

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 S. CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001  
(805) 585-1800



# F10a

## ADDENDUM

August 9, 2022

TO: Coastal Commissioners and Interested Persons

FROM: South Central Coast District Staff

SUBJECT: **Addendum to Item F10a, City of Malibu LCP Amendment No. LCP-4-MAL-20-0083-2 (Short-term Rentals) For the Commission Meeting of Friday, August 12, 2022**

---

The purpose of this addendum is to (1) make a clarification to the July 21, 2022 staff report; (2) attach correspondence received to date and provide a response to certain correspondence; and (3) attach an *Ex Parte* Notice received from Commissioner Uranga. Staff has received over 190 emails and letters since the staff report was published. The correspondence letters are available in the Correspondence tab for the item on the Commission's website, and the *Ex Parte* Notice is available under the Ex Parte tab.

### I. CHANGES TO STAFF REPORT

Staff hereby makes the following clarification to the staff report and, thereby, to the findings that staff proposes for Commission adoption (language to be inserted is shown underline and language to be deleted is shown in ~~strikethrough~~):

The first full paragraph on page 21 of the staff report shall be revised as follows:

However, at its June 13, 2022 hearing, the City Council indicated that it wished to go forward with the LCP Amendment as adopted. It also directed City staff not to work with Commission staff on any alternative STR regulations. As such, City and Commission staff have not coordinated further on any possible modifications to the LCP Amendment. Additionally, at the same June 13, 2022 meeting, the City Council directed their staff to prepare a letter to Commission staff to (1) explain how their proposed amendment "increases the availability of STRs in Malibu," and (2) explain that "Malibu will be forced to begin the strict enforcement of its existing zoning laws to prohibit the short-term rental of homes in residential neighborhoods" if the Commission does not approve the subject LCP amendment (Exhibit 6). Although the City has taken the position that the proposed

amendment increases the availability of STRs within the City, the City has not provided any evidence to support its statement. Moreover, the City Council's position appears based on a flawed premise that because the City's certified LCP does not explicitly define or regulate STRs, STRs are currently prohibited under the certified LCP. However, as previously mentioned, the Commission has taken the position that where LCPs are silent on the use of homes for short-term rentals, the general assumption is that the LCP allows for STRs, similar to the way that the rental of homes is allowed for longer-term renters without being explicitly addressed by an LCP. In this case, the Commission does not agree with the City Council's stated position that STRs are currently prohibited under the City's certified LCP. Rather, STRs have been allowed in Malibu, even before cityhood and before and after adoption of the LCP. The City has accepted the payment of transient occupancy taxes (TOTs) paid by owners of STRs and later by online platforms that have collected the taxes and remitted them for owners. The Commission has taken the position that ordinances restricting STRs are not in effect in the coastal zone unless approved by the Coastal Commission through certification of an LCP amendment (or by coastal development permit in uncertified areas). Recent court cases have found that new regulations on STRs in the coastal zone requires approval under the Coastal Act through a coastal development permit or LCPA<sup>1</sup>. In this case, as described in detail above, the City began regulating STRs in January 2021 pursuant to a Malibu Municipal Code ordinance, even though the subject LCPA had not yet been considered or approved by the Commission. Such regulation is not consistent with the certified LCP. The Commission's Enforcement Division is evaluating options to ensure compliance and resolve the matter. Additionally, if the City starts enforcing a ban on STRs without an approved LCPA, as is the City's stated intent, such action will also be inconsistent with the LCP and the Coastal Act. At that point, the Commission's Enforcement Division would evaluate options to ensure compliance and resolve the matter.

## II. STAFF'S RESPONSE TO CORRESPONDENCE RECEIVED

- a) A letter from the City of Malibu's Planning Director, Richard Mollica, was received via email on August 5, 2022, and is included in the Correspondence file for this item. The letter begins with a request that the Commission approve the City's proposed LCP Amendment regulating short-term rentals (STRs). Further, the letter states that the Commission has already approved similar hosting requirements in other jurisdictions and that the City only requests approval of a system previously approved by the Commission. However, the City provided no specific examples of such jurisdictions. While the Commission has approved past regulations allowing "hosted only" STRs in certain geographic locations or zone districts (e.g., City of Torrance CDP No. 5-20-0031 approved a restriction requiring all STRs in all residentially zoned areas to be hosted), unlike the City of Malibu, those cities or counties either had ample existing overnight accommodations (for instance, the City of Torrance), allowed existing unhosted STRs to remain in areas nearest the coast (for instance, the City of Carpinteria), or had a relatively small coastal zone area (e.g., the shoreline in the Coastal Zone of the City of Torrance extends approximately one mile)." In any event,

---

<sup>1</sup> See *Kracke v. City of Santa Barbara*, 63 Cal. App. 5th 1089 (2021) and *Keen v. City of Manhattan Beach*, 77 Cal. App. 5th 142 (2022).

each STR ordinance must be reviewed on a case-by-case basis and given the relatively limited hotel/motel rooms in the City (only around 130 rooms) and the particular geography of the City (with its 21 miles of coastline), the proposed “hosted only” requirements are not consistent with the Coastal Act or certified Land Use Plan (LUP).

