref. Bilder; Original 90 9/26/18 Agenda File



# City of Malibu

## *City Council Policy*

*Policy #3*

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Title: General Fund Undesignated Reserve Policy

Purpose: To establish a General Fund Undesignated Reserve Policy for the Malibu City Government.

Policy Statement:

The City of Malibu's goal is to maintain a minimum amount in the General Fund of at least fifty (50) percent of budgeted fiscal year expenditures for its General Fund.

Implementation:

Each fiscal year, during the budgeting process, the minimum reserve will be re-evaluated by the City Council to determine if the reserve amount is adequate based on economic conditions of the City and/or region.

The City Council shall receive regular reports on the fund balances of all city funds.

Should the fund balance of the General Fund fall below the minimum reserve level, the City Manager shall prepare a plan for consideration by the City Council to rebuild the fund balance during the next budgeting process.

Date Adopted:

May 6, 1997

Date Amended:

November 28, 2011



Recycled Paper

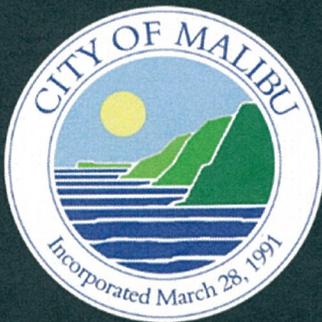
ATTACHMENT 4

# City of Malibu

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## DRAFT - Financial Analysis

City Council Presentation – October 28, 2019



# Agenda

- Current Situation
- Financial Model Functionality
- Key Assumptions
  - › Woolsey Fire
  - › Short-Term Rentals
- Status Quo
- Scenarios
- Key Take Away



## Current Situation

- Starting from a strong financial position
- Woolsey Fire had major impact
  - › Reduced revenues
  - › Significant response and rebuild costs
- Evaluating a ban on short-term rentals

*The City engaged Raftelis to develop a financial planning model and analyze financial impacts of the Woolsey Fire and potential short-term rental ban*



# Process

- Obtain critical data
- Review and analyze data
  - › Most importantly the City's current and past budgets
- Develop assumptions to forecast all revenues and expenses
- Validate assumptions with City staff
- Build the financial planning model
- Validate the model with City staff
- Present findings



# Model Functionality

- The model takes into account
  - › Impacts from Woolsey Fire
  - › Impacts from a potential short-term rental ban
- The model can evaluate
  - › Cost of the Woolsey Fire
  - › Cost of partial and full short-term rental ban
- The model dashboards
  - › Financial Plan
  - › Fund Balance
  - › Revenues and Expenditures



# Budget Areas Evaluated

- Revenues

- › Property tax
- › TOT and all other taxes
- › Licenses and permits
- › Fines and forfeitures
- › FEMA/OES and other government revenues
- › Service charges
- › Interest earnings and use fees
- › Miscellaneous revenues

- Expenditures

- › All City departments
- › Fire rebuild
- › Storm response
- › Disaster related capital projects
- › City's capital improvement plan



# Other Items Evaluated

- Revenues
  - › Increase in registration revenues due to a partial short-term rental ban
  - › Increase in short-term rental penalties due to short-term rental ban
- Expenditures
  - › Increased enforcement costs due to a partial or short-term rental ban
  - › Potential increase in legal costs due to a full short-term rental ban



## Insufficient Data to Quantify:

- “Trickle down effect” of short-term rental ban scenarios
- Possible impact to sales tax of short-term rental ban scenarios
- Potential impact to property values of short-term rental ban scenarios



# Assumptions

- Informed, reasonable, and conservative
- Revenues
  - › Historical property tax growth rates
  - › CPI
  - › Historical trends
  - › Special assumptions based on inputs and scenarios
- Expenditures
  - › CPI
  - › Historical trends
  - › Special assumptions based on inputs and scenarios
  - › Actual debt service



# Financial Policies

- Reserve Targets
  - › Fund Balance
    - City Council Policy – 50% of operating budget
    - City Council Goal – 65%
  - › The City has been and remains committed to maintaining a healthy general fund reserve in recognition of the City's disaster prone environment



