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LCP-4-MAL-20-0083-2 (Short-term Rentals)

August 12, 2022

EXHIBITS

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ORDINANCE NO. 472

AN ORDINANCE OF THE CITY OF MALIBU AMENDING THE LOCAL COASTAL PROGRAM (LOCAL COASTAL PROGRAM AMENDMENT NO. 19-003) AND TITLE 17 (ZONING) OF THE MALIBU MUNICIPAL CODE (ZONING TEXT AMENDMENT NO. 19-005) REGULATING THE RENTAL OF RESIDENTIAL UNITS FOR 30 DAYS OR LESS (SHORT-TERM RENTALS) INCLUDING, BUT NOT LIMITED TO, REQUIRING THE PRESENCE OF AN ONSITE HOST DURING SHORT-TERM RENTALS AND OTHER RESTRICTIONS, AND CLARIFYING PERMITTED USES RELATED TO SHORT-TERM RENTAL CITYWIDE, AMENDING CHAPTER 15.44 PERTAINING TO OPERATING PERMITS FOR ONSITE WASTEWATER TREATMENT SYSTEMS AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 platforms that consolidate and facilitate the short-term rental of property, the City has seen increased violations of its prohibition against illegal hotel, motel, and bed and breakfast inn 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, written reports, public testimony, and other in
Commission discussed additional information they wished to rec

Exhibit 1
City of Malibu Ordinance No. 472
LCP Amendment No.
LCP-4-MAL-20-0083-2

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, written reports, public testimony, and other information on the record and adopted Planning Commission Resolution No. 18-26 stating 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.

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, written reports, public testimony, and other information in the record. The City Council directed staff to revise the ordinance and return with additional information at the September 11, 2018 City Council Regular meeting.

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

K. On September 26, 2018, the City Council held a duly noticed public hearing on ZTA No. 17-002, reviewed and considered the agenda report, written reports, public testimony, and other information in the record. The City Council directed staff to investigate potential options and procedures for banning short-term rentals in the City, the implications and potential impacts of a ban, including financial analysis, approaches to using the Local Coastal Program Amendment process and the approaches of other coastal cities to dealing with short-term rentals and the current state of litigation over those issues.

L. On November 8, 2018, the Woolsey Fire broke out in the Chatsworth area north of the 101 Freeway and reached Malibu on November 9, 2018. On November 9, 2018, the Director of Emergency Services proclaimed the existence of a local emergency. The Woolsey Fire was largest fire Los Angeles County history and the most disastrous event ever in Malibu. In one week, the fire burned approximately 90,000 acres throughout the Santa Monica Mountains area and destroyed 488 single-family homes in Malibu.

M. On November 16, 2018, the Director of Emergency Services again proclaimed the existence of a local emergency as a result of conditions of extreme peril to the safety of persons and property caused by the Woolsey Fire. The City Council extended the existence of a local emergency until April 22, 2019 through Resolution Nos. 18-64, 18-68, 18-69, 19-02, and 19-13.

N. On June 24, 2019, the City Council authorized the City Manager to execute the Professional Services Agreement with Raftelis Financial Consultants, Inc. for financial analysis services to examine the short- and long-term financial implications of a potential ban on short-term rentals.

O. On October 3, 2019, the City Council Administration and Finance Subcommittee, received a report the short and long-term financial implications of a potential ban on STRs and recommended that requested that the financial analysis presentation to Council include potential expenditure reductions that could offset loss of revenue from a partial or a full ban on short-term rentals as well as a consideration of the financial impact of a 25 percent ban.

P. On October 28, 2019, the City Council received financial analysis on the

implications and potential impacts of a ban on short-term rentals. Council also discussed the potential options and procedures for banning short-term rentals, whether an amendment to the Local Coastal Program (LCP) is necessary for a short-term rental ban, and approaches other coastal cities have taken to legislate short-term rentals and associated litigation in those cities. Council directed staff to initiate a ZTA and Local Coastal Program Amendment (LCPA) regarding regulation of home-sharing and short-term rentals to include provisions similar to Santa Monica's home-sharing ordinance for single-family homes, bypassing the Zoning Ordinance Revisions and Code Enforcement Subcommittee and taking the ZTA and LCPA directly to the Planning Commission; and to bring back an updated version of the September 26, 2018, draft ordinance (ZTA No. 17-002) to the City Council for adoption that could be implemented without an LCPA, with the understanding it would be superseded when the new ZTA and LCPA were approved.

Q. On December 3, 2019, the City Council held a duly noticed public hearing on ZTA No. 17-002. The City Council did not move forward with ZTA No. 17-002 at that time but did adopt Resolution No. 19-53 initiating a new LCPA No. 19-003 and ZTA No. 19-005 to consider a regulatory system similar to that adopted by the City of Santa Monica. 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. The City Council's direction was to require a "host" to live onsite at the property during the rental, but not require the person to be within the dwelling unit. The City Council also directed that the multifamily regulation system proposed in ZTA No. 17-002 should be included.

R. On March 5, 2020, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu and sent to interested parties.

S. Beginning in March 2020, the COVID-19 pandemic began to affect City operations, and public meetings began to be held virtually in April. Legislative matters drawing extensive public interest were temporarily postponed. On June 8, 2020, the Council directed staff to move the Santa Monica-style LCPA/ZTA forward to the Planning Commission for a virtual public hearing.

T. On June 22, 2020, in response to immediate resident concerns about neighborhood impacts from short-term rentals, the City Council directed staff to bring back the ordinance presented to the City Council on December 3, 2019 (ZTA No. 17-002) establishing provisions to regulate short-term rental property.

U. On July 16, 2020, a Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu.

V. On July 29, 2020 the Planning Commission held a duly noticed public hearing on LCPA No. 19-003 and ZTA No. 19-005, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record pertaining to hosted short-term rental regulations. At the conclusion of its deliberations, the Planning Commission voted to recommend that the City Council adopt ZTA No. 19-005, with modifications, including that short-term rental of guest houses not be allowed, and made two additional recommendations, first that the Council not adopt LCPA No. 19-003 and second, that Council revise City Council Policy No. 43 pertaining to short-term rental complaints.

W. On August 10, 2020, the City Council held a duly noticed public hearing on ZTA No. 17-002 (Ordinance No. 468), reviewed and considered the staff report, written reports, public testimony, and other information in the record. City Council continued Ordinance No. 468 to the September 14, 2020, Regular meeting in order to consider it concurrently with the hosted short-term rental amendments (LCPA No. 19-003 and ZTA No. 19-005) and with a revised version of Ordinance No. 468. Council directed staff to modify Ordinance No. 468 in order to remove the primary resident requirement and certain other requirements to focus on providing enforcement tools against nuisance properties while LCPA No. 19-003 is being processed.

On September 14, 2020, the City Council held a duly noticed public hearing on the hosted short-term rental amendments (LCPA No. 19-003 and ZTA No. 19-005), reviewed and considered the staff report, the recommendation of the Planning Commission, written reports, public testimony, and other information in the record. Council continued to a date uncertain the public hearing and directed staff to bring back the Hosted Amendments (Ordinance No. 472 and Resolution No. 20-51) amended to: a) allow guest houses to be used for short-term rentals but require that a short-term rental permit designate only one specific unit on the single-family residential property to be listed, b) require the property owner to be onsite during short-term rental except that a designated operator, other than the owner, is allowed to host short-term rentals for up to two months cumulatively per calendar year with two-week notice to the City modifying the short-term rental permit, c) require designated operator to be present onsite between the hours of 9:00 p.m. and 6:00 a.m. during hosted short-term rentals, d) allow one unit of a duplex to be rented short-term if the owner lives onsite in the other, and e) allow up to 40%, up to two units maximum (whichever is fewer), of multifamily properties to be rented short-term if the other onsite units are rented long-term.

X. On September 14, 2020, the City Council also approved on first reading Ordinance No. 468 (the Enforcement Ordinance) and adopted it on September 29, 2020.

Y. On October 1, 2020, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and sent to interested parties.

Z. On October 26, 2020, the City Council Regular meeting was adjourned to November 5, 2020.

AA. On November 5, 2020, the City Council held a duly noticed public hearing on the Hosted Amendments (LCPA No. 19-003 and ZTA No. 19-005) consisting of Ordinance No. 472 and Resolution No. 20-51, reviewed and considered the staff report, written reports, public testimony, and other information in the entire record of the City's consideration of short-term rental regulations.

SECTION 2. Local Coastal Program Amendments.

The LCP Local Implementation Plan (LIP) is amended as follows:

A. LIP Section 2.1 is hereby amended by adding the following definitions, inserted in alphabetical order:

DESIGNATED OPERATOR – pertaining to the short-term rental of residential property, any natural person who is required by the owner of a short-term rental unit to: (1) resolve any nuisance or compliance issues with the dwelling unit, (2) produce requested records, (3) allow others including, but not limited, to code enforcement officers and law enforcement personnel, to enter the dwelling unit, and (4) live onsite at any dwelling unit offered for use as a hosted short-term rental for the duration of the rental.

DWELLING UNIT - one or more rooms in a building or portion thereof designed, intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. 'Dwelling unit' also includes:

A. One or more habitable rooms within a mobile home which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating and sanitation; and
B. Any room used for sleeping accommodations which contains a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except a guest room or guest suite in a hotel, motel or bed and breakfast inn; and
C. Each space or pad designed and allocated to accommodate a mobile home within a mobile home park.

GUEST – pertaining to the short-term rental of residential property, a natural person who rents a short-term rental or is an invitee of such person.

GUEST HOUSE - attached or detached living quarters on the same premises as a single family residence for the use of family members, guests or employees of the occupants of such residence, containing no kitchen facilities and not rented or otherwise used as a separate dwelling. The maximum living area of a guest house shall not exceed nine hundred (900) square feet, including any mezzanine or storage space. A guest house may include a garage not to exceed four hundred (400) sq. ft. The square footage of the garage shall not be included in the maximum living area. Guest houses may be used as short-term rentals pursuant to a valid short-term rental permit issued by the City.

HOSTED SHORT-TERM RENTAL – a short-term rental for which the owner or designated operator lives onsite throughout the guests' stay in accordance with the requirements of a hosted short-term rental permit issued by the City.

LIVES ONSITE – pertaining to short-term rental of residential property, means maintains a physical presence on the property, including, but not limited to, sleeping overnight, preparing and eating meals, and being present on the property each day of the short-term rental as required by the hosted short-term rental permit.

OWNER – pertaining to the short-term rental of residential property, a person who alone or with others, has legal or equitable title to a dwelling unit. A person whose interest in a dwelling unit is solely that of a tenant, subtenant, lessee, or sublessee under an oral or written rental housing agreement shall not be considered an owner.

SHORT-TERM RENTAL – of property means 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 30 consecutive days or less to a transient.

B. LIP Section 3.3(Q)(2)(a) Planned Development (PD) Zone is amended to add subsection (v) to section (a):

a. Lot Nos. 1—5

i. One single-family residence per lot.
ii. Accessory uses (one second unit or guest house per lot, garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the Planning Director).
iii. Domestic animals, kept as pets.
iv. Landscaping.
v. Hosted short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

C. LIP Section 13.31 is added to LIP Chapter 13 (Coastal Development Permits) to read as follows:

13.31 Short-term Rental of Residential Property

A. No coastal development permit is required nor is the City required to maintain a record of coastal development permit exemption pursuant to LIP Section 13.4.10 for short-term rental of residential property as defined in Section 2.1 of this LIP provided that such use meets all of the following criteria:

1. The short-term rental use is conducted pursuant to a valid short-term rental permit issued by the City.
2. The short-term rental use is conducted in a dwelling unit that was lawfully established as described in LIP Section 13.3(F).
3. The short-term rental use will not result in reduction or elimination of public parking for access to the beach, public trails or parklands.

D. LIP Table B – Permitted Uses (Key to Table) is amended to read as follows:

KEY TO TABLE (In addition to a coastal development permit, MCUP, CUP, LFDC, STR & WTF permits are required pursuant to the Malibu Municipal Code where shown in this table.)	
P	**Permitted use**
MCUP	**Requires the approval of a minor Conditional Use Permit by the Director**
CUP	**Requires the approval of a Conditional Use Permit**
A	**Permitted only as an accessory use to an otherwise permitted use**
LFDC	**Requires the approval of a Large Family Day Care permit**
WTF	**Requires the approval of a Wireless Telecommunications Facility**

STR	**Use requires valid short-term rental permit approved by the City**
·	**Not permitted (Prohibited)**

E. LIP Table B – Permitted Uses is amended by inserting the following new use category to the end of the Residential section of the table after the "Home Occupation" category and adding a new footnote 21:

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
RESIDENTIAL																
Short-term rental	STR[21]	STR[21]	STR[21]	STR[21]	STR[21]	·	·	·	·	·	·	·	·	·	·	·

21. Single-family residence properties are limited to hosted short-term rental permits only; one dwelling unit in a duplex may be rented unhosted if the owner or designated operator lives onsite in the other dwelling unit during the rental period; and for multifamily properties, a maximum of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.

SECTION 3. LCP Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA No. 19-003 meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act as follows:

A. The amendment maintains standards to require that uses and development within the City's jurisdiction of the Coastal Zone advance the overarching goals of protecting coastal resources. In particular, the amendment will assure that visitor-serving accommodations are available within the City through short-term rental of residential property in a manner that protects residential neighborhoods and preserves the amount and variety of the City's existing housing stock.

B. The amendment will be consistent with the following policies:

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to be used for short-term rentals, which is currently prohibited.

2.36 Coastal recreational and visitor serving uses and opportunities, especially lower cost

opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

No conversion or removal of lower cost opportunities for visitor-serving accommodations result from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which is often more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to also be used for short-term rentals, which is currently prohibited.

SECTION 4. Zoning Text Amendments.

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

A. MMC Section 17.02.060 (Definitions) is hereby amended to add the following definitions, inserted in alphabetical order:

"Bedroom" means any habitable space in a dwelling unit other than a kitchen or living room that is intended for or capable of being used for sleeping, is at least 70 square feet in area, is separated from other rooms by a door, and is accessible to a bathroom without crossing another bedroom.

"Booking transaction" means any reservation or payment service provided by a natural person, joint venture, joint stock company, partnership, association, club, company corporation, business trust, or organization of any kind who facilitates a short-term rental transaction between a prospective guest and an owner.

"Designated operator" means any natural person who is required by the owner of a short-term rental unit to: (1) resolve any nuisance or compliance issues with the dwelling unit, (2) produce requested records, (3) allow others including, but not limited, to code enforcement officers and law enforcement personnel, to enter the dwelling unit, and (4) live onsite at any dwelling unit offered for use as a hosted short-term rental for the duration of the rental.

"Dwelling unit" means one or more rooms in a building or portion thereof designed, intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. "Dwelling unit" also includes:

1. One or more habitable rooms within a mobilehome which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating and sanitation; and
2. Any room used for sleeping accommodations which contains a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except a guest room or guest suite in a motel, hotel or bed and breakfast inn.

"Guest" means a natural person who rents a short-term rental or is an invitee of such person. This definition is applicable to Chapter 17.55 only.

"Guest House" means detached living quarters on the same premises as a single family residence for the use of family members, guests or employees of the occupants of such residence, containing

no kitchen facilities and not rented or otherwise used as a separate dwelling. Guest houses may be used for short-term rentals pursuant to a valid short-term rental permit issued by the City.

"Hosted short-term rental" means a short-term rental for which the owner or designated operator lives onsite throughout the guests' stay in accordance with Section 17.55.040.

"Hosting platform" means a natural person, joint venture, joint stock company, partnership, association, club, company corporation, business trust, or organization of any kind who participates in the short-term rental business by collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting a booking transaction using any medium of facilitation.

"Lives onsite" means maintains a physical presence on the property, including, but not limited to, sleeping overnight, preparing and eating meals, and being present on the property each day of the short-term rental as required by the hosted short-term rental permit. This definition is applicable to Chapter 17.55 only.

"Owner" means any person who, alone or with others, has legal or equitable title to a dwelling unit. A person whose interest in a dwelling unit is solely that of a tenant, subtenant, lessee, or sublessee under an oral or written rental housing agreement shall not be considered an owner. This definition is applicable to Chapter 17.55 only.

"Primary Residence" means the usual place of return for housing of an owner as documented to the satisfaction of the City Manager by an active voter registration, a valid driver's license or other government issued identification card with the address of the property. A person can only have one primary residence. This definition is applicable to Chapter 17.55 only.

"Short-term rental" of property means 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 30 consecutive days or less to a transient.

B. MMC Section 17.08.020 (Permitted Uses, Rural Residential) is amended to add subsection L:

L. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

C. MMC Section 17.10.020 (Permitted Uses, Single Family) is amended to add subsection I:

I. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

D. MMC Section 17.12.020 (Permitted Uses, Multiple Family) is amended to add subsection J:

J. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

E. MMC Section 17.14.020 (Permitted Uses, Multifamily Beachfront) is amended to add subsection I:

I. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

F. MMC Section 17.16.020 (Permitted Uses, Mobile Home) is amended to add subsection C:

C. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

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

Section 17.55.010 Short-Term Rental of Property

A. Hosted short-term rental of single-family residential property, and the short-term rental of up to two dwelling units on a multifamily housing parcel, is allowed as specified in Section 17.55.040 if conducted in compliance with this Chapter 17.55 and the owner complies with each of the following requirements:
    1. Obtains and maintains at all times a Short-Term Rental Permit issued pursuant to this Chapter.
    2. Operates the short-term rental activity in compliance with all permit conditions for short-term rental as set forth in Section 17.55.020 and any regulations promulgated pursuant to this Chapter.
    3. Collects and remits Transient Occupancy Tax ("TOT"), in coordination with any hosting platform if utilized, to the City and complies with all City TOT requirements as set forth in Chapter 3.24 of this Code.
    4. Takes responsibility for and actively prevents any nuisance activities that may take place as a result of short-term rental activities.
    5. Is available, or a designated operator is available, 24 hours a day, 7 days a week, at a phone number provided to both the City and any guest staying at the property to immediately answer a call from the City, an agent authorized by the City to make such calls, or a guest when there is a guest renting the property. No person may serve as a designated operator for more than one hosted short-term rental concurrently.
    6. Ensures that basic health and safety features are provided, including fire extinguishers, smoke detectors, and carbon monoxide detectors.
    7. Limits the occupancy of the short-term rental (including the host, guests, and any other natural persons) to two people more than twice the number of bedrooms listed on City or County records as determined by the Planning Director up to a maximum of 14 people, unless a special event permit is obtained pursuant to Chapter 5.34 of this code.

8. Maintains liability insurance to cover the short-term rental of property with minimum limits of not less than $500,000 or conducts each short-term rental transaction through a hosting platform that provides equal or greater coverage.
9. Complies with Section 17.55.080 governing advertisements of short-term rentals.
10. Provides all guests with the Short-term Rental Code of Conduct, which shall be developed by the City Manager, and posts the same on the inside of the main entrance door to the dwelling unit rented, or on the wall adjacent thereto.
11. Provides 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 in compliance with federal and state law.
12. Complies with all applicable laws, including the noise limitations set forth in Chapter 8.24 of this Code, and all applicable codes regarding fire, building and safety, and other relevant laws and ordinances.
13. Maintains a valid Onsite Wastewater Treatment System (OWTS) operating permit pursuant to Chapter 15.44 or has entered a compliance agreement with the City excusing such compliance and is in full compliance with the compliance agreement and not in default or breach.

Section 17.55.020 Short-Term Rental Permit Required

A. No person shall offer, facilitate an offer, or allow the short-term rental of property in any location not specifically identified and approved on a valid 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.

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. Each permit may include only one listing, and shall designate the dwelling unit, or portion thereof, that is to be rented.

C. Application Required. To obtain a short-term rental permit an owner shall submit an application on a form to be provided by the City and signed by the owner under penalty of perjury.

D. 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. Address of the proposed short-term rental
2. Type of dwelling unit
3. Contact information for the owner of the property
4. Contact information for the designated operator, if a designated operator will live onsite for the hosted short-term rental
5. A copy of a valid OWTS operating permit for the property, or a copy of a City approved compliance agreement pursuant to Section 17.55.010(A)(14) paired with

an attestation that the owner is in full compliance with the compliance agreement and not in default or breach

6. Attestation and agreement to comply with the requirements of this Chapter
7. Proof that the owner is in compliance with Chapter 3.24 of this code
8. The Uniform Resource Locator (URL) (i.e., the website address) for any and all advertisements of the short-term rental of the property
9. 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 owner 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 owner maintains a short-term rental permit for the property.
10. Attestation of the number of bedrooms in the proposed short-term rental and proposed maximum occupancy
11. Attestation of compliance with the required insurance coverage
12. The location of all dwelling units, or portions thereof, that will be rented on a short-term basis
13. The type of short-term rental permit sought: hosted or multifamily
14. If seeking a hosted short-term rental permit, proof of primary residency and attestation that the location is the owner's primary residence, meaning that the owner lives in a dwelling 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 owner's primary residence for the duration of the permit shall suffice
15. If seeking a multifamily short-term rental permit, contact information, including phone number, for all tenants, proof of ownership of the entire parcel, and an attestation that all dwelling units (except for two) are rented on a long term-basis per Section 17.55.040(B). The permit holder shall maintain copies of the leases for all tenants documenting compliance at all times with Section 17.55.040(B) for a period of three years following the expiration of the short-term rental permit.

E. Review and Approval. Short-term rental permits shall be subject to the approval of the City Manager or her/his designee.

F. Notice of Approval. Upon approval, the Planning Director shall provide, at the owner's expense, the contact information for the owner or designated operator identified in 17.55.010(A)(5) to all dwelling units within 500 feet of the short-term rental unit's parcel boundary.

G. Duration. Short-term rental permits shall be issued for one year and must be renewed annually.

H. Duty to Amend. If there are any material changes to the information submitted on a short-term rental permit application, the owner shall submit an amended application on a form to be provided by the City and signed by the owner under penalty of perjury within 30 days of any such changes, or immediately for any change in the owner or designated operator's contact information. For the purposes of this Section, any change to the information required to be included in a short-term rental permit application by subsection (D) of this Section shall constitute a material change. A permittee may not cure a violation of this Chapter by seeking to amend a short-term rental permit after a violation occurs; short-term rental of a property may only be conducted as specifically authorized by an active short-term rental permit.

I. 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.

J. 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.

K. Nothing in this chapter shall prohibit the operation of a hotel, motel or bed and breakfast inn where such use is permitted.

L. Possession of a STR permit does not excuse any other permitting requirements of this code including but not limited to TOT and special event permit requirements.

17.55.030 Grounds for Denial and Revocation of Short-term Rental Permit

A. 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 owner has not paid all TOT due or is not in compliance with Chapter 3.24 of this code.

2. The property has 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 owner 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 owner has failed to amend an application as required by Section 17.55.020(H).

6. 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.

7. The property has received two or more citations for violation of the City's noise ordinance within a period of 12 consecutive months.
8. Failure to comply with Section 17.55.010(A)(13)
9. A holder of a Hosted Short-term Rental Permit receives three or more citations for violation of any combination of the following requirements within a period of 12 consecutive months, or a holder of a Multifamily Short-term Rental Permit receives two or more citations for violation of any combination of the following requirements within a period of 12 consecutive months:
    i. The requirements of Sections 17.55.010(A)(4), (7), (10), (11), 17.55.040(A), and Section 17.55.080.

17.55.040 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. Hosted Short-term Rental Permit. A primary resident owner may obtain this type of permit which allows hosted short-term rental of residential property, in compliance with this chapter, during the period that the permit is valid. The owner must live onsite during any period of rental, and must appear at the property within one hour of a phone call requesting such appearance by the City, an agent authorized by the City to make such calls, or law enforcement personnel. In addition, the owner must be located onsite, and present immediately upon request, during the hours of 9 p.m. to 6 a.m. during any period that the unit is rented. A designated operator may fulfill the owner obligations listed in the prior two sentences for up to 60 days cumulatively during a calendar year so long as the owner provides the City written notice and contact information for the designated operator, two weeks in advance of the rental date, in a form acceptable to the City. Multifamily residential buildings containing three 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 a primary resident owner of a condominium unit may obtain this type of permit for the unit where he or she has established his or her primary residence.

B. Multifamily Short-term Rental Permit. Owners of entire parcels that have multifamily residential buildings containing three 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 units, or 40% of the units on the parcel (whichever is less), 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. The owner of both units of a duplex may also

obtain this type of permit to rent one unit if the owner lives onsite during any period of rental in the other unit. The owner of the duplex must appear at the property within one hour of a phone call requesting such appearance by the City, an agent authorized by the City to make such calls, or law enforcement personnel. In addition, the owner the duplex must be located onsite, and present immediately upon request, during the hours of 9 p.m. to 6 a.m. during any period that the unit is rented. A designated operator may fulfill the owner obligations listed in the prior three sentences for up to 60 days cumulatively during a calendar year so long as the owner provides the City written notice and contact information for the designated operator, two weeks in advance of the rental date, in a form acceptable to the City

17.55.050 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 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 owner are paid in full, including the renewal fee.

17.55.060 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 owner and location for a 12 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 owner 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 17.55.030(A)(9), or (3) two or more citations for violation of the City's noise ordinance in a period of 12 consecutive months, a new application shall not be approved for a period of at least 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 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 (in addition to any other penalty) result in the property and owner 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.

17.55.070 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 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 will result in the denial or revocation being 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 Advertisement and Facilitation of Short-term Rentals

A. The owner shall include and prominently post the following information in any advertisement for short-term rental:

    1. The short-term rental permit number issued by the City;

    2. That the owner lives onsite and the owner or designated operator will live onsite throughout the visitor's stay unless the advertisement is for a permitted multifamily short-term rental;

    3. The permitted occupancy of the short-term rental as specified in the short-term rental permit application; and

    4. Any other information required by regulations promulgated pursuant to this Chapter.

B. No advertisements regarding the availability of a dwelling unit for short-term rental shall be posted in or on any exterior area of the dwelling unit, any exterior area of any other dwelling unit on the same lot, or the lot on which the dwelling unit is located.

C. The address of the property shall be prominently displayed.

D. No person or entity shall offer, advertise or facilitate the short-term rental of property in the city unless the owner possesses a valid short-term rental permit for its rental.

E. Any offer or advertisement for the short-term rental of property in the City that does not contain a valid short-term rental permit number, or which the City identifies as illegal to the person or entity advertising or offering the rental, shall be immediately removed from any location it is posted, whether online or otherwise.

17.55.090 Hosting Platform Responsibilities

A. Hosting platforms shall be responsible for collecting all applicable TOT and remitting the same to the City. The hosting platform shall be considered an agent of the owner for purposes of TOT collections and remittance responsibilities as set forth in Chapter 3.24 of this Code. Should a hosting platform fail to fulfill its responsibilities under this Section the owner shall remain responsible for collection and remittance of the TOT the Hosting platform failed to collect and/or remit to the City.

B. Subject to applicable laws, hosting platforms shall disclose to the City on a regular basis each short-term rental listing located in the City, the names of the owner for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay.

C. Hosting platforms shall not complete any booking transaction for any residential property or unit unless it is listed on the City's registry of properties with valid short-term rental permits at the time the hosting platform receives a fee for the booking transaction.

D. Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to a short-term rental, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.

E. Safe Harbor. A hosting platform operating exclusively on the Internet, which operates in compliance with subsections (A), (B), (C), and (D) above, shall be presumed to be in compliance with this Chapter. If technical issues pose a substantial obstacle to compliance with this Section, a hosting platform may also satisfy these obligations pursuant to a compliance agreement with the City that prevents booking transactions for unpermitted short-term rentals, collects all transient occupancy tax due, and complies with the disclosure requirements of this Section..

F. The provisions of this Section 17.55.090 shall be interpreted in accordance with otherwise applicable State and Federal law(s) and will not apply if determined by the City to be in violation of, or preempted by, any such law(s).

17.55.100 Regulations

The City Manager or designee may promulgate regulations to facilitate the purposes of this Chapter.

17.55.110 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 Section 17.55.020(A) by an owner shall be subject to a fine of $1000 per day or violation, or twice the short-term rental's advertised daily rental rate per day or violation, whichever is higher, and for all other violations an owner shall be subject to a fine of $500 per day or violation, or the short-term rental's advertised daily rental rate per day or violation, whichever is higher.

B. The short-term rental permit holder shall be held responsible for administrative citations for violations of the municipal code or local coastal program 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.

H. MMC Title 17 – Appendix 1 (Permitted Uses Table) – Key to Table is hereby amended to read as follows:

KEY TO TABLE (In addition to a coastal development permit where applicable, MCUP, CUP, LFDC, STR & WTF permits are required pursuant to the Malibu Municipal Code where shown in this table.)	
P	Permitted use
MCUP	Requires the approval of a minor Conditional Use Permit by the Director
CUP	Requires the approval of a Conditional Use Permit
A	Permitted only as an accessory use to an otherwise permitted use
LFDC	Requires the approval of a Large Family Day Care permit
WTF	Requires the approval of a Wireless Telecommunications Facility
STR	Use requires valid short-term rental permit approved by the City
•	Not permitted (Prohibited)

I. MMC Title 17 – Appendix 1 – (Permitted Uses Table) is amended by inserting the following new use category after the "Home Occupations" use category in the table and a new footnote 32:

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Short-term rental	STR[32]	STR[32]	STR[32]	STR[32]	STR[32]	·	·	·	·	·	·	·	·	·	·	·

32. Single-family residence properties are limited to hosted short-term rental permits only; one dwelling unit in a duplex may be rented unhosted if the owner or designated operator lives onsite in the other dwelling unit during

the rental period; and for multifamily properties, a maximum of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.

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SECTION 6. 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 made 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 7. Zoning Text Amendment Findings.

The City Council hereby finds that ZTA No. 19-005 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], protect rural residential character [General Plan LU Policy 1.1.4], protect and preserve the unique character of the City's distinct neighborhoods, and conserve affordable housing in the Coastal Zone [General Plan Housing Policy 1.4].

ZTA No. 19-005 will support these policies by introducing regulations to reduce the impact of short-term rentals on neighbors and the community.

SECTION 8. 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. Further, the Ordinance is exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines which states that permitting and licensing of existing private structures involving negligible or no expansion of existing or former use in that the proposed short-term rental permitting program will establish rules and regulations that do not expand existing residential uses. Additionally, the Ordinance is exempt pursuant to Section 15321 (Enforcement Actions by Regulatory Agencies) in that the regulatory program established will facilitate enforcement actions, such as permit revocation, for nuisance short-term rental properties. Finally, in accordance with the CEQA, Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This Ordinance is for an LCP amendment which must be certified by the California Coastal Commission before it takes effect.

SECTION 9. 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 10. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit the LCP amendments contained in Section 2 of this Ordinance to the California Coastal Commission per Title 14, California Code of Regulations Section 13554.5(a).

SECTION 11. Effectiveness.

The LCP amendment and corollary ZTA approved in this Ordinance shall become effective only upon certification by the California Coastal Commission of this amendment to the LCP.

SECTION 12. 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 23rd day of November, 2020.

MIKKE PIERSON, Mayor

ATTEST:

HEATHER GLASER, City Clerk

Date: December 7, 2020

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 472 was passed and adopted at the Regular City Council meeting of November 23, 2020, by the following vote:

AYES:	4	Councilmembers:	Farrer, Mullen, Peak, Pierson
NOES:	0		
ABSTAIN:	1	Councilmember:	Wagner
ABSENT:	0		

HEATHER GLASER, City Clerk
(seal)

RESOLUTION NO. 20-51

A RESOLUTION OF THE CITY OF MALIBU DETERMINING LOCAL COASTAL PROGRAM AMENDMENT NO. 19-003 IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING THE LOCAL COASTAL PROGRAM LAND USE PLAN TO MODIFY CHAPTER 3 PERTAINING TO SHORT-TERM RENTALS (CITYWIDE)

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

SECTION 1. Recitals.

A. The City of Malibu wishes to address the potential impacts of short-term rental of residential property and protect the neighborhood character in the City by adopting regulations for the short-term rental of property that prohibit use inconsistent with the General Plan and impose prohibitions and regulations consistent thereof.

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

C. 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.

D. 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, 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.

E. 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, written reports, public testimony, and other information on the record and adopted Planning Commission Resolution No. 18-26 stating 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.

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

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

H. On September 26, 2018, the City Council held a duly noticed public hearing

on ZTA No. 17-002, reviewed and considered the agenda report, written reports, public testimony, and other information in the record. The City Council directed staff to investigate potential options and procedures for banning short-term rentals in the City, the implications and potential impacts of a ban, including financial analysis, approaches to using the Local Coastal Program Amendment process and the approaches of other coastal cities to dealing with short-term rentals and the current state of litigation over those issues.

I. On November 8, 2018, the Woolsey Fire broke out in the Chatsworth area north of the 101 Freeway and reached Malibu on November 9, 2018. On November 9, 2018, the Director of Emergency Services proclaimed the existence of a local emergency. The Woolsey Fire was largest fire Los Angeles County history and the most disastrous event ever in Malibu. In one week, the fire burned approximately 90,000 acres throughout the Santa Monica Mountains area and destroyed 488 single-family homes in Malibu.

J. On November 16, 2018, the Director of Emergency Services again proclaimed the existence of a local emergency as a result of conditions of extreme peril to the safety of persons and property caused by the Woolsey Fire. The City Council extended the existence of a local emergency until April 22, 2019 through Resolution Nos. 18-64, 18-68, 18-69, 19-02, and 19-13.

K. On June 24, 2019, the City Council authorized the City Manager to execute the Professional Services Agreement with Raftelis Financial Consultants, Inc. for financial analysis services to examine the short- and long-term financial implications of a potential ban on short-term rentals.

L. On October 3, 2019, the City Council Administration and Finance Subcommittee, received a report the short and long-term financial implications of a potential ban on STRs and recommended that requested that the financial analysis presentation to Council include potential expenditure reductions that could offset loss of revenue from a partial or a full ban on short-term rentals as well as a consideration of the financial impact of a 25 percent ban.

M. On October 28, 2019, the City Council received financial analysis on the implications and potential impacts of a ban on short-term rentals. Council also discussed the potential options and procedures for banning short-term rentals, whether an amendment to the Local Coastal Program (LCP) is necessary for a short-term rental ban, and approaches other coastal cities have taken to legislate short-term rentals and associated litigation in those cities. Council directed staff to initiate a ZTA and Local Coastal Program Amendment (LCPA) regarding regulation of home-sharing and short-term rentals to include provisions similar to Santa Monica's home-sharing ordinance for single-family homes, bypassing the Zoning Ordinance Revisions and Code Enforcement Subcommittee and taking the ZTA and LCPA directly to the Planning Commission; and to bring back an updated version of the September 26, 2018, draft ordinance (ZTA No. 17-002) to the City Council for adoption that could be implemented without an LCPA, with the understanding it would be superseded when the new ZTA and LCPA were approved.

N. On December 3, 2019, in compliance with Local Coastal Program (LCP) Local Implementation Plan (LIP) Chapter 19, the City Council adopted Resolution No. 19-53 to initiate Local Coastal Program (LCP) Amendment No. 19-003 to consider changes to the Malibu LCP and Zoning Text Amendment (ZTA) No. 19-005 to consider changes to Title 17 (Zoning) of the Malibu Municipal Code (MMC) and provided direction to staff on the definitions and regulations to include in the proposed amendments.

O. On March 5, 2020, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu and sent to interested parties.

P. Beginning in March 2020, the COVID-19 pandemic began to affect City operations, and public meetings began to be held virtually in April. Legislative matters drawing extensive public interest were temporarily postponed.

Q. On March 12, 2020, the Special Planning Commission meeting of March 30, 2020 was adjourned to April 6, 2020 due to the COVID-19 pandemic.

R. On April 6, 2020, the Planning Commission continued the item to a date uncertain.

S. On June 8, 2020, Council directed staff to move the Santa Monica-style LCPA/ZTA forward to the Planning Commission with a virtual public hearing.

T. On July 2, 2020, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and sent to interested parties.

U. On July 16, 2020, a Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu.

V. On July 29, 2020 the Planning Commission held a duly noticed public hearing on LCPA No. 19-003 and ZTA No. 19-005, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record. At the conclusion of its deliberations, the Planning Commission voted to recommend that the City Council adopt ZTA No. 19-005, with modifications, and made two additional recommendations, first that the Council not adopt LCPA No. 19-003 and second, that Council revise City Council Policy No. 43 pertaining to short-term rental complaints.

W. On August 20, 2020, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu.

X. On September 14, 2020, the City Council held a duly noticed public hearing on the Hosted Amendments (LCPA No. 19-003 and ZTA No. 19-005), reviewed and considered the staff report, the recommendation of the Planning Commission, written

reports, public testimony, and other information in the record. Council continued to a date uncertain the public hearing and directed staff to bring back the Hosted Amendments (Ordinance No. 472 and Resolution No. 20-51) amended to: a) allow guest houses to be used for short-term rentals but require that a short-term rental permit designate only one specific unit on the single-family residential property to be listed, b) require the property owner to be onsite during short-term rental except that a designated operator, other than the owner, is allowed to host short-term rentals for up to two months cumulatively per calendar year with two-week notice to the City modifying the short-term rental permit, c) require designated operator to be present onsite between the hours of 9:00 p.m. and 6:00 a.m. during hosted short-term rentals, d) allow one unit of a duplex to be rented short-term if the owner lives onsite in the other, and e) allow up to 40%, up to two units maximum (whichever is fewer), of multifamily properties to be rented short-term if the other onsite units are rented long-term.

Y. On September 14, 2020, the City Council also approved on first reading Ordinance No. 468 (the Enforcement Ordinance) and adopted it on September 29, 2020.

Z. On October 1, 2020, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and sent to interested parties.

AA. On October 26, 2020, the City Council Regular meeting was adjourned to November 5, 2020.

BB. On November 5, 2020, the City Council held a duly noticed public hearing on the Hosted Amendments (LCPA No. 19-003 and ZTA No. 19-005) consisting of Ordinance No. 472 and Resolution No. 20-51, reviewed and considered the staff report, written reports, public testimony, and other information in the entire record of the City's consideration of short-term rental regulations.

SECTION 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCPA and therefore, does not apply to this application. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission (CCC) before it takes effect

SECTION 3. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA No. 19-003 meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act as follows:

A. The amendment maintains standards to require that development within the City's jurisdiction of the Coastal Zone advance the overarching goals of protecting coastal

resources. In particular, the amendment will assure that visitor-serving accommodations are available within the City through short-term rental of residential property in a manner that protects residential neighborhoods and preserves the amount and variety of the City's existing housing stock.

B. The amendment will be consistent with the following policies:

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

No conversion or removal of lower cost opportunities for visitor-serving accommodations result from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which is often more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to also be used for short-term rentals, which is currently prohibited.

2.36 Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

No conversion or removal of lower cost opportunities for visitor-serving accommodations result from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which is often more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to also be used for short-term rentals, which is currently prohibited.

SECTION 4. Local Coastal Program Amendment No. 19-003.

LCPA No. 19-003 includes the following amendments.

A. Amend LUP Chapter 5 (New Development), Section C (Land Use Policies), Subsection 2 (Land Use Designations) to replace the land use designation descriptions below with the amended language to read as follows:

RURAL RESIDENTIAL (RR): The RR designation allows sensitively designed, large lot single family residential development, with a range of maximum densities from one dwelling per acre to one dwelling unit per 40 acres. Minimum lot sizes range from 1 to 40 acres, with agricultural uses and animal keeping as accessory uses to approved residential development. Public open space and recreation may be permitted. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City. The following maximum residential density standards shall apply:

RR1	One dwelling unit per acre
RR2	One dwelling unit per 2 acres
RR5	One dwelling unit per 5 acres
RR10	One dwelling units per 10 acres
RR20	One dwelling unit per 20 acres
RR40	One dwelling unit per 40 acres

SINGLE-FAMILY RESIDENTIAL (SF): This land use designation allows single family residential development at higher density than the rural residential category. It is intended to enhance the rural characteristics of the community by maintaining low-density single-family residential development on lots ranging from 1/4 to 1 acre in size. Single-Family Low (SFL) allows a maximum density of 2 dwelling units per acre, with a minimum lot size of 0.5 acre. Single-Family Medium (SFM) allows a maximum density of 4 dwelling units per acre, with a minimum lot size of 0.25 acre. Public open space and recreation may be permitted. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

MOBILE HOME RESIDENTIAL (MHR): The MHR designation is intended to accommodate existing mobile home parks and associated facilities. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

MULTI-FAMILY RESIDENTIAL (MF): The MF designation provides for multi-family residential developments, such as duplexes, condominiums, stock cooperatives, and apartments. The Multi-family Residential (MF) designation allows a maximum density of six units per acre on a minimum lot size of 20,000 square feet. Public open space and recreation may be permitted. Short-term rental use of multi-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

B. Amend LUP Policy 5.20 to read as follows:

5.20 All residential development, including land divisions and lot line adjustments, shall conform to all applicable LCP policies, including density provisions. Allowable densities are stated as maximums. Compliance with the other

policies of the LCP may further limit the maximum allowable density of development. Short-term rental use of residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

C. Amend LUP Policy 2.34 to read as follows:

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources. Short-term rental use of residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

SECTION 5. Approval.

Subject to the contingency set forth in Section 8, the City Council hereby adopts LCPA No. 19-003, amending the LCP.

SECTION 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 3-001 to the CCC for certification, in conformance with the submittal requirements specified in California Code of Regulations, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations section 13551, et. seq.

SECTION 7. Effectiveness.

The LCP amendment approved in this Resolution shall become effective only upon its certification by the CCC.

SECTION 8. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 5th day of November 2020.

MIKKE PIERSON, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 20-51 was passed and adopted by the City Council of the City of Malibu at the adjourned regular meeting thereof held on the 5th day of November 2020 by the following vote:

AYES:	4	Councilmembers:	Farrer, Mullen, Peak, Pierson
NOES:	0		
ABSTAIN:	1	Councilmember:	Wagner
ABSENT:	0		

HEATHER GLASER, City Clerk
(seal)

ATTACHMENT B

Supplemental Information
LCPA 19-003 – Short-Term Rentals

Accommodations in Malibu			
Name	Address	Accommodation Type	Number
The M Malibu	22541 PCH	Hotel Rooms	18
Nobu Ryokan	22752 PCH	Hotel Rooms	16
Malibu Beach Inn	22878 PCH	Hotel Rooms	47
The Surfrider Hotel	23033 PCH	Hotel Rooms	20
The Native	28920 PCH	Hotel Rooms	13
Malibu County Inn	6506 Westward Road	Hotel Rooms	16
		Total Hotel Rooms	130
Malibu Beach RV Park	25801 PCH	RV sites	142
		Tent sites	35
		Total Existing Accommodations	**307**
Pending applications on file with the City			
Malibu Inn Hotel	22959 PCH	Hotel Rooms	20
Sea View Hotel	22741 PCH	Hotel Rooms	39
		Total Future Hotel Rooms	**59**
		Overall Total (Existing and Planned)	**366**

Exhibit 3
City of Malibu Overnight
Accommodations Table
LCP Amendment No.
LCP-4-MAL-20-0083-2

City of Malibu

MEMORANDUM TO FILE

To: Steve McClary, Interim City Manager

From: Richard Mollica, Planning Director

Date: April 11, 2022

Re: Short term rental LCPA

In recent discussions with the California Coastal Commission (CCC) staff regarding the City's Short Term Rental (STR) Local Coastal Program Amendment (LCPA), the CCC staff advised City staff that they were moving towards recommending denial of the LCPA. CCC staff believes that the hosted-only provision for single-family properties will reduce the availability of STRs in the City and unlike Santa Monica, the City has fewer other overnight accommodations (hotel rooms and bed and breakfasts) to make up for the loss of those STRs. CCC staff stated they believe that many people would not want to rent an STR if the homeowner was living in the house at the same time. CCC staff felt that single-family properties with existing guest houses or second units would be the properties that would most likely support to utilize the hosted-only provision. Staff is currently developing a list of those properties along with a list of other legal accessory structures that a property owner could utilize as an STR.

Coastal staff expressed a willingness to work with the City towards a mutually agreeable modification to the LCPA before the Commission considers the LCPA. The Commission must act on the amendment request by early November 2022, which means that the latest the Commission could hear the item at a public meeting would be at their October 2022 meeting. While the LCPA could be heard at any meeting, the next scheduled meeting in the South Central (Santa Barbara, Ventura, and Los Angeles) area would be in August 2022. Any proposed modifications would need to be agreed upon well in advance of that hearing in order for Coastal staff to meet staff report submittal deadlines.

In Fiscal Year 20-21 the CCC certified LCP amendments related to STRs for the Cities of Carmel-by-the-Sea, Oxnard, and Laguna Beach as well as the County of Santa Cruz. Coastal staff indicated that while each city has its own set of unique issues based on local circumstances the key is to find a balance that would not overly restrict STRs while at the same time minimizing impacts on residential neighborhoods. CCC staff informed City staff that other cities/counties have proposed allowing both hosted and non-hosted STRs. The CCC staff indicated that the City should consider allowing non-hosted STRs only during certain higher demand periods of the year. This would result in allowing both hosted and non-hosted STRs while placing a limit on the number of permits allowed for each STR type.

In addition, this approach could place a limit on the number of STRs by neighborhood to reduce over-concentration. Given the hearing timeline for the City's LCPA, it would be difficult for staff to complete the needed in-depth analysis for some of the approaches taken by other cities but staff could continue to work with CCC staff on some of the other approaches at the direction of the City Council.

City Council Meeting
06-13-22
Item 6.A.

Council Agenda Report

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

Prepared by: Joyce Parker-Bozylinski, Contract Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: May 25, 2022 Meeting date: June 13, 2022

Subject: Short-Term Rental Ordinance Discussion (LCPA No. 19-003)

RECOMMENDED ACTION: Provide direction to staff on discussions with California Coastal Commission (CCC) staff regarding the City's proposed Short-term Rental Ordinance (LCPA 19-003).

FISCAL IMPACT: In Fiscal Year 2020-2021, the City received $5.3 million (audited) in transient occupancy tax (TOT) from private residential rentals. For Fiscal Year 2021-22, actual TOT receipts are on track to out-perform the budgeted amount of $5.0 million. The implementation of the Hosted Short-Term Rental Ordinance will have a significant impact on this revenue. Preliminary loss estimates are $2.0 million to $3.0 million. Changes to the Hosted Ordinance will affect this estimate but the extent to which is unknown at this time.

WORK PLAN: This item was included as item #4b in the Adopted Work Plan for Fiscal Year 2021-2022.

DISCUSSION: On November 23, 2020, the City Council adopted Ordinance No. 472, the Hosted STR Ordinance, to establish provisions to regulate short-term rental of property citywide which include, but are not limited to, requiring the presence of an onsite host during short-term rentals, primary residency requirements and multifamily restrictions. The Hosted STR Ordinance is intended to supersede the short-term rental regulations and permit program currently in place. The Hosted STR Ordinance regulations cannot go into effect until the associated amendments to the City's Local Coastal Program and Land Use Plan are certified by the California Coastal Commission (CCC). The Local

Exhibit 5
6.13.22 Malibu City Council Mtg. Agenda Report re: STR Ordinance Discussion
LCP Amendment No. LCP-4-MAL-20-0083-2

Coastal Program Amendment (LCPA), as recommended by the City Council, was received by the CCC on December 9, 2020 and is currently under its review.

CCC staff contacted City Staff to inform the City that the CCC was moving towards recommending denial of the LCPA. CCC staff believes that the hosted-only provision for single-family properties will reduce the availability of STRs in the City, and unlike Santa Monica, the City has fewer overnight accommodations (hotel rooms and bed and breakfasts) to make up for the loss of those STRs. CCC staff stated they believe that many people would not want to rent an STR if the homeowner was living in the house at the same time. CCC staff felt that single-family properties with existing guest houses or second units would be the properties that would most likely utilize the hosted-only provision since either the single-family house or the accessory building could be utilized as a STR. City staff is currently developing a list of those properties along with a list of properties with existing legal accessory structures.

CCC staff expressed a willingness to work with the City towards a mutually agreeable modification to the LCPA before the Commission considers the LCPA. The CCC must act on the amendment request by early November 2022, which means that the latest the CCC could hear the item at a public meeting would be at its October 2022 meeting which will be held in San Diego. The September meeting with be in the Central (Santa Cruz, Monterey, San Luis Obispo) area. The next scheduled meeting in the South Central (Santa Barbara, Ventura, and Los Angeles) area would be in August 2022. Any proposed modifications would need to be agreed upon well in advance of that hearing in order for CCC staff to meet staff report submittal deadlines.

In Fiscal Year 2020-21 the CCC certified LCP amendments related to STRs for the Cities of Carmel-by-the-Sea, Oxnard, and Laguna Beach as well as the County of Santa Cruz. Coastal staff indicated that while each city/county has its own set of unique issues based on local circumstances the key is to find a balance that would not overly restrict STRs while at the same time minimizing impacts on residential neighborhoods. While there were a range of approaches taken by other cities, given the hearing timeline for the City's LCPA, it would be difficult for staff to complete the needed in-depth analysis for some of the approaches taken by other cities such as limiting the number of permits by neighborhoods.

CCC staff informed City staff that other cities/counties have proposed allowing both hosted and non-hosted STRs. The CCC staff indicated that the City could consider allowing non-hosted STRs only during certain higher demand periods of the year. One of the draft ordinances considered by the City Council (August 10, 2020) established a STR permit system with three types of permits: 1) primary resident, 2) non-primary resident, and 3) multifamily with different permit requirements and permissions for each permit type. Non-primary residents could operate STRs only between April 1 and September 30 of each year. While that ordinance allowed STRs for non-primary residents only during

certain periods of the year, the Council could direct staff to work with CCC staff to consider a similar approach allowing non-hosted STRs for primary residents during certain periods of the year.

To summarize, staff is seeking direction from the Council regarding whether they want staff to work with the CCC staff to find an acceptable alternative that would allow the CCC staff to recommend approval of the City's ordinance with suggested modifications as opposed to denying the LCPA. Should the Council direct staff to work with the CCC, staff can report the results of those discussions at an upcoming Council meeting.

ALTERNATIVES: The Council could suggest different changes to the ordinance that they believe will address the concerns expressed by CCC staff or the Council could take no action. Pursuant to Coastal Act Section 3051, the maximum time extension the CCC can approve is one year. This means the CCC must take action on the City's LCPA in early November. The item could not be continued to allow additional time to work on the ordinance. If the CCC denies the LCPA, the City would need to start the process over and develop a new STR Ordinance.

ATTACHMENTS: None

SHORT-TERM RENTAL ORDINANCES IN PROGRESS

SHORT-TERM RENTAL (STR) PERMITS

For information regarding the City's existing STR permit program in effect, visit the STR Permit webpage.

HOSTED ORDINANCE (IN PROGRESS)

Updated 7/18/22 - The City's Short-Term Rental Unit Hosted Ordinance, which requires the presence of an onsite host during short-term rentals, primary residency requirements and multifamily restrictions, is currently under review by the California Coastal Commission (CCC). City staff was notified that the CCC is leaning towards denying the City's proposed Local Coastal Program Amendment for the Short-Term Rental Unit Hosted Ordinance, but is willing to work with the City towards a mutually agreeable modification to the Local Coastal Program Amendment before the CCC considers it. Staff prepared a summary of issues for the Council's consideration. On June 13, 2022, the City Council discussed the CCC's position on the City's proposed amendment (City Council staff report). At the conclusion of its deliberations, the Council moved to 1) Decline the CCC's invitation to further weaken the Hosted Short-Term Rental Ordinance; and 2) direct staff to explain to the CCC that the Hosted Short-Term Rental Ordinance actually increases the availability of short-term rentals in Malibu and does not narrow that availability, and further explain that Malibu will be forced to begin the strict enforcement of its existing zoning laws to prohibit

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PLANNING DEPARTMENT

Email Planning Dept

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23825 Stuart Ranch Rd
Malibu, CA 90265

Phone: 310-456-2489, ext. 485

Directory

Exhibit 6
6.13.22 City Council Meeting Deliberations Conclusion (Update 7/18/22)
LCP Amendment No. LCP-4-MAL-20-0083-2

the short-term rental of homes in residential neighborhoods if the CCC does not approve the enabling legislation proposed by the City. City staff is currently preparing a letter to CCC staff.

Background

On November 23, 2020, the City Council adopted Ordinance No. 472 (Hosted STR Ordinance) to establish provisions to regulate short-term rental of property citywide which include, but are not limited to, requiring the presence of an onsite host during short-term rentals, primary residency requirements and multifamily restrictions. On November 5, Council conducted the first reading of the Hosted Ordinance and adopted Resolution No. 20-51, amending Local Coastal Program (LCP) Land Use Plan (LUP) Chapter 5 accordingly. See the November 23 staff report and November 5 staff report for more information on the Hosted STR Ordinance. The Hosted STR Ordinance involves an LCP amendment and Zoning Text Amendment to the Malibu Municipal Code. The Hosted Ordinance regulations cannot go into effect until the LCPA is certified by the California Coastal Commission.

On September 8, 2021, the California Coastal Commission granted Coastal Commission staff a one-year extension to consider the City's LCP amendment. During the next few months, City staff will work with CCC staff on addressing any suggested modifications to ensure that an amendment is brought to a hearing in the near future. Prior to the hearing, a Notice of Public Hearing will be published in a local newspaper and a CCC staff report will be available on the CCC's website.

LCP AMENDMENT SUBMITTAL TO THE CALIFORNIA COASTAL COMMISSION & CORRESPONDENCE

- City's LCP Amendment Submittal to the Coastal Commission
- Acknowledgement Letter from Coastal Commission dated December 16, 2020
- Incomplete Letter from Coastal Commission dated January 13, 2021
- City's Response Letter dated April 7, 2021
- City's Letter dated April 13, 2021
- Incomplete Letter from Coastal Commission dated April 22, 2021
- City's Response Letter dated June 16, 2021
- Complete Letter from Coastal Commission dated June 30, 2021

COMMUNITY MEETINGS & PUBLIC INPUT

Subscribe to receive text or email messages with the latest info related to the City's STR regulations.

A detailed history of the both ordinances is provided in the Short-Term Rental Ordinance Staff Memorandum. The following documents also provide additional information:

- City Council (June 13, 2022) Staff Report
- California Coastal Commission (Sept 8, 2021) Staff Report
- City Council (November 23, 2020) Agenda & Staff Report (See Item 3A1)
- City Council (November 5, 2020) Agenda & Staff Report (See Items 4A and 4B)
- City Council (September 29, 2020) Agenda & Staff Report and Correspondence
- City Council (September 14, 2020) Agenda & Staff Report and Correspondence
- City Council (August 10, 2020) - ZTA No. 17-002 - Agenda & Staff Report (see Item 4C) and Correspondence
- Planning Commission (July 29, 2020) - LCPA No. 19-003 Agenda & Staff Report and Correspondence
- Planning Commission (March 30, 2020) Notice of Public Hearing - CANCELLED
- Meetings materials prior to 2020, can be located in OnBase.
    - City Council (December 3, 2019)
    - City Council (October 28, 2019) Item 5A
    - Administration & Finance Subcommittee (October 3, 2019) Financial Analysis on Implications & Potential Impacts of a Ban on Short-Term Rentals
    - City Council (September 26, 2018) Agenda & Staff Report (See Item 4B), Draft Ordinance No. 436 and Council's Changes to Proposed Ordinance
    - City Council (July 9, 2018) Agenda & Staff Report (See Item 4A), Proposed Ordinance, and Council's Changes to Proposed Ordinance
    - Planning Commission (May 7, 2018) Planning Commission Recommendations (Resolution No. 18-26), Agenda & Staff Report (See Item 5C) and Correspondence received by May 7, 2018
    - City Council (March 26, 2018) Notice of Public Hearing (Hearing cancelled and item remanded back to the Planning Commission)
    - Planning Commission Hearing (November 20, 2017) Staff Report and Draft Ordinance (Attachment 1)
    - Zoning Revisions & Code Enforcement Subcommittee (May 23, 2017) Staff Report and Meeting Minutes

- City Council (October 10, 2016) Meeting Agenda & Staff Report (see Item 5B) and Meeting Minutes
- City Council (June 13, 2016) Staff Report
- City Council (February 8, 2016) Staff Report and Meeting Minutes
- City Council (November 9, 2015) Meeting Agenda & Staff Report (see Item 6B) and Meeting Minutes

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HELPFUL LINKS

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Am I required to get a permit for a party at my home?

Do I need a business license to do business in Malibu?

Is the Malibu Pier open?

Can I apply for a U.S. passport at City Hall?

My neighbor is remodeling, how

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early may he begin work?

I am moving to Malibu - who do I call to hook up utilities?

TRAVEL TECH
The Travel Technology Association

Via Electronic Mail

July 18, 2022

Mr. Steve Hudson, South Coast District Deputy Director
Ms. Denise Venegas, Coastal Program Analyst
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: City of Malibu LCP Amendment No. LCP-4-MAL-20-0083-2

Dear Mr. Hudson and Ms. Venegas:

On behalf of the Travel Technology Association and our members, we write to express our significant concerns with the actions taken by the Malibu City Council on June 13th in response to Commission staff's "willingness to work with the City towards a mutually agreeable modification" to the City's submitted Local Coastal Program Amendment governing short-term rentals (referred to by the City as its "Hosted Ordinance.")

As we previously shared with Commission staff in our August 21, 2021, letter, it is estimated that the City's Hosted Ordinance will reduce the supply of nights in unhosted single-family homes by approximately 95 percent, effectively banning the most attractive overnight accommodations for families. It will also significantly reduce the affordability of any remaining STRs and cause an increase in the average daily rate of the extremely limited number of hotel/motel rooms in Malibu.

During deliberations on June 13th, the City Council seemed determined to reject Commission staff's request to discuss reasonable alternatives to the Hosted Ordinance, and made a number of troubling statements reflecting a clear intent to close off the City to future visitors.

For the reasons previously outlined in both our and our members' prior submissions to the City and the Commission,[1] the City's Hosted Ordinance and its recent motion declaring that its current LCP completely bans STRs directly conflict with the law. Accordingly, we respectfully request that staff recommend the Commission deny the Hosted Ordinance as submitted and affirmatively inform the City that its current LCP, as previously certified by the Commission, permits STRs.[2]

[1] For your ease of reference, we are attaching both our and our members' prior correspondence on this matter.

[2] If Commission staff were inclined to offer amendments to the Hosted Ordinance for the Commission's consideration, the compromise approach we suggested to the City in advance of its June 13th meeting would help ensure consistency with Coastal Act and LCP policies. Our proposal would 1) allow STRs with permits issued pursuant to the Enforcement Ordinance to continue offering unhosted rentals in primary and non-primary residences and (2) allow new STRs in a small area of the City with proximity to the City's "Civic Center" to offer unhosted stays in primary and non-primary residences up to 180 days per year. Note that demand for STRs in M

Thank you again for the opportunity to comment on this matter.

Sincerely,

Dan Rene
Director of Communications
Travel Technology Association

Enc.

the year, so seasonal restrictions would result in untenable price spikes during off-peak travel periods when many low- and moderate-income families take vacations.

John Choi, Airbnb Public Policy Manager, letter to Malibu City Council, August 7, 2020

Heather Glaser

Subject: Airbnb Comment on Agenda Item 4C: Interim STR Ordinance

From: John Choi <john.choi@airbnb.com>
Date: August 7, 2020 at 6:37:56 PM PDT
To: Karen Farrer <kfarrer@malibucity.org>, Mikke Pierson <mpierson@malibucity.org>, Rick Mullen <rmullen@malibucity.org>, Skylar Peak <speak@malibucity.org>, Jefferson Wagner <jwagner@malibucity.org>
Cc: Reva Feldman <rfeldman@malibucity.org>, Trevor Rusin <trevor.rusin@bbklaw.com>
Subject: Airbnb Comment on Agenda Item 4C: Interim STR Ordinance

Compiled Documents - FINAL.pdf

Please find attached the following items for Item 4C on the Monday, Aug 10th City Council Agenda:

1. Comment Letter on proposed interim STR ordinance
2. Exhibit A - redline ordinance draft suggestions
3. Exhibit B - Legal Analysis
4. Compiled Documents - link to Attachment to Exhibit B

--

John Choi
Public Policy
Los Angeles

CC: Council; CM; CA ; PL ; Ref. Binder; Original to 8/10/2020 Agenda File

August 7, 2020

Malibu City Council
c/o: Heather Glaser, City Clerk
23825 Stuart Ranch Road
Malibu, CA 90265
email: hglaser@malibucity.org

Re: August 10, 2020 Meeting – Agenda Item 4.C: Zoning Text Amendment No. 17-002 (Short-Term Rental Ordinance)

Dear Mayor Pierson and Honorable Members of the City Council:

On behalf of Airbnb, thank you for the opportunity to provide comments on the proposed "STR Ordinance" that the Council will consider at its August 10, 2020 meeting. Since our founding in 2008, Airbnb has worked closely with cities around the world as they have developed and implemented short-term rentals policies and regulations, and we commend the City for its careful consideration of these issues over the last several years.

We are, however, extremely concerned with the new seasonal prohibitions on short-term rentals in non-primary residences in the proposed STR Ordinance. As we detail in this letter, because the majority of single-family homes offered as short-term rentals in Malibu are likely secondary residences, the proposed STR Ordinance will impose new, significant restrictions on the availability of overnight accommodations in the City. In a City with fewer than 120 hotel and motel rooms, these restrictions would run afoul of the City's Local Coastal Program (LCP) and the California Coastal Act. We also have meaningfully reviewed the proposed permitting requirements and seasonal prohibitions and estimate they may result in up to a 50% decrease (greater than $1 million annually) in transient occupancy tax (TOT) revenues going forward and have adverse impacts on our hosts and the local economy.

Airbnb has carefully analyzed the proposed STR Ordinance and applicable law, and we believe the City can ensure consistency with its LCP and the Coastal Act, while mitigating against revenue decline and economic harm, by adding two new permit categories to: (1) allow existing, lawful, short-term rentals in non-primary residences that have operated without past incident to continue offering short-term rentals year-round; and (2) permit new, non-primary residences to offer year-round short-term rentals and allow additional units in multifamily buildings to be offered as short-term rentals on the seaward side of Pacific Coast Highway in the heart of the City's tourist core. We respectfully request the Council amend the proposed STR Ordinance to include these additional permit categories and submit the revised ordinance to the California Coastal Commission for approval.

The STR Ordinance Requires Approval by the California Coastal Commission

In a December 2016 letter to Coastal Planning/Community Development Directors, then-Coastal Commission Chair Steve Kinsey explained that the Coastal Commission "strongly encourage[s] your community to pursue vacation rental regulation through your LCP."[1] In September 2018, Coastal staff informed the City itself that "vacation rental regulations in the coastal zone must occur within the context of the City's LCP," and encouraged "the City to submit an LCP amendment to the Commission."[2] As summarized below and detailed in the attached "Legal Analysis of the City of Malibu's Proposed Short-Term Rental Ordinance (Ordinance No. 468)," the law supports the Coastal Commission's position.

The Coastal Act creates a system to regulate "development" in the Coastal Zone. Courts have interpreted "development" under the Coastal Act broadly, and the California Court of Appeal held in a 2018 published decision that a change in the availability of short-term rentals constituted "development" under the Coastal Act.[3] Recent superior court cases have concluded the regulation of short-term rentals in jurisdictions with certified LCPs must be undertaken in the context of the jurisdictions' LCPs and receive Coastal Commission approval.[4] A 2019 Ventura County Superior Court case, *Kracke v. City of Santa Barbara*, is particularly instructive. In 2015, the Santa Barbara City Council interpreted its existing zoning ordinance to prohibit short-term rentals in residential areas. The Council instructed city staff to "aggressively identify and prosecute" owners who failed to comply with the city's new interpretation. The superior court determined the policy choice to shift from tolerating short-term rentals to aggressively enforcing against them was sufficient to find development under the Coastal Act.[5] The case is currently on appeal. The Coastal Commission filed an *amicus* brief in the *Kracke* appeal[6] stating clearly: "[W]hen an LCP is silent about the regulation of a high-priority coastal land use such as [short-term rentals], the Coastal Act does not allow local jurisdictions to enact new policies to regulate or ban such uses without going through the [LCP] amendment process."[7]

---

[1] Letter from Steve Kinsey to Coastal Planning/Community Development Directors (December 6, 2016).

[2] Letter from Denise Venegas to Bonnie Blue, Malibu Planning Director (September 20, 2018).

[3] *Greenfield v. Mandalay Shores Community. Assn*. (2018) 21 Cal.App.5th 896, 901.

[4] *Kracke v. City of Santa Barbara* (Super. Ct. Ventura County, March 8, 2019, No. 56-2016-00490376-CU-WM-VTA) and *Keen v. City of Manhattan Beach* (Super. Ct. L.A. County, June 25, 2020, No. 19STCP02984).

[5] Statement of Decision at p. 20, *Kracke v. City of Santa Barbara* (Super. Ct. Ventura County, March 8, 2019, No. 56-2016-00490376-CU-WM-VTA).

[6] See Amicus Curiae Brief of the California Coastal Commission ("Coastal Commission Amicus Brief"), *Kracke v. City of Santa Barbara* (Ct.App., May 21, 2020, No. B300528).

[7] Coastal Commission Amicus Brief, *supra,* at p. 17. At the July 29, 2020, Malibu Planning Commission meeting, certain Commissioners suggested the regulation of short-term rentals in the City does not require Coastal Commission approval, making reference to a court case involving Santa Monica's "home-sharing" ordinance. We believe the Commissioners may have been referencing certain Los Angeles Superior Court decisions in *Hayek v. City of Santa Monica*. In addition to being superior court cases without binding or precedential effect, as detailed in the attached White Paper, the *Hayek* cases are distinguishable. Importantly, Santa Monica never allowed short-term rentals under its zoning code. In contrast, Malibu has historically permitted short-term rentals, and the proposed STR Ordinance's seasonal prohibitions would ***significantly decrease Coastal access*** to single-family homes in the City. The Court of Appeal in *Greenfield* and superior court judges in *Kracke* and *Keen* have all determined decreases in availability of short-term rentals constitutes development, requiring approval by the Coastal Commission.

Given the clear direction from the Coastal Commission and recent developments in courts around the state analyzing the regulation of short-term rentals in jurisdictions with certified LCPs, it is concerning staff is not proposing to submit the new short-term restrictions and prohibitions to the Coastal Commission for approval. The staff report asserts "[t]he proposed ordinance does not change the uses currently allowed in the City, and instead, imposes regulations to address nuisance issues and impacts on neighborhoods." This is simply not accurate. As City staff has confirmed on numerous occasions, short-term rental of single-family residences is currently permitted in the City.[8] ***There are no existing restrictions on who may offer single-family residences for short-term rental, or the time period that such residences can be offered***. In contrast, the proposed STR Ordinance would ***prohibit*** short-term rentals in all non-primary residences for six months out of the year.

Based on our review of active listings on the Airbnb platform in Malibu, 90% of them are whole home listings. Prohibiting short-term rentals October to March in non-primary residences therefore is estimated to result in a significant reduction of annual single-family home STR offerings in the City during those months. This decrease in the availability of short-term rentals would substantially change the intensity of a currently permitted land use and require approval by the Coastal Commission.[9]

The Proposed STR Ordinance Conflicts with the LCP and Coastal Act

As discussed above, the STR Ordinance will effectively eliminate a significant percentage of the annually available short-term rental accommodations in the City. Given the extremely limited availability of traditional overnight accommodations in the City, elimination of existing overnight accommodations directly conflicts with LCP and Coastal Act policies calling for the protection of existing visitor-serving and recreation facilities in the City. The LCP and Coastal Act also directs the City to ***encourage new facilities***. By imposing restrictions on the year-round offering of single-family homes, and restricting multifamily buildings to offering two units for short-term rentals, the proposed STR Ordinance establishes strong disincentives for the establishment of any new short-term rentals in the City. This is particularly problematic for future coastal access in a community where no new hotels or motels have been constructed since the City's incorporation in 1991.

The Proposed STR Ordinance Will Result in Meaningful TOT Revenue Declines

In addition to unduly restricting access to the Malibu coast in violation of LCP and Coastal Act policies, the restrictions and prohibitions in the proposed STR Ordinance will also have a meaningful impact on the City's revenue. The staff report indicates "Ordinance No. 468 is anticipated to reduce the TOT collected from short-term residential rentals, but the extent of this decrease cannot be determined at this time." ***We have undertaken a meaningful review of the potential revenue impacts of the proposed STR Ordinance, and estimate the City will lose 50% of its TOT revenue (over a $1 million per year) under the STR Ordinance as proposed***.

[8] Council Agenda Report, Item 4.A: Short Term Rental Ordinance, July 9, 2018 City Council Meeting.

[9] *Greenfield*, *supra,* 21 Cal.App.5th at p. 901.

Suggested Amendments to the Proposed STR Ordinance

Airbnb encourages a balanced approach to the regulation of short-term rentals, and supports the proposed STR Ordinance's requirement for a 24-hour contact, the establishment of maximum occupancy rates, parking restrictions, and conditions for permit revocation. We also believe that with the addition of the simple concepts below, the STR Ordinance would be consistent with LCP and Coastal Act policies and fully supportive of the local economy.

Historical Use Permit

To ensure consistency with LCP and Coastal Act policies calling for the ***protection of existing visitor-serving and recreation facilities***, and to protect the City's economic well-being, the Council should amend the proposed STR Ordinance to create a permit category for existing non-primary residences, legally offering short-term rentals, that allows these properties to continue offering year-round accommodations.[10] To address any "bad actors," we propose to obtain a "Historical Use Permit," an applicant would need to demonstrate that the property: (1) has previously generated and transmitted TOT; (2) is current on its TOT; and (3) has never received a citation for a violation of the City's noise ordinance.

Tourist Core Permit

To ensure consistency with LCP and Coastal Act policies ***encouraging new visitor-serving and recreation facilities***, the Council should further amend the proposed STR Ordinance to include a permit category for short-term rentals within an area of Malibu that offers proximity to both Coastal resources (like beaches) and the heart of the City's commercial core.[11] This proposed "Tourist Core" would extend on the seaward side of Pacific Coast Highway between the Malibu Pier to the west and Las Flores Canyon Road to the east. A "Tourist Core Permit" would allow year-round short-term rentals in non-primary residences and the rental of any number of units in multifamily offerings.

Conclusion

Again, we commend the City's efforts to find an appropriate balance in the STR Ordinance. However, without the ability non-primary residences to continue to offering year-round accommodations, and without encouraging new short-term rentals in the area of the City with close proximity to both City's beaches and commercial core, the proposal

[10] The Coastal Commission approved a similar approach in Santa Cruz. There, the Commission approved as submitted an LCP amendment that permitted existing, TOT-paying STRs to continue to operate, but set new limits on future STR permit applications. Staff Report at pp. 10-11, City of Santa Cruz LCP Amendment Number LCP 3-STC-17-0073-2-Part B (Short Term Rentals) (approved as submitted April 11, 2018).

[11] Note the Coastal Commission recently advocated for the consideration of location when regulating short-term rentals. In a litigation involving short-term rentals in the City of Del Mar, the Coastal Commission noted: "[Del Mar's] proposed amendment makes no distinction between inland parts of the City and the shoreline areas, and the City's blanket restrictions are overly broad and restrictive. . . . Residents in prime visitor-serving, beach-adjacent areas are not given any priority for use as an STR, which hinders the public's ability to access and recreate in these near shore areas." California Coastal Commission Brief in Opposition to Writ at p. 18, *City of Del Mar v. California Coastal Commission* (Super. Ct. San Diego County, Nov. 15, 2019, No. 37-2018-00039254).

remains inconsistent with LCP and Coastal Act policies, and will have significant impacts on the local economy. To address these issues, we encourage the Council to make the language changes to the STR Ordinance we have proposed in the attached Exhibit A and to seek the Coastal Commission's approval of the same through an LCP amendment with additional legal analysis set forth in the attached Exhibit B.

Thank you,

John Choi
Policy Manager, Airbnb

Attachments:

Exhibit A – Draft STR Ordinance (Red-lined)
Exhibit B – Legal Analysis of the City of Malibu's Proposed Short-Term Rental Ordinance

ORDINANCE NO. 468

AN ORDINANCE OF THE CITY OF MALIBU AMENDING TITLE 17 (ZONING) OF THE MALIBU MUNICIPAL CODE AND ADDING CHAPTER 17.55 (SHORT-TERM RENTAL ORDINANCE) TO ESTABLISH PROVISIONS TO REGULATE SHORT-TERM RENTAL OF PROPERTY CITYWIDE AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 platforms that consolidate and facilitate the short-term rental of property, the City has seen increased violations of its prohibition against illegal hotel, motel, and bed and breakfast inn 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, 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,

written reports, public testimony, and other information on the record and adopted Planning Commission Resolution No. 18-26 stating 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.

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, written reports, public testimony, and other information in the record. The City Council directed staff to revise the ordinance and return with additional information at the September 11, 2018 City Council Regular meeting.

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

K. On September 26, 2018, the City Council held a duly noticed public hearing on ZTA No. 17-002, reviewed and considered the agenda report, written reports, public testimony, and other information in the record. The City Council directed staff to investigate potential options and procedures for banning short-term rentals in the City, the implications and potential impacts of a ban, including financial analysis, approaches to using the Local Coastal Program Amendment process and the approaches of other coastal cities to dealing with short-term rentals and the current state of litigation over those issues.

L. On November 8, 2018, the Woolsey Fire broke out in the Chatsworth area north of the 101 Freeway and reached Malibu on November 9, 2018. On November 9, 2018, the Director of Emergency Services proclaimed the existence of a local emergency. The Woolsey Fire was largest fire Los Angeles County history and the most disastrous event ever in Malibu. In one week, the fire burned approximately 90,000 acres throughout the Santa Monica Mountains area and destroyed 488 single-family homes in Malibu.

M. On November 16, 2018, the Director of Emergency Services again proclaimed the existence of a local emergency as a result of conditions of extreme peril to the safety of persons and property caused by the Woolsey Fire. The City Council extended the existence of a local emergency until April 22, 2019 through Resolution Nos. 18-64, 18-68, 18-69, 19-02, and 19-13.

