

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
301 E. OCEAN BLVD., SUITE 300  
LONG BEACH, CA 90802  
(562) 590-5071



**W14b**

**LCP AMENDMENT NO. LCP-5-NPB-20-0070-3  
(SHORT TERM LODGING)**

**OCTOBER 13, 2021**

**CORRESPONDENCE**

- 1. E-mail correspondence in opposition – One (1)**
- 2. E-mail correspondence in support – Six (6)**

Date of comment: October 6, 2021  
Date of hearing: September 13, 2021  
Agenda Item: **W14b**

California Coastal Commission  
c/o Liliana Roman  
301 E. Ocean Blvd, Suite 300  
Long Beach, CA, 90802-4830

Re: **Item W14b-10-2021, City of Newport Beach Major Amendment No. LCP-5-NPB-20-0070-3 (Short-Term Lodging)**

Dear Ms. Roman and Commissioners,

I wish to bring the following matters to the Commission's attention, some of which are more general comments and suggestions about Commission procedures, including how they are followed in Newport Beach, than specific to this particular LCP amendment request.

### **Procedural Concerns**

[14 CCR § 13519](#) of the Commission's regulations, which I assume applies not just to original LCP submissions, but to amendments as well, requires the submitting agency to provide "*copies or summaries of significant comments received*" during the extensive local public and agency participation that is supposed to have taken place as detailed in [14 CCR § 13515](#).

In view of this, it is curious that while the staff report says (page 2) "*The City held numerous meetings including community meetings, town hall sessions, City Council study sessions throughout 2019 and a Planning Commission hearing on July 23, 2020 and a City Council hearing on October 13, 2020 approving City Council Resolution No. 2020-91,*" and while summaries of those may have been passed on to Commission staff, no inkling of issues raised during that public participation have been passed on to the Commission for their consideration.

Had that been done, the Commission would be aware I raised repeated questions about the City's compliance with 14 CCR § 13515's requirement that review drafts (plural) of proposed LCP amendments be made available "*at a minimum at least six (6) weeks prior to any final action on the documents by the local government.*"

I take this to be like the requirement for a first and second reading of an ordinance, during which time, to avoid faultily written legislation to be too hastily adopted, no changes to the text are allowed.

Newport Beach does not read the regulation that way, and does not provide an opportunity for a six-week public and agency review of the LCP amendment proposals it ultimately submits to the Coastal Commission. Instead, ignoring the plural in "drafts," it posts on a [Local Coastal Program Amendments – Notice of Availabilities](#) page a *single* review draft at the very beginning of the process before any hearings are held. As the hearings and outreach meetings progress, constantly changing drafts are produced, but made available for public inspection only a few days, and in some cases minutes, before the hearing, at which it may be further changed. As a result, those attempting to comment have very limited opportunity to know what proposal will be discussed or acted upon.

In the present case, the one and only review draft posted on the City's [pending amendments page](#) is [one dated July 14, 2020](#), which is very different from the document finally acted upon. In particular, this currently-posted review draft prohibits the issuance of *any* new short-term lodging permits and requires a six-day minimum stay in non-owner-occupied dwellings. While it is true City staff's ever-changing later proposals were posted with the materials for the subsequent hearings, this does practice of not posting the most current review draft, and not waiting 6 weeks for action on it, does not seem compliant with the Commission's regulations.

By the City's logic, a local agency would be in compliance with the Commission's 6-week local review requirement even if it followed a "gut-and-replace" procedure in which on one day it posted and noticed availability of a placeholder LCP amendment text and then six weeks later took final action to submit something completely different to the Commission.

It seems important to understand what the Commission's understanding of its policy is, both as to the 6-week review and the forwarding of comments received. In October of last year, I attempted to seek clarification about the first of these issues from the Commission's legal staff, but do not seem to have received an answer

### **Structural Concerns**

Whatever their local history, I also have concerns about the way LCP amendment requests – at least those from Newport Beach -- are being presented to the Commission.

The staff report attempts to show on page 9 certain text in the existing IP that the City is proposing to modify, and further modifications proposed by Commission staff.

That is fine, but in attempting to understand the remainder of what is being proposed, the Commission (and California public) sees only the City Resolution No. 2020-91 requesting changes to IP Section 21.48.115, an Ordinance No. 2020-26 amending Municipal Code Chapter 5.95 and a copy of the currently certified text of IP Section 21.48.115.