Further, the City asserts that Commission staff has not demonstrated how the proposed LCP Amendment is inconsistent with and inadequate to carry out the certified LUP and how the LCP amendment is not in conformity with the policies of Chapter 3 of the Coastal Act. However, the staff report already addresses how the proposed Local Implementation Plan (LIP) amendment is inconsistent with and inadequate to carry out the certified LUP and how the LUP amendment is not in conformity with the policies of Chapter 3 of the Coastal Act. The proposed LUP amendment would allow for designated short-term rental use of residential property pursuant to a short-term rental permit issued by the City. In turn, the proposed LIP amendment would specify permit requirements, including a ban on unhosted short-term rentals in single family residences.<sup>2</sup> As discussed in the staff report, the Coastal Act protects, among other relevant provisions, “[l]ower cost visitor and recreational facilities” (Section 30213). The certified LUP (Policy 2.34) protects “existing, lower-cost visitor-serving facilities, including overnight accommodations, to the maximum feasible extent.” The proposed amendment would unduly restrict the rental of residential units to visitors and diminishes the public’s ability to access and recreate on the coast. The proposed LCP amendment is inconsistent with and inadequate to carry out the certified LUP and LCP amendment is not in conformity with the policies of Chapter 3 of the Coastal Act.

Additionally, the City argues that the staff report assumes a false baseline for the number of STRs historically located in the City. Specifically, the staff report utilizes the Host Compliance STR number advertised for STRs as of December 2, 2020 (372 STRs) to represent the historical number of STRs operating in the City, because this was the last year of data not affected by the City’s new Enforcement Ordinance. The City asserts that the Host Compliance’s STR number included listings that did not reflect actual STRs available for rent, included listings outside of City limits, and included inactive listings. However, the City presented no data showing how many STR listings in the Host Compliance December 2, 2020 number were inactive or nonexistent. The City claims that the most accurate number for STRs currently operating in the City is the number of permits issued for an STR permit (202 in June 2021). Staff notes that the reasoning for utilizing Host Compliance’s STR number of 372 on December 2, 2020 as a baseline is already addressed in the staff report. Furthermore, according to the City, approximately 414 properties remitted Transient Occupancy Tax (TOT) for STRs in 2018 (which is the most current tax data provided by the City). Additionally, this TOT tax collection date is actual use and is more in line with the staff’s proposed baseline of 372 STRs on December 2, 2020 (before the effective date of the City’s Enforcement Ordinance) than the City’s 202 STRs in June 2021 (after the effective date of the City’s Enforcement Ordinance).

---

<sup>2</sup> Existing LUP Policy 2.34 protects existing, lower-cost visitor-serving facilities, including overnight accommodations, to the maximum feasible extent. And existing LUP Policy 5.20 requires all residential development to conform with all applicable LCP policies, including density provisions. The proposed amendment to the LUP portion of the LCP would modify existing LUP Policies 2.34 and 5.20 to include additional language clarifying that short-term rental use of residential property is only allowed pursuant to a city-issued STR permit.

Lastly, the City claims the staff report under-counted the number of second units and guest houses in the City that could be used to facilitate hosted STR rentals. The letter states that a review of City records indicates that there are approximately 113 second units and 65 guest houses in the City that property owners could utilize as STRs. However, the City presents no evidence to show that a significant portion of these properties have been used or registered as STRs, so it is conjecture that they would actually be used for STRs in the future.

The City's letter argues that the proposed LCP Amendment will not negatively affect public access to coastal resources or the availability of visitor-serving accommodations and that the City's LCP has never authorized short-term rental of single-family residences and multi-family housing units. However, as noted in the staff report for this item, the City's proposed amendment would unduly restrict the rental of residential units to visitors and diminish the public's ability to access and recreate on the coast. Moreover, the City has allowed STRs in Malibu for a number of years. Indeed, the subject ordinance, Malibu Ordinance No. 472 (which is attached as Exhibit 1 to the staff report), acknowledges in Section 1.A that "the City of Malibu allows residential property to be rented on a short-term basis for periods of 30 days or less." Thus, the proposed LCP amendment is inconsistent with and inadequate to carry out the certified LUP, and the LCP amendment is not in conformity with the policies of Chapter 3 of the Coastal Act.

- b) Email correspondence from Bruce Silverstein<sup>3</sup> was received on August 2, 2022, and a supplemental email was received on August 5, 2022 (both are included in the Correspondence file for this item). Mr. Silverstein's correspondence urges the Commission to approve the City's Hosted STR LCP amendment as submitted. Specifically, Mr. Silverstein claims that Commission staff have wrongly determined that approval of the LCP Amendment "will reduce the availability of affordable overnight access to the California Coastline." He argues that STRs in single family residences are currently unlawful under Malibu's existing zoning laws and that, therefore, the proposed LCP amendment will increase the availability of "lawful" STRs in Malibu, not reduce that availability. Mr. Silverstein argues that his position is supported by the language of the Commission-approved Malibu Municipal Code (MMC). However, as stated in the staff report, the MMC is a completely separate code that is not a part of the City's Local Coastal Program, and the Commission has never considered or approved it. The MMC is in no way a standard of review for coastal development.