N. On October 28, 2019, the City Council held a duly noticed public hearing on short-term rentals and directed staff to initiate a Zoning Text Amendment (ZTA) and Local Coastal Program Amendment (LCPA) regarding regulation of home-sharing and short-term rentals for single-family homes, bypassing the Zoning Ordinance Revisions and Code Enforcement Subcommittee and taking the ZTA and LCPA directly to the Planning Commission; and to bring back an updated version of the September 26, 2018, draft ordinance to the City Council for adoption that could be implemented without an LCPA, with the understanding it would be superseded when the new ZTA and LCPA were approved.

O. On December 3, 2019, the City Council held a duly noticed public hearing on ZTA No. 17-002. The City Council did not move forward with ZTA No. 17-002 at that time but did adopt Resolution No. 19-53 initiating a new Local Coastal Program Amendment (LCPA) and ZTA to consider a regulatory system similar to that adopted by the City of Santa Monica. 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. The City Council's direction was to require a "host" to live onsite at the property during the rental, but not require the person to be within the dwelling unit. The City Council also directed that the multifamily regulation system proposed in ZTA No. 17-002 should be included.

P. On June 22, 2020, the City Council directed staff to bring back the ordinance presented to the City Council on December 3, 2019 establishing provisions to regulate short-term rental property.

Q. On August 10, 2020, the City Council held a duly noticed public hearing on the proposed ordinance, reviewed and considered the staff report, written reports, public testimony, and other information in the record and approved the ordinance and directed staff to schedule second reading and adoption for August 24, 2020.

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:

"Bedroom" means any habitable space in a dwelling unit other than a kitchen or living room that is intended for or capable of being used for sleeping, is at least 70 square feet in area, is separated from other rooms by a door and is accessible to a bathroom without crossing another bedroom.

"Booking transaction" means any reservation or payment service provided by a natural person, joint venture, joint stock company, partnership, association, club, company corporation, business trust, or organization of any kind who facilitates a short-term rental transaction between a prospective guest and an owner.

"Dwelling unit" means one or more rooms in a building or portion thereof designed, intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. "Dwelling unit" also includes:

1. One or more habitable rooms within a mobilehome which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating and sanitation; and

2. Any room used for sleeping accommodations which contains a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except a guest room or guest suite in a motel, hotel or bed and breakfast inn.

"Guest" means a natural person who rents a short-term rental or is an invitee of such person. This definition is applicable to Chapter 17.55 only.

"Hosting platform" means a natural person, joint venture, joint stock company, partnership, association, club, company corporation, business trust, or organization of any kind who

participates in the short-term rental business by collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting a booking transaction using any medium of facilitation.

"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 (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. No person or entity shall offer, advertise or facilitate the short-term rental of property in the city unless the owner possesses a valid short-term rental permit for its rental. Any offer or advertisement for the short-term rental of property in the city that does not contain a valid short-term rental permit number, or which the City identifies as illegal, shall be immediately removed.

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. Unless in possession of a tourist core permit, no more than two dwelling units may be approved for short-term rental on a legal lot.

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, including phone number and email.
   2. Contact information for the owner's agent as required by Section 17.55.020(A) (6). An owner may serve as the owner's agent. Contact information for the owner's agent will be made available to the public upon request.
   3. A copy of a valid OWTS operating 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 must be included as of January 1, 2023.
   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.

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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. Attestation of the number of bedrooms in the proposed short-term rental and proposed maximum occupancy.
9. The location of all dwelling units, or portions thereof, that will be rented on a short- term basis.
10. The type of short-term rental permit sought: primary resident, non-primary resident, multifamily, historical use, or tourist core.
11. 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 dwelling 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. Primary residency must be established with a valid active voter registration, driver's license, or other government-issued identification card that includes the address of the property for which a short-term rental permit is sought.
12. If seeking a multifamily short-term rental permit, contact information, including phone number, for all tenants, proof of ownership of the entire building, and an attestation that all dwelling units (except for two) are rented on a long term-basis per Section 17.55.040(C). The permit holder shall maintain copies of the leases for all tenants documenting compliance at all times with Section 17.55.040(C) for a period of three years following the expiration of the short-term rental permit.
13. If seeking a historical use permit, evidence that the property (1) was offered as a short-term rental prior to the effective date of Ordinance 458; (2) generated transient occupancy taxes that were transmitted the City in Fiscal Year 2019-2020; (3) does not have any outstanding transient occupancy taxes owed to the City; and (4) has never received a citation for violation of the City's noise ordinance.

D. Review and Approval. Short-term rental permits shall be subject to the approval of the City Manager or her/his designee.

E. Duration. Short-term rental permits shall be issued for one year and must be renewed annually.

F. Duty to Amend. If there are any material changes to the information submitted on a short- term rental permit application, the owner shall submit an amended application on a form to be provided by the City and signed by the owner under penalty of perjury within 30 days of any such changes. For the purposes of this Section, any change to the information required to be included in a short-term rental

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permit application by subsection C of this Section shall constitute a material change.

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. No Transfer or Assignment. A short-term rental permit may not be assigned or transferred to another person.

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

K. The City Manager or her/his designee may promulgate regulations to facilitate the purposes of this Chapter.

17.55.20 Specific Requirements for Short-term Rentals.

A. The following requirements shall be strictly adhered to by those conducting the short-term rental of property:

1. The short-term rental activity complies with all short-term rental permit conditions, the requirements of this Chapter, and any regulations promulgated pursuant to this Chapter.
2. The owner shall collect and remit transient occupancy tax, in coordination with any hosting platform (if utilized), to the City and comply with all City transient occupancy tax requirements as set forth in Chapter 3.24 of this Code.
3. The owner shall take responsibility for, and actively prevent, any nuisance activities that may take place as a result of short-term rental activities.
4. 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 as determined by the Planning Director 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.
5. The owner shall ensure that basic health and safety features are provided, including fire extinguishers, smoke detectors, and carbon monoxide detectors.
6. 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 to answer a call from the City, an agent authorized by the City to make such calls or a guest when there is a guest renting the property.

7. Owner or owner's agent must 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.
8. Owner or owner's agent must 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.
9. The maximum occupancy of a short-term rental property (including the guests, owner, and any other natural persons) 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. This occupancy, as listed on the short-term rental permit, shall not be exceeded at any time the property is rented.
10. The short-term rental permit number must be prominently posted on all advertisements for the short-term rental of the property.
11. The short-term rental activity shall comply with all applicable laws, including the noise limitations set forth in Chapter 8.24 of this Code, and all applicable codes regarding fire, building and safety, and other relevant laws and ordinances.

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.

C. As of January 1, 2023, 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 Grounds for Denial and Revocation of Short-term Rental Permit

A. 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 owner has not paid all transient occupancy tax due or is not in compliance with Chapter 3.24 of this Code
2. The property has 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 owner 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 owner has failed to amend an application as required by Section 17.55.010(G).
6. 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.
7. The property has received more than two citations for violations of the City's noise ordinance within a period of 12 consecutive months.
8. Failure to comply with Section 17.55.020(C)
9. Failure to comply with the requirements of Section 17.55.040
10. 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 a holder of a Non-Primary Resident Permit, , Multifamily Permit, Historical Use Permit, or Tourist Core 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:
    a. The requirements of Sections 17.55.020(A) (3), (4), (7), (8), (9), 17.55.040, regulations propounded by the City Manager per Section 17.55.010(L), or violation of any condition or requirement of the short-term rental permit.

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17.55.40 Types of Short-term Rental Permits

Only a natural person, which must be the owner or the owner's agent, 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. 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.D. Historical Use 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, if the property: (1) was offered as a short-term rental prior to the effective date of Ordinance 458; (2) generated transient occupancy taxes that were transmitted the City in Fiscal Year 2019-2020; (3) does not have any outstanding transient occupancy taxes owed to the City; and (4) has never received a citation for violation of the City's noise ordinance. A historical use permit is valid even if the property is not 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 owners of condominiums may obtain this type of permit.

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E. Tourist Core Permit. An owner, including the owner of a multifamily residential building, may obtain this permit, which allows short-term rental of residential property, in compliance with this chapter, during the period that the permit is valid, if the permitted location is located on the seaward side of Pacific Coast Highway between the Malibu Pier to the west and Las Flores Canyon Road to the east. A tourist core permit is valid even if the property is not the owner's primary residence.

17.55.50 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 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.

17.55.60 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 nor for that location for a twelve (12) 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 17.55.030(A)(10), (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 (in addition to any other penalty) 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.

17.55.70 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.

17.55.80 Hosting platform responsibilities.

A. Hosting platforms shall be responsible for collecting all applicable transient occupancy tax and remitting the same to the City. The hosting platform shall be considered an agent of the owner for purposes of transient occupancy tax collections and remittance responsibilities as set forth in Chapter 3.24 of this Code. Should a hosting platform fail to fulfill its responsibilities under this Section the owner shall remain responsible for collection and remittance of the transient occupancy tax the hosting platform failed to collect and/or remit to the City.

B. Subject to applicable laws, hosting platforms shall disclose to the City on a regular basis each short-term rental listing located in the City, the names of the owner for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay.

C. Hosting platforms shall not complete any booking transaction for any residential property or unit unless it is listed on the City's registry of properties with valid short-term rental permits at the time the hosting platform receives a fee for the booking transaction.

D. Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to an unpermitted short-term rental, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.

E. Safe Harbor. A hosting platform operating exclusively on the Internet, which operates in compliance with subsections (A), (B), (C) and (D) above, shall be presumed to be in compliance with this Chapter. If technical issues pose a substantial obstacle to compliance with this Section, a hosting platform may also satisfy these obligations pursuant to a compliance agreement with the City that prevents booking transactions for unpermitted short-term rentals, collects all transient occupancy tax due, and complies with the disclosure requirements of this Section.

F. The provisions of this Section 17.55.080 shall be interpreted in accordance with otherwise applicable State and Federal law(s) and will not apply if determined by the City to be in violation of, or preempted by, any such law(s).

17.55.90 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, or twice the advertised short-term rental's daily rental rate per day or violation, whichever is higher.

B. The short-term rental permit holder shall be held responsible 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. 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 January 15, 2021, 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 _____, 2020.

_____
MIKKE PIERSON, Mayor

LEGAL ANALYSIS OF THE CITY OF MALIBU'S PROPOSED SHORT-TERM RENTAL ORDINANCE (ORDINANCE NO. 468)

I. INTRODUCTION AND OVERVIEW

On August 10, 2020 the Malibu City Council will consider a proposed ordinance (the "Proposed Ordinance") establishing new restrictions on the short-term rental (defined as rental for 30 days or less) of residential properties in the City. The Proposed Ordinance[1] would create a new permitting system for these short-term rentals, or "STRs", establish specific limits on the availability of permits, impose substantive requirements related to occupancy, parking, and contact availability, and create new penalties for property owners who do not comply with the City's regulations. The City currently requires properties offering STRs to register with the City and pay transient occupancy tax ("TOT"), but it does not otherwise require permits or impose seasonal restrictions on when a residence can be offered as an STR.

The Proposed Ordinance's new permitting system creates three types of permits: (1) "Primary Resident" permits, (2) "Non-Primary Resident" permits, and (3) "Multifamily" permits. A Primary Resident permit is available only to property owners who live at the property at least 185 days per year. The holder of a Primary Resident permit can rent single-family residential property as an STR year-round. (See Proposed Ordinance § 2(B).) A Non-Primary Resident permit allows a property owner to rent single-family residential property as an STR between April 1 and September 30 (no rental of STRs is permitted between October and March). (See *ibid*.) A Multifamily permit allows the owner of a multifamily building to rent two units as STRs, regardless of how many units might be in the building, "so long as all other units are rented for a period of one year or more." (See *ibid*.)

This White Paper analyzes the Proposed Ordinance under the procedural and substantive requirements of the California Coastal Act (the "Coastal Act"). In particular, this White Paper analyzes (1) whether the Proposed Ordinance could be considered "development" as that term is defined under the Coastal Act; (2) whether the Proposed Ordinance must be submitted to the California Coastal Commission ("Commission") for approval; and (3) whether the Proposed Ordinance conflicts with the City's Commission-certified Local Coastal Program, or "LCP", and/or the Coastal Act.

The White Paper concludes that the Proposed Ordinance, which will significantly reduce the availability of visitor-serving overnight accommodations in the City through the new seasonal rental prohibitions placed on non-primary residences, constitutes a change in the intensity of use of land and of access to the beach, and "development" under the Coastal Act. As development, the City must receive Coastal Commission approval of the Proposed Ordinance before it becomes effective. The White Paper further concludes that, given STRs have served a critical function in the City by providing a wide range of overnight accommodations in a community with an extremely limited supply of "traditional" visitor lodging (i.e., hotel/motel rooms), the proposed reduction in the availability of visitor-serving overnight accommodations in the City violates both Malibu's Commission-certified LCP and Coastal Act policies.

[1] Draft Ordinance No. 468 (Zoning Text Amendment No. 17-002) (Attachment 1).

II. SHORT-TERM RENTALS AND DEVELOPMENT UNDER THE COASTAL ACT

The Coastal Act creates a framework for managing the coastal zone in California.[2] The Coastal Act includes a number of goals, including: to "[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners"; to protect the coastal zone; to manage development in the coastal zone and use of coastal zone resources; and to provide for collaboration between state and local planning. (Pub. Resources Code § 30001.5 [Attachment 3].)

To implement these goals, the Coastal Act creates a system to regulate "development" in the coastal zone. Development requires a coastal development permit ("CDP"). Once a local government has a certified Local Coastal Program ("LCP"), that government becomes the permitting agency for development in the coastal zone. (See Pub. Resources Code § 30600, subds. (a), (b)-(d) [Attachment 4].)

An LCP consists of "a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, this division at the local level." (Pub. Resources Code § 30108.6 [Attachment 5].) More specifically, an LCP is made up of a Land Use Plan ("LUP") and an implementation program, called a Local Implementation Plan ("LIP"). An LUP is "the relevant portions of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions" (Pub. Resources Code § 30108.5 [Attachment 6].) The LIP includes the implementing actions. The Commission certified Malibu's LCP in 2002.

III. CALIFORNIA LAW CONFIRMS THAT THE PROPOSED ORDINANCE IS A "DEVELOPMENT" SUBJECT TO COMMISSION APPROVAL

A. *California law establishes that restrictions on short-term rentals constitute "development" under the Coastal Act*

The definition of "development" under the Coastal Act includes a "change in the density or intensity of use of land" and a "change in the intensity of use of water, or of access thereto." (Pub. Resources Code § 30106 [Attachment 7].) "Development" has been interpreted broadly. The Supreme Court of California has expressed that "[a]n expansive interpretation of 'development' is consistent with the mandate that the Coastal Act is to be 'liberally construed to accomplish its purposes and objectives.'" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 796 [citing Pub. Resources Code § 30009] [Attachment 8].)

In *Greenfield v. Mandalay Shores Community Ass'n* (2018) 21 Cal.App.5th 896 (Attachment 9), the California Court of Appeal found that a ban on STRs by a homeowner's association in a beachfront area "change[d] the intensity of use and access to single family

[2] The entire city of Malibu is inside the coastal zone. (See Malibu LCP, Land Use Plan, Ch. 1, § A) [Attachment 2].)

residences in the . . . Coastal Zone" and therefore constituted "development" under Public Resources Code section 30601. (21 Cal.App.5th at pp. 900-01.) In that case, certain property owners appealed the trial court's denial of a preliminary injunction against enforcement of a homeowner's association's resolution barring rentals of single-family homes for less than 30 days in Oxnard Shores, a beachfront area where "[n]on-residents ha[d] vacationed . . . for decades, renting homes on a short-term basis." (*Id*. at p. 898.) The ban "affect[ed] 1,400 units and cut[] across a wide swath of beach properties that ha[d] historically been used as short term rentals." (*Id*. at p. 902.)

As the Court explained in overruling the denial of the preliminary injunction, "development" need not involve grading and concrete:

> Closing and locking a gate that is usually open to allow public access to a beach over private property is a "development" under the Coastal Act. (*Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 248-250 . . . .) So is posting "no trespassing" signs on a 23-acre parcel used to access a Malibu beach. (*LT-WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 779, 805. . . .)

(*Greenfield, supra*, 21 Cal.App.5th at p. 900, parallel citations omitted.)

The Court found that the homeowner's association "had no right" to "erect[] a monetary barrier to the beach" by restricting STRs in violation of the Coastal Act's policy to "maximize public access to the beach." (*Greenfield, supra,* 21 Cal.App.5th at p. 898.)

Greenfield's finding that actions or activities that restrict or decrease access to the coast constitute development under the Coastal Act is consistent with the Court of Appeal's decision in *Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238 (Attachment 10). In *Surfrider*, the Court affirmed the trial court's conclusion that shutting a gate, adding a "no access" sign, and painting over a billboard that had previously advertised beach access—thereby cutting off the only public access to the beach—constituted development under the Coastal Act and required a CDP. (*Id*. at pp. 244-46.) The *Surfrider* court explained: "the Coastal Act's definition of 'development' goes beyond 'what is commonly regarded as a development of real property' and is not restricted to activities that physically alter the land or water." (*Id*. at p. 252, citations omitted). The court emphasized that "[w]hat is important for purposes of [Public Resources Code] section 30106 in the present case is that appellants' conduct indisputably resulted in a significant decrease in access to [the beach]." (*Ibid*, emphasis in original.)

A number of recent superior court cases have relied on *Greenfield* and *Surfrider* in finding that certain STR restrictions imposed in coastal jurisdictions constitute "development" subject to Commission review. While these superior court decisions have no binding or precedential effect, the reasoning put forward is instructive and consistent with settled law that restricting access to the coast, as the City's Proposed Ordinance does, constitutes development under the Coastal Act.

1. *Kracke v. City of Santa Barbara* (March 2019)

First, in 2019 the Ventura County Superior Court invalidated Santa Barbara's 2015 "heightened enforcement" that limited the operation of STRs in the City because it constituted development under the Coastal Act.

In 2015, the City Council interpreted its existing zoning ordinance to regulate STRs as hotels, which meant they were prohibited in residential areas. The City had previously allowed STRs to operate as long as the property owners paid the City's Transient Occupancy Tax ("TOT"). The Council instructed city staff to "aggressively identify and prosecute" STR owners who failed to comply with the city's new interpretation (i.e. continued to operate in a residential zone or failed to meet the City's requirements placed on hotels). (See Statement of Decision ("*Kracke* Decision") at p. 5, *Kracke v. City of Santa Barbara* (Super. Ct. Ventura County, March 8, 2019, No. 56-2016-00490376-CU-WM-VTA) [Attachment 11].)

A business owner who managed STRs in Santa Barbara sought a writ of mandate and injunctive and declaratory relief against the City, alleging that the City's 2015 enforcement approach violated the Coastal Act. (*Kracke* Decision, *supra,* at p. 4.) In 2019, the superior court held that Santa Barbara's restrictions constituted development and required a CDP or an LCP amendment. (See *id.* at pp. 31-32.)

The City argued that its enhanced enforcement mechanism could not constitute development because "the city did not 'do' anything new and, therefore, nothing changed." (See *Kracke* Decision, *supra,* at p. 20.) The superior court disagreed, finding that the City's method mattered less than its purpose and effect: "with the purpose of all but completely eliminating" them was sufficient to find development under the Coastal Act. (*Ibid*.) Moreover, the court found that the shift from availability to unavailability of these properties in the coastal zone proved "development." (*Id.* at p. 25.)

The City of Santa Barbara has appealed the superior court's decision, arguing, among other things, that generally applicable restrictions on STRs do not constitute development and that the regulation of the STR restrictions were simply "enhanced enforcement" of the City's existing ban on STRs. (See Appellant's Opening Brief ("Appellant's Opening Brief") at p. 34, *Kracke v. City of Santa Barbara* (Ct.App., Dec. 18, 2019, No. B300528) [Attachment 12].) Certain of the City's arguments on appeal rely on the fact that the City had always prohibited STRs, and that the "change in use" was not a change in what uses were permitted, but enforcement of existing restrictions. In seeking to distinguish *Greenfield*, the City explains in its appeal brief:

> [In *Greenfield*,] STVRs were allowed; then the association's board adopted a resolution to prohibit them. In the instant case, the trial court overlooked the fact that STVRs were never legally allowed in Santa Barbara. If anything, the City's earlier tolerance of their use might have called for an LCP amendment. [3]
>
> (Appellant's Opening Brief, *supra*, at p. 34.)

[3] The appeal briefing in *Kracke* refers to STRs as "STVRs," an abbreviation of "Short Term Vacation Rentals."

The California Attorney General, on behalf of the Commission, filed an *amicus* brief in the *Kracke* appeal. (See Amicus Curiae Brief of the California Coastal Commission ("Coastal Commission Amicus Brief"), *Kracke v. City of Santa Barbara* (Ct. App., May 21, 2020, No. B300528) [Attachment 13].) The Coastal Commission Amicus Brief argues that a city wishing to "modify" its existing, permissive approach to STRs cannot do so "unilaterally," but rather must amend its LCP. (Coastal Commission Amicus Brief, *supra,* at p. 17.) Indeed, as explained by the Commission: "[t]he recent rise of STVRs due to online rental platforms . . . is precisely the type of new issue that merits an [LCP] amendment." (*Id.* at p. 12, fn. 4.) In analyzing Santa Barbara's actions, the Commission posits:

> The City's STVR policy attempts to regulate—indeed, to virtually prohibit—a high priority, visitor-serving use of coastal land. Although the Local Coastal Program does not expressly discuss or regulate STVRs, the City has long allowed and condoned them in residential areas. If the City wishes to modify this approach, it may not do so by unilaterally adopting a policy to prohibit STVRs in residential areas. . . . [W]hen an LCP is silent about the regulation of a high-priority coastal land use such as STVRs, the Coastal Act does not allow local jurisdictions to enact new policies to regulate or ban such uses without going through the local coastal program amendment process.[4]

In addition, the Commission argues that Santa Barbara's STR limitations conflict with the Coastal Act because they reduce visitor access to the coastal zone. The Coastal Commission asserts:

> [T]he City's regulation of STVRs conflicts with the Coastal Act by failing to adhere to the Act's public access policies. In particular, the new regulation caused a significant decrease in visitor-serving overnight accommodations within the coastal residential zone, in conflict with Coastal Act policies that prioritize public access and lower cost accommodations. ([Pub. Resources Code] §§ 30001.5, subd. (c), 30210, and 30213.) If the City wishes to regulate STVRs, and particularly if it wishes to virtually prohibit them, it is required to submit a Local Coastal Program amendment to the Commission. (§ 30514.) In unilaterally adopting this regulation, the City deprived the Commission of its right to bring its statewide coastal planning authority and perspective to bear on the City's regulation. . . .
>
> A core principle of the Coastal Act is to maximize public access and recreational opportunities within coastal areas statewide. (§§ 30001.5, subd. (c) and 30210.) The Coastal Act grants "maximum access" along the coast for "all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." (§ 30210.) The Legislature has directed that the Act "be liberally construed to accomplish its purpose and objectives." (. . . citing § 30009.)[5]

The briefing in the *Kracke* appeal is complete. No oral arguments have been scheduled as of August 6, 2020.

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[4] Coastal Commission Amicus Brief, *supra*, at pp. 16-17.

[5] Coastal Commission Amicus Brief, *supra*, at pp. 7-8, 18 (citations omitted).

2. *Keen v. City of Manhattan Beach* (June 2020)

A more recent Los Angeles County Superior Court decision invalidated the City of Manhattan Beach's restrictions on STRs in the coastal zone. In *Keen v. City of Manhattan Beach*, a property owner in Manhattan Beach's coastal zone sought a writ of mandate and declaratory relief, seeking an injunction against the City's enforcement of its 2019 STR ordinance. Manhattan Beach's Ordinance 19-0007, among other things, "noted that STRs are not a permitted use in residential zones" and imposed strict requirements to "enforce" this prohibition. (See Decision on Petition for Writ of Mandate ("*Keen* Decision") at p. 9, *Keen v. City of Manhattan Beach* (Super. Ct. L.A. County, June 25, 2020, No. 19STCP02984) [Attachment 14].)

The court in *Keen* noted that Manhattan Beach has 12 hotels, three in the coastal zone with a total of 89 rooms, which the court called an "extreme shortage." (*Keen* Decision, *supra*, at pp. 5, 1.) In explaining its determination that the ordinance constituted "development" under the Coastal Act, the superior court stated:

> The [Coastal] Commission and the *Greenfield* court have construed the Coastal Act's public access and recreation requirements [to] protect STRs to some extent in order to provide access to the beach. Therefore, a local ordinance purporting to ban STRs is subject to the Commission's review and approval as an amendment to a local government's LCP. Because the City's certified LCP never prohibited short-term rentals, both [the City's ordinances limiting STRs] require review and approval by the Coastal Commission as an LCP amendment. The City may not avoid its duty to seek Commission approval of its STR ban in the coastal zone as an LCP amendment, and must refrain from enforcing these prohibitions in the coastal zone without the Commission's approval.[6]

The superior court has instructed the City to submit a proposed judgment granting the writ of mandate by August 25, 2020.

3. *Coastal Act Protectors v. City of Los Angeles* (pending)

In a currently active case involving the City of Los Angeles' imposition of STR restrictions, a Los Angeles County Superior Court recently issued a tentative decision enjoining the City's enforcement of its restrictions on STRs in the coastal zone because they constituted "development" under the Coastal Act and required a CDP. (See Tentative Decision ("*CAP* Decision") at p. 8, fn. 8, *Coastal Act Protectors v. City of Los Angeles* (Super. Ct. L.A. County, 2020, No. 20STCP00630 [tentatively enjoining the City of Los Angeles from enforcing its STR ban in the Venice coastal zone because moving from "de facto approval of STVRs [by collecting TOT from property owners] to banning or significantly limiting them in the Venice Coastal zone through the Ordinance . . . is a change that may have decreased public access to the beach and a CDP is required."] [Attachment 15].)

The court will hear the plaintiff-petitioner's writ petition and motion for a preliminary injunction and the defendant-respondent's demurrer on August 11, 2020.

* * *

[6] *Keen* Decision, *supra*, at p. 15 (citations omitted).

As explained more thoroughly below in Section IV.C, here, as in *Greenfield, Kracke, and Keen*, Malibu's Proposed Ordinance constitutes "development" under the Coastal Act. The Proposed Ordinance creates a *new* permitting system for STRs, imposes *new* substantive requirements and restrictions on who may offer their property as an STR, and sets *new* seasonal prohibitions on when certain properties can be rented. Especially considered in conjunction with the fact that it appears the City has allowed unrestricted offering of STRs in single-family homes for the last three decades, and the limited number of traditional overnight accommodations in the City, the Proposed Ordinance would "result[] in a significant decrease in access" and therefore constitutes "development" requiring Commission approval.

B. *Certain Superior Court decisions[7] related to Santa Monica's "Home-Sharing Ordinance" are inapposite*

In 2015, Santa Monica adopted a "Home-Sharing Ordinance." Santa Monica does not have a Commission-certified LCP, and it did not submit its Home-Sharing Ordinance to the Commission as an LCP amendment. Following its adoption, Santa Monica moved to enforce the Home-Sharing Ordinance's prohibitions on certain STRs against a property owner. These enforcement actions gave rise to a number of superior court cases.

Hayek v. City of Santa Monica (Super. Ct. L.A. County, May 30, 2018, No. 17STLC02007) ("*Hayek I"*) (Attachment 16) involved superior court review of the City of Santa Monica's issuance of 11 administrative violations to a property owner for alleged noncompliance with the Home-Sharing Ordinance, "which authorized short-term rentals under specific circumstances." (*Hayek I*, *supra*, at pp. 2, 3 (fn. omitted).) The property owner appealed her administrative citations, arguing that the ordinance violated the Coastal Act. The superior court upheld the violations, concluding that "the City adopted the Ordinance as a traditional and unremarkable exercise of its constitutional police power." (*Id*. at p. 8.) The superior court also found the ordinance did not require a CDP and that the ordinance was not a "local coastal program" or "related implementation action." (*Id*. at p. 9.) The superior court recognized that Santa Monica did not currently have a certified LCP because it had not adopted an LIP. (*Id*. at p. 7.) [8]

In *Hayek II*, the same property owner challenged civil citations for four violations of the same ordinance, making the same arguments. The superior court found in *Hayek II* that the petitioner was estopped from challenging the Home-Sharing Ordinance on the grounds that it violated the Coastal Act, because the petitioner had previously made the same arguments,

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[7] At the July 29, 2020, Malibu Planning Commission meeting on the proposed short-term rental LCPA/ZTA, certain Commissioners suggested that the regulation of short-term rentals in the City does not require Coastal Commission approval, making reference to a court case involving Santa Monica's "home-sharing" ordinance. We believe the Commissioners may have been referencing *Hayek v. City of Santa Monica*, discussed herein.

[8] The appellate division of the superior court concluded that it did not have jurisdiction of an appeal from an administrative citation following a de novo appeal to the superior court. (See Order at p. 1, *Hayek v. City of Santa Monica* (Super. Ct. App. Div., Feb. 19, 2019, No. BV 032732) [Attachment 17].) After a trial, the property owner was also convicted of five criminal counts for violations of the same ordinance and sentenced to 48 months of probation; the criminal court adopted the *Hayek I* court's reasoning in rejecting the defendant's Coastal Act arguments. (See Order, Exh. A, *People v. Hayek* (Super. Ct. L.A. County, Dec. 21, 2018, No. 8AR21291) [Attachment 18].)

unsuccessfully, in *Hayek I*. (See Minute Order ("*Hayek II*") at pp. 6-7, *Hayek v. City of Santa Monica* (Super. Ct. L.A. County, July 23, 2019, No. BS170950) [Attachment 19].)

The petitioner argued in *Hayek II* that collateral estoppel should not apply because *Greenfield*, which was decided after the court issued its *Hayek I* ruling and is not discussed in the *Hayek I* decision,[9] constituted a material change in the applicable law since the *Hayek I* decision. (*Hayek II*, *supra*, at p. 8.) In explaining why *Greenfield* did not constitute a material change in the applicable law, the superior distinguished *Hayek* from *Greenfield*. In *Greenfield*, the superior court explained, "short term rentals had been prevalent in the coastal zone affected . . . before they were banned." (*Id.* at p. 9.) By contrast, "Santa Monica assert[ed] STVRs have always been banned, and that [Santa Monica's] Home-Sharing ordinance actually allows more visitor-serving uses consistent with the Coastal Act." (*Ibid.*)[10] The superior court also concluded that "given that the Home-Sharing ordinance provides greater access by allowing home-sharing opportunities previously banned, the court finds no conflict between the ordinance and the City's LUP or the Coastal Act." (*Id.* at p. 10.)[11]

* * *

The superior courts in *Hayek I* and *Hayek II* did not make any reference to allegations that short-term rentals were previously allowed in Santa Monica. Likewise, there does not appear to be any reference made to Santa Monica "tolerating" STRs by collecting TOT prior to seeking to enforce a prohibition on their operation (as was alleged in *Kracke* and *Keen*).[12] More generally, the *Hayek* decisions focus in part on the fact that Santa Monica's Home-Sharing Ordinance did not constitute a new limitation on STRs and did not violate the Coastal Act.[13] (See *Hayek I*, *supra*, at p. 2 ["The Ordinance continued to prohibit vacation rentals"]; *Hayek II*, *supra*, at p. 9 ["Santa Monica asserts STVRs have always been banned, and that the Home-Sharing ordinance actually allows more visitor serving uses consistent with the Coastal Act"].) As explained more thoroughly below in Section IV.C, here, the Proposed Ordinance does constitute a *new* limitation on STRs and does *violate* both Malibu's Commission-certified LCP and the Coastal Act.

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[9] The superior court issued its ruling on *Hayek I* on February 1, 2018. (See *Hayek I*, *supra*, at p. 4.)

[10] The superior court also distinguished Santa Monica's home-sharing ordinance from *Greenfield* because the entity regulating STRs in *Greenfield* was a private homeowner's association, not a city. (See *Hayek I*, *supra*, at pp. 8-9.) However, the Coastal Commission has made clear that it agrees that where a city with an LCP institutes a change to its STR regulations constituting a change in access, the Coastal Commission must approve such a decision. (See Coastal Commission Amicus Brief, *supra*, at pp. 16-17.)

[11] The federal Ninth Circuit Court of Appeal has also rejected challenges to Santa Monica's home-sharing ordinance based on certain federal law claims, but has never considered the Coastal Act issues discussed in this White Paper. (See *Rosenblatt v. Santa Monica* (9th Cir. 2019) 940 F.3d 439, 453 [affirming district court's dismissal of claims that Santa Monica's home-sharing ordinance violated the dormant Commerce Clause] [Attachment 20]; *HomeAway v. City of Santa Monica* (9th Cir. 2019) 918 F.3d 676, 687, 681 fn.2 [affirming district court's dismissal of claims that Santa Monica's home-sharing ordinance violated the Communications Decency Act and the First Amendment, but noting that the district court declined to exercise supplemental jurisdiction over the plaintiffs' Coastal Act claims and that because the Ninth Circuit affirmed the district court's dismissal of the federal claims, the court of appeal "need not consider the state-law [Coastal Act] claims"] [Attachment 21].)

[12] Further, unlike the situation in Santa Barbara and Manhattan Beach, Santa Monica did not have a Commission-certified LCP.

[13] See also *ante* fn. 10.

C. *The restrictions placed on existing, legal short-term rentals in the Proposed Ordinance constitute "development" under the Coastal Act*

1. The Proposed Ordinance imposes new restrictions and seasonal prohibitions that will significantly reduce the availability of overnight accommodation in Malibu

Malibu is an important visitor-serving coastal destination. (See Malibu LCP, Land Use Plan, Ch. 2, § A) ["The beaches of Malibu are world-famous tourist destinations for millions of visitors annually from foreign countries, all 50 states of the U.S., as well as to residents of cities and towns located throughout California."] [Attachment 22].) Yet the City has a limited supply of traditional visitor-serving overnight accommodations—there are fewer than 120 hotel rooms in the City.

Currently, hundreds of STRs supplement the City's limited traditional accommodations options. City staff previously reported that as of September 26, 2018, there were 414 properties remitting TOT for STRs, and perhaps 109 additional STRs not registered with the City. Approximately 94 percent of these STRs were for entire homes, a figure that includes the rental of accessory dwelling units or duplex units where the homeowner may be onsite for the entire stay. Approximately 74 percent of the City's STRs were for single-family residences.[14]

The Proposed Ordinance would constitute a significant change from the status quo by reducing the number of STRs available in the City. The Proposed Ordinance would prohibit the rental of any single-family residence that is not a primary residence from October to March. Based on Airbnb's review of active listings in Malibu on the Airbnb platform, 90% of such listings are "whole-home" offerings. Prohibiting short-term rentals October to March in non-primary residences is, in other words, estimated to result in a significant reduction of annual single-family home STR offerings in the City during those months.

2. Malibu has historically allowed and financially benefited from short-term rentals

Short-term rental of single-family homes is currently allowed—if not encouraged—in the City, and there are currently no restrictions in the LCP placed on who may offer a single-family residence for short-term rental, or the time period that such property can be offered.[15] That appears to have been the case in Malibu for decades.

Unlike in other jurisdictions, Malibu has repeatedly stated that it expressly allows the unrestricted rental of STRs in single-family homes. As summarized by staff, "[s]hort-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

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[14] Council Agenda Report, Item 4.B: Short Term Rental Ordinance at pp. 2-3, September 26, 2018 City Council Meeting (Attachment 23).

[15] While the City states that rental of multifamily units as STRs is not permitted, the City has registered and collected TOT from multifamily buildings. To our knowledge, the City has never enforced its supposed prohibition on the rental of multifamily units as STRs; if it has enforced this prohibition, it has not done so consistently.

Tax (TOT) is properly remitted."[16] The Proposed Ordinance itself acknowledges in the recitals that "the City of Malibu allows residential property to be rented on a short-term basis for periods of 30 days or less." The City has also long benefited financially from STRs. The City began collecting TOT on STRs in 2009.[17] In Fiscal Year 2018-2019, the City collected approximately $2.42 million in TOT from STRs.[18]

3. Applicable California law holds that the Proposed Ordinance constitutes "development" requiring Commission approval

In a December 2016 letter to Coastal Planning/Community Development Directors, then-Coastal Commission Chair Steve Kinsey explained that the Coastal Commission "strongly encourage[s] your community to pursue vacation rental regulation through your LCP."[19] In September 2018, Coastal staff informed the City itself that "vacation rental regulations in the coastal zone must occur within the context of the City's LCP," and encouraged "the City to submit an LCP amendment to the Commission."[20] The Commission's direction makes sense. As held by the California Supreme Court, "the public access and recreational policies of the Coastal Act should be ***broadly construed to encompass all impediments to access, whether direct or indirect, physical or nonphysical***." (*Surfrider Foundation v. California Coastal Corn*. (1994) 26 Cal.App.4th 151, 158 [emphasis added] [Attachment 29].) As discussed above, a "change in the [] intensity of use of land [. . . or] water, or of access thereto," is "development" under the Coastal Act. (Pub. Resources Code § 30106.)

Prohibiting STRs in an area where they were previously common "changes the intensity of use and access to" such accommodations and constitutes development. (*Greenfield, supra,* 21 Cal.App.5th at p. 901.) Since 2009, the City has reportedly collected TOT from single-family residences offering STRs. While other jurisdictions (*e.g.* Santa Barbara and Manhattan Beach) currently face legal challenges to their enforcement of alleged existing STR restrictions, we have not been able to find any indication that Malibu as a City has ever taken the position that its LCP prohibits STRs in single-family residences. To the contrary, the City has repeatedly stated[21] that STRs in single-family homes are expressly permitted.[22] Accordingly, the Proposed Ordinance,

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[16] See Commission Agenda Report, Item 5.C: Short Term Rental Ordinance at p. 1, May 7, 2018 Planning Commission Meeting (Attachment 24); see also Council Agenda Report, Item 4.A: Short Term Rental Ordinance at p. 2, July 9, 2018 City Council Meeting (Attachment 25); Council Agenda Report, Item 4.B: Short Term Rental Ordinance at p. 2, September 26, 2018 City Council Meeting.

[17] Council Agenda Report, Item 4.A: Short Term Rental Ordinance at p. 2, July 9, 2018 City Council Meeting.

[18] Council Agenda Report, Item 4.C: Interim Short-Term Rental Ordinance at p. 1, August 10, 2020 City Council Meeting (Attachment 26).

[19] Letter from Steve Kinsey to Coastal Planning/Community Development Directors (December 6, 2016) (Attachment 27).

[20] Letter from Denise Venegas to Bonnie Blue, Malibu Planning Director (September 20, 2018) (Attachment 28).

[21] See Commission Agenda Report, Item 5.C: Short Term Rental Ordinance at p. 1, May 7, 2018 Planning Commission Meeting; see also Council Agenda Report, Item 4.A: Short Term Rental Ordinance at p. 2, July 9, 2018 City Council Meeting (stating STRs in Malibu predate its incorporation as a city); Council Agenda Report, Item 4.B: Short Term Rental Ordinance at p. 2, September 26, 2018 City Council Meeting (stating same).

[22] We recognize that in the context of the regulation of STRs, certain jurisdictions have argued that given the respective jurisdiction's permissive zoning, if STRs are not expressly permitted in the zoning code, they are

which, for the first time since the Commission's certification of the LCP will prohibit STRs in certain single-family residences for six months out of the year, constitutes a new regulation.

The Proposed Ordinance will effectively eliminate a significant percentage of existing, single-family residences STRs for six months of the year. This reduction clearly "changes the intensity of use and access to" the coast and therefore constitutes "development" under California law. As appropriately recognized by the Commission in its *amicus* brief filed in the *Kracke* appeal, STRs are "a high priority, visitor-serving use of coastal land." (Coastal Commission Amicus Brief, *supra*, at p. 16.) If a city wishes "to enact new policies to regulate or ban such uses," it must do so through an LCP amendment. (*Id.* at p. 17.) The Proposed Ordinance is a complete new policy that regulates STRs and will eliminate a significant percentage of available single-family residences STRs for six months out of the year. The City can only impose the new restrictions and prohibitions through an LCP amendment.

The trial court's decisions in *Kracke* and *Keen* are instructive. In both cases, Santa Barbara and Manhattan Beach collected TOT from STRs for years before subsequently moving to regulate and limit their operation. In each of these cases, the trial court recognized that the efforts to regulate and limit STRs would reduce the availability of existing STRs and thus constitute development. Malibu not only has collected TOT from STRs for the last 11 years, as City staff has pointed out on numerous occasions, short-term rental of single-family residences is currently permitted in the City.[23] There are currently no restrictions in the LCP placed on who may offer a single-family residences as an STR, or the time period such property can be offered. Accordingly, the STR Ordinance's new restrictions and prohibitions on STRs in the City represents a "change in the [] intensity of use" requiring approval by the Commission.[24]

Hayek I and *Hayek II* do not provide otherwise. First, Santa Monica, unlike Malibu, never allowed STRs under its zoning code. Santa Monica's Home-Sharing Ordinance *could* arguably be viewed as allowing and/or facilitating new access. Here, in contrast, there is no doubt that the Proposed Ordinance would significantly ***decrease Coastal access*** to single-family residences for six months out of the year, and *Greenfield*, *Surfrider*, and the superior court judges in *Kracke* and *Keen* have all determined that such a decrease in coastal access is development under the Coastal Act requiring approval by the Commission.

IV. THE PROPOSED ORDINANCE IS INCONSISTENT WITH THE MALIBU LCP AND THE COASTAL ACT

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prohibited. This "permissive zoning" argument does not apply in Malibu. Malibu has repeatedly indicated that STRs in single-family residences are permitted under its LCP. Moreover, as explained by the Coastal Commission, "when an LCP is silent about the regulation of a high-priority coastal land such as STVRs, the Coastal Act does not allow local jurisdictions to enact new policies to regulate or ban such uses without going through the local coastal amendment process." Coastal Commission Amicus Brief, *supra*, at pp. 16-17. The Commission has also informed various jurisdictions around that State that it has "generally interpreted local zoning ordinances in a broad fashion and found that short-term rentals are a form of residential use, permitted by right in any residentially zoned area unless such uses are specifically prohibited or otherwise restricted." *See*, *e.g.*, July 13, 2018 Letter to the City of San Diego (Attachment 30).

[23] *See, e.g.*, Commission Agenda Report, Item 5.C: Short Term Rental Ordinance at p. 1, May 7, 2018 Planning Commission Meeting.

[24] See *Greenfield*, *supra*, 21 Cal.App.5th at p. 901.

The Commission takes the position that significant restrictions on STRs will only be permitted based on a case-specific determination of "the extent to which STVRs form a necessary part of a jurisdiction's suite of coastal accommodations," a determination that, again, must be made by the Commission. (Coastal Commission Amicus Brief, *supra*, at p. 20, fn. 7.) A new regulation that "cause[s] a sharp decline of visitor serving accommodations in the coastal zone . . . objectively hinders visitor access to the coast" in conflict with Coastal Act policies. (*Id.* at pp. 19-20.) Here, the Proposed Ordinance will result in a "sharp decline" in visitor-serving accommodations in the City by effectively removing a significant percentage of available single-family STRs in the City from October to March. This is particularly problematic in Malibu, where are there are extremely limited traditional overnight accommodations.

A. *The Proposed Ordinance directly conflicts with the City's LCP*

The City's LCP clearly states:

> A broad policy goal of California's Coastal Management Program is to maximize the provision of coastal access and recreation consistent with the protection of public rights, private property rights, and coastal resources as required by the California Constitution and provided in Section 30210 of the Coastal Act.[25]

The Proposed Ordinance fails to "maximize" the provision of coastal access. As explained above, the vast majority of single-family homes offered as STRs in Malibu are likely secondary residences. Given the Proposed Ordinance's restrictions on non-primary residences, the City will lose a significant percentage of its single-family STR overnight accommodations every year from October to March. In a City with fewer than 120 hotel and motel rooms, these new restrictions directly conflict with the following LCP policies calling for the protection of existing visitor-serving facilities in the City:

> 2.34 – Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.
>
> 2.36 – Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.[26]

Further, the LCP policies reproduced above not only require the ***protection of existing*** visitor-serving and recreation facilities, but also direct the City to ***encourage new facilities***.

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[25] Malibu LCP, Land Use Plan, Ch. 2, § A.1.

[26] Malibu LCP, Land Use Plan, Ch. 2, § C (Attachment 31).

By imposing restrictions on the year-round offering of single-family homes as short-term rentals that are not a primary residence, and restricting multifamily buildings to offering two units for short-term rentals, the proposed STR Ordinance creates a strong disincentive for the establishment of any new short-term rentals in the City. This is particularly problematic for future coastal access in a community with fewer than 120 existing hotel and motel rooms, and where no new hotels or motels have been constructed since the City was incorporated in 1991.

B. *The Proposed Ordinance directly conflicts with the Coastal Act*

The Proposed Ordinance is also inconsistent with the Coastal Act policy reproduced directly below and the California State Legislature's intent to "[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners":[27]

> The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.[28]

As previously summarized by Commission staff, "the Coastal Act places a higher priority on the provision of visitor-serving uses, particularly overnight accommodations, over private residential uses because such visitor-serving uses offer a vehicle for the general public to access and recreate within the state's coastal zone."[29]

As discussed above, in its *amicus* brief in the *Kracke* appeal, the California Attorney General, on behalf of the Commission, explained:

> The City's strict regulation of STVRs raises serious concerns regarding consistency with the Coastal Act's policies of maximizing statewide public access to the coast. The City's newly adopted regulation caused a sharp decline of visitor serving accommodations in the coastal zone. Only 6 of 114 then-existing vacation rentals continued to operate in the coastal zone after the City re-defined STVRs as "hotels" under its municipal code. Instead of enhancing public access, the City's regulation of STVRs objectively hinders visitor access to the coast.[30]

Malibu's Proposed Ordinance clearly fails to prioritize visitor-serving overnight accommodations and will likewise "cause[] a sharp decline of visitor serving accommodations in the coastal zone." The Proposed Ordinance violates Coastal Act policies.

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[27] Pub. Resources Code § 30001.5.

[28] Pub. Resources Code § 30222 (Attachment 32).

[29] Letter from Susan Craig, Central Coast District Manager, California Coastal Commission, to Carl Holm, Director, Monterey County Resource Management Agency (June 23, 2016) (Attachment 33).

[30] Coastal Commission Amicus Brief, *supra*, at pp. 19-20 (citations to the administrative record omitted).

V. CONCLUSION

The Proposed Ordinance will sharply reduce the availability of visitor-serving overnight accommodations in Malibu. This reduction constitutes "development" under the Coastal Act, necessitating approval by the Commission in the form of an LCP amendment or a CDP. Further, given the Proposed Ordinance would severely restrict the availability of overnight accommodations in the City every year from October to March, coupled with the fact the City has fewer than 120 hotel and motel rooms, the Proposed Ordinance also runs afoul of the City's LCP and the Coastal Act.

Richard de Sam Lazaro, Expedia Senior Manager, Government and Community, letter to Mayor Pierson and the Malibu City Council, Sept. 14, 2020

expedia group™

September 14, 2020

Malibu City Council
c/o: Heather Glaser, City Clerk
23825 Stuart Ranch Road
Malibu, CA 90265
email: hglaser@malibucity.org

FILED
City of Malibu
Office of the City Clerk
Meeting Date 9/14/20
Agenda Item # 4A

RECEIVED
Sep 14 2020
CITY CLERKS OFFICE
CITY OF MALIBU

Dear Mayor Pierson and Honorable Members of the City Council:

On behalf of Expedia Group, a family of travel brands including vacation rental leader Vrbo, thank you for the opportunity to comment on the proposed ban on unhosted vacation rentals in Malibu. The proposal as currently drafted unnecessarily overreaches the issues Malibu seeks to address and in the process violates requirements to preserve affordable accommodation in Malibu's Coastal Zone. We urge you to defer further consideration and work with Expedia Group and other local stakeholders to craft sustainable, balanced regulations that meet Coastal Zone requirements.

The proposal before Council attempts to address nuanced and complex issues through a blunt policy by banning outright unhosted, traditional vacation rentals which have been part of Malibu's communities and tourism ecosystem for generations. This will have significant and unnecessary negative impact on Malibu's tourism economy. As an alternative, we invite you to work with Expedia Group to discuss regulatory options and compliance tools that can help meet community need while protecting property rights and preserving affordable accomodations throughout the city for traveling families.

Platforms like Vrbo can be valuable partners in driving a high rate of compliance with nuanced, forward-thinking vacation rental regulations. In many California cities, platforms connect with City databases to automatically remove any listing bearing an invalid or revoked permit number in real time. This process of noncompliant listing removal could help Malibu eliminate any loopholes or workarounds for operators whose permits have been suspended or revoked, driving a high rate of compliance with regulations that meet community need while taking problematic listings off the market at relatively low cost to city enforcement programs.

Additionally, we would be grateful to explore a Voluntary Collection Agreement to collect and remit transient occupancy taxes generated by vacation rentals on Expedia Group platforms, ensuring a robust, reliable, easily administered revenue stream for Malibu. Vacation rentals provide critical economic and revenue streams to Malibu, and we look forward to helping the city maximize their value.

With the opportunity in mind, we respectfully urge you to consider the proposed regulations' inconsistency with Coastal Zone requirements to preserve affordable transient accomodations. Put simply, the proposed ordinance would devastate the availability of vacation rentals, in turn significantly limiting the lodging options available to traveling families and drastically increasing costs. This unnecessarily heavy-handed proposal eliminates accomodations that have provided tens of thousands of booked room nights in Malibu, driving down supply to a small fraction of demand and increasing the cost of a visit to Malibu.

While City materials claim the opposite, they provide no data to support this position and leave serious doubt as to this proposal's compliance with Malibu's mandate to protect affordable transient accomodations "to the maximum feasible extent."

CC: Council; CM; CA ; PL ; Ref. Binder; Original to 9/14/20 Agenda File

Thank you for taking the time to conduct a detailed, thorough analysis of the regulatory options available to Malibu, their consequences, and their consistency with Coastal Zone requirements. While the current proposal does not meet the standard for sustainable and balanced public policy, we encourage you to work with us to explore the compliance and partnership opportunities above and stand ready to discuss reasonable, responsible limits on vacation rental licenses as part of a balanced regulatory package.

Please feel free to contact me with any questions at rilazaro@expediagroup.com or 206-660-8227. We appreciate your partnership and leadership through this challenging time.

Sincerely,

Richard de Sam Lazaro
Senior Manager, Government and Community

John Choi, Airbnb Public Policy Manager, letter to Mayor Pierson and the Malibu City Council, Sept. 14, 2020

September 14, 2020

Mayor Pierson and the Malibu City Council
c/o: Heather Glaser, City Clerk
23825 Stuart Ranch Road
Malibu, CA 90265

Dear Mayor Pierson and Honorable Members of the City Council:

On behalf of Airbnb, thank you for the opportunity to continue our dialogue on the City of Malibu's efforts to adopt new short-term rental (STRs) regulations. For the last 12 years, Airbnb has worked closely with cities around the world to help communities realize the benefits of STRs for travelers, hosts, and local economies.

While Malibu's significant planning efforts over the last several years is commendable, the "Hosted Ordinance" and associated Local Coastal Program ("LCP") amendment[1] before the City Council on September 14, 2020, will eliminate hundreds of accommodations in the City and make it harder for families and visitors to visit the City and access the coast. The proposed restrictions will cut-off Malibu from visitors, inhibit families from experiencing the City's coastal areas, and have significant adverse impacts on the local tourism economy.

Most concerning, as summarized below, the Proposed Ordinance violates LCP and California Coastal Act policies designed to protect and encourage visitor-serving opportunities and access to the coast.

To protect against these consequences and ensure consistency with the LCP and Coastal Act, we respectfully request the Council amend the Proposed Ordinance to include the modifications set forth in the attached Exhibit A and submit the revised ordinance to the California Coastal Commission ("Commission") for approval.[2]

The Proposed Ordinance Conflicts with the City's LCP and the California Coastal Act

As explained by the California Attorney General in a recent brief filed in the California Court of Appeal on behalf of the Commission, a new regulation for STRs that "cause[s] a sharp decline of visitor-serving accommodations in the coastal zone . . . objectively hinders visitor access to the coast" in conflict with Coastal Act policies.[3] Here, the Proposed Ordinance will not only result in a "sharp decline" in visitor-serving accommodations in the City, it will devastate the overnight lodging market in Malibu by removing an estimated tens of thousands of room nights annually.

The reduction of available STR accommodations is particularly problematic in Malibu, where traditional

[1] The proposed Hosted Ordinance and LCP amendment are collectively referred to as the "Proposed Ordinance."

[2] As recognized in the Staff Report, new restrictions placed on the offering of STRs in a jurisdiction with a certified LCP (like Malibu) must be submitted to the Commission.

[3] Amicus Curiae Brief of the California Coastal Commission at pp. 19-20, *Kracke v. City of Santa Barbara* (Ct. App., May 21, 2020, No. B300528).

overnight accommodations (i.e. motel/hotel rooms) are already extremely limited.

The City's proposed findings for the Proposed Ordinance's consistency with LCP Policy 2.34 and LCP Policy 2.36 (below) are unsubstantiated:

> *No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to be used for short-term rentals, which is currently prohibited.*

There is simply no evidence in the record before the Council to support these findings. The City has not provided any data or analysis supporting the assertion that the Proposed Ordinance will not result in the removal lower cost opportunities for visitor-serving accommodations, nor has the City provided any data or analysis regarding the potential impacts on the going-forward pricing of hotel/motel rooms and remaining STRs. Further, the City has not provided any data, analysis, or substantial justification to show that the prohibition on non-hosted rentals is necessary Citywide, or that the remaining STRs in the City following the imposition of the prohibition on non-hosted STRs would provide sufficient room nights and the types of STRs to accommodate existing visitor demand consistent with the LCP and the Coastal Act.

In fact, Airbnb's extensive experience in markets around the world and available research provides otherwise. Given the lack of traditional overnight accommodations and the decades long reliance on STRs in Malibu for vacation rentals, removing a significant portion of STRs from the market will have potentially devastating impacts to the accessibility and affordability of the Malibu vacation rental market.

The Proposed Ordinance will eliminate non-hosted, single-family home STRs and restrict the availability of apartment and condominium STRs. Generally, "STRs provide a better value per visitor due to their increased capacity to host families and large groups and the wide range of amenities they offer visitors, such as parking, kitchen access, gathering spaces, etc. These facilities can help reduce the overall cost of a vacation."[4] We estimate that the "entire home" rentals are the most demanded STRs in Malibu for this very reason.[5]

While STRs traditionally "offer a more sustainable option that require[] fewer resources and help[] increase access with more diverse accommodation options and better value,"[6] the Proposed Ordinance will decrease both the supply and diversity of accommodation options, reducing access and potentially increasing costs. Reducing the supply and diversity of STR supply is particularly troublesome given Malibu's position in the State as a significant visitor destination.

Unlike other Coastal communities with significant supplies of traditional overnight accommodations (i.e., Santa Monica has over 3,900 hotel/motel rooms), Malibu has fewer than 120 hotel rooms. The removal of *any* STRs will have a major effect on families that rely on such accommodations to make vacations to the

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[4] "Unequal Access – Protecting Affordable Accommodations Along the California Coast," at p. 33, attached as Exhibit B.

[5] City staff previously reported that as of September 26, 2018, there were 414 properties remitting TOT for STRs, and perhaps 109 additional STRs were not registered with the City. The City reported approximately 94% of these STRs were for "entire homes." About 74% of the City's STRs were for single-family residences. Council Agenda Report, Item 4.B: Short Term Rental Ordinance at pp. 2-3, September 26, 2018 City Council Meeting

[6] Exhibit B, "Unequal Access – Protecting Affordable Accommodations Along the California Coast," at p. 33.

City feasible. As reported, "[w]ith the high cost of coastal land, it is not profitable to build low cost hotels or similar lodging. High fixed and startup costs not only restrict the construction of new hotels but also influence the price of hotel rooms at peak times. Hotels cannot increase supply, due to high fixed costs, so they increase rates."[7] A robust and diverse STR market has mitigated this effect in Malibu, but the Proposed Ordinance, which we estimate will remove tens of thousands of room nights from the Malibu vacation rental supply annually, puts this at risk.

The limited STRs that will remain available will also generally be the type of accommodations *least* attractive to families. As previously recognized by City staff:

> *Demand for lodging in the City is likely to continue to outstrip the ability of hotels/motels to supply that lodging. As a result, demand for short term rental options in the City is likely to continue to grow, especially because many families prefer to rent a home rather than rooms in a hotel.*[8]

By significantly reducing the availability of non-hosted, single-family residence STR options in the City, the Proposed Ordinance will force families wishing to visit Malibu to either rent multiple hotel/motel rooms at great expense (if such rooms are even available). Families that cannot afford multiple hotel/motel rooms or may feel uncomfortable staying with a host will face a barrier to staying in Malibu in the future. Those families that do feel comfortable staying in a hosted STR will likely face higher prices for their rental than they would today given the anticipated substantial reduction in the supply of existing room nights under the Proposed Ordinance's prohibitions.[9]

Put simply, the Proposed Ordinance's regulation of STRs in Malibu will severely reduce the availability of diverse overnight accommodations and limit coastal access. Accordingly, the Proposed Ordinance objectively fails both to (1) protect "[c]oastal recreational and visitor serving uses and opportunities" and (2) protect "to the maximum feasible extent" "existing lower cost visitor-serving and recreation facilities, including overnight accommodations ….", in violation of both LCP Policy 2.34 and LCP Policy 2.36.[10]

Further, the City's LCP policies not only require the protection of existing visitor-serving facilities, they also direct the City to encourage new facilities. STRs "offer a more sustainable option that require[] fewer resources and help[] increase access with more diverse accommodation options and better value."[11] By imposing restrictions on the offering of single-family residences as STRs, and restricting multi-family buildings to offering just two units as STRs, the Proposed Ordinance creates a strong disincentive for the establishment of any new STRs in the City. This is very problematic for future coastal access in a community where no new hotels or motels have been erected in over thirty years.[12]

Suggested Amendments to the Proposed Ordinance to Encourage Access to Malibu

Airbnb has long encouraged a balanced approach to the regulation of STRs. We also believe that with the

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[7] "Unequal Access – Protecting Affordable Accommodations Along the California Coast," at p. 35 (citing Zervas 2016, 22).

[8] See Commission Agenda Report, Item 5.C: Short Term Rental Ordinance, November 20, 2017 Planning Commission Meeting.

[9] For additional details on the potential impacts on the cost of overnight coastal accommodations from the removal of STRs, please see the attached report titled "Unequal Access – Protecting Affordable Accommodations Along the California Coast" (Exhibit B).

[10] Malibu LCP, Land Use Plan, Ch. 2, § C, subds. 2.34 & 2.36.

[11] "Unequal Access – Protecting Affordable Accommodations Along the California Coast," at p. 33.

[12] While we understand certain hotels/motels in Malibu have been recently remodeled, the opening of the Malibu Beach Inn in 1989 was the last "new" hotel/motel developed in the City.

modifications proposed below, the Proposed Ordinance would be consistent with LCP and Coastal Act policies, will support the democratization of tourism in Malibu, and ensure that visitors and families will continue to have the opportunity to experience the unique beauty of the Malibu coast for decades to come.

Historical Use Permit

To ensure consistency with LCP and Coastal Act policies calling for the protection of existing visitor-serving facilities, the Council should amend the Proposed Ordinance to create a permit category that allows existing, legally operating STRs to continue offering non-hosted STRs in both primary and non-primary single-family residences. By allowing for the continued access to existing, legally operating STRs, the City will maintain the room nights needed to meet demand and simultaneously ensure the availability of the STR types most attractive to families. This approach will also mitigate against the risk of increased prices for the remaining STRs and hotel/motel rooms following the adoption of the Proposed Ordinance.[13]

> *Section 17.55.040(C): Historical Use Permit. An owner of a historical short-term rental 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. Notwithstanding anything in Section 17.55 to the contrary, a historical use permit is valid even if the historical short-term rental is not 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.*

Tourist Core Permit

To ensure consistency with LCP and Coastal Act policies encouraging new visitor-serving facilities, the Council should further amend the Proposed Ordinance to include a permit category for STRs within an area of Malibu that offers proximity to both Coastal resources (like beaches) and the heart of the City's commercial and tourist core. This proposed "Tourist Core" overlay would extend on the seaward side of Pacific Coast Highway between the Malibu Pier to the west and Las Flores Canyon Road to the east. A "Tourist Core Permit" would allow non-hosted STRs in primary and non-primary residences, and the rental of any number of units in multi-family buildings. This approach would encourage new visitor-serving accommodations in the City as required by the applicable LCP and Coastal Act policies and consistent with past-Commission precedent.[14]

> *Section 17.55.040(D): Tourist Core Permit. An owner, including the owner of a multifamily residential building, may obtain this permit, which allows short-term rental of residential property, in compliance with this chapter, during the period that the permit is valid, if the permitted location is located on the seaward side of Pacific Coast Highway between the Malibu Pier to the west and Las Flores Canyon Road to the east. Notwithstanding anything in Section 17.55 to the contrary, a tourist core permit is valid even if the property is not the owner's primary residence.*

Definition of Hosting Platform

Airbnb has been collecting and remitting transient occupancy taxes on behalf of owners in Malibu since

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[13] The Commission approved a similar approach in Santa Cruz. There, the Commission approved as submitted an LCP amendment that permitted existing, TOT-paying STRs to continue to operate, but set new limits on future STR permit applications.

[14] The Commission recently advocated in a court filing for the consideration of location when regulating STRs stating: "[Del Mar's] proposed amendment makes no distinction between inland parts of the City and the shoreline areas, and the City's blanket restrictions are overly broad and restrictive. . . . Residences in prime visitor-serving, beach-adjacent areas are not given any priority for use as an STR, which hinders the public's ability to access and recreate in these near shore areas." California Coastal Commission Brief in Opposition to Writ at p. 18, *City of Del Mar v. California Coastal Commission* (Super. Ct. San Diego County, Nov. 15, 2019, No. 37-2018-00039254).

2015 through a voluntary collection agreement. To ensure that all hosting platforms are obligated to collect and remit transient occupancy taxes on behalf of short-term rental owners, we suggest making minor edits to the definition of "Hosting Platform" in Section 2 so that requirement captures a broader segment of hosting platforms, thereby ensuring greater compliance and greater revenue for the city. As written now, platforms could argue that they do not have to comply with the provision at all.

> *Section 2: "Hosting platform" means a natural person, joint venture, joint stock company, partnership, association, club, company corporation, business trust, or organization of any kind who participates in the short-term rental business by ~~collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting~~ facilitating a booking transaction using any medium of facilitation.*

Moreover, traditional hospitality operators like hotels, and professional management companies that operate short-term rentals often already have systems in place to collect and remit local taxes. We have found that these professional hosts often prefer to remit their own taxes, and as such, we ask that the language be amended so that they can operate in accordance with existing business practices. The language we suggest below ensures that the City will receive TOT for all applicable booking transactions, from *either* the hosting platform or these more traditional hospitality operators.

> *Section 17.55.090(A): Hosting platforms shall be responsible for collecting all applicable TOT and remitting the same to the City. The hosting platform shall be considered an agent of the owner for purposes of TOT collections and remittance responsibilities as set forth in Chapter 3.24 of this Code. Should a hosting platform fail to fulfill its responsibilities under this Section, or the hosting platform and the owner enter into an agreement regarding the fulfillment of this subsection (A), the owner shall remain responsible for collection and remittance of the TOT the Hosting platform failed to collect and/or remit to the City.*

Hosting Platform Responsibilities

Lastly, we urge the City to ensure that its hosting platform responsibilities section is in accordance with prior draft Ordinances and Ordinance No. 468 ("Enforcement Ordinance), which all provide that a hosting platform may otherwise comply subject to a compliance agreement with the City. This approach allows for the City to negotiate a compliance framework that is more transparent and proactive with regards to enforcement compared to the existing hosting platform booking transaction prohibition set forth in Section 17.55.090(C).

> *Section 17.55.090(E): A hosting platform operating exclusively on the Internet, which operates in compliance with subsections (A), (B), (C), and (D) above, shall be presumed to be in compliance with this Chapter and shall not be found in violation of Section 17.55.080. If technical issues pose a substantial obstacle to compliance with this Section, a hosting platform may also satisfy these obligations pursuant to a compliance agreement with the City that prevents booking transactions for unpermitted short-term rentals, collects all transient occupancy tax due, and complies with the disclosure requirements of this Section.*

Conclusion

Again, we commend the City's efforts to find an appropriate balance in the Proposed Ordinance. However, without the ability for existing primary and non-primary single-family residences to continue to offer non-hosted rentals, and without encouraging new STRs in the area of the City with close proximity to both the City's beaches and its commercial and tourist core, the proposal remains inconsistent with LCP and Coastal Act policies, and will have significant adverse impacts on future access to the Malibu coast. To address these concerns and the others concerns outlined above, we encourage the Council to make the language changes to the Proposed Ordinance we have proposed in the attached Exhibit A and to

seek the Commission's approval of the same through an LCP amendment.

Sincerely,

John Choi
Public Policy Manager, Airbnb

Richard de Sam Lazaro, Expedia Senior Manager, Government and Community, letter to Mayor Pierson and the Malibu City Council, Sept. 29, 2020

Kelsey Pettijohn

Subject: Support for Ord. 468
Attachments: 092920 - Expedia Group re STR.pdf

From: Richard de Sam Lazaro (ELCA) <rilazaro@expediagroup.com>
Sent: Tuesday, September 29, 2020 2:09 PM
To: Mikke Pierson <mpierson@malibucity.org>; Skylar Peak <speak@malibucity.org>; Karen Farrer <kfarrer@malibucity.org>; Rick Mullen <rmullen@malibucity.org>; Jefferson Wagner <jwagner@malibucity.org>; Heather Glaser <hglaser@malibucity.org>; Kelsey Pettijohn <kpettijohn@malibucity.org>
Cc: Trevor Rusin <trevor.rusin@bbklaw.com>
Subject: Support for Ord. 468

Good afternoon,

Please find attached comments on behalf of Expedia Group in support of Ordinance 468. This ordinance represents commonsense, balanced policy that sets out clear expectations and guidelines for short-term rentals and provides Malibu with the enforcement tools necessary to drive a high rate of compliance.

The separate "hosted-only" legislation is extremely damaging policy, particularly as hosted stays are currently restricted by state public health orders. We encourage Council to move forward with Ordinance 468 and measure its impacts and effectiveness before considering additional regulations.

Thank you,

Richard

Richard de Sam Lazaro
Senior Manager, Government and Community
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FILED
City of Malibu
Office of the City Clerk
Meeting Date 9/29/20
Agenda Item # 3A1

CC: Council; CM; CA ; PL ; Ref. Binder; Original to 9/29/20 Agenda File

expedia group™

September 28, 2020

Dear Mayor Pierson and Honorable Members of the City Council:

On behalf of Expedia Group, a family of travel brands including vacation rental leader Vrbo, thank you for the opportunity to comment on proposals to address short-term rentals (STRs) in Malibu. Expedia Group supports Ordinance 468, which sets out clear expectations for STR operators, establishes a system for licensing and enforcement, and brings in platforms like Vrbo as partners in driving a high rate of compliance. This is a strong example of sustainable, balanced policy that addresses community needs while protecting local property rights, TOT revenue, and Malibu's tourism economy. We strongly urge Council to defer consideration of additional, more damaging proposals until the positive impacts of Ordinance 468 can be fully assessed and specific outstanding policy needs are more clear.

The separate "hosted only" proposal before Council attempts to address nuanced and complex issues through a blunt policy by imposing an outright ban on traditional vacation rentals, which have been part of Malibu's communities and tourism ecosystem for generations. The effect of this drastic measure would be especially damaging to Malibu's economy and community now, as state public health guidelines presently prohibit the rental of "rooms or spaces within an occupied residence." Put simply, the hosted-only proposal is an untimely, unbalanced, and unnecessary ban on a lodging option that is critical to preserving affordable access to the coastal zone.

Rather than moving forward with this unsound policy, we invite you and Malibu's city staff to work with Expedia Group to identify reasonable limitations on STRs built on the strong foundation set out in Ordinance 468. Such limitations could include a limit on the number of licenses any one property owner may hold, density limitations (e.g. a certain number of feet between permitted STRs), or capping the total number of permits at a certain percentage of Malibu's total housing units. The enforcement provisions laid out in Ordinance 468 allow for this kind of creative and outcome-focused policymaking and we encourage you to make the most of this opportunity.

Additionally, we would be grateful to explore a Voluntary Collection Agreement to collect and remit transient occupancy taxes generated by vacation rentals on Expedia Group platforms, ensuring a robust, reliable, easily administered revenue stream for Malibu. Vacation rentals provide critical economic and revenue streams to Malibu, and we look forward to helping the city maximize their value.

Thank you for moving forward with Ordinance 468 and rejecting the hosted-only proposal in favor of more balanced, sustainable public policy. Please feel free to contact me with any questions at rilazaro@expediagroup.com or 206-660-8227. We appreciate your partnership and leadership through this challenging time.

Sincerely,

Richard de Sam Lazaro
Senior Manager, Government and Community

John Choi, Airbnb Director of Public Policy, letter to Denise Venegas, Coastal Program Analyst, California Coastal Commission, Jan. 13, 2021

January 13, 2021

Ms. Denise Venegas
Coastal Program Analyst
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: City of Malibu Local Coastal Program Amendment No. 19-003 – Hosted Short-Term Rental Ordinance

Dear Ms. Venegas:

On behalf of Airbnb, thank you for the opportunity to comment on the City of Malibu's December 7, 2020, Local Coastal Program Amendment No. 19-003 – Hosted Short-Term Rental Ordinance (the "LCPA") submittal. For the last twelve years, Airbnb has worked closely with cities around the world to help communities realize the significant benefits that vacation and other short-term rentals ("STRs") provide to travelers, hosts, and local economies. STRs provide unique access opportunities for families and individuals to communities throughout California, including in the Coastal Zone where traditional hotel accommodations are either in limited supply or often prohibitively expensive. We commend the Commission's efforts to support and encourage STRs throughout the Coastal Zone to ensure these important accommodations remain available for visitors to communities throughout California. Airbnb hosts are proud to help advance these efforts by opening their homes and giving thousands of families the opportunity to experience the one-of-a-kind beauty of the coast.

Given the important role STRs play in offering families the opportunity to visit and access the State's iconic shoreline, we are extremely concerned with the proposed LCPA Malibu submitted to the Commission. The LCPA as proposed would completely ban the non-hosted[1] rental of single-family residences, the most widely-offered and utilized STR accommodations in the City. ***We estimate this ban will eliminate tens of thousands of currently available room nights*** and leave the City with approximately one-tenth of the room nights necessary to meet existing demand for single-family residence STRs.

The City's proposal to ban non-hosted STRs in single-family residences throughout the City would be unprecedented in a community like Malibu, which severely lacks other overnight accommodations. Given the fewer than 120 total hotel/motel rooms in the City, STRs provide an important and necessary supplement to the City's supply of overnight accommodations and substantially increase coastal access for thousands of people each year in a coastal town where they could not otherwise spend the night. The LCPA therefore will dramatically decrease overnight room supply, prevent countless families from experiencing Malibu's unique coastal

[1] Under the proposed LCPA, a "hosted" STR is one in which the owner or a "designated operator" lives onsite throughout the duration of the rental. (City of Malibu LCP Amendment Submittal, Att. 1 (December 7, 2020).)

environment, and devastate the affordability of overnight accommodations. For these reasons, the LCPA is inconsistent with both the City's certified LCP and the Coastal Act, as it (1) fails to protect "[c]oastal recreational and visitor serving uses and opportunities" and (2) fails to protect "to the maximum feasible extent" "existing, lower cost visitor-serving and recreation facilities, including overnight accommodations." We encourage Coastal staff to recommend that the Commission reject the City's proposal and recommend the City to modify the LCPA to allow existing, legally operating STRs to continue offering non-hosted accommodations in single-family residences and allow for additional non-hosted STRs in a portion of Malibu close to coastal resources and the City's commercial and tourist core.

The LCPA Submittal Fails to Provide Evidence or Meaningful Analysis to Support the City's Assertion of LCP Consistency

Despite the magnitude of the City's proposal to remove tens of thousands of existing annual room nights from the Malibu overnight accommodation market, the LCPA lacks any meaningful analysis of the impacts the proposal will have on coastal access and evidence to support the City's finding of LCP consistency. The submitted LCPA includes an "LCP Consistency Analysis"[2] that incorrectly asserts:

> *No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to be used for short-term rentals, which is currently prohibited.*

This cursory "LCP Consistency Analysis" fails to include any evidence supporting the assertion that the LCPA will not result in the removal of lower-cost opportunities for visitor-serving accommodations. Specifically, the City:

- ***Does not provide any analysis*** of the impacts the proposed restrictions will have on the pricing of the limited supply of hotel/motel rooms and remaining STRs.
- ***Fails to include*** an inventory or mapping of existing visitor-serving accommodations by type or capacity to allow for an accurate assessment of what lodging will be available to visitors and whether those accommodations can meet current demand.
- ***Ignores statement***s[3] provided during the administrative process that the LCPA will result in the removal of hundreds of existing, legally operating STRs and eliminate tens of thousands of annual room nights currently available in Malibu.

[2] City of Malibu LCP Amendment Submittal, Att. 3.

[3] See, for example, City of Malibu LCP Amendment Submittal, Att. 5, p. 970 (July 27, 2020 transmission from Jeff Bosson, SeaBreeze, to the City Planning Commission) ("If the City were to require that Short Term Rentals (STR's) be only a Home Share Rental, it would eliminate 89.2% of the existing short term rentals in Malibu.").

- ***Offers no substantial justification*** for the need to prohibit non-hosted STRs in single-family residences citywide.