## Status Quo Summary

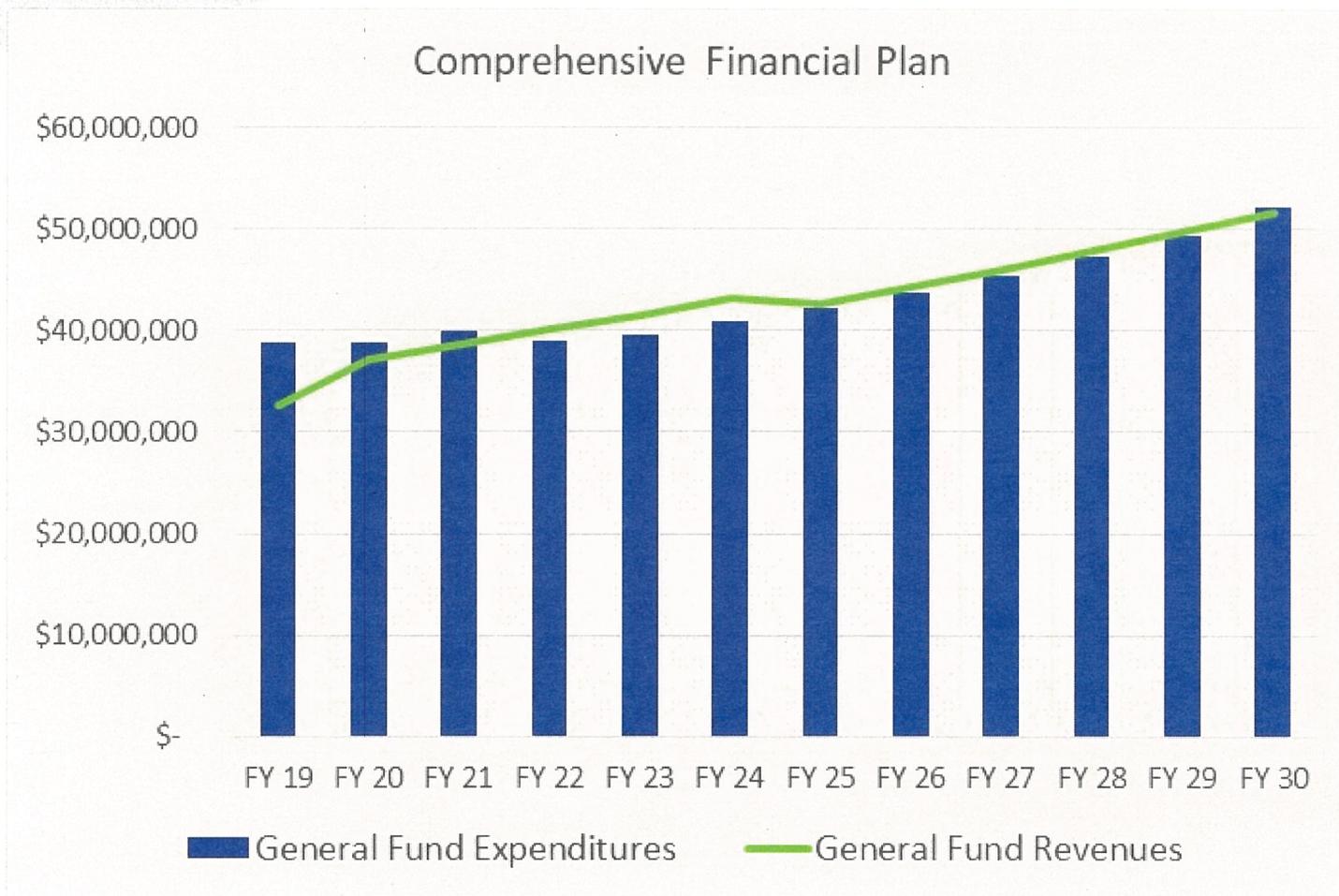
- Property value growth rate of 5.7%
  - › Based upon 2012 to 2019 growth rate
- Fees increase at CPI
- Impacts of Woolsey Fire
  - › Major general fund operating expenditures continue through 2023
  - › Additional flood/debris flow mitigation through 2026
  - › FEMA reimbursements over 5 years beginning in FY 2021
- No short-term rental ban
- Debt service increases substantially due to 2018 COP
  - › For the purchase of vacant land
- Public Safety
  - › Recent increases to level of service flow into forecast
  - › Increase in FY 2023 due to new Sheriff station