These do not distinguish existing from proposed text. While it is possible, but tedious, to verify the staff report is accurately highlighting what the City proposes to change in IP Section 21.48.115, it is impossible to tell what the City is changing in Chapter 5.95. It would have been helpful to provide the [redlines of both](#), which the City possesses, and Commission staff likely saw.

More importantly, at least in this case, is the significance of NBMC Chapter 5.95 and what the Coastal Commission is being asked to do with regard to it.

The statement at the top of page 14 of the staff report, that "*the resulting proposed new IP language incorporates all short-term lodging permit conditions set forth in the NBMC Title 20 [sic] Chapter 5.95, thereby incorporating NBMC Title 20 [sic] into the certified LCP,*" does not appear to be correct.

The proposed new IP language incorporates, at best, only a few of the current and new short-term lodging permit conditions set forth in NBMC Chapter 5.95. And the City does not appear to be requesting the Commission's certification of the entirety of Title 5 or even the entirety of Chapter 5.95 nor say it is incorporating any of those into its IP. Yet, a close reading of Section 16 of Ordinance No. 2020-26 (page 10 of Exhibit 2) indicates the enactment of substantial parts

of the ordinance (Sections 1 through 8 and the addition of Subsection 23 to NBMC Section 5.95.045) are contingent on Commission approval of the LCP IP amendment presented with Resolution No. 2020-91.

In other words, this is a mish-mash of regulations, a few contained in the IP (the modifications to which the City is asking the Commission to certify), but most in NBMC Chapter 5.95. For example, Chapter 5.95 places 23 conditions on short-term lodging permits (only one of which, Subsec. 5.95.045.A.23, is said by the City to require Commission approval), while Sec. 21.48.115.D of the IP places only 7 conditions (as shown on page 6 of Exhibit 1) on the same permits. 22 of the conditions in Chapter 5.95 have, in fact, already been enacted without waiting for Commission review.

This has already created confusion. For example, in the Summary on page 1 of its report, Commission staff seems to regard new regulations to “*set up a wait list for new permits, make revisions clarifying the transferability of permits and establishing when a permit is deemed abandoned, prohibit the rental to user that is under the age of 25, and allowance for the owner of the short-term rental unit to be cited if a user receives a parking ticket while utilizing a short-term lodging unit*” to be matters for which the City is seeking Commission certification. But the City is not seeking certification of the last two of these, and they are purportedly already the law in all parts of the City, including the Coastal Zone, effective with last October’s adoption of Ordinance No. 2020-26. And, as best I can tell, it not seeking certification for the first few either, but will not implement these already-adopted regulations unless the Commission certifies a 1,550-permit cap.

Finally, for the small subset of short-term lodging regulations the Commission *is* being asked to certify, I am not entirely sure how the Commission will be able to ensure they are being enforced. Even though it allows a change in land use, there does not appear to be a coastal development permit requirement associated with obtaining a short-term lodging permit, so the many review and appeal provisions of the IP that are tied to the issuance of a CDP would not be invoked.

### **Substantive Concerns**

Regarding the two key substantive changes the Commission is being asked to certify (the citywide 1,500 permit cap and the 2-night minimum stay), it faces difficult decisions.

As to the minimum stay, there is apparently a genuine problem with bad actors misusing rental properties for disruptive “one-night stands.” However, imposing any minimum stay requirement deprives families who might only be able to afford a single-night’s rental to enjoy this amenity – in contradiction to Coastal Act and Commission objectives.

I have no solution to this.

As to the permit cap, while it reasonable to want to keep the fraction of residential units being offered as short-term lodgings to under 25%, the devil is in the details, particularly the transferability rules which the City has already adopted pending certification of a permit cap.

The problem I see with these uncertified new transferability rules is they effectively create a new land use category: residential properties that can be rented for 30 days or less. Under the

proposed (and already adopted) rules, when the cap has been reached, those who wish to engage in the short-term lodging business will not be able to obtain permits from the City, and will have to find a willing seller of an already-designated property, which they can buy and transfer the permit with (this is much like what has happened with the moorings in Newport Harbor, for which the City has a similar transferability program never reviewed or certified by the Commission). This will not only create a new privileged class, but will also likely result in a semi-fixed pattern of rentals, overconcentrated in some areas and under-concentrated in others, which cannot be corrected by regulation.