As evidenced by the City's actions over the last several years, Malibu's efforts to regulate STRs was never about ensuring a variety of visitor-serving accommodations or providing economical options for families wishing to visit the coast – it was always about restricting STRs in an effort to cut off the City from visitors. For example, in 2018, the Malibu Planning Commission adopted a resolution recommending the City Council adopt an ordinance prohibiting all STRs in the City. During the various City Council debates on the LCPA, certain councilmembers made their views clear:

- *Maybe we just want to ban it altogether*.[4]

- *I'm going to pursue another path about where we're headed. [Councilmember] Skylar [Peak] said we should ban it, and I would support that*.[5]

- *I'll be honest with you, I personally am more of a full-ban guy. I think it shouldn't be in the City at all. I think it goes against the mission statement*.[6]

In 2019, the City Council commissioned an analysis looking at the implications and potential impacts of a complete STR ban on the City's transient occupancy tax ("TOT") revenue. With that information, one councilmember noted that "I'm all for banning this, but then I look at the financial reports and I realize, hey, we will need some money for a rainy day."[7]

While the City did not move forward with a complete ban, it approved an LCPA that would restrict STRs as much as possible. One councilmember went so far as to say that "we wanted to come up with something that was sort of bullet proof in court and we preferred to pick -- to plagiarize another organization, Santa Monica, that had withstood a legal challenge and that was the way to go."[8] But as the Commission has recognized, time and time again, one size does not fit all when it comes to the regulation of STRs.

As described in more detail below, Airbnb's extensive experience in markets around the world and available research indicates that, contrary to the City's unsupported assertions, the LCPA will result in a sharp decline in visitor-serving accommodations in the City and will devastate the overnight lodging market in direct conflict with the City's LCP and the Coastal Act.[9]

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[4] Councilmember Rick Mullen, September 26, 2018 City Council Hearing. Malibu City Council public hearing videos are available https://www.malibucity.org/662/Public-Meeting-Video-Archive.

[5] Councilmember Jefferson Wagner, September 26, 2018 City Council Hearing.

[6] Councilmember Rick Mullen, October 28, 2019 City Council Hearing.

[7] Councilmember Jefferson Wagner, October 28, 2019 City Council Hearing.

[8] Councilmember Rick Mullen, August 10, 2020 City Council Hearing.

[9] Malibu LCP, Land Use Plan, Ch. 2, § C, subds. 2.34, 2.36; Pub. Resources Code §§ 30001.5(c), 30210, 30213.

The LCPA Conflicts with the LCP and the Coastal Act

The California Attorney General explained in a recent Court of Appeal brief filed on behalf of the Commission that a new regulation for STRs that "cause[s] a sharp decline of visitor serving accommodations in the coastal zone . . . objectively hinders visitor access to the coast" in conflict with Coastal Act policies.[10] In Malibu's case, the LCPA's contemplated regulation of STRs will "cause a sharp decline" in the availability and diversity of overnight accommodations and limit coastal access in Malibu. Accordingly, the LCPA objectively (1) fails to protect "[c]oastal recreational and visitor serving uses and opportunities" and (2) fails to protect "to the maximum feasible extent" "existing, lower cost visitor-serving and recreation facilities, including overnight accommodations . . .", in violation of both the LCP and the Coastal Act.[11] Further, the LCP and the Coastal Act direct the City to encourage new visitor-serving facilities. By restricting the use of single-family residences as STRs and limiting STRs in multi-family buildings, the LCPA creates a strong disincentive for the establishment of any new STRs in the City.

More specifically, the LCPA will eliminate STRs in non-hosted, single-family residences and restrict the availability of apartment and condominium STRs. Reducing the supply and diversity of STRs poses a real problem in Malibu. Unlike some other coastal communities with significant supplies of other overnight accommodations – Santa Monica, for example, has over 3,900 hotel/motel rooms and Laguna Beach has over 1,300 hotel/motel rooms – ***Malibu has fewer than 120 hotel/motel rooms***. The removal of *any* STRs from the Malibu market will hurt families relying on these accommodations to make vacations to the City feasible.

The remaining STR types allowed under the LCPA generally represent the type of accommodations least attractive to families. As the City recognized:

> *Demand for lodging in the City is likely to continue to outstrip the ability of hotels/motels to supply that lodging. As a result, demand for short-term rental options in the City is likely to continue to grow, especially because many families prefer to rent a home rather than rooms in a hotel.*[12]

As Commission staff previously noted, "the attractiveness of [STRs] for many families is the kitchen facilities and expanded living space facilitating an extended stay." This is consistent with Airbnb's own research. Nearly all families that travel utilizing Airbnb choose a home over a hotel/motel because it offers more amenities, such as more room, a kitchen for preparing meals, and common spaces for the family to enjoy together (like backyards). And virtually all families that choose Airbnb also do so because it can be a more affordable way to vacation. Ninety-six percent (96%) of family travelers said that saving money was an important consideration in their decision to use Airbnb. For all of these reasons, it is no surprise that the City reports "entire

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[10] Amicus Curiae Brief of the California Coastal Commission at pp. 19-20, *Kracke v. City of Santa Barbara* (Ct. App., May 21, 2020, No. B300528) (Exh. A).

[11] Malibu LCP, Land Use Plan, Ch. 2, § C, subds. 2.36, 2.34; Pub. Resources Code §§ 30001.5(c), 30210, 30213.

[12] Agenda Report, Item 5.C: Short Term Rental Ordinance at p. 6, November 20, 2017 City of Malibu Planning Commission Meeting (Exh. B).

home" STRs in Malibu are overwhelmingly the most popular type of overnight accommodation.[13]

The City's proposal will effectively eliminate the "entire home" STR option for families. ***We estimate that the LCPA will remove tens of thousands of "entire home" STR room nights from the market and leave the City with just one-tenth of the room nights needed to meet existing STR demand for single-family residences***. By severely restricting the ability to rent single-family residences in the City, the LCPA will force families visiting Malibu either to (1) rent multiple hotel/motel rooms at great expense (if such rooms are even available given the limited supply of hotel/motel rooms in the City), or (2) stay in a hosted STR. Families who cannot afford multiple hotel/motel rooms, or who feel uncomfortable staying with a host who is unknown to them, will face a severe barrier to staying in Malibu. Those families who do stay in a hosted STR will likely face much higher prices for their rental than they would today, given the anticipated massive reduction in the supply of existing room nights under the LCPA prohibitions.[14]

Proposed Modifications to Ensure Consistency with the LCP and the Coastal Act

Airbnb supports a balanced approach to STR regulation. During the City's administrative process on the LCPA, we suggested that the City create a permit category allowing for existing, legally operating STRs to continue offering non-hosted accommodations in single-family residences. We developed this suggestion following our review of recent Commission actions on other STR regulations. For example, in October 2020, the Commission supported Laguna Beach's proposal to allow existing, legally permitted STRs in residential zones to continue to operate.[15] In July 2020, the Commission recommended that the City of Oxnard exempt existing, TOT-paying properties from the City's new limitations on the number of STRs permitted in each zone.[16] In April 2018, the Commission approved a City of Santa Cruz LCP amendment that banned new non-hosted STRs but allowed the City's approximately 600 existing, TOT-paying STRs to continue to operate.[17]

We also suggested a more permissive regulatory approach to STRs in a small portion of Malibu offering proximity to coastal resources and the City's commercial and tourist core. This

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[13] City staff previously reported that, as of September 26, 2018, there were 414 properties remitting TOT for STRs, and perhaps 109 additional STRs were not registered with the City. The City reported approximately 94% of these STRs were for "entire homes." This included instances when homeowners rent out "accessory dwelling units, duplex units, etc." About 74% of the City's STRs were for single-family residences. (Agenda Report, Item 4.B: Short Term Rental Ordinance at pp. 2-3, September 26, 2018 City Council Meeting [Exh. C].)

[14] For additional details on the potential impacts on the cost of overnight coastal accommodations from the removal of STRs, we refer you to the following report: Dr. Philip G. King and Sarah Jenkins, Unequal Access – Protecting Affordable Accommodations Along the California Coast (Exh. D).

[15] California Coastal Commission, Staff Report on City of Laguna Beach Local Coastal Program Amendment No. LCP-5-LGB-19-0074-1 (Short Term Lodgings), staff recommendation adopted October 7, 2020 (Exh. E).

[16] California Coastal Commission, Staff Report on City of Oxnard Local Coastal Program Amendment No. LCP-4-OXN-20-0008-1 (Short Term Rentals), staff recommendation adopted July 10, 2020 (Exh. F).

[17] California Coastal Commission, Staff Report on City of Santa Cruz LCP Amendment No. LCP 3-STC-17-0073-2-Part B (Short Term Rentals), adopted April 11, 2018 (Exh. G).

approach is also consistent with recent Commission direction. In litigation involving STR regulation in the City of Del Mar, the Commission noted: "[Del Mar's] proposed amendment makes no distinction between inland parts of the City and the shoreline areas, and the City's blanket restrictions are overly broad and restrictive. . . . Residences in prime visitor-serving, beach-adjacent areas are not given any priority for use as a STR, which hinders the public's ability to access and recreate in these nearshore areas."[18] In August 2018, the Commission approved the City of Pismo Beach's proposed LCP amendment that allowed only primary residents to offer their homes as non-hosted STRs but exempted the City's beachfront "Downtown Core" and non-residential zones from this requirement.[19]

In contrast to the tailored approaches the Commission approved for other coastal cities, Malibu's extreme prohibition of non-hosted STRs in single-family residences citywide would be unprecedented for a community with a high demand for overnight accommodations, fewer than 120 hotel/motel rooms, and ***where no new hotels or motels have been erected since the City's incorporation in 1991***.

Conclusion

Malibu's proposed ban on non-hosted STRs in single-family residences will devastate families' access to the Malibu coast and make overnight accommodations in the City more expensive for everyone by substantially reducing supply. Such results are contrary to the plain text of the Coastal Act and the LCP.

To protect against this, we encourage Coastal staff to recommend that the Commission reject the City's LCPA as submitted and propose modifications to permit existing, legally operating STRs to continue offering non-hosted accommodations in single-family residences and to allow new non-hosted STRs in a small area of Malibu close to the City's beaches and tourist core. Those modest changes would help mitigate the LCPA's impact on affordability and availability of overnight coastal accommodations.

Airbnb looks forward to working with the Commission during the LCPA process.

Sincerely,

John Choi
Director of Public Policy, Airbnb

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[18] California Coastal Commission Brief in Opposition to Writ at p. 18, *City of Del Mar v. California Coastal Com.* (Super. Ct. San Diego County, Nov. 15, 2019, No. 37-2018-00039254) (Exh. H).

[19] California Coastal Commission, Staff Report on City of Pismo Beach LCP Amendment Number LCP-3-PSB-18-0051-1 (Short Term Rentals), adopted August 10, 2018 (Exh. I).

Steven Shur, Travel Technology Association President, letter to Denise Venegas, Coastal Program Analyst, California Coastal Commission, August 11, 2021

TRAVEL TECH
The Travel Technology Association

August 11, 2021

Ms. Denise Venegas
Coastal Program Analyst
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: City of Malibu Local Coastal Program Amendment No. 19-003 – Hosted Short-Term Rental Ordinance

Dear Ms. Venegas:

On behalf of the Travel Technology Association ("Travel Tech"), thank you for the opportunity to comment on the City of Malibu's December 7, 2020, Local Coastal Program Amendment No. 19-003 – Hosted Short-Term Rental Ordinance (the "LCPA") submittal. Travel Tech is the leading voice of the travel technology industry and advocates for public policy that promotes transparency and competition in the marketplace, encourages innovation, and preserves consumer choice. Travel Tech represents the leading innovators in travel technology, including global distribution systems, online travel agencies, metasearch engines, short-term rental ("STR") platforms, and travel management companies.

Travel Tech commends the California Coastal Commission ("Commission") for its unwavering commitment to promoting access to the California coast and its efforts to ensure all people–particularly low- and middle-income households–have the opportunity to experience this distinct and valuable public resource. Travel Tech's STR platform members have supported this commitment by connecting adventurers with affordable and accessible accommodations in homes up and down the California coast. Our members' technology democratizes and diversifies available travel experiences and has made visiting the coast a reality for thousands of families over the last 20 years.

Unfortunately, the LCPA submitted by Malibu hinders the Commission's and Travel Tech's efforts to facilitate access to the California coast, and we respectfully request that the Commission recommend changes that will foster an inclusionary environment in Malibu where *all* people can experience the City and access the natural beauty of its coast.

I. THE LCPA WOULD DEVASTATE THE OVERNIGHT ACCOMMODATION MARKET IN MALIBU

While Travel Tech members' commitment to the democratization, diversification, and accessibility of travel has opened the California coast for thousands of new visitors, the City's

LCPA would set these advances back by decades in Malibu. The LCPA also would establish dangerous precedent by helping enable cities up and down the California coast to build virtual walls around themselves through the banning of overnight accommodations that are most attractive and affordable to families – STRs.

The City's submitted LCPA application includes an "LCP Consistency Analysis" asserting:

> *No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to be used for short-term rentals, which is currently prohibited.*[1]

The City did not provide any evidentiary support for these findings. The City's application[2] does not include data or analysis supporting the assertion that the LCPA will not lead to the removal of lower cost opportunities. The City also fails to provide any data or analysis regarding the potential impacts of the going-forward pricing of hotel/motel rooms and remaining STRs.

We are aware that on April 7, 2021, the City provided the Commission with additional information[3] regarding the LCPA, but this Supplemental Letter still does not provide any evidence to support a conclusion that the LCPA will not convert or remove lower cost visitor-serving accommodations. It also does not provide any evidence to demonstrate how the City's LCPA will "protect and encourage" existing visitor-serving opportunities.[4] In fact, as discussed below, evidence demonstrates that the LCPA will have an adverse effect on the overnight lodging market in Malibu by removing the types of accommodations most attractive and affordable to families and increasing the cost for the limited remaining supply.[5]

A. <u>The LCPA Will Effectively Ban the Accommodations Most Attractive to Families</u>

CBRE Hotels Advisory ("CBRE") analyzed the potential impacts of the LCPA and found "entire home" single-family residences ("Entire Home SFs") were the most widely offered STRs in the City, accounting for approximately 63% of the analyzed STR supply.[6] This makes sense. Travel Tech member Airbnb previously reported, "nearly all families that travel utilizing Airbnb choose

[1] Excerpt from City of Malibu LCP Amendment Submittal (Dec. 7, 2020), p. 10 (Attachment A). To view the submittal in full, see <malibucity.org/DocumentCenter/View/27373/ADMIN-RECORD>.

[2] See generally *id.*

[3] See Justine Kendall, Associate Planner, letter to Denise Venegas, Coastal Program Analyst, California Coastal Commission, Apr. 7, 2021 ("Supplemental Letter") (Attachment B).

[4] Malibu LCP, Land Use Plan, Ch. 2, § C, subd. 2.34 2.36 (Attachment C).

[5] CBRE Commercial Real Estate Services, *Impact of Proposed Hosted Short-Term Rental Ordinance on the Supply and Pricing of Overnight Accommodations in the City of Malibu, California* (June 10, 2021) ("CBRE Report") (Attachment D).

[6] CBRE defines "Entire Home SFs" as STRs where the guest has complete and sole access to the rented dwelling unit during his or her stay. *Id.* at p. 1.

a home over a hotel/motel because it offers more amenities, such as more room, a kitchen for preparing meals, and common spaces for the family to enjoy together (like backyards)."[7] Indeed, Commission staff recently reminded the City of San Diego that "the attractiveness of vacation rentals for many families is the kitchen facilities and expanded living space facilitating an extended stay[.]"[8] Commissioner Dayna Bochco summarized the allure of STRs in homes by explaining that "[a]ccess means the way you get to go to the beach and stay there with family, and that means less money and more amenities."[9]

The LCPA requires that single-family residences offered as STRs serve as the primary residence of the owner, and it only permits the rental of a single-family residence as an STR if the owner/owner's representative maintains a physical presence onsite during the rental. Given these severe restrictions, ***CBRE estimates the LCPA will reduce the supply of Entire Home SFs nights in Malibu by approximately 95%, effectively banning the most attractive accommodations for families***.[10]

CBRE further concluded that "entire home" apartments and condominiums ("Entire Home Apt/Condos") were the second most widely offered STRs in the City, accounting for approximately 25% of the analyzed STR supply.[11] But the LCPA only permits the owner of an individual condominium to offer that unit as an STR if (1) the unit functions as the owner's primary residence *and* (2) the owner/representative remains physically present onsite during the rental.[12] Further, the owner of a multifamily residential building can only offer a maximum of two units as STRs.[13] Given these restrictions, ***CBRE estimates the LCPA will reduce the supply of Entire Home Apt/Condos nights in Malibu by approximately 67%***.[14]

B. The LCPA Will Effectively Ban the Accommodations Most Affordable to Families

In the Supplemental Letter, the City calculated an average nightly room rate for hotels/motels in Malibu, but excluded the Nobu Ryokan from the average "since the hotel is a boutique hotel and the rates can skew the average hotel rate in the City."[15] However, when providing the average rate for short-term rentals, it appears that the City did not exclude the high-end homes offered as

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[7] John Choi, Airbnb Director of Public Policy, letter to Denise Venegas, Coastal Program Analyst, California Coastal Commission, Jan. 13, 2021, p. 4 (exhibits omitted) (Attachment E).

[8] Deborah N. Lee, District Manager, San Diego Coast District, California Coastal Commission, letter to City of San Diego City Council, July 13, 2018, p. 2 (Attachment F).

[9] Remarks of Commissioner Dayna Bochco, Coastal Commission Hearing (June 7, 2018) <https://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2018-06-07>.

[10] CBRE Report, *supra* note 5, at p. 8.

[11] CBRE defines "Entire Home Apt/Condo" as an STR "where the guest has complete and sole access to the rented dwelling unit during their stay." *Id.* at p. 2.

[12] City of Malibu Ordinance No. 472, § 17.55.040, subd. A (Attachment G).

[13] *Id*., § 17.55.040, subd. B.

[14] CBRE Report, *supra* note 5, at p. 10.

[15] City Supplemental Letter, *supra* note 3, at p. 4.

STRs in Malibu.[16] Malibu's somewhat disingenuous presentation of pricing information to the Commission is concerning. CBRE reviewed the City's report and reported that the City "data ***excluded*** the Nobu Ryokan which is the highest rated hotel in Malibu which means the actual ADR for the aggregated hotel/motel rooms in Malibu is higher than [the] $758 figure reported by the city."[17]

The LCPA will, objectively, remove a significant number of the currently available, lower-cost overnight accommodations from the Malibu market. When considering the cost per person, the loss of STRs is even more troubling. The current prevalence of larger STRs in Malibu (the City previously reported approximately 62% of STRs in the City are three bedrooms or more[18]) makes it particularly suitable for families, as the ***per-person cost to stay in these larger STR units is significantly lower than hotels/motels***, and these STRs typically provide kitchens, parking, and other cost-saving amenities. The LCPA will devastate this important lower-cost accommodation option for families in Malibu.[19]

C. The LCPA Will Cause an Insufficient Supply of Accommodations in Malibu

Given the City's world-renowned reputation for its beaches and millions of visitors every year, the overnight lodging market in Malibu is wholly insufficient without STRs. CBRE notes the City has just five currently operating hotels/motels totaling 117 rooms.[20] The table below shows how limited Malibu's lodging opportunities are compared to other similar coastal vacation destinations in Central and Southern California.[21]

Central/Southern California Hotel and Motel Lodging Supply

Jurisdiction	Rooms
Malibu	117
Carmel-by-the-Sea	1,541
La Jolla (San Diego)	2,810
Laguna Beach	1,679
Manhattan Beach	1,016
Newport Beach	3,056
Oxnard	1,474
Pismo Beach	2,102
Santa Barbara	3,646

[16] See *ibid*. Regardless, based on the City's own analysis, if a family visiting Malibu needed more than one hotel room, they would be looking at spending $1,514, nearly $500 more than the City's reported average short-term rental rate.

[17] CBRE Report, *supra* note 5, at p. 14 (emphasis in original).

[18] Malibu Council Agenda Report, Item 4.B: Short-Term Rental Ordinance at p. 3, July 9, 2018 City Council Meeting (Attachment H).

[19] CBRE Report, *supra* note 5, at p. 15 ("A family or large household utilizing a motel/hotel would have to rent multiple motel/hotel rooms to replicate what they receive via the entire single-family homes on the short-term rental platforms. As such, the motel/hotel option for these types of travelers in Malibu would be considerably more expensive as compared to what is available on the various short-term rental platforms.")

[20] *Id.* at pp. 3–4.

[21] *Id.* at p. 4.

Santa Monica	3,976

Source: Smith Travel Research as compiled by CBRE

CBRE concluded that the implementation of the LCPA will lead to a decrease from 105,389 annual room nights in Malibu to 55,882 annual room nights, a nearly 50% reduction.[22]

CBRE's conclusions align with evidence submitted to (and ignored by) the City during the City's administrative process. Travel Tech member Airbnb informed Malibu in September 2020 that the LCPA would "eliminate hundreds of accommodations in the City" and remove "an estimated tens of thousands of room nights annually."[23] Airbnb also informed the City that, based on its extensive experience in markets around the world and available research, "[g]iven the lack of traditional overnight accommodations and the decades long reliance on STRs in Malibu for vacation rentals, removing a significant portion of STRs from the market will have potentially devastating impacts to the accessibility and affordability of the Malibu vacation rental market."[24]

Expedia Group, another Travel Tech member and parent to short-term rental platform Vrbo, offered similar guidance. In a letter dated September 14, 2020, Expedia Group warned that Malibu's LPCA would "devastate the availability of vacation rentals, in turn significantly limiting the lodging options available to traveling families and drastically increasing costs… leav[ing] serious doubt as to [the LPCA's] compliance with Malibu's mandate to protect affordable transient accommodations 'to the maximum feasible extent.'"

CBRE's conclusions confirm our members' fears, and the insufficient supply of overnight accommodations to meet the demand will create a major accessibility problem in Malibu. Based on the expected substantial reduction in the total supply of overnight accommodations under the LCPA, all visitors to Malibu will face higher prices for their rentals.[25] Further, by effectively eliminating Entire Home SF STRs, the LCPA will prohibit families from staying in the City that either cannot afford multiple hotel or motel rooms or feel uncomfortable residing with a host.[26]

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[22] *Id.* at p. 12. The total annual room nights does not include nights associated with RV sites or tent sites in the City. CBRE concluded these "types of accommodations are not directly comparable to hotels/motels or Entire Homes SFs and Entire Home Apt/Condos. Travelers utilizing the RV park would be required to secure a recreational vehicle either by renting or owning it. As a result, this mode of travel would be viewed as less convenient to many travelers seeking accommodations in Malibu." *Id*. at p. 13. However, even when accounting for these types of alternative accommodations, the LCPA will still result in the removal of tens of thousands of nights and the demand for overnight accommodations will exceed supply. *Id*.

[23] John Choi, Airbnb Public Policy Manager, letter to Mayor Pierson and the Malibu City Council, Sept. 14, 2020, pp. 1, 2 (exhibits omitted) (Attachment I).

[24] *Id.* at p. 2.

[25] For additional details on the potential impacts to the cost of overnight accommodations in the City from the removal of existing STRs, see discussion *infra* Section III.

[26] Often families do not prefer hosted accommodations. Commission Vice Chair Donne Brownsey acknowledged this during the Commission's consideration of Santa Cruz County's STR regulation in January 2021, stating: "Clearly the market is revealing there is less interest in hosted accommodations for whatever reason and I just think taking that 42 [STRs] which is a significant portion of the currently available vacation rentals and moving them to hosted is too much." Coastal Commission Hearing (Jan. 13, 2021) <https://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2021-01-13>.

II. THE LCPA CONFLICTS WITH THE COASTAL ACT AND MALIBU LCP ACCESSIBILITY MANDATES

California adopted the Coastal Act to maximize public access and recreational opportunities within coastal areas statewide.[27] The Coastal Act mandates "maximum access" along the coast for "all the people," and "[a] lack of affordable accommodations [is considered] a barrier to coastal access."[28] The California Attorney General recognized in a recent Court of Appeal brief filed on behalf of the Commission:

> *To help ensure that coastal areas have sufficient overnight accommodations for visitors, the Commission is tasked with ensuring that local plans protect and, where feasible, provide such accommodations.*[29]

STRs play a critical role in providing those accommodations. Commission staff recently reported:

> *[STRs] provide a significant supplement to traditional visitor-serving overnight accommodations, promoting public access and visitor-serving opportunities to coastal communities. The provision of overnight visitor-serving accommodations, such as [short-term lodgings], serves a significant purpose as a subset of visitor-serving uses that promotes public coastal access and provides California residents and visitors one way to enjoy the coast. Overnight visitor-serving accommodations allow public members who do not reside within a day's journey to the coast an opportunity to enjoy the coastline.*[30]

The California Court of Appeal recently concluded the same, determining that the City of Santa Barbara's attempts to prohibit short-term rentals in the Coastal Zone conflicted with the Coastal Act's goal of improving the availability of accommodations along the Coast.[31]

The City's own LCP recognizes that "[a] broad policy goal of California's Coastal Management Program is to maximize the provision of coastal access and recreation consistent with the protection of public rights, private property rights, and coastal resources as required by the California Constitution and . . . the Coastal Act."[32] Malibu's LCP also adopts the following policies to implement this goal:

> 2.34 – Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost

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[27] Pub. Resources Code §§ 30001.5, subd. (c) and 30210.

[28] Pub. Resources Code §§ 30210 and 31411.

[29] Amicus Curiae Brief of [the] California Coastal Commission at pp. 19–20, *Kracke v. City of Santa Barbara* (Ct. App., May 21, 2020, No. B300528) (Attachment J).

[30] California Coastal Commission, Staff Report on City of Laguna Beach Major Amendment Request No. LCP-5-LGB-19-0074-1 (Short Term Lodgings), pp. 23–24 (Attachment J).

[31] *Kracke v. City of Santa Barbara* (2021) 63 Cal. App. 5th 1089, 1097.

[32] Malibu LCP, *supra* note 4, Ch. 2, § A, subd. 1.

visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

2.36 – Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.[33]

The LCPA conflicts with these access principles and policies by causing a significant decrease (over 50,000 nights annually) in existing (and generally lower-cost)[34] visitor-serving overnight accommodations in Malibu.[35] Public access implications in Malibu are particularly stark given the lack of hotel/motel rooms in the City. Malibu is an important visitor-serving coastal destination,[36] but unlike other coastal communities with significant supplies of traditional lodging (including Santa Monica with nearly 4,000 hotel/motel rooms and Laguna Beach with more than 1,600 hotel/motel rooms),[37] Malibu has fewer than 120 hotel/motel rooms to serve its millions of visitors each year.[38] With the scarcity of hotel/motel rooms, it is no surprise that STRs make up a significant component of the City's visitor-serving infrastructure. CBRE reported: "[l]ooking collectively at hotels, motels, and STRs in the City, we estimate that STRs listed on Airbnb and Vrbo account for over 60% of the total supply of overnight accommodations. This is significantly higher than the national average which in 2019 was estimated to be approximately 10 [%] of the traditional overnight hotel/motel room supply."[39]

The Commission repeatedly has found that jurisdictions seeking to restrict the availability of STRs in their communities (as Malibu does here with its LCPA) violate the Coastal Act. For example, in 2018, the County of Santa Barbara (the "County") submitted an LCP amendment that would have prohibited STRs outside one beachside residential zone and forced 142 existing STRs to stop operating.[40] Under the County's proposed amendment, STRs still would have been allowed in commercial zones, and "homestays" (similar to hosted rentals) would have been permitted in almost all zones.[41] But the Commission rejected the amendment, along with a less-

[33] *Id.* at § C, subds. 2.34 & 2.36.

[34] CBRE Report, *supra* note 5, at p. 12.

[35] See *Greenfield v. Mandalay Shores Community Ass'n* (2018) 21 Cal.App.5th 896, 901 ("Here the STR ban changes the intensity of use and access to single-family residences in the Oxnard Coastal Zone.").

[36] See Malibu LCP, *supra* note 4, Ch. 2 § A ("The beaches of Malibu are world-famous tourist destinations for millions of visitors annually from foreign countries, all 50 states of the U.S., as well as to residents of cities and towns located throughout California.").

[37] CBRE Report, *supra* note 5, at p. 5.

[38] See *ibid*.

[39] *Id.* at p. 12.

[40] California Coastal Commission, Staff Report on Santa Barbara County Local Coastal Program Amendment No. LCP-4-STB-17-0086-3 (Short-Term Rentals Ordinance) (Attachment K).

[41] *Id*.

restrictive version proposed by Commission staff that would have included guesthouses in the County's definition of "homestays." Commissioner Steve Padilla accurately summarized the Commission's mandate when he opined:

> *Our standard is one of maintenance or improvement . . . what we are realizing here is a net reduction in the availability of low cost visitor serving, so this Commissioner cannot make that finding that we are somehow consistent with the LUP and the Coastal Act.*[42]

More recently, in July 2020, the Commission rejected an LCP amendment submitted by the City of Oxnard that would have permitted hosted and non-hosted STRs in all residential zones, but would have capped non-hosted STRs at 5% of residential units, and would have required a 200-foot buffer between non-hosted STRs.[43] As detailed in the Staff Report:

> *[Oxnard's proposed STR] restrictions would result in reduced options for the people who most need the economies of scale that STRs can offer to groups and families on the coast, and could cause a reduction in the current number of STRs operating in the City. Thus, the amendment, as proposed, does not adequately protect STRs as a valuable visitor-serving accommodation (that can often be lower-cost) within the City's coastal zone, nor does it adequately protect and maximize public recreational and access opportunities (particularly in relation to the role that overnight accommodations play in providing such opportunities).*[44]

The Commission proposed modifications to Oxnard's LCP amendment to increase the cap of non-hosted STRs to 10% and decrease the buffer between non-hosted STRs to 100 feet in the most popular beachfront neighborhoods, as well as to permit existing transient occupancy tax-paying STRs to continue operating.[45]

Malibu's LCPA is significantly more restrictive than the regulations previously rejected by the Commission. For example, unlike the Santa Barbara County proposal, which would have permitted STRs to continue operating without restrictions in commercial zones and one beachside residential zone, Malibu's LCPA will impose its restrictions in all zones. And unlike the City of Oxnard, which would have allowed limited numbers of non-hosted STRs in all zoning districts on the coast, ***the LCPA will completely prohibit non-hosted STRs in single-family residences and individually owned condominiums***.

Malibu's LCPA will also impact the availability of overnight accommodations more significantly than the Commission-rejected Santa Barbara County or Oxnard proposals. The County of Santa Barbara has 206 hotel rooms in its coastal zone to accommodate overnight

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[42] Remarks of Commissioner Steve Padilla, Coastal Commission Hearing (May 10, 2018) <https://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2018-05-10>.

[43] California Coastal Commission, Staff Report on City of Oxnard Local Coastal Program Amendment No. LCP-4-OXN-20-0008-1 (Short Term Rentals), p. 2, staff recommendation adopted July 10, 2020 (Attachment L).

[44] *Id*. at pp. 15–16.

[45] *Id*. at p. 16.

visitors.[46] The City of Oxnard has 367 hotel rooms and a new 210-room hotel planned in its coastal zone.[47] By contrast, Malibu has fewer than 120 hotel and motel rooms, and the LCPA will result in the established demand for STRs outstripping future supply, leading to both reduced access (particularly for families) and increased costs.[48] Simply stated, the City's approach does not maintain or improve access and expressly conflicts with the Coastal Act and the City's LCP.[49]

III. THE LCPA WILL ADVERSELY IMPACT THE AFFORDABILITY OF THE REMAINING OVERNIGHT ACCOMMODATIONS IN MALIBU

The Commission and its staff have long recognized that the STR of single-family residences may provide a lower cost alternative to renting hotel or motel rooms for large families or groups of individuals. The effective elimination of this type of offering in Malibu will not only devastate the existing overnight accommodation market in the City, it will also increase costs for those less desirable accommodations that remain. CBRE concludes the LCPA will:

- ***Result in the removal of a significant percentage of the most popular overnight accommodation types in Malibu;***
- ***Remove lower-cost overnight accommodations;***
- ***Significantly reduce the affordability of remaining STRs;***
- ***Increase the average daily rate of hotel/motel rooms in Malibu; and***
- ***Make Malibu less affordable to visitors***.[50]

Other studies reach the same conclusion. Travel Tech member Airbnb worked with Dr. Philip King, Associate Professor of Economics at San Francisco State University, who recently authored *Unequal Access: Protecting Affordable Accommodations Along California's Coast*.[51] Dr. King's March 2020 report found that the "high cost of accommodation along the coast presents a significant barrier for many households. The supply of affordable rooms fails to meet the demand of millions of residents who do not live close enough to the coast to make a

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[46] Santa Barbara County Coastal Commission Staff Report, *supra* note 37, at p. 3; see also Four Seasons Resort the Biltmore Santa Barbara Facts <https://press.fourseasons.com/santabarbara/hotel-facts/> [last visited Sept. 10, 2020] (reflecting that the hotel has 206 rooms).

[47] Oxnard Coastal Commission Staff Report*, supra* note 40, at pp. 10–11.

[48] CBRE Report, *supra* note 5, at pp. 12–14; see also King & Jenkins, *Unequal Access: Protecting Affordable Accommodations Along the California Coast* (Aug. 12, 2020) (Attachment M); *supra* Section I.B.

[49] Pub. Resources Code § 30214; *San Diego Unified Port Dist. v. Cal. Coastal Com.* (2018) 27 Cal.App.5th 1111, 1141–42 (giving great weight to the Commission's interpretation that visitor facilities mandate overnight accommodations); *Surfrider Found. v. Cal. Coastal Com.* (1994) 26 Cal.App.4th 151, 158 ("[T]he public access and recreational policies of the Coastal Act should be broadly construed to encompass *all* impediments to access, whether direct or indirect, physical or nonphysical.").

[50] CBRE Report, *supra* note 5, at p. 15.

[51] King & Jenkins, *supra* note 45.

daytrip."[52] It further determined that STRs can increase the supply of lower cost accommodations along the California coast and expand access.[53]

Dr. King offers:

> *Short-term rentals provide a relatively simple and generally sustainable way to increase access to the coast, yet many coastal communities have enacted restrictive regulations that increase the cost of accommodations and force low and moderate income visitors away from the coast.*[54]

Malibu's LCPA does just that: it increases costs and pushes away low- and moderate-income visitors. Malibu's efforts exacerbate locally the problems faced by the broader California coastal community. As summarized in *Unequal Access*:

> *California's coast has become increasingly inaccessible—with the majority of areas far more affluent, less diverse, and older than the state overall. This exclusivity produces an inequity that runs counter to the aims of the California Coastal Act. Access to the resources and opportunities associated with California's coast is not distributed fairly among California's diverse population. Often, those who can afford to spend the least to visit the coast must spend the most as lower-income communities inland face the highest travel costs and accommodation burdens.*[55]

One of Malibu's justifications for its proposed limits on STRs relates to increasing housing affordability. However, as Malibu itself has recognized, "[t]he 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."[56] More generally, concerns about STRs' impacts on housing costs are largely overstated. In 2019, Travel Tech member Expedia commissioned an independent, in-depth study from Oxford Economics to examine the key drivers of affordable housing challenges and the role STRs play. Oxford Economics found that STRs have an extremely minimal impact on rising housing costs.[57] It concluded that labor market improvements (including a major drop in unemployment), household income, housing supply, and building permits played the largest role in rent increases, not STRs.[58]

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[52] *Id.* at p. 8.

[53] See generally *id*.

[54] Airbnb, *Report: Short-term Rentals Expand Access to the California Coast* (August 12, 2020) <https://news.airbnb.com/report-short-term-rentals-can-help-increase-access-to-california-coast/>.

[55] King & Jenkins, *supra* note 45, at p. 11.

[56] Malibu Council Agenda Report, *supra* note 17, at p. 3.

[57] Oxford Economics, *The Drivers of Housing Affordability: An Assessment of the Role of Short-Term Rentals* (Nov. 2019) (Attachment N).

[58] *Ibid*.

IV. THE LCPA STUNTS THE ADVANCES NEW TECHNOLOGY HAS MADE FOR COASTAL ACCESS

Advances in technology over the last two decades have allowed consumers to reap the benefits of increased competition, which include gaining greater pricing power and finding unique, authentic accommodations that allow them to experience travel destinations on their own terms. Travel technology can help solve the affordable access problem in California's coastal communities, but it must be allowed to function in a balanced regulatory environment. Malibu's LCPA does not provide that balance, and we implore the Commission to reject the City's proposal and offer solutions that have proven successful in other coastal jurisdictions. As summarized in the recent Loyola Law Review article titled *Regulating Short-Term Rentals in California's Coastal Cities: Harmonizing Local Ordinances with the California Coastal Act*:

> *Whether it be through the creation of a new overlay district or by designating caps tailored to existing zoning districts, local governments in coastal cities can create more balanced regulations that are in-line with the policies underlying the Coastal Act.*[59]

During the City's consideration of the LCPA, Travel Tech member Airbnb proposed a balanced framework in line with Coastal Act policies when it recommended that Malibu establish a permit category for existing, legally operating STRs to continue offering non-hosted accommodations.[60] Airbnb also suggested a more flexible regulatory approach to STRs in a small portion of Malibu with immediate proximity to coastal resources and the City's commercial and tourist core.[61] Tellingly, although Airbnb offered this solution to the City in September 2020, the City did not mention the proposal in subsequent staff reports, nor did the City Council discuss the concepts during its deliberations at later hearings. Instead, the City pushed forward with a wholly unbalanced regulatory approach that will devastate the Malibu overnight accommodation market and impede coastal access. As the City refused to consider a balanced approach on its own accord, we respectfully request that the Commission direct the City to consider the amendments previously put forward by Airbnb to ensure the ultimate LCPA's consistency with the Coastal Act and the City's own LCP.

V. CONCLUSION

Travel Tech member companies sit on the front lines of travel and tourism and recognize the great benefit that affordable travel brings to consumers and the economy. Innovative technologies in the STR industry have led to a more efficient and more affordable travel economy and have opened the California coast to thousands of families from California and around the globe.

Malibu's proposed ban on non-hosted STRs in single-family residences and other restrictions

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[59] Humphreys, Note, *Regulating Short-Term Rentals in California's Coastal Cities: Harmonizing Local Ordinances with the California Coastal Act* (2019) 52 Loy. L.A. L.Rev. 309, 337 (2019) <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=3057&context=llr>.

[60] Letter from John Choi, Sept. 14, 2020, *supra* note 21, at p. 4.

[61] *Ibid*.

will deflate these technological advances, devastate families' access to the Malibu coast, and make remaining overnight accommodations in the City more expensive for everyone. For all these reasons, we respectfully request Coastal staff recommend that the Commission reject the City's LCPA as submitted and propose modifications to protect the public's Coastal Act-established right to access the Malibu coast.

Sincerely,

Stephen Shur
President
Travel Technology Association

Attachment A

City of Malibu

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December 7, 2020

Steve Hudson, Executive Director
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001

VIA PERSONAL DELIVERY

Re: City of Malibu Local Coastal Program Amendment No. 19-003 – Hosted Short-Term Rental Ordinance

Dear Mr. Hudson:

Attached is the City of Malibu's submittal of Local Coastal Program Amendment No. 19-003. The submittal package includes the following documents for each proposed amendment:

1. Proposed LCP Amendment
2. Summary of Proposed LCP Amendment
3. LCP Consistency Analysis
4. Environmental Review Statement
5. Administrative Record Index and Documents

For further information, please contact Richard Mollica, Acting Planning Director, at (310) 456-2489, ext. 346 or email at jkendall@malibucity.org.

Sincerely,

Patricia Salazar
Senior Administrative Analyst

Proposed Changes to the Local Coastal Program:

Local Coastal Program Amendment No. 19-003

These changes correspond with City Council Ordinance No. 472

Action: Adopted Resolution No. 20-51 amending LCP Land Use Plan (LUP) Chapter 5 to address short-term rental use in residential zones and found the action exempt from CEQA, and adopted Ordinance No. 472 determining Zoning Text Amendment No. 19-005 to be categorically exempt from the California Environmental Quality Act and amending the Local Coastal Program (Local Coastal Program Amendment No. 19-003) and Title 17 (Zoning) of the Malibu Municipal Code (Zoning Text Amendment No. 19-005) regulating the rental of residential units for 30 days or less (Short-term Rentals) including, but not limited to, requiring the presence of an onsite host during short-term rentals and other restrictions, and clarifying permitted uses related to short-term rental citywide, amending Chapter 15.44 pertaining to operating permits for onsite wastewater treatment systems.

Land Use Plan
Changes in ~~strikethrough~~/underline

A. Amend LUP Chapter 5 (New Development), Section C (Land Use Policies), Subsection 2 (Land Use Designations) to replace the land use designation descriptions below with the amended language to read as follows:

RURAL RESIDENTIAL (RR): The RR designation allows sensitively designed, large lot single family residential development, with a range of maximum densities from one dwelling per acre to one dwelling unit per 40 acres. Minimum lot sizes range from 1 to 40 acres, with agricultural uses and animal keeping as accessory uses to approved residential development. Public open space and recreation may be permitted. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City. The following maximum residential density standards shall apply:

RR1	One dwelling unit per acre
RR2	One dwelling unit per 2 acres
RR5	One dwelling unit per 5 acres
RR10	One dwelling units per 10 acres
RR20	One dwelling unit per 20 acres
RR40	One dwelling unit per 40 acres

SINGLE-FAMILY RESIDENTIAL (SF): This land use designation allows single family residential development at higher density than the rural residential category. It is intended to enhance the rural characteristics of the community by maintaining low-density single-family residential development on lots ranging from 1/4 to 1 acre in size. Single-Family Low (SFL) allows a maximum density of 2 dwelling units per acre, with a

minimum lot size of 0.5 acre. Single-Family Medium (SFM) allows a maximum density of 4 dwelling units per acre, with a minimum lot size of 0.25 acre. Public open space and recreation may be permitted. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

MOBILE HOME RESIDENTIAL (MHR): The MHR designation is intended to accommodate existing mobile home parks and associated facilities. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

MULTI-FAMILY RESIDENTIAL (MF): The MF designation provides for multi-family residential developments, such as duplexes, condominiums, stock cooperatives, and apartments. The Multi-family Residential (MF) designation allows a maximum density of six units per acre on a minimum lot size of 20,000 square feet. Public open space and recreation may be permitted. Short-term rental use of multi-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

B. Amend LUP Policy 5.20 to read as follows:

5.20 All residential development, including land divisions and lot line adjustments, shall conform to all applicable LCP policies, including density provisions. Allowable densities are stated as maximums. Compliance with the other policies of the LCP may further limit the maximum allowable density of development. Short-term rental use of residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

C. Amend LUP Policy 2.34 to read as follows:

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources. Short-term rental use of residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

Local Implementation Plan
Changes in ~~strikethrough~~/underline

D. LIP Chapter 2.1 "Definitions" is hereby amended by adding the following definitions, inserted in alphabetical order:

DESIGNATED OPERATOR – pertaining to the short-term rental of residential property, any natural person who is required by the owner of a short-term rental unit to: (1) resolve any nuisance or compliance issues with the dwelling unit, (2) produce requested records, (3) allow others including, but not limited, to code enforcement officers and law enforcement personnel, to enter the dwelling unit, and (4) live onsite at any dwelling unit offered for use as a hosted short-term rental for the duration of the rental.

DWELLING UNIT - one or more rooms in a building or portion thereof designed, intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. 'Dwelling unit' also includes:

A. One or more habitable rooms within a mobile home which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating and sanitation; and

B. Any room used for sleeping accommodations which contains a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except a guest room or guest suite in a hotel, motel or bed and breakfast inn; and

C. Each space or pad designed and allocated to accommodate a mobile home within a mobile home park.

GUEST – pertaining to the short-term rental of residential property, a natural person who rents a short-term rental or is an invitee of such person.

GUEST HOUSE - attached or detached living quarters on the same premises as a single family residence for the use of family members, guests or employees of the occupants of such residence, containing no kitchen facilities and not rented or otherwise used as a separate dwelling. The maximum living area of a guest house shall not exceed nine hundred (900) square feet, including any mezzanine or storage space. A guest house may include a garage not to exceed four hundred (400) sq. ft. The square footage of the garage shall not be included in the maximum living area. Guest houses may be used as short-term rentals pursuant to a valid short-term rental permit issued by the City.

HOSTED SHORT-TERM RENTAL – a short-term rental for which the owner or designated operator lives onsite throughout the guests' stay in accordance with the requirements of a hosted short-term rental permit issued by the City.

LIVES ONSITE – pertaining to short-term rental of residential property, means maintains a physical presence on the property, including, but not limited to, sleeping overnight, preparing and eating meals, and being present on the property each day of the short-term rental as required by the hosted short-term rental permit.

OWNER – pertaining to the short-term rental of residential property, a person who alone or with others, has legal or equitable title to a dwelling unit. A person whose interest in a dwelling unit is solely that of a tenant, subtenant, lessee, or sublessee under an oral or written rental housing agreement shall not be considered an owner.

SHORT-TERM RENTAL – of property means 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 30 consecutive days or less to a transient.

E. LIP Chapter 3.3(Q)(2)(a) Planned Development (PD) Zone is amended to add subsection (v) to section (a):

v. Hosted short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

F. LIP Section 13.31 is added to LIP Chapter 13 (Coastal Development Permits) to read as follows:

13.31 Short-term Rental of Residential Property

A. No coastal development permit is required nor is the City required to maintain a record of coastal development permit exemption pursuant to LIP Section 13.4.10 for short-term rental of residential property as defined in Section 2.1 of this LIP provided that such use meets all of the following criteria:

1. The short-term rental use is conducted pursuant to a valid short-term rental permit issued by the City.
2. The short-term rental use is conducted in a dwelling unit that was lawfully stablished as described in LIP Section 13.3(F).
3. The short-term rental use will not result in reduction or elimination of public parking for access to the beach, public trails or parklands.

G. LIP Table B – Permitted Uses is amended by inserting the following new use category to the end of the Residential section of the table after the "Home Occupation" category, and by adding a new footnote 21:

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
RESIDENTIAL																
Short-term rental	STR[21]	STR[21]	STR[21]	STR[21]	STR[21]	·	·	·	·	·	·	·	·	·	·	·

21. Single-family residence properties are limited to hosted short-term rental permits only; one dwelling unit in a duplex may be rented unhosted if the owner or designated operator lives onsite in the other dwelling unit during the rental

period; and for multifamily properties, a maximum of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.

H. LIP Table B – Permitted Uses (Key to Table) is amended to include "STR" "Use requires valid short-term rental permit approved by the City"

Summary of Amendment to the Local Coastal Program:

Local Coastal Program Amendment No. 19-003 (Hosted Short-Term Rental Ordinance)

Action: Adopted Resolution No. 20-51 amending LCP Land Use Plan (LUP) Chapter 5 to address short-term rental use in residential zones and found the action exempt from CEQA, and adopted Ordinance No. 472 determining Zoning Text Amendment No. 19-005 to be categorically exempt from the California Environmental Quality Act and amending the Local Coastal Program (Local Coastal Program Amendment No. 19-003) and Title 17 (Zoning) of the Malibu Municipal Code (Zoning Text Amendment No. 19-005) regulating the rental of residential units for 30 days or less (Short-term Rentals) including, but not limited to, requiring the presence of an onsite host during short-term rentals and other restrictions, and clarifying permitted uses related to short-term rental citywide, amending Chapter 15.44 pertaining to operating permits for onsite wastewater treatment systems.

Brief Summary of LCP Amendment: The LCPA involves changes to the LCP LUP and LIP which memorialize that short-term rental use is allowed in residential zones pursuant to a valid short-term rental permit issued by the City. The amendments to the LIP detail the requirements for issuance of and operation under short-term rental permits. The permitting requirements will allow the City to better control nuisance issues and avoid the proliferation of short-term rental businesses in which corporations and other entities buy up residences to use solely for vacation rentals, while ensuring a variety of visitor-serving accommodations remain available.

Environmental Review

Local Coastal Program Amendment No. 19-003 (Hosted Short-Term Rental Ordinance)

In accordance with the California Environmental Quality Act (CEQA), the ordinance would be exempt from CEQA under the common sense exemption of Section 15061(b)(3) that states CEQA review is not required when there is no possibility that the ordinance may have a significant adverse 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. Further, the Ordinance is exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines which states that permitting and licensing of existing private structures involving negligible or no expansion of existing or former use in that the proposed short-term rental permitting program will establish rules and regulations that do not expand existing residential uses. Additionally, the Ordinance is exempt pursuant to Section 15321 (Enforcement Actions by Regulatory Agencies) in that the regulatory program established will facilitate enforcement actions, such as permit revocation, for nuisance short-term rental properties. Finally, in accordance with the CEQA, Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This Ordinance is for an LCP amendment which must be certified by the California Coastal Commission before it takes effect.

LCP Consistency Analysis

Local Coastal Program Amendment No. 19-003 (Hosted Short-Term Rental Ordinance)

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA No. 19-003 meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act as follows:

A. The amendment maintains standards to require that uses and development within the City's jurisdiction of the Coastal Zone advance the overarching goals of protecting coastal resources. In particular, the amendment will assure that visitor-serving accommodations are available within the City through short-term rental of residential property in a manner that protects residential neighborhoods and preserves the amount and variety of the City's existing housing stock.

B. The amendment will be consistent with the following policies:

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to be used for short-term rentals, which is currently prohibited.

2.36 Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

No conversion or removal of lower cost opportunities for visitor-serving accommodations result from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which is often more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to also be used for short-term rentals, which is currently prohibited.

Attachment B

City of Malibu

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April 7, 2021

Denise Venegas, Coastal Program Analyst
California Coastal Commission
South Central Coast District Office
89 South California Street, Suite 200
Ventura, CA 93001

Re: City of Malibu Local Coastal Program Amendment No. 19-003 – Hosted Short-Term Rental Ordinance

To Denise Venegas:

As requested by California Coastal Commission (CCC) staff, the City is providing additional information on Local Coastal Program Amendment (LCPA) No. 19-003. In addition to the supplemental information provided below, Attachment A provides an expanded consistency analysis table.

In general, the amendment proposes to allow two types of short-term rentals in the City: 1) a hosted short-term rental for single-family dwellings, condominiums and duplexes, and 2) a multi-family (more than 2 dwelling units) short-term rental. A hosted short-term rental would require the property owner or designated operator to live onsite. Up to two multi-family dwelling units on a parcel (not to exceed 40% of the units on a parcel) may be rented un-hosted so long as the other units on the property are rented on a long-term basis. The regulations would apply to multi-family properties regardless of the zoning district the property is located in. This system prevents the conversion of multi-family units into unregistered hotels, protects some of the lowest cost housing in the City, and encourages units to be rented long-term at lower rent as short-term rental is only allowed if all other units are at full occupancy. This will ensure the City maintains a variety of affordable units for long term renters and prevent property owners from utilizing all the rental units as short-term rentals thus operating as a hotel while at the same time providing short-term rentals for visitors. Additional details on these two types of short-term rentals can be found below in the section entitled "Short-Term Rental (STR) Permit Program".

A short-term rental use must be conducted pursuant to a valid short-term rental permit issued by the City. Ordinance No. 472, which approved LCPA No. 19-003, also included amendments to the Malibu Municipal Code (MMC) to amend the City's existing short-term rental regulations (Chapter 17.55). Chapter 17.55 provides the regulations for short-term rentals and amendments to Chapter 17.55, approved under Ordinance No. 472, will incorporate the two short-term rental types. These changes will go into effect after the CCC approves LCPA No. 19-003.

The LCPA seeks to address nuisance issues that have developed under the recent, rapid, and substantial expansion of short-term rental activity in the City and protect residential neighborhood character, housing

stock availability and variety, while continuing to provide over-night accommodations consistent with the City's LCP and the Coastal Act.

The amendment will ensure that uses and development within the City's jurisdiction of the Coastal Zone advance the overarching goals of protecting coastal resources. In particular, the amendment will ensure that visitor-serving accommodations are available within the City through short-term rental of residential property in a manner that protects residential neighborhoods and preserves the amount and variety of the City's existing housing stock.

Number of Short-term Rentals Operating in the City

On September 29, 2020, the City Council adopted Ordinance No. 468 (Enforcement Ordinance), which created a new short-term rental permit system to regulate the short-term rental of residential property. This ordinance, which is located in the MMC, required all short-term rentals located in the City to obtain a permit by January 15, 2021.

A total of 229 short-term rental applications were submitted to the City as of March 16, 2021, and as of that date, 171 applications were approved and 57 were pending. The City currently contracts with Host Compliance to monitor short-term rental listings online and the number of listings is consistent with the number of approved applications. Many of the pending applications that were not approved were due to outstanding code violations (building without permit, wastewater issues, etc.). Once these violations are remedied, the remaining 57 properties could be issued a short-term rental permit.

Since advertising or operating residential property as a short-term rental without a permit as of January 15, 2021 could result in a fine of one thousand dollars ($1,000.00) per day or violation, or twice the advertised short-term rental's daily rental rate per day or violation, whichever is higher, it is likely that most of the properties that are operating or planning to operate short-term rentals have submitted applications. However, the number of applications could increase as travel restrictions due to COVID-19 relax, summer approaches, and more of the 488 homes that were destroyed by the Woolsey Fire are rebuilt.

It should be noted; however, that the 229 short-term rentals applications do not represent the exact number of short-term rentals operating in the City because only one short-term rental permit is required for each parcel regardless of the number of short-term rental units on the parcel. Since properties can currently have more than one short-term rental, the number of short-term rentals operating in the City would be higher although there is no reliable data to determine the exact number. Information collected from the short-term rental application indicates that 37 of the 229 short-term rental applications are multi-family properties (self-reported). There are a total of 157 units on those multi-family properties and 90 short-term rentals within those units.

In response to the question regarding how many short-term rentals are currently advertised as hosted, this information is not collected by Host Compliance and is not readily available.

Since April 2015, Airbnb has been collecting and remitting Transiency Occupancy Tax (TOT) on behalf of property owners who use its service. Property owners must collect and remit TOT on their own for any short-term rentals which use other vacation rental websites or are made independently. The majority of short-term rentals in the City advertise through Airbnb so these properties would be paying TOT. In addition, Ordinance No. 468 imposed obligations on all online hosting platforms. These obligations include requiring the hosting platform to collect and remit TOT and preventing the booking of short-term rentals unless the property has a short-term rental permit from the City. The ordinance allows a hosting platform to satisfy these obligations

through a compliance agreement. On February 8, 2021 the City entered into a compliance agreement with Airbnb. This agreement will ensure all short-term rentals pay TOT and that all short-term rentals booked through Airbnb have a valid City short-term rental permit.

Number of Short-Term Rental Properties by Zoning District

The following table breaks down the zoning district location of the 229 properties which had submitted applications as of March 16, 2021. The short-term rentals located in commercial zones are in existing nonconforming residential buildings or existing residential dwellings in commercial buildings.

Short-Term Rentals Applications by Zoning District		
Zoning District	**Zone Description**	**Parcel Count**
CC	Community Commercial	1
CN	Commercial Neighborhood	2
CR	Commercial Recreation	1
CV-1	Commercial Visitor-Serving-One	2
MF	Multi-family Residential	24
MFBF	Multi-family Beach Front	39
PRF	Private Recreational Facilities	1
RR-1	Rural Residential-One Acre	29
RR-10	Rural Residential-Ten Acre	5
RR-2	Rural Residential-Two Acre	32
RR-20	Rural Residential-Twenty Acre	1
RR-5	Rural Residential-Five Acre	9
SFL	Single-family Low	8
SFM	Single-family Medium	75
	Total	**229**

While the City does not have information on the number of dwelling units located within parcels zoned Multi-Family (MF), Table 2 indicates that 24 MF parcels and 39 MF Beach Front (MFBF) parcels have submitted applications for short-term rentals. The 2012 Housing Element indicates there are a total of 1,000 multi-family dwelling units in the City but does not provide a breakdown of the zoning districts the units are located in. However, multi-family short-term rentals would be regulated based on property type not zoning district so a multi-family complex in a Single-Family Residential zone would be subject to the non-hosted two dwelling units (not to exceed 40% of the total units) regulations.

Accommodations in the City

There are six hotels in the City with 130 hotel rooms and 142 RV sites and 35 tent sites for a total of 307 existing accommodations. The six hotels include: The M Malibu, The Surfrider, Malibu Beach Inn, Malibu Country Inn, The Native, and Nobu Ryokan. The City is currently processing applications for two new hotels which would add an additional 59 rooms, resulting in 366 available hotel accommodations (Attachment B). In addition, the Malibu Beach RV park has a total of 177 accommodations (142 RV sites and 35 tent sites). The accommodations at Malibu Beach RV PARK offer a more affordable alternative for visitors traveling in RVs or those wishing to utilize the tent sites. Nightly RV sites range from $58 to $253 depending on the season and location. And nightly rates for tent sites range from $46.20 to $110 (Attachment B).

Information on the average hotel room rate within the City is not readily available but based on staff research, the rate is approximately $757.75 per room per night. Staff arrived at this rate by determining the rate by room type for four of the existing six hotels in the City. Summer, winter, and summer weekend rates were determined and then averaged by each of the four hotels.

The average room rates for four of the six hotels are noted below.

- The M Malibu - $252 average
- The Surfrider - $564 average
- Malibu Beach Inn - $1,109 average
- Malibu Country Inn - $838 average

Nightly room rates weren't available for The Native as it is currently being renovated and staff did not include Nobu Ryokan since the hotel is a boutique hotel and the rates can skew the average hotel rate in the City. The starting rate is $2,000 a night with a minimum two-night stay and rates can go up to $3,500 a night.

According to Airbnb data available to the City, the average nightly short-term rental rate is $978.30 so, while short-term rentals offer an opportunity for larger accommodations, they may not always be more affordable for families. However, hosted short-term rentals in which the property owner or designated operator is also on the site may be more affordable than whole house rentals. In addition, some short-term rentals require minimum night stays ranging from 4 to 10 nights, which may not be an option for some visitors. For hotels, a minimum of 2 nights is often required for summer weekend bookings.

Short-Term Rental (STR) Permit Program

The section below provides the eligibility, operating and enforcement requirements of the City's STR Permit Program. For the most part, these regulations already exist in the Chapter 17.55 in the MMC. An update to Chapter 17.55, which includes the two short-term rental permit types, was approved as part of Ordinance No. 472 (LCPA 19-003) and will go into effect once the CCC approves LCPA No. 19-003.

Eligibility

The proposed permit program has two distinct short-term rental permit types: one for owners of single-family residences and condominium units to offer hosted short-term rentals, and one for owners of multifamily parcels to offer up to two units as short-term rentals, as long as all other units are rented long-term.

A "hosted" short-term rental requires the owner or designated operator of single-family properties, including condominiums, to live onsite. That person need only live on the property, not in the same dwelling unit, during the rental. A property owner can assign a "designated operator" to live onsite instead of the owner, during the time of rental. A designated operator, other than the owner, is allowed for up to 60 days cumulatively per calendar year, so long as the designated operator is required to: (1) resolve any nuisance or compliance issues, (2) produce records, and (3) allow Code Enforcement Officers to enter the property. Under the terms of the City's proposed amendment, the designated operator would also have to be located onsite between the hours of 9:00 p.m. and 6:00 a.m. Proof of Primary Residency is required to obtain a Single-Family Residence Short-Term Rental Permit. Applicants can demonstrate primary residency with an active voter registration, a valid driver's license or other government issued identification card.

The amendment will also allow one unit of a duplex to be rented short-term if the owner lives onsite in the other unit and is present during the hours of 9 pm and 6 am. A designated operator may be used for up to 60 days.

For multi-family properties, defined as more than two (2) dwelling units, those units can be rented un-hosted. Up to two multi-family dwelling units on a parcel (not to exceed 40% of the units on a parcel) may be rented un-hosted so long as the other units on the property are rented on a long-term basis. The regulations would apply to multi-family properties regardless of the zoning district the property is located in.

Property owners of hosted short-term rental properties can rent the primary dwelling, accessory dwelling unit, or guest house as long as owner lives on site in one of the units. There is currently no prohibition against using an accessory dwelling unit as an STR as long as the ADU was legally created, unless otherwise regulated by state law.

Key requirements include:

- An individual may not possess more than one active short-term rental permit, regardless of type.
- A separate short-term rental permit is required for every legal lot or condominium unit (if a condominium unit is to be rented).
- No person may serve as a designated operator for more than one short-term rental concurrently.
- Permits must be renewed annually.

Operating Requirements

Property owners must comply with all the terms and conditions of the short-term rental program including, but not limited to, the following:

1. Maintain an active permit at all times short-term rentals are conducted
2. Take responsibility for and actively prevent any nuisance activities that may take place during short-term rentals
3. Be available, or designated operator be available, 24/7 via contact information provided to and kept current with City and any guest renting the property
4. Collect and remit TOT
5. Provide basic health and safety features for guests
6. Limit occupancy based on the number of bedrooms on record in City or County documents, as determined by the Planning Director, to two people more than twice the number of bedrooms, but no more than 14 unless a special event permit (SEP) is obtained under MMC Chapter 5.34 (example - for a 3 bedroom property - ((3 bedrooms x 2 people) + 2 people)) = 8 people max occupancy, including owner/designated operator)
7. Maintain liability insurance with minimum limits no less than $500,000
8. Provide guests with the City of Malibu's Short-Term Rental Code of Conduct (Attachment C)
9. Provide access to the property and documents upon request by City during business hours or when property is rented
10. Comply with all applicable building, fire and other safety codes including noise limitations
11. Maintain a valid Onsite Wastewater Treatment System (OWTS) operating permit (a compliance agreement option is available for those in the process of upgrading)
12. Follow all rules for advertising short-term rentals:
    - immediately remove any advertisement identified by the City as illegal
    - include permit number in all advertisements
    - clearly state in all advertisements related to a HSTR permit that the owner or designated operator will live onsite during the rental (not required for MSTR permits)
    - clearly state occupancy limits
13. Keep permit application information on file with the City current at all times, including the 24/7 contact information for owner / designated operator

Enforcement
The code sets forth special tools for enforcement, including setting a fine for unpermitted short-term rentals of $1,000 or twice the daily rental rate, whichever is higher, and setting the fine for all other violations at $500 or twice the daily rental rate. The code also provides explicitly that offering or allowing short-term rental of any location not approved for use as a dwelling unit, such as any vehicle, trailer, tent, storage shed or garage, is prohibited.

Summary

In summary, the permitting requirements in LCPA 19-003 will allow the City to ensure that a variety of visitor-serving accommodations remain available for visitors while better controlling nuisance issues. The requirements will also avoid the proliferation of short-term rental businesses in which corporations and other entities buy up residences to use solely for vacation rentals thus reducing the number of long-term affordable housing options in the City.

For further information, please contact Richard Mollica, Planning Director, at (310) 456-2489, ext. 346 or email at jkendall@malibucity.org.

Sincerely,

Justine Kendall

Digitally signed by Justine Kendall
Date: 2021.04.08 09:04:16 -07'00'

Justine Kendall
Associate Planner

ENCLOSED:
Attachment A: Consistency Analysis Table
Attachment B: Accommodations in the City
Attachment C: Short-term Rental Code of Conduct

ATTACHMENT A

Malibu Land Use Plan (LUP) and Coastal Act
Consistency Analysis – LCPA No. 19-003

Policy		Consistency Determination
Chapter 2 – Public Access and Recreation and Coastal Act Section 30213		
2.25	New development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation.	Short-term rentals are limited to existing legally established structures in residential zoning districts. These properties generally have existing off-site parking available on the site; however, there are properties located on the ocean side of Pacific Coast Highway in eastern Malibu that don't meet current parking standards. Parking for the dwelling unit is often located between the front of the building and the edge of Pacific Coast Highway. This forces the public to park on the land side of Pacific Coast Highway thus forcing them to cross Pacific Coast Highway to access the ocean. In these areas, in particular, allowing dwelling units to be utilized solely as un-hosted short-term rentals results in these structures functioning like a hotel which can negatively impact public street parking. This can occur if reserved parking spaces are not provided or the unit is rented to a group of people that arrive in multiple vehicles. Allowing hosted single-family short-term rentals and multi-family short-term rentals, with a limit on the number of rentals allowed, will minimize impacts to public street parking and increase the availability of street parking. This will allow all visitors to enjoy coastal access and recreational opportunities while at the same time providing short-term rental opportunities for those visitors that wish to stay overnight in Malibu.
2.34	Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that	No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals in single-family homes and condominiums which can be more

Policy		Consistency Determination
	include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.	economical than whole house rentals since the property owner or long-term tenant is also on the site. For multi-family properties, defined as more than two (2) dwelling units, these units can be rented un-hosted. Up to two multi-family dwelling units on a parcel (not to exceed 40% of the units on a parcel) may be rented un-hosted so long as the other units on the property are rented on a long-term basis. The regulations would apply to properties with multi-family complexes regardless of the zoning district the property is located in. This system prevents the conversion of multi-family units into unregistered hotels, protects some of the lowest cost housing in the City, and encourages units to be rented long-term at lower rent as short-term rental is only allowed if all other units are at full occupancy. This will ensure the City maintains a variety of affordable units for long term renters and prevent property owners from utilizing all the most affordable rental units as short-term rentals while at the same time providing opportunities for short-term rentals to operate in the City.
2.36	Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.	No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations are available in the City. The amendment allows for hosted short-term rentals in single-family homes and condominiums which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. For multi-family properties, defined as more than two (2) dwelling units, these units can be rented un-hosted. Up to two multi-family dwelling units on a parcel (not to exceed 40% of the units on a parcel) may be rented un-hosted so long as the other units on the property are rented on a long-term basis. The regulations would apply to properties with multi-family

Policy		Consistency Determination
		complexes regardless of the zoning district the property is located in. This system prevents the conversion of multi-family units into unregistered hotels, protects some of the lowest cost housing in the City, and encourages units to be rented long-term at lower rent as short-term rental is only allowed if all other units are at full occupancy. This will ensure the City maintains a variety of affordable units for long term renters and prevent property owners from utilizing all the most affordable rental units as short-term rentals while at the same time providing opportunities for short-term rentals to operate in the City.
Chapter 3 - Marine and Land Resources and Coastal Act Sections 30231 and 30240		
3.14	New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.	Short-term rentals are limited to existing legally established structures in residential zoning districts. This allows the use of developed properties without the need to further disturb the land or impact ESHA.
3.96	New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board's municipal stormwater permit and the California Ocean Plan.	Short-term rentals are limited to existing legally established structures in residential zoning districts. Based on these limitations, water quality associated with the rental use would be consistent with that of a typical residential dwelling.

Policy		Consistency Determination
3.125	Development involving onsite wastewater discharges shall be consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements, revised waivers and other regulations that apply.	While short-term rentals are limited to existing legally established structures in residential zoning districts, short-term rentals can have an impact on the on-site wastewater system if a structure has large groups of people utilizing the unit or if there is constant and rapid turn-over of the unit. One of the requirements for operating a short-term rental in the City is the property must maintain a valid Onsite Wastewater Treatment System (OWTS) operating permit. This will ensure short-term rentals are consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements.
Chapter 4 - Hazards & Shoreline Bluff Development and Coastal Act Policy 30253		
4.2	All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.	Short-term rentals are limited to existing legally established structures in residential zoning districts. Regulations require property owners to provide information on methods of emergency communications used by the City in case of an emergency along with information on the Evacuation Zone for the property. In addition, to increase the safety of guests staying in a short-term rental, property owners must ensure that basic health and safety features are provided, including fire extinguishers, smoke detectors, and carbon monoxide detectors.
Chapter 5 – New Development and Coastal Act Policy 30250		
5.4	Off-street parking shall be provided for all new development in accordance with the ordinances contained in the LCP to assure there is adequate public access to coastal resources. A modification in the required parking standards through the variance process shall not be approved unless the City makes findings that the provision of fewer parking spaces will not result in adverse impacts to public access.	Short-term rentals are limited to existing legally established structures in residential zoning districts. These properties generally have existing off-site parking available on the site; however, there are properties located on the ocean side of Pacific Coast Highway in eastern Malibu that don't meet current parking standards. Parking for the dwelling unit is often located between the front of the building and the edge of Pacific Coast Highway. This forces the public to park on the land side of Pacific Coast Highway thus forcing the public to cross Pacific Coast Highway to access the ocean. In these areas, in particular, allowing dwelling units to be utilized solely as un-hosted short-term rentals results in these structures functioning

Policy		Consistency Determination
		like a hotel which can negatively impact public street parking. This can occur if reserved parking spaces are not provided or the unit is rented to a group of people that arrive in multiple vehicles. Allowing hosted single-family rentals and multi-family short-term rentals, with a limit on the number of rentals allowed, will minimize impacts to public street parking and increase the availability of street parking. This will allow all visitors to enjoy coastal access and recreational opportunities while at the same time providing short-term rental opportunities for those visitors that wish to stay overnight in Malibu.
5.49	All new development shall comply with the City's water conservation and wastewater regulations.	Short-term rentals are limited to existing legally established structures in residential zoning districts. One of the requirements for operating a short-term rental in the City is the property must maintain a valid Onsite Wastewater Treatment System (OWTS) operating permit. This will ensure short-term rentals are consistent with the rules and regulations of the L.A. Regional Water Quality Control Board, including Waste Discharge Requirements.
Chapter 6 – Scenic and Visual Resources and Coastal Act Policy 30251		
6.5	New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.	Short-term rentals are limited to existing legally established structures in residential zoning districts. This allows the use of developed properties with no adverse impacts on scenic areas visible from scenic roads or public viewing areas. The subject LCPA is limited to the use of existing structures and does not preclude future development from being consistent and requiring review under the Coastal Act.

Policy		Consistency Determination
6.33	The Pacific Coast Highway corridor shall be protected as a scenic highway and significant viewshed.	The capacity of Pacific Coast Highway is exceeded regularly on summer weekends as visitors travel to the beach or enjoy a drive along the coast. The conversion of long term housing to short-term rental use increases traffic impacts to Pacific Coast Highway through increased trip demands of transient occupancy. Allowing only hosted short-term rentals in single family homes/condominiums and limiting the number of short-term rentals in multi-family dwellings will help reduce the traffic on Pacific Coast Highway which will enhance the quality of the visitor experience on Pacific Coast Highway and assure access to recreational opportunities.
Chapter 7 – Public Works and Coastal Act Policy 30254		
7.16	Additional water storage facilities and/or new pipelines may be allowed in the City to replace deteriorated or undersized facilities and/or to ensure an adequate source of domestic and fire protection water supply during outages or pipeline interruptions provided such facilities are designed and limited to accommodate existing or planned development allowed by the Land Use Plan and can be found to be consistent with all applicable policies of the LCP.	Short-term rentals are limited to existing legally established structures in residential zoning districts. It is expected, that the demand from short-term rentals on domestic and fire protection water supplies would be consistent with that of a typical residential dwelling.

ATTACHMENT B

Supplemental Information
LCPA 19-003 – Short-Term Rentals

Accommodations in Malibu			
Name	Address	Accommodation Type	Number
The M Malibu	22541 PCH	Hotel Rooms	18
Nobu Ryokan	22752 PCH	Hotel Rooms	16
Malibu Beach Inn	22878 PCH	Hotel Rooms	47
The Surfrider Hotel	23033 PCH	Hotel Rooms	20
The Native	28920 PCH	Hotel Rooms	13
Malibu County Inn	6506 Westward Road	Hotel Rooms	16
		Total Hotel Rooms	130
Malibu Beach RV Park	25801 PCH	RV sites	142
		Tent sites	35
		Total Existing Accommodations	**307**
Pending applications on file with the City			
Malibu Inn Hotel	22959 PCH	Hotel Rooms	20
Sea View Hotel	22741 PCH	Hotel Rooms	39
		Total Future Hotel Rooms	**59**
		Overall Total (Existing and Planned)	**366**

Malibu Beach RV Park

Winter Rates (December 1, 2020 through February 28, 2021)*

All RV Sites = Full Hook Up (Water, Electric, and Sewer) and are Bacl Excluding Tent Sites.	Weekdays (Sun-Thu)	Weekends (Fri-Sat)	Weekly (7 Days)	Max Stay = 28 Nights (APPROVAL REQUIRED)
Ocean View Premium 50 Amp (No Towables)	104.50	110.00	632.50	2,530.00
Ocean View Premium 30 Amp (No Towables)	93.50	99.00	566.50	2266.00
Ocean View 50 Amp	99.00	104.50	599.50	2,398.00
Ocean View 30 Amp	88.00	93.50	533.50	2,134.00
Partial Ocean View 50 Amp (No Towables)	78.00	84.00	474.00	1,896.00
Partial Ocean View 30 Amp (No Towables)	70.00	76.00	426.00	1,704.00
Mountain View 50 Amp or Premium 30 Amp	82.50	88.00	500.50	2,002.00
Mountain View 30 Amp	58.00	62.50	352.50	1,410.00
Tent Site Ocean View	51.70	57.20	315.70	N/A
Tent Site Mountain View	46.20	51.70	282.70	N/A

Malibu Beach RV Park

Spring Rates (March 1, 2021 through May 27, 2021)*

All RV Sites = Full Hook Up (Water, Electric, and Sewer) and are Back In Only. Excluding Tent Sites.	Weekdays (Sun-Thu)	Weekends (Fri-Sat)	Weekly (7 Days)	Max Stay = 28 Nights (APPROVAL REQUIRED)
Ocean View Premium 50 Amp (No Towables)	114.00	120.00	690.00	2,760.00
Ocean View Premium 30 Amp (No Towables)	102.00	108.00	618.00	2,472.00
Ocean View 50 Amp	108.00	114.00	654.00	2,616.00
Ocean View 30 Amp	96.00	102.00	582.00	2,328.00
Partial Ocean View 50 Amp (No Towables)	96.00	104.00	584.00	2,336.00
Partial Ocean View 30 Amp (No Towables)	80.00	88.00	488.00	1,952.00
Mountain View 50 Amp or Premium 30 Amp	90.00	96.00	546.00	2,184.00
Mountain View 30 Amp	72.00	78.00	438.00	1,752.00
Tent Site Ocean View	51.70	57.20	315.70	N/A
Tent Site Mountain View	46.20	51.70	282.70	N/A

Malibu Beach RV Park

Summer Rates (May 28, 2021 through October 31, 2021)

All RV Sites = Full Hook Up (Water, Electric, and Sewer) and are Back In Only. Excluding Tent Sites.	Weekdays (Sun-Thu)	Weekends (Fri-Sat)	Weekly (7 Days)	Max Stay = 28 Nights (APPROVAL REQUIRED)
Ocean View Premium 50 Amp (No Towables)	253.00	264.00	1,529.00	6,116.00
Ocean View Premium 30 Amp (No Towables)	209.00	231.00	1,276.00	5,104.00
Ocean View 50 Amp	220.00	242.00	1,342.00	5,368.00
Ocean View 30 Amp	198.00	225.50	1,215.50	4,862.00
Partial Ocean View 50 Amp (No Towables)	192.00	222.00	1,182.00	4,728.00
Partial Ocean View 30 Amp (No Towables)	117.00	162.50	747.50	2,990.00
Mountain View 50 Amp or Premium 30 Amp	170.50	192.50	1,045.00	4,180.00
Mountain View 30 Amp	137.50	154.00	841.50	3,366.00
Tent Site Ocean View	99.00	110.00	605.00	N/A
Tent Site Mountain View	71.50	93.50	451.00	N/A

Malibu Beach RV Park

Fall Rates (November 1, 2021 through December 31, 2021)

All RV Sites = Full Hook Up (Water, Electric, and Sewer) and are Back In Only. Excluding Tent Sites.	**Weekdays (Sun-Thu)**	**Weekends (Fri-Sat)**	**Weekly (7 Days)**	**Max Stay = 28 Nights (APPROVAL REQUIRED)**
Ocean View Premium 50 Amp (No Towables)	127.05	133.10	768.35	3,073.40
Ocean View Premium 30 Amp (No Towables)	114.95	121.00	695.75	2,783.00
Ocean View 50 Amp	121.00	127.05	732.05	2,928.20
Ocean View 30 Amp	108.90	114.95	659.45	2,637.80
Partial Ocean View 50 Amp (No Towables)	100.80	108.00	612.00	2,448.00
Partial Ocean View 30 Amp (No Towables)	90.11	98.30	548.85	2,195.40
Mountain View 50 Amp or Premium 30 Amp	102.85	123.20	637.45	2,549.80
Mountain View 30 Amp	72.60	78.65	441.65	1,766.60
Tent Site Ocean View	56.87	62.92	347.27	N/A
Tent Site Mountain View	50.82	56.87	310.97	N/A

ATTACHMENT C

CITY OF MALIBU

SHORT-TERM RENTAL
CODE OF CONDUCT

The short-term rental of residential property may only be conducted in Malibu pursuant to a valid Short-Term Rental Permit issued by the City in accordance with the permit regulations set forth in the Malibu Municipal Code (MMC) 17.55. Go to **MalibuCity.org/STR** for more information.