Additionally, as previously mentioned in the staff report, the Commission has taken the position that where LCPs are silent on the use of homes for short-term rentals, the general assumption is that LCPs allow for STRs, similar to the way that the rental of homes is allowed for longer-term renters without being explicitly addressed by an LCP. Further, the Commission has taken the position that ordinances restricting STRs are not in effect in the coastal zone unless approved by the Commission through certification of an LCP amendment (or by coastal development permit in uncertified areas). Recent court cases have found that new restrictions on STRs in the coastal

---

<sup>3</sup> Although Mr. Silverstein is the Mayor Pro Tem, he states in his correspondence that he is writing in his personal capacity only and not in any official capacity.

zone require approval under the Coastal Act through a coastal development permit or LCPA<sup>4</sup>.

Mr. Silverstein also claims that certain court decisions support Malibu's authority to prohibit STRs of homes in residential neighborhoods as part of its zoning authority. None of the court cases cited by Mr. Silverstein in his correspondence address the requirements of the Coastal Act, however, and nearly all of the cases that he cites are non-California cases. As such, those cases are not on point. Mr. Silverstein also asserts that the proposed LCP Amendment will not reduce the availability of affordable overnight access to the coast because most single family STRs are "hardly affordable to the average person who seeks to stay overnight in Malibu, with many renting for well over \$1,000 per night," and that "STRs in Malibu are such that only the wealthiest individuals can afford them." However, he does not argue that all single family STRs are over \$1,000 per night (nor could he). Moreover, as noted in the staff report, unlike many traditional hotels, STRs are unique in typically providing full kitchens and common spaces where visitors can spend time together and because many STRs contain multiple bedrooms, it is possible to accommodate family groups and spread the cost of shared amenities among more visitors (cost-sharing).

Mr. Silverstein also argues that the staff report's statement on page 17 that "short-term rental of residential property is allowed in the City so long as the property is registered with the City and TOT is adequately remitted" is incorrect. He argues that prior Malibu City Managers have failed to enforce Malibu's existing zoning laws and opted to collect TOT from short-term rentals of single-family residences in residential neighborhoods. Notably, Mr. Silverstein's position contradicts the Malibu City Council's when it approved the subject STR ordinance. Specifically, as discussed above, the subject ordinance states that "the City of Malibu allows residential property to be rented on a short-term basis for periods of 30 days or less." (Staff Report, Exhibit 1.)

It is undisputed that Malibu has allowed the short-term rental of single-family residences in Malibu for a number of years, a fact acknowledged by Mr. Silverstein in his correspondence. Thus, it is appropriate for the Commission to consider the fact that short-term rentals of single-family residences have operated in Malibu as one of the factors in evaluating the impacts posed by the City's proposed amendment. Furthermore, as stated above and in the staff report, if the City intends to restrict STRs in the future, controlling caselaw requires approval under the Coastal Act through an LCPA or coastal development permit for those restrictions to be effective<sup>5</sup>.

Lastly, Mr. Silverstein states that in 2019, a short-term rental ordinance of the City of Santa Monica survived a legal challenge (Santa Monica's ordinance requires the presence of an onsite host within the rented dwelling unit, known as a "home-share" or a "hosted" rental). However, as noted in the staff report, the Commission has not received any coastal development permit application nor any LCP amendment submittal for regulating STRs in the City of Santa Monica. In any case, the Commission must evaluate STR ordinances within the specific context of the locality. Here, despite being a significant visitor-serving destination, the lack of overnight accommodations is

---

<sup>4</sup> See *Kracke v. City of Santa Barbara*, 63 Cal. App. 5th 1089 (2021) and *Keen v. City of Manhattan Beach*, 77 Cal. App. 5th 142 (2022).

<sup>5</sup> See *Kracke v. City of Santa Barbara*, 63 Cal. App. 5th 1089 (2021) and *Keen v. City of Manhattan Beach*, 77 Cal. App. 5th 142 (2022).

a key factor in Malibu. The City of Santa Monica would not be a fair comparison to Malibu, even if an LCPA had been approved for that City. For instance, Santa Monica has a different situation regarding its overnight accommodations.

For the reasons detailed in the July 21, 2022 staff report, the proposed amendment does not strike an appropriate balance to continue to accommodate STRs in a manner that would not adversely impact the stock of existing and potential future visitor-serving overnight accommodations. Further, a denial of the City's proposed amendment does not preclude the City from developing an STR ordinance that balances relevant interests. Commission staff undertook significant efforts to work with the City to reach a more balanced approach for targeted response regulations of STRs. The City's ban on unhosted single-family STRs is not a balanced approach based on the specific facts that are relevant to the Commission's review of the proposed LCP amendment.