For this I do have a solution, which I tried to suggest to the City Council, but which was not adopted and which the Commission would now seem powerless to require unless it could convince the City to alter its adopted Chapter 5.95. My solution would be issue the 1,550 short-term lodging permits at random to interested parties via an annual lottery. If the cap has not been reached, this would be the same as the City's proposal, for all applications received would be granted. But if the cap has been reached, this would give new entrants into the business the same opportunity as existing ones, and vary the pattern of available rentals from year to year.

It seems an idea worth considering.

Yours sincerely,



James M. Mosher, Ph.D.  
2210 Private Road  
Newport Beach, CA. 92660

## Additional Specific Comments

1. The staff report refers, erroneously, in numerous places to "*NBMC Title 20, Chapter 5.95.*" [Chapter 5.95](#) is not part of Newport Beach Municipal Code [Title 20](#) ("Planning and Zoning"). Instead, as its numbering implies, Chapter 5.95 is part of NBMC [Title 5](#) ("Business Licenses and Regulations").  
  
Adding to the confusion, Title 20, which Title 21 ("Local Coastal Program Implementation Plan") is generally a slightly modified version of, does not contain, for application outside the coastal zone, a Section 20.48.115 comparable to the [Section 21.48.115](#) (Short-Term Lodging) the City proposes to add to Title 21. Instead, Title 20 only indicates whether short term lodging is an allowed use in the various zoning districts, and defers entirely to Title 5, Chapter 5.95 for any planning and zoning regulations affecting them.
2. The "Deadline for Commission Action" section on page 7 does not correlate with the statements on that subject made in the last paragraph on page 2. Instead, it appears the dates and deadlines mentioned refer to the separate, later LCP amendment request related to Newport Island, as described in the first paragraph at the top of page 3.

3. The existing provision in IP Section 21.48.115.B prohibiting short-term lodgings on parcels *"in the R-1 (Single-Unit Residential) Coastal Zoning District or any parcel designated for single-unit dwelling land use as part of a planned community development plan, unless the short-term lodging unit was legally established on or before June 1, 2004,"* although it may seem consistent with Policy 2.3.3-6, actually seems inconsistent with the Section 2.3.3 narrative on page 2-37 of the CLUP, which says: *"A significant number of **single-family homes, condominiums, and apartments** serve as overnight visitor accommodations."*

In any event, the statements on pages 2, 13, and 15 that this prohibition began in 1992 is incorrect. By its plain language, the grandfathering and future prohibition began in 2004, some 12 years after short-term lodging permits were first required in Newport Beach.

4. Section 16 at the bottom of page 10 of 12 of Exhibit 2 says "Sections 1 through 8 and the portion of Section 10, which adds Subsection 21, to Section 5. 95. 045" will not go into effect until the Coastal Commission approves the present LCP amendment request.
5. Minor comments:
  - a. Page 1, "Summary of LCP Amendment Request," line 2: "**Implementing Plan**" was likely intended to read "**Implementation Plan**."
  - b. Page 3, "Summary of Staff Recommendation," line 14 – "*short-term longings*" was likely intended to read "*short-term lodgings*."
  - c. Page 17: the last paragraph uses the "STR" terminology instead of the "STL" one used elsewhere.
  - d. Page 18: the reference to Section 21.48.115(B) in the first sentence of the paragraph before "Conclusion" appears intended to be to Section 21.48.115(C).
  - e. In the title page to the Exhibits, "Exhibit 2 – City of Newport Beach **Resolution** No. 2020-26" should read "**Ordinance** No. 2020-26."

**Roman, Liliana@Coastal**

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**From:** SouthCoast@Coastal  
**Sent:** Tuesday, October 05, 2021 4:38 PM  
**To:** Roman, Liliana@Coastal  
**Cc:** Hammonds, Rebecca@Coastal  
**Subject:** FW: Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

-----Original Message-----

**From:** Gordon Clemons <gordonclemons@icloud.com>  
**Sent:** Tuesday, October 5, 2021 4:02 PM  
**To:** SouthCoast@Coastal <SouthCoast@coastal.ca.gov>  
**Subject:** Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

As the owner of multiple STR properties in Newport Beach, I support the Coastal Commission staff recommendation to deny the request.