The 24-hour contact for this property is _____.

They can be reached anytime at _____.

NEIGHBORHOOD REGULATIONS

Maximum Occupancy: The maximum occupancy of this property is _____ .

Special Events: Events in which 15 or more people are anticipated to attend may only be conducted pursuant to a Special Event Permit issued by the City.

Noise: Unreasonable noise is prohibited. Maintain peace and quiet between 10 PM - 7 AM.

Parking: All guests should park onsite whenever possible and abide by all posted street parking signs.

Trash: Place containers outside after 5:30 PM the day before collection day and remove all containers no later than 8:00 PM on collection day.

Fines for Violation of the STR Permit Regulations:
Violations of MMC 17.55 are subject to a fine of $500 per day or violation, or the short-term rental's advertised daily rate per day or violation, whichever is higher.

ENVIRONMENTAL REGULATIONS

During your stay, help us protect Malibu by properly disposing of all trash to prevent it from entering the ocean and abiding by our local environmental regulations including the City's Plastic Bag Ban, Polystyrene Foam Ban, Plastic Straws and Cutlery Ban and the Smoking on the Beach Ban.

Onsite Wastewater Treatment Systems
Most homes in Malibu rely on onsite wastewater treatment systems (septic systems) rather than traditional sewer systems. These systems require special care. Be mindful of what goes down the drain.

EMERGENCY INFORMATION

High Risk Fire Hazard Severity Zone
Malibu is in a very high fire hazard severity zone. Exercise extreme caution and situational awareness during your stay. Know your evacuation zone and routes and be prepared to evacuate on short notice.

Emergency Communications
To receive emergency updates, follow the City's social media accounts:

- twitter.com/CityMalibu
- twitter.com/MalibuEOC
- facebook.com/CityofMalibu
- instagram.com/CityofMalibu

If there is a widespread threat, the City may issue a Wireless Emergency Alert (WEA) which goes to all cell phones within the City with no subscriptions necessary, so you may receive a WEA on your mobile device.

Evacuation Zone
This property at _____
is located in Malibu Evacuation Zone _____.
For more information go to **MalibuCity.org/evac.**

Emergency Preparedness
For more information go to
MalibuCity.org/PublicSafety

RESOURCES

Los Angeles County Sheriff: 818-878-1808
LA County Fire Prevention: 818-880-0341
Malibu City Hall: 310-456-2489
Malibu Emergency Hotline: 310-456-9982
City Code Enforcement: 310-456-2489, ext. 308

For life-threatening emergencies, call 9-1-1

Attachment C

CHAPTER 2—PUBLIC ACCESS AND RECREATION*

* CodeAlert: This topic has been affected by Ordinance No. Resolution 19-33 and Resolution 19-54. To view amendments and newly added provisions, please refer to the CodeAlert Amendment List.

A. Introduction

The beaches of Malibu are world-famous tourist destinations for millions of visitors annually from foreign countries, all 50 states of the U.S., as well as to residents of cities and towns located throughout California. In addition, the Santa Monica Mountains area within and adjacent to the City provides an extensive network of public trails that traverse and connect Federal, State, and County parklands, and a system of heavily used historic trails on private land. Overall, a wide variety of recreational opportunities exist in the area including hiking, biking, horseback riding, camping, fishing, picnicking, nature study, surfing, diving, and swimming. Public access to and along the shoreline and trails, and the provision of public recreational opportunities and visitor-serving facilities such as campgrounds, hotels and motels has historically been a critical and controversial issue in Malibu. Continuing conflicts in providing maximum public access to and along the shoreline and trails, as mandated by the Coastal Act, is evidenced in the Coastal Commission's permit regulatory reviews and public hearings concerning proposed projects in Malibu since 1976.

The loss of coastal recreation opportunities resulting from development occurring over the past 25 years represents a significant adverse impact to the availability of public access and recreation in Malibu. Defined broadly, these opportunities include not only the physical availability of access and recreation areas, but also the ability of the public to reach and utilize these sites. Coastal access is generally viewed as an issue of physical supply, and includes lateral access (access along a beach), vertical access (access from an upland street, parking area, bluff or public park to the beach), coastal blufftop trails, and upland trails that lead to the shore or traverse inland parklands within the coastal zone. These inland parks provide significant access and recreation opportunities in the City and Santa Monica Mountains coastal zone, and are as important to coastal access as shoreline accessways.

While the physical supply of access is a primary factor in assuring access opportunities, the Local Coastal Program cannot view the issue of supply in isolation of a number of other factors. These variables include the availability of transit to beaches, parking availability, providing other support facilities such as restrooms and picnic areas, addressing user demands and conflicts, and maintenance of a diversity of coastal recreation experiences. Impacts to any one of these variables may ultimately affect the availability and use of the physical supply of access. For example, without adequate parking or alternate transportation, users will have difficulty reaching the shoreline or trailhead. Therefore, managing and increasing coastal access and ensuring that growth and development does not cumulatively impact the ability of the public to access the shoreline and trails, involves improving not only the physical supply of access, but all of the other variables that contribute to ensuring maximum coastal access.

To understand the importance of protecting and maximizing public access, it is critical to know that the public already possesses ownership interests in tidelands or those lands below the mean high tide line. Because the mean high tide line varies, the extent of lands in public ownership also varies with the location of the mean high tide line. By virtue of its admission into the Union, California became the owner of all tidelands, submerged lands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The use of these lands is limited to public trust uses, such as navigation, fisheries, commerce, public access, water-oriented recreation, open space, and environmental protection. The protection of these public areas and the assurance of access to them lies at the heart of Coastal Act policies requiring both the implementation of a public access program and the minimization of impacts to access through the regulation of development.

1. Coastal Act Provisions

A broad policy goal of California's Coastal Management Program is to maximize the provision of coastal access and recreation consistent with the protection of public rights, private property rights, and coastal resources as required by the California Constitution and provided in Section 30210 of the Coastal Act. Several additional policies contained in the Coastal Act, which are herein incorporated into the Land Use Plan, work to meet this objective. The Coastal Act requires that development not interfere with the public right of access to the sea (Section 30211); provides for public access in new development projects with limited exceptions (Section 30212); encourages the provision of lower cost visitor and recreational facilities (Section 30213); addresses the need to regulate the time, place, and manner of public access (30214); specifies the need to protect ocean front land suitable for recreational use (Section 30221); gives priority to the use of land suitable for visitor-serving recreational facilities over certain other uses (Section 30222); requires the protection of upland areas to support coastal recreation, where feasible (Section 30223); and encourages recreational boating use of coastal waters (Section 30224).

2. Land Use Plan Provisions

The policies contained in the Local Coastal Program Land Use Plan are intended to carry out the goals and objectives reflected in the policies of the Coastal Act. These policies can be broadly summarized as follows:

- Improving existing public access opportunities by supporting proposals to open accessways including efforts by Los Angeles County to open and improve accessibility to El Sol and Dan Blocker Beaches;
- Improving public access to Point Dume State Preserve by improving the availability of parking at the blufftop and providing transit service from Point Dume State Beach below the headlands consistent with the terms of the settlement agreement between the City, the Department of Parks and Recreation and the Coastal Commission;
- Providing objectives, standards, and designated sites for locating visitor-serving recreational facilities and commercial uses such as hotels and motels;
- Coordinating with other public agencies to develop a comprehensive signage program to better identify public access and use opportunities and minimize conflicts between public and private use;
- Identifying and seeking removal of all unauthorized physical development, including signs and fences on the beach, which inhibit public use of public beach areas and state tidelands, as well as those that that physically encroach into state tidelands;
- Protecting existing and improving future parking availability near shoreline and trail accessways throughout the City;
- Improving methods and programs to carry out public access impact mitigation measures by coordinating with other public agencies and private associations to ensure that vertical and lateral access and trail easements obtained pursuant to Offers to Dedicate (OTDs) are accepted, opened, maintained and operated;
- Requiring public access OTDs to mitigate demonstrated impacts to public access;
- Providing guidelines to locate, design, map and otherwise implement a California Coastal Trail (CCT) in the City;
- Establishing standards for the siting and provision of public accessways and support facilities at specific beaches throughout the City;
- Supporting efforts to develop and publish a regional access guide for the Malibu area.

The overarching goal and intent of the policies provided below is to ensure that the LCP Land Use Plan provides for protection, provision, and enhancement of public access and recreation opportunities in the City of Malibu consistent with goals, objectives, and policies of the California Coastal Act.

B. Coastal Act Policies

The Coastal Act Policies set forth below are incorporated herein as policies of the Land Use Plan:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) Adequate access exists nearby, or,

(3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

(b) For purposes of this section, "new development" does not include:

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than l0 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30214

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30224

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the

development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

C. Land Use Plan Policies

2.1 The shoreline, parklands, beaches and trails located within the City provide a wide range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities shall be protected, and where feasible, expanded or enhanced as a resource of regional, state and national importance.

2.2 New development shall minimize impacts to public access to and along the shoreline and inland trails. The City shall assure that the recreational needs resulting from proposed development will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and/or development plans with the provision of onsite recreational facilities to serve new development.

2.3 Public prescriptive rights may exist in certain areas along the shoreline and trails within the City. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization. These rights shall be protected through public acquisition measures or through permit conditions for new development, which incorporate measures to provide or protect access when there is substantial evidence that prescriptive rights exist.

2.4 Public accessways and trails shall be an allowed use in Environmentally Sensitive Habitat Areas. Where determined to be desirable (by consideration of supporting evidence), limited or controlled methods of access and/or mitigation designed to eliminate or minimize impacts to ESHA may be utilized. Accessways to and along the shoreline shall be sited, designed, and managed to avoid and/or protect marine mammal hauling grounds, seabird nesting and roosting sites, sensitive rocky points and intertidal areas, and coastal dunes.

2.5 New development shall be sited and designed to minimize impacts to public access and recreation along the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities shall be implemented prior to or concurrent with construction of the approved development.

2.6 Mitigation shall not substitute for implementation of a feasible project alternative that would avoid impacts to public access.

2.7 Public accessways and trails to the shoreline and public parklands shall be a permitted use in all land use and zoning designations. Where there is an existing, but unaccepted and/or unopened public access Offer-to-Dedicate (OTD), easement, or deed restriction for lateral, vertical or trail access or related support facilities e.g. parking, construction of necessary access improvements shall be permitted to be constructed, opened and operated for its intended public use.

2.8 Public recreational facilities throughout the City, including parking areas or facilities, shall be distributed, as feasible, to prevent overcrowding and to protect environmentally sensitive habitat areas.

2.9 Public access and recreational planning efforts shall be coordinated, as feasible, with the National Park Service, the State Department of Parks and Recreation, the State Coastal Conservancy, Los Angeles County, Los Angeles County Department of Beaches and Harbors, the Santa Monica Mountains Conservancy, and the Santa Monica Mountains Trails Council.

2.10 Volunteers and conservation or public work programs should be utilized where feasible to assist in the development, maintenance, and operation of public accessways and recreational facilities.

2.11 Public land, including rights of way, easements, dedications, shall be utilized for public recreation or access purposes, where appropriate and consistent with public safety and the protection of environmentally sensitive habitat areas.

2.12 For any new development adjacent to or within 100 feet of a public park, beach, trail, or recreation area, notice of proposed developments shall be provided, as applicable, to Los Angeles and Ventura Counties, the National Park Service, the California Department of Parks and Recreation and the Santa Monica Mountains Conservancy for their review with regard to potential impacts to public access, recreation, environmentally sensitive habitat and any other sensitive environmental resources.

2.13 Open space easements and dedications shall be utilized, where required, to facilitate the objectives of the City's recreational and/or public access program.

2.14 An incentives program that will encourage landowners to make lands available for public access and recreational uses should be developed.

2.15 The City should coordinate with County, federal and state park agencies and nonprofit land trusts or organizations to insure that private land donations and/or public access dedications are accepted and managed for their intended use.

2.16 Entrance roads, parking facilities, and other necessary support facilities for parks, beaches and other shoreline recreation areas shall be sited and designed to minimize adverse impacts to environmentally sensitive habitat areas and other sensitive environmental and visual resources.

2.17 Recreation and access opportunities at existing public beaches and parks shall be protected, and where feasible, enhanced as an important coastal resource. Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. Limitations on time of use or increases in use fees or parking fees, which effect the intensity of use, shall be subject to a coastal development permit.

2.18 The City should coordinate with the National Park Service, the California Department of Parks and Recreation, the State Coastal Conservancy, Caltrans, the County Department of Beaches and Harbors and the Santa Monica Mountains Conservancy to provide a comprehensive signage program to identify public parks, trails and accessways. Said signage program should be designed to minimize conflicts between public and private property uses.

2.19 Temporary events shall minimize impacts to public access, recreation and coastal resources. A coastal development permit shall be required for temporary events that meet all of the following criteria: 1) held between Memorial Day and Labor Day; 2) occupy any portion of a public sandy beach area; and 3) involve a charge for general public admission where no fee is currently charged for use of the same area. A coastal development permit shall also be required for temporary events that do not meet all of these criteria, but have the potential to result in significant adverse impacts to public access and/or coastal resources.

2.20 New public beach facilities shall be limited to only those structures which provide or enhance public recreation activities. No development shall be permitted on sandy public beach areas, except that lifeguard stations, small visitor serving concessions, trash and recycling receptacles, and public access improvements may be permitted when sited and designed to minimize adverse impacts to public access, visual resources and environmentally sensitive habitat areas and marine resources. (Resolution No. 19-49)

2.21 The limited development of visitor-serving commercial recreational facilities designed to serve beach or park users may be permitted on non-sand areas of public beaches or beach parks. Developments designed or sized to serve a larger market than park users shall be prohibited in public beaches and parks.

2.22 Signs advertising off-site non-coastal related uses or services shall be prohibited in public beaches and beach parks. Replacement of signs on lifeguard towers authorized pursuant to a Coastal Commission CDP prior to adoption of the LCP shall be allowed.

2.23 No new structures or reconstruction shall be permitted on a bluff face, except for stairways or accessways to provide public access to the shoreline or beach or routine repair and maintenance or to replace a structure destroyed by natural disaster.

2.24 The extension of public transit facilities and services, including shuttle programs, to maximize public access and recreation opportunities shall be encouraged, where feasible.

2.25 New development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation.

2.26 Adequate parking should be provided to serve coastal access and recreation uses to the extent feasible. Existing parking areas serving recreational uses shall not be displaced unless a comparable replacement area is provided.

2.27 The implementation of restrictions on public parking, which would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of “no parking” signs, red curbing, physical barriers, imposition of maximum parking time periods, and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Where feasible, an equivalent number of public parking spaces shall be provided nearby as mitigation for impacts to coastal access and recreation.

2.28 Gates, guardhouses, barriers or other structures designed to regulate or restrict access shall not be permitted within private street easements where they have the potential to limit, deter, or prevent public access to the shoreline, inland trails, or parklands where there is substantial evidence that prescriptive rights exist.

2.29 Parking facilities for new development of general office or commercial use, which may cumulatively impact public access and recreation, shall be designed to serve not only the development during ordinary working hours, but also public beach parking during weekends and holidays, in conjunction with public transit or shuttle buses serving beach recreational areas.

2.30 A program to utilize existing parking facilities for office and commercial development located near beaches for public access parking during periods of normal beach use when such development is not open for business should be developed. As feasible, new non-visitor serving office or commercial development shall be required to provide public parking for beach access during weekends and holidays.

2.31 The City should complete an inventory of existing public parking along Pacific Coast Highway and public roads seaward of PCH to identify all unpermitted signage or physical barriers to public parking and to establish a database to aid in preventing future loss of legal public access and parking. All unpermitted signs and/or physical barriers which prevent public parking near the shoreline shall not be permitted.

2.32 Landscaping and any other barriers or obstructions placed by private landowners shall not be allowed within existing public road rights-of-way where such areas would otherwise be available for public parking.

2.33 Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

2.35 New development of luxury overnight visitor-serving accommodations shall be designed to provide for a component of lower cost overnight visitor accommodations (e.g. campground, RV park, hostel, or lower cost hotel/motel). The lower-cost visitor accommodations may be provided on-site, off-site, or through payment of an in-lieu fee into a fund to subsidize the construction of lower- cost overnight facilities in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The applicant shall be required to provide lower-cost overnight accommodations consisting of 15 percent of the number of luxury overnight accommodations that are approved.

2.36 Coastal recreational and visitor serving uses and opportunities, especially lower cost opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

2.37 Priority shall be given to the development of visitor-serving commercial and/or recreational uses that complement public recreation areas or supply recreational opportunities not currently available in public parks or beaches. Visitor-serving commercial and/or recreational uses may be located near public park and recreation areas only if the scale and intensity of the visitor-serving commercial recreational uses is compatible with the character of the nearby parkland and all applicable provisions of the LCP.

2.38 To help finance the construction and maintenance of new accessways, the use of private or public grants or other local, State and Federal funding sources shall be utilized.

2.39 The City shall not close, abandon, or render unusable by the public any existing accessway which the City owns, operates, maintains, or is otherwise responsible for unless determined to be necessary for public safety without first obtaining a Coastal Development permit. Any accessway which the City or any other managing agency or organization determines cannot be maintained or operated in a condition suitable for public use shall be offered to another public agency or qualified private association that agrees to open and maintain the accessway for public use.

2.40 For any project where the LCP requires an offer to dedicate an easement for a trail or for public beach access, a grant of easement may be recorded instead of an offer to dedicate an easement, if a government agency or private association is willing to accept the grant of easement and is willing to operate and maintain the trail or public beach accessway.

2.41 For all offers to dedicate an easement that are required as conditions of Coastal Development Permits approved by the City, the City has the authority to approve a private association that seeks to accept the offer. Any government agency may accept an offer to dedicate an easement if the agency is willing to operate and maintain the easement. The City shall approve any private association that submits a management plan that indicates that the association will open, operate, and maintain the easement in accordance with terms of the recorded offer to dedicate the easement.

1. Trails and Bikeways

2.42 Safe and accessible bikeways and support facilities shall be provided, where feasible, through the development and adoption of a Bikeways Plan in the City's Coastal Zone.

2.43 Existing bikeway corridors along roads and highways should be upgraded, as feasible, to eliminate the present hazards between motor vehicles and bicycles, consistent with the sensitive environmental resource and visual resource protection policies. Improvements to any roadway containing a bikeway should not adversely affect the provision of bicycle use, to the extent feasible.

2.44 Proposals to install bike racks, lockers, or other devices for securing bicycles in convenient locations at beach and mountain parks, parking lots throughout the City, trailheads and other staging areas shall be permitted. Funding should be supported and provided where available.

2.45 An extensive public trail system has been developed across the Santa Monica Mountains that provides public coastal access and recreation opportunities. This system includes trails located within state and national parklands as well as those which cross private property in the City and County. The City's existing and proposed trails are shown on the LUP Park Lands Map. A safe trail system shall be provided throughout the mountains and along the shoreline that achieves the following:

a. Connects parks and major recreational facilities;

b. Links with trail systems of adjacent jurisdictions;

c. Provides recreational corridors between the mountains and the coast;

d. Allows for flexible, site-specific design and routing to minimize impacts on adjacent development, and fragile habitats. In particular, ensure that trails located within or adjacent to Environmentally Sensitive Habitat Areas are designed to protect fish and wildlife resources;

e. Provides connections with populated areas;

f. Includes trails designed to accommodate multiple use (hiking, biking and equestrian) where multiple use can be provided safely for all users and where impacts to coastal resources are minimized;

g. Reserves certain trails for hiking only;

h. Facilitates linkages to community trail systems;

i. Provides diverse recreational and aesthetic experiences;

j. Prohibits public use of motorized vehicles on any trail;

k. Provides public parking at trail head areas;

l. Ensures that trails are used for their intended purpose and that trail use does not violate private property rights. (Resolution No. 07-04)

2.46 The appropriate agency or organization to accept and develop trail dedication offers resulting from City issued CDPs shall be determined through coordination, where applicable, with the National Park Service, the State Department of Parks and Recreation, the State Coastal Conservancy, Los Angeles County, the Santa Monica Mountains Coastal Conservancy, and the Santa Monica Mountains Trails Council, and nonprofit land trusts or associations.

2.47 A strategic plan for the acceptance, construction, and operation of existing recorded trail easement offers which have not been accepted by a public agency or private association should be developed to address said trail easement offers no later than two years from the date of LCP certification. The strategic plan shall be incorporated into the LCP as an amendment.

2.48 Development of public or private trail campsites along primary trail routes shall be a conditionally permitted use, where impacts to environmentally sensitive habitat areas and visual resources are minimized and where designed to meet fire safety standards.

2.49 A trail offer of dedication shall be required in new development where the property contains a LCP mapped trail alignment or where there is substantial evidence that prescriptive rights exist. An existing trail which has historically been used by the public may be relocated as long as the new trail alignment offers equivalent public use. Both new development and the trail alignment shall be sited and designed to provide maximum privacy for residents and maximum safety for trail users.

2.50 The opening of a trail easement that was dedicated for public use as a term or condition of a Coastal Development Permit shall occur only after a public agency or private association has accepted the offer of dedication and agreed to open, operate, and maintain the trail. New offers to dedicate public trail easements shall

include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with prescriptive rights, in the area subject to the easement prior to acceptance of the offer and, 2) prohibits any development or obstruction in the easement area prior to acceptance of the offer.

2.51 A uniform signage program shall be developed and utilized to assist the public in locating and recognizing trail access points. In areas containing environmentally sensitive habitat or safety hazards, signs shall be posted in English and in Spanish with a description of the sensitive habitat or safety hazard once the trail is opened by a public agency or private association.

2.52 Trail areas that have been degraded through overuse or lack of maintenance should be restored by such techniques as revegetation with native plants, and through the provision of support facilities such as parking, trash receptacles, restrooms, picnic areas etc. In environmentally sensitive habitat areas a limited recovery period during which public access should be controlled may be necessary. Any limitation on access shall be for the minimum period necessary, shall be evaluated periodically to determine the need for continued limited use and shall require a Coastal Development Permit.

2.53 Efforts to obtain public and/or private funding for the purchase of parcels and/or easements to complete all gaps in the public trail system throughout the City and Santa Monica Mountains Coastal Zone should be encouraged.

2. California Coastal Trail

2.54 The City shall participate and consult with the National Park Service, the State Department of Parks & Recreation, the State Coastal Conservancy, the Santa Monica Mountains Conservancy, Los Angeles & Ventura Counties, and other appropriate public and private entities and interested parties in designing, locating, funding, acquiring, and implementing the Malibu/Santa Monica Mountains California Coastal Trail (CCT) segment.

2.55 The California Coastal Trail shall be identified and defined as a continuous trail system traversing the length of the state's coastline and designed and sited as a continuous lateral trail traversing the length of the City's Coastal Zone and connecting with contiguous trail links in adjacent Coastal jurisdictions (Los Angeles and Ventura Counties).

2.56 The CCT shall be designed and implemented to achieve the following objectives:

a. Provide a continuous walking and hiking trail as close to the ocean as possible;

b. Provide maximum access for a variety of non-motorized uses by utilizing alternative trail segments where feasible;

c. Maximize connections to existing and proposed local trail systems;

d. Ensure that all segments of the trail have vertical access connections at reasonable intervals;

e. Maximize ocean views and scenic coastal vistas;

f. Provide an educational experience where feasible through interpretive facilities. (Resolution No. 07-04)

2.57 CCT Siting and Design Standards:

a. The trail should be sited and designed to be located along or as close to the shoreline where physically and aesthetically feasible. Where it is not feasible to locate the trail along the shoreline due to natural landforms or legally authorized development that prevents passage at all times, inland bypass trail segments located as close to the shoreline as possible should be utilized. Shoreline trail segments that may not be passable at all times should provide inland alternative routes.

b. Where gaps are identified in the trail, interim segments should be identified to ensure a continuous coastal trail. Interim segments should be noted as such, with provisions that as opportunities arise, the trail shall be realigned for ideal siting. Interim trail segments should meet as many of the CCT objectives and standards as possible.

c. The CCT should be designed and located to minimize impacts to environmentally sensitive habitat areas to the maximum extent feasible. Where appropriate, trail access should be limited to pass and repass. Where necessary to prevent disturbance of nesting birds, sections of the trail may be closed on a seasonal basis. Alternative trail segments shall be provided where feasible.

d. The CCT should be located to incorporate existing oceanfront trails and paths and support facilities of public shoreline parks and beaches to the maximum extent feasible.

e. To provide a continuously identifiable trail along the base and shoreline of the Santa Monica Mountains, the trail should be integrated with the CCT in Ventura and Los Angeles Counties which border the City.

f. The CCT should be designed to avoid being located on roads with motorized vehicle traffic where feasible. In locations where it is not possible to avoid siting the trail along a roadway, the trail should be located off of the pavement and within the public right-of-way, and separated from traffic by a safe distance. In locations where the trail must cross a roadway, appropriate directional and traffic warning signing should be provided. (Resolution No. 07-04)

2.58 CCT Acquisition and Management:

a. Trail easements should be obtained by encouraging private donation of land, by public purchase, or by dedication of trail easements. Trail easement dedications shall be required as a condition of approval of a Coastal Development Permit for development on property located on the CCT route, when the dedication will mitigate adverse impacts on public access and/or recreation by the project.

b. The CCT plan should identify the appropriate management agency(s) to take responsibility for trail maintenance. (Resolution No. 07-04)

2.59 CCT Signage Program Standards:

a. The trail should provide adequate signage at all access points, trailheads, parking lots, road crossings, and linkages or intersections with other trails or roads which incorporate the CCT logo (to be designed).

b. The trail should provide adequate safety signage, including but not limited to, road crossing signs and yield/warning signs on multi-use trail segments. Where appropriate signs should be developed in coordination with Caltrans and/or City and County Public Works Departments and any other applicable public agencies.

c. Signs shall be posted in Spanish and in English. (Resolution No. 07-04)

2.60 CCT Support Facilities:

To maximize access to the CCT, adequate parking and trailhead facilities should be provided. (Resolution No. 07-04)

2.61 CCT Mapping:

a. The final CCT map shall identify all planned or secured segments, including existing segments, all access linkages and planned staging areas, public and private lands, existing easements, deed restricted sections and sections subject to an Offer-to-dedicate (OTD). The map shall be updated on a regular basis.

b. The CCT shall be identified on all applicable City Trail Maps contained in the LCP Access Component. (Resolution No. 07-04)

2.62 Inclusion of CCT in LCP:

The LCP shall be amended to incorporate all plans and designs for locating and implementing the CCT within the City including the final mapped alignment. (Resolution No. 07-04)

3. Shoreline Access

2.63 Consistent with the policies below, maximum public access from the nearest public roadway to the shoreline and along the shoreline shall be provided in new development. Exceptions may occur only where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected. Such access can be lateral and/or vertical. Lateral access is defined as an accessway that provides for public access and use along the shoreline. Vertical access is defined as an accessway which extends to the shoreline, or perpendicular to the shoreline in order to provide access from the first public road to the shoreline.

2.64 An Offer to Dedicate (OTD) an easement for lateral public access shall be required for all new oceanfronting development causing or contributing to adverse public access impacts. Such easement shall extend from the mean high tide line landward to a point fixed at the most seaward extent of development i.e. intersection of sand with toe of revetment, vertical face of seawall, dripline of deck, or toe of bluff.

2.65 On beachfront property containing dune ESHA the required easement for lateral public access shall be located along the entire width of the property from the ambulatory mean high tide line landward to the ambulatory seawardmost limit of dune vegetation. If at some time in the future, there is no dune vegetation seaward of the approved deck/patio line, such easement shall be located from the ambulatory mean high tide line landward to the seaward extent of development.

2.66 An Offer to Dedicate (OTD) an easement for vertical access shall be required in all new development projects causing or contributing to adverse public access impacts when adequate access is not available within 500 feet of the development site. Vertical accessways shall be a minimum of 10 feet in width and should be sited along the border or side property line of the project site or away from existing or proposed development to the maximum feasible extent. Where there is substantial evidence that prescriptive rights of access to the beach exist on a parcel, development on that parcel must be designed, or conditions must be imposed, to avoid interference with the prescriptive rights that may exist.

2.67 Facilities to complement public access to and along the shoreline should be provided where feasible and appropriate. This may include parking areas, restroom facilities, picnic tables, or other such improvements. No facilities or amenities, including, but not limited to, those referenced above, shall be required as a prerequisite to the approval of any lateral or vertical accessways OTDs or as a precondition to the approval or construction of said accessways.

2.68 New development located on the seaward side of Pacific Coast Highway and east of Malibu Creek shall be required to construct a public sidewalk with a minimum width of five feet between the approved development and Pacific Coast Highway, where feasible.

2.69 Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept the responsibility for maintenance and operation of the accessway. New offers to dedicate public access shall include an interim deed restriction that 1) states that the terms and conditions of the permit do not authorize any interference with prescriptive rights in the areas subject to the easement prior to acceptance of the offer and 2) prohibits any development or obstruction in the accessway prior to acceptance of the offer of dedication.

2.70 Offers to dedicate public access shall be accepted for the express purpose of opening, operating, and maintaining the accessway for public use. Unless there are unusual circumstances, the accessway shall be opened within 5 years of acceptance. If the accessway is not opened within this period, and if another public agency or qualified private association expressly requests ownership of the easement in order to open it to the public, the easement holder shall transfer the easement to that entity within 6 months of the written request. A Coastal Development Permit that includes an offer to dedicate public access as a term or condition shall require the recorded offer to dedicate to include the requirement that the easement holder shall transfer the easement to another public agency or private association that requests such transfer, if the easement holder has not opened the accessway to the public within 5 years of accepting the offer.

2.71 Public agencies and private associations which may be appropriate to accept offers of dedication include, but shall not be limited to, the State Coastal Conservancy, the Department of Parks and Recreation, the State Lands Commission, the County, the City, the Santa Monica Mountains Conservancy and non-governmental organizations.

2.72 A uniform signage program shall be developed and utilized to assist the public in locating and recognizing shoreline access points. In environmentally sensitive habitat areas signs may be posted with a description of the sensitive habitat. Signs shall be posted in English and Spanish.

2.73 Maximum public access shall be provided in a manner which minimizes conflicts with adjacent uses.

2.74 Where a proposed project would increase the burdens on access to or along the shoreline, additional access may be required to balance or mitigate the impact resulting from construction of the project.

2.75 Accessways or areas adjacent to accessways that have been severely degraded as the result of intense and/or unrestricted use should be restored by such techniques as revegetation with native plants, trail consolidation and improvement and through the provision of support facilities such as parking, defined trail and/or beach walk stairway systems, raised wooden boardwalks, trash receptacles, restrooms, picnic areas. In severely degraded areas controlled and limited public access may be allowed during the recovery period subject to a coastal development permit and consultation with appropriate public agencies and/or resource specialists. Any limitation of public use shall be evaluated periodically to determine the need for continued limited use and the limitation shall be removed at the termination of the recovery period.

2.76 Proposals to open and provide increased public access to El Sol and Dan Blocker Beaches, where feasible, shall be supported and coordinated with the Los Angeles County Department of Beaches and Harbors.

2.77 Acquisition of parcels owned by Caltrans, which may be appropriate for public recreational use, should be supported.

2.78 RESERVE. (Resolution No. 15-63)

2.79 The City should continue to support and coordinate with the California Department of Parks and Recreation in improving access to Point Dume State Preserve by ensuring that adequate public parking is provided consistent with the terms of the settlement agreement between the City, State Department of Parks and Recreation and the Coastal Commission. Where applicable, the City should support and coordinate with the Department of Parks and Recreation in designing and constructing trails consistent with ongoing efforts to restore, enhance and protect sensitive resources.

2.80 In consultation and coordination with the State Lands Commission, all unauthorized or illegal development, including signs, which encroach onto State tidelands should be identified and removed. In particular, and in coordination with the State Lands Commission, existing signs at Broad Beach which purport to identify the boundary between State tidelands and private property that are determined to be unpermitted development should be removed.

2.81 No signs shall be posted on a beachfront property or on public beach unless authorized by a coastal development permit. Signs which purport to identify the boundary between State tidelands and private property or which indicate that public access to State tidelands or public lateral access easement areas is restricted shall not be permitted.

2.82 Efforts to develop and publish a regional access guide to Malibu area beaches and trails should be encouraged and supported.

2.83 Efforts to ensure that all existing shoreline and inland trail OTD easements are accepted prior to their expiration date shall be coordinated with other public agencies as appropriate.

4. Beach and Blufftop Accessway Standards

2.84 The frequency of public access locations shall vary according to localized beach settings and conditions as set forth below. Vertical access standards and related dedication requirements may range from none in areas of major public beach holdings to one accessway per 1,000 feet of shoreline unless otherwise specified in Policy 2.86. This requirement shall not preclude the provision or requirement of vertical accessways at less than 1,000 feet separation if a public agency or private landowner offers to dedicate such access or if a project related impact warrants such access (offer-to-dedicate) as a condition of approval.

2.85 Improvements and/or opening of accessways already in public ownership or accepted pursuant to a Coastal Permit shall be permitted regardless of the distance from the nearest available vertical accessway.

5. Specific Vertical Accessway Standards

2.86 The following standards shall apply in carrying out the access policies of the LCP relative to requiring and locating vertical accessways to the shoreline. These standards shall not be used as limitations on any access requirements pursuant to the above policies.

a. Nicholas Canyon

No new dedications required — public beach.

b. Encinal

A minimum of two vertical accessway (OTDs) between Nicholas Canyon and El Pescadero for a separation of approximately one accessway per 2500 feet. Development of an accessway at El Sol may satisfy one of the requirements. Additional offers of dedication should be located at least 600 feet west of El Sol.

c. Lechuza

Public acquisition of or requirements for two vertical access (OTDs).

d. Trancas / Broad Beach

Public acquisition of and/or requirements for vertical access every 1,000 feet of shoreline.

e. Zuma

No new dedications required — public beach.

f. Point Dume State Beach / Westward Beach

No new dedications required — public beach.

g. Dume Cove / Point Dume State Reserve

1. Vertical access to the beach from the blufftop headlands parking lot.

2. Vertical access to and lateral access along the blufftop at the Point Dume headlands for coastal view purposes and passive recreation, with a minimum of two established viewpoints at least 500 feet apart.

3. The provision and protection of public parking pursuant to the terms of the settlement agreement between the City, the State Department of Parks and Recreation and the Coastal Commission shall be required.

h. Paradise Cove

Requirement for or public acquisition of vertical access every 1,000 feet of shoreline (with no fewer than two).

i. Escondido Beach — Malibu Cove Colony

1. Requirement for or public acquisition of vertical access every 1,000 feet of shoreline (with at least two additional accessways to those existing at Escondido Creek and Seacliff).

2. Maintain and operate 2 existing vertical accessways.

3. Improve and open 3 existing vertical access easements.

j. Latigo Beach

1. Requirement for or public acquisition of vertical access dedication on property seaward of and fronting Latigo Shore Drive to meet standard of one accessway every 1,000 feet.

2. Requirement for or acquisition of public viewpoint on the blufftop at Pacific Coast Highway (PCH) or public street seaward of PCH.

3. Improve and open existing vertical accessway and OTD.

k. Dan Blocker Beach

Improvement of existing vertical accessway, public parking and restroom facilities on portion of shoreline owned by Los Angeles County.

l. Malibu Beach Road (Amarillo and Puerco Beach)

1. Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.

2. Improve and open existing 100 foot wide vertical access OTD for public use in accordance with the site plan approved by the California Coastal Conservancy on August 8, 2002.

3. Maintain and operate existing accessway (5 are open).

4. Enhance trail connections to Malibu Bluffs State Park.

m. Malibu Beach

Public vertical access dedications or public acquisition to meet the minimum standard of one accessway per 1,000 feet of shoreline from properties located seaward of and fronting on Malibu Road.

n. Malibu Lagoon State Beach / Surfrider Beach

No dedications required — public beach.

o. Carbon Beach

1. Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.

2. Improve and open 2 existing vertical access OTDs and 4 existing vertical access deed restrictions.

3. Maintain and operate existing “Zonker Harris” vertical accessway.

p. La Costa / Las Flores Beaches

1. Requirement for or public acquisition of vertical access every 1,000 feet of shoreline.

2. Improve and open vertical access easement at Las Flores Creek.

3. Improve and open parcel at 21704 PCH at western end.

q. Big Rock Beach

1. Dedication of one vertical accessway every 1,000 feet of shoreline.

2. Maintain and operate 2 existing accessways.

r. Las Tunas Beach

1. Dedication of one vertical accessway every 1,000 feet of shoreline.

2. Improve and open existing vertical access OTD and Deed Restriction. (Resolution No. 07-04)

6. Recreational Boating

2.87 Vessel operations near the shoreline, including launching and landing at beaches, shall be done in a safe and responsible manner.

2.88 Boat storage facilities which do not restrict coastal access and which do not impair coastal resources may be permitted in the vicinity of existing launch facilities.

2.89 Other than the State of California or its grantee acting pursuant to the public trust doctrine, no new development shall obstruct the public's right of use of tidelands pursuant to the public trust doctrine or a public easement in navigable waters.

2.90 The LUP Public Access Map shall be updated every five years to reflect current information regarding the location and status of vertical and lateral public accessways, as well as public beaches. Revisions to the map shall be treated as LCP amendments and shall be subject to the approval of the Coastal Commission. Since the LUP Public Access Map will only be updated periodically, it may not indicate the full extent of public access or public ownership information. (Resolution No. 19-33)

Attachment D

COMMERCIAL REAL ESTATE SERVICES

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June 14, 2021

Re: Impact of Hosted Short-Term Rental Ordinance on the Supply and Average Daily Rate of Overnight Accommodations in the City of Malibu, California

To Whom It May Concern:

The City of Malibu (the "City" or "Malibu") adopted an ordinance (referred to herein as the "Ordinance") that will regulate the rental of residential units for 30 days or less. In general, the Ordinance creates a short-term rental ("STR") permit program offering two distinct permit types: (1) one for owners of single-family residences and condominium units to offer "hosted" STRS; and (2) one for owners of multifamily residential buildings to offer up to two units, or 40 percent of the units on the parcel (whichever is less), as STRs, as long as all other units in the building are rented long-term. "Hosted" STRs require the owner or the owner's designated operator to be onsite during the duration of the rental.

A. EXECUTIVE SUMMARY

CBRE Hotels Advisory ("CBRE") reviewed the Ordinance to analyze its potential impact on the supply of Short-Term Rentals (STRs) in Malibu and the effect on the pricing of the City's remaining (post-Ordinance) overnight accommodations. More specifically, we compiled data from AirDNA, a leading provider of vacation rental data and analytics that collects data from Airbnb and VRBO, two of the largest STR platforms in the world. We then analyzed the data to determine the supply of STRs in the City in Fiscal Year 2018-2019 ("FY 2018/19") and analyze what the supply would have been if the Ordinance was in effect during that year. We used FY 2018/19 because it was the last full year of data not affected by the COVID-19 pandemic.

As summarized herein, we conclude the Ordinance would have a pronounced effect on the overnight accommodation market in Malibu as summarized below:

- "Entire home" single-family residences ("Entire Home SFs") are the most widely offered STRs in the City, accounting for approximately **63 percent** of the analyzed STR supply. Entire Home SFs are STRs where the guest has complete and sole access to the rented dwelling unit during their stay. We estimate that the supply of Entire Home SFs nights would have decreased by approximately **95 percent** if the Ordinance were in place during the historical period analyzed. **The actual number**

of Entire Home SF nights demanded in 2018/19 was 20,515 which is over ten times greater than the restated supply of SF 1,928 nights if the Ordinance had been in effect.

- "Entire home" apartments and condos ("Entire Home Apt/Condos") are the second most widely offered STRs in the City, accounting for approximately 25 percent of the STR supply. Entire Home Apt/Condos are STRs where the guest has complete and sole access to the rented dwelling unit during their stay. Based on our analysis, we estimate that the supply of Entire Home Apt/Condos would have been approximately **67 percent** less under the Ordinance. **By comparison, the actual demand for Entire Homes Apt/Condos in FY 2018/19 was 9,244 nights which is nearly two times greater than our estimate of restated supply (5,166 nights).**

- Together, Entire Home SFs and Entire Home Apt/Condos accounted for approximately **88 percent** of the total STR supply in fiscal year 2018/19. We estimate that supply of the Entire SF's and Entire Home Apt/Condos would have decreased from approximately **55,735 annual room nights** to **7,094 room nights** in the historical period analyzed which represents an **87 percent decrease** in the annual supply of these type of STR room nights. By comparison, the total number of hotel/motel annual room nights in Malibu during the same period was 41,975. **Based on our analysis the actual demand for Entire Home SFs and Entire Home Apt/Condos in FY 2018/19 was more than three times greater than our estimate of the restated supply if the Ordinance was in effect.**

- Looking collectively at hotels, motels, and STRs, STRs offered on Airbnb and VRBO account for over 60 percent of the total analyzed supply of overnight accommodations in the City. The Ordinance would therefore result in a significant decrease in the supply of overnight accommodations in Malibu. ***More specifically, we estimate the Ordinance would result in the loss of nearly 50,000 annual room nights.***[1]

- The Ordinance would result in an increase in demand for the existing hotel/motel supply in Malibu. ***In addition, the Ordinance would increase the average daily rate (ADR) of the existing hotel/motel rooms in Malibu, making Malibu less affordable to visitors.***

B. OVERVIEW

CBRE analyzed the Ordinance and its potential impact on the supply of STRs in the City. The Ordinance defines an STR as the renting of a dwelling unit, or portion thereof, for 30

[1] This estimate only considers the loss of room nights associated with STRs listed on Airbnb and VRBO, whose data are available through the AirDNA database. While AirDNA collects data from Airbnb and VRBO, it does not have data for STRs that are not listed on those specific platforms.

consecutive days or less to a transient. The Ordinance establishes the following two distinct STR permit types:

- **Hosted Short-term Rental Permit ("HSTR Permit")**: To be eligible for an HSTR Permit, the property offered must be the owner's primary residence. In addition, the owner, or the owner's designated operator,[2] must live onsite for the duration of the period of rental. A primary resident owner of a condominium is eligible for an HSTR Permit.

- **Multifamily Short-Term Rental Permit ("MSTR Permit")**: Owners of "entire parcels that have multifamily residential buildings containing three or more dwelling units (including, but not limited to, triplexes, condominiums, stock cooperatives, apartments, and similar developments)" may obtain an MSTR Permit. For owners of buildings with four units or less, this permit would allow the owner to rent a single unit on a parcel, provided that all the other units on the property are rented for a period of one year or more. For owners of buildings with five units or more, the MSTR Permit would allow the owner to rent up to two units on a parcel, provided that all the other units on the property are rented for a period of one year or more. The owner of both units of a duplex may also obtain this type of permit to rent one unit, if the owner, or the owner's designated operator,[3] lives onsite during any period of rental in the other unit.

Under the Ordinance, only a natural person may obtain a short-term rental permit, and that person may not possess more than one STR permit, regardless of type. A separate STR permit is required for every legal lot or condominium unit. No person may serve as a designated operator for more than one STR concurrently, and all permits must be renewed annually.

In order to analyze the impact of the Ordinance, we performed our analysis under the assumption that the Ordinance was in effect as of July 1, 2018. Our projections of the impact of the Ordinance on the supply of STRs reflect the City's fiscal year (July 1 through June 30).

Below is an overview of the Malibu lodging supply, a summary of the supply and performance of STRs in Malibu, the methodology, and the summary of our findings.

C. MALIBU LODGING MARKET

Malibu Overview: Malibu is a coastal city in western Los Angeles County, California, situated about 30 miles west of Downtown Los Angeles. The City is a community of

[2] An owner's designated operator is allowed to live onsite instead of the owner for up to 60 days (cumulatively) per calendar year.

[3] An owner's designated operator is allowed to live onsite instead of the owner for up to 60 days cumulatively per calendar year.

approximately 13,000 persons on 21 miles of coastline nestled between the Pacific Ocean and the Santa Monica Mountains. The area is known for its picturesque setting and Mediterranean climate.

OVERVIEW OF MALIBU'S CURRENT LODGING SUPPLY

Despite the City's world-renowned beaches, the traditional overnight lodging market in Malibu is extremely small relative to other coastal destinations in Central and Southern California.

Table 1 summarizes the current Malibu hotel/motel lodging market.[4]

Table 1: CURRENT HOTEL AND MOTEL LODGING SUPPLY IN MALIBU

MALIBU SUPPLY OF NIGHTS BY UNIT TYPE

Hotel/Motel Name	No. of Rooms	Address	City	Open Date	Affiliation Date
The Malibu Hotel	18	22541 Pacific Coast Highway	Malibu	Jan-47	-
Nobu Ryokan Malibu	16	22752 Pacific Coast Highway	Malibu	Jun-49	Jun-17
Malibu Beach Inn	47	22878 Pacific Coast Highway	Malibu	Jul-89	Jul-89
The Surfrider Malibu	20	23033 Pacific Coast Highway	Malibu	Jun-52	Sep-17
Malibu Country Inn	16	6506 Westward Beach Rd	Malibu	Jun-42	Jun-42
Total	**117**				

Source: Smith Travel Research

As indicated above, the City's current hotel/motel market is comprised of five hotels/motels totaling 117 rooms. The properties range from limited service motels to luxury full service hotels. The lodging facilities in Malibu primarily serve leisure travelers with some limited group business at the larger properties.[5] Malibu's lodging options are significantly limited compared to similar coastal towns in Central and Southern California.

[4] We understand that there are two applications currently pending in the City for motel projects. However, these projects have been pending for several years and no new hotels/motels have been constructed in the City since its incorporation in 1991.

[5] The Native Hotel, which is not shown in the motel/hotel supply table above, sustained significant damage during the November 2018 Woolsey Fire and has been closed since that time. Prior to closure, the Native Hotel offered 13 rooms.

Table 2 summarizes the hotel/lodging supply in Malibu as compared to other coastal cities/communities in Central and Southern California.

TABLE 2: REPRESENTATIVE CENTRAL/SOUTHERN CALIFORNIA HOTEL AND MOTEL LODGING SUPPLY

Jurisdiction	Rooms
Malibu	**117**
Carmel-by-the-Sea	1,541
La Jolla (San Diego)	2,810
Laguna Beach	1,679
Manhattan Beach	1,016
Newport Beach	3,056
Oxnard	1,474
Pismo Beach	2,102
Santa Barbara	3,646
Santa Monica	3,976

Source: Smith Travel Research as compiled by CBRE

Malibu also has a single recreational vehicle park (the Malibu Beach RV Park) with a City-reported 142 RV sites. The City also reported 35 tent sites in Malibu.

D. SHORT-TERM RENTAL MARKET OVERVIEW

Once dismissed as a relatively inconsequential niche product and distant cousin to traditional hotels, STRs have become a widely accepted form of overnight accommodation. Based on research by CBRE Hotels Research, STRs total approximately 10% of the traditional U.S. hotel room supply. This alternative lodging market has evolved from catering to the adventurous millennial leisure traveler to targeting more traditional hotel guests, including business and leisure travelers.

As STRs have evolved, the STR platforms used have also grown. Airbnb and VRBO represent two of the largest platforms, with many hosts listing STRs across multiple sites. Determining the total national supply of STRs is a challenge, but the most reliable and relied on estimate is the total number of units listed on each platform. According to CBRE Hotels Research, there were more than 1.5 million STRs on various listing platforms in 2019, which was seven times the amount in 2014. However, not all of these units were active or available for booking year round.

Based on 2019 data, the most penetrated markets for STRs were Los Angeles and Miami, with STRs representing 22.3 percent and 19.2 percent of those cities' overnight room count, respectively. These figures represent about double the national average of approximately 10 percent. The role of STRs is significantly more pronounced in Malibu. Considering only those STRs offered on either the Airbnb or VRBO platforms, we estimate that STRs represented 60 percent of the City's overnight room count for hotels/motels/STRs in FY 2018/19. Given that some STRs offered in Malibu may not be listed on these platforms, the actual percentage of the overnight room count provided by STRs in the City is likely higher.

E. ANALYSIS OF THE ORDINANCE'S IMPACT ON THE MALIBU SHORT-TERM RENTAL MARKET

METHODOLOGY

In conducting our analysis of the impact of the Ordinance we:

- Compiled and analyzed data from AirDNA, a leading provider of vacation rental data and analytics. AirDNA collects data from Airbnb and VRBO, two of the largest STR platforms in the world. While AirDNA data does not account for all STRs offered in Malibu during the analyzed time period, it does represent the most robust publicly available information on STRs and offers a credible and reasonable data set to analyze the potential impact of the Ordinance on the overall overnight accommodation market in Malibu;

- Reviewed various available documents, public records, and other reports that discuss the Ordinance and/or provide insight into the characteristics of the STR supply in the City; and

- Using this aggregated data, analyzed the supply of STRs in the City in FY 2018/19 and estimated what we would have expected that STR supply to be if the Ordinance was in effect during that time period.[6]

EXISTING SUPPLY AND DEMAND BY STR TYPE

AirDNA collects data based on STR type in the following categories:

- **Entire Homes Single-Family Residences (SFs) and Entire Home Apt/Condos**: STRs where the guest has complete and sole access to the rented unit (e.g., a single-family residence, guest house, apartment or condos) during their stay. Under the Ordinance, these would be considered "non-hosted" STRs.

- **Private Rooms**: STRs where the guest has their own sleeping area but shares access to the unit common areas with others. Under the Ordinance, these would be considered "hosted" STRs.

- **Shared Rooms**: STRs where the guest rents a common area (e.g., a living room). Under the Ordinance, these would be considered "hosted" STRs.

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[6] We are aware of the City of Malibu's April 7, 2021 submission to the California Coastal Commission explaining that, as of April 2021, the City had received approximately 229 applications for STRs. We believe that utilizing the FY 2018/19 baseline is appropriate given this was the last full fiscal year of data not affected by the COVID-19 pandemic. The City reported in 2018 that there were 414 STRs previously paying TOT.

- **Other**: STRs in unique property types such as lighthouses, boats, and campers.

Using the AirDNA data, the Table 3 presents actual supply and demand by STR unit type in FY 2018-19.

TABLE 3: MALIBU STR NIGHTS – ACTUAL SUPPLY AND DEMAND BY UNIT TYPE (FY 2018/19)

Unit by Type	Annual Supply	Percentage of Supply	Annual Demand	Percentage of Demand
Entire Home SFs	40,175	63.4%	20,515	60.8%
Entire Apt/Condos	15,560	24.5%	9,244	27.4%
Private Room	6,208	9.8%	3,223	9.5%
Shared Room	0	0.0%	0	0.0%
Other	1,471	2.3%	774	2.3%
Total	**63,414**	**100.0%**	**33,756**	**100.0%**

Source: AirDNA, compiled by CBRE Hotels

Existing Supply: As indicated in Table 3, the vast majority of STR nights supplied in FY 2018/19 were in Entire Home SFs and Entire Home Apt/Condos. Entire Home SFs comprised approximately 63 percent of supply and Entire Home Apt/Condos comprised approximately 25 percent of supply.

Existing Demand: The largest segment of demand was for Entire Home SFs (61 percent of total demand). This was followed by Entire Home Apt/Condos (27 percent of total demand).

ESTIMATED SUPPLY IF THE ORDINANCE WAS IN EFFECT AND ITS RELATION TO EXISTING DEMAND (BY STR TYPE)

Entire Home Single Family Residences

As summarized above, AirDNA reported an annual supply of 40,175 nights for Entire Home Single-Family Residences in FY 2018/19. If the Ordinance was in effect, we estimate that the supply of Entire Home Single-Family nights would have decreased by approximately 95 percent. We developed this estimate based on the following assumptions:

- ***Limits on Permit Availability***. The Ordinance places a limit of one permit per person. It is our experience that highly desirable resort destinations like Malibu attract significant real estate investment activity and that property owners in these types of communities will often own more than one property in the local market. Malibu has a high number of vacation rentals, reflected in its relatively high housing vacancy rate (approximately 25 percent in the time period analyzed) as compared to Los Angeles County (approximately 5 percent). Because the Ordinance would restrict a property owner with more than one property from offering more than one STR, we reduced the existing Entire Home SFs supply by 20 percent.

- ***Primary Residency Requirement***. The Ordinance requires that a single-family residence offered as an STR be the primary residence of the owner. In general, we believe it is reasonable to assume that a majority of the single-family residences offered as STRs in markets like Malibu will be either (1) a second/vacation residence or (2) an investment property. Accordingly, we estimate that 60 percent of the supply of single-family residences offered as Entire Home Single-Family Residences in Malibu are not the primary residence of the property owner and reduced the existing Entire Home Single-Family Residence supply by 60 percent.

- ***Restrictions on Offering a Single-Family Home as an Entire Home SF***. The Ordinance only permits the STR of a single-family residence if the property owner or the property owner's designated operator is physically present onsite. Accordingly, only those properties that have either a second dwelling unit or guest house could be offered as an Entire Home SF. Nationwide, the vast majority of single family homes do not have a guest house or second dwelling unit. However, markets like Malibu do tend to foster investments in guesthouses/secondary units. Accordingly, we have estimated that 15 percent of single-family residences previously offered as Entire Home Single-Family Residence have a secondary dwelling unit/guest house on the property that can facilitate the offering of the property as an Entire Home Single-Family Residence. The remaining 85 percent of single-family residences could not be offered as Entire Home Single-Family Residences under the Ordinance, and we reduced the supply accordingly.

Estimated Supply

Table 4 includes our estimated supply of Entire Home SFs nights:

TABLE 4: ESTIMATED SUPPLY OF ENTIRE HOME SFs NIGHTS IF THE ORDINANCE WAS IN EFFECT (FY 2018/19)

Annual Supply (AirDNA Actual for FY 2018/19) of Entire Home Single-Family Residence Nights	**40,175**
Percentage of Single-Family Residences Offering Entire Home SFs Nights Eligible for a Permit Under the One Permit Per Person Limitation	80%
Remaining Supply of Entire Home SFs Nights	32,140
Percentage of Single-Family Residences Offering Entire Home SFs Nights that Are Primary Residences	40%
Remaining Supply of Entire Home SFs Nights	12,856
Percentage of Single-Family Residences offering Entire Home SFs Nights with Secondary Unit	15%
CBRE's Estimated Supply of Entire Home Single-Family Residence Nights	**1,928**
Reduction in Supply of Entire Home SFs Nights	95%

Estimated Supply and Relation to Actual Demand

AirDNA reported a supply of 40,175 Entire Homes Single-Family Residence nights in FY 2018/2019. As summarized above, we have estimated there would have been only 1,928 Entire Home SFs nights available during the same period if the Ordinance was in effect thereby reducing the supply by over 38,000 annual room nights. As noted previously, the

actual number of Entire Home SF nights demanded in 2018/19 was 20,515 which is over ten times greater than the restated supply of 1,928 nights.

Entire Home Apt/Condos

AirDNA reported an annual supply of 15,560 nights for Entire Home Apt/Condos. If the Ordinance was in effect, we estimate that the supply of Entire Home Apt/Condos nights would have decreased by approximately 67 percent. We developed this estimate based on the following assumptions.

- First we bifurcated the 15,560 Entire Home Apt/Condo room nights between condominiums (60 percent) and apartment units (40 percent). We find this ratio reasonable based on the high rate of home ownership in Malibu.

- ***Restrictions on Offering Individually Owned Condominiums as Entire Home Apt/Condos***. The Ordinance only permits the owner of an individual condominium to offer that unit as an STR if it is the property owner's primary residence and the property owner or the property owner's designated operator is physically present onsite. Accordingly, an individual condominium owner cannot offer his or her unit as an Entire Home Apt/Condo. However, the Ordinance does allow the owner of a parcel with a condominium building operating as rental apartments to apply for an MSTR Permit. There is a limit of two STR permits per condominium building operated in this manner. We interviewed several residential brokers with extensive experience in the Malibu rental market and they were not aware of any entire condominium buildings operated as rental apartments in Malibu. Accordingly, we have estimated that only 5 percent of the overall condominium nights supplied are operated in this manner. Furthermore, we reduced this supply by an additional 40 percent to account for the limit of two STR permits per building owner. The estimated supply of Entire Home Apt/Condos nights results on only 187 annual room nights associated with condominium units operated as apartments as illustrated in Table 5 below.

- ***Limits on the Rental of Units in Multifamily Residential Buildings.*** For owners of multifamily residential buildings with four units or less, the Ordinance allows the owner to rent a single unit on a parcel, provided that all the other units on the property are rented for a period of one year or more. For owners of multifamily residential buildings with five units or more, the Ordinance allows the owner to rent up to two units on a parcel, provided that all the other units on the property are rented for a period of one year or more. Given this difference in allowable permits for multifamily rental buildings by number of units we first estimated the number of entire apartment units in buildings with 5 or more units. We estimated that approximately 75 percent of the apartment units are in multifamily buildings with 5 or more units which is consistent with a survey of the City's multifamily housing stock produced by the Southern California Association of Government (SCAG) in 2018. In addition, we estimate that 80 percent of the remaining entire apartment homes with 5 or more units would remain in the STR supply after factoring in the

limit of two units per building. We based this estimate on our understanding of the characteristics of the multifamily housing stock in Malibu which is comprised predominantly of buildings ranging from 5 to 49 units. However, it should be noted that our estimate of 80 percent could be conservative if the listing activity among apartment buildings with 5 or more units was dominated by a relatively small segment of building owners. Finally, we made the same estimate of retaining 80 percent of apartment buildings with four units or less in the available STR supply. We found this reasonable based on the relatively large percentage of the multifamily stock in Malibu with 4 units or less. As indicated in Table 5 below, our estimates produces a reduction in the total supply of Entire Condo/Apartment homes of approximately 67 percent.

Estimated Supply

Table 5 includes our estimated supply of Entire Home Apt/Condos nights:

TABLE 5: ESTIMATED SUPPLY OF ENTIRE HOME APT/CONDOS NIGHTS IF THE ORDINANCE WAS IN EFFECT (FY 2018/19)

Annual Supply (AirDNA Actual for FY 2018/19) of Entire Home Apt/Condos Nights	**15,560**
Entire Home Apt/Condos Nights Associated with Condo Units (60% x 15,560)	9,336
Entire Home Apt/Condos Nights Associated with Apartment Units (40% x 15,560)	6,224
Entire Home Apt/Condos Nights Associated with Condo Units (from above)	9,336
Percentage of Entire Home Apt/Condos Nights - Condo Buildings Operating as Apartments	5%
Total Entire Home Apt/Condos Nights Associated with Condo Buildings Operating as Apartments	467
Further Reduction in Entire Apt/Condos in Condo Buildings Operating as Apartment - 2 unit Limit	40%
Remaining Entire Home Apt/Condos Nights Associated with Condo Units that Are Non-Hosted	**187**
Entire Home Apt/Condos Nights Associated with Apartment Units	6,224
Percent of Entire Apartment Home Listings in buildings with 5 or more Units	75%
Effective Entire Home Apartment Nights in buildings with 5 or more Units	4,668
Percentage of Entire Home Apartments Available due to Limit of 2 units for 5+ Unit Buildings	80%
Entire Home Apt/Condos Nights in Complexes with 5+ Units (80% x 4,668)	**3.734**
Entire Home Apt/Condos Nights in Complexes with 4 Units or Less (6,224 – 4,668)	1,556
Percentage of Entire Home Apt/Condos Available Due to Limit of 1 Permit per Building 4 Units or Less	80%
Entire Home Apt/Condos Nights in Multifamily Buildings 4 Units or Less	**1,245**
CBRE's Estimated Supply of Entire Home Apt/Condos Nights (187 + 3,734 + 1,245)	**5.166**
Reduction in Supply of Entire Home Apt/Condos Nights	67%

Estimated Supply and Relation to Actual Demand

As shown above, our estimates produces a reduction in the total supply of Entire Condo/Apartment homes from 15,560 annual room nights to 5,166 or approximately a 67 percent decrease. By comparison, AirDNA reported that the actual demand for Entire Homes Apt/Condos in FY 2018/19 was 9,244 nights. Accordingly, the actual demand in 2018/19 was nearly two times greater than our estimate of restated supply (5,166 nights).

Private/Shared Rooms

Based on AirDNA data this unit type represented 10 percent of total supply of STRs in FY 2018/19. Given that the Ordinance permits hosted rental of properties, our estimated supply for this unit type reflects the actual performance for this unit type in FY 2018/19. In addition, we have also assumed that a small percentage of primary resident property owners that previously did not offer private room nights would offer these nights under the Ordinance.

Estimated Supply

Table 6 includes our estimated supply of Private Room nights:

TABLE 6: ESTIMATED SUPPLY OF PRIVATE ROOM NIGHTS IF THE ORDINANCE WAS IN EFFECT (FY 2018/19)

Annual Supply (AirDNA Actual for FY 2018-19) of Private/Shared Room Nights	**6,208**
Additional Private Rooms Listed from Primary Resident Owners Who Previously Listed Entire Homes on the STR Platform	532
CBRE's Estimated Supply of Total Private/Shared Rooms Nights	**6,740**
Increase in Supply of Private Room Nights	9%

While the supply on this unit type is estimated to increase by 9 percent, this type of STR is very limited in Malibu compared to the supply and demand for Entire Home SFs and Entire Home Apt/Condos nights.

Other Units

"Other Units" include unique property types such as lighthouses, boats, and campers. AirDNA reported that this unit type represented 2% of the total STR supply in the City for FY 2018/19. The Ordinance allows only approved dwelling units to be rented as STRs. For this reason, and the other reasons discussed above (one permit per person, primary residency requirements, etc.), CBRE estimates 5 percent of the existing nights in FY 2018/19 would have been available during the same period if the Ordinance was in effect.

Estimated Supply

Table 7 includes our estimated supply of Other Unit nights:

TABLE 7: ESTIMATED SUPPLY OF OTHER UNIT NIGHTS IF THE ORDINANCE WAS IN EFFECT (FY 2018/19)

Annual Supply (AirDNA Actual for FY 2018-19) of Other Unit Nights	**1,471**
Legal, Primary Resident Units (%)	5%
CBRE's Estimated Supply of Other Unit Nights	**74**
Reduction in Supply	95%

Estimated Supply and Relation to Actual Demand

AirDNA reported a demand of 744 nights for Other Unit nights in FY 2018/19. As summarized above, we have estimated there would have been only 74 Other Unit nights available during the same period if the Ordinance was in effect. Accordingly, we estimate that actual demand for Other Units in FY 2018/19 would have been 10 times greater than the estimated supply if the Ordinance was in effect.

SUMMARY OF THE IMPACT OF THE ORDINANCE ON THE BROADER MALIBU OVERNIGHT ACCOMMODATION MARKET

Looking collectively at hotels, motels, and STRs in the City, we estimate that STRs listed on Airbnb and VRBO accounted for over 60 percent of the total supply of overnight accommodations during the period analyzed. This is significantly higher than the national average which in 2019 was estimated to be approximately 10 percent of the traditional overnight hotel/motel room supply.

Table 8 includes the total supply of hotel/motel room nights in Malibu, as well as STR room nights offered on Airbnb and/or VRBO for FY 2018/19:

TABLE 8: MALIBU ACTUAL SUPPLY OF ROOM NIGHTS BY PRIMARY UNIT TYPES (FY 2018/19)

Unit by Type	Annual Supply	Percentage of Supply
Hotel/Motels	41,975	39.8%
Short-Term Rentals (STRs)	63,414	60.2%
Total	**105,389**	**100.0%**

Sources: AirDNA and Smith Travel Research, compiled by CBRE Hotels

Table 9 includes the estimated supply of hotel/motel/STR room nights in Malibu for FY 2018/19, assuming the Ordinance was in effect:

TABLE 9: MALIBU ESTIMATED SUPPLY OF ROOM NIGHTS BY PRIMARY UNIT TYPES IF THE ORDINANCE WAS IN EFFECT (FY 2018/19)

Unit by Type	Annual Supply	Percentage of Supply
Hotel/Motels	41,975	75.1%
Short-Term Rentals (STRs)	13,907	24.9%
Total	**55,882**	**100.0%**

Source: CBRE Hotels

As shown in the Table 9 above, we estimate the Ordinance would result in a decrease from 105,389 annual room nights (hotels/motels/STRs on Airbnb and/or VRBO) to 55,882 annual room nights, representing the loss of approximately 50,000 annual room nights.[7]

We note the City also has a single recreational vehicle park (the Malibu Beach RV park) with a City-reported 142 RV sites. The City also reported 35 tent sites in Malibu. We do not expect a change in the number of nights associated with these RV or tent sites in connection with the Ordinance. However, these types of accommodations are not directly comparable to hotels/motels or Entire Homes SFs and Entire Home Apt/Condos. Travelers utilizing the RV park would be required to secure a recreational vehicle either by renting or owning it. As a result, this mode of travel would viewed as less convenient to many travelers seeking accommodations in Malibu.

Table 10 includes the total supply of annual accommodation nights in Malibu for hotels, motels, RV sites, tent sites and STRs offered on Airbnb and/or VRBO for FY 2018/19:

TABLE 10: MALIBU ACTUAL SUPPLY OF ACCOMMODATION NIGHTS BY UNIT TYPE (FY 2018/19)

Unit by Type	Annual Supply	Percentage of Supply
Hotel/Motels	41,975	24.7%
RV Sites/Tent Sites	64,605	38.0%
Short-Term Rentals (STRs)	63,414	37.3%
Total	**169,994**	**100.0%**

Sources: Smith Travel Research, City of Malibu & Smith Travel Research, as compiled by CBRE Hotels

[7] Again, this estimate only considers the loss of room nights associated with STRs listed on Airbnb and VRBO. Additional rooms nights could be lost from STR properties not listed on the Airbnb and/or VRBO platform.

Table 11 includes the estimated supply of STRs and annual room nights in Malibu for hotels, motels, RV sites, tent sites and STRs offered on Airbnb and/or VRBO in FY 2018-19, assuming the Ordinance was in effect:

TABLE 11: MALIBU ESTIMATED SUPPLY OF ACCOMMODATION NIGHTS BY UNIT TYPE IF THE ORDINANCE WAS IN EFFECT (FY 2018/19)

Unit by Type	Annual Supply	Percentage of Supply
Hotel/Motels	41,975	34.8
RV Sites/Tent Sites	64,605	53.6
Short-Term Rentals (STRs)	13,907	11.5
Total	**120,487**	**100.0%**

Source: CBRE Hotels

We estimate the overall change in annual room night supply when including hotels, motels, RV sites, tent sites and STRs offered on Airbnb and/or VRBO would decrease from 169,994 annual room nights to 120,487 annual room nights if the Ordinance was in effect, resulting in 29.1 percent decrease in overall supply. Moreover, the majority of remaining nights are RV sites and Tent sites, which, as described above are not directly comparable to room nights offered in motels/hotels or on the short-term rental platforms. As noted previously, the vast majority of room nights supplied and demanded in Malibu are entire homes including both single-family and condo/apartment units. The estimated 13,907 annual room nights supplied via short term rentals assuming the ordinance was in place is comprised of only one-half entire homes and the other half are mostly private rooms which would likely result is considerably less options for families (or larger households) seeking accommodations in Malibu.

EXISTING OVERNIGHT ACCOMMODATION PRICING OF HOTELS/MOTELS AND ENTIRE HOMES SFS AND ENTIRE HOME APT/CONDOS

We estimate the Ordinance would result in the removal of nearly 50,000 annual room nights associated with Entire Homes SFs and Entire Home Apt/Condos. Based on data from AirDNA, the average daily rate (ADR) for Entire Homes SF's was $881 and Entire Home Apt/Condos was $549 in fiscal year 2018/19.[8] According to data provided by the City of Malibu, the estimated average daily rate (ADR) for existing hotel/motel rooms was approximately $758 in 2021. However, this data ***excluded*** the Nobu Ryokan which is the highest rated hotel in Malibu which means the actual ADR for the aggregated hotel/motel rooms in Malibu is higher than $758 figure reported by the city.

Based on the ADR figures noted above, the ADR for Entire Home Apt/Condo STRs is significantly less than the ADR for the existing hotel/motel supply in Malibu. While the ADR for Entire Single-Family Residences (SFs) on the short-term rental platforms was higher than that for the existing motel/hotel stock, it should be noted there are important differences

[8] Again, we used FY 2018/19 in arriving at our estimates because it was the last full year of data not affected by the COVID-19 pandemic.

between renting an entire home and a motel/hotel room. A family or large household utilizing a motel/hotel would have to rent multiple motel/hotel rooms to replicate what they receive via the entire single-family homes on the short-term rental platforms. As such, the motel/hotel option for these types of travelers in Malibu would be considerably more expensive as compared to what is available on the various short-term rental platforms.

SUMMARY OF IMPACT OF THE ORDINANCE ON FUTURE MALIBU OVERNIGHT ACCOMMODATION PRICING

As noted previously, we estimate that the supply of entire homes for single-family residences and entire condos/apartments would decrease by **48,641 annual rooms nights** which is an **87 percent decrease**. The total decrease in supply is greater than the actual demand for Entire Home SFs and Condo/Apartments in 2018/19 which was just under 30,000 annual room nights. In other words, our estimate of the restated supply for entire homes in 2018/19 results in only 7,094 annual room nights. Therefore, the actual demand for these units (30,000 annual nights) was over three times greater than what we project would have been supplied if the Ordinance was in effect. Given this tremendous decrease in the most popular type of STRs, those STRs that would remain would undoubtedly be in short supply and command a steep price increase. Thus, not only would the Ordinance result in the removal of the most popular overnight accommodation types in Malibu, it would also significantly reduce their affordability.

Furthermore, entire Home Apt/Condos rented on a short-term basis are the most comparable to the existing hotel/motel rooms in Malibu. Based on our analysis of the impact of the Ordinance, we estimate that the annual supply of just the Airbnb and VRBO Entire Home Apt/Condos nights would have decreased from 15,560 annual nights to 5,166 annual nights in FY 2018/19 if the Ordinance was in effect. At the same time, the supply for hotel/motel rooms was constant during the period analyzed. Therefore, we believe that the demand for the existing hotels/motels in Malibu would have increased over the same time period. The actual hotel/motel occupancy rate for Malibu is not publicly available since not all the hotels/motels report to Smith Travel Research (or any other public source). However, based on data published by ***Discover Los Angeles***, the occupancy rate for the *Santa Monica/Marina Del Rey/Malibu* submarket was in the mid-80 percent range in 2018. As a result, we believe a reasonable estimate for the existing Malibu hotels/motels during the time period analyzed would have been in the low 80 percent range given that Malibu attracts less corporate demand than Santa Monica or Marina Del Rey. We estimate that the impact of the ordinance would have been to increase the aggregate Malibu hotel/motel occupancy rate to the mid-80 percent range. By comparison, the national hotel occupancy rate during the same period was approximately 66 percent. Hotel markets with occupancy rates at or above 80 percent generally exhibit strong pricing power for hotel/motel owners. As a result, all things being equal, the Ordinance would have increased both the occupancy and average daily rate of the existing hotel/motel rooms in Malibu, again making Malibu even less affordable to visitors.