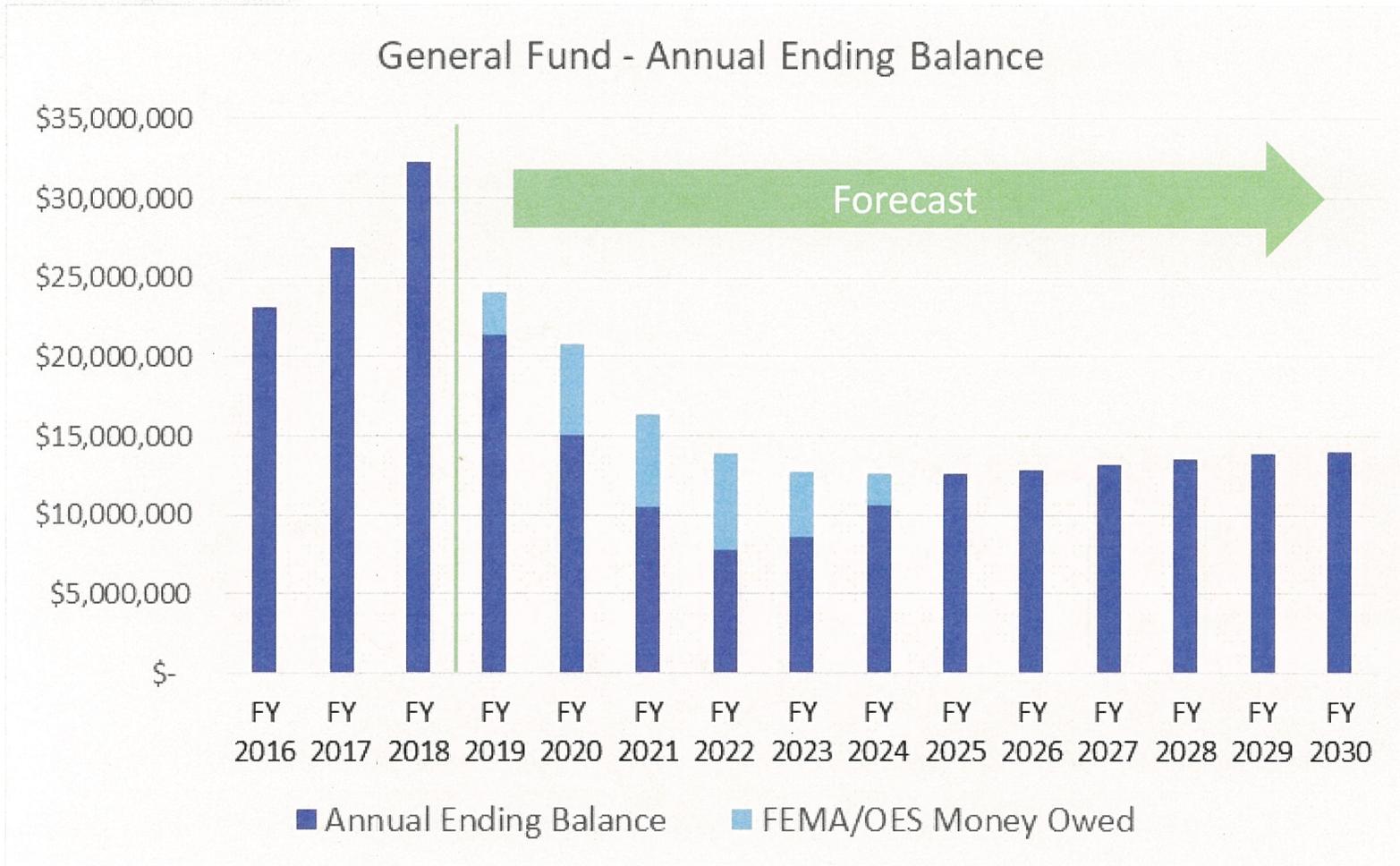
# Change in Property Tax From 2003 to 2020