Gordon Clemons

**Roman, Liliana@Coastal**

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**From:** SouthCoast@Coastal  
**Sent:** Tuesday, October 05, 2021 10:40 AM  
**To:** Roman, Liliana@Coastal  
**Cc:** Hammonds, Rebecca@Coastal  
**Subject:** FW: Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

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**From:** Steve Jones <steve.jonz@gmail.com>  
**Sent:** Tuesday, October 5, 2021 10:27 AM  
**To:** SouthCoast@Coastal <SouthCoast@coastal.ca.gov>  
**Subject:** Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

I am a 68 year resident of Newport Beach and own a home on the Balboa Peninsula.

I support the Coastal Commission Staff Recommendations especially the reduction to a 2 night minimum.

Thank you for your consideration.

Steve Jones  
600 E Ocean Front  
Balboa, CA 92661

Sent from Mail for Windows



**Roman, Liliana@Coastal**

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**From:** SouthCoast@Coastal  
**Sent:** Tuesday, October 05, 2021 5:12 PM  
**To:** Roman, Liliana@Coastal  
**Cc:** Hammonds, Rebecca@Coastal  
**Subject:** FW: Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

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**From:** Bryan Gadol <bgadol@gmail.com>  
**Sent:** Tuesday, October 5, 2021 5:12 PM  
**To:** SouthCoast@Coastal <SouthCoast@coastal.ca.gov>  
**Subject:** Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

To Those of the CA Coastal Commission,

I am writing in support of the Coastal Commission Staff recommendation to deny Newport Beach LCP Amendment Request. Please deny the request as it is written and implement changes to their request. We support a 2 night minimum, as it is preferable than 3 night min for STR.

Thank you,

Bryan Gadol  
Newport Beach resident

**Roman, Liliana@Coastal**

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**From:** SouthCoast@Coastal  
**Sent:** Tuesday, October 05, 2021 5:13 PM  
**To:** Roman, Liliana@Coastal  
**Cc:** Hammonds, Rebecca@Coastal  
**Subject:** FW: Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

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**From:** Nancy Gadol <nancygadol@yahoo.com>  
**Sent:** Tuesday, October 5, 2021 5:11 PM  
**To:** SouthCoast@Coastal <SouthCoast@coastal.ca.gov>  
**Subject:** Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

To Those of the CA Coastal Commission,

I am writing in support of the Coastal Commission Staff recommendation to deny Newport Beach LCP Amendment Request. Please deny the request as it is written and implement changes to their request. We support a 2 night minimum, as it is preferable than 3 night min for STR.

Thank you,

Nancy Gadol  
Newport Beach resident

**Roman, Liliana@Coastal**

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**From:** SouthCoast@Coastal  
**Sent:** Wednesday, October 06, 2021 2:40 PM  
**To:** Roman, Liliana@Coastal  
**Cc:** Hammonds, Rebecca@Coastal  
**Subject:** FW: Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

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**From:** Lisa Li [mailto:li.lisa@sbcglobal.net]  
**Sent:** Wednesday, October 06, 2021 1:54 PM  
**To:** SouthCoast@Coastal  
**Subject:** Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

To whom it may concern....I support Coastal Commission Staff Recommendation. I agree that the minimum number of nights should be 2 nights (not 3) as many of our guests cannot afford to stay for 3 nights and this would preclude many working families from enjoying the beach. Vacation rentals offer affordable beach access to big families that cannot stay in a hotel and cannot come for 3 nights.

Thank you.

Lisa Li

949-874-6418

1600 Dorothy Lane, Newport Beach, CA 92660

**Roman, Liliana@Coastal**

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**From:** SouthCoast@Coastal  
**Sent:** Wednesday, October 06, 2021 2:58 PM  
**To:** Roman, Liliana@Coastal  
**Cc:** Hammonds, Rebecca@Coastal  
**Subject:** FW: Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

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**From:** Colleen Howes [mailto:chowes@sabp.com]  
**Sent:** Wednesday, October 06, 2021 2:48 PM  
**To:** SouthCoast@Coastal  
**Subject:** Public Comment on October 2021 Agenda Item Wednesday 14b - City of Newport Beach LCP Amendment No. LCP-5-NPB-20-0070-3

To whom it may concern;  
I am asking you to kindly **reject** the City of Newport Beach's request to amend the Short term rental permit and operational standards.  
Thank you for your consideration on this matter.  
With Gratitude,  
Colleen Howes Short term rental permit holder  
Corona del Mar, CA 92625

Sent from Mail for Windows