Sincerely,

CBRE Hotels Advisory

By: Jeff Lugosi
Executive Vice President

By: Mike Baker
Vice President

Attachment E

January 13, 2021

Ms. Denise Venegas
Coastal Program Analyst
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: City of Malibu Local Coastal Program Amendment No. 19-003 – Hosted Short-Term Rental Ordinance

Dear Ms. Venegas:

On behalf of Airbnb, thank you for the opportunity to comment on the City of Malibu's December 7, 2020, Local Coastal Program Amendment No. 19-003 – Hosted Short-Term Rental Ordinance (the "LCPA") submittal. For the last twelve years, Airbnb has worked closely with cities around the world to help communities realize the significant benefits that vacation and other short-term rentals ("STRs") provide to travelers, hosts, and local economies. STRs provide unique access opportunities for families and individuals to communities throughout California, including in the Coastal Zone where traditional hotel accommodations are either in limited supply or often prohibitively expensive. We commend the Commission's efforts to support and encourage STRs throughout the Coastal Zone to ensure these important accommodations remain available for visitors to communities throughout California. Airbnb hosts are proud to help advance these efforts by opening their homes and giving thousands of families the opportunity to experience the one-of-a-kind beauty of the coast.

Given the important role STRs play in offering families the opportunity to visit and access the State's iconic shoreline, we are extremely concerned with the proposed LCPA Malibu submitted to the Commission. The LCPA as proposed would completely ban the non-hosted[1] rental of single-family residences, the most widely-offered and utilized STR accommodations in the City. ***We estimate this ban will eliminate tens of thousands of currently available room nights*** and leave the City with approximately one-tenth of the room nights necessary to meet existing demand for single-family residence STRs.

The City's proposal to ban non-hosted STRs in single-family residences throughout the City would be unprecedented in a community like Malibu, which severely lacks other overnight accommodations. Given the fewer than 120 total hotel/motel rooms in the City, STRs provide an important and necessary supplement to the City's supply of overnight accommodations and substantially increase coastal access for thousands of people each year in a coastal town where they could not otherwise spend the night. The LCPA therefore will dramatically decrease overnight room supply, prevent countless families from experiencing Malibu's unique coastal

[1] Under the proposed LCPA, a "hosted" STR is one in which the owner or a "designated operator" lives onsite throughout the duration of the rental. (City of Malibu LCP Amendment Submittal, Att. 1 (December 7, 2020).)

environment, and devastate the affordability of overnight accommodations. For these reasons, the LCPA is inconsistent with both the City's certified LCP and the Coastal Act, as it (1) fails to protect "[c]oastal recreational and visitor serving uses and opportunities" and (2) fails to protect "to the maximum feasible extent" "existing, lower cost visitor-serving and recreation facilities, including overnight accommodations." We encourage Coastal staff to recommend that the Commission reject the City's proposal and recommend the City to modify the LCPA to allow existing, legally operating STRs to continue offering non-hosted accommodations in single-family residences and allow for additional non-hosted STRs in a portion of Malibu close to coastal resources and the City's commercial and tourist core.

The LCPA Submittal Fails to Provide Evidence or Meaningful Analysis to Support the City's Assertion of LCP Consistency

Despite the magnitude of the City's proposal to remove tens of thousands of existing annual room nights from the Malibu overnight accommodation market, the LCPA lacks any meaningful analysis of the impacts the proposal will have on coastal access and evidence to support the City's finding of LCP consistency. The submitted LCPA includes an "LCP Consistency Analysis"[2] that incorrectly asserts:

> *No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to be used for short-term rentals, which is currently prohibited.*

This cursory "LCP Consistency Analysis" fails to include any evidence supporting the assertion that the LCPA will not result in the removal of lower-cost opportunities for visitor-serving accommodations. Specifically, the City:

- ***Does not provide any analysis*** of the impacts the proposed restrictions will have on the pricing of the limited supply of hotel/motel rooms and remaining STRs.
- ***Fails to include*** an inventory or mapping of existing visitor-serving accommodations by type or capacity to allow for an accurate assessment of what lodging will be available to visitors and whether those accommodations can meet current demand.
- ***Ignores statement***s[3] provided during the administrative process that the LCPA will result in the removal of hundreds of existing, legally operating STRs and eliminate tens of thousands of annual room nights currently available in Malibu.

[2] City of Malibu LCP Amendment Submittal, Att. 3.

[3] See, for example, City of Malibu LCP Amendment Submittal, Att. 5, p. 970 (July 27, 2020 transmission from Jeff Bosson, SeaBreeze, to the City Planning Commission) ("If the City were to require that Short Term Rentals (STR's) be only a Home Share Rental, it would eliminate 89.2% of the existing short term rentals in Malibu.").

- ***Offers no substantial justification*** for the need to prohibit non-hosted STRs in single-family residences citywide.

As evidenced by the City's actions over the last several years, Malibu's efforts to regulate STRs was never about ensuring a variety of visitor-serving accommodations or providing economical options for families wishing to visit the coast – it was always about restricting STRs in an effort to cut off the City from visitors. For example, in 2018, the Malibu Planning Commission adopted a resolution recommending the City Council adopt an ordinance prohibiting all STRs in the City. During the various City Council debates on the LCPA, certain councilmembers made their views clear:

- *Maybe we just want to ban it altogether*.[4]

- *I'm going to pursue another path about where we're headed. [Councilmember] Skylar [Peak] said we should ban it, and I would support that*.[5]

- *I'll be honest with you, I personally am more of a full-ban guy. I think it shouldn't be in the City at all. I think it goes against the mission statement*.[6]

In 2019, the City Council commissioned an analysis looking at the implications and potential impacts of a complete STR ban on the City's transient occupancy tax ("TOT") revenue. With that information, one councilmember noted that "I'm all for banning this, but then I look at the financial reports and I realize, hey, we will need some money for a rainy day."[7]

While the City did not move forward with a complete ban, it approved an LCPA that would restrict STRs as much as possible. One councilmember went so far as to say that "we wanted to come up with something that was sort of bullet proof in court and we preferred to pick -- to plagiarize another organization, Santa Monica, that had withstood a legal challenge and that was the way to go."[8] But as the Commission has recognized, time and time again, one size does not fit all when it comes to the regulation of STRs.

As described in more detail below, Airbnb's extensive experience in markets around the world and available research indicates that, contrary to the City's unsupported assertions, the LCPA will result in a sharp decline in visitor-serving accommodations in the City and will devastate the overnight lodging market in direct conflict with the City's LCP and the Coastal Act.[9]

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[4] Councilmember Rick Mullen, September 26, 2018 City Council Hearing. Malibu City Council public hearing videos are available https://www.malibucity.org/662/Public-Meeting-Video-Archive.

[5] Councilmember Jefferson Wagner, September 26, 2018 City Council Hearing.

[6] Councilmember Rick Mullen, October 28, 2019 City Council Hearing.

[7] Councilmember Jefferson Wagner, October 28, 2019 City Council Hearing.

[8] Councilmember Rick Mullen, August 10, 2020 City Council Hearing.

[9] Malibu LCP, Land Use Plan, Ch. 2, § C, subds. 2.34, 2.36; Pub. Resources Code §§ 30001.5(c), 30210, 30213.

The LCPA Conflicts with the LCP and the Coastal Act

The California Attorney General explained in a recent Court of Appeal brief filed on behalf of the Commission that a new regulation for STRs that "cause[s] a sharp decline of visitor serving accommodations in the coastal zone . . . objectively hinders visitor access to the coast" in conflict with Coastal Act policies.[10] In Malibu's case, the LCPA's contemplated regulation of STRs will "cause a sharp decline" in the availability and diversity of overnight accommodations and limit coastal access in Malibu. Accordingly, the LCPA objectively (1) fails to protect "[c]oastal recreational and visitor serving uses and opportunities" and (2) fails to protect "to the maximum feasible extent" "existing, lower cost visitor-serving and recreation facilities, including overnight accommodations . . .", in violation of both the LCP and the Coastal Act.[11] Further, the LCP and the Coastal Act direct the City to encourage new visitor-serving facilities. By restricting the use of single-family residences as STRs and limiting STRs in multi-family buildings, the LCPA creates a strong disincentive for the establishment of any new STRs in the City.

More specifically, the LCPA will eliminate STRs in non-hosted, single-family residences and restrict the availability of apartment and condominium STRs. Reducing the supply and diversity of STRs poses a real problem in Malibu. Unlike some other coastal communities with significant supplies of other overnight accommodations – Santa Monica, for example, has over 3,900 hotel/motel rooms and Laguna Beach has over 1,300 hotel/motel rooms – ***Malibu has fewer than 120 hotel/motel rooms***. The removal of *any* STRs from the Malibu market will hurt families relying on these accommodations to make vacations to the City feasible.

The remaining STR types allowed under the LCPA generally represent the type of accommodations least attractive to families. As the City recognized:

> *Demand for lodging in the City is likely to continue to outstrip the ability of hotels/motels to supply that lodging. As a result, demand for short-term rental options in the City is likely to continue to grow, especially because many families prefer to rent a home rather than rooms in a hotel.*[12]

As Commission staff previously noted, "the attractiveness of [STRs] for many families is the kitchen facilities and expanded living space facilitating an extended stay." This is consistent with Airbnb's own research. Nearly all families that travel utilizing Airbnb choose a home over a hotel/motel because it offers more amenities, such as more room, a kitchen for preparing meals, and common spaces for the family to enjoy together (like backyards). And virtually all families that choose Airbnb also do so because it can be a more affordable way to vacation. Ninety-six percent (96%) of family travelers said that saving money was an important consideration in their decision to use Airbnb. For all of these reasons, it is no surprise that the City reports "entire

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[10] Amicus Curiae Brief of the California Coastal Commission at pp. 19-20, *Kracke v. City of Santa Barbara* (Ct. App., May 21, 2020, No. B300528) (Exh. A).

[11] Malibu LCP, Land Use Plan, Ch. 2, § C, subds. 2.36, 2.34; Pub. Resources Code §§ 30001.5(c), 30210, 30213.

[12] Agenda Report, Item 5.C: Short Term Rental Ordinance at p. 6, November 20, 2017 City of Malibu Planning Commission Meeting (Exh. B).

home" STRs in Malibu are overwhelmingly the most popular type of overnight accommodation.[13]

The City's proposal will effectively eliminate the "entire home" STR option for families. ***We estimate that the LCPA will remove tens of thousands of "entire home" STR room nights from the market and leave the City with just one-tenth of the room nights needed to meet existing STR demand for single-family residences***. By severely restricting the ability to rent single-family residences in the City, the LCPA will force families visiting Malibu either to (1) rent multiple hotel/motel rooms at great expense (if such rooms are even available given the limited supply of hotel/motel rooms in the City), or (2) stay in a hosted STR. Families who cannot afford multiple hotel/motel rooms, or who feel uncomfortable staying with a host who is unknown to them, will face a severe barrier to staying in Malibu. Those families who do stay in a hosted STR will likely face much higher prices for their rental than they would today, given the anticipated massive reduction in the supply of existing room nights under the LCPA prohibitions.[14]

Proposed Modifications to Ensure Consistency with the LCP and the Coastal Act

Airbnb supports a balanced approach to STR regulation. During the City's administrative process on the LCPA, we suggested that the City create a permit category allowing for existing, legally operating STRs to continue offering non-hosted accommodations in single-family residences. We developed this suggestion following our review of recent Commission actions on other STR regulations. For example, in October 2020, the Commission supported Laguna Beach's proposal to allow existing, legally permitted STRs in residential zones to continue to operate.[15] In July 2020, the Commission recommended that the City of Oxnard exempt existing, TOT-paying properties from the City's new limitations on the number of STRs permitted in each zone.[16] In April 2018, the Commission approved a City of Santa Cruz LCP amendment that banned new non-hosted STRs but allowed the City's approximately 600 existing, TOT-paying STRs to continue to operate.[17]

We also suggested a more permissive regulatory approach to STRs in a small portion of Malibu offering proximity to coastal resources and the City's commercial and tourist core. This

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[13] City staff previously reported that, as of September 26, 2018, there were 414 properties remitting TOT for STRs, and perhaps 109 additional STRs were not registered with the City. The City reported approximately 94% of these STRs were for "entire homes." This included instances when homeowners rent out "accessory dwelling units, duplex units, etc." About 74% of the City's STRs were for single-family residences. (Agenda Report, Item 4.B: Short Term Rental Ordinance at pp. 2-3, September 26, 2018 City Council Meeting [Exh. C].)

[14] For additional details on the potential impacts on the cost of overnight coastal accommodations from the removal of STRs, we refer you to the following report: Dr. Philip G. King and Sarah Jenkins, Unequal Access – Protecting Affordable Accommodations Along the California Coast (Exh. D).

[15] California Coastal Commission, Staff Report on City of Laguna Beach Local Coastal Program Amendment No. LCP-5-LGB-19-0074-1 (Short Term Lodgings), staff recommendation adopted October 7, 2020 (Exh. E).

[16] California Coastal Commission, Staff Report on City of Oxnard Local Coastal Program Amendment No. LCP-4-OXN-20-0008-1 (Short Term Rentals), staff recommendation adopted July 10, 2020 (Exh. F).

[17] California Coastal Commission, Staff Report on City of Santa Cruz LCP Amendment No. LCP 3-STC-17-0073-2-Part B (Short Term Rentals), adopted April 11, 2018 (Exh. G).

approach is also consistent with recent Commission direction. In litigation involving STR regulation in the City of Del Mar, the Commission noted: "[Del Mar's] proposed amendment makes no distinction between inland parts of the City and the shoreline areas, and the City's blanket restrictions are overly broad and restrictive. . . . Residences in prime visitor-serving, beach-adjacent areas are not given any priority for use as a STR, which hinders the public's ability to access and recreate in these nearshore areas."[18] In August 2018, the Commission approved the City of Pismo Beach's proposed LCP amendment that allowed only primary residents to offer their homes as non-hosted STRs but exempted the City's beachfront "Downtown Core" and non-residential zones from this requirement.[19]

In contrast to the tailored approaches the Commission approved for other coastal cities, Malibu's extreme prohibition of non-hosted STRs in single-family residences citywide would be unprecedented for a community with a high demand for overnight accommodations, fewer than 120 hotel/motel rooms, and ***where no new hotels or motels have been erected since the City's incorporation in 1991***.

Conclusion

Malibu's proposed ban on non-hosted STRs in single-family residences will devastate families' access to the Malibu coast and make overnight accommodations in the City more expensive for everyone by substantially reducing supply. Such results are contrary to the plain text of the Coastal Act and the LCP.

To protect against this, we encourage Coastal staff to recommend that the Commission reject the City's LCPA as submitted and propose modifications to permit existing, legally operating STRs to continue offering non-hosted accommodations in single-family residences and to allow new non-hosted STRs in a small area of Malibu close to the City's beaches and tourist core. Those modest changes would help mitigate the LCPA's impact on affordability and availability of overnight coastal accommodations.

Airbnb looks forward to working with the Commission during the LCPA process.

Sincerely,

John Choi
Director of Public Policy, Airbnb

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[18] California Coastal Commission Brief in Opposition to Writ at p. 18, *City of Del Mar v. California Coastal Com.* (Super. Ct. San Diego County, Nov. 15, 2019, No. 37-2018-00039254) (Exh. H).

[19] California Coastal Commission, Staff Report on City of Pismo Beach LCP Amendment Number LCP-3-PSB-18-0051-1 (Short Term Rentals), adopted August 10, 2018 (Exh. I).

Attachment F

STATE OF CALIFORNIA – THE NATURAL RESOURCES AGENCY EDMUND G. BROWN, JR., *Governor*

CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

July 13, 2018

City of San Diego
City Council
202 C Street
San Diego, CA 92101

Re: City Council Docket for July 16, 2018: Short Term Vacation Rentals and Home Sharing

Dear Councilmembers:

Over the last several years, and as the City of San Diego has already experienced, the growth and impacts of the vacation rental market has become an issue in many coastal communities. In general, under the Coastal Act, they represent a high priority visitor-serving use that should be promoted as a means to provide overnight accommodations and support increased coastal access opportunities. In addition, our staff believes that they also serve as a more affordable option of overnight accommodations than traditional hotels, motels or timeshare units, especially for families.

In the last year, the Coastal Commission has considered and acted on a number of proposed ordinances from jurisdictions up and down the state. The Commission's actions have supported some requests, reflecting different iterations or geographic applications, but it has generally not supported outright bans of short-term vacation rentals. In addition, while promoting affordable overnight accommodation options, the Commission has expressed concerns about the loss of community character and potential impacts to affordable housing as a result of the proliferation of short term vacation rentals.

For context, the relevant Coastal Act mandates are the following sections:

> **Section 30213**
> ***Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.*** Developments providing public recreational opportunities are preferred. (emphasis added)
>
> **Section 30222**
> The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation ***shall have priority over private residential, general industrial, or general commercial development***, but not over agriculture or coastal-dependent industry. (emphasis added)

As this office has stated before, this agency has generally interpreted local zoning ordinances in a broad fashion and found that short term rentals or vacation rentals are a form of residential use, permitted by right, in any residentially zoned area unless such uses are specifically prohibited or otherwise restricted. Nonetheless, as noted above, this agency also understands and appreciates that these uses may raise a number of neighborhood character and operational issues, such as site management, number of occupants, special events,

parking, litter and noise limits. Therefore, the Coastal Commission has endorsed certain regulations to require on-site management, enforcement protocols, occupancy limits, required parking and other use provisions.

Based on a review of the updated draft ordinance language and related City report and materials, it is this office's understanding that the City is considering the adoption of ordinance amendments that would create a new separately regulated use called "short term residential occupancy" (STRO), require annual licenses for "whole home" STROs (but not "home share" STROs unless the structure has 5 or more bedrooms), establish limits on the number of operating licenses a natural person may be issued (though no license limit is proposed in Mission Beach), require a Neighborhood Use Permit for any STRO with five or more bedrooms, and create a registration process in order to manage all aspects of STRO licensing and enforcement. In the case of STROs within the coastal zone and the Downtown Community Planning area, the proposed ordinance amendment would further require a minimum stay of no fewer than three (3) nights for whole home STROs. Alternatively, for a home share STRO where the owner occupant would remain in residence, no minimum night stay is proposed. In addition, the City's ordinance would not allow use of accessory dwelling units or junior accessory dwelling units as short term rentals. The proposed licensing and registration will incorporate the "good neighbor" provisions, the payment of an affordable housing impact fee, and stronger enforcement measures. Commission staff believes the affordable housing impact fee and accessory dwelling unit provisions are important elements to help address concerns about potential housing issues.

The standard of review for any proposed ordinance amendment is the City's certified land use plans; the City's analysis should review any proposed changes for conformity with those certified community plans. Based on the Coastal Act mandates, the certified land use plans, and an evaluation of the proposed regulatory revisions, Commission staff views the City's proposed amendment as a supportable effort to preserve a means of affordable overnight accommodation while balancing it with the recognized need to respect the character of coastal communities. Given that many coastal visitors may be looking to get away for only a week or an extended weekend, the establishment of a three-night minimum would not unduly impede this type of travel and will still permit the substantial majority of visitor opportunities. In addition, the attractiveness of vacation rentals for many families is the kitchen facilities and expanded living space facilitating an extended stay; and again, a three-night minimum stay would be not be unduly limiting the availability of those rentals. The decision to not place limits on the number of STROs in the Mission Beach community contributes to staff's general support for this plan given its character as the most densely developed community in San Diego and the decades-long popularity – recognized in the certified Mission Beach Precise Plan – of STROs in the peninsular community given its location between the ocean and Mission Bay Park.

In summary, the Commission staff acknowledges the need to provide for some regulatory controls and management provisions for short term rentals, and the City's draft ordinance appears to be a prudent middle ground in providing a popular overnight accommodation alternative while protecting the neighborhood character of San Diego's coastal area. On a technical note, the regulations under consideration are being proposed in Chapter 5 of the City's Municipal Code which is not presently part of the City's certified Local Coastal Program. Thus, the City's action and resolution must make it clear that the relevant chapter

and article is being submitted for Coastal Commission review and adoption. Relatedly, in terms of any future submittal, Commission staff would continue to strongly recommend that the amendment request include an updated inventory and mapping of existing visitor-serving accommodations by type, capacity, ownership, and price range in order to gain an accurate assessment of what is or is not available for tourists. Utilization studies would also be helpful to gauge how various forms of vacation rentals operate and demand projections for overnight visitor accommodations are also needed to evaluate whether the current supply is adequate to meet future needs. We appreciate the opportunity to provide comment and look forward to working with the City to develop a vacation rental ordinance that promotes and expands affordable coastal visitor opportunities while also addressing neighborhood concerns. These comments are being provided by staff and are not binding on the Commission itself. If you have any questions, please don't hesitate to contact Alexander Llerandi, Coastal Program Analyst, or me at the above office.

Sincerely,

Deborah N. Lee
District Manager
San Diego Coast District

Attachment G

ORDINANCE NO. 472

AN ORDINANCE OF THE CITY OF MALIBU AMENDING THE LOCAL COASTAL PROGRAM (LOCAL COASTAL PROGRAM AMENDMENT NO. 19-003) AND TITLE 17 (ZONING) OF THE MALIBU MUNICIPAL CODE (ZONING TEXT AMENDMENT NO. 19-005) REGULATING THE RENTAL OF RESIDENTIAL UNITS FOR 30 DAYS OR LESS (SHORT-TERM RENTALS) INCLUDING, BUT NOT LIMITED TO, REQUIRING THE PRESENCE OF AN ONSITE HOST DURING SHORT-TERM RENTALS AND OTHER RESTRICTIONS, AND CLARIFYING PERMITTED USES RELATED TO SHORT-TERM RENTAL CITYWIDE, AMENDING CHAPTER 15.44 PERTAINING TO OPERATING PERMITS FOR ONSITE WASTEWATER TREATMENT SYSTEMS AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 platforms that consolidate and facilitate the short-term rental of property, the City has seen increased violations of its prohibition against illegal hotel, motel, and bed and breakfast inn 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, 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, written reports, public testimony, and other information on the record and adopted Planning Commission Resolution No. 18-26 stating 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.

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, written reports, public testimony, and other information in the record. The City Council directed staff to revise the ordinance and return with additional information at the September 11, 2018 City Council Regular meeting.

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

K. On September 26, 2018, the City Council held a duly noticed public hearing on ZTA No. 17-002, reviewed and considered the agenda report, written reports, public testimony, and other information in the record. The City Council directed staff to investigate potential options and procedures for banning short-term rentals in the City, the implications and potential impacts of a ban, including financial analysis, approaches to using the Local Coastal Program Amendment process and the approaches of other coastal cities to dealing with short-term rentals and the current state of litigation over those issues.

L. On November 8, 2018, the Woolsey Fire broke out in the Chatsworth area north of the 101 Freeway and reached Malibu on November 9, 2018. On November 9, 2018, the Director of Emergency Services proclaimed the existence of a local emergency. The Woolsey Fire was largest fire Los Angeles County history and the most disastrous event ever in Malibu. In one week, the fire burned approximately 90,000 acres throughout the Santa Monica Mountains area and destroyed 488 single-family homes in Malibu.

M. On November 16, 2018, the Director of Emergency Services again proclaimed the existence of a local emergency as a result of conditions of extreme peril to the safety of persons and property caused by the Woolsey Fire. The City Council extended the existence of a local emergency until April 22, 2019 through Resolution Nos. 18-64, 18-68, 18-69, 19-02, and 19-13.

N. On June 24, 2019, the City Council authorized the City Manager to execute the Professional Services Agreement with Raftelis Financial Consultants, Inc. for financial analysis services to examine the short- and long-term financial implications of a potential ban on short-term rentals.

O. On October 3, 2019, the City Council Administration and Finance Subcommittee, received a report the short and long-term financial implications of a potential ban on STRs and recommended that requested that the financial analysis presentation to Council include potential expenditure reductions that could offset loss of revenue from a partial or a full ban on short-term rentals as well as a consideration of the financial impact of a 25 percent ban.

P. On October 28, 2019, the City Council received financial analysis on the

implications and potential impacts of a ban on short-term rentals. Council also discussed the potential options and procedures for banning short-term rentals, whether an amendment to the Local Coastal Program (LCP) is necessary for a short-term rental ban, and approaches other coastal cities have taken to legislate short-term rentals and associated litigation in those cities. Council directed staff to initiate a ZTA and Local Coastal Program Amendment (LCPA) regarding regulation of home-sharing and short-term rentals to include provisions similar to Santa Monica's home-sharing ordinance for single-family homes, bypassing the Zoning Ordinance Revisions and Code Enforcement Subcommittee and taking the ZTA and LCPA directly to the Planning Commission; and to bring back an updated version of the September 26, 2018, draft ordinance (ZTA No. 17-002) to the City Council for adoption that could be implemented without an LCPA, with the understanding it would be superseded when the new ZTA and LCPA were approved.

Q. On December 3, 2019, the City Council held a duly noticed public hearing on ZTA No. 17-002. The City Council did not move forward with ZTA No. 17-002 at that time but did adopt Resolution No. 19-53 initiating a new LCPA No. 19-003 and ZTA No. 19-005 to consider a regulatory system similar to that adopted by the City of Santa Monica. 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. The City Council's direction was to require a "host" to live onsite at the property during the rental, but not require the person to be within the dwelling unit. The City Council also directed that the multifamily regulation system proposed in ZTA No. 17-002 should be included.

R. On March 5, 2020, a Notice of Public Hearing and Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu and sent to interested parties.

S. Beginning in March 2020, the COVID-19 pandemic began to affect City operations, and public meetings began to be held virtually in April. Legislative matters drawing extensive public interest were temporarily postponed. On June 8, 2020, the Council directed staff to move the Santa Monica-style LCPA/ZTA forward to the Planning Commission for a virtual public hearing.

T. On June 22, 2020, in response to immediate resident concerns about neighborhood impacts from short-term rentals, the City Council directed staff to bring back the ordinance presented to the City Council on December 3, 2019 (ZTA No. 17-002) establishing provisions to regulate short-term rental property.

U. On July 16, 2020, a Notice of Availability of LCP Documents was published in a newspaper of general circulation within the City of Malibu.

V. On July 29, 2020 the Planning Commission held a duly noticed public hearing on LCPA No. 19-003 and ZTA No. 19-005, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information on the record pertaining to hosted short-term rental regulations. At the conclusion of its deliberations, the Planning Commission voted to recommend that the City Council adopt ZTA No. 19-005, with modifications, including that short-term rental of guest houses not be allowed, and made two additional recommendations, first that the Council not adopt LCPA No. 19-003 and second, that Council revise City Council Policy No. 43 pertaining to short-term rental complaints.

W. On August 10, 2020, the City Council held a duly noticed public hearing on ZTA No. 17-002 (Ordinance No. 468), reviewed and considered the staff report, written reports, public testimony, and other information in the record. City Council continued Ordinance No. 468 to the September 14, 2020, Regular meeting in order to consider it concurrently with the hosted short-term rental amendments (LCPA No. 19-003 and ZTA No. 19-005) and with a revised version of Ordinance No. 468. Council directed staff to modify Ordinance No. 468 in order to remove the primary resident requirement and certain other requirements to focus on providing enforcement tools against nuisance properties while LCPA No. 19-003 is being processed.

On September 14, 2020, the City Council held a duly noticed public hearing on the hosted short-term rental amendments (LCPA No. 19-003 and ZTA No. 19-005), reviewed and considered the staff report, the recommendation of the Planning Commission, written reports, public testimony, and other information in the record. Council continued to a date uncertain the public hearing and directed staff to bring back the Hosted Amendments (Ordinance No. 472 and Resolution No. 20-51) amended to: a) allow guest houses to be used for short-term rentals but require that a short-term rental permit designate only one specific unit on the single-family residential property to be listed, b) require the property owner to be onsite during short-term rental except that a designated operator, other than the owner, is allowed to host short-term rentals for up to two months cumulatively per calendar year with two-week notice to the City modifying the short-term rental permit, c) require designated operator to be present onsite between the hours of 9:00 p.m. and 6:00 a.m. during hosted short-term rentals, d) allow one unit of a duplex to be rented short-term if the owner lives onsite in the other, and e) allow up to 40%, up to two units maximum (whichever is fewer), of multifamily properties to be rented short-term if the other onsite units are rented long-term.

X. On September 14, 2020, the City Council also approved on first reading Ordinance No. 468 (the Enforcement Ordinance) and adopted it on September 29, 2020.

Y. On October 1, 2020, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu and sent to interested parties.

Z. On October 26, 2020, the City Council Regular meeting was adjourned to November 5, 2020.

AA. On November 5, 2020, the City Council held a duly noticed public hearing on the Hosted Amendments (LCPA No. 19-003 and ZTA No. 19-005) consisting of Ordinance No. 472 and Resolution No. 20-51, reviewed and considered the staff report, written reports, public testimony, and other information in the entire record of the City's consideration of short-term rental regulations.

SECTION 2. Local Coastal Program Amendments.

The LCP Local Implementation Plan (LIP) is amended as follows:

A. LIP Section 2.1 is hereby amended by adding the following definitions, inserted in alphabetical order:

DESIGNATED OPERATOR – pertaining to the short-term rental of residential property, any natural person who is required by the owner of a short-term rental unit to: (1) resolve any nuisance or compliance issues with the dwelling unit, (2) produce requested records, (3) allow others including, but not limited, to code enforcement officers and law enforcement personnel, to enter the dwelling unit, and (4) live onsite at any dwelling unit offered for use as a hosted short-term rental for the duration of the rental.

DWELLING UNIT - one or more rooms in a building or portion thereof designed, intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. 'Dwelling unit' also includes:

A. One or more habitable rooms within a mobile home which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating and sanitation; and
B. Any room used for sleeping accommodations which contains a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except a guest room or guest suite in a hotel, motel or bed and breakfast inn; and
C. Each space or pad designed and allocated to accommodate a mobile home within a mobile home park.

GUEST – pertaining to the short-term rental of residential property, a natural person who rents a short-term rental or is an invitee of such person.

GUEST HOUSE - attached or detached living quarters on the same premises as a single family residence for the use of family members, guests or employees of the occupants of such residence, containing no kitchen facilities and not rented or otherwise used as a separate dwelling. The maximum living area of a guest house shall not exceed nine hundred (900) square feet, including any mezzanine or storage space. A guest house may include a garage not to exceed four hundred (400) sq. ft. The square footage of the garage shall not be included in the maximum living area. Guest houses may be used as short-term rentals pursuant to a valid short-term rental permit issued by the City.

HOSTED SHORT-TERM RENTAL – a short-term rental for which the owner or designated operator lives onsite throughout the guests' stay in accordance with the requirements of a hosted short-term rental permit issued by the City.

LIVES ONSITE – pertaining to short-term rental of residential property, means maintains a physical presence on the property, including, but not limited to, sleeping overnight, preparing and eating meals, and being present on the property each day of the short-term rental as required by the hosted short-term rental permit.

OWNER – pertaining to the short-term rental of residential property, a person who alone or with others, has legal or equitable title to a dwelling unit. A person whose interest in a dwelling unit is solely that of a tenant, subtenant, lessee, or sublessee under an oral or written rental housing agreement shall not be considered an owner.

SHORT-TERM RENTAL – of property means 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 30 consecutive days or less to a transient.

B. LIP Section 3.3(Q)(2)(a) Planned Development (PD) Zone is amended to add subsection (v) to section (a):

a. Lot Nos. 1—5

i. One single-family residence per lot.
ii. Accessory uses (one second unit or guest house per lot, garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the Planning Director).
iii. Domestic animals, kept as pets.
iv. Landscaping.
v. Hosted short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

C. LIP Section 13.31 is added to LIP Chapter 13 (Coastal Development Permits) to read as follows:

13.31 Short-term Rental of Residential Property

A. No coastal development permit is required nor is the City required to maintain a record of coastal development permit exemption pursuant to LIP Section 13.4.10 for short-term rental of residential property as defined in Section 2.1 of this LIP provided that such use meets all of the following criteria:

1. The short-term rental use is conducted pursuant to a valid short-term rental permit issued by the City.
2. The short-term rental use is conducted in a dwelling unit that was lawfully established as described in LIP Section 13.3(F).
3. The short-term rental use will not result in reduction or elimination of public parking for access to the beach, public trails or parklands.

D. LIP Table B – Permitted Uses (Key to Table) is amended to read as follows:

KEY TO TABLE (In addition to a coastal development permit, MCUP, CUP, LFDC, STR & WTF permits are required pursuant to the Malibu Municipal Code where shown in this table.)	
P	**Permitted use**
MCUP	**Requires the approval of a minor Conditional Use Permit by the Director**
CUP	**Requires the approval of a Conditional Use Permit**
A	**Permitted only as an accessory use to an otherwise permitted use**
LFDC	**Requires the approval of a Large Family Day Care permit**
WTF	**Requires the approval of a Wireless Telecommunications Facility**

STR	**Use requires valid short-term rental permit approved by the City**
-	**Not permitted (Prohibited)**

E. LIP Table B – Permitted Uses is amended by inserting the following new use category to the end of the Residential section of the table after the "Home Occupation" category and adding a new footnote 21:

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
RESIDENTIAL																
Short-term rental	STR[21]	STR[21]	STR[21]	STR[21]	STR[21]	-	-	-	-	-	-	-	-	-	-	-

21. Single-family residence properties are limited to hosted short-term rental permits only; one dwelling unit in a duplex may be rented unhosted if the owner or designated operator lives onsite in the other dwelling unit during the rental period; and for multifamily properties, a maximum of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.

SECTION 3. LCP Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA No. 19-003 meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act as follows:

A. The amendment maintains standards to require that uses and development within the City's jurisdiction of the Coastal Zone advance the overarching goals of protecting coastal resources. In particular, the amendment will assure that visitor-serving accommodations are available within the City through short-term rental of residential property in a manner that protects residential neighborhoods and preserves the amount and variety of the City's existing housing stock.

B. The amendment will be consistent with the following policies:

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources.

No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to be used for short-term rentals, which is currently prohibited.

2.36 Coastal recreational and visitor serving uses and opportunities, especially lower cost

opportunities, shall be protected, encouraged, and where feasible, provided by both public and private means. Removal or conversion of existing lower cost opportunities shall be prohibited unless the use will be replaced with another offering comparable visitor serving or recreational opportunities.

No conversion or removal of lower cost opportunities for visitor-serving accommodations result from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which is often more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to also be used for short-term rentals, which is currently prohibited.

SECTION 4. Zoning Text Amendments.

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

A. MMC Section 17.02.060 (Definitions) is hereby amended to add the following definitions, inserted in alphabetical order:

"Bedroom" means any habitable space in a dwelling unit other than a kitchen or living room that is intended for or capable of being used for sleeping, is at least 70 square feet in area, is separated from other rooms by a door, and is accessible to a bathroom without crossing another bedroom.

"Booking transaction" means any reservation or payment service provided by a natural person, joint venture, joint stock company, partnership, association, club, company corporation, business trust, or organization of any kind who facilitates a short-term rental transaction between a prospective guest and an owner.

"Designated operator" means any natural person who is required by the owner of a short-term rental unit to: (1) resolve any nuisance or compliance issues with the dwelling unit, (2) produce requested records, (3) allow others including, but not limited, to code enforcement officers and law enforcement personnel, to enter the dwelling unit, and (4) live onsite at any dwelling unit offered for use as a hosted short-term rental for the duration of the rental.

"Dwelling unit" means one or more rooms in a building or portion thereof designed, intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. "Dwelling unit" also includes:

1. One or more habitable rooms within a mobilehome which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating and sanitation; and
2. Any room used for sleeping accommodations which contains a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except a guest room or guest suite in a motel, hotel or bed and breakfast inn.

"Guest" means a natural person who rents a short-term rental or is an invitee of such person. This definition is applicable to Chapter 17.55 only.

"Guest House" means detached living quarters on the same premises as a single family residence for the use of family members, guests or employees of the occupants of such residence, containing

no kitchen facilities and not rented or otherwise used as a separate dwelling. Guest houses may be used for short-term rentals pursuant to a valid short-term rental permit issued by the City.

"Hosted short-term rental" means a short-term rental for which the owner or designated operator lives onsite throughout the guests' stay in accordance with Section 17.55.040.

"Hosting platform" means a natural person, joint venture, joint stock company, partnership, association, club, company corporation, business trust, or organization of any kind who participates in the short-term rental business by collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting a booking transaction using any medium of facilitation.

"Lives onsite" means maintains a physical presence on the property, including, but not limited to, sleeping overnight, preparing and eating meals, and being present on the property each day of the short-term rental as required by the hosted short-term rental permit. This definition is applicable to Chapter 17.55 only.

"Owner" means any person who, alone or with others, has legal or equitable title to a dwelling unit. A person whose interest in a dwelling unit is solely that of a tenant, subtenant, lessee, or sublessee under an oral or written rental housing agreement shall not be considered an owner. This definition is applicable to Chapter 17.55 only.

"Primary Residence" means the usual place of return for housing of an owner as documented to the satisfaction of the City Manager by an active voter registration, a valid driver's license or other government issued identification card with the address of the property. A person can only have one primary residence. This definition is applicable to Chapter 17.55 only.

"Short-term rental" of property means 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 30 consecutive days or less to a transient.

B. MMC Section 17.08.020 (Permitted Uses, Rural Residential) is amended to add subsection L:

L. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

C. MMC Section 17.10.020 (Permitted Uses, Single Family) is amended to add subsection I:

I. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

D. MMC Section 17.12.020 (Permitted Uses, Multiple Family) is amended to add subsection J:

J. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

E. MMC Section 17.14.020 (Permitted Uses, Multifamily Beachfront) is amended to add subsection I:

I. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

F. MMC Section 17.16.020 (Permitted Uses, Mobile Home) is amended to add subsection C:

C. Short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

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

Section 17.55.010 Short-Term Rental of Property

A. Hosted short-term rental of single-family residential property, and the short-term rental of up to two dwelling units on a multifamily housing parcel, is allowed as specified in Section 17.55.040 if conducted in compliance with this Chapter 17.55 and the owner complies with each of the following requirements:
   1. Obtains and maintains at all times a Short-Term Rental Permit issued pursuant to this Chapter.
   2. Operates the short-term rental activity in compliance with all permit conditions for short-term rental as set forth in Section 17.55.020 and any regulations promulgated pursuant to this Chapter.
   3. Collects and remits Transient Occupancy Tax ("TOT"), in coordination with any hosting platform if utilized, to the City and complies with all City TOT requirements as set forth in Chapter 3.24 of this Code.
   4. Takes responsibility for and actively prevents any nuisance activities that may take place as a result of short-term rental activities.
   5. Is available, or a designated operator is available, 24 hours a day, 7 days a week, at a phone number provided to both the City and any guest staying at the property to immediately answer a call from the City, an agent authorized by the City to make such calls, or a guest when there is a guest renting the property. No person may serve as a designated operator for more than one hosted short-term rental concurrently.
   6. Ensures that basic health and safety features are provided, including fire extinguishers, smoke detectors, and carbon monoxide detectors.
   7. Limits the occupancy of the short-term rental (including the host, guests, and any other natural persons) to two people more than twice the number of bedrooms listed on City or County records as determined by the Planning Director up to a maximum of 14 people, unless a special event permit is obtained pursuant to Chapter 5.34 of this code.

8. Maintains liability insurance to cover the short-term rental of property with minimum limits of not less than $500,000 or conducts each short-term rental transaction through a hosting platform that provides equal or greater coverage.
9. Complies with Section 17.55.080 governing advertisements of short-term rentals.
10. Provides all guests with the Short-term Rental Code of Conduct, which shall be developed by the City Manager, and posts the same on the inside of the main entrance door to the dwelling unit rented, or on the wall adjacent thereto.
11. Provides 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 in compliance with federal and state law.
12. Complies with all applicable laws, including the noise limitations set forth in Chapter 8.24 of this Code, and all applicable codes regarding fire, building and safety, and other relevant laws and ordinances.
13. Maintains a valid Onsite Wastewater Treatment System (OWTS) operating permit pursuant to Chapter 15.44 or has entered a compliance agreement with the City excusing such compliance and is in full compliance with the compliance agreement and not in default or breach.

Section 17.55.020 Short-Term Rental Permit Required

A. No person shall offer, facilitate an offer, or allow the short-term rental of property in any location not specifically identified and approved on a valid 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.

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. Each permit may include only one listing, and shall designate the dwelling unit, or portion thereof, that is to be rented.

C. Application Required. To obtain a short-term rental permit an owner shall submit an application on a form to be provided by the City and signed by the owner under penalty of perjury.

D. 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. Address of the proposed short-term rental
2. Type of dwelling unit
3. Contact information for the owner of the property
4. Contact information for the designated operator, if a designated operator will live onsite for the hosted short-term rental
5. A copy of a valid OWTS operating permit for the property, or a copy of a City approved compliance agreement pursuant to Section 17.55.010(A)(14) paired with

an attestation that the owner is in full compliance with the compliance agreement and not in default or breach

6. Attestation and agreement to comply with the requirements of this Chapter
7. Proof that the owner is in compliance with Chapter 3.24 of this code
8. The Uniform Resource Locator (URL) (i.e., the website address) for any and all advertisements of the short-term rental of the property
9. 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 owner 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 owner maintains a short-term rental permit for the property.
10. Attestation of the number of bedrooms in the proposed short-term rental and proposed maximum occupancy
11. Attestation of compliance with the required insurance coverage
12. The location of all dwelling units, or portions thereof, that will be rented on a short-term basis
13. The type of short-term rental permit sought: hosted or multifamily
14. If seeking a hosted short-term rental permit, proof of primary residency and attestation that the location is the owner's primary residence, meaning that the owner lives in a dwelling 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 owner's primary residence for the duration of the permit shall suffice
15. If seeking a multifamily short-term rental permit, contact information, including phone number, for all tenants, proof of ownership of the entire parcel, and an attestation that all dwelling units (except for two) are rented on a long term-basis per Section 17.55.040(B). The permit holder shall maintain copies of the leases for all tenants documenting compliance at all times with Section 17.55.040(B) for a period of three years following the expiration of the short-term rental permit.

E. Review and Approval. Short-term rental permits shall be subject to the approval of the City Manager or her/his designee.

F. Notice of Approval. Upon approval, the Planning Director shall provide, at the owner's expense, the contact information for the owner or designated operator identified in 17.55.010(A)(5) to all dwelling units within 500 feet of the short-term rental unit's parcel boundary.

G. Duration. Short-term rental permits shall be issued for one year and must be renewed annually.

H. Duty to Amend. If there are any material changes to the information submitted on a short-term rental permit application, the owner shall submit an amended application on a form to be provided by the City and signed by the owner under penalty of perjury within 30 days of any such changes, or immediately for any change in the owner or designated operator's contact information. For the purposes of this Section, any change to the information required to be included in a short-term rental permit application by subsection (D) of this Section shall constitute a material change. A permittee may not cure a violation of this Chapter by seeking to amend a short-term rental permit after a violation occurs; short-term rental of a property may only be conducted as specifically authorized by an active short-term rental permit.

I. 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.

J. 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.

K. Nothing in this chapter shall prohibit the operation of a hotel, motel or bed and breakfast inn where such use is permitted.

L. Possession of a STR permit does not excuse any other permitting requirements of this code including but not limited to TOT and special event permit requirements.

17.55.030 Grounds for Denial and Revocation of Short-term Rental Permit

A. 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 owner has not paid all TOT due or is not in compliance with Chapter 3.24 of this code.

2. The property has 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 owner 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 owner has failed to amend an application as required by Section 17.55.020(H).

6. 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.

7. The property has received two or more citations for violation of the City's noise ordinance within a period of 12 consecutive months.
8. Failure to comply with Section 17.55.010(A)(13)
9. A holder of a Hosted Short-term Rental Permit receives three or more citations for violation of any combination of the following requirements within a period of 12 consecutive months, or a holder of a Multifamily Short-term Rental Permit receives two or more citations for violation of any combination of the following requirements within a period of 12 consecutive months:
    i. The requirements of Sections 17.55.010(A)(4), (7), (10), (11), 17.55.040(A), and Section 17.55.080.

17.55.040 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. Hosted Short-term Rental Permit. A primary resident owner may obtain this type of permit which allows hosted short-term rental of residential property, in compliance with this chapter, during the period that the permit is valid. The owner must live onsite during any period of rental, and must appear at the property within one hour of a phone call requesting such appearance by the City, an agent authorized by the City to make such calls, or law enforcement personnel. In addition, the owner must be located onsite, and present immediately upon request, during the hours of 9 p.m. to 6 a.m. during any period that the unit is rented. A designated operator may fulfill the owner obligations listed in the prior two sentences for up to 60 days cumulatively during a calendar year so long as the owner provides the City written notice and contact information for the designated operator, two weeks in advance of the rental date, in a form acceptable to the City. Multifamily residential buildings containing three 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 a primary resident owner of a condominium unit may obtain this type of permit for the unit where he or she has established his or her primary residence.

B. Multifamily Short-term Rental Permit. Owners of entire parcels that have multifamily residential buildings containing three 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 units, or 40% of the units on the parcel (whichever is less), 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. The owner of both units of a duplex may also

obtain this type of permit to rent one unit if the owner lives onsite during any period of rental in the other unit. The owner of the duplex must appear at the property within one hour of a phone call requesting such appearance by the City, an agent authorized by the City to make such calls, or law enforcement personnel. In addition, the owner the duplex must be located onsite, and present immediately upon request, during the hours of 9 p.m. to 6 a.m. during any period that the unit is rented. A designated operator may fulfill the owner obligations listed in the prior three sentences for up to 60 days cumulatively during a calendar year so long as the owner provides the City written notice and contact information for the designated operator, two weeks in advance of the rental date, in a form acceptable to the City

17.55.050 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 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 owner are paid in full, including the renewal fee.

17.55.060 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 owner and location for a 12 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 owner 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 17.55.030(A)(9), or (3) two or more citations for violation of the City's noise ordinance in a period of 12 consecutive months, a new application shall not be approved for a period of at least 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 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 (in addition to any other penalty) result in the property and owner 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.

17.55.070 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 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 will result in the denial or revocation being 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 Advertisement and Facilitation of Short-term Rentals

A. The owner shall include and prominently post the following information in any advertisement for short-term rental:

1. The short-term rental permit number issued by the City;
2. That the owner lives onsite and the owner or designated operator will live onsite throughout the visitor's stay unless the advertisement is for a permitted multifamily short-term rental;
3. The permitted occupancy of the short-term rental as specified in the short-term rental permit application; and
4. Any other information required by regulations promulgated pursuant to this Chapter.

B. No advertisements regarding the availability of a dwelling unit for short-term rental shall be posted in or on any exterior area of the dwelling unit, any exterior area of any other dwelling unit on the same lot, or the lot on which the dwelling unit is located.

C. The address of the property shall be prominently displayed.

D. No person or entity shall offer, advertise or facilitate the short-term rental of property in the city unless the owner possesses a valid short-term rental permit for its rental.

E. Any offer or advertisement for the short-term rental of property in the City that does not contain a valid short-term rental permit number, or which the City identifies as illegal to the person or entity advertising or offering the rental, shall be immediately removed from any location it is posted, whether online or otherwise.

17.55.090 Hosting Platform Responsibilities

A. Hosting platforms shall be responsible for collecting all applicable TOT and remitting the same to the City. The hosting platform shall be considered an agent of the owner for purposes of TOT collections and remittance responsibilities as set forth in Chapter 3.24 of this Code. Should a hosting platform fail to fulfill its responsibilities under this Section the owner shall remain responsible for collection and remittance of the TOT the Hosting platform failed to collect and/or remit to the City.

B. Subject to applicable laws, hosting platforms shall disclose to the City on a regular basis each short-term rental listing located in the City, the names of the owner for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay.

C. Hosting platforms shall not complete any booking transaction for any residential property or unit unless it is listed on the City's registry of properties with valid short-term rental permits at the time the hosting platform receives a fee for the booking transaction.

D. Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to a short-term rental, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.

E. Safe Harbor. A hosting platform operating exclusively on the Internet, which operates in compliance with subsections (A), (B), (C), and (D) above, shall be presumed to be in compliance with this Chapter. If technical issues pose a substantial obstacle to compliance with this Section, a hosting platform may also satisfy these obligations pursuant to a compliance agreement with the City that prevents booking transactions for unpermitted short-term rentals, collects all transient occupancy tax due, and complies with the disclosure requirements of this Section..

F. The provisions of this Section 17.55.090 shall be interpreted in accordance with otherwise applicable State and Federal law(s) and will not apply if determined by the City to be in violation of, or preempted by, any such law(s).

17.55.100 Regulations

The City Manager or designee may promulgate regulations to facilitate the purposes of this Chapter.

17.55.110 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 Section 17.55.020(A) by an owner shall be subject to a fine of $1000 per day or violation, or twice the short-term rental's advertised daily rental rate per day or violation, whichever is higher, and for all other violations an owner shall be subject to a fine of $500 per day or violation, or the short-term rental's advertised daily rental rate per day or violation, whichever is higher.

B. The short-term rental permit holder shall be held responsible for administrative citations for violations of the municipal code or local coastal program 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.

H. MMC Title 17 – Appendix 1 (Permitted Uses Table) – Key to Table is hereby amended to read as follows:

KEY TO TABLE (In addition to a coastal development permit where applicable, MCUP, CUP, LFDC, STR & WTF permits are required pursuant to the Malibu Municipal Code where shown in this table.)	
P	Permitted use
MCUP	Requires the approval of a minor Conditional Use Permit by the Director
CUP	Requires the approval of a Conditional Use Permit
A	Permitted only as an accessory use to an otherwise permitted use
LFDC	Requires the approval of a Large Family Day Care permit
WTF	Requires the approval of a Wireless Telecommunications Facility
STR	Use requires valid short-term rental permit approved by the City
•	Not permitted (Prohibited)

I. MMC Title 17 – Appendix 1 – (Permitted Uses Table) is amended by inserting the following new use category after the "Home Occupations" use category in the table and a new footnote 32:

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
Short-term rental	STR[32]	STR[32]	STR[32]	STR[32]	STR[32]	•	•	•	•	•	•	•	•	•	•	•

32. Single-family residence properties are limited to hosted short-term rental permits only; one dwelling unit in a duplex may be rented unhosted if the owner or designated operator lives onsite in the other dwelling unit during

the rental period; and for multifamily properties, a maximum of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.

SECTION 6. 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 made 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 7. Zoning Text Amendment Findings.

The City Council hereby finds that ZTA No. 19-005 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], protect rural residential character [General Plan LU Policy 1.1.4], protect and preserve the unique character of the City's distinct neighborhoods, and conserve affordable housing in the Coastal Zone [General Plan Housing Policy 1.4].

ZTA No. 19-005 will support these policies by introducing regulations to reduce the impact of short-term rentals on neighbors and the community.

SECTION 8. 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. Further, the Ordinance is exempt pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines which states that permitting and licensing of existing private structures involving negligible or no expansion of existing or former use in that the proposed short-term rental permitting program will establish rules and regulations that do not expand existing residential uses. Additionally, the Ordinance is exempt pursuant to Section 15321 (Enforcement Actions by Regulatory Agencies) in that the regulatory program established will facilitate enforcement actions, such as permit revocation, for nuisance short-term rental properties. Finally, in accordance with the CEQA, Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This Ordinance is for an LCP amendment which must be certified by the California Coastal Commission before it takes effect.

SECTION 9. 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 10. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit the LCP amendments contained in Section 2 of this Ordinance to the California Coastal Commission per Title 14, California Code of Regulations Section 13554.5(a).

SECTION 11. Effectiveness.

The LCP amendment and corollary ZTA approved in this Ordinance shall become effective only upon certification by the California Coastal Commission of this amendment to the LCP.

SECTION 12. 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 23rd day of November, 2020.

MIKKE PIERSON, Mayor

ATTEST:

HEATHER GLASER, City Clerk

Date: December 10, 2020.

APPROVED AS TO FORM:

CHRISTI HOGIN, City Attorney

I CERTIFY THAT THE FOREGOING ORDINANCE NO. 472 was passed and adopted at the Regular City Council meeting of November 23, 2020, by the following vote:

AYES:	4	Councilmembers:	Farrer, Mullen, Peak, Pierson
NOES:	0		
ABSTAIN:	1	Councilmember:	Wagner
ABSENT:	0		

Heather Glaser

HEATHER GLASER, City Clerk
(seal)

Attachment H

Adjourned Meeting
09-26-18
Item 4.B.

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)

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.[1] 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

[1] 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.[2] 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[3] 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

[2] Units in multifamily buildings are counted as separate and distinct units.
[3] 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.[4] 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

[4] 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.

_____
RICK MULLEN, Mayor

ATTEST:

_____
HEATHER GLASER, City Clerk

Date: _____

APPROVED AS TO FORM:

_____
CHRISTI HOGIN, City Attorney

City Council Meeting
03-26-18
Item
4.A.

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

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.

Attachment B

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.[1] 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.

[1] 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.[2] 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[3] 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

[2] Units in multifamily buildings are counted as separate and distinct units.
[3] 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.

<u>May 7 Planning Commission Meeting Comments</u>

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 appears 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 of 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, 3017 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.

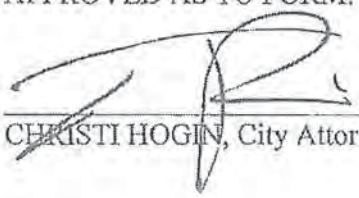
Section 3. Zoning Text Amendment No. 18-xxx.

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:



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 7th 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 7th 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

CITY OF MALIBU

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.

ATTACHMENT 4

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

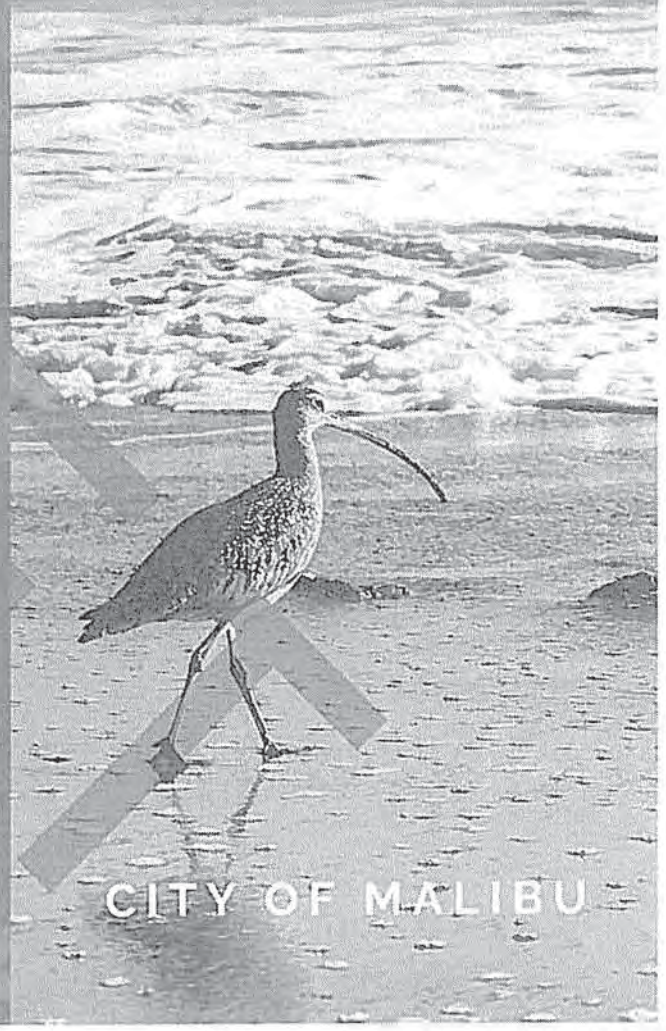
23825 Stuart Ranch Rd
Malibu, CA 90265

310-456-2489

MalibuCity.org/STR

CITY OF MALIBU

SHORT-TERM RENTAL CODE OF CONDUCT



CITY OF MALIBU

SHORT-TERM RENTAL
CODE OF CONDUCT

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

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

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.

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.

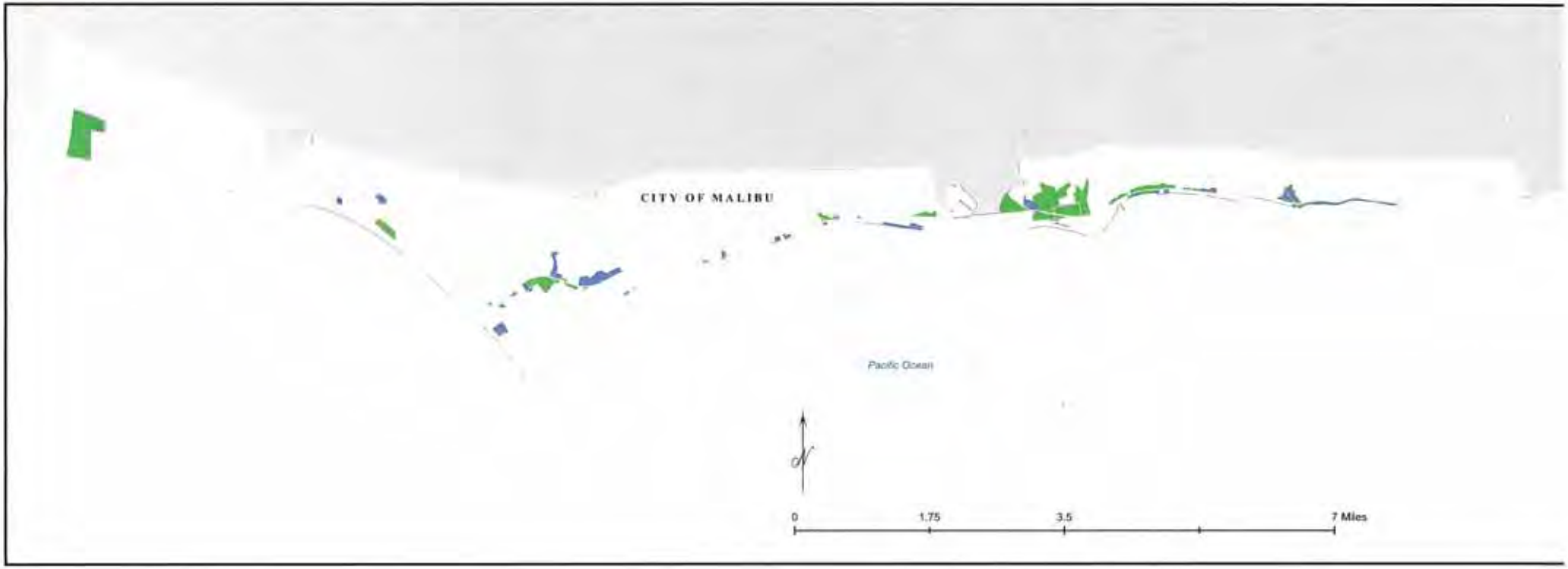
If there are any questions regarding this notice, please contact Bonnie Blue, Planning Director, at (310) 456-2489, extension 258.

Bonnie Blue
Planning Director

Publish Date: June 14, 2018

ATTACHMENT 5

Map of Parcels Zoned Multifamily or Commercial



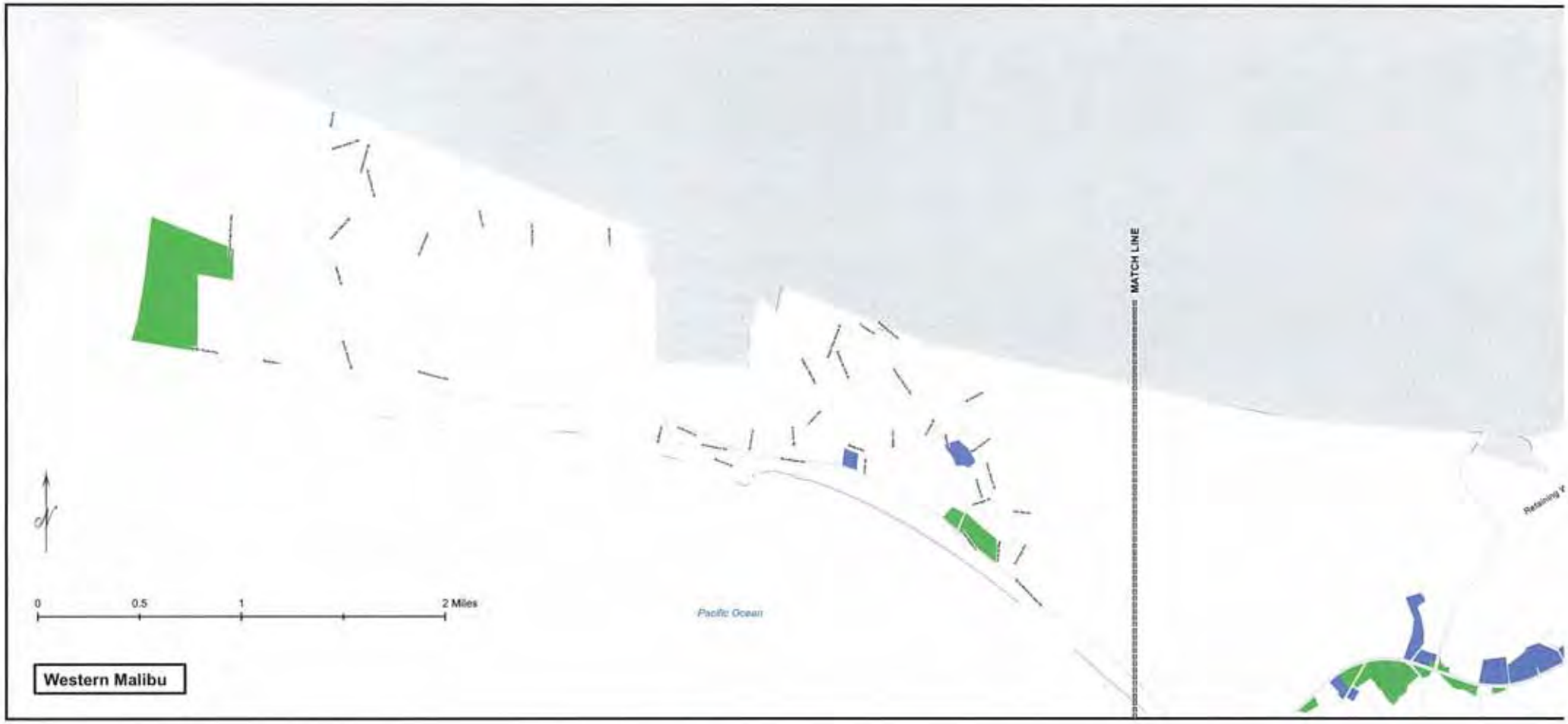
Legend

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

Attachment C

Date Prepared: 9/7/2018

Map of Parcels Zoned Multifamily or Commercial



Legend

- Commercial Zones (CC, CG, CN, CR, CV-1, and CV-2)
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Date Prepared: 9/7/20

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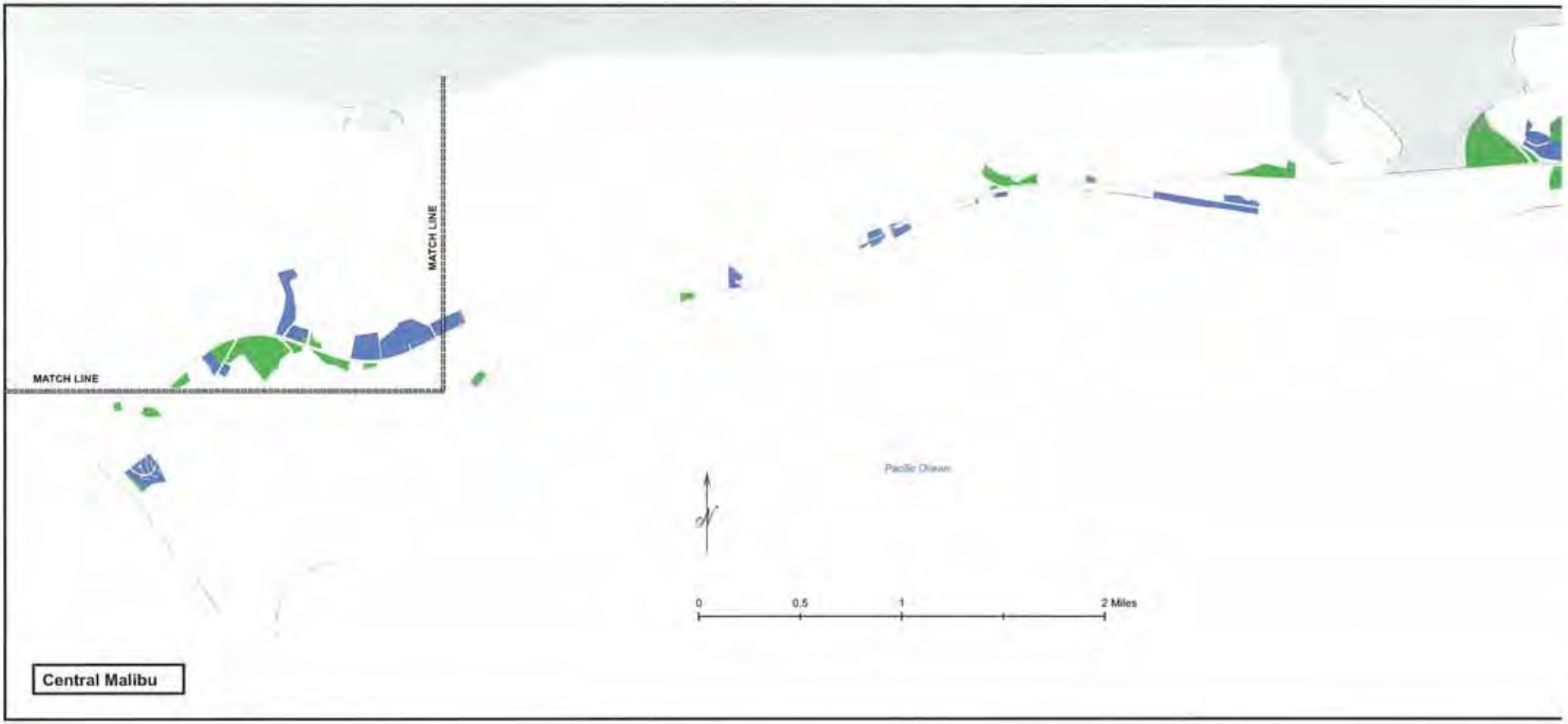

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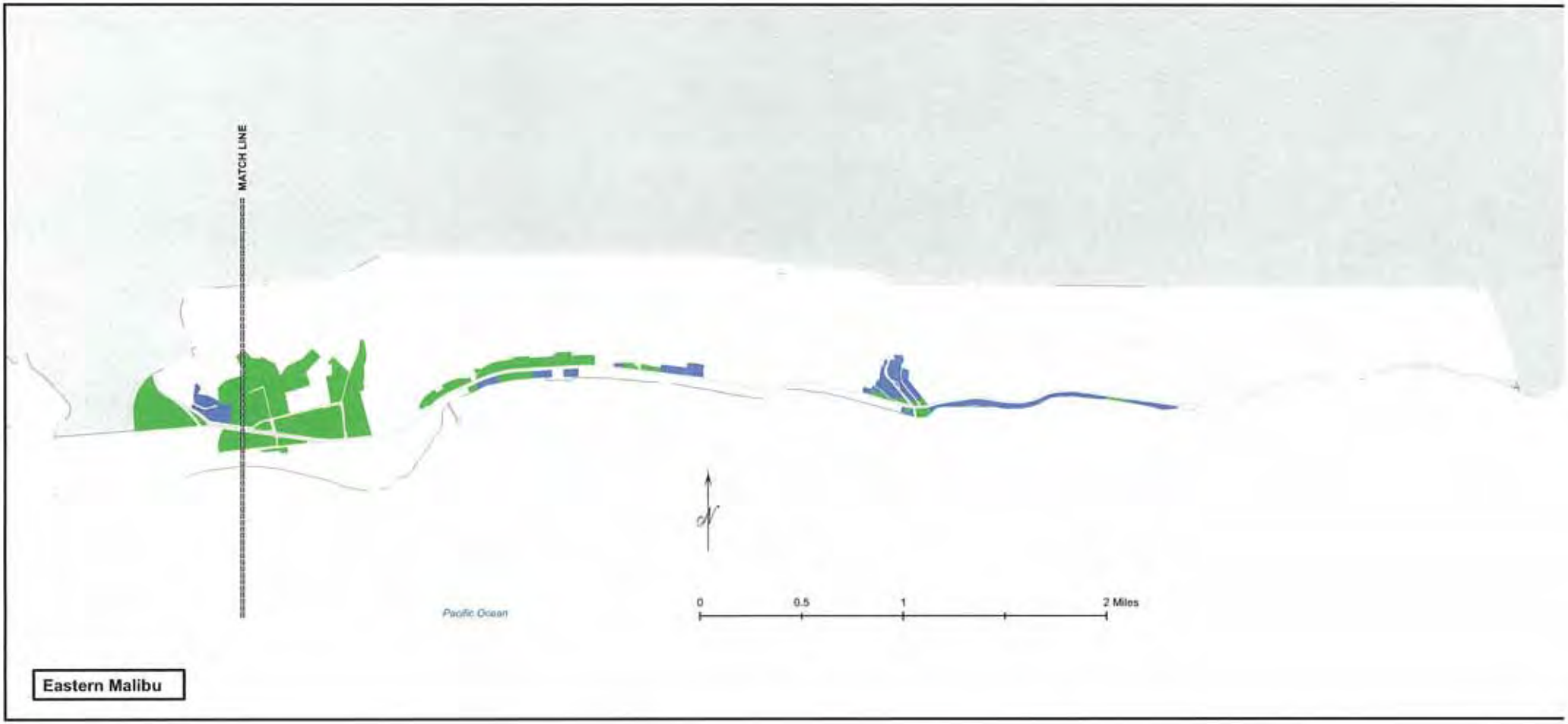

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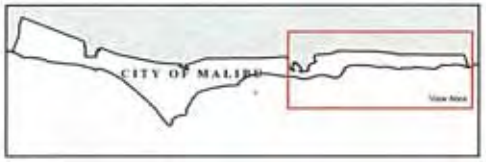

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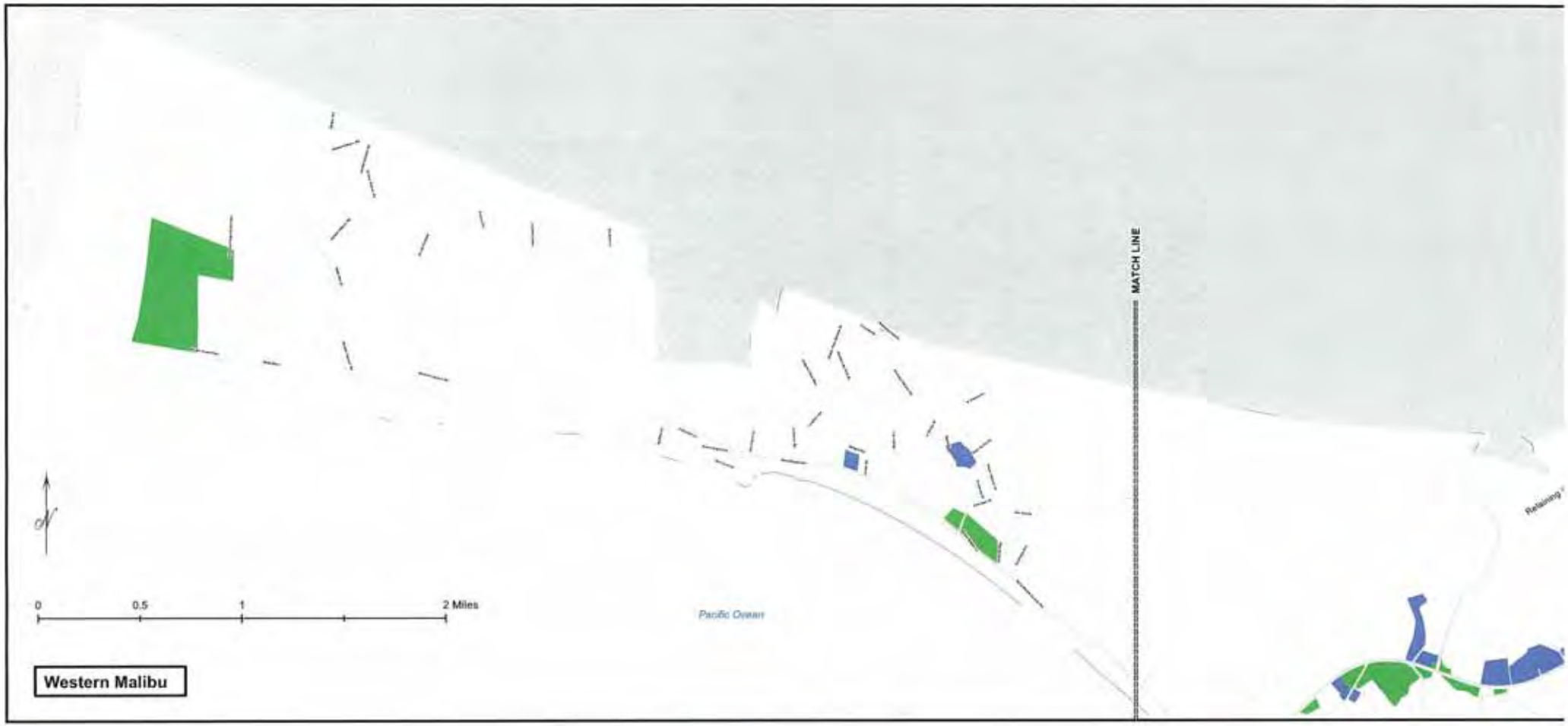

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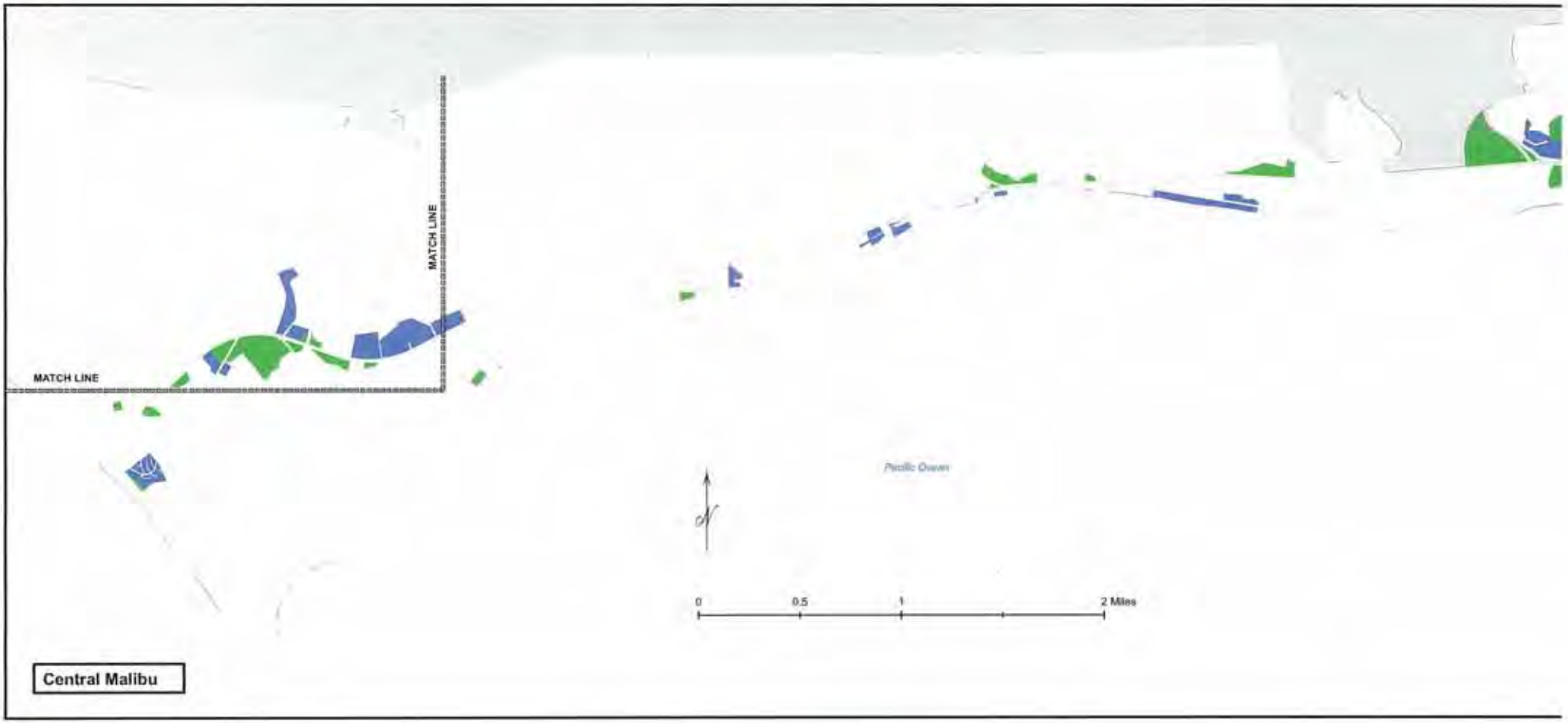

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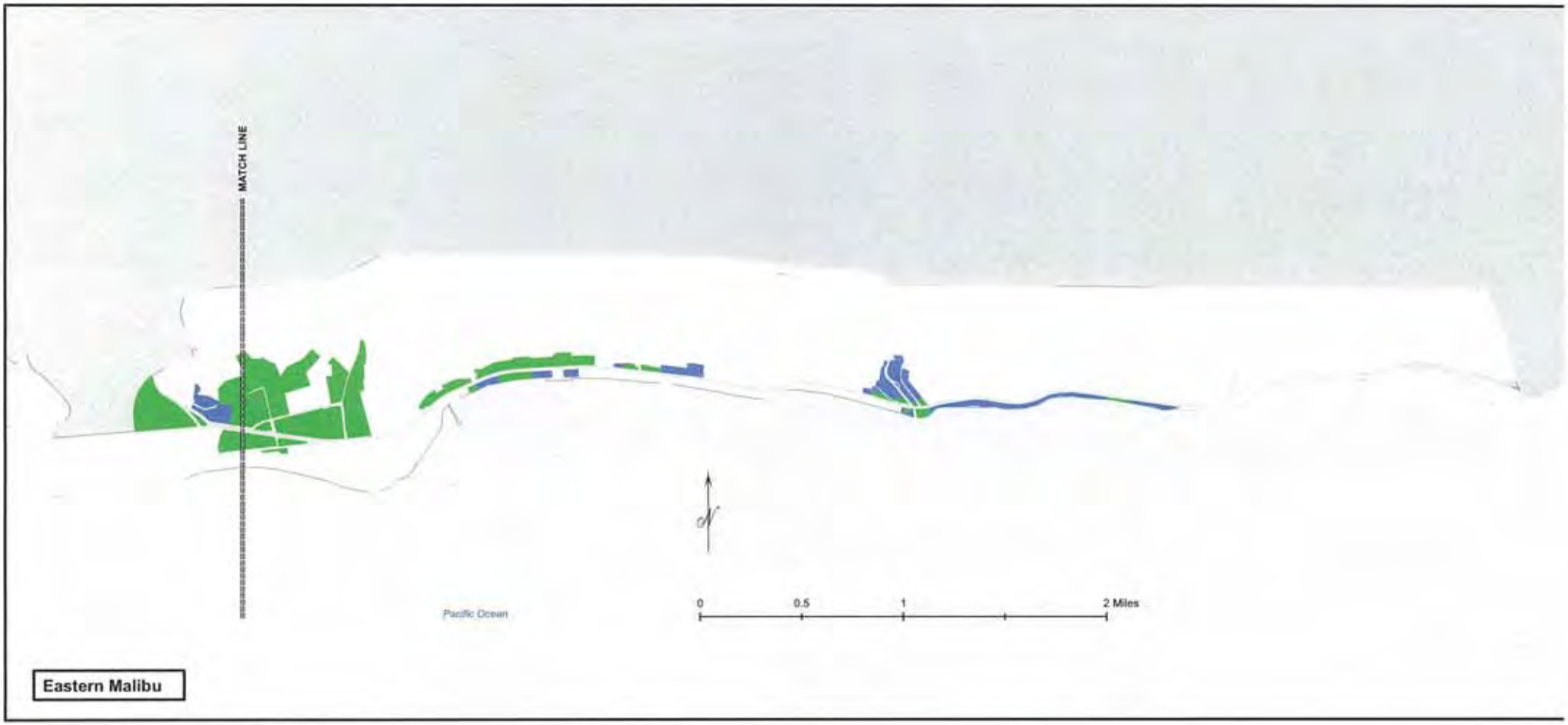

Legend

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- 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.