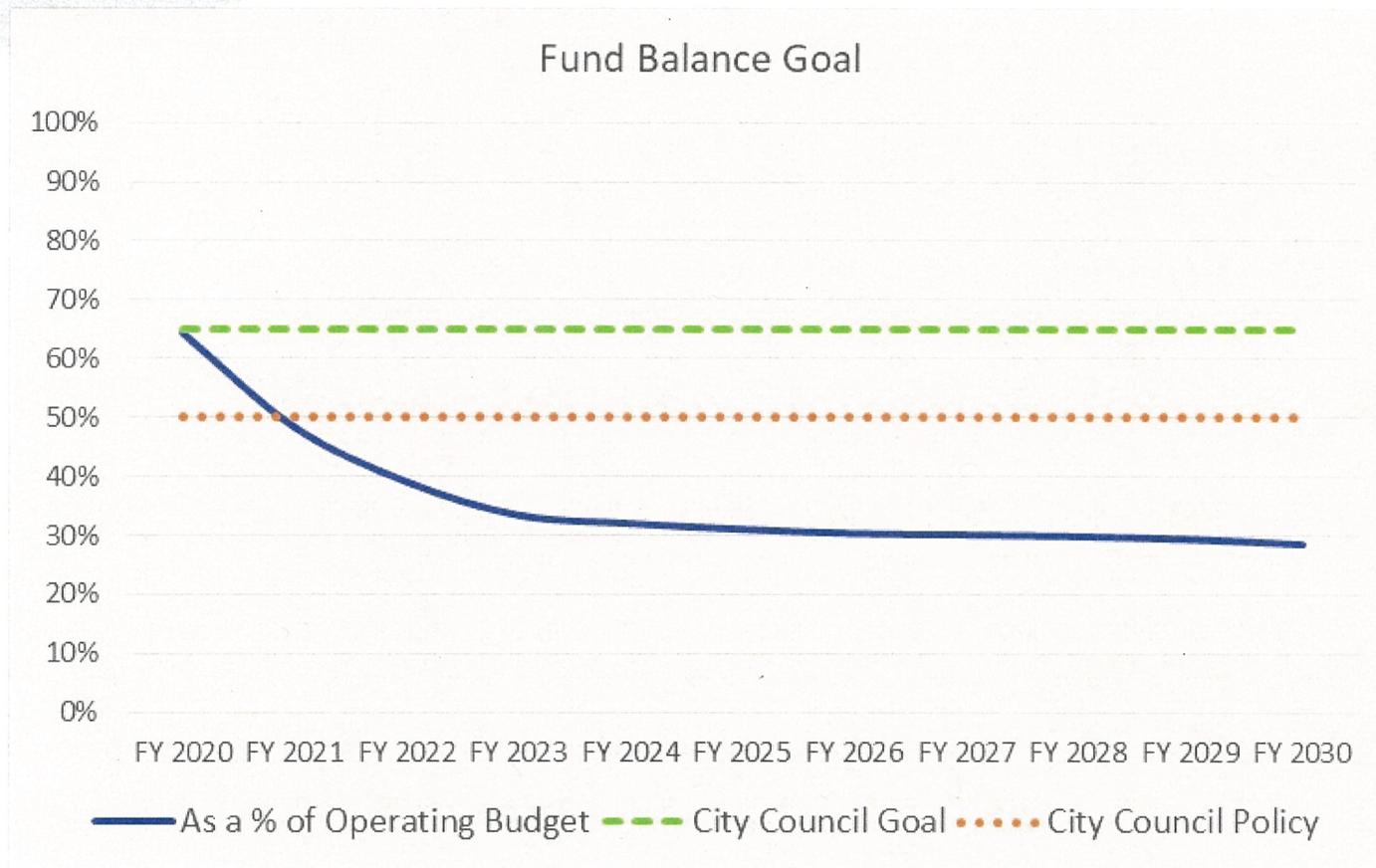
# Status Quo - Financial Plan



# Status Quo – Ending Fund Balance



# Status Quo – Fund Balance Goal



## Key Observations – Status Quo

- Property Tax revenue assumptions subject to high degree of variability
- Un-reimbursed Woolsey Fire costs reduce General Fund balance by \$13.4 million from FY 2019 – FY 2025
- Increase in COP debt service for the purchase of vacant land and expected public safety costs impact City's ability to restore general fund reserves