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.

Attachment D

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: August 30, 2018

Attachment I

September 14, 2020

Mayor Pierson and the Malibu City Council
c/o: Heather Glaser, City Clerk
23825 Stuart Ranch Road
Malibu, CA 90265

Dear Mayor Pierson and Honorable Members of the City Council:

On behalf of Airbnb, thank you for the opportunity to continue our dialogue on the City of Malibu's efforts to adopt new short-term rental (STRs) regulations. For the last 12 years, Airbnb has worked closely with cities around the world to help communities realize the benefits of STRs for travelers, hosts, and local economies.

While Malibu's significant planning efforts over the last several years is commendable, the "Hosted Ordinance" and associated Local Coastal Program ("LCP") amendment[1] before the City Council on September 14, 2020, will eliminate hundreds of accommodations in the City and make it harder for families and visitors to visit the City and access the coast. The proposed restrictions will cut-off Malibu from visitors, inhibit families from experiencing the City's coastal areas, and have significant adverse impacts on the local tourism economy.

Most concerning, as summarized below, the Proposed Ordinance violates LCP and California Coastal Act policies designed to protect and encourage visitor-serving opportunities and access to the coast.

To protect against these consequences and ensure consistency with the LCP and Coastal Act, we respectfully request the Council amend the Proposed Ordinance to include the modifications set forth in the attached Exhibit A and submit the revised ordinance to the California Coastal Commission ("Commission") for approval.[2]

The Proposed Ordinance Conflicts with the City's LCP and the California Coastal Act

As explained by the California Attorney General in a recent brief filed in the California Court of Appeal on behalf of the Commission, a new regulation for STRs that "cause[s] a sharp decline of visitor-serving accommodations in the coastal zone . . . objectively hinders visitor access to the coast" in conflict with Coastal Act policies.[3] Here, the Proposed Ordinance will not only result in a "sharp decline" in visitor-serving accommodations in the City, it will devastate the overnight lodging market in Malibu by removing an estimated tens of thousands of room nights annually.

The reduction of available STR accommodations is particularly problematic in Malibu, where traditional

[1] The proposed Hosted Ordinance and LCP amendment are collectively referred to as the "Proposed Ordinance."

[2] As recognized in the Staff Report, new restrictions placed on the offering of STRs in a jurisdiction with a certified LCP (like Malibu) must be submitted to the Commission.

[3] Amicus Curiae Brief of the California Coastal Commission at pp. 19-20, *Kracke v. City of Santa Barbara* (Ct. App., May 21, 2020, No. B300528).

overnight accommodations (i.e. motel/hotel rooms) are already extremely limited.

The City's proposed findings for the Proposed Ordinance's consistency with LCP Policy 2.34 and LCP Policy 2.36 (below) are unsubstantiated:

> *No conversion or removal of lower cost opportunities for visitor-serving accommodations results from the amendment. The amendment ensures that a variety of visitor-serving accommodations is available in the City. The amendment allows for hosted short-term rentals which can be more economical than whole house rentals since the property owner or long-term tenant is also on the site. In addition, the amendments allow for a limited number of multifamily units to be used for short-term rentals, which is currently prohibited.*

There is simply no evidence in the record before the Council to support these findings. The City has not provided any data or analysis supporting the assertion that the Proposed Ordinance will not result in the removal lower cost opportunities for visitor-serving accommodations, nor has the City provided any data or analysis regarding the potential impacts on the going-forward pricing of hotel/motel rooms and remaining STRs. Further, the City has not provided any data, analysis, or substantial justification to show that the prohibition on non-hosted rentals is necessary Citywide, or that the remaining STRs in the City following the imposition of the prohibition on non-hosted STRs would provide sufficient room nights and the types of STRs to accommodate existing visitor demand consistent with the LCP and the Coastal Act.

In fact, Airbnb's extensive experience in markets around the world and available research provides otherwise. Given the lack of traditional overnight accommodations and the decades long reliance on STRs in Malibu for vacation rentals, removing a significant portion of STRs from the market will have potentially devastating impacts to the accessibility and affordability of the Malibu vacation rental market.

The Proposed Ordinance will eliminate non-hosted, single-family home STRs and restrict the availability of apartment and condominium STRs. Generally, "STRs provide a better value per visitor due to their increased capacity to host families and large groups and the wide range of amenities they offer visitors, such as parking, kitchen access, gathering spaces, etc. These facilities can help reduce the overall cost of a vacation."[4] We estimate that the "entire home" rentals are the most demanded STRs in Malibu for this very reason.[5]

While STRs traditionally "offer a more sustainable option that require[] fewer resources and help[] increase access with more diverse accommodation options and better value,"[6] the Proposed Ordinance will decrease both the supply and diversity of accommodation options, reducing access and potentially increasing costs. Reducing the supply and diversity of STR supply is particularly troublesome given Malibu's position in the State as a significant visitor destination.

Unlike other Coastal communities with significant supplies of traditional overnight accommodations (i.e., Santa Monica has over 3,900 hotel/motel rooms), Malibu has fewer than 120 hotel rooms. The removal of *any* STRs will have a major effect on families that rely on such accommodations to make vacations to the

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[4] "Unequal Access – Protecting Affordable Accommodations Along the California Coast," at p. 33, attached as Exhibit B.

[5] City staff previously reported that as of September 26, 2018, there were 414 properties remitting TOT for STRs, and perhaps 109 additional STRs were not registered with the City. The City reported approximately 94% of these STRs were for "entire homes." About 74% of the City's STRs were for single-family residences. Council Agenda Report, Item 4.B: Short Term Rental Ordinance at pp. 2-3, September 26, 2018 City Council Meeting

[6] Exhibit B, "Unequal Access – Protecting Affordable Accommodations Along the California Coast," at p. 33.

City feasible. As reported, "[w]ith the high cost of coastal land, it is not profitable to build low cost hotels or similar lodging. High fixed and startup costs not only restrict the construction of new hotels but also influence the price of hotel rooms at peak times. Hotels cannot increase supply, due to high fixed costs, so they increase rates."[7] A robust and diverse STR market has mitigated this effect in Malibu, but the Proposed Ordinance, which we estimate will remove tens of thousands of room nights from the Malibu vacation rental supply annually, puts this at risk.

The limited STRs that will remain available will also generally be the type of accommodations *least* attractive to families. As previously recognized by City staff:

> *Demand for lodging in the City is likely to continue to outstrip the ability of hotels/motels to supply that lodging. As a result, demand for short term rental options in the City is likely to continue to grow, especially because many families prefer to rent a home rather than rooms in a hotel.*[8]

By significantly reducing the availability of non-hosted, single-family residence STR options in the City, the Proposed Ordinance will force families wishing to visit Malibu to either rent multiple hotel/motel rooms at great expense (if such rooms are even available). Families that cannot afford multiple hotel/motel rooms or may feel uncomfortable staying with a host will face a barrier to staying in Malibu in the future. Those families that do feel comfortable staying in a hosted STR will likely face higher prices for their rental than they would today given the anticipated substantial reduction in the supply of existing room nights under the Proposed Ordinance's prohibitions.[9]

Put simply, the Proposed Ordinance's regulation of STRs in Malibu will severely reduce the availability of diverse overnight accommodations and limit coastal access. Accordingly, the Proposed Ordinance objectively fails both to (1) protect "[c]oastal recreational and visitor serving uses and opportunities" and (2) protect "to the maximum feasible extent" "existing lower cost visitor-serving and recreation facilities, including overnight accommodations ….", in violation of both LCP Policy 2.34 and LCP Policy 2.36.[10]

Further, the City's LCP policies not only require the protection of existing visitor-serving facilities, they also direct the City to encourage new facilities. STRs "offer a more sustainable option that require[] fewer resources and help[] increase access with more diverse accommodation options and better value."[11] By imposing restrictions on the offering of single-family residences as STRs, and restricting multi-family buildings to offering just two units as STRs, the Proposed Ordinance creates a strong disincentive for the establishment of any new STRs in the City. This is very problematic for future coastal access in a community where no new hotels or motels have been erected in over thirty years.[12]

Suggested Amendments to the Proposed Ordinance to Encourage Access to Malibu

Airbnb has long encouraged a balanced approach to the regulation of STRs. We also believe that with the

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[7] "Unequal Access – Protecting Affordable Accommodations Along the California Coast," at p. 35 (citing Zervas 2016, 22).

[8] See Commission Agenda Report, Item 5.C: Short Term Rental Ordinance, November 20, 2017 Planning Commission Meeting.

[9] For additional details on the potential impacts on the cost of overnight coastal accommodations from the removal of STRs, please see the attached report titled "Unequal Access – Protecting Affordable Accommodations Along the California Coast" (Exhibit B).

[10] Malibu LCP, Land Use Plan, Ch. 2, § C, subds. 2.34 & 2.36.

[11] "Unequal Access – Protecting Affordable Accommodations Along the California Coast," at p. 33.

[12] While we understand certain hotels/motels in Malibu have been recently remodeled, the opening of the Malibu Beach Inn in 1989 was the last "new" hotel/motel developed in the City.

modifications proposed below, the Proposed Ordinance would be consistent with LCP and Coastal Act policies, will support the democratization of tourism in Malibu, and ensure that visitors and families will continue to have the opportunity to experience the unique beauty of the Malibu coast for decades to come.

Historical Use Permit

To ensure consistency with LCP and Coastal Act policies calling for the protection of existing visitor-serving facilities, the Council should amend the Proposed Ordinance to create a permit category that allows existing, legally operating STRs to continue offering non-hosted STRs in both primary and non-primary single-family residences. By allowing for the continued access to existing, legally operating STRs, the City will maintain the room nights needed to meet demand and simultaneously ensure the availability of the STR types most attractive to families. This approach will also mitigate against the risk of increased prices for the remaining STRs and hotel/motel rooms following the adoption of the Proposed Ordinance.[13]

> *Section 17.55.040(C): Historical Use Permit. An owner of a historical short-term rental 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. Notwithstanding anything in Section 17.55 to the contrary, a historical use permit is valid even if the historical short-term rental is not 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.*

Tourist Core Permit

To ensure consistency with LCP and Coastal Act policies encouraging new visitor-serving facilities, the Council should further amend the Proposed Ordinance to include a permit category for STRs within an area of Malibu that offers proximity to both Coastal resources (like beaches) and the heart of the City's commercial and tourist core. This proposed "Tourist Core" overlay would extend on the seaward side of Pacific Coast Highway between the Malibu Pier to the west and Las Flores Canyon Road to the east. A "Tourist Core Permit" would allow non-hosted STRs in primary and non-primary residences, and the rental of any number of units in multi-family buildings. This approach would encourage new visitor-serving accommodations in the City as required by the applicable LCP and Coastal Act policies and consistent with past-Commission precedent.[14]

> *Section 17.55.040(D): Tourist Core Permit. An owner, including the owner of a multifamily residential building, may obtain this permit, which allows short-term rental of residential property, in compliance with this chapter, during the period that the permit is valid, if the permitted location is located on the seaward side of Pacific Coast Highway between the Malibu Pier to the west and Las Flores Canyon Road to the east. Notwithstanding anything in Section 17.55 to the contrary, a tourist core permit is valid even if the property is not the owner's primary residence.*

Definition of Hosting Platform

Airbnb has been collecting and remitting transient occupancy taxes on behalf of owners in Malibu since

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[13] The Commission approved a similar approach in Santa Cruz. There, the Commission approved as submitted an LCP amendment that permitted existing, TOT-paying STRs to continue to operate, but set new limits on future STR permit applications.

[14] The Commission recently advocated in a court filing for the consideration of location when regulating STRs stating: "[Del Mar's] proposed amendment makes no distinction between inland parts of the City and the shoreline areas, and the City's blanket restrictions are overly broad and restrictive. . . . Residences in prime visitor-serving, beach-adjacent areas are not given any priority for use as an STR, which hinders the public's ability to access and recreate in these near shore areas." California Coastal Commission Brief in Opposition to Writ at p. 18, *City of Del Mar v. California Coastal Commission* (Super. Ct. San Diego County, Nov. 15, 2019, No. 37-2018-00039254).

2015 through a voluntary collection agreement. To ensure that all hosting platforms are obligated to collect and remit transient occupancy taxes on behalf of short-term rental owners, we suggest making minor edits to the definition of "Hosting Platform" in Section 2 so that requirement captures a broader segment of hosting platforms, thereby ensuring greater compliance and greater revenue for the city. As written now, platforms could argue that they do not have to comply with the provision at all.

> *Section 2: "Hosting platform" means a natural person, joint venture, joint stock company, partnership, association, club, company corporation, business trust, or organization of any kind who participates in the short-term rental business by ~~collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting~~ facilitating a booking transaction using any medium of facilitation.*

Moreover, traditional hospitality operators like hotels, and professional management companies that operate short-term rentals often already have systems in place to collect and remit local taxes. We have found that these professional hosts often prefer to remit their own taxes, and as such, we ask that the language be amended so that they can operate in accordance with existing business practices. The language we suggest below ensures that the City will receive TOT for all applicable booking transactions, from *either* the hosting platform or these more traditional hospitality operators.

> *Section 17.55.090(A): Hosting platforms shall be responsible for collecting all applicable TOT and remitting the same to the City. The hosting platform shall be considered an agent of the owner for purposes of TOT collections and remittance responsibilities as set forth in Chapter 3.24 of this Code. Should a hosting platform fail to fulfill its responsibilities under this Section, or the hosting platform and the owner enter into an agreement regarding the fulfillment of this subsection (A), the owner shall remain responsible for collection and remittance of the TOT the Hosting platform failed to collect and/or remit to the City.*

Hosting Platform Responsibilities

Lastly, we urge the City to ensure that its hosting platform responsibilities section is in accordance with prior draft Ordinances and Ordinance No. 468 ("Enforcement Ordinance), which all provide that a hosting platform may otherwise comply subject to a compliance agreement with the City. This approach allows for the City to negotiate a compliance framework that is more transparent and proactive with regards to enforcement compared to the existing hosting platform booking transaction prohibition set forth in Section 17.55.090(C).

> *Section 17.55.090(E): A hosting platform operating exclusively on the Internet, which operates in compliance with subsections (A), (B), (C), and (D) above, shall be presumed to be in compliance with this Chapter and shall not be found in violation of Section 17.55.080. If technical issues pose a substantial obstacle to compliance with this Section, a hosting platform may also satisfy these obligations pursuant to a compliance agreement with the City that prevents booking transactions for unpermitted short-term rentals, collects all transient occupancy tax due, and complies with the disclosure requirements of this Section.*

Conclusion

Again, we commend the City's efforts to find an appropriate balance in the Proposed Ordinance. However, without the ability for existing primary and non-primary single-family residences to continue to offer non-hosted rentals, and without encouraging new STRs in the area of the City with close proximity to both the City's beaches and its commercial and tourist core, the proposal remains inconsistent with LCP and Coastal Act policies, and will have significant adverse impacts on future access to the Malibu coast. To address these concerns and the others concerns outlined above, we encourage the Council to make the language changes to the Proposed Ordinance we have proposed in the attached Exhibit A and to

seek the Commission's approval of the same through an LCP amendment.

Sincerely,

John Choi
Public Policy Manager, Airbnb

Attachment J

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION 6

THEODORE P. KRACKE,

Plaintiff and Respondent,

v.

CITY OF SANTA BARBARA,

Defendant and Appellant.

Case No. B300528

Appeal from the Ventura County Superior Court
Case No. 56-2016-00490376-CU-WM-VTA
Hon. Mark S. Borrell, Judge

AMICUS CURIAE BRIEF OF CALIFORNIA COASTAL COMMISSION

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INTRODUCTION

Prior to 2015, the City of Santa Barbara (the City) encouraged short-term vacation rentals (STVRs) to operate along its coast by treating them as permissible residential uses. (1 AA 99-1 AA 107.) After encouraging STVRs for many years, in 2015 the City changed course and began regulating them as "hotels" under its municipal code. The City did so in an effort to reduce the prevalence of STVRs in coastal residential neighborhoods. The City's new regulation of STVRs had the intended result: it effectively banned them along the coast.

The trial court correctly determined that the City's action violated the California Coastal Act. (Pub. Resources Code § 30000, *et seq.*)[1] The Coastal Act governs land use planning along the California coast. It designates the California Coastal Commission (the Commission) as the state coastal planning agency for any and all purposes. (§ 30330.) The Coastal Act also encourages cooperation between local governments and the Commission to govern local land use and development in the coastal zone. (§ 30001.5, subd. (e).)

To effectuate this cooperation, the Act permits local governments to adopt local coastal programs to govern coastal development within their jurisdictions. Once the Commission certifies such a program as consistent with the Coastal Act's statewide policies—as the Commission did for the City's Local Coastal Program here—the Coastal Act delegates to the local government the authority to ensure compliance with the local coastal program.

But the Coastal Act also acts as an ongoing check on this authority. It restricts the local government's exercise of powers not expressly

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[1] All statutory references are to the California Public Resources Code unless otherwise indicated.

delegated to it under the Commission-certified local coastal program. The Act requires local governments to obtain Commission certification of any amendment to these programs before such amendments can take effect. And the Legislature charged the Commission with the ultimate authority under the Coastal Act to ensure that local coastal land use policy is consistent with the Act's statewide policies.

In this case, the trial court ruled that the City's regulation of STVRs violated the Coastal Act. Specifically, the trial court ruled that before the City may regulate STVRs as "hotels" in the coastal zone, it must comply with the Coastal Act by, for example, obtaining Commission certification of a Local Coastal Program amendment that includes regulation of STVRs, or securing a waiver from the Commission's Executive Director to allow for such regulation.

This Court should affirm the trial court's decision because the City's action violated the Coastal Act. The City's Local Coastal Program is silent as to STVRs. However, the City permitted, licensed, and taxed STVRs for many years before suddenly changing course and, beginning in 2015, regulating STVRs as "hotels" under a new interpretation of its municipal code. By regulating STVRs as "hotels," the City effectively amended its program without Commission certification.

This unilateral amendment exceeded the City's delegated authority. The City cannot expand its delegated authority by interpreting its Local Coastal Program in ways that run counter to the Coastal Act. And here, the City's regulation of STVRs conflicts with the Coastal Act by failing to adhere to the Act's public access policies. In particular, the new regulation caused a significant decrease in visitor-serving overnight accommodations within the coastal residential zone, in conflict with Coastal Act policies that prioritize public access and lower cost accommodations. (§§ 30001.5, subd. (c), 30210, and 30213.) If the City wishes to regulate STVRs, and

particularly if it wishes to virtually prohibit them, it is required to submit a Local Coastal Program amendment to the Commission. (§ 30514.) In unilaterally adopting this regulation, the City deprived the Commission of its right to bring its statewide coastal planning authority and perspective to bear on the City's regulation.

The Commission respectfully requests that this Court affirm the trial court ruling. The City cannot effectively ban STVRs without first proposing amendments to its Local Coastal Program and submitting them to the Commission for review and certification, if appropriate.[2] The Commission has worked with many other jurisdictions to craft implementation provisions that permit a reasonable number of STVRs in appropriate locations, while also protecting housing stock, neighborhood character, and other local concerns. The Commission looks forward to working with the City on a similar approach that protects both the City's neighborhoods as well as visitors' ability to obtain reasonably priced overnight accommodations in the City's coastal zone.

FACTUAL AND PROCEDURAL BACKGROUND

The Commission adopts Respondent Theodore Kracke's procedural and factual background, and recites only those additional facts that are necessary and salient to the analysis in this brief.

The City's Local Coastal Program, which governs land use along the City's coast, is silent regarding STVRs. (See Declaration of Erin B. Chalmers (Chalmers Decl.) in support of Motion for Judicial Notice (MJN), Ex. A; Declaration of Norma Nava Franklin (Franklin Decl.) in support of MJN, Exs. C-E.) The Commission thus did not consider regulation of

[2] Contrary to the City's position, the Commission agrees with the trial court that under certain circumstances a local government may properly regulate STVRs along the coast after securing a coastal development permit or a waiver of such a permit.

STVRs when it certified the City's Local Coastal Program in 1986.[3] To date, the City's certified Local Coastal Program neither expressly allows nor prohibits STVRs in the coastal zone.

For many years before 2015, the City allowed and encouraged STVRs to operate along the coast as long as they registered with the City. (1 AA 104.) The City historically treated STVRs as residential activity and collected transient occupancy taxes from STVR operations. (*Ibid*.) However, in 2015, the City for the first time began regulating STVRs as "hotels" under its municipal code and effectively banned them from operating along the coast. (2 AA 112-114; 4 AA 973, 975.) Since the municipal code restricts commercial hotel operation in the coastal zone, the City also began restricting STVRs along the coast by treating them as commercial "hotels." (2 AA 112-114.) The City did not amend its Local Coastal Program to address STVRs when it made the policy choice to so restrict STVRs, nor did it seek Commission certification for any such amendment.

The City's new regulation of STVRs caused a sharp decline in the number of visitor-serving accommodations along its coast. Before the City adopted this regulation, 114 STVRs operated within the City's coastal zone. (1 AA 66; 4 AA 971, 973, 975.) However, by 2018, only 6 STVRs continued to operate. (4 AA 1133.)

Based on these undisputed facts, the trial court determined that the City's regulation caused a sudden unavailability of visitor-serving

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[3] The City argues on appeal that the Commission "agreed through the certified [Local Coastal Program] that STVRs were not a required use in all residential zones and created hotel zones designated HRC 1 and HRC II, where STVRs may operate." (Reply Br. at p. 10, citing 2 AA 232.) But since the Commission did not consider STVR regulation upon certifying the City's Local Coastal Program, it could not have "agreed" that STVRs were not a "required use."

overnight accommodations in the coastal zone. (8 AA 2318.) The trial court ruled that the City's regulation of STVRs, absent Commission review and certification, is inconsistent with the Coastal Act. In so determining, the trial court specifically held that the City's regulation of STVRs constitutes "development" under Public Resources Code section 30106, for which the City did not first obtain a coastal development permit. (8 AA 2324-2325.)

The trial court issued a writ of mandate directing the City to allow STVRs in the coastal zone in the same manner in which it had previously allowed them to operate. (8 AA 2325.) The trial court also directed the City, before regulating STVRs along its coast, to take one of three alternative actions: secure a coastal development permit; adopt and have the Commission certify an amendment to its Local Coastal Program to include regulation of STVRs; or secure a waiver of coastal development permit requirements from the Commission's Executive Director that allows the City to regulate STVRs. (*Ibid.*)

THE COASTAL ACT FRAMEWORK

The Legislature enacted the Coastal Act as a comprehensive scheme to govern land use planning for the entire coastal zone of California. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793.) The Act designates the Commission as the state coastal zone planning and management agency for any and all purposes. (§ 30330.) In this capacity, the Commission promotes and protects the core policies of the Coastal Act, which include "maximizing public access to and along the coast" and mandating "state and local initiatives and cooperation" over land use and development in the coastal zone. (§ 30001.5, subds. (c), (e).) "The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the

Coastal Act." (*Charles A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075.)

Under the Coastal Act, the Commission collaborates with local governments to ensure that local coastal development planning comports with the Act's statewide policies. The Coastal Act requires local governments in the coastal zone to prepare local coastal programs. (§ 30500, subd. (a).) A local coastal program comprises "a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together… implement the provisions and policies of [the Coastal Act] at the local level." (§ 30108.6.) Once prepared, a local government submits its local coastal program to the Commission for review. (§ 30510.) The Commission will certify the program if the program is consistent with the Coastal Act's policies. (§§ 30512, subd. (c), 30513.) Once the Commission certifies a local coastal program, the Coastal Act delegates to the local government the authority to implement and enforce the local coastal program. (§ 30519, subd. (a); *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra,* 55 Cal.4th at p. 794; *Kaczorowski v. Mendocino Cty. Bd. of Supervisors* (2001) 88 Cal.App.4th 564, 569.)

After certification, the Commission may recommend amendments to a local coastal program to accommodate uses of greater than local importance that the certified program does not otherwise permit. (§ 30519, subd. (c); see also § 30519.5, subd. (a).) Local governments may also amend their local coastal programs to modify how they regulate development or to address new issues that have arisen since the original

certification.[4] However, a local government's amendments to its local coastal program have no effect unless the Commission certifies the amendments. (§ 30514, subd. (a).)

A local coastal program therefore does not merely codify local law; it also embodies statewide Coastal Act policies. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, supra,* 55 Cal.4th at p. 794, citing *Charles A. Pratt Construction Co., Inc. v. California Coastal Com., supra,* 162 Cal.App.4th at p. 1075.) When tension arises between the Coastal Act and local policy goals, "a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government." (*Charles A. Pratt Construction Co., Inc. v. California Coastal Com., supra,* 162 Cal.App.4th at p. 1075.) Thus, although local governments determine the contents of local coastal programs, in full consultation with the Commission (§ 30500, subd. (c)), "the Legislature made the Commission, not the [local government], the final word on the interpretation of [an] LCP." (*Charles A. Pratt Construction Co., Inc. v. California Coastal Com., supra*, 162 Cal.App.4th at p. 1075.)

[4] For example, the increasing popularity of online vacation rental platforms like Airbnb have fundamentally altered and increased the use of STVRs along the coast, including within the City of Santa Barbara. The recent rise of STVRs due to online rental platforms was not contemplated when the City initially certified its Local Coastal Program, and is precisely the type of new issue that merits an amendment.

ARGUMENT

I. THE CITY'S REGULATION OF STVRs EXCEEDS THE CITY'S DELEGATED AUTHORITY.

A. The City's regulation of STVRs amounts to a unilateral and thus impermissible amendment of the Local Coastal Program.

The City exceeded the scope of its delegated authority under its Local Coastal Program and the Coastal Act when it unilaterally restricted vacation rentals in the coastal zone. The Coastal Act renders this action of no legal effect.

A local government with a Commission-certified local coastal program must exercise authority delegated to it in a manner consistent with both that program and the Coastal Act's statewide policies that the program embodies. (See *Dunex, Inc. v. City of Oceanside* (2014) 218 Cal.App.4th 1158, 1168 [a city's delegated authority requires enforcement of the Local Coastal Program's policies]; *Charles A. Pratt Construction Co., Inc. v. California Coastal Com., supra,* 162 Cal.App.4th at p. 1075 [coastal development must conform to the policies embodied in the state's Coastal Act].) As a result, when implementing its program, a local government cannot exceed its delegated powers. Rather, when preparing a local coastal program for certification, the local government "can decide to be more restrictive with respect to any parcel of land, *provided such restrictions do not conflict with the [A]ct*." (*Yost v. Thomas* (1984) 36 Cal.3d 561, 573, emphasis added.)

The Coastal Act codifies this principle by prohibiting local governments from amending their certified local coastal programs without Commission approval. Such an amendment is a nullity under the Coastal Act unless the Commission first certifies it. The Act unequivocally states: "A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local

government, but no such amendment shall take effect until it has been certified by the [C]ommission." (§ 30514, subd. (a); accord, *Yost v. Thomas, supra,* 36 Cal.3d at p. 573, n. 9.) The Act, and regulations that the Commission adopted under it, set forth a detailed, open public procedure by which the Commission reviews proposed local coastal program amendments for certification. (§ 30514, subds. (b)-(d); Cal. Code Regs., tit. 14, §§ 13551-13555.)

The Coastal Act broadly defines what constitutes such an "amendment." Under the Act, an "amendment of a certified local coastal program *includes*, *but is not limited to*, *any* action by a local government that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel." (§ 30514, subd. (e), emphasis added.) Thus, though this definition identifies a local action that allows uses not otherwise permitted under the local coastal program as an example of an amendment, the definition's use of the phrases "including, but not limited to" and "any" demonstrates its far broader reach. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1390 ["Nor do we dispute that the phrase 'including, but not limited to' is a phrase of enlargement"]; *Nguyen v. Western Digital Corp*. (2014) 229 Cal.App.4th 1522, 1545 [the use of the word "any" in a statute "'means without limit and no matter what kind,'" citation omitted].)

Here, the City exceeded its delegated authority under the Coastal Act because its new restrictions on STVRs in the coastal zone effectively amended its Local Coastal Program without Commission certification. STVRs are not mentioned anywhere in the City's Local Coastal Program. Most notably, they are mentioned in neither Section 3.2 of the coastal Land Use Plan governing overnight accommodations nor Section 3.1 of that Plan governing public access. (Franklin Decl., Exs. C-D.) Since the City's

Local Coastal Program does not expressly regulate STVRs, the Coastal Act could not have delegated to the City the power to do so when the Commission certified that program. Nor could the Coastal Act have delegated to the City the authority to take an entire type of land use (STVRs) that had previously been widely used in the City and subject it for the first time to regulation under its existing "hotel" ordinance. The Coastal Act required the City to submit these then-proposed new restrictions to the Commission for certification. The City failed to do so.

The City argues, however, that in 2015 it merely began enforcing the Local Coastal Program's existing property restrictions more strictly than it previously had. (Appellant's Br. at p. 42.) This argument ignores the plain terms of the City's Local Coastal Program, which do not address STVRs at all. Since that program does not address STVRs, the program and the Commission's certification of it never delegated to the City authority to regulate STVRs in the coastal zone. The City instead helped itself to that authority unilaterally.

The City also argues that its regulation of STVRs complies with the Coastal Act because the City has engaged in an ongoing "collaborative process" with the Commission to amend its Local Coastal Program. (Appellant's Br. at pp. 26-27.) Engaging in a "collaborative process," however, is no substitute under the Coastal Act for securing the Commission's certification of a local coastal program amendment as section 30514 requires. The City's recent actions tacitly so recognize. Last year, the City sought and obtained from the Commission certification of amendments to its Local Coastal Program that replaced the City's Land Use Plan with a new proposed Plan. (Chalmers Decl., Ex. A). But those

amendments do not include provisions regulating STVRs along the coast.[5] (*Ibid.*) The City cannot unilaterally give itself the power to regulate STVRs after the fact simply by adopting a novel and strained reading of the term "hotel."[6]

Indeed, the City acknowledged as much both before and during this litigation. Before adopting its STVR policy, the City's staff recommended that the City "initiate [a] zoning ordinance amendment to allow home sharing rentals." (2 AA 179.) In the trial court, counsel for the City agreed that the City's regulation of STVRs should occur within the context of a local coastal program amendment. (RT 58:7-12.) On appeal, the City similarly appears to concede that STVRs along the coast are not a use that its Local Coastal Program either contemplates or empowers the City to regulate. As the City's opening brief states, "if anything, the City's earlier tolerance of their use might have called for an LCP amendment." (Appellant's Br. at p. 34.)

The City's STVR policy attempts to regulate—indeed, to virtually prohibit—a high priority, visitor-serving use of coastal land. Although the Local Coastal Program does not expressly discuss or regulate STVRs, the

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[5] The City admits on its website that "the updated Coastal [Land Use Plan] does not include changes to the Zoning Ordinance and all projects in the Coastal Zone will continue to be regulated by Title 28 of the Coastal Zoning Ordinance." (Franklin Decl, Ex. E, p. 3.) The City does not include STVR regulations in its Coastal Zoning Ordinance.

[6] The City regulating the rental of a private residence as a "hotel" is inconsistent with the City's own definition of "residential unit" in its Municipal Code. The Municipal Code defines "residential unit" as "a building or portion thereof designed or occupied for residential purposes, containing not more than one kitchen per residential unit, *but not including hotels or boarding houses*." (Santa Barbara Municipal Code, § 28.04.020, emphasis added). Renting a private residence for a short period of time does not logically change it to a "hotel," since that private residence remains "designed or occupied for residential purposes."

City has long allowed and condoned them in residential areas. If the City wishes to modify this approach, it may not do so by unilaterally adopting a policy to prohibit STVRs in residential areas. That the City adopted the policy through a City Council action that purported to interpret and set enforcement priorities for the Local Coastal Program, rather than expressly amend it, does not justify the City's action. Rather, Section 30514's plain language required the City to submit a local coastal program amendment that includes regulation of STVRs to the Commission for certification. By failing to do so, the City deprived the Commission of its statutory right to bring its statewide perspective to bear on the proposed amendment. (See *Charles A. Pratt Construction Co., Inc. v. California Coastal Com., supra,* 162 Cal.App.4th at p. 1075.) Absent Commission certification, the City's regulation of STVRs exceeds the scope of authority granted to the City under its certified Local Coastal Program. The City's regulation of STVRs is therefore of no effect. (§ 30514, subd. (a).) The Court should so hold.

Such a ruling would not improperly inject the Commission into local jurisdictions' local coastal program enforcement decisions, nor would it require the City to obtain a permit before taking general enforcement actions. (See Appellant's Br. at p. 10 [expressing concern that a City prosecutor would need to obtain a coastal development permit before filing an action to enforce the law].) Rather, it would simply acknowledge that, when an LCP is silent about the regulation of a high-priority coastal land use such as STVRs, the Coastal Act does not allow local jurisdictions to enact new policies to regulate or ban such uses without going through the local coastal program amendment process.

B. The City's novel interpretation of its municipal code and Local Coastal Program is inconsistent with the Coastal Act.

The City argues that it must have authority to interpret its own municipal code. But local government interpretation must always be reasonable and cannot be wholly arbitrary, as the City's interpretation of "hotel" is here. (See fn. 6, *supra*.) Where there is a certified local coastal program, the relevant provisions of the Coastal Act guide the interpretation of that program. The City's interpretation of "hotel" and its policies and regulations pertaining to STVRs run counter to the Coastal Act and must be rejected.

1. The City's regulation of STVRs conflicts with the Coastal Act's statewide policies of maximizing public access to and along the coast.

The City's new interpretation of its municipal code, which effected a unilateral delegation of authority to itself to regulate STVRs, presents no mere local concern. "Underlying the Act's goals are the Legislature's findings that the… coastal zone is a distinct and valuable natural resource of vital and enduring interest *to all people*." (*San Diego Unified Port Dist. v. California Coastal Com.* (2018) 27 Cal.App.5th 1111, 1129-1130, citing *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, *supra*, 55 Cal.4th at p. 793, emphasis added.) A core principle of the Coastal Act is to maximize public access and recreational opportunities within coastal areas statewide. (§§ 30001.5, subd. (c) and 30210.) The Coastal Act grants "maximum access" along the coast for "all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." (§ 30210.) The Legislature has directed that the Act "be liberally construed to accomplish its purpose and objectives." (*Ibid.*, citing § 30009.)

The Coastal Act also specifically protects and encourages lower cost visitor and recreational facilities along the coast, including overnight accommodations. (§ 30213; *San Diego Unified Port Dist. v. California Coastal Com., supra,* 27 Cal.App.5th at pp. 1141-1142.) The Legislature has determined that "[a] lack of affordable accommodations remains a barrier to coastal access." (§ 31411.) To help ensure that coastal areas have sufficient overnight accommodations for visitors, the Commission is tasked with ensuring that local plans protect and, where feasible, provide such accommodations. (§§ 30210, 30213; *San Diego Unified Port Dist. v. California Coastal Com., supra,* 27 Cal.App.5th at pp. 1141-1142.) As the trial court explained, the Commission has previously issued guidance to local governments that explains how 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. (3 AA 594-596.) The Commission recognizes that the proliferation of STVRs and online booking platforms can affect neighborhood character and housing stock. However, it has successfully worked with numerous local jurisdictions to craft reasonable local coastal program policies that permit STVRs while appropriately regulating them to prevent adverse impacts. (3 AA 595-596; see Chalmers Decl., Ex. B.)

The City's strict regulation of STVRs raises serious concerns regarding consistency with the Coastal Act's policies of maximizing statewide public access to the coast. The City's newly adopted regulation caused a sharp decline of visitor serving accommodations in the coastal zone. Only 6 of 114 then-existing vacation rentals continued to operate in the coastal zone after the City re-defined STVRs as "hotels" under its municipal code. Instead of enhancing

public access, the City's regulation of STVRs objectively hinders visitor access to the coast.[7]

The City nevertheless argues that its restriction of coastal STVRs is somehow "consistent" with the Coastal Act and its Local Coastal Program. (Appellant's Br. at p. 41.) According to the City, since the program's original zoning ordinance restricts hotels along the coast, and since the City's new policy treats STVRs as "hotels" under the municipal code, the City's vacation rental regulation is necessarily consistent with its certified Local Coastal Program. (Appellant's Br. at p. 23; Reply Br. at pp. 19-20.)

This Court previously considered and rejected an identical argument in *Greenfield v. Mandalay Shores Community Assn.* (2018) 21 Cal.App.5th 896. In *Greenfield*, the trial court refused to issue a preliminary injunction against a homeowners' association rule prohibiting its members from renting out their residences in the beachside community of Oxnard Shores for fewer than 30 days. (*Id.* at p. 902.) Defending this ban on appeal, the association advanced a similar argument as the City does here. Specifically, the association argued that STVRs are akin to commercial bed and breakfast inns, and should be restricted from operating in the coastal residential zone. (*Id*. at p. 901, n. 3.)

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[7] It may be that the Coastal Act permits some jurisdictions to restrict STVRs significantly if there are other ample local overnight accommodation options, including lower-cost accommodations. (3 AA 594-596; § 30213.) However, the extent to which STVRs form a necessary part of a jurisdiction's suite of coastal accommodations is a case-specific determination that must be made based on the evidence. This determination must occur through the local coastal program amendment certification process, rather than through unilateral action by the City without first considering the action's effect on coastal access and regional needs.

In reversing, this Court rejected the association's argument based on the historical treatment of STVRs as residential activity. The City of Oxnard, like the City of Santa Barbara in this case, had historically treated STVRs as residential activity and collected transient occupancy taxes from private vacation rentals. (*Id*. at p. 899.)[8] In addition, the City of Oxnard's Local Coastal Program, like the City of Santa Barbara's, did not address STVRs at all. Indeed, neither the City of Oxnard nor the Commission had ever interpreted Oxnard's Local Coastal Program to regulate or ban STVRs. (*Id*. at p. 901, n. 3.) Relying on this historical treatment of STVRs as residential rather than commercial property, this Court determined that vacation rentals were not the type of commercial activity regulated in Oxnard's Local Coastal Program, and the homeowners' association in turn lacked the power to do so. (*Ibid.*) Instead, this Court held that "[t]he decision to ban or regulate [STVRs along the coast] should be made by the City *and the Coastal Commission*." (*Id.* at pp. 901-902, emphasis added.)

In so holding, this Court reasoned that an STVR ban is inconsistent with the Coastal Act's public access policies. (*Id.* at p. 901.) As in this case, STVRs were common in Oxnard Shores prior to the association's ban. (*Ibid.*) The ban ultimately affected "1,400 units and cut across a wide swath of beach properties that (had) historically been used as short term rentals." (*Id.* at p. 902.)

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[8] In a January 10, 2017 letter to the City, the Commission stressed that STVRs are a type of residential activity: "Due to their function as a high priority visitor-serving use, the Coastal Commission has generally interpreted local zoning ordinances in a broad fashion and found that short term rentals are a form of residential use, permitted by right, in any residentially zoned area unless such uses are specifically prohibited or otherwise restricted." (3 AA 599)

The STVR ban in *Greenfield*, like the STVR ban in this case, therefore reduced public access to the coast. (*Id.* at p. 901.)

The Court should reach the same conclusion in this case. The City unilaterally precluded approximately 108 vacation rentals from operating in the coastal zone. The City's novel interpretation and regulation based on that interpretation reduced the inventory of overnight coastal accommodations and, consequently, reduced statewide public access to the coast. And the City did so without affording the Commission the opportunity to review and certify the City's regulation to ensure that it considers the "time, place, and manner of public access." (*San Diego Unified Port Dist. v. California Coastal Com., supra,* 27 Cal.App.5th at p. 1131, citing § 30214, subd. (a).) The City violated the Coastal Act, and its regulation of STVRs cannot stand.

2. The City's regulation of STVRs is inconsistent with the Coastal Act's policy of encouraging state and local cooperation over coastal planning.

The City does not dispute that it failed to consult with the Commission before adopting its novel interpretation and effectively banning vacation rentals along the coast. Instead, the City relies on its "police power" as a justification for not doing so. (Appellant's Br. at p. 36.) The City's go-it-alone approach violates the Coastal Act.

The Act expressly requires the Commission to "cooperate with and assist local governments" in carrying out the Act's policies and likewise requires localities to cooperate with the Commission in exercising its authority. (§ 30336.) Granted, the Coastal Act does not supplant localities' powers to regulate land to abate nuisances or preserve coastal resources. (§ 30005, subds. (a), (b).) But local

governments must do so in ways "not in conflict with th[e] [A]ct" and may not invoke these powers as a pretext for circumventing their local coastal programs' and the Coastal Act's requirements. (*Ibid.*; *City of Dana Point v. California Coastal Com.* (2013) 217 Cal.App.4th 170, 194, citing § 30005, subd. (b).)

The City's purported exercise of its interpretative and police powers violates these principles. The City claims that "the increased popularity of internet-based booking services began turning residential neighborhoods into hotel zones." (Appellant's Br. at p. 11.) According to the City, "the proliferation of STVRs has [increased] housing costs, reduc[ed] housing stock, and chang[ed] the character of residential zones." (Appellant's Br. at pp. 25-26, citing 1 AA 100.) But in one-sidedly invoking these concerns, the City failed to consider competing statewide interests such as "the right of individual property owners [and] the public's constitutional right of access" to the coast. (§ 30214, subd. (b).)

Rather than representing a mere procedural formality, local government consultation with the Commission on changes to local coastal programs ensures that these statewide concerns do not go ignored. The Commission's past experience working with local governments to craft and implement vacation rental policies demonstrates that there are ways to balance local concerns with Coastal Act mandates. The Commission has historically supported local vacation rental regulations that include the following:

1. A limit on the total number of vacation rentals allowed within a specific area;
2. A limit on the types of housing that can be used as a vacation rental (i.e., prohibiting vacation rental in affordable housing contexts);
3. A limit on maximum vacation rental occupancies;

4. A time limit on the use of residential units as vacation rentals within a given time period;
5. Requiring an on-site or nearby 24-hour management response for vacation rentals;
6. Signage requirements, including posting 24-hour contact information and posting requirements and restrictions within units;
7. Provisions in rental agreements that include operational requirements and consequences for vacation rental violations;
8. Payment of transient occupancy taxes;
9. Enforcement protocols, including requirements for responding to complaints;
10. Revoking vacation rental permits that fail to comply with local vacation rental regulations.

(3 AA 595.)

In light of this balanced approach to STVRs that the Commission has developed in tandem with localities, the Commission repeatedly advised the City that a unilateral, categorical restriction of STVRs is not enforceable in the coastal zone. Instead, the Commission advised the City it should propose any regulation of STVRs to the Commission as a formal amendment to its Local Coastal Program. (1 AA 68; 3 AA 598-599.) The City circumvented this process.

The City dismisses this obligation by arguing that the position the Commission articulated to it on STVRs is "effectively dicta" and "not binding in any way on the City." (Reply Br. at p. 23.) Though the Commission letters to the City were not binding in and of themselves, they articulated substantive and procedural Coastal Act obligations that are binding and that the City was not free to simply dismiss. The City's Local Coastal Program is not exclusively a matter of local law. (*Pacific*

Palisades Bowl Mobile Home Estates, LLC v. City of Los Angeles, *supra*, 55 Cal.4th at p. 794, citing *Charles A. Pratt Construction Co., Inc. v. California Coastal Com., supra,* 162 Cal.App.4th at p. 1075.) Although the Commission has no authority to make changes to the content of a certified local program (*Sec. Nat'l Guar., Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 421-422), "the Legislature made the Commission, not the County, the final word on the interpretation of the LCP." (*Charles A. Pratt Construction Co., Inc. v. California Coastal Com., supra*, at p. 1075; see also *San Diego Unified Port Dist. v. California Coastal Com., supra,* 27 Cal.App.5th at p. 1140 ["it ultimately remains the Commission's primary role and responsibility as the statewide supervisory agency to implement the Act and ensure a [local] plan furthers the Act's policies" in relation to overnight accommodations].) The City's position that it is free to interpret its Local Coastal Program and adopt new program policies without Commission involvement is incorrect as a matter of law.[9]

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[9] The City also incorrectly relies on *Conway v City of Imperial Beach* (1997) 52 Cal.App.4th 78 to argue that it need not obtain Commission certification before imposing more restrictive regulations, so long as the regulations do not change allowed land uses. (Appellant's Br. at p. 42.) *Conway* is inapplicable. *Conway* involved an urgency interim ordinance that did not change a permitted land use contemplated by the local coastal program. After harmonizing Government Code section 65858 with Public Resources Code section 30514, the court ruled that prior Commission review and approval of the emergency interim ordinance was not required because the ordinance did not regulate "a (land) use other than that designated in the LCP as a permitted use." (*Conway v. City of Imperial Beach*, *supra*, 52 Cal.App.4th at p. 90.) The court also determined that the emergency interim ordinance in *Conway* did not impede public access or otherwise harm coastal resources. (*Id*. at pp. 89-90.) By contrast here, the City's extraordinary regulation of STVRs as "hotels" *does* regulate a land use not contemplated by the Local Coastal Program and *does* impede public access to the coast.

The Coastal Act required the City to work with the Commission to craft reasonable and enforceable Local Coastal Program regulations that balance legitimate local concerns with the goal of maximizing statewide public access to the coast. By cutting the Commission out of this process and unilaterally adopting its unsupported interpretation of "hotel" and blanket regulation of STVRs, the City violated the Coastal Act.

II. THE CITY CANNOT LITIGATE ITS NUISANCE ABATEMENT CLAIM IN THIS FORUM.

Even if the City could rationalize its regulation of STVRs as a nuisance-abatement measure (and, as discussed above, it cannot), the Court should not entertain this argument. The City never raised this argument in the trial court and cannot do so for the first time in this Court. (*Nellie Gail Ranch Owners Ass'n v. McMullini* (2016) 4 Cal.App.5th 982, 997.)

While California law allows exceptions to this rule where the newly raised argument asserts pure questions of law on undisputed facts, that exception does not apply where, as here, the argument presents controverted factual questions or mixed questions of law and fact. (*Krechuniak v. Noorzoy* (2017) 11 Cal.App.5th 713, 725; accord, *Findleton v. Coyote Valley Band of Pomo Indians* (2018) 27 Cal.App.5th 565, 569.)

The City's nuisance abatement argument here involves both. Whether a local nuisance abatement measure violates the Coastal Act requires a court to determine whether the measure (1) is directed at a "true nuisance;" (2) is "narrowly targeted at abating the nuisance;" (3) is "undertaken in good faith;" and (4) is "not as a pretext for avoiding local coastal program obligations under the Coastal Act." (*City of Dana Point v. California Coastal Com., supra,* 217 Cal.App.4th at p. 199.) This inquiry involves a factual inquiry that was not developed at trial. Since the City never raised this argument below, the Court should decline to consider it for the first time now.

CONCLUSION

For the reasons discussed above, the Commission requests that this Court affirm the trial court's decision. The City must present proposed amendments to its Local Coastal Program to the Commission for review and certification, before it can effectively ban STVRs along the coast.

Dated: May 21, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Amicus Curiae Brief of California Coastal Commission uses a 13-point Times New Roman font and contains 6,174 words.

Dated: May 21, 2020

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DECLARATION OF ELECTRONIC SERVICE

Case Name: Kracke v. City of Santa Barbara
Case No.: B300528

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On May 21, 2020, I electronically served the attached AMICUS CURIAE OF CALIFORNIA COASTAL COMMISSION **by transmitting a true copy via this Court's TrueFiling system:**

PLEASE SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 21, 2020, at Los Angeles, California.

Andrew Vogel	***/s/* Andrew Vogel**
Declarant	**Signature**

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B300528
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STATE OF CALIFORNIA California Court of Appeal, Second Appellate District	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, Second Appellate District

Case Name: **Kracke v. City of Santa Barbara**
Case Number: **B300528**
Lower Court Case Number: **56-2016-00490376-CU-WM-VTA**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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MOTION - MOTION (FEE PREVIOUSLY PAID)	Amicus Curiae California Coastal Commission's Motion Requesting Judicial Notice; Memo. of P&A
DECLARATION - DECLARATION	Declaration of Erin Chalmers In Support of Motion for Judicial Notice
DECLARATION - DECLARATION	Declaration of Norma Nava Franklin In Support of Motion for Judicial Notice
MISCELLANEOUS - ADDITIONAL DOCUMENTS	Proposed Order Granting Motion for Judicial Notice

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/21/2020

Date

/s/Andrew Vogel

Signature

Vogel, Andrew (187312)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

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Attachment K

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
301 E. Ocean Blvd, Suite 300
Long Beach, CA 90802-4302
(562) 590-5071

W11a

DATE: September 18, 2020

TO: Commissioners and Interested Persons

FROM: Karl Schwing, Deputy Director
Amber Dobson, District Manager
Zach Rehm, District Supervisor
Marlene Alvarado, Coastal Program Analyst

SUBJECT: Major Amendment Request No. LCP-5-LGB-19-0074-1 (Short Term Lodgings) to the City of Laguna Beach Certified Local Coastal Program, for Public Hearing and Commission Action on October 7, 2020.

SUMMARY OF LCP AMENDMENT REQUEST NO. LCP-5-LGB-19-0074-1

The City of Laguna Beach (City) requests to amend the Implementation Plan (IP) of the certified Local Coastal Program (LCP) to implement new regulations and standards for the operation of short-term lodgings (STL), or vacation rentals, and limit where new STLs would be allowed in the City. STLs generally refer to the short-term rental (30 days or less) of private dwelling units or a room in a home by tourists and other travelers visiting the area.

Presently, the City's LCP includes a Commission-certified STL Ordinance (2008) that permits and provides for regulation of STLs in certain residential zones (Residential Low Density R-1, Residential Medium Density R-2, Residential High Density R-3, and Village Community VC) and commercial districts (Local Business Professional LBP, Commercial Neighborhood C-N, Local Business C-1, Commercial Hotel-Motel CH-M, and South Laguna Village Commercial SLV), which includes requirements for establishing and operating an STL. The proposed LCP amendment would modify various chapters of Title 25 (Zoning) of the City's Municipal Code related to the regulation and standards for the operation of STLs (Chapters 25.23 (Short-Term Lodging), 25.10 (R-1 Residential Low Density Zone), 25.12 (R-2 Residential Medium Density Zone), 25.14 (R-3 Residential High Density Zone), and 25.43 (Village Community Zone)).

Changes proposed to Title 25 (zoning code) are reflected in City Council Ordinance No. 1635 (**Exhibit 4**) and were submitted pursuant to City Council Resolution No. 19.030 (**Exhibit 3**). No changes are proposed to the Land Use Plan (LUP) portion of the certified LCP.

Changes proposed to Chapters 25.23, 25.10, 25.12, 25.14, and 25.43 as they relate to STL units (Ordinance No. 1635) include: the application of an **existing nonconforming status** designation to all existing permitted STL units that are currently operational, which

may continue to operate within residential zoning districts; prohibition of **new** STL units (including homestays, or owner-occupied) in residential zoning districts; and regulation of existing and new STL units in zoning districts where they are currently allowed (LBP, C-N, C-1, CH-M, SLV) and in new zoning districts where they will now be allowed (Residential Serving CBD-1, Downtown Commercial CBD-2, Central Bluffs CBD-CB, Office CBD-O and Visitor Commercial Districts CBD-V (or CBD-VCD as termed by the City).[1] Moreover, the proposed LCP amendment would: supplement the existing regulations applicable to STLs by adding new language to clearly define STLs, and new registry requirements and operational standards, including, but not limited to, maximum occupancy and parking requirements; afford a mechanism for neighbors to report problems; and establish provisions for the imposition of fines and penalties for violation of the regulations. Home sharing, or owner-occupied vacation rentals, would be regulated in the same way as traditional STLs (non-owner occupied). Existing permitted STLs would be allowed to continue in perpetuity, regardless of the zone in which they are located. Moreover, the proposed amendment would allow **existing nonconforming** residential units (as to development standards, parking, and density) located in the allowable commercial zoning districts to be converted into STLs, with the exception of those restricted by covenant or similar instrument for the purpose of providing affordable housing, senior housing, or housing for the disabled.

SUMMARY OF STAFF RECOMMENDATION

Demand for STLs is especially high in this City because of its proximity to the coast and because of its historical reputation as a popular coastal-resort community. Although there is a history of vacation rentals in Laguna Beach, since online platforms have changed the dynamics of short term lodging, the City has more recently raised issues with the presence of STL rentals causing problems (e.g. noise, disorderly conduct, traffic congestion, excessive trash, etc.) that could negatively impact residents and communities, reduce the long-term rental housing stock, reduce the lower-cost hotel/motel stock, and unduly burden City services. The City has indicated that the intent of the proposed LCP amendment is to limit these conflicts by prohibiting any new STL units in residential zoning districts (with an exception for *existing* legally permitted units operating in residential zones), and by imposing regulation of existing and new STL units in commercial zoning districts where they are currently allowed and in new commercial districts where they are not currently allowed.

STLs provide a significant supplement for visitor accommodations promoting public access and visitor-serving opportunities to coastal communities. Depending on site-specific circumstances, STLs, including home shares,[2] can sometimes provide a lower cost option than a traditional hotel. The certified LUP contains policy language that protects and

[1] The listed commercial zoning districts are not all of the commercial zoning districts that exist in Laguna Beach.
[2] The proposed LCP amendment would define “Home sharing” as “a rental in a residential unit for 30 consecutive days or less during which the host lives on-site for the entirety of the visitor's stay.”[2]

prioritizes lower-cost visitor and recreational facilities and requires that public coastal access be maximized. The Commission has found that visitor-serving overnight accommodation uses, including STL units, help maximize the opportunities provided for all the public to access the coast. These units can increase public coastal access by providing a wider selection of overnight accommodations in the Coastal Zone to groups and families that might not otherwise be able to afford a more expensive traditional option (i.e. hotels), and by including more units in areas where residential communities directly flank the shoreline. At the same time, the Commission has recognized legitimate community concerns over potential adverse impacts associated with vacation rentals, with respect to housing stock and affordability, community character, noise, and traffic impacts.

In the Commission's past actions, including with respect to the Local Coastal Programs of the County of Ventura (LCP-4-VNT-18-0058-1), City of Pismo Beach (LCP-3-PSB-18-0051-1), County of Santa Cruz (3-SCO-18-0032-2-Part B), City of Del Mar (LCP-6-DMR-17-0083-3), and County of Santa Barbara (LCP-4-STB-17-0086-3), and in order to be consistent with Chapter 3 of the Coastal Act, local jurisdictions in the Coastal Zone that have concerns about the impacts of STLs have been required to provide a means and a framework to appropriately regulate the establishment and operation of STLs, rather than overly restrict this use or otherwise significantly diminish its visitor-serving utility. The Commission has approved a number of LCP amendments regulating STLs in the Coastal Zone. Each of these LCP amendment cases presented its own set of unique issues based on local circumstances but, as a general rule, the approved LCP amendments generally provided for standards for continued STL operations in private residential dwellings, rather than blanket bans of STLs.

In this case, although the proposed amendment would reduce the total area where STLs are allowed and the potential number of lots for which a STL could be permitted by limiting STLs in all residentially zoned areas, the City of Laguna Beach offers more traditional overnight accommodations (i.e. hotel and motel units) than the other coastal communities discussed. The City has estimated there are approximately 1,305 existing hotel/motel lodging units within the City's coastal zone. The City of Laguna Beach provides an ample supply of visitor serving overnight accommodations based on its size and relative to other coastal cities. The City also has a history of allowing vacation rentals, and states through the proposed LCP Amendment that vacation rentals will continue where previously authorized by permit and in the permitted commercial areas, but where further proliferation of vacation rentals has the potential to adversely impact community character or other coastal resources, specific restrictions on STLs in specific areas may be appropriate.

In 2017, the City of Laguna Beach estimated that there were approximately 383 existing STL rentals citywide, including unpermitted STL units. The proposed LCP amendment would grandfather in (authorize as permitted uses) 117 existing legally operating STLs. Any STL that currently operates without a permit would not be grandfathered (authorized) through the LCP Amendment, and the proposed regulations and restrictions would apply. In addition, unlike the City's 2016 LCP amendment request, the proposed amendment would add a provision to the LCP to relax the parking requirements for the existing

residential units that are located in a permitted commercial district and are therefore legally non-conforming to encourage STLs in the mixed-use areas of the permitted commercial districts. The City estimates that approximately 723 existing residential units in the allowable commercial districts (not including existing units reserved as senior and disability housing) could accommodate STLs without the need for any future development because, as proposed today, the LCP amendment would allow for the conversion of these units into STLs, regardless if they are nonconforming to development standards, density, or parking.

Therefore, as proposed, the amendment is not a blanket ban of STLs or an "all or none" proposition. However, Commission staff is recommending **denial** of the LCP Amendment as submitted because the amendment, as proposed, could still significantly restrict the potential for alternate affordable (low- to moderate- cost)[3] overnight lodging accommodations for all coastal visitors and limit public access, and would not be adequate to carry out the provisions of the certified Land Use Plan (LUP).

On August 13, 2020, the Coastal Commission conducted a public hearing to consider this LCP amendment, but the Commission continued the public hearing. The Commission directed the City and Commission staff to consider additional provisions, including a home sharing program to promote and encourage more affordable visitor-serving accommodations, and regulations to provide some protection to the City's long-term rental housing stock in the mixed-use districts. The suggested modifications proposed by the City in a memorandum to Commission staff dated September 16, 2020 (**Exhibit 6**) and recommended in this report are the result of additional coordination on the STL proposal between Commission staff and City staff.

A few suggested modifications are necessary to ensure the proposed amendment provides an appropriate balance to continue to accommodate STLs in a manner that would not contribute to a loss of lower-cost overnight accommodations or affordable housing stock, unduly restrict the rental of residential units to visitors, or diminish the public's ability to access and recreate on the coast.

If modified as recommended, the LCP amendment would allow for a total of 465 STL units (300 non-home sharing units and 165 home share units) citywide. The 465 STLs would exceed the demand for STLs which was estimated by the City as almost 400 units in 2017, while allowing for gradual increase as more units are either developed or converted. No more than 20 percent of units within an existing or proposed multi-unit building would be allowed to operate as STLs (no more than one unit in buildings with five or fewer units). Therefore, the proposed amendment would continue to provide enough STLs to accommodate visitor demand for this important type of coastal accommodation consistent with the LUP, without converting most of the City's rental housing stock to STLs.

The 165 home share units would need to be occupied by the owner of the unit or a tenant, who could host visitors in a portion of the unit. These units would remain as part of the

[3] The Land Use Element (LUE) of the certified LUP for the City of Laguna Beach defines 'affordable overnight accommodations' as "overnight visitor facilities – including, but not limited to hotels, motels, campground, recreational vehicle parks and hostels – that offer low to moderate cost accommodation rates."

City's rental housing stock because these units would still be occupied by the owner or a tenant. They would also serve coastal visitors seeking a different type of accommodation than a traditional hotel or "whole house" rental. Home shares tend to be more affordable than hotels or other STL options because the space is shared and may be smaller (e.g. one room in a dwelling with a shared kitchen). In order to encourage these types of overnight accommodations, which will serve a segment of coastal visitors seeking more affordable options, the City would waive permit fees when they are registered, although TOT tax may still be applied consistent with City regulations outside of the policies of the LCP.

In addition, the suggested modifications would include a requirement that the City report to the Coastal Commission in three years to allow for reevaluation of the proposed STL program. If the report identifies evidence that STL units are contributing to the loss of lower-cost hotel/motel rooms or affordable housing, the suggested provisions require that the City propose and request an LCP amendment to the STL ordinance and/or other provisions of the LCP to address the identified trend.

Therefore, Staff is recommending that the Commission, after public hearing:

> **Deny** the amendment request to the Implementation Plan **as submitted.**
>
> **Approve** the amendment request to the Implementation Plan **if modified as recommended.**

The proposed amendment to the City's certified IP, if modified as recommended, will be in conformance with and adequate to carry out the public access and recreation policies of the certified Land Use Plan. The City of Laguna Beach is in agreement with the suggested modifications. **The motions to accomplish this are found on pages 9-10.**

DEADLINE FOR COMMISSION ACTION: Under the Permit Streamlining Act, the Commission was required to act on this LCP amendment request on or before August 30, 2020, one year after the application was filed and deemed complete. However, on April 16, 2020, the Governor of the State of California issued Executive Order N-52-20 tolling the time frame for action in the Permit Streamlining Act for 60 days. Accordingly, the Commission must act on this LCP amendment request on or before October 29, 2020.

ADDITIONAL INFORMATION
Copies of the staff report are available on the Commission's website at www.coastal.ca.gov. For additional information, contact Marlene Alvarado in the South Coast District Office of the Coastal Commission at marlene.alvarado@coastal.ca.gov.

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EXHIBITS

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The City's Land Use Plan ("LUP") was certified with suggested modifications on June 11, 1985, and effectively certified on March 13, 1986. The City's LUP is comprised of a variety of planning documents including the Land Use Element (LUE), Open Space/Conservation Element, Technical Appendix, and Fuel Modification Guidelines (of the Safety General Element of the City's General Plan as adopted by Resolution 89.104). The Coastal Land Use Element was updated and replaced in its entirety via LCPA 1-10 in 2012.

The Implementation Plan for the City was certified in 1993, with the City assuming coastal development permit issuing authority at that time. The Implementation Plan (IP) of the City of Laguna Beach certified Local Coastal Program (LCP) is comprised of more than 10 documents, including Title 25 of the City's Municipal Code, which is the City's Zoning Code. The Open Space/Conservation Element and Title 25 have been amended a number of times since original certification.

The standard of review for the proposed amendment to the IP, pursuant to Sections 30513 and 30514 (regarding amendments) of the Coastal Act, is whether the IP would be in conformance with, and adequate to carry out, the provisions of the LUP portion of the City of Laguna Beach's certified LCP.

The standard of review of the IP amendment request is the certified language of the LUP, which Commission staff has referenced in development of the recommended findings below.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states: "During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program, which has not been subjected to public hearings within four years of such submission." The City has solicited broad public participation in the development of the proposed STL regulations. The City held 12 meetings related to the regulation of STLs between 2015 and 2019, and the proposed regulations were revised throughout the local process and have been revised again in the time since they were previously reviewed by the Coastal Commission.

Ordinance No. 1617: The proposed changes under Ordinance No. 1617 affected Chapters 25.23, 25.10, 25.12, 25.14, and 25.43. These changes were the subject of eight (8) related City Council public hearings: May 19, 2015, June 15, 2015, August 18, 2015, November 17, 2015, April 12, 2016, August 9, 2016, August 30, 2016, and September 27, 2016; and one (1) Planning Commission public hearing: March 16, 2016. In addition, a City Council Subcommittee held two public meetings on June 21, 2016 and July 14, 2016. Because the ordinance is of citywide effect, a 1/8th page notice was published in the local

newspaper. Public testimony at the hearings included concerns regarding the prohibition of new STL units in residential zoning districts and the regulation of existing and new STL units in the allowable commercial zoning districts.

On October 12, 2016, the City of Laguna Beach Community Development Department submitted to the Commission's South Coast District office a request to amend the Implementation Plan of the City of Laguna Beach certified LCP, which included City Council Resolution No. 16.076 and City Council Ordinance No. 1617. This requested amendment was assigned LCP No. 1-16 (LCP-5-LGB-16-0055-1).

On December 14, 2017, the Coastal Commission, after a public hearing, approved with modifications LCP Major Amendment No. 1-16 (Short-Term Lodgings). However, the City did not accept the suggested modifications within six months of the Commission's action, and, therefore, LCP Amendment No. 1-16 was never certified.

Ordinance 1635: Ordinance No. 1635 is similar to the City's previous ordinance (Ordinance No. 1617) with the exception of new language to address the following:

1) Offer protection of affordable housing, senior housing, or housing for disabled people from being converted into STLs.
2) Allow existing residential units in most commercial districts that are currently non-conforming to any density or development standard within its zoning district to be permitted to convert to STLs subject to the securing of an administrative use permit or conditional use permit.
3) Allow existing residential units in most commercial districts with nonconforming parking to be permitted to convert to STLs, provided the same number of nonconforming off-street parking spaces continues to be provided.
4) Require that newly constructed STLs provide the minimum amount of off-street parking spaces as set forth in Section 25.52.012(G).
5) Require hosting platforms to disclose to the City STL rental listings, names of persons responsible for each listing, the address of each listing, the length of stay for each listing, and price paid for each stay.

The City's first public reading of this proposed (revised) Ordinance No. 1635 was on April 23, 2019. A subsequent public hearing was conducted on June 4, 2019. Because this ordinance is also of citywide effect, a notice was published in the local newspaper. Public testimony at the hearings included both opposition to and support for the prohibition of new STL units in residential zoning districts.

On August 13, 2020, the Coastal Commission conducted a public hearing to consider LCP Major Amendment No. LCP-5-LGB-19-0074-1 (Short-Term Lodgings), but the Commission continued the item. The public hearing for this amendment has been continued to the Commission's October 2020 meeting.

C. Procedural Requirements

If the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary. City staff has indicated that the ordinance will only become final after certification by the Commission, but pursuant to Section 13544(b)(2) of Title 14 of the California Code of Regulations, no further formal action is required. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCP amendment is not effective, pursuant to Section 13542(f). Should the Commission deny the LCP Amendment, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City's acceptance is consistent with the Commission's action. In that scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCP Amendment will become final at a subsequent Commission meeting if the Commission concurs with the Executive Director's Determination that the City's action in accepting the suggested modifications approved by the Commission for LCP Amendment No. LCP-5-LGB-19-0074-1 is legally adequate. If the City does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective within the coastal zone.

II. MOTIONS AND RESOLUTIONS

A. Denial of the IP Amendment as Submitted

MOTION I:

> I move that the Commission reject the Implementation Plan Amendment No. LCP-5-LGB-19-0074-1 for the City of Laguna Beach as submitted.

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION I:

> The Commission hereby denies certification of the Amendment to the Implementation Plan submitted for the City of Laguna Beach certified LCP and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan as submitted does not conform with and is not adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.

B. Approval of the IP Amendment if Modified as Suggested

MOTION II:

> I move that the Commission certify the Implementation Plan Amendment No. LCP-5-LGB-19-0074-1 for the City of Laguna Beach if it is modified as suggested in the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the IP Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the Commissioners present.

RESOLUTION II:

> The Commission hereby certifies the Amendment to the Implementation Plan No. LCP-5-LGB-19-0074-1 for the City of Laguna Beach certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with the suggested modifications will be in conformance with and adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

Certification of the LCP Amendment is subject to the following modifications. Text added to the City's proposed zoning code by the suggested modifications is **bold and double-underlined**, and text suggested to be deleted is **struck through twice and in bold**. Only those subsections of the LCP Amendment for which modifications are being suggested are shown below. The underlying language consists of the City's proposed amending language (shown as text underlined or struckthrough once) and the existing certified language. See **Exhibit 5** for a copy of the certified language, which is shown as the underlying text in the exhibit.

SUGGESTED MODIFICATION 1 TO SECTION 25.23.030 (Permit Required): *Clarify there not be an application fee for home shares and add provisions for protection of the housing stock in the allowable commercial districts.*

25.23.030 Permit Required ~~Administrative use permit or conditional use permit.~~
(A) Short-term lodging units shall only be allowed within the ~~R-1, R-2, R-3,~~ LB/P, C-N, C-1~~,~~ and CH-M~~, and VC~~ Z~~z~~oning D~~d~~istricts, and within the CBD-1, CBD-2, CBD Central Bluffs, CBD Office

and CBD Visitor Commercial Districts of the Downtown Specific Plan, subject to the approval of an Aadministrative Uuse Ppermit as provided for in Section 25.05.020 of this title and SLV zoning district subject to ~~the~~ approval of a Conditional Use Permit~~CUP~~ as provided in Section 25.05.030~~, issued pursuant to this chapter~~. No owner of a dwelling unit or units located outside of those zoning districts shall rent that unit or units for a short term (30 consecutive days or less)~~without a valid administrative use permit or conditional use permit, as applicable, issuedpursuant to this chapter~~.