# Assumptions – Woolsey Fire

- Property Tax Values
  - › 3 Year Recovery
- Capital
  - › FEMA/OES reimbursable costs
  - › Non-reimbursable General Fund costs
- Operating
  - › Fire rebuild costs
    - Increase consultant cost
  - › Storm response costs
- “Like for Like” Permit Waivers
  - › Due to waivers being offered in FY 2020, study assumed historical average for permit revenues
  - › City may actually see an increase in permit revenues due to residents who do not rebuild “Like for Like.”
  - › Revenue impacts from permits associated with rebuilds is difficult to quantify



# Woolsey Fire – Impacts Overview

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<b>Woolsey Fire Recovery Table</b>	<b>FY19 - FY25 Total</b>
CIP General Fund - Not Reimbursable	\$ 1,257,220
CIP FEMA/OES - Reimbursable	10,080,001
3002 Fire Rebuilds	9,835,737
3002 Storm Response	<u>2,300,000</u>
<b>Total Cost</b>	<b>\$ 23,472,958</b>
<b>Projected FEMA/OES Reimbursements</b>	<b>\$ 10,080,001</b>
<b>Net Cost to the City</b>	<b>\$ 13,392,957</b>

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# Potential Short-Term Rental Ban Assumptions

- Status Quo Assumption
  - › TOT revenues increase from pre-fire levels based on CPI
- Partial Ban Assumptions
  - › 50% or 25% reduction to STR-TOT revenues in FY 2021
  - › Lost revenue percentages designed to approximate the level of restrictiveness of potential regulation/ban
- Full Ban Assumptions
  - › 100% reduction to STR-TOT revenues in FY 2021
- For All Ban Scenarios the Study Evaluated
  - › Potential impacts to STR registration and enforcement penalty revenues
  - › Potential costs of additional code enforcement staffing



# 10 Year Impact on Short-Term Rental Ban FY 2021 to FY 2030

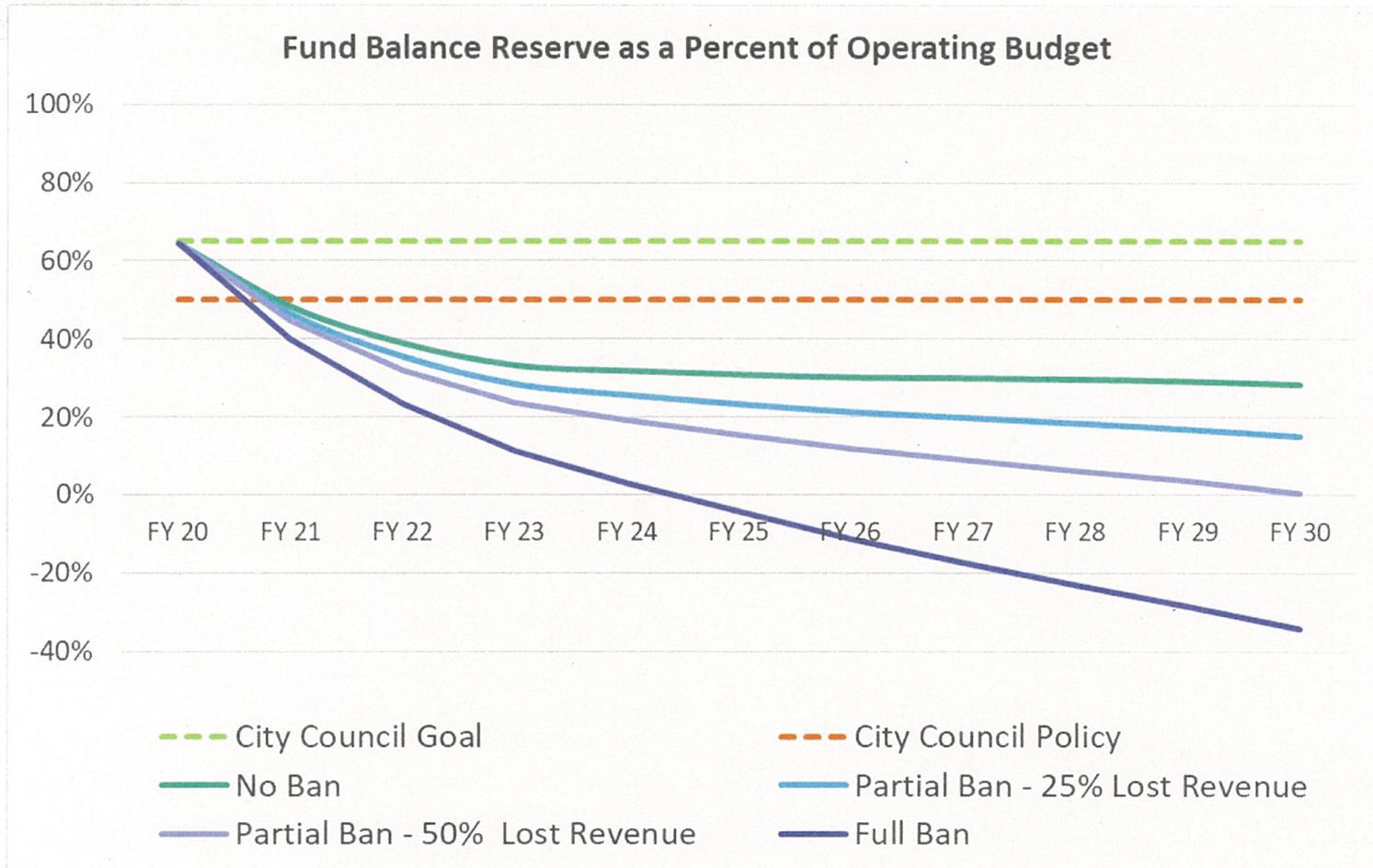
	Estimated STR Revenue	Net Impact vs. Status Quo
No Ban	\$ 27,600,000	
Partial Ban 25%	\$ 22,659,000	\$ (6,300,000)
Partial Ban 50%	\$ 15,792,000	\$ (13,167,000)
Full Ban	\$251,000	\$ (30,036,000)

Revenues Include:

- STR-TOT
- STR Registrations
- STR Penalties



# Fund Balance Goal – STR Ban Scenarios



## Key Take Away

- City needs to carefully monitor and forecast property tax revenues due to variability
- A partial or full short-term rental ban could significantly impact the City's finances
  - › Already strained by the vacant land purchase, Woolsey Fire, winter storms and the fire rebuild
- City should work to minimize non-reimbursable one-time Woolsey costs
  - › Currently estimated at \$13.4 million from FY19 – FY25
- Consider limiting service level enhancements until full impact of Woolsey Fire determined
- May need to defer General Fund CIP projects



**Thank you!**

R

## Transient Occupancy Tax Rates Throughout California

City	TOT Tax Rates
Long Beach	12-15%
Anaheim	15%
Beverly Hills	14%
Los Angeles	14%
Marina	14%
San Francisco	14%
Santa Monica	14%
Solana Beach	13%
Agoura Hills	12%
Calabasas	12%
Carpinteria	12%
County of Los Angeles	12%
County of Santa Barbara	12%
El Segundo	12%
Glendale	12%
Goleta	12%
Half Moon Bay	12%
Hermosa Beach	12%
Laguna Beach	12%
Malibu	12%
Pacific Grove	12%
Redondo Beach	12%
Seaside	12%
Sonoma	12%
Santa Cruz	11%
Torrance	11%
Carlsbad	10%
Carmel	10%
Chula Vista	10%
Dana Point	10%

## Transient Occupancy Tax Rates Throughout California

City	TOT Tax Rates
Manhattan Beach*	10%
Monterey	10%
Morro Bay	10%
Oceanside	10%
Oxnard	10%
Pismo Beach	10%
Rancho Palos Verdes	10%
San Clemente	10%
San Luis Obispo	10%
San Mateo	10%
Santa Barbara	10%
Thousand Oaks	10%
Ventura	10%
Westlake Village	10%
Newport Beach	9%
Laguna Niguel	8%
Pasadena	7%
San Diego	6%
Hidden Hills	n/a

\*Manhattan Beach is planning to increase rates to 12% May 1, 2020

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



December 6, 2016

TO: Coastal Planning/Community Development Directors

SUBJECT: Short-Term/Vacation Rentals in the California Coastal Zone

Dear Planning/Community Development Director:

Your community and others state and nationwide are grappling with the use of private residential areas for short-term overnight accommodations. This practice, commonly referred to as vacation rentals (or short-term rentals), has recently elicited significant controversy over the proper use of private residential stock within residential areas. Although vacation rentals have historically been part of our beach communities for many decades, the more recent introduction of online booking sites has resulted in a surge of vacation rental activity, and has led to an increased focus on how best to regulate these rentals.