(B) To protect the long-term rental housing stock, no more than twenty percent (20%) of the total number of allowable rental units located in the permitted zoning districts may be converted to short-term lodgings, with a maximum number of three hundred (300) total short-term lodgings (not including home share units) allowed city-wide, including those short-term lodgings units approved prior to October 2020. To promote home share units as another type of short-term lodging, an additional one hundred sixty-five (165) home share units may be authorized in single-family, duplex, and triplex dwellings located in the permitted zoning districts. The Use Permit fees are waived for home share units.

(C) To avoid wholesale conversion of existing and new housing complexes into short-term lodgings, properties with five or fewer units may only convert a maximum of one unit into a short-term lodging. Properties with more than five units may only convert a maximum of twenty percent (20%) of the total number of units into short-term lodgings (rounded down to the nearest whole number).

(**DB**) No owner or tenant of a lodging unit that is restricted by covenant or similar instrument for the purpose of providing affordable housing, senior housing, or housing for the disabled shall rent such unit for the purpose of providing short-term lodging.

(**EC**) A home exchange as defined in Section 25.23.020(D) shall not constitute short-term lodging for the purposes of this Chapter.

(**FD**) Existing residential units that are currently non-conforming to any density or development standard within the underlying zoning district of the subject property shall be permitted to convert to short-term lodging subject to the approval of an Administrative Use Permit or Conditional Use Permit.

(**GE**) The following information shall be included with the completed application form:

(1) The name, address and telephone number of the owner of the subject short-term lodging unit;

(2) The name, address and telephone number of the operator;

(3) The name, address and telephone number (available 24/7) of the local contact person that will be available to physically be able, if necessary, to respond within 60 minutes of notification of a problem resulting from the short-term lodging unit;

(4) The address of the proposed short-term lodging unit;

(5) The days of the week, weeks of the month and/or months of the year that the proposed short-term lodging unit will be available for rent on a short-term basis, and the minimum length of stay that the short-term rental will be advertised;

(6) The number of bedrooms and the applicable overnight and daytime occupancy of the proposed short-term lodging unit;

(7) The number of parking spaces located on site;

(8) A site plan and floor plan, drawn to scale depicting the site layout, trash storage area that must be concealed from public view, parking area and a floor plan of the entire unit/rooms
to be rented for short-term lodging purposes;
(9) Acknowledgement of receipt and inspection of the Good Neighbor brochure;
(10) Evidence that the residence/premises passed a safety inspection conducted by the Laguna Beach Fire Department;
(11) Evidence that the use of the property is eligible for liability insurance (homeowners or rental property insurance) in the amount of not less than $500,000.00 to cover injuries, damages, losses and other claims associated with the short-term lodging;
(12) An estimate of the daily rental fee that will be charged for occupancy of the unit(s);
(13) An application fee established by resolution of the City Council, **except for Use Permit applications for home share units. The Use Permit fees are waived for home share units**;
(14) One set of public notification materials prepared by a qualified and independent vendor as instructed more fully in the "City of Laguna Beach Community Development Department Public Notice Package Requirements."

SUGGESTED MODIFICATION 2 TO SECTION 25.23.060(A): *To clarify the date from which to measure to define when Section 25.23.060(A) applies.*

(A) The operation of any legal short-term lodging unit ~~**in existence as of the effective date of this ordinance**~~**permitted prior to October 2020** and located within the R-1, R-2, R-3 or VC zoning districts may continue as a legal nonconforming use subject to (1) the requirements set forth below, (2) continuously maintaining a business license for the short-term lodging unit, (3) fully and timely complying with applicable requirements for record-keeping and the collection and remittance of transient occupancy taxes, and (4) complying with all other conditions of the previously approved permit. No new short-term lodging may be established within the R-1, R-2, R-3 or VC zoning districts.

SUGGESTED MODIFICATION 3 TO SECTION 25.23.065(A): *To clarify the date from which to measure to define when Section 25.23.065(A) applies.*

(A) The operation of any legal short-term lodging unit ~~**in existence as of the effective date of this ordinance**~~**permitted prior to October 2020** and located within the LB/P, C-N, C-1 or CH-M zoning districts or within the CBD-1, CBD-2, CBD Central Bluffs, CBD Office or CBD Commercial districts of the Downtown Specific Plan may continue as a legal conforming use subject to (1) the requirements set forth below, (2) continuously maintaining a business license for the short-term lodging unit, (3) fully and timely complying with applicable requirements for record-keeping and the collection and remittance of transient occupancy taxes, and (4) complying with all other conditions of the previously approved permit. The establishment of new short-term lodging units within these zoning districts shall conform to the provisions of this chapter.

SUGGESTED MODIFICATION 4: *Add new subsection to address reporting to the Coastal Commission.*

25.23.090 Reporting to the California Coastal Commission.
(A) Three years after the date of certification of this LCP Amendment No. LCP-5-LGB-19-0074-1 or three years after October 2020, whichever occurs first, the City shall provide the California Coastal Commission with a report to include the following:
(1) An update on new housing and hotel units added within the City including lower and higher cost hotels and affordable and higher cost housing;
(2) Total number of dwelling units in the permitted districts as well as the total number of short-term lodging permits that have been issued;
(3) Identification of the housing types and locations of the short-term lodging permits issued, including home share units.
(B) If the report identifies evidence that short-term lodging is contributing to a loss of lower cost hotel room stock or affordable housing stock, the City shall submit an amendment to the short-term lodging ordinance and/or other provisions of the Local Coastal Program to address the identified trend.

III. FINDINGS

The Commission hereby finds and declares:

A. AMENDMENT DESCRIPTION

The City of Laguna Beach has requested to amend the Implementation Plan (IP) of the certified LCP to implement new regulations and standards for the operation of short-term lodgings (STL), or vacation rentals, and limit where new STLs would be allowed in the City. The ordinance submitted with the LCP amendment request is a revised version of an earlier ordinance that was submitted as a former LCP amendment request by the City, and that was subject to Commission action in 2017 (LCP-5-LGB-16-0055-1), which is described in greater detail in the Background section of this report, below. The main document comprising the City's certified Implementation Plan is Title 25 of the City's Municipal Code, which is the City's Zoning Code, but the certified IP also includes a number of other documents. The City is only proposing to modify Title 25 (Zoning). The changes proposed are reflected in Ordinance No. 1635, which was submitted for Commission action via City Council Resolution No. 19.030 (**Exhibits 3 & 4**). This ordinance proposes modifications to various chapters related to the regulation and standards for the operation of STLs: Chapters 25.23 (Short-Term Lodging), 25.10 (R-1 Residential Low Density Zone), 25.12 (R-2 Residential Medium Density Zone), 25.14 R-3 (Residential High Density Zone), and 25.43 (Village Community Zone). [Note: the legislative draft version has been attached as **Exhibit 5** to highlight the changes proposed by the City].

Chapter 25.23 (Short-term Lodging) sets forth the currently certified standards for the short-term lodging use. Short-term lodging (STL) is currently defined in Chapter 25.23 as: "occupancy of a lodging unit[4] for a period of thirty consecutive calendar days or less."

Section 25.23.030 of Chapter 25.23 identifies the zones in which the STL use is allowed and prohibits the use in all other zones. Currently, STLs are allowed in the following zones: Residential Low Density R-1, Residential Medium Density R-2, Residential High Density R-3, Local Business Professional LBP, Commercial Neighborhood C-N, Local Business C-1, Commercial Hotel-Motel CH-M, Village Community V-C, and South Laguna Village Commercial SLV (**Exhibit 2**).[5]

As proposed, LCP Amendment No. LCP-5-LGB-19-0074-1 would revise the standards and impose limits on STLs, and would eliminate these rentals as an allowable use in the R-1, R-2, R-3, and VC residential zones. However, under the proposed ordinance, pre-existing (existing before certification of the proposed ordinance) legally permitted STLs within these residential zones would be grandfathered and allowed to operate and continue as a legal non-conforming use. There are currently 117 legally operating STLs in the city. Out of the 117 legally operating STLs, approximately 79 STLs are located in residentially zoned lots. The right to continue operation of the active legally operating 117 STLs would run with the land, regardless of the zone in which they are located, as long as they are not abandoned or cease to operate for a period of twelve or more consecutive months.

The ordinance approving the proposed LCP revisions would also expand the allowable commercial zoning districts where STLs would be permitted to include most (but not all) commercial zoning districts. The STL use is currently allowed within the Local Business Professional LBP, Commercial Neighborhood C-N, Local Business C-1, Commercial Hotel-Motel CH-M, and South Laguna Village Commercial SLV commercial zoned districts. The proposed amendment would add the following zones located within the Laguna Beach Central Business District (CBD) as districts where STLs would be allowed: Residential Serving CBD-1, Downtown Commercial CBD-2, Central Bluffs CBD-CB, Office CBD-O and Visitor Commercial Districts CBD-V (or CBD-VCD as termed by the City), which represents most (but not all) of the remaining commercial zoning districts within the City. STL units would still be subject to the approval of Administrative Use Permits, or Conditional Use Permits if located in the SLV Zoning District. However, the current proposal would require all new STLs to be subject to more detailed standards and regulations that were not previously imposed.

The LCP amendment would impose a number of administrative application requirements and operating standards, including maximum occupancy standards and parking

[4] "Lodging unit" or "unit" is defined as: same as a "dwelling unit," which is a room or suite of rooms with a single kitchen used for the residential use and occupancy of one family, and which is rented to person(s) other than the owner. (Municipal Code Section 25.23.020).

[5] Although the South Village Commercial SLV zone is not included in the zoning map of the certified LCP, the Commission has recognized SLV zone as an existing zone in prior LCPAs (e.g. LCPA 2-11B). Therefore, the City will need to provide a revised zoning map to the Commission that includes the SLV zone recognized by the Commission through LCPA 2-11B.

requirements, as well as certain exceptions where applicable. See Table 1 below for a comparison summary of both the currently certified and the proposed STL regulations.

Table 1: Comparison of certified STL regulations and proposed STL regulations**.**

	Existing Certified STL Regulations	Proposed STL Regulations
Require Business License	Yes	Yes
Require Transient Occupancy Registration Certificate	Yes	Yes. Also requires that every Administrative Use Permit or Conditional Use Permit holder for short-term lodging submit a quarterly return, whether or not the short-term lodging unit was rented during the quarter and/or Transient Occupancy Tax was collected.
License Transferability	Yes – There currently are no limits on license transferability	No conveyance or transfer of an administrative use permit or conditional use permit for short-term lodging would be allowed
Number of Occupants Allowed	Number of occupants shall not exceed that permitted by the provisions of Titles 14 (Building and Construction) and 15 (Fire) of this code	Maximum of two persons per bedroom
Number of Visitors Allowed	No	Additional daytime guests would be allowed between the hours of 7:00 a.m. and 10:00 p.m. with the maximum daytime guests not to exceed two persons per bedroom with a maximum of 20 guests allowed for five bedrooms or more.
Parking Requirement	No	Existing residential units in commercial districts with nonconforming parking shall be permitted to convert to STLs. Each newly constructed short-term lodging unit must have a minimum of off-street parking spaces per applicable use of “Dwelling, single-family or two-family,” or “Dwelling multi-family” as set forth in Section 25.52.012(G).[6]
Sound Time Restrictions	No	Yes: No device or equipment that produces or reproduces any sound shall be played outside of any short-term lodging or be audible from the useable area of any adjacent

[6] Section 25.52.012(G) of the IP of the certified LCP requires that a minimum of two covered parking spaces per dwelling unit plus an additional space when the gross floor area of each residence is 3,600 or more square feet be provided for “dwelling, single-family or two-family” units; a minimum of 1 ½ spaces for every studio or 1-bedroom unit; 2 spaces for every unit with 2 or more bedrooms; and 1 additional guest space for 4 units and every 4 thereafter (at least 50% of the spaces must be covered) be provided for “dwelling multi-family” units.

	Existing Certified STL Regulations	Proposed STL Regulations
		residences between the hours of 10:00pm and 10:00am.
Good Neighbor Brochure	No	Yes
Require Posting of Valid Permit in conspicuous location onsite	No	Yes
Prohibition on Onsite Advertising Signs	No	Yes
Prohibition of large events and parties	No	Yes
Revocation	Failure to comply with any of the imposed conditions may be grounds for possible revocation of the administrative use permit for short-term lodging	Three or more confirmed violations of large or unruly gatherings would result in an automatic hearing for revocation of the Administrative Use Permit
Code Violations	No	Yes – Additional conditions; Permit modification, suspension and revocation; Administrative Citations
Permit Expiration	No	Permits valid for a maximum of two (2) years from the date of approval of the permit. Within three to six month prior to the expiration of permit, owner may apply for a permit renewal
Inspections	No	Evidence that the residence/premises passed a safety inspection conducted by the Laguna Beach Fire Department
Liability Insurance	No	Evidence that the use of the property is eligible for liability insurance (homeowners or rental property insurance) in the amount of not less than $500,000.00 to cover injuries, damages, losses and other claims associated with the short-term lodging
Require Strict Adherence to Density Requirements	Yes	Existing residential units in commercial districts that are currently non-conforming to density shall be permitted to convert to STLs subject to administrative use permits or conditional use permits. New STLs would have to adhere to any density requirements within its zoning district.
Require local contact person available on 24-hour basis	No	Yes

As previously indicated, the currently certified ordinance defines “short-term” lodging within Chapter 25.23 as:

> "Occupancy of a lodging unit for a period of thirty consecutive calendar days or less."

The proposed ordinance would provide a revised definition of "short-term" lodging within Chapter 25.23:

> "Short-term": occupancy of a lodging unit for a period of thirty consecutive calendar days or less. "Short-term" shall include the rental of a lodging unit for a period of more than thirty consecutive days to an entity, person or group of persons and said entity, person or group of persons sublets or otherwise makes available the unit to another entity, person or group of persons whereby separate occupancy durations are established for the other entity, person or group of persons for a period of thirty calendar days or less.

In addition, the following language is proposed to be added within LCP Chapter 25.23:

> (B) Short-term lodging units are considered a commercial use, which are not permitted in residentially-zoned properties.
> (C) Short-term lodging units deplete the City's limited supply of multiple-family residential units.

The LCP amendment would specifically modify Chapters 25.10, 25.12, 25.14, and 25.43 of the zoning code pertaining to R-1, R-2, R-3, and VC residential zones by deleting the following language from the list of allowable uses in each chapter: "Short-term lodging as defined and specified in Chapter 25.23 of this title."

Although Chapter 25.23 is currently silent on the matter of home shares, the proposed new STL regulations would characterize "Home sharing" as a form of STL, which would be subject to the proposed restrictions in residential districts but allowed within most commercial districts. Specifically, it would define "Home sharing" as "a rental in a residential unit for 30 consecutive days or less during which the host lives on-site for the entirety of the visitor's stay."[7]

The revised ordinance (Ordinance 1635) underlying the proposed amendment before the Commission is similar the City's 2016 ordinance related to STLs with the exception of a few notable changes. Ordinance 1635 would:

1) Offer protection of affordable housing, senior housing, or housing for disabled people from being converted into STLs;
2) Allow *existing* residential units in commercial districts that are currently non-conforming to any density or development standard within its zoning district to convert to STLs subject to administrative use permit or conditional use permit;

[7] Unlike home shares, the proposed LCP amendment would allow "Home exchanges" as a permissible use within residential zones and would not characterize them as a type of STL. The new STL regulations would define "Home exchange" as "the simultaneous exchange of homes by one owner with another owner in a different city for short periods of time, for not less than one week and not more than two times in total per calendar year, by written agreement between both parties to exchange homes without any exchange of compensation or other consideration."

3) Allow *existing* residential units in commercial districts with nonconforming parking to be permitted to convert to STLs provided the same number of nonconforming off-street parking spaces continues to be provided;
4) Require *newly constructed* STLs to provide the minimum off-street parking spaces set forth in Section 25.52.012(G);
5) Require hosting platforms to disclose to the City STL rental listings, names of persons responsible for each listing, the address of each listing, the length of stay for each listing, and price paid for each stay; and
6) Allow the City to issue citations in the amount of $1,000 per violation for any violation of Chapter 25.23.

In short, the LCP currently allows STLs in most residential zones, but the proposed LCP amendment would allow STLs within most commercial and visitor-serving districts, while banning them in all residential districts, and would require implementation of new regulations.

B. BACKGROUND

Setting

The City of Laguna Beach lies almost exclusively within the Coastal Zone, with a total area of 8.8 square miles. Geographically, the City of Laguna Beach is surrounded by open space/wilderness parks and is comprised of three main parts: the shoreline, the coastal plain, and the hillsides and canyons (**Exhibit 1**). The City's shoreline extends for approximately 6.2 linear miles. Most of the City's shoreline is fronted by bluffs, with areas of pocket beaches. The shoreline includes two large sandy beaches: Main Beach adjacent to the City's downtown area, at the mouth of Laguna Canyon; and Aliso Beach in South Laguna at the mouth of Aliso Canyon. Only two roads provide access into and out of the City (Coast Highway and Laguna Canyon Road), establishing a physical separation from other regions.

History of Short-Term Lodging Regulation in Laguna Beach

Since the late 1800s, the surrounding Pacific coastline, hillsides, and canyons have made this City a highly desirable, picturesque seaside community and prime tourist destination. The Laguna Beach Hotel was constructed in 1895.[8] Early 20th century photographs and aerial images of Laguna Beach show canvas tents set up on the beach, offering visitors overnight accommodations directly along the coast. A variety of visitor-serving accommodations, from hotels and motels, bed-and-breakfast inns, to vacation rentals, are available throughout the City.

Historically, short-term lodgings have operated in the City of Laguna Beach. In response to concerns raised by Laguna Beach residents about the effects of unregulated vacation rentals in the City, the City began discussing short-term lodging (or vacation rental) regulations in the 1990s. The City first adopted a Short-Term Lodging (STL) ordinance in

[8] Laguna Beach Historical Society, "Chronology of Laguna Beach" http://www.lagunabeachhistory.org/chronology/ (accessed November 20, 2017)

1999. On April 10, 2008, the Commission effectively certified the STL ordinance through LCPA No. 1-07C, modifying the IP portion of the LCP and adding Chapter 25.23 (Short-Term Lodging) to the City's municipal code. The STL ordinance permits and provides for regulation of STLs in certain residential zones (R-1, R-2, R-3, VC) and commercial districts (LBP, C-N, C-1, CH-M), and includes requirements for establishing and operating an STL.

On October 19, 2011, the Commission approved LCPA No. 2-10 to correct an inadvertent discrepancy between Chapter 25.23 (Short-Term Lodging) and Chapter 25.10 (R-1 Zone) that was created by LCPA No. 1-07C relating to which permit type is required (administrative or conditional use permit) to implement STL uses; STL units in the R-1 Zone are subject to administrative use permits.

In 2012, the Commission approved LCPA No. 2-11B with suggested modifications. The primary purpose of this LCPA was to amend the IP to identify the zones in which residential care facilities and residential housing for people with special need are allowed to operate. However, this LCPA included various other changes to the IP. One of the 'clean-up' items included deleting 'short term lodging' from the list of uses allowed with a Conditional Use Permit in the South Laguna Village Zone, which would prohibit that use in that zone. The Commission determined that the elimination of STLs as an allowable use in the South Laguna Village zone would adversely affect the availability of overnight accommodations in the City. Therefore, the Commission approved LCPA No. 2-11B with suggested modifications requiring that STLs continue to be an allowable use in the South Laguna Village Zone (SLV) and be subject to approval of a conditional use permit. No other changes were made to the IP with regard to STLs.

On November 15, 2013, the Commission approved LCPA No. 1-12 to add language to Chapter 25.17 (Second Residential Units) to prohibit short-term rentals of second residential units, or accessory dwelling units, which are allowed in R-1 zones, as a means to provide affordable housing within the City.

Since 2013, however, the City has noted a significant increase in the number and location of short-term rentals, and has raised concerns about the potential adverse impacts to residential neighborhoods resulting from the unregulated growth of short-term rentals, loss of rental housing stock, enforcement issues, altered residential community character, and parking and traffic congestion. The current STL ordinance includes no limits on the overall number of STLs in the City. The City is aware of approximately 117 legally permitted STLs, but based on online advertisement postings, more STLs are illegally operating in the City. In 2017, the City estimated that at least 383 residences were advertised as available and operating STLs in Laguna Beach.

The City Council asserts that while STLs serve an important lodging resource, they can have negative impacts on the character of residential neighborhoods and availability of housing. Therefore, on May 19, 2015, the City passed a 45-day moratorium on the issuance of new STL licenses until additional regulations or prohibitions could be implemented to minimize these potential impacts. On June 15, 2015, the City extended the

moratorium for 90 days; and on August 18, 2015, the City extended the moratorium for a one-year period, which expired as of October 1, 2016.

Numerous public hearings were held before the Laguna Beach Planning Commission and City Council on the subject of STLs within the City. Additional public meetings were also held before a City Council Subcommittee. In October 2016, the City submitted a request to the Commission's South Coast District office to amend the Implementation Plan of the City of Laguna Beach certified LCP, which included City Council Resolution No. 16.076 and City Council Ordinance No. 1617. This requested amendment was assigned LCP No. 1-16 (LCP-5-LGB-16-0055-1). This amendment proposal was deemed complete and filed on October 26, 2016. At the December 7, 2016 hearing, the Commission granted a one-year time extension to act on the subject amendment pursuant to Coastal Act Section 30517 and California Code of Regulations, Title 14, Section 13535(c).

On December 14, 2017, the Coastal Commission, after a public hearing, approved with modifications LCP Major Amendment No. 1-16 (Short-Term Lodgings). The main modification suggested by the Commission was to change the LCP Amendment to allow STLs to remain as a permitted use in the R-1, R-2, and R-3 Zoning Districts. Because the Commission denied LCP Amendment No. 1-16 as submitted, but then approved it with suggested modifications, the City Council has the option to accept or not accept the suggested modifications. The modified LCP Amendment would have become final at a subsequent Commission meeting if the Commission concurred with the Executive Director's Determination that the City's action in accepting the suggested modifications approved by the Commission for LCP Amendment 1-16 was legally adequate. However, the City did not accept the suggested modifications within six months of the Commission's action, and LCP Amendment No. 1-16 was never certified. The City did not concur with the modification approved by the Coastal Commission that re-instated STLs as a permitted use in the R-1, R-2, and R-3 Zoning Districts.

On February 8, 2018, August 8, 2018, and November 26, 2018, the Commission and the City met and entered into a series of tolling agreements to allow additional time for the parties to further discuss and address concerns regarding the Commission's December 2017 suggested modifications, and to avoid litigation.

In 2016, only 81 STL units were legally permitted and operating in Laguna Beach. Since the expiration of the moratorium, approximately 36 applications have been submitted to the City for the operation of new STL units in residential zones, and 19 in commercial zones. As of September 2020, approximately 117 STLs are legally operating in the City of Laguna Beach.

On April 23, 2019, and June 4, 2019, the City Council conducted public hearings and adopted City Council Resolution No. 19.030 and Ordinance No. 1635. On June 17, 2019, the City submitted to the Commission's South Coast District office the LCP amendment request that is currently before the Commission (No. LCP-5-LGB-19-0074-1) related to City Council Resolution No. 19.030 and Ordinance No. 1635, which was deemed officially received on July 1, 2019.

On August 13, 2020, the Coastal Commission conducted a public hearing to consider LCP Major Amendment No. LCP-5-LGB-19-0074-1 (Short-Term Lodgings) but the Commission continued the public hearing. The Commission directed the City and Commission staff to consider additional provisions, including requiring a home sharing program to promote and encourage more affordable visitor-serving accommodations, and regulations to provide some protection to the City's long-term rental housing stock in the mixed-use districts. The City's response to that direction is outlined in a memorandum dated September 16, 2020 (see **Exhibit 6**).

Past Commission Action related to STLs in Other Coastal Communities
As in other coastal communities in California, STLs have proliferated over the years. What may have been predominantly summer and holiday vacation rentals have evolved into what is now in some cases a year-round business. The unregulated proliferation of such STLs has raised concerns regarding impacts to the preservation of neighborhood integrity, reductions in rental housing stock, public safety, increased traffic and parking difficulties, and other issues that have sometimes been associated with STLs.

As a reaction to such issues, LCP amendment proposals have been submitted to the Commission to ban STLs in certain communities (e.g. outright bans in all residential zones). However, such bans can conflict with the Coastal Act and LCP policies and objectives to protect and provide for visitor-serving opportunities and coastal public access. In general, rather than supporting restrictive bans of such uses, the Commission has encouraged allowance of this use and more targeted, responsive regulations of STLs that are based on applicable community and area specific factors.

In the Commission's past actions, including in response to proposed amendments of the Local Coastal Programs of the County of Ventura (LCP-4-VNT-18-0058-1), City of Pismo Beach (LCP-3-PSB-18-0051-1), County of Santa Cruz (3-SCO-18-0032-2-Part B), City of Del Mar (LCP-6-DMR-17-0083-3), County of Santa Barbara (LCP-4-STB-17-0086-3), and City of Encinitas (ENC-MAJ-1-06), in order to be consistent with Chapter 3 of the Coastal Act, local jurisdictions in the Coastal Zone that have concerns about the impacts of STLs have been required to provide a means and a framework to appropriately regulate the establishment and operation of STLs, rather than overly restrict this use or otherwise significantly diminish its visitor-serving utility. The Commission has approved a number of LCP amendments regulating STLs in the Coastal Zone. Each of these LCP amendments presented unique issues considering geographic specificity, but the approved LCP amendments generally provide for standards for continued STL operations, rather than blanket bans.

C. Denial of the LCP Amendment as Submitted

As described above, the standard of review for the proposed amendment to the Implementation Plan of the certified Local Coastal Program (LCP) is whether the Implementation Plan, as amended, would be in conformance with, and adequate to carry out, the policies of the certified Land Use Plan (LUP) portion of the certified LCP. (*See* Coastal Act sections 30513, 30514.)

The City of Laguna Beach's certified LUP contains objectives and policies that provide for visitor-serving uses with the intent of maximizing coastal access. Below are the relevant City of Laguna Beach certified LUP policies:

The Coastal Land Use Plan Technical Appendix segment of the certified LUP incorporates the following Coastal Act policies regarding public access and visitor serving uses:

Section 30210 states:

> In carrying out the requirement of Section 2 of Article XV of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 states, in relevant part:

> Lower cost visitor and recreational facilities…shall be protected, encouraged and where feasible provided. Developments which provide public recreational opportunities are preferred.

Section 30222 states:

> The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general commercial development, but not over agriculture or coastal-dependent industry.

In addition, the Land Use Element of the certified LUP contains the following policies:

Policy 4.2 states:

> Promote policies to accommodate visitors, reduce conflicts between visitor-serving uses/infrastructure and residents, and reduce impacts on the City's natural resources.

Policy 6.2 states:

> Preserve and encourage an increase of the City's stock of affordable motel and hotel rooms available for short-term visitors. Protect, encourage, and where feasible, provide affordable overnight accommodations.

Policy 6.9 states:

> Provide public access to designated public areas wherever safe and legally and environmentally appropriate.

Priority Uses
Section 30213 of the Coastal Act (adopted by the City as a Land Use Plan policy) requires that lower-cost visitor and recreation facilities be protected, encouraged, and where feasible provided. Section 30222 of the Coastal Act (adopted by the City as a Land Use Plan policy) places a higher priority on the provision of visitor-serving uses designed to enhance public opportunities for coastal recreation over residential, industrial, or general commercial uses.

Short-Term Lodgings
The City's LUP includes strong support for visitor serving uses including lower-cost overnight accommodations such as can be provided in some instances with short-term rentals. Policy 6.2 of the Land Use Element of the certified LUP requires that affordable overnight accommodations be protected, encouraged and, where, feasible, provided. The certified Coastal Technical Appendix incorporates Coastal Act Section 30213, which requires that lower-cost visitor facilities be protected, encouraged, and where feasible provided, and Coastal Act Section 30210, which requires that public coastal access be maximized. The Commission has found that generally visitor-serving overnight accommodation uses, including STL units, help maximize the opportunities provided for all the public to access the coast. At the same time, the Commission has recognized legitimate community concerns associated with the potential adverse impacts associated with vacation rentals, with respect to housing stock and affordability, community character, noise, and traffic impacts.

Demand for STLs is especially high in this City because of its proximity to the coast and because of its historical reputation as a popular coastal-resort community. Because of recent proliferation of STLs in Laguna Beach, the City has cited issues about the presence of STL rentals causing problems (e.g. noise, disorderly conduct, traffic congestion, excessive trash, etc.) that could negatively impact residents and communities, unduly burden City services, and reduce the long-term rental housing stock.[9] The City has indicated that the intent of the proposed LCP amendment is not to eliminate an existing, legally established use, but to clarify those new STL units should no longer be permitted in residential zones in order to preserve its long-term housing rental stock and to limit other conflicts by prohibiting new STL units in all residential zoning districts (with an exception for **existing** legally permitted units operating in residential zones), and by imposing regulation of existing and new STL units in existing and expanded allowable commercial zoning districts.

STLs provide a significant supplement to traditional visitor-serving overnight accommodations, promoting public access and visitor-serving opportunities to coastal communities. The provision of overnight visitor-serving accommodations, such as STLs, serves a significant purpose as a subset of visitor-serving uses that promotes public coastal access and provides California residents and visitors one way to enjoy the coast.

[9] Of the existing permitted approximately 117 STLs, approximately 79 of them are situated in the R-1, R-2 and R-3 residential zones. Therefore, the City has expressed its concerns regarding the potential adverse impacts of STL units to the City's rental housing stock in the residential zones.

Overnight visitor-serving accommodations allow public members who do not reside within a day's journey to the coast an opportunity to enjoy the coastline.

Despite also being significant visitor-serving destinations, cities such as the City of Del Mar and the County of Santa Barbara have fewer overnight accommodations for coastal visitors. The City of Del Mar only has six hotels offering 355 rooms in total. Currently, within the Coastal Zone, the County of Santa Barbara only has one higher cost hotel, no bed and breakfasts, one County-owned campsite, and three State-owned campsites. In such areas in need of more overnight accommodations, short-term vacation rental units provide an important visitor-serving amenity that supports coastal access. Unlike the City of Del Mar and the County of Santa Barbara, the City of Laguna Beach has a number of overnight accommodations for coastal visitors. The City has estimated there are approximately 1,305 existing hotel/motel lodging units within the City's coastal zone. Therefore, the City of Laguna Beach already provides an ample supply of visitor serving overnight accommodations, and where further proliferation of vacation rentals has the potential to impair community character or other coastal resources, specific restrictions on STLs in specific areas may be appropriate.

In this case, the proposed amendment would expand the allowable commercial districts to permit STLs in areas where they are currently not permitted, and it would allow for the continuation of the existing legally permitted STL units (approx. 117 units) currently operating regardless of the zone in which they are located. Of the existing 117 STLs, approximately 79 of them are located in residentially zoned districts. The proposed amendment would restrict new STLs to only the allowable commercially zoned districts and would prohibit any new STLs in the residential zones. Although the proposed amendment would reduce the total area where STLs are allowed and the potential number of lots for which a STL could be permitted by prohibiting STLs in all residential areas, the City of Laguna Beach is unlike other coastal communities that have fewer traditional overnight accommodations (i.e. hotel and motel units) available for coastal visitors. Moreover, some of the mixed-use and commercially zoned districts are located within 200 feet from the shoreline. The City emphasizes that the location of the mixed-use and commercial zones are located along Coast Highway and relatively close to the beach; therefore, accessibility to the beach would still be maximized.

Additionally, as part of this LCP Amendment, the City has also proposed appropriate vacation rental regulations that address potential visitor-residential conflicts and that satisfy the sometimes competing objectives associated with facilitating public recreational opportunities near the shoreline.

In 2017, the City of Laguna Beach estimated that there were approximately 383 existing STL rentals city-wide, including unpermitted STL units, based on listings on the websites of hosting platforms such as VRBO and Airbnb. The City uses this figure to estimate current demand for STLs, although the actual demand for STLs may vary widely over time. Commission staff does not believe the estimated number of existing STLs alone is fully indicative of the demand for STLs in the region since demand is highly variable and changes depending upon the season, time of year, growing population, and other varying

factors. However, assuming the current demand for STLs in the City of Laguna Beach is around that number, the proposed LCP amendment would continue to provide enough STLs to accommodate visitor demand. The proposed LCP amendment would grandfather the existing legally operating STLs. Any STL that currently operates without a permit would not be grandfathered, and the proposed regulations and restrictions would apply. The proposed amendment would add a provision to the LCP to relax the parking requirements and development and density standards for the existing residential units that are legally non-conforming to encourage STLs in the mixed-use areas of the allowable commercial zones. Under the proposed LCP amendment, the City estimates that approximately 723 existing residential units in the allowable commercial zones (not including existing units reserved as senior and disability housing) could accommodate STLs without the need for any future development because, as proposed today, the LCP amendment would allow for the conversion of these units into STLs, regardless if they are nonconforming to development standards, density, or parking. Therefore, the existing 723 residential units could accommodate new STLs regardless of the potential non-conforming nature of some of them under the proposed LCP amendment.

However, the certified LUE contains policies to preserve relatively lower-cost housing opportunities in commercial zones.

Policy 6.12 of the certified LUE states:

> Promote mixed-use development in commercial zones, where appropriate, to encourage the provision of lower-cost housing and to reduce traffic trips. Encourage ground floor uses to be commercial and where appropriate, visitor serving.

Action 6.12.1 of the certified LUE states, in relevant part:

> Evaluate incentives for the development of affordable residential units in conjunction with mixed-use development in commercial zones.

Policies 6.12 and Action 6.12.1 promote and encourage the development of affordable residential units in conjunction with mixed-use development in commercial zones. Housing located within mixed-use commercial properties can offer reduced housing costs. As proposed, the LCP amendment does not provide any protections to ensure that not all of the City's long-term rental housing stock in the allowable mixed-use commercial districts be converted into STL units.

It is important to note that the City is currently working with Commission staff on another LCP amendment to address and implement new provisions in their LCP that would regulate accessory dwelling units (ADUs) consistent with State law, which requires that ADUs, which are intended to augment the City's affordable housing rental stock, be allowed on lots developed with single-family residences, most of which are located within the residentially zoned districts. That LCP amendment has not yet come before the Commission. However, as proposed, this LCP amendment currently before the

Commission would not conflict with any efforts to foster the development of ADUs as an additional long-term housing opportunity.

In addition, there are concerns that the proposed LCP amendment could inadvertently contribute to the loss of lower-cost hotel/motel units in Laguna Beach. The certified LUE has a policy intended to preserve and encourage affordable short-term overnight accommodations.

Policy 6.2 of the certified LUE states:

> Preserve and encourage an increase of the City's stock of affordable motel and hotel rooms available for short-term visitors. Protect, encourage, and where feasible provide, affordable overnight accommodations.

Although Policy 6.2 includes a specific requirement for the preservation of affordable motel and hotel rooms, the intent of the policy is also to protect, encourage, and where feasible provide, affordable overnight accommodations, which could include STL units. In addition, the certified Coastal Technical Appendix incorporates Coastal Act Section 30213.

Section 30213 states, in relevant part:

> Lower cost visitor and recreational facilities…shall be protected, encouraged and where feasible provided. Developments which provide public recreational opportunities are preferred.

Coastal Act Section 30213 requires that lower-cost visitor facilities be protected, encouraged, and where feasible provided.

The City has provided an inventory of existing accommodation types (i.e. hotel/motel rooms) in various price ranges, including the number of rooms in each accommodation and averages of 2015-2016 nightly room rates. These range from high-end hotels such as the Montage where the rate varies upward of $1,000 per night, to the Laguna Brisas Hotel where rates range from $120 to $180 per night. The rates range depending upon, among other things, the time of year (generally highest during summer weekends and lowest during winter weekdays). Based on 2015-2016 nightly room rate information, the average nightly weekday rental rate for the existing hotel and motel rooms averaged approximately $292 and $350 on weekends. While a number of visitor-serving overnight accommodations exist in the City of Laguna Beach, there are presently no hostels, campgrounds, or other types of accommodations that are generally considered to be ‘low-cost’ available in the City.

As the City has pointed out, many of the STLs rent at similar average rates as the local hotel rooms, but there is wide variation in prices, as evidenced by an online search. Depending on site-specific circumstances, short-term rental of a residence can provide a lower cost option than a traditional hotel. For instance, this can be true when traveling with extended family or other larger groups, where renting a single residence is less expensive

than renting multiple traditional hotel rooms.[10] Short-term residential rental units also typically include full kitchen facilities, which allow overnight visitors the option of preparing meals in, a more affordable option than dining out.

Another instance is the operation of owner-occupied STLs, or home share units. Home share units permit owners and long-term residents who live onsite to be able to rent a spare room and host visitors in their homes. In a home share unit, because only a room or portion of a residential unit is being rented, home share units sometimes provide lower-cost overnight accommodations and can be more affordable than traditional overnight accommodations (i.e. hotel/motel and non-owner occupied STLs). Affordable (low- to moderate- cost) overnight accommodations aid public coastal access.

In all cases, STLs increase the range of options available to coastal visitors. Regardless of the cost, overnight accommodations are a higher priority use because they allow for enhanced public access.

However, as proposed, the LCP amendment does not include a home share program or any provisions that would encourage home share style short-term rentals. Encouraging home shares would help continue to aid and maximize public coastal access and will help strike a balance between preserving the City's available housing stock, preserving lower-cost hotel/motel stock, and preventing home-shares from turning into de facto hostels and hotels. Without such a program or provision, the proposed LCP amendment has the potential to reduce lower cost public visitor-serving opportunities, which would conflict with the LUP objectives to protect and maximize public access and visitor-serving opportunities in the City's coastal zone.

As proposed, the amendment is not a blanket ban of STLs or an "all or none" proposition. However, as discussed in greater detail above, several suggested modifications are necessary to ensure the proposed amendment provides an appropriate balance to continue to accommodate STLs in a manner that would not contribute to a loss of lower-cost overnight accommodations or affordable housing stock, unduly restrict the rental of residential units to visitors, or diminish the public's ability to access and recreate on the coast. For this reason, the proposed LCP amendment is inconsistent with and inadequate to carry out the certified LUP and must be denied. As a result, the Commission is recommending suggested modifications to the City's LCP in this regard, described in detail in Section III and IV(D) below.

D. Certify the LCP Amendment With Suggested Modifications

Chapter 25.23 (Short-term Lodging) of the certified IP sets forth the currently certified standards for the STL use and identifies the zones in which STLs are allowed. Suggested modifications to sections in Chapter 25.23 are necessary to ensure the proposed LCP Amendment will not have significant adverse impacts on visitors, will not contribute to a loss of lower-cost hotel/motel stock or affordable housing stock, and would not conflict with

[10] Even though the LCP amendment would still limit the maximum number of occupants in a STL to two persons per bedroom, where a STL constitutes an entire house comprising multiple rooms, rental of an entire multi-room house is likely to be more cost-effective than renting multiple hotel or motel rooms for an extended family or large groups.

the certified LUP requirements for promoting and maximizing access to the City's coastline. The modifications are contained in Suggested Modifications 1-4 described below. The recommended modifications are consistent with those outlined by the City in a memorandum to Commission staff dated September 16, 2020 (**Exhibit 6**).

Suggestion Modification 1 (Permit Requirements)
There is a total of approximately 772 dwelling units in Laguna Beach's commercial and mixed-use districts (including units reserved as senior and disability housing). Housing located within mixed-use commercial properties can offer reduced housing costs and offer proximity to needed commercial services. Therefore, the City's LUE contains policies to preserve relatively lower-cost housing opportunities in commercial zones.

Policy 6.12 of the certified LUE states:

> Promote mixed-use development in commercial zones, where appropriate, to encourage the provision of lower-cost housing and to reduce traffic trips. Encourage ground floor uses to be commercial and where appropriate, visitor serving.

Action 6.12.1 of the certified LUE states, in relevant part:

> Evaluate incentives for the development of affordable residential units in conjunction with mixed-use development in commercial zones.

Policies 6.12 and Action 6.12.1 promote and encourage the development of affordable residential units in conjunction with mixed-use development in commercial zones. Consistent with Policy 6.12 and Action 6.12.1, a suggested modification is recommended to Section 25.23.030 to help preserve the long-term rental housing stock in the allowable commercial districts and in mixed-used developments, which can provide relatively lower-cost housing opportunities, whilst still accommodating some STL allowances. The modification would impose a cap on the total number of STL allowed within the permitted commercial and mixed-use districts. The suggested cap would allow no more than 20 percent of the total number of units in the permitted commercial and mixed-use districts to be converted to STLs, with a maximum number of 300 traditional STLs (not including new home share units) allowed City-wide. This cap includes the existing 117 legally permitted STL units.

Another suggested modification is also recommended to Section 25.23.030 to promote home share units (owner-occupied vacation rentals) as a separate type of STL. Home share units will be regulated in the same way as traditional STLs (non-owner occupied). However, a separate cap will be applied to home share units. An additional 165 home share units will be allowed in single-family, duplex, and triplex dwellings located within the allowable commercial zoning districts. Of the 772 total dwelling units in the permitted commercial and mixed-use districts, there are approximately 240 single-family dwellings, 80 duplexes and 15 triplexes. The '165' figure is roughly one-half of the 240 single-family, duplex, and triplex dwellings available in the permitted commercial districts.

Home share units offer, in some instances, lower-cost overnight accommodations. The certified LUE has a policy intended to preserve and encourage affordable short-term overnight accommodations.

Policy 6.2 of the certified LUE states:

> Preserve and encourage an increase of the City's stock of affordable motel and hotel rooms available for short-term visitors. Protect, encourage, and where feasible provide, affordable overnight accommodations.

Although Policy 6.2 includes a specific requirement for the preservation of affordable motel and hotel rooms, the intent of the policy is also to protect, encourage, and where feasible, provide affordable overnight accommodations, which includes STL units. In addition, the certified Coastal Technical Appendix incorporates Coastal Act Section 30213.

Section 30213 states, in relevant part:

> Lower cost visitor and recreational facilities…shall be protected, encouraged and where feasible provided. Developments which provide public recreational opportunities are preferred.

Regardless of the cost, overnight accommodations are a higher priority use because they allow for enhanced public access to the coast, consistent with the LCPs public access policies.

Encouraging home shares will continue to aid and maximize public coastal access and will help strike a balance between preserving the City’s available housing stock, preserving lower-cost hotel/motel stock, and preventing home-shares from turning into de facto hostels and hotels. To encourage home shares, a suggested modification is being made to waive the Administrative Use Permit and Conditional Use Permit fees for home share units.

The suggested 20 percent cap and maximum cap of 300 STLs (for non-home sharing), and allowance of an additional 165 home share units, would allow a maximum of 465 STL units within the allowable commercial districts. An overly restrictive cap that does not take into account the estimated demand for STLs could result in higher priced STL units instead of helping realize more affordability. In 2017, the City of Laguna Beach estimated that there were approximately 383 active STL rentals citywide (permitted and unpermitted); this estimate should more accurately represent the demand for STL operations in Laguna Beach because it is based on conditions prior to the COVID-19 pandemic. Therefore, in this case, allowance of 465 units surpasses, and would be sufficient to meet, the estimated demand. A cap of 465 STLs (non-owner-occupied units and owner-occupied home share units) city-wide would still preserve the character of the commercial area and the majority of the housing stock but would allow for future development that includes short-term rental units.

With the proposed and suggested provisions, including the aforementioned caps, and the City's existing supply of overnight accommodations (i.e. approx. 1,305 hotel/motel units), the proposed LCP amendment as modified would balance the protection of the housing stock with the provision of a wide range of visitor accommodations.

To prevent wholesale conversion of existing and new housing complexes into STLs, another suggested modification is recommended to Section 25.23.030. This modification clarifies the number of units each property may convert into a STL, which will be contingent on the total number housing units on the property. Properties with five or fewer units may only convert a maximum of one unit into a STL, and properties with more than five units may only convert a maximum of twenty percent (20%) of the total number of units into STLs. This modification will help preserve and maintain the existing housing stock located in the allowable commercial districts, whilst still providing an allowance for STLs.

If the LCP amendment is modified as recommended, then the LCP amendment can be found to be consistent with and adequate to carry out the certified LUP policies regarding visitor serving use, lower cost overnight accommodations, and public access.

Suggestion Modification 2 (Grandfather Clause for STLs in Residential Zones)
The City is proposing to add a new section (Section 25.23.060) to Chapter 25.23 (Short-term Lodgings) to address the continuation of legal STL units in residential zones. As proposed, the cutoff date for existing STL to qualify for this "grandfather" clause is unclear. The proposed Section 25.23.060(A) would read, in relevant part [**emphasis added**]:

> (A) The operation of any legal short-term lodging unit **in existence as of the effective date of this ordinance** and located within the R-1, R-2, R-3 or VC zoning districts may continue as a legal nonconforming use…

A minor suggested modification to Section 25.23.060(A) is necessary to clarify that this "grandfather" clause in the proposed LCP amendment would apply to current permits for STLs in residential zones that were approved before and during the review of the pending LCP amendment request. This modification will ensure that recently approved STL permits be honored, including those issued while the LCP Amendment has been pending.

Suggestion Modification 3 (Grandfather Clause for STLs in Allowable Commercial Districts)
Similar to Section 25.23.060, the City is adding another new section (Section 25.23.065) to Chapter 25.23 (Short-term Lodgings) to address the continuation of legal STL units in the allowable commercial districts. As proposed, the cutoff date for existing STL to qualify for this "grandfather" clause is unclear. The proposed Section 25.23.065(A) would read, in relevant part [**emphasis added**]:

A minor suggested modification to Section 25.23.065(A) is necessary to clarify that this "grandfather" clause in the proposed LCP amendment would apply to current permits for STLs in the permitted commercial districts that were approved before and during the

review of the pending LCP amendment request. This modification will ensure that recently approved STL permits be honored, including those issued while the LCP Amendment has been pending.

Suggestion Modification 4 (Reporting to the Coastal Commission)
Although STLs are essential for the promotion of public access to the City's major visitor destination beaches, it is recognized that STLs may result in conflicts, such as a reduction in the long-term rental housing stock, a reduction in the lower-cost hotel/motel stock, and increased burdens on City services, if STL use is not adequately regulated.

To allow for reevaluation of the proposed STL Program, a suggested modification is being made requiring that the City provide a report to the Coastal Commission after three years from the date of certification of this pending LCP Amendment. This provision will be included as a new section (Section 25.23.090) in Chapter 25.23. The suggested reporting provision requires that the report include: (1) an update on new housing and hotel units added within the City including lower and higher cost hotels and affordable and higher cost housing; (2) the total number of dwelling units in the permitted districts as well as the total number of STL permits that have been issued; and (3) the identification of the housing types and locations of the newly permitted STL, including home share units.

If the report identifies evidence that STL units are contributing to the loss of lower-cost hotel/motel rooms or affordable housing, the suggested Section 25.23.090 will require that the City request and submit an LCP amendment to the STL ordinance and/or other provisions of the LCP to address the identified trend.

Such reporting will help ensure that this LCP amendment provides an appropriate balance to continue to accommodate STLs in a manner that would not contribute to a loss of lower-cost overnight accommodations or affordable housing stock, unduly restrict the rental of residential units to visitors, or diminish the public's ability to access and recreate on the coast.

Conclusion
If modified as suggested, the LCP amendment is appropriate to avoid adverse impacts associated with the allowance of STLs in the City, while concomitantly ensuring that visitor-serving overnight accommodations are allowed. Under this LCP amendment, if modified as suggested, STLs would be expected to effectively coexist in mixed-use commercial areas with better clarity on regulations to ensure that they do not become problematic. If modified, the LCP amendment would provide an appropriate balance that is consistent with the LUP objectives of maintaining the City's vibrant tourism economy and ensuring cooperative use of the City by both residents and visitors, and would also provide an opportunity to regulate vacation rentals in a manner that protects coastal resources and access and recreational opportunities, as well as residential communities and community character, consistent with the requirements of the LUP.

For the reasons described above, the Commission finds that only as modified is the proposed IP amendment consistent with and adequate to carry out the provisions of the certified LUP.

E. California Environmental Quality Act (CEQA)

As set forth in Section 21080.9 of the California Public Resources Code, the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. (14 CCR § 15251(f).) Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As outlined in this staff report, the proposed LCP Amendment if modified as suggested is a feasible mitigation measure which will be consistent with the policies of the LUP and substantially lessen significant adverse impacts which the proposed LCP amendment will have with respect to coastal impacts to public access, visitor accommodations, and recreation. Thus, the Commission finds that the LCP Amendment, if modified as suggested, is in conformity with and adequate to carry out the land use policies of the certified LUP. The Commission finds that approval of the LCP Amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP Amendment request No. LCP-5-LGB-19-0074-1 if modified as suggested herein.

Attachment L

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

Th19a

DATE: April 27, 2018

TO: Commissioners and Interested Persons

FROM: Steve Hudson, Deputy Director
Barbara Carey, District Manager
Deanna Christensen, Supervising Coastal Program Analyst
Megan Sinkula, Coastal Program Analyst

SUBJECT: County of Santa Barbara Local Coastal Program Amendment No. LCP-4-STB-17-0086-3 (Short-Term Rentals Ordinance), for public hearing and Commission action at the May 10, 2018 Commission Hearing in Santa Rosa.

DESCRIPTION OF THE SUBMITTAL

Santa Barbara County is requesting an amendment to the Implementation Program/Coastal Zoning Ordinance (IP/CZO) component of its certified Local Coastal Program (LCP) to add new regulations to address short-term rentals and homestays. As proposed, the amendment limits the zoning districts where short-term rentals would be allowed in the County to legal dwellings within the Limited Commercial, Retail Commercial, Resort/Visitor Serving Commercial, and Highway Commercial zoning districts, and within a proposed Short-term Rentals Coastal Historic Overlay (**Exhibit 2**) in the residentially zoned neighborhood of Miramar Beach. The amendment also allows for homestays (a form of short-term rental where the owner is present on the property) within legal dwellings in the majority of residential zones throughout the County, including the Rural Residential, Single-Family Residential, Two Family Residential, One-Family Exclusive Residential, Design Residential, Planned Residential Development and Agriculture I zoning districts.

In addition, as part of this amendment, the County proposes to define "short-term rentals" as structures which are rented for overnight lodging, in whole or in part and with or without the presence onsite of the owner or representative of the owner, for thirty consecutive days or less. The proposed amendment distinguishes "homestays" from "short-term rentals" by defining homestays as a residential structure, including portions thereof, rented for thirty consecutive days or less where the owner or long-term tenant of the property inhabits a legal dwelling on the same lot at the same time as the transient occupant. As a result, the owner (or representative of the owner) of a short-term rental *may or may not* be present during the rental period, and the owner (or representative of the owner) of a homestay *must be present* during the rental period. The proposed amendment requires property owners to first obtain a Coastal Development Permit for both types of rentals to operate for the first year, after which point the property owner must annually apply for and obtain a Land Use Permit to continue operation.

The County is proposing the creation of the Short-term Rentals Coastal Historic Overlay District (**Exhibit 2**) for the Miramar Beach community to establish short-term rentals as an allowed use

in this area. The County is proposing this as the only residentially zoned district that would allow such a use. This residentially zoned area was selected by the County as an appropriate location for the Overlay District (**Exhibit 2**) because this area has a documented history of short-term rental use, it is within an area that contains coastal recreation areas (e.g., Miramar Beach, Hammonds Beach, Butterfly Beach), and it is in close proximity to Montecito Village and Montecito's commercial core along Coast Village Road. The Overlay area is approximately 97 acres in size, and contains 170 residentially developed properties, of which, 14 currently contain short-term rentals, although up to 39 properties in this area have operated as short-term rentals in the past (**Exhibit 2**). The County is not proposing to place a cap on the number of allowable units within the Overlay District.

Additionally, the County proposes to allow homestays in six of the County's residential zoning districts and the Agriculture I zoning district, and since the proposed regulations for homestays require the owner or long-term tenant to be present on the property, but not necessarily within the same legal dwelling as the transient occupant of the homestay, occupants of properties that contain multiple legal dwellings on the same property would be able to stay within a separate legal dwelling from that of the owner or long-term tenant and homestays could, in some instances, function similarly to short-term rentals.

The proposed amendment also contains comprehensive administrative details regarding permit requirements and operating standards for both short-term rentals and homestays. The amendment establishes maximum occupancy standards, which place limitations on the number of transient occupants and visitors of short-term rentals and homestays. The amendment also provides parking standards, signage restrictions, limitations on noise generation, and noticing requirements.

The County has proposed the limited residential zoning area where short-term rentals would be allowed because they are concerned with purported nuisance issues that short-term rentals have created with long-term neighbors of the rentals, which mainly involve noise complaints and residential parking displacement. In addition, although the County has calculated that there are approximately 506 existing short-term rental units in the entire County (and 142 existing short-term rentals within the Coastal Zone), they are concerned that if the trend of converting existing housing and rental stock to short-term rentals continues, then the character of these communities would be adversely impacted by the loss of permanent residents.

Moreover, the County is currently experiencing an extremely low vacancy rate and they believe that the short-term rental market is exacerbating the availability of affordable housing and rental housing. The low vacancy rate also determinately affects the cost of already limited housing for both affordable housing and workforce housing. The County's proposal to allow for homestays in all but two of the residentially zoned areas within the County would still serve to provide an important stock of overnight accommodations that are generally lower cost while minimizing the negative effects typically associated with other forms of short-term rentals on the stock of available housing and rental units within the area.

If the proposed amendment is certified, approximately 506 existing short-term rentals County-wide and 142 existing short-term rentals within the Coastal Zone would become non-conforming

uses and will have either ninety days following certification of this proposed amendment or 333 days after the Board of Supervisors adopted this amendment, whichever is later, to cease such use. If this use does not cease within the given timeframe, then the existing non-conforming short-term rental will be considered a violation of the LCP subject to enforcement and penalties.

The County of Santa Barbara submitted Local Coastal Program Amendment LCP-4-STB-17-0086-3 to the Commission on December 22, 2017, and the submittal was deemed complete on January 9, 2018. At the March 9, 2018 hearing, the Commission granted a one year time extension to act on the subject amendment pursuant to Coastal Act Section 30517 and California Code of Regulations, Title 14, Section 13535(c).

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **deny** the proposed County of Santa Barbara LCP Amendment No. LCP-4-STB-17-0086-3 as submitted and **approve** the amendment only if modified pursuant to **two** (2) **suggested modifications**. These modifications are necessary because the proposed amendment to the IP, as submitted, would significantly restrict the potential for alternative lodging opportunities for coastal visitors, limit public access, and is in conflict with the provisions of the certified Land Use Plan and the Coastal Act, which have been incorporated into the Land Use Plan. The motions to accomplish this recommendation are found on **Pages 7-8** of this staff report.

Although the proposed amendment would allow for short-term rentals in commercially zoned districts and the residentially zoned neighborhood of Miramar Beach and would allow for homestays in all but two residentially zoned districts and all Agriculture I zoning districts, the result of the certification of the amendment, as proposed by the County, would be to require approximately 506 existing short-term rentals County-wide and 142 existing short-term rentals within the Coastal Zone to cease use as vacation rentals. The unincorporated County of Santa Barbara has few overnight accommodations for coastal visitors. Currently, within the Coastal Zone, there is only one higher cost hotel (Four Seasons Resort the Biltmore Santa Barbara), no bed and breakfasts, one County-owned campsite (Jalama Beach Campground), and three State-owned campsites (El Capitan, Refugio, and Gaviota Campgrounds). There is extremely high demand for the County's campground units, especially in the summer months when campsites are often completely booked many months in advance. Short-term vacation rental units therefore provide an important visitor-serving amenity that supports coastal access, as attested to by the numerous letters submitted to the County and the Coastal Commission from current and prior renters of such units.

As proposed, the amendment allows homestays within an owner or long-term tenant's home or within a legal second residential unit; however, it expressly prohibits the use of homestays within guest houses. In order to avoid the displacement of existing housing stock, maximize the amount of potential overnight accommodations for coastal visitors, and avoid significant adverse impacts to neighborhood character, **Suggested Modifications Nos. 1** and **2** modify language from the County's proposed amendment that would prohibit the use of homestays within guest houses. The County originally excluded guest houses from use as homestays due to the fact that guest

houses do not contain full kitchens; however, staff would note that typically hotels and motels do not provide kitchens, and accordingly, the lack of an available kitchen does not render such overnight lodging inappropriate for use as a homestay. With or without an available kitchen, homestays can provide important overnight accommodations, which will likely be rented at a lower cost than units with kitchens. In addition, because the existing certified IP/CZO prohibits guest houses from use as long-term rentals, their use as homestays does not reduce the number of long-term rental units available within the County.

If modified as suggested, the proposed amendment does not prohibit or unduly restrict the rental of residences to visitors in a manner that will diminish the public's ability to access and recreate on the coast. The regulations proposed are appropriate to avoid any adverse impacts associated with the allowance of lodging in residential areas, while concomitantly ensuring that visitor-serving overnight accommodations are allowed. If modified as suggested, the proposed amendment to the County's certified IP/CZO will conform to and be adequate to carry out the public access, recreation, and agricultural protection policies of the certified land use plan. As such, staff recommends that the Commission deny Local Coastal Program Amendment LCP-4-STB-17-0086-3 as submitted and approve the amendment request to the IP/CZO if modified as suggested.

Additional Information: Please contact Megan Sinkula at the South Central Coast District Office of the Coastal Commission at (805) 585-1800 or 89 South California Street, Suite 200, Ventura, CA 93001

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EXHIBITS

I. PROCEDURAL OVERVIEW

A. STANDARD OF REVIEW

The standard of review for the proposed amendment to the Implementation Plan (Coastal Zoning Ordinance) of the certified Local Coastal Program, pursuant to Sections 30513 and 30514 (regarding amendments) of the Coastal Act, is whether the Implementation Plan would be in conformance with, and adequate to carry out, the provisions of the Land Use Plan portion of the County of Santa Barbara's certified Local Coastal Program.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in the preparation, approval, certification and amendment of any LCP. The County of Santa Barbara held eight public hearings on the subject of this amendment request. Specifically, the Board of Supervisors considered the proposed amendment on December 6, 2016 and June 6, 2017, the County Planning Commission considered the proposed amendment on November 4, 2015, December 9, 2015, February 24, 2016, and August 3, 2016, and the Montecito Planning Commission considered the proposed amendment on November 4, 2015 and September 21, 2016. The County of Santa Barbara also conducted public outreach on the subject of this amendment at the Agricultural Advisory Committee Meetings on January 6, 2016, February 3, 2016, and July 6, 2016 and the Agricultural Preserve Advisory Committee Meetings on February 5, 2016 and July 8, 2016. The County conducted public workshops on the subject amendment on August 18, 2015 in Buellton and on August 20, 2015 in Montecito, as well as public meetings on the subject amendment on July 16, 2015 in Buellton and on July 30, 2015 in Montecito. All hearings were duly noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment was posted in a local newspaper at least ten days prior to the May 10, 2018 Coastal Commission hearing, and individual notices have been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section13551(b) of Title 14 of the California Code of Regulations, the County's submittal may specify that a LCP amendment will either require formal local government adoption after the Commission approval, or that it is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, the County's Ordinances Nos. 5016 and 5017 state that it will take effect immediately. Therefore, if the Commission certifies the LCP amendment as submitted, no further County action will be necessary. Should the Commission certify the LCP amendment subject to suggested modifications that change the nature of the amendment, final approval by the County will be required prior to the amendment taking effect. Should the Commission deny the LCP amendment as submitted without suggested modifications, no further action is required by either the Commission or the County, and the LCP amendment is not effective.

II. MOTIONS AND RESOLUTIONS

A. Denial of the IP/CZO Amendment as Submitted

MOTION I: *I move that the Commission **reject** Implementation Plan Amendment No. LCP-4-STB-17-0086-3 as submitted by the County of Santa Barbara.*

STAFF RECOMMENDATION TO DENY AS SUBMITTED:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan Amendment No. LCP-4-STB-17-0086-3 as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION I TO DENY THE IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of Implementation Plan Amendment No. LCP-4-STB-17-0086-3 as submitted by the County of Santa Barbara and adopts the findings set forth below on the grounds that the Implementation Plan amendment as submitted does not conform with, and is not adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment will not meet the requirements of the California Environmental Quality Act as there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.

B. Approval of the IP/CZO Amendment if Modified as Suggested

MOTION II: *I move that the Commission **certify** Implementation Plan Amendment No. LCP-4-STB-17-0086-3 submitted by the County of Santa Barbara if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY IF MODIFIED AS SUGGESTED:

Staff recommends a **YES** vote. Passage of this motion will result in the certification of Implementation Plan Amendment No. LCP-4-STB-17-0086-3 with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the Commissioners present.

RESOLUTION II TO CERTIFY IF MODIFIED AS SUGGESTED:

The Commission hereby certifies Implementation Plan Amendment No. LCP-4-STB-17-0086-3 for the County of Santa Barbara certified Local Coastal Program if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with the suggested modifications will be in conformance with and adequate to carry out the

provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Plan if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

SUGGESTED MODIFICATIONS TO THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE

The County's proposed amendment language to the certified Implementation Plan/Coastal Zoning Ordinance is shown in straight type. Language recommended by Commission staff to be deleted is shown in ~~line out~~. Language recommended by Commission staff to be inserted is shown in underline.

SUGGESTED MODIFICATION NO. 1

The following language shown in ~~line out~~ shall be deleted from Section 35-120 of the Implementation Plan/Coastal Zoning Ordinance and language shown in underline shall be inserted into Section 35-120.

9. A guest house shall be used on a temporary basis only by the occupants of the main dwelling or their non-paying guests or servants and is not intended to be rented or let out, whether the compensation is paid directly or indirectly in money, goods, wares, merchandise, or services, with the exception of homestays which shall be allowed within guesthouses. Temporary is defined as occupying the premises for no more than 120 days in any 12 month period.
…

11. Guest houses, artist studios, or cabañas shall not be permitted to be used as ~~Homestays or~~ Short-Term Rentals.

SUGGESTED MODIFICATION NO. 2

The following language shown in underline shall be inserted into Section 35-144S of the Implementation Plan/Coastal Zoning Ordinance.

D. **Development Standards.** Homestays shall comply with all of the following standards in addition to any other applicable standards of this Article.
…

(3) **Prohibited structures.** Homestays shall not be allowed in:

a. Any dwelling subject to agreements, conditions, or covenants entered into with the County restricting their use including, but not limited to, affordable housing units, agricultural employee housing, and farmworker housing.

b. Any structure that is only permitted to be occupied on a temporary basis including, but not limited to, cabañas. Homestays shall be allowed within ~~and~~ guest houses.

IV. FINDINGS FOR DENIAL AS SUBMITTED & APPROVAL IF MODIFIED AS SUGGESTED

The following findings support the Commission's denial of the proposed Implementation Plan amendment as submitted and approval if modified as suggested. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

The County of Santa Barbara (**Exhibit 1**) is requesting an amendment to the Implementation Plan/Coastal Zoning Ordinance (IP/CZO) component of its certified Local Coastal Program (LCP) to regulate short-term rentals. These proposed changes are described in detail below. The ordinance language is attached as **Exhibit 4**.

Definitions

The County proposes to add twelve definitions to Division 2 of Article II (Chapter 35, Section 35-58): Bed and Breakfast, Homestay, Hosting Platform, Long-term Tenant or Owner, Visitor, Residential Structure, Short-term Rental, Transient, Local, Local Contact, Managing Agency, and Operator.

Section 35-58 is proposed to be amended to include the definition of "Bed and Breakfast" as a residential structure with one or more bedrooms rented for overnight lodging, where meals may be provided subject to applicable County health regulations.

Section 35-58 is proposed to be amended to include the definition of "Homestay" as a residential structure, including portions thereof, rented for thirty consecutive days or less where the owner or long-term tenant of the property inhabits a legal dwelling on the same lot at the same time as the transient occupant.

In order to provide greater clarity to Section 35-144S (Homestay), Section 35-58 is proposed to be amended to include the definitions of "Hosting Platform", "Long-term Tenant or Owner", and "Visitor." "Hosting Platform" is defined as a marketplace which facilitates the consummation of Homestay agreements through advertising and from which, in whatever format, information is provided about or relating to a residential structure, including portions thereof, for occupancy as a Homestay. "Long-term Tenant or Owner" is defined as a person who is the owner of the property or who rents the property for 6 months or more. Additionally, "Visitor" is defined as a person who enters the property on which a Homestay is located for the purpose of visiting, seeing or communicating with the transient occupant of the Homestay.

Section 35-58 is proposed to be amended to include a definition of "Residential Structure" as a structure containing one or more dwelling units, except for a mixed use building.

Section 35-58 is proposed to be amended to include a definition of "Short-term Rental" as a structure which is rented for overnight lodging, in whole or in part and with or without the presence onsite of the owner or representative of the owner, for thirty consecutive days or less.

Section 35-58 is proposed to be amended to include a definition of "Transient" or transient occupant as any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty consecutive days or less. The definition further clarifies that any such person that occupies space in any lodging use shall be considered a transient until the expiration of thirty days or less except where there is an agreement between the owner or operator and the occupant that provides for a longer period of occupancy.

In order to facilitate the implementation of the operating standards within the Short-term Rental Coastal Historic Overlay (**Exhibit 2**), Section 35-58 is also proposed to be amended to include definitions of "Local", "Local Contact", "Managing Agency", and "Operator." "Local" is defined as belonging or relating to a particular area or neighborhood, typically within thirty miles of its center, and "local contact" is defined as a person designated by the operator of the short-term rental who shall be available during the term of any short-term rental for the purpose of responding to complaints regarding the condition or operation of the dwelling or portion thereof used as a short-term rental or the conduct of transient occupants, as well as taking remedial action to resolve such complaints. "Managing Agency" is defined as any person, enterprise, or agency representing, directly or indirectly, the property owner or operator of a dwelling which is used as a short-term rental. "Operator" is defined as a person or enterprise who is the property owner or proprietor of a dwelling, and is intended to include operators that function in the capacity of owner, lessee, sub-lessee, mortgagee in possession, and licensee (or in any other capacity). This definition clarifies that if the operator performs his or her functions through a Managing Agency or Rental Agent, the agency or agent is considered to have the same duties as its principal.

<u>Short-term Rentals Coastal Historic Overlay</u>

The County proposes to amend the IP/CZO to add a Coastal Historic Overlay map as Figure No. 35-102.2.A (as shown in **Exhibit 2**) and to add the Short-term Rentals Coastal Historical Overlay to the list of overlay districts found in Section 35-53. This area would be the only *residentially* zoned location in the County where short-term rentals would be an allowed use. The Overlay encompasses the approximately 97-acre Miramar Beach community which is bordered by U.S. Highway 101 to the north, Posilipo Lane to the east, Miramar Beach to the south, and Danielson Road and Via Del Mar to the west. There are approximately 170 residential dwellings within the proposed Overlay District that could potentially obtain permits and operate as short-term rentals. Currently, there are 14 short-term rentals operating within the proposed Short-term Rentals Coastal Historic Overlay although up to 39 rentals have operated here in the past. The County is not proposing to place a cap on the number of allowable units within the Overlay District.

This residentially zoned area was selected by the County as an appropriate location for the Overlay District because the County determined that this area has a clearly documented history

of short-term rental use. During the creation of the Overlay District, County planning staff gathered evidence that demonstrated a pattern of historic use of short-term rentals within the Miramar Beach neighborhood, which included interviews with residents of the neighborhood, County planning staff knowledge of signage advertising such use, and collection and analysis of historic transient occupancy tax data. Additionally, the Miramar Beach neighborhood is considered an appropriate location for short-term rentals because it is within an area that contains coastal recreation areas (e.g., Miramar Beach, Hammonds Beach, Butterfly Beach), and it is in close proximity to Montecito Village and Montecito's commercial core along Coast Village Road.

Short-Term Rentals

The County proposes to define short-term rentals as a structure that is rented for overnight lodging, in whole or in part and with or without the presence onsite of the owner or representative of the owner, for thirty consecutive days or less. The proposed amendment distinguishes short-term rentals from homestays by having different requirements for when the owners or operators of the property are required to be present on the property. More specifically, the proposed amendment allows the owner (or representative of the owner) of a short-term rental to *be present or not present* during the rental period, whereas the owner (or representative of the owner) of a homestay *must be present* on the property during the rental period.

The County proposes to amend Sections 35-77A.3, 35-78.3, 35-80, and 35-81 of the IP/CZO to establish short-term rentals as an allowed use within the Limited Commercial, Retail Commercial, Resort/Visitor Serving Commercial, and Highway Commercial zoning districts, as well as within a proposed Short-term Rentals Coastal Historic Overlay (**Exhibit 2**) in the residentially zoned neighborhood of Miramar Beach (described above). The amendment also adds Sections 35-102.5, 35-102.6, 35-102.7, and 35-144T to include standards for the permitting and operation of short-term rentals within these zoning districts.

Sections 35-102.5, 35-102.6, 35-102.7, and 35-144T contain a number of administrative details regarding Coastal Development Permit and Land Use Permit applications and renewal requirements for the operation of short-term rentals, details regarding the potential for revocation of Coastal Development Permits, and comprehensive operating standards. Existing short-term rentals within the zoning districts where this will be an allowed use, subject to certification of this proposed amendment, must first apply for and receive a Coastal Development Permit to operate as a short-term rental within ninety days following certification of this amendment or within 333 days after the Board of Supervisors adopted this amendment, whichever is later. If a Coastal Development Permit is not issued within this given timeframe, then the use of the existing structures as short-term rentals must cease or it will be considered a violation of the LCP subject to penalties and enforcement.

Additionally, existing short-term rentals within the zoning districts that will be specifically disallowed through certification of the proposed IP/CZO amendment must cease use as short-term rentals no later than ninety days following the certification of this amendment or within 333 days after the Board of Supervisors adopted this amendment, whichever is later. If this use does

not cease within the given timeframe, then the existing short-term rental will be considered a violation of the LCP and subject to penalties and enforcement.

The proposed amendment also provides comprehensive operating standards for short-term rentals, including requirements for compliance with fire, building, and health codes; prohibitions on short-term rentals within dwellings subject to restricted use agreements with the County, affordable housing units, agricultural employee housing, farmworker housing, cabañas, guest houses, as well as structures that cannot legally be used as a dwelling (e.g., agricultural accessory structures, tents, trailers, vehicles, and yurts); allowance of only one short-term rental per lot and prohibition on all signage advertising for short-term rentals; requirements for the provision of all internet listing materials to be provided to the County; requirements that establish maximum occupancy standards, which do not allow more than two persons per bedroom (excluding children under three years of age) and limitations on the number of visitors to a short-term rental to no more than two times the number of transient occupants of the rental; and provisions for parking requirements that include one parking space per bedroom, consistency with the existing certified parking requirements of the IP/CZO, and the prohibition of any on-street parking associated with the short-term rental.

In order to avoid adverse impacts and disturbance to nearby residents from short-term rentals, the proposed amendment also includes very specific limitations on noise generation from the use of short-term rentals. The amendment specifies that the volume of sound generated by the short-term rental between the hours of 8:01 a.m. and 9:59 p.m. cannot exceed 65 dB or existing ambient noise levels, whichever is greater, and between the hours of 10:00 p.m. and 8:00 a.m., the volume of sound generated by the short-term rental cannot exceed 45 dB or existing ambient noise levels, whichever is greater.

Furthermore, the proposed operating standards require the posting of a notice within each short-term rental unit that provides the contact information for the local contact assigned to the unit, the maximum number of occupants allowed within the unit, the maximum number of vehicles allowed to be parked on the property of the unit, the applicable noise standards (discussed directly above), and a notification that failure to comply with the applicable operating standards will result in a violation of the LCP, penalties, and enforcement.

In addition, the operating standards include the requirement of a “Nuisance Response Plan” to eliminate the potential for any persistent conflict of use issues between the short-term rental and the neighboring community. Specifically, the operator, property owner, or managing agency must submit (and update) contact information for a local contact, prior to Coastal Development Permit issuance, who will be available on a 24-hour basis to respond to any complaints and to take remedial action, if necessary, to address any such complaints. The proposed amendment language notes that the failure of the local contact to respond to complaints in a “timely and appropriate” manner may result in revocation of the permit allowing the short-term rental use. The proposed amendment clarifies that a timely and appropriate manner requires the local contact to respond to any complaints within one hour from the time the initial complaint is made, and corrective action to address the complaint, if needed, is required to be undertaken within two hours from the time the initial complaint is made.

The proposed amendment also contains details regarding the permit renewal process required to operate short-term rentals. The proposed amendment states that a Coastal Development Permit issued for a short-term rental shall only be valid for one year, at which point, the owner or operator must annually obtain a Land Use Permit to continue the short-term rental use. The application for the Land Use Permit must be submitted no later than thirty days prior to the expiration of the Coastal Development Permit. If the approval of a Land Use Permit for the continuation of the short-term rental use is appealed, the validity of the Coastal Development Permit will be extended until the appeal process for the Land Use Permit concludes.

Finally, the proposed amendment provides five criteria that will serve as the basis for revocation of Coastal Development Permits and Land Use Permits to operate short-term rentals in addition to the existing certified criteria for revocation of permits found in Sections 35-169.8 and 35-178.7 of the IP/CZO. The amendment establishes that a Coastal Development Permit or Land Use Permit may be revoked if the permit applicant: (1) makes alterations to the property that do not conform to the original permit approval (e.g., removal of required parking); (2) is found to have submitted false or misleading information to the County, particularly in regards to the permit application; (3) fails to comply with conditions of the permit(s); (4) fails to comply with any other required County, state, or local permit; and/or (5) fails to comply with the requirements of the Nuisance Response Plan.

Homestays

The County proposes to define homestays as a residential structure, including portions thereof, rented for thirty consecutive days or less where the owner or long-term tenant of the property inhabits a legal dwelling on the same lot at the same time as the transient occupant. As discussed above, the proposed amendment distinguishes short-term rentals from homestays with the requirement of where the owners or operators of short-term rentals and homestays are required to be present. More specifically, the proposed amendment allows the owner (or representative of the owner) of a short-term rental to *be present or not present* during the rental period, and the owner (or representative of the owner) of a homestay *must be present* during the rental period.