The Commission has heard a variety of viewpoints on this topic. Some argue that private residences should remain solely for the exclusive use of those who reside there in order to foster neighborhood stability and residential character, as well as to ensure adequate housing stock in the community. Others argue that vacation rentals should be encouraged because they often provide more affordable options for families and other coastal visitors of a wide range of economic backgrounds to enjoy the California coastline. In addition, vacation rentals allow property owners an avenue to use their residence as a source of supplemental income. There are no easy answers to the vexing issues and questions of how best to regulate short-term/vacation rentals. The purpose of this letter is to provide guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal zone areas moving forward.

First, please note that vacation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.

The Commission has experience in this arena, and has helped several communities develop successful LCP vacation rental rules and programs (e.g., certified programs in San Luis Obispo and Santa Cruz Counties going back over a decade; see a summary of such LCP ordinances on our website at:

[https://documents.coastal.ca.gov/assets/la/Sample\\_of\\_Commission\\_Actions\\_on\\_Short\\_Term\\_Rentals](https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals)

[.pdf](#) ). We suggest that you pay particular attention to the extent to which any such regulations are susceptible to monitoring and enforcement since these programs present some challenges in those regards. I encourage you to contact your [local district Coastal Commission office](#) for help in such efforts.

Second, the Commission has not historically supported blanket vacation rental bans under the Coastal Act, and has found such programs in the past not to be consistent with the Coastal Act. In such cases the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act. However, in situations where a community already provides an ample supply of vacation rentals and where further proliferation of vacation rentals would impair community character or other coastal resources, restrictions may be appropriate. In any case, we strongly support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for vacation rentals, while providing appropriate regulation to ensure consistency with applicable laws. We believe that appropriate rules and regulations can address issues and avoid potential problems, and that the end result can be an appropriate balancing of various viewpoints and interests. For example, the Commission has historically supported vacation rental regulations that provide for all of the following:

- Limits on the total number of vacation rentals allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a vacation rental (e.g., disallowing vacation rentals in affordable housing contexts, etc.).
- Limits on maximum vacation rental occupancies.
- Limits on the amount of time a residential unit can be used as a vacation rental during a given time period.
- Requirements for 24-hour management and/or response, whether onsite or within a certain distance of the vacation rental.
- Requirements regarding onsite parking, garbage, and noise.
- Signage requirements, including posting 24-hour contact information, posting requirements and restrictions within units, and incorporating operational requirements and violation consequences (e.g., forfeit of deposits, etc.) in rental agreements.
- Payment of transient occupancy tax (TOT).
- Enforcement protocols, including requirements for responding to complaints and enforcing against violations of vacation rental requirements, including providing for revocation of vacation rental permits in certain circumstances.

These and/or other provisions may be applicable in your community. We believe that vacation rentals provide an important source of visitor accommodations in the coastal zone, especially for larger families and groups and for people of a wide range of economic backgrounds. At the same time we also recognize and understand legitimate community concerns associated with the potential adverse impacts associated with vacation rentals, including with respect to community character and noise

and traffic impacts. We also recognize concerns regarding the impact of vacation rentals on local housing stock and affordability. Thus, in our view it is not an ‘all or none’ proposition. Rather, the Commission’s obligation is to work with local governments to accommodate vacation rentals in a way that respects local context. Through application of reasonable enforceable LCP regulations on such rentals, Coastal Act provisions requiring that public recreational access opportunities be maximized can be achieved while also addressing potential concerns and issues.

We look forward to working with you and your community to regulate vacation rentals through your LCP in a balanced way that allows for them in a manner that is compatible with community character, including to avoid oversaturation of vacation rentals in any one neighborhood or locale, and that provides these important overnight options for visitors to our coastal areas. These types of LCP programs have proven successful in other communities, and we would suggest that their approach can serve as a model and starting place for your community moving forward. Please contact your [local district Coastal Commission office](#) for help in such efforts.

Sincerely,

A handwritten signature in black ink that reads "Steve Kinsey". The signature is written in a cursive, slightly slanted style.

STEVE KINSEY, Chair  
California Coastal Commission