The County proposes to amend Sections 35-68.3, 35-70.3, 35-71.3, 35-72.3, 35-73.3, 35-74.4, and 35-75.7 of the IP/CZO to establish homestays as an allowed use within the Agriculture I, Rural Residential, Single-Family Residential, Two-Family Residential, One-Family Exclusive Residential, Design Residential, and Planned Residential Development zoning districts. Within these zoning districts where homestays will be allowed, pursuant to certification of this amendment, there are approximately 3,350 dwellings that could potentially obtain permits and operate as homestays. Since the County proposes to allow homestays in almost all of the residential zoning districts and the proposed regulations for homestays require the owner or long-term tenant to be present on the property, but not necessarily within the same legal dwelling as the transient occupant of the homestay, occupants of properties that contain multiple legal dwellings would be able to stay within a separate legal dwelling from that of the owner or long-term tenant and homestays could, in some instances, function similarly to short-term rentals.

The only residential zoning districts within the Coastal Zone of the County where homestays will not be allowed are the Medium Density Student Residential and High Density Student

Residential zoning districts in the community of Isla Vista (around the University of California Santa Barbara), due to the fact that these two zoning districts already have a higher density of residents and the County believes that incentivizing an even higher density within these areas would be unduly burdensome on public services, traffic, and parking within these already densely developed areas.

The amendment also adds Section 35-144S to include standards for the permitting and operation of homestays within these zoning districts. Section 35-144S contains a number of administrative details regarding Coastal Development Permit application and renewal requirements for the operation of homestays, details regarding the potential for revocation of Coastal Development Permits and Land Use Permits, and comprehensive operating standards. The proposed amendment specifies that regardless of the number of properties owned, a property owner cannot possess more than one homestay permit at any given time. Additionally, the amendment restricts homestays to no more than three bedrooms of a legal dwelling unit.

The proposed amendment also provides comprehensive operating standards for homestays, including requirements for compliance with fire, building, and health codes; requirement that the owner or long-term tenant must reside on the property at the same time as the transient occupant of the homestay, prohibitions on homestays within dwellings subject to restricted use agreements with the County, affordable housing units, agricultural employee housing, farmworker housing, cabañas, guest houses, as well as structures that cannot legally be used as a dwelling (e.g., agricultural accessory structures, tents, trailers, vehicles, and yurts); prohibition on all signage advertising for homestays; requirements for the provision of all internet listing materials to be provided to the County; requirements that establish maximum occupancy standards, which do not allow more than two persons per bedroom (excluding minor children) and limitations on the number of visitors to a homestay to no more than two times the number of transient occupants of the rental; and provisions for parking requirements that include consistency with the existing certified parking requirements of the IP/CZO and the requirement that all parking shall be provided on the lot on which the Homestay is located.

In order to avoid adverse impacts of short-term rentals on neighboring communities, the proposed amendment also includes very specific limitations on noise generation from the use of homestays. The amendment specifies that the volume of sound generated by the homestay between the hours of 8:01 a.m. and 9:59 p.m. cannot exceed 65 dB or existing ambient noise levels, whichever is greater, and between the hours of 10:00 p.m. and 8:00 a.m., the volume of sound generated by the homestay cannot exceed 45 dB or existing ambient noise levels, whichever is greater.

Furthermore, the proposed operating standards require the owner or long-term tenant of the homestay to provide proof of ownership or long-term tenancy with the homestay permit application. If the homestay permit application is submitted by the long-term tenant of the property, the owner of the homestay is required to sign the permit application.

In addition, the operating standards include the requirement of a “Nuisance Response Plan” to eliminate the potential for any persistent conflict of use issues between the homestay and the neighboring community. Specifically, the owner or long-term tenant must submit (and update)

their contact information and be available by telephone on a 24-hour basis to respond to any calls regarding the homestay. The proposed amendment language notes that the failure to respond to calls regarding the homestay in a "timely and appropriate" manner may result in revocation of the permit allowing the homestay use. The proposed amendment clarifies that a timely and appropriate manner requires the owner or long-term tenant to respond to any complaints within one hour from the time the initial complaint is made, and corrective action to address the complaint, if needed, is required to be undertaken within two hours from the time the initial complaint is made.

The proposed amendment also contains details regarding the permit renewal process required to operate homestays. The proposed amendment states that a Coastal Development Permit issued for a homestay shall only be valid for one year, at which point, the owner or long-term tenant must annually obtain a Land Use Permit to continue the homestay use. The application for the Land Use Permit must be submitted no later than thirty days prior to the expiration of the Coastal Development Permit. If the approval of a Land Use Permit for the continuation of the homestay use is appealed, the validity of the Coastal Development Permit will be extended until the appeal process for the Land Use Permit concludes.

Finally, the proposed amendment provides four criteria that will serve as the basis for revocation of Coastal Development Permits and Land Use Permits to operate homestays in addition to the existing certified criteria for revocation of permits found in Sections 35-169.8 and 35-178.7 of the IP/CZO. The amendment establishes that a Coastal Development Permit or Land Use Permit may be revoked if the permit applicant: (1) makes alterations to the property that do not conform to the original permit approval (e.g., removal of required parking); (2) is found to have submitted false or misleading information to the County, particularly in regards to the permit application; (3) fails to comply with conditions of the permit(s); and/or (4) fails to comply with any other required County, state, or local permit.

B. Findings for Denial of the LCP Amendment as Submitted and Approval if Modified As Suggested

1. Coastal Act Policies

The County has incorporated all Chapter 3 policies of the Coastal Act into the certified Land Use Plan (LUP) as guiding policies of the LUP.

Coastal Act Section 30210 states:

> *In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30213 states, in relevant part:

> *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.*

Coastal Act Section 30222 states:

> *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or generic commercial development, but not over agriculture or coastal-dependent industry.*

Coastal Act Section 30241 states, in relevant part:

> *The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses…*

Coastal Act Section 30242 states:

> *All other lands suitable for agricultural use shall not be converted to nonagricultural use unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

Coastal Act Section 30250(c) states:

> *Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.*

2. Existing LUP Policies

County of Santa Barbara Land Use Plan Policy 4-6 states:

> *Signs shall be of size, location, and appearance so as not to detract from scenic areas or views from public roads and other viewing points.*

County of Santa Barbara Land Use Plan Policy 7-1 states, in relevant part:

> *The County shall take all necessary steps to protect and defend the public's constitutionally guaranteed rights of access to and along the shoreline.*

County of Santa Barbara Land Use Plan Policy 7-18, in relevant part:

> *Expanded opportunities for access and recreation shall be provided in the Gaviota Coast planning area.*

County of Santa Barbara Land Use Plan Policy, in relevant part:

> *Expanded opportunities for public access and recreation shall be provided in the North Coast planning area.*

County of Santa Barbara Land Use Plan Policy 7-30 states:

> *Visitor-serving facilities shall be permitted in rural areas only if it is determined that approval of such development will not result in a need for major ancillary facilities on nearby lands, i.e., residences, stores, gas stations.*

Eastern Goleta Valley Community Plan Policy LUA-EGV-1.1 states:

> *Agricultural resources, agricultural land uses and operations, and distinctive urban and rural agricultural characteristics shall be preserved to the greatest extent feasible.*

Eastern Goleta Valley Community Plan Policy LUA-EGV-1.5 states:

> *Agricultural land within the Urban Area shall be preserved for urban agricultural uses to the greatest extent feasible.*

Eastern Goleta Valley Community Plan Policy N-EGV-1.1 states:

> *Noise impacts to interior noise-sensitive land uses, such as residential, educational, medical, lodging, public meeting spaces, or others specified by the Noise Element of the Comprehensive Plan, shall be minimized.*

Eastern Goleta Valley Community Plan Policy N-EGV-1.2 states:

> *Levels and duration of noise in existing residential neighborhoods shall be maintained consistent with the Noise Element.*

Montecito Community Plan Policy N-M-1.1 states:

> *Noise-sensitive uses (i.e., residential and lodging facilities, educational facilities, public meeting places and others specified in the Noise Element) shall be protected from significant noise impacts.*

Toro Canyon Plan Policy LUA-TC-2 states:

> *Land designated for agriculture within Toro Canyon shall be preserved and protected for agricultural use.*

3. IP/CZO Amendment Consistency Analysis

To approve the proposed amendment to the IP/CZO, the Commission must find the IP/CZO, as amended, conforms with, and is adequate to carry out, the provisions of the County's certified Land Use Plan (LUP) pursuant to Section 30513 of the Coastal Act. Furthermore, LUP Policy 1-1 incorporates the policies of the Coastal Act as the guiding policies of the LUP.

Visitor-Serving Accommodations

The Commission has found that short-term vacation rentals, including those in residential areas, can provide an important visitor-serving asset. These rentals can increase public access to the

coast, provide large groups and families traveling together the opportunity to divide up the cost of accommodations, and in many cases, provide the facilities necessary for guests to cook their own meals and avoid the added expense of dining out. In some cases, these rentals offer a lower price point than expensive hotel options near the coast.

While short-term rentals have been available in the County of Santa Barbara dating back decades, the number and geographic location of short-term rentals has expanded considerably in recent years, which can increase the potential for adverse impacts on some residential neighborhoods. The County found that while short-term rentals serve as an important lodging resource and contributor to the local economy, these rentals can have negative impacts on the character of residential neighborhoods and the availability of housing. To address these issues while still allowing this visitor-serving use, the County has proposed an amendment that limits short-term rentals to areas able to accommodate such use, allows the generally lower-cost use of homestays in almost all residential zoning districts, and creates a regulatory framework (detailed above) for both short-term rentals and homestays that will serve to minimize the potential for adverse impacts on the residential neighborhoods where these uses will be allowed.

Coastal Act Sections 30213, 30222, and 30250(c) protect both lower cost visitor-serving facilities and visitor-serving facilities within the Coastal Zone, encourage the development of such facilities, and prioritize these facilities over private residential land uses. Section 3.7.7 of the County's certified LUP recognizes the critical function of visitor-serving overnight accommodations by stating that "visitor-serving facilities together with public parks and beaches provide the major opportunities for public access and recreation on the coast." In addition, LUP Policies 7-18 and 7-22 require the expansion of opportunities for public coastal access and recreation within the Gaviota and North Coast planning areas. As proposed, short-term rentals would be an allowed use within the Limited Commercial, Retail Commercial, Resort/Visitor Serving Commercial, and Highway Commercial zoning districts, as well as within a proposed Short-term Rentals Coastal Historic Overlay (**Exhibit 2**) in the residentially zoned neighborhood of Miramar Beach (described above). The amendment also proposes to allow homestays within the Agriculture I, Rural Residential, Single-Family Residential, Two-Family Residential, One-Family Exclusive Residential, Design Residential, and Planned Residential Development zoning districts.

Currently, there are 14 short-term rentals operating within the proposed Short-term Rentals Coastal Historic Overlay, and the County is not proposing to place a cap on the number of allowable units within the Overlay District or the commercial zones where this use will also be allowed. There are approximately 170 residential dwellings within the proposed Overlay District that could potentially obtain permits and operate as short-term rentals. The County was not able to provide an approximation of how many potential short-term rental units could be developed within the commercial zones. If the proposed amendment is certified, approximately 506 existing short-term rentals County-wide and 142 existing short-term rentals within the Coastal Zone would fall outside of zoning districts where such uses will be allowed and these short-term rentals would become non-conforming uses with either ninety days following certification of this proposed amendment or 333 days after the Board of Supervisors adopted this amendment, whichever is later, to cease such use. If this use does not cease within the given timeframe, then the existing non-conforming short-term rental will be considered a violation of the LCP subject

to enforcement and penalties. However, the existing short-term rentals within the Agriculture I, Rural Residential, Single-Family Residential, Two-Family Residential, One-Family Exclusive Residential, Design Residential, and Planned Residential Development zoning districts may be used for homestays, subject to the permit requirements and operating standards proposed in this amendment.

The County has proposed the limited residential zoning area where short-term rentals would be allowed because they are concerned with purported nuisance issues that short-term rentals can have with long-term neighbors of the rentals, which mainly involve noise complaints and residential parking displacement. In addition, although the County has calculated that there are currently only a few more than 500 existing short-term rental units in the County, they are concerned that if the trend of converting existing housing and rental stock to short-term rentals continues, then the character of these communities would be adversely impacted by the loss of permanent residents. Moreover, the County is currently experiencing an extremely low vacancy rate and they believe that the short-term rental market is exacerbating the availability of affordable housing and rental housing. The low vacancy rate also determinately affects the cost of already limited housing for both affordable housing and workforce housing.

Notably, the unincorporated County of Santa Barbara has few existing available overnight accommodations for coastal visitors aside from that provided by existing short-term rentals. Currently, within the Coastal Zone, there is only one higher cost hotel (Four Seasons Resort the Biltmore Santa Barbara), no bed and breakfasts, one County-owned campsite (Jalama Beach Campground), and three State-owned campsites (El Capitan, Refugio, and Gaviota Campgrounds). There is extremely high demand for the County's campground units, especially in the summer months when campsites are often completely booked many months in advance.

The proposed amendment to restrict areas where short-term rentals will be allowed fails to protect more than one hundred existing overnight accommodations within the Coastal Zone and therefore reduces the availability of certain existing overnight accommodations. However, the County's proposal to allow for homestays throughout the majority of the residentially zoned areas within the County would serve to bolster the stock of overnight accommodations while minimizing the adverse impacts typically associated with short-term rentals. In particular, the use of homestays does not adversely impact the stock of available housing and rental units within the area.

The County's proposed amendment contains a prohibition on the use of homestays within guest houses. In order to further maximize this type of overnight accommodation in a manner that does not cause significant adverse impacts to neighborhood character or displace existing housing stock, **Suggested Modifications Nos. 1** and **2** amend provisions of the certified IP/CZO that prohibit homestays within guest houses to allow for such use. The County originally excluded guest houses from use as homestays due to the fact that guest houses do not contain full kitchens; however, hotels and motels oftentimes do not provide kitchens, and accordingly, the lack of an available kitchen does not render overnight lodging inappropriate for such use. With or without an available kitchen, homestays can make a significant contribution to the stock of available overnight accommodations within the County, including lower-cost accommodations. Because the existing certified IP/CZO does not allow guest houses to be used for long-term rentals,

allowing homestays within guest houses will also not reduce the availability of long-term rental housing opportunities.

The proposed amendment allows for the use of homestays throughout all residential zoning districts with the exception of the high density residential zoning districts within the Isla Vista community surrounding the University of California Santa Barbara. If the proposed amendment is certified, there are approximately 3,350 dwellings that could potentially obtain permits and operate as homestays. The addition of homestays, including homestays in guest houses, as an allowed use in residential zones throughout the County's residential neighborhoods will create a net increase in visitor-serving accommodations and will offer comparable visitor-serving opportunities to that of short-term rentals, consistent with the requirements of Coastal Act Sections 30222 and 30250(c) and LUP Policies 7-18 and 7-22. **Suggested Modifications Nos. 1** and **2** will further ensure that homestays provide a comparable experience to that of short-term rentals, as transient occupants will be allowed to stay within guest houses without the presence of the owner (or representative of the owner) within the same structure. Therefore, the use of guest houses as homestays will allow for transient occupants to enjoy privacy similar to that of staying within a short-term rental. Similarly, on properties that contain multiple legal dwellings, the proposed amendment would allow for transient occupants to rent the principal dwelling as a homestay while the owner (or representative of the owner) resides within the residential second unit on the property. In addition, homestays are often significantly more affordable than short-term rentals, particularly in the residential coastal communities of the County. As such, the addition of homestays as an allowed use within the County, if modified as suggested, is consistent with the requirement of Coastal Act Section 30213 to provide lower cost visitor accommodations and the requirement of the LUP to expand opportunities for access and recreation in the Gaviota and North Coast planning areas.

Coastal Act Section 30210 requires the provision of maximum public coastal access and recreational opportunities that are consistent with public safety, the protection of both public rights and private property rights, and the protection of natural resources. In addition, LUP Policy 7-1 requires the County to take all necessary measures to protect and defend the public's right of access to and along the shoreline. The Commission has found that short-term rentals within the Coastal Zone can provide an opportunity for the public to stay at a location where they can have access to the coast. If modified as suggested, the County's amendment to allow short-term rentals within commercial zoning districts and the residential zoning district of Miramar Beach, and to allow homestays within all but two residential zoning districts and the Agriculture I zoning district, is consistent with LUP Policy 7-1 and Section 30210's requirement of protecting and maximizing public coastal access and recreational opportunities, while also ensuring the protection of private property rights through the avoidance of significant adverse impacts to neighborhood character.

LUP Policy 4-6 requires the regulation of signage to avoid any adverse impacts of signage upon public scenic views. Additionally, Eastern Goleta Valley Community Plan Policies N-EGV-1.1, N-EGV-1.2, and Montecito Community Plan Policy N-M-1.1 all require the regulation of noise levels and duration of noise within residentially zoned areas. In order to achieve consistency with these requirements of the LUP, the Eastern Goleta Valley Community Plan, and the Montecito Community Plan, the County's proposed amendment prohibits all signage advertising for short-

term rentals and homestays and sets specific noise limit levels (detailed above), based upon what would be appropriate for the time of day, for transient occupants of short-term rentals and homestays. The proposed amendment also places maximum occupancy limitations on the use of short-term rentals and homestays to reduce the potential for excessive noise generated by the rentals. Further, the proposed Nuisance Response Plan (detailed above) ensures that any exceedance of the noise limits set by the proposed amendment will be quickly remediated, and the requirement for annual permit renewal, as well as the criteria for revocation of permits for short-term rentals and homestays, ensure that rentals that demonstrate a pattern of violating the noise limits will be required to cease use. Lastly, the County's proposed requirement of posting the noise standards within short-term rentals will ensure that transient occupants of the rentals are aware of the noise limits during their usage of the rental. Therefore, the County's proposed regulatory framework for short-term rentals and homestays is consistent with, and adequate to carry out, these requirements of the certified Land Use Plans.

Agriculture

The County proposes to allow homestays within the Agriculture I zoning district. Coastal Act Section 30241 requires the protection of the maximum amount of prime agricultural land and the minimization of conflicts of use between agricultural and urban land uses. Coastal Act Section 30242 prohibits the conversion of agricultural land uses to non-agricultural land uses unless such a conversion would preserve the agricultural land and would be compatible with continued agricultural use in the surrounding area. Furthermore, Eastern Goleta Valley Community Plan Policies LUA-EGV-1.1 and LUA-EGV-1.5 and Toro Canyon Plan Policy LUA-TC-2 require the preservation of agricultural resources and land uses, particularly within urban areas. In addition, LUP Policy 7-30 only allows visitor-serving facilities to be developed in rural areas if such development would not result in the need for major commercial facilities. Although the County is proposing to allow a visitor-serving use on agriculturally zoned properties, the allowance of homestays on such properties will occupy only portions of existing development and does not involve new development beyond that which is allowed pursuant to the applicable LCP policies and provisions, and therefore, the proposed amendment does not have the potential to convert existing agricultural lands to a non-agricultural use. In addition, the proposed amendment specifically prohibits the use of agricultural employee housing, farmworker housing, and agricultural accessory structures for use as homestays to ensure that the allowance of homestays within Agriculture I zoning districts does not create any significant adverse impacts on agricultural productivity or conflict with the agricultural protection policies of the Coastal Act and LUP. Therefore, the proposed amendment to allow homestays on agriculturally zoned properties is consistent with the Policies 30241, 30242, LUA-EGV-1.1, LUA-EGV-1.5, and LUA-TC-2. The proposed amendment is also consistent with the requirements of LUP Policy 7-30 because the use of portions of existing development as homestays within rural, agricultural areas will not require the development of major ancillary commercial facilities.

Additionally, the County believes that agricultural parcels are appropriate for the homestay use because agricultural parcels are larger in size than traditional residentially zoned parcels, which would allow for parking on-site to be easily accommodated and would create a larger buffer that would reduce noise impacts from transient occupants of the homestays on long-term neighbors. As such, the County's proposed amendment to allow homestays within Agriculture I zoning

districts is consistent with, and adequate to carry out, the requirements of the certified Land Use Plans regarding the protection of agricultural resources.

Public Comment Received

Staff has received seventeen emails and five letters from interested parties in opposition to the proposed LCP amendment. In addition, a letter was also received from Santa Barbara County Supervisor Das Williams indicating his belief that the Short-Term Rental Coastal Historic Overlay should be expanded. These public comment emails and letters are attached as **Exhibit 5** of the staff report. The primary issues raised by the twenty-three emails/letters received from members of the public in opposition to the proposed LCP amendment include the concern that the proposed amendment would result in adverse impacts to public coastal access and recreational amenities due to the limited area covered by the Short-Term Rental Coastal Historic Overlay and loss of lower-cost overnight accommodations. In addition, the public comments state that although the amendment would allow for homestays in the majority of residential zoning districts throughout the County, they believe that homestays do not provide comparable overnight accommodations to that of full short-term rentals.

Many of the emails/letters received have pointed out that short-term rentals, in particular in areas near the coast that do not provide public accessways and contain only private accessways that are used by the neighboring community, can provide members of the public that rent these homes with public access to the coast. These emails/letters therefore assert that restricting the residential zoning districts where short-term rentals will be an allowed use will have adverse impacts on public access to the coast. In response to this, Staff would note that the County has proposed a balanced approach that will allow for different forms of short-term vacation rentals, including short-term rentals in one residential zoning district and homestays within all but two residential zoning districts in these coastal communities. Homestays, and if modified as suggested, homestays within guest houses, in these particular coastal communities would allow transient occupants to enjoy otherwise private accessways to the beach during their stay.

Staff has also received one public comment that requests the Commission to require all short-term vacation rentals to become compliant with the current standards of the Americans with Disabilities Act. Staff would note that the Commission is not responsible for assuring that each development that would be permitted subject to the proposed amendment complies with federal and state disability laws. Rather, the public agencies and private parties seeking permits and approvals from the the Commission, the County, or actually operators of such facilities, are themselves responsible for assuring that their projects comply with relevant statutes. The Commission does have a separate obligation, pursuant to the Coastal Act, to maximize public access. However, as described in this report, the proposed IP/CZO amendment, as modified, is in conformance with Coastal Act access policies.

4. Conclusion

The County's certified LUPs, including Coastal Act policies incorporated therein, protect visitor-serving accommodations and recreational facilities, in addition to coastal resources such as public access, within the County. If modified as suggested, the proposed amendment does not

prohibit or unduly restrict the rental of residences to visitors in a manner that will significantly impact the public's ability to access and recreate on the coast. The proposed changes to the IP/CZO do not conflict with the provision of priority land uses identified in the LUP, nor do the proposed changes raise issue with regard to the public access policies of the LUP. Rather, the proposed amendment, if modified as suggested, strikes a balance between ensuring the availability of short-term rentals for coastal visitors and providing long-term housing for local residents. Therefore, the Commission finds that the subject sections of the proposed amendment, if modified as suggested, conform to and are adequate to implement the LUP policies.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT

California Public Resources Code (PRC) Section 21080.9, within the California Environmental Quality Act (CEQA), exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with their adoption of a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, because the California Natural Resources Agency found the Commission's LCP review and approval process to be functionally equivalent to the EIR process (*See* 14 C.C.R. Section 15251(f)), PRC Section 21080.5 relieves the Commission of the responsibility to prepare an EIR for its approval of LCP amendments. Nevertheless, some elements of CEQA continue to apply to this review process.

Specifically, pursuant to CEQA and the Commission's regulations (*See* 14 C.C.R. Sections 13540(f), 13542(a), and 13555(b)), the Commission's certification of this LCP amendment must be based in part on a finding that it meets the CEQA requirements listed in PRC Section 21080.5(d)(2)(A). That Section requires that the Commission not approve or adopt an LCP "if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment."

As outlined in this staff report, the Implementation Plan amendment as submitted would reduce the number of certain, existing overnight visitor accommodations within the Coastal Zone and would not encourage or maximize public access and recreational opportunities. However, if modified as suggested, the proposed amendment would be in conformity with, and adequate to carry out, the provisions of the Land Use Plan component of the certified LCP, including provisions calling for protection and provision of access and recreational and visitor-serving opportunities. Therefore, the Commission finds that approval of the LCP amendment as modified will address the impacts of the submitted amendment and will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

Attachment M

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT OFFICE
89 SOUTH CALIFORNIA STREET, SUITE 2000
VENTURA, CA 93001
(805) 585-1800

F13a

Date: June 18, 2020

To: Commissioners and Interested Persons

From: Steve Hudson, District Director
Barbara Carey, District Manager
Deanna Christensen, District Supervisor

Subject: **City of Oxnard Local Coastal Program Amendment No. LCP-4-OXN-20-0008-1 (Short Term Rentals) for July 10, 2020 Commission Meeting**

SUMMARY OF STAFF RECOMMENDATION

The City of Oxnard is requesting an amendment to the Implementation Plan/Coastal Zoning Ordinance (IP/CZO) portion of its certified Local Coastal Program (LCP) to add regulations for short term rentals (STRs). Commission staff recommends that the Commission, after public hearing, **reject** the proposed City of Oxnard LCP Amendment No. LCP-4-OXN-20-0008-1 as submitted, and **certify** the proposed amendment only if modified pursuant to 3 suggested modifications. The modifications are necessary to ensure the proposed amendment to the IP/CZO conforms with, and is adequate to carry out, the policies of the City's certified Land Use Plan (LUP). All of the suggested modifications were developed in cooperation with City staff. The motions and resolutions to accomplish this recommendation are found starting on page 6 of this staff report.

Currently, the City's certified LCP does not explicitly define, regulate or prohibit STRs. However, STRs have historically operated in the City for many decades, particularly in the residential neighborhoods nearest to beaches, and the City currently collects a transient occupancy tax (TOT) on some of the existing STRs whose owners choose to pay it on a self-reporting basis. Currently, without regulations in place, most STRs in Oxnard operate without a business license, without paying TOT, and without a permit. In recent years, with the advent of internet rental services such as Airbnb, HomeAway and VRBO, the short term rental of homes, condominiums, and apartments in Oxnard has substantially increased. The City has also observed an increase in the number of issues and complaints related to STRs in residential neighborhoods, such as noise, trash, and parking problems.

The proposed amendment would allow STRs in all residential zones and would define "short term rentals" as the rental of a residential unit for a period of less than thirty (30) consecutive calendar days. The amendment also defines two types of short term rentals: vacation rentals and homeshares. A vacation rental is a type of STR in which the owner of the dwelling is not physically present for the rental period. A homeshare is

a type of STR in which the owner of the dwelling *is* physically present for the rental period. Both types of rentals would require property owners to obtain a short term rental permit from the City to operate, subject to the standards and requirements that are proposed in the subject amendment.

The proposed amendment would also limit the number of vacation rentals to no more than 5% of eligible residential units in each of the four coastal zone neighborhoods within the City: Oxnard Dunes, Oxnard Shores, Channel Islands, and Hollywood by the Sea (Exhibits 1-2). The City estimates that there are approximately 5,000 existing residential units in the City's coastal zone, and approximately 230 of those are currently STRs (which represents 4.6 percent of residential units in the coastal zone). The percentage of existing STRs in each of the four residential neighborhoods range from 3.5 to 4.8 percent. However, within the Residential Beachfront (R-BF) zone of the Oxnard Shores neighborhood (Exhibit 3), there is a higher concentration of existing STRs – 17.2 percent.

In addition to limiting the number of short term vacation rentals in each neighborhood, the proposed amendment would also limit vacation rentals within the R-BF zone of the Oxnard Shores neighborhood to five percent in order to break up the existing concentration of STRs within that zone so that STRs are more evenly distributed. The proposed amendment would also require that vacation rentals be separated from each other by 200 feet from property line to property line. Additional limitations on vacation rentals include a three-night minimum stay and that a dwelling may be used as a vacation rental for a maximum of 100 days per calendar year. The 5% neighborhood cap, 200 foot separation, and 100 day maximum per year requirements would only be applicable to vacation rentals. Homeshares would not be similarly limited.

The proposed amendment also establishes a variety of regulations for STRs intended to limit neighborhood impacts from parties, noise, trash disposal, parking, and other related issues that are often raised in terms of STRs and community character. These proposed operational standards are generally similar to other standards the Commission has approved for adjacent communities, such as for Ventura County and the City of Carpinteria, as reasonable regulations to address potential STR issues.

However, the proposed vacation rental STR cap and 200 ft. separation requirements are overly restrictive with regard to the R-BF zone portion of the Oxnard Shores neighborhood, and Commission staff does not believe the amendment strikes a reasonable balance between ensuring availability of short term rentals for coastal visitors and preserving neighborhood character and long-term housing for local residents. Additionally, in other neighborhoods, the separation requirements can serve to restrict the percentage of the vacation rentals allowed below the 5 percent cap. Although the City's proposed 5 percent vacation rental cap for each of the four neighborhoods may theoretically allow a slight increase in STRs per neighborhood since the percentage of existing STRs in each neighborhood ranges from 3.5 to 4.8 percent, the 200 foot separation requirement between STRs may prevent a neighborhood form hitting this cap. In some cases, imposition of the separation requirement would result in the amount of STRs below the proposed five percent cap,

even under ideal (for STR density purposes) spacing. Further, within the Residential Beachfront (R-BF) zone of the Oxnard Shores neighborhood, where there is a higher concentration of existing STRs (17.2 percent) among the 93 beachfront homes, the proposed restrictions would allow less than five vacation rentals STRs, leading to a significant reduction of STRs in the City's only residential beachfront area that is the most desirable location for visitors.

Thus, the amendment, as proposed, does not adequately protect STRs as a valuable visitor-serving accommodation (that can often be lower-cost than other accommodations) within the City's coastal zone. Nor does it adequately protect public recreational and access opportunities (particularly in relation to the role that overnight accommodations play in providing such opportunities). The restrictions would result in reduced lodging options for the people who most need the economies of scale that STRs can offer to groups and families visiting the coast.

In order to account for the relative desirability to visitors of some areas compared to others, while also avoiding significant adverse impacts to neighborhood character and housing stock, Commission staff is recommending modifications to the City's proposed vacation rental cap and separation requirements. Specifically, staff recommends a modest increase of the vacation rental cap in the Residential Beachfront (R-BF) zone from 5% to 10% (Suggested Modification 1), and a reduction in the separation requirement within the R-BF zone from 200 feet to 100 feet. In addition, Commission staff is recommending another change to exempt existing STR properties from the neighborhood and R-BF zone vacation rental cap and separation requirement if the owner of an existing STR property previously paid transient occupancy taxes to the City and complies with the other requirements of the STR ordinance, including obtaining an STR permit in a timely manner and operating in compliance with the STR permit. The suggested modifications were developed in close coordination with City staff, and Commission staff believes these changes would not unduly restrict the rental of residences to visitors in a manner that will diminish the public's ability to access and recreate on the coast, nor detract from the City's goal to preserve neighborhood character. The amendment, as modified, also would preserve the availability of housing stock and long-term rentals and would not affect affordable housing.

Therefore, staff recommends that the Commission approve the amendment with suggested modifications. If modified as suggested, the proposed amendment is consistent with and adequate to carry out the LUP.

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EXHIBITS

I. PROCEDURAL OVERVIEW

A. Standard of Review

The standard of review for the proposed amendment to the Implementation Plan/Coastal Zoning Ordinance (IP/CZO) component of the City of Oxnard's certified Local Coastal Program (LCP), pursuant to Sections 30513 (regarding ordinances) and 30514 (regarding amendments) of the Coastal Act, is whether the proposed IP/CZO amendment is in conformance with, and is adequate to carry out, the provisions of the Land Use Plan (LUP) portion of the certified City of Oxnard LCP. All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified Oxnard LUP as guiding policies.

B. Procedural Requirements

If the Commission approves the proposed amendment pursuant to the staff recommendation with the suggested modifications, the City must act to accept the certified suggested modifications within six months from the date of Commission action in order for the amendment to become effective (California Code of Regulations, Title 14, Sections 13542(b), (f), 13544, and 13544.5). In that case, pursuant to Section 13544 of the California Code of Regulations, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. In that scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCP Amendment will become final at a subsequent Commission meeting if the Commission concurs with the Executive Director's determination that the City's action in accepting the suggested modifications is legally adequate. Should the Commission deny the LCP Amendment as submitted, and not approve it with any modifications, no further action is required by either the Commission or the City, and the LCP Amendment will not become effective.

C. Public Participation

Section 30503 of the Coastal Act requires the provision of maximum opportunities for public input in preparation, approval, certification and amendment of any LCP. The City held a series of public hearings regarding the amendment. The hearings were noticed to the public consistent with Section 13515 of Title 14 of the California Code of Regulations. Notice of the Commission's consideration of the subject amendment has been distributed to all known interested parties.

II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS FOR THE LCP AMENDMENT

A. Denial of the Implementation Plan As Submitted

MOTION I:

> **I move that the Commission reject City of Oxnard Implementation Plan Amendment No. LCP-4-OXN-20-0008-1 as submitted.**

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan Amendment No. LCP-4-OXN-20-0008-1 and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:

The Commission hereby **denies** certification of City of Oxnard Implementation Plan/Coastal Zoning Ordinance Amendment No. LCP-4-OXN-20-0008-1, as submitted, and adopts the findings set forth below on grounds that the Implementation Plan Amendment, as submitted, does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Plan Amendment as submitted.

B. Certification with Suggested Modifications

MOTION II:

> **I move that the Commission certify City of Oxnard Implementation Plan Amendment No. LCP-4-OXN-20-0008-1 if it is modified as suggested in this staff report.**

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of this motion will result in certification of Implementation Plan Amendment No. LCP-4-OXN-20-0008-1 with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby **certifies** the City of Oxnard Implementation Plan Amendment No. LCP-4-OXN-20-0008-1, if modified as suggested, and adopts the findings set forth below on grounds that the Implementation Plan Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan Amendment, if modified as suggested, complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Plan Ordinance Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

The City's proposed amendment language to be added to the certified Implementation Plan/Coastal Zoning Ordinance is shown in straight type. Language recommended by Commission staff to be added and deleted is shown in underline and ~~strikeout~~.

SUGGESTED MODIFICATION 1

Subsection C (Vacation Rental Permit Cap) of proposed Section 17-53 (Short Term Rental Units) shall be modified as follows:

(C) Vacation Rental Permit Cap.

1. The number of vacation rental permits shall be limited by a 5% cap per General Plan neighborhood as established in the City of Oxnard Neighborhood Map adopted as Figure 3-4 in the 2030 General Plan or its successor document. The number of vacation rental permits shall also be limited to ~~5~~10% in the Residential Beach Front (R-BF) zone. The total number of vacation rental permits issued to residential dwellings ~~in the City and the R-BF zone~~ shall not exceed 5% of the total dwelling units in each neighborhood ~~or zone~~. If no short-term rental permits are available pursuant to the cap on short-term rentals, the Director or designee shall place interested property owners on a waiting list in the order in which they were received. If a permit becomes available, applications shall be accepted and reviewed in the order they are listed on the waiting list, subject to Subsection (K).

2. Notwithstanding any language in this Subsection (C) or in Subsection (F)(3) to the contrary, if the owner(s) of an existing short-term rental property (i) consistently paid transient occupancy taxes to the City pursuant to Section 13-15 et seq. on or before January 1, 2019 (ii) otherwise complies with the requirements of this Section 17-53, and (iii) applies for a vacation rental permit within six (6) months from the effective date of Section 17.53, then such owner(s) shall be eligible for a short-term rental permit even if the vacation rental permit cap has already been reached for the General Plan neighborhood or R-BF zone in which the property is located. If, however, the

vacation rental permit for that property is revoked pursuant to Section 17-53(R), said property will be subject to the applicable cap requirement and the owner(s) may reapply for a permit pursuant to this Section 17-53.

SUGGESTED MODIFICATION 2

Subsection D (Separation Requirement) of proposed Section 17-53 (Short Term Rental Units) shall be modified as follows:

(D) Separation Requirement.

1. No Vacation Rental shall be issued a permit when a Vacation Rental permit has already been issued to another property within 100 feet of the Vacation Rental in the Residential Beach Front (R-BF) zone or within 200 feet of the proposed Vacation Rental in all other areas of the City. The 100 foot and 200 footfeet separation is to be measured horizontally from the lines of property ownership as established by the legal description for the property on record with the County of Ventura.

2. Notwithstanding any language in this Subsection D to the contrary, the 100 and 200-foot separation requirement shall not apply to a dwelling unit within a development:

   a. That is subject to the Vacation Ownership and Time-share Act of 2004 (Business and Professions Code Section 11210 et seq.); and

   b. That became subject to the Vacation Ownership and Time-share Act of 2004 on or before January 1. 2019; and

   c. Whose owner(s) (i) on or before January 1, 2019, consistently paid transient occupancy taxes to the City pursuant to Oxnard City Code Section 13-15 et seq. (ii) otherwise complies with the requirements of this Section 17-53, (iii) and applies for a vacation rental permit within six (6) months from the effective date of Section 17.53; provided, however, if the vacation rental permit is revoked pursuant to Section 17-53(R), said property will be subject to the applicable separation requirement and the owner(s) may reapply for a permit pursuant to this Section 17-53.

SUGGESTED MODIFICATION 3

Subsection I.3 (Ineligible Dwellings, Structures, and Spaces) of proposed Section 17-53 (Short Term Rental Units) shall be modified as follows:

(I) Ineligible Dwellings, Structures, and Spaces.

No permit for a homeshare or vacation rental shall be issued for any of the following dwellings:

…

3. A dwelling on property owned by six or more owners, unless each owner shares common ancestors or the dwelling is subject to the Vacation Ownership and Time-share Act of 2004 and became subject to the Vacation Ownership and Time-share Act of 2004 on or before January 1, 2019.

…

IV. FINDINGS FOR DENIAL AS SUBMITTED, AND APPROVAL OF THE AMENDMENT IF MODIFIED AS SUGGESTED

The following findings support the Commission's denial of the proposed Implementation Plan/Coastal Zoning Ordinance (IP/CZO) Amendment as submitted, and approval of the IP/CZO Amendment if modified as suggested. The Commission hereby finds and declares as follows:

A. Amendment Description and Background

The City of Oxnard is requesting an amendment to the IP/CZO portion of its certified Local Coastal Program (LCP) to add regulations for short term rentals (STRs) (Exhibit 4). Currently, the City's certified LCP does not explicitly define, regulate or prohibit STRs. The City has indicated that STRs have historically occurred in the City of Oxnard, particularly in the beachfront and coastal zone portions of the City. The City currently collects a transient occupancy tax (TOT) on those STRs whose owners choose to pay it on a self-reporting basis. Currently, without regulations in place, most STRs operating in Oxnard are doing so without a business license, without paying TOT, and without a permit. In recent years, with the advent of internet rental services such as Airbnb, HomeAway, and VRBO, the short-term rental of homes, condominiums, and apartments in Oxnard has substantially increased.

The City estimates that there are approximately 230 STRs currently operating in the City's coastal zone. At the same time, the City has also observed an increase in the number of issues and complaints related to STRs in residential neighborhoods, such as noise, trash, and parking problems. In response to this, the City began an STR public outreach effort in 2016 and studied the issue in order to develop STR regulation recommendations for the Planning Commission and City Council. A number of public hearings were held by the City between August 2016 and November 2019. In response to these meetings, the proposed amendment was developed to authorize short term rentals as an allowed use in residential zones, and at the same time, put regulations in place to address concerns raised by residents. The subject LCP amendment is the product of this effort.

The proposed amendment would allow STRs in all residential zones of the City's coastal zone. As part of the amendment, the City proposes to define short term rentals

as the rental of a residential unit for a period of less than thirty (30) consecutive calendar days. It also distinguishes between, and defines, two different types of short term rentals: vacation rentals and homeshares. A vacation rental is a type of STR in which the owner of the dwelling is not physically present for the rental period. A homeshare is a type of STR in which the owner of the dwelling *is* physically present for the rental period. Both types of rentals would require property owners to obtain a short term rental permit from the City and to operate subject to the standards and requirements that are proposed in the subject amendment.

The proposed amendment would limit the number of vacation rentals to no more than five percent of eligible residential units in each of the City's four coastal zone neighborhoods, the limits of which are depicted on the City's General Plan Neighborhood Map: Oxnard Dunes, Oxnard Shores, Channel Islands, and Hollywood by the Sea (Exhibits 1 and 2).

The Oxnard Dunes neighborhood consists of approximately 270 existing single-family and duplex-style homes and is located at the northern portion of the City's coastal zone, near the Southern California Edison Mandalay Beach Generating Station and adjacent to the Edison Canal. This neighborhood is not directly adjacent to the beach and does not have direct access to the beach.

The Oxnard Shores neighborhood consists of approximately 2,051 existing residential units that include a mix of single-family residences, mobile homes, apartments, condominiums, and timeshare properties. This neighborhood is adjacent to the beach and a public beach park (Oxnard Beach Park), with direct vertical and lateral beach access. Most properties within the Oxnard Shores neighborhood are zoned Single Family Beach (RB1), and there is a stretch of 93 single family beachfront homes nearest the beach that are zoned Residential Beachfront (R-BF). The neighborhood is also adjacent to the 277-room Embassy Suites resort hotel (higher cost hotel) and near the Channel Islands Harbor.[1]

The Channel Islands neighborhood contains a variety of residential, commercial, and visitor-serving developments designed around waterways that were constructed as extensions to the Channel Islands Harbor. The neighborhood consists of approximately 1,832 existing residential units that are mostly single-family residences. This

[1] The Oxnard Shores neighborhood includes 1,400 units that belong to the Mandalay Shores Community Association. In 2016, that homeowners' association banned short-term rentals of units, and some owners sued, claiming that the association could not enact such a ban without first obtaining a coastal development permit. The Court of Appeal held that the association did not have the authority to unilaterally ban STRs; rather, "[t]he decision to ban or regulate STRs must be made by the City and Coastal Commission, not a homeowners association." *Greenfield v. Mandalay Shores Community Assn*. (2018) 21 Cal.App.5th 896, 901-02. As the court noted, the neighborhood includes numerous "beach properties that have historically been used as short-term rentals," and banning such rentals could reduce the public's ability to access the coast.

neighborhood has direct public access to the waterways that support coastal recreational activities and is in close proximity to the beach.

The Hollywood by the Sea neighborhood in Channel Islands Harbor is comprised of visitor-serving commercial and recreational uses, including recreational boating and commercial fishing-related uses, as well as 900 residential units (mix of apartments and condominiums). There is also an existing 90-room moderate cost hotel (Hampton Inn) on the peninsula within the harbor, as well as an old moderate cost hotel (Casa Sirena Hotel) that has been closed since 2009 due to disrepair but received authorization in 2018 to be demolished and replaced with a new, 210-room moderate cost hotel. The streets, parking lots, and other public amenities within this neighborhood provide direct access to the beach and waterways of the harbor.

The table below summarizes the City's estimated quantity of existing residential units and existing STRs in each of the four coastal zone neighborhoods. The City estimates that there are approximately 5,000 existing residential units in the City's coastal zone, and approximately 230 of those are STRs currently (which represents 4.6 percent of residential units in the coastal zone). As can be seen in the table below, the percentage of existing STRs in each of the four residential neighborhoods (which includes vacation rentals and homeshares) ranges from 3.5 to 4.8 percent. However, within the Residential Beachfront (R-BF) zone portion of the Oxnard Shores neighborhood (Exhibit 3), there is a higher concentration of existing STRs – 17.2 percent.

Coastal Zone Neighborhood	Existing Residential Units	Existing Short Term Rentals	
		Number	Percentage
Oxnard Dunes	270	12	4.4%
Oxnard Shores	2,051	99	4.8%
R-BF Zone Subset	93	16	17.2%
Channel Islands	1,832	87	4.7%
Hollywood by the Sea	900	32	3.5%

In addition to limiting the number of short term vacation rentals to no more than five percent of eligible residential units in each neighborhood, the proposed amendment would also limit vacation rentals within the portion of the Oxnard Shores neighborhood that is zoned R-BF to five percent in order to break up the existing concentration of STRs within that zone so that STRs are more distributed.

Further, the proposed amendment would also require 200 feet of separation between vacation rentals. Specifically, no permit can be issued to a new vacation rental if it would be less than 200 feet from a previously permitted vacation rental property (measured horizontally from property line to property line). Additional limitations on vacation rentals include a three-night minimum stay and a limit of 100 days per calendar year that the dwelling may be used as a vacation rental.

While the proposed amendment requires approval of a permit for all STRs, the five percent cap, 200 foot separation, and 100 day maximum per year requirements would only be applicable to vacation rentals. Homeshares, where the owner of the dwelling is present for the rental period, would not be so limited. Also, when existing timeshare units are opportunistically being used as STRs instead of timeshares during unsold weeks, they would be regulated the same as an STR under the proposed amendment but would be excluded from the 200 ft. separation requirement and the 100 day per year maximum. When timeshare units are being used as timeshares, they would not be considered an STR and would not require an STR permit.

Certain types of residential units would be ineligible for use as STRs under the proposed amendment, such as mobile homes, affordable deed-restricted units, farmworker housing units, accessory dwelling units (ADUs), apartment complexes (limited to one STR for the complex), and two private residential communities—the Colony at Mandalay Beach and Harbour Island—in which the City found that STR use would be inappropriate for various physical and historic reasons that are specific to those locations.

The proposed regulations also establish ownership requirements and limitations which allow the operation of one STR per owner. The City has also proposed occupancy limits so that no more than ten overnight guests would be allowed in a vacation rental and no more than five overnight guests would be allowed in a homeshare. Noise limitations, including quiet hours between 10:00 p.m. to 7:00 a.m., and requirements for on-site parking are also established. The proposed amendment also includes a comprehensive property management and complaint response program, as well as an inspection, compliance, and enforcement program to ensure that any non-compliance with the proposed standards is addressed in a timely manner.

B. Coastal Access and Recreation

The proposed amendment affects the IP component of the City's LCP. The standard of review for IP amendments is that they must be consistent with, and adequate to carry out, the policies of the certified Land Use Plan (LUP).

All Chapter 3 policies of the Coastal Act are incorporated by reference into the City's certified LUP. A core goal of the Coastal Act is to protect the public's ability to recreate in and enjoy the coastal zone, particularly for coastal visitors not fortunate enough to live by the shoreline. The Coastal Act's access and recreation policies provide significant direction regarding not only protecting existing public recreational access opportunities, but also ensuring that such access opportunities are provided and maximized. Specifically, Coastal Act Section 30210 requires that maximum public access and recreational opportunities be provided, stating:

> **In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights,**

> **rights of private property owners, and natural resource areas from overuse.**

Similarly, the Coastal Act requires that overnight accommodations, and particularly lower-cost accommodations, be protected and encouraged as a means of providing public recreational access to the coast. Section 30213 states (in part):

> **Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.**

In short, these Coastal Act policies (which are incorporated in the City's certified LUP) make clear that public recreational access, particularly as it relates to the specific needs of the visiting public, is of critical importance and must be protected and maximized. Overnight accommodations are a necessary part of providing public access and recreational opportunities for the many visitors that live further from the coast, including those from inland areas, such as California's Central Valley, where a coastal trip requires a lengthy car ride. For many low and moderate income visitors, lower cost overnight accommodations are essential to being able to access the California coast at all. These access issues are perhaps more apparent than ever now, and more critical as they relate to overnight accommodations, as coastal visitors are increasingly priced out of the overnight accommodations market, particularly low and middle-income households, people of color, and young people.[2]

The Commission has found STRs to be an important source of visitor accommodations in the state. STRs provide amenities that distinguish them from other types of overnight lodging and often make them the most affordable option for overnight stays on the coast, particularly for groups and families. For example, unlike traditional hotels, STRs usually include full kitchens and common space in which visitors can spend time together, and many allow pets. While these amenities can be obtained at some hotels, the cost of extra space and rooms, a room with a kitchen, or for pet-friendly lodging is often much higher than the price of an STR. Since many STRs contain multiple bedrooms, it is often possible to spread the cost of additional shared amenities among more visitors, and the opportunity to prepare food on-site saves visitors the significant costs associated with dining out. STRs also provide a visitor experience that is unique and different from a standard hotel/motel, and many are situated in close proximity to desirable visitor destinations along the shoreline. STRs are, in many ways, complementary alternatives that can help coastal visitors enjoy coastal zone opportunities. Additionally, STRs can provide local jurisdictions with increased revenues through the payment of transient occupancy taxes.

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[2] See "Explore the Coast Overnight: An Assessment of Lower-Cost Coastal Accommodations" by the California Coastal Conservancy (March 2019) and California Coastal Commission Public Workshop Staff Report on Lower-Cost Visitor-Serving Accommodations (October 2016).

The Commission also recognizes that STRs can result in a number of adverse impacts, including loss of affordable housing, enforcement issues, altered residential neighborhood character, and parking and transportation impacts. The Commission has provided local governments with guidance and direction to regulate STRs in a manner that balances these public and visitor-serving benefits with their potential impacts on coastal communities. Consistent with this guidance, the Commission has been very supportive of STR-related LCP provisions that prescribe occupancy limits, parking requirements, quiet hours, complaint response processes, and other common-sense standards on STR operations.

Currently, the City of Oxnard's certified LCP does not explicitly define, regulate or prohibit STRs. However, STRs have historically occurred in the City for many decades, particularly in the residential neighborhoods nearest the beach, and the City currently collects a transient occupancy tax (TOT) on some of the existing STRs whose owners choose to pay it on a self-reporting basis.

As mentioned previously, the City estimates that there are approximately 5,000 existing residential units in the City's coastal zone, and approximately 230 of those are currently used as STRs (which represents 4.6 percent of residential units in the coastal zone). The percentage of existing STRs in each of the four coastal zone residential neighborhoods (which includes vacation rentals and homeshares) range from 3.5 to 4.8 percent.

Coastal Zone Neighborhood	Existing Residential Units	Existing Short Term Rentals	
		Number	Percentage
Oxnard Dunes	270	12	4.4%
Oxnard Shores	2,051	99	4.8%
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Hollywood by the Sea	900	32	3.5%

The City's proposed five percent vacation rental cap for each of the four neighborhoods would theoretically allow a slight increase in STRs per neighborhood. However, the proposed 200 foot separation requirement between vacation rental properties would further limit the number of vacation rental STRs that can be achieved within each neighborhood, in some cases to an amount that would be less than the proposed five percent cap, even under generous, but likely unrealistic, spatial circumstances of properties that have, or want, an STR.

Further, within the Residential Beachfront (R-BF) zone of the Oxnard Shores neighborhood, where there is a higher concentration of existing STRs (17.2 percent) among the 93 beachfront homes, the proposed amendment would limit vacation rentals to no more than five percent, and the 200 foot separation requirement would likely reduce it even further. These proposed limitations would significantly reduce the availability of STRs within the City's only beachfront residential neighborhood—an area where they have historically occurred and that is the most desirable location for visitors.

There are currently approximately 16 STRs in the R-BF zone, but the proposed restrictions would allow less than five permitted vacation rental STRs.

STRs are an important source of visitor accommodations in the City's coastal zone. The amenities they provide often make them the most affordable option for overnight stays on the coast, particularly for groups and families when restaurant meal and parking cost savings are considered. The City has indicated that STR rates in Oxnard average $350 per night. Hotel room rates in the City's coastal zone are in the high cost ($200 and above) and moderate cost ($140-$200) range. However, STRs usually include full kitchens and common space in which visitors can spend time together, and many allow pets. While these amenities can be obtained at some hotels, the cost of extra space and rooms, a room with a kitchen, or for pet-friendly lodging is often much higher than the price of an STR. Since many STRs contain multiple bedrooms, it is often possible to spread the cost of additional shared amenities among more visitors, and the opportunity to prepare food onsite saves visitors the significant costs associated with taking all meals at restaurants. The unique benefit of vacation rentals as a lower-cost option was specifically recognized in the 1975 Coastal Plan[3], which contained Policy 125, entitled: Provide Lower Cost Tourist Facilities in the Nearcoast Area. That policy stated, in relevant part:

> To increase recreational access to the coast for the general public, tourist facilities (including campgrounds, hotels, youth hostels, recreational vehicle parks, etc.) for low and moderate income persons shall be provided in the nearcoast areas . . . Lower cost visitor facilities such as campgrounds, rustic shelters, ranch houses converted to inns, *bed and board in private homes, summer home rentals where several families can share the cost*, and new tourist accommodations that provide some moderately priced units and short-term rentals of other recreational facilities (e.g. boats) shall be given priority over exclusively expensive facilities . . .

The proposed vacation rental STR cap and 200 ft. separation requirements are overly restrictive with regard to the R-BF zone portion of the Oxnard Shores neighborhood and do not strike a reasonable balance between ensuring availability of short term rentals for coastal visitors and preserving neighborhood character and long-term housing for local residents. Additionally, in other neighborhoods, the separation requirements can serve to restrict the percentage of the vacation rentals allowed below the five percent cap. The restrictions would result in reduced options for the people who most need the economies of scale that STRs can offer to groups and families on the coast, and could cause a reduction in the current number of STRs operating in the City. Thus, the amendment, as proposed, does not adequately protect STRs as a valuable visitor-serving accommodation (that can often be lower-cost) within the City's coastal zone, nor does it adequately protect and maximize public recreational and access opportunities

[3] The 1975 Coastal Plan was prepared and adopted by the California Coastal Zone Conservation Commission pursuant to the California Coastal Zone Conservation Act of 1972, and its policy recommendations largely formed the basis for the Chapter 3 policies of the Coastal Act.

(particularly in relation to the role that overnight accommodations play in providing such opportunities).

In order to account for the relative desirability to visitors of some areas compared to others, while also avoiding significant adverse impacts to neighborhood character and housing stock, the Commission finds it necessary to modify the City's proposed vacation rental cap and separation requirements. Specifically, **Suggested Modification 1** increases the vacation rental cap in the Residential Beachfront (R-BF) zone from 5% to 10%, and **Suggested Modification 2** reduces the separation requirement in the R-BF zone from 200 feet to 100 feet. In addition, **Suggested Modifications 1 and 2** add a provision that allows properties where STRs were operated on or before January 1, 2019 to not be subject to the neighborhood and R-BF zone vacation rental cap and separation requirements if the owner: (1) consistently paid transient occupancy taxes to the City before January 1, 2019, (2) otherwise complies with the requirements of the STR ordinance, and (3) applies for an STR permit within six months from the effective date of the STR ordinance and operates in compliance with the STR permit. These changes would help avoid any significant reduction in the availability of STRs within the coastal zone neighborhoods, including the most desirable area nearest the beach, where they have historically occurred. These changes were developed in coordination with City staff in order to address the issues raised by the amendment.

The proposed amendment also establishes a variety of regulations for STRs intended to limit neighborhood impacts from parties, noise, trash disposal, parking, and other related issues that are often raised in terms of STRs and community character. These proposed operational standards are generally similar to other standards the Commission has approved for adjacent communities, such as for Ventura County and the City of Carpinteria, and are reasonable regulations to address potential STR issues.

With the suggested modifications, the amendment would not unduly restrict the rental of residences to visitors in a manner that will diminish the public's ability to access and recreate on the coast, nor detract from the City's goal to preserve neighborhood character. The amendment, as modified, also would not meaningfully decrease the availability of housing stock and long-term rentals, or affect affordable housing. Most STRs are located in some of the most desirable areas of the City, where long-term rental would likely be out of reach for the vast majority of people even if those homes were made available in that way. Such homes do not provide affordable housing. Also, the City's proposed STR limits and regulations prohibit STRs in mobile homes, affordable deed-restricted units, farmworker housing units, accessory dwelling units (ADUs), and two residential condominium communities where the City determined STRs were not appropriate for a variety of reasons (The Colony at Mandalay Beach and Harbour Island). The prohibition on STRs in ADUs is consistent with the Legislature's recent passage of statutory changes that disallow STRs in new ADUs in order to ensure that ADUs are available to meet communities' need for more, and more affordable, housing. See Gov. Code § 65852.2. In addition, the proposed regulations allow only one dwelling unit within an apartment complex to be used as a homeshare or vacation rental STR.

When the City was developing the proposed amendment, an issue came up regarding how to deal with existing timeshare properties that operate in the Oxnard Shores neighborhood. Timeshares are a unique form of property ownership and units are sold in time segments which consist of a period of occupancy of no less than one week or greater than 30 days with an annual right to use the unit. However, the rights to use the unit for the annual period are often traded to exchange companies or granted to individuals other than the owners in exchange for a fee. Which means they operate like an STR from time to time during unsold timeshare weeks. To address this issue, the City's proposed amendment clarifies that existing timeshare units would be regulated the same as an STR (and require an STR permit) when the timeshare units are being used opportunistically as STRs instead of timeshares during unsold weeks; however, they would not be subject to the 200 ft. separation and the 100 day per year maximum STR restrictions. When timeshare units are being used as timeshares, they would not be considered an STR and would not require an STR permit. The Commission finds this approach to be a reasonable regulation. However, a discrepancy was brought to Commission staff's attention during review of the proposed amendment in which an ownership restriction provision within the ordinance could be interpreted to prohibit timeshare properties from seeking an STR permit to use units as STRs during unsold weeks. The City staff has indicated this discrepancy was not intentional and coordinated with Commission staff to clarify this issue, which is reflected in **Suggested Modification 3**.

In conclusion, for the reasons discussed above, the Commission finds that only if modified as suggested will the IP/CZO amendment conform with and be adequate to carry out the applicable policies of the certified Land Use Plan.

C. California Environmental Quality Act

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission; however, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP action.

Nevertheless, the Commission is required, in approving an LCP submittal, to find that the approval of the proposed LCPA does conform with various CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f) and 13555(b).

The County's IP/CZO amendment as originally submitted does not conform with, and is not adequate to carry out, the policies of the certified LUP. The Commission has, therefore, suggested modifications to the proposed IP/CZO amendment to include all feasible measures to ensure that such significant environmental impacts of new development are minimized to the maximum extent feasible consistent with the requirements of the Coastal Act. For the reasons discussed in this report, the LCP amendment, as suggested to be modified, is consistent with the applicable policies of the certified Land Use Plan, including the Coastal Act policies incorporated by reference therein. As modified, the project will not have significant impacts on the environment, and no feasible alternatives or mitigation measures beyond those already required are available which would lessen any significant adverse effect which the approval would have on the environment. In addition, the findings in this staff report address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. Therefore, the Commission finds that the proposed LCP amendment, as suggested to be modified, is consistent with CEQA.

Attachment N

Unequal Access

Protecting Affordable Accommodations Along the California Coast

Table of Contents

Bios

Dr. Philip G. King

Dr. Philip G. King received his PhD in Economics from Cornell is 1987 and has been an economics professor at San Francisco State for over 30 years; he was Department Chair from 2002-2005. He has worked on the economics of coastal resources in California for over 25 years and has published numerous peer-reviewed papers in journals such as Climatic Change and Ocean and Coastal Management. His work on coastal access includes a report with Jon Christensen of UCLA on Access for All, which examined disparities in coastal access. Recently, Dr. King conducted the economic analyses for eight local coastal programs including Oceanside, Ventura County, and Imperial Beach. He is currently working with the State Lands Commission evaluating the impacts of sea level rise on California tideland properties. Dr. King also served as chair of the SF State Foundation's Finance and Investment committee and implemented their divestment from fossil fuel stocks.

Sarah Jenkins

Sarah Jenkins is a research assistant with Dr Philip King. Her interest in coastal access for Californians was developed while living inland in Stockton, California. She is especially interested in the equity aspects of Dr. King's coastal work, drawing on an interest in structural discrimination. Sarah has previously worked in International Development in Washington D.C. and for a global health non-profit. Sarah holds degrees in Economics and International Relations from University of the Pacific.

Introduction

Our report, *"Unequal Access: Protecting Affordable Accommodations Along California's Coast"* was slated for release in March 2020 with the goal of analyzing the role short-term rentals can play in expanding access to California's coast. The COVID-19 pandemic and "shelter in place" order put those plans on pause as the state and local jurisdictions grappled with how to handle the unfolding public health crisis. In the following months, the COVID-19 pandemic has created a "new normal" of limited mobility, minimal tourism, and economic strife. Local governments nationwide are facing steep budget deficits as a result of decreased tax revenues. Things are far from the normal California summer season. However, as many have noted, this time may be a time for growth, change, and reflection, allowing us as individuals and communities to not simply return to normal, but to create something better and more inclusive.

It is uncertain what this year holds, but it is likely that following the pandemic the "staycation" will become more popular. For California, this likely means more visitors to the beaches, and more demand than ever for accommodations—especially those that offer increased privacy and safety.

The past few months have forced Americans to not only face a public health crisis, but a social and cultural crisis as well. The pandemic has disproportionately impacted Black and Latino Americans "in a widespread manner that spans the country, throughout hundreds of counties in urban, suburban and rural areas, and across all age groups," according to a comprehensive study of federal data from the New York Times. Compared to White Americans, Black and Latino Americans are three times as likely to contract the coronavirus, and twice as likely to die[1]. In the midst of this crisis, two months after this report was scheduled to be released, George Floyd's death at the hands of Minneapolis police sparked nationwide protests over a criminal justice system that systematically discriminates against people of color, especially black males.

The history of unequal access in California extends to one of our most sacred treasures, our beaches. Until as recently as 1960, California's beaches were segregated. Even after laws were passed to eliminate de jure discrimination, de facto segregation continues. However, there are at least two monuments in California worth remembering: the monument at "Inkwell" Beach in Santa Monica, and the monument at Bruce's Beach (Manhattan Beach, Los Angeles County). These two beaches allowed African Americans to visit the beach during segregation.

While today these *formal* barriers to beach visitation have ended, participation in coastal recreation at beaches, campgrounds, surf sites, tide pools and other spots is heavily skewed against people of color, and towards largely affluent groups who already have access. As our report documents (along with many excellent studies) access to California's coast is heavily skewed towards a richer, older and whiter demographic. This skewing is first and foremost caused by the high cost of housing on California's coast, though other historical and cultural barriers are also important.Increasing access requires recognizing these disparities and enacting policies to remedy them. Coastal communities need to be aware of and sensitive to these barriers—many of which are economic—in their local coastal plans and policies. With many low and middle-income

1 Oppel, Richard A. Jr et all, "The Fullest Look Yet at the Racial Inequality of the Corona Virus," New York Times. July 5, 2020.

Californians living inland, providing affordable overnight accommodation is crucial for inclusive coastal access. Unfortunately, as work completed by the Coastal Conservancy and Coastal Commission indicates, the supply of affordable hotels has actually decreased over the past twenty years, and the current outbreak of COVID 19 is having a profound effect on the hospitality industry and may lead to permanent closures, especially for smaller operations with limited access to capital markets.

At the same time, dozens of communities in California, many of them affluent, have placed a de facto ban and additional restrictions on short-term rentals, up to and including outright bans. In our study, we discuss two of the coastal cities -- Del Mar and Santa Barbara -- that have actively sought to restrict short-term rentals and hence access to the coast. These restrictions lower the supply of overnight accommodations and drive up the price, making access even more affordable for underserved communities.

To meet these challenges, the State and local coastal communities must embrace change and encourage policies that increase access. Short-term rentals (STRs) are one possible solution. STRs require no new construction, generate significant local taxes, and provide overnight accommodations in cities that have few other options.

In addition to the loss/damage to life, the COVID pandemic has wreaked havoc on State and local governments. By one estimate, the State of California will lose $2.5 billion in taxes this year (2020) and local jurisdictions will lose over a billion dollars[2]. Unlike the federal government, state and local governments cannot borrow money to make up for budget deficits, so budgets will need to be cut during a pandemic.

For local governments, short-term rentals can provide a significant new source of revenue, without raising taxes, while also increasing access to the coast. Our report examines these issues and provides a number of recommendations for policies that would increase access,, e.g., setting aside a certain percentage of STRs for underserved communities.

We believe achieving *access for all* will require the cooperation of all stakeholders including the private sector. Finding a solution—as with many issues highlighted by recent events—will require dialogue between business, State and local government, environmental and social justice groups, and other stakeholders, in order to forge a sustainable and equitable long-term solution.

Dr. Philip G. King and Sarah Jenkins

2 See Estimates of State and Local Government Revenue Losses from Pandemic Mitigation, By Stephan Whitaker, Policy Economist II, Federal Reserve Bank of Cleveland May 13, 2020, https://www.clevelandfed.org/newsroom-and-events/publications/cfed-district-data-briefs/cfddb-20200513-estimates-of-state-and-local-government-revenue-losses-from-pandemic-mitigation.aspx.

Executive Summary

The 1976 California Coastal Act was created to protect and preserve California's iconic coastline and beaches and to ensure that everyone has "maximum access…[to] recreational opportunities" of this precious resource[3]. The Act created the California Coastal Commission with the mandate to help protect and ensure access. Today, however, this access is being threatened by the high cost of California's coastal real estate, which has pushed many Californians to move inland, farther away from the coast in search of affordable housing. Numerous studies, cited within this report, have found that while visiting the coast is highly desired by most Californians, many feel that a visit is simply too costly. Travel costs and accommodation are the most prohibitive expenses—expenses which continue to increase as more of California's middle- and low-income families are displaced inland due to housing costs.

The high cost of accommodation along the coast presents a significant barrier for many households. The supply of affordable rooms fails to meet the demand of millions of residents who do not live close enough to the coast to make a daytrip. Over the past decade, many budget hotels along the coast have closed or have been refurbished and raised their prices well beyond what many families can afford. Economy class hotels along the coast have closed at a far greater rate than other, more expensive types of accommodations. Many previous studies point to a significant decline in the number of overnight coastal accommodations that are affordable (defined as 75% of the average daily price for a hotel room in California, which was $137 a night in summer 2018). The lack of such options means that some households who would otherwise visit the coast cannot, because they cannot afford the cost of an overnight stay (Figure E1 below).

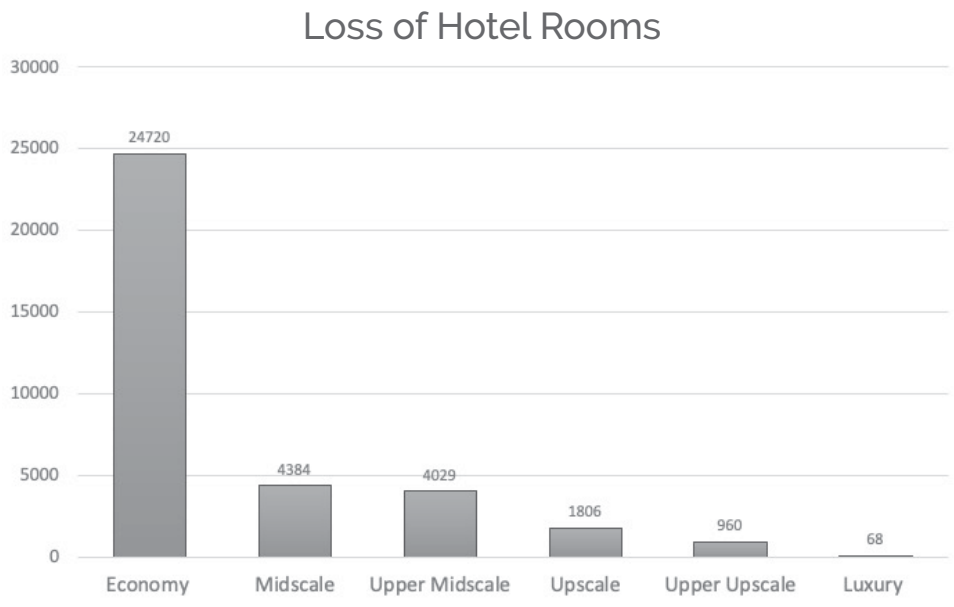


Figure E1: Loss of hotel rooms in California by class (Ainsworth 2016).

3 1976 California Coastal Act, Section 30210

During the high season—from mid-June until September—prices are often much higher than at other periods (see Figure E2 below). The supply of coastal hotel rooms is particularly strained during the summer when there are not enough hotel rooms of any class let alone those classified as lower cost. Hotels respond to this demand with increased prices. An accommodation that may have been affordable to a lower-income family in February is far out of reach in July when most Californians wish to visit the coast.

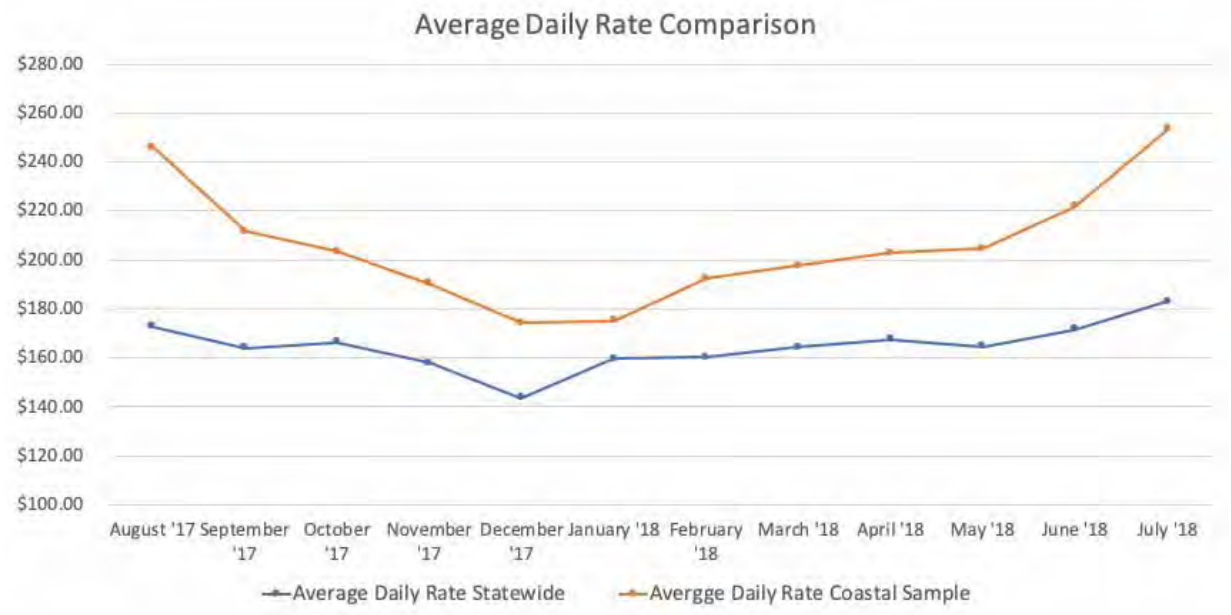


Figure E2: Average daily rate for overnight accommodation in California: coastal and non-coastal.

Camping may provide an option for some households seeking lower cost accommodation. However, coastal campsites are also very limited, especially in summer, and some are under threat from coastal erosion. The supply of campsites in California has not kept up with demand, especially in high season. Moreover, even though booking a campsite is affordable, it requires costly equipment that may exclude many families and often requires one to make reservations well in advance. Studies of camping participation also indicate that despite the relatively low cost, participation in camping also skews heavily towards more affluent groups and away from communities of color.

The lack of affordable accommodation along the coast creates a significant barrier to coastal access and makes it harder for families to visit. Given this challenge, it is imperative that California explore alternative means to expand the supply of lower cost coastal accommodations.

Alternative Options: Short-Term Rentals

One possible solution to the lack of affordable overnight accommodations on the coast are short-term rentals (STRs). Unlike campsites or hotels, expanding the number of STRs does not require new construction on or near California's coastline but instead utilizes existing properties. Rentals allow for the use of property otherwise unoccupied and may offer much needed income to hosts in expensive coastal communities. STRs have been providing accommodation for Californians wishing to visit the coast for decades, offering a significantly different experience than staying in a hotel or camping. Indeed, the California Coastal Plan, which laid the groundwork for the California Coastal Act, mentions home-sharing as a means of coastal access dating back prior to 1975. In addition, STRs may be especially suited to families or larger groups as they often offer kitchens, gathering spaces, multiple bedrooms and bathrooms, and are often less expensive per visitor than a hotel room.

As indicated in the literature review in this study, empirical studies of STRs indicate that the entry of STRs typically results in lower hotel rates, especially at peak periods. STRs offer competition and a flexible supply, which can be scaled to meet demand more easily. Hotels respond to this competition by lowering their prices. This benefits all visitors, including those who do not utilize the rentals. Furthermore, STRs can bring in visitors who may not have been able to access the coast before or may have chosen not to due to the difficulty of finding accommodation in the high season or desiring the specific amenities they can find at an STR.

Short-term rentals also make sense economically in communities where demand is highly seasonal as is the case with many coastal communities where beach and other recreation peaks in the summer. Building new hotels to serve a demand for a few months of the year makes little sense, and hotels must charge high rates in peak summer months to remain economically viable.

Short-term rentals have become more popular along California's coast and elsewhere as online platforms make it easier for potential visitors to locate, evaluate (through photos, maps, and other guest ratings), and book a property all in a few minutes. The recent popularity of STRs has also led to concerns in local communities about the character of neighborhoods that have traditionally been composed of single-family dwellings occupied by one family. Coastal communities up and down California have struggled with how to regulate STRs.

The Housing Crisis and Coastal Affordability

California's housing crisis is most acute in the Coastal region, near rapidly growing economic powerhouse cities such as San Francisco and Los Angeles. In these cities, demand for housing has far surpassed supply. Due to a combination of regulatory lags, permitting issues, and pushback against higher density construction and up-zoning, there has not been a substantial increase in housing construction necessary to meet this demand. Local authorities face pressure from many residents who worry about the burdens associated with expanding the supply of housing. As a result, housing has become scarce and prices have skyrocketed.

Rising housing costs have displaced many middle- and low-income residents inland. This means that many Californians, including nurses, police, teachers, and service workers, cannot afford to live where they work and must suffer long commutes. This displacement often results in a concentration of exclusive wealth and resources along the accessible only by the wealthy. This report focuses on the lack of access to California's coast.

Several key studies by the California Coastal Conservancy, the Coastal Commission, and others have highlighted this access issue and all point out that the increased cost of coastal access falls disproportionately on low- and moderate- income households as well as communities that have been historically excluded or discouraged from going to the coast, such as Latino residents and people of color. Latino Californians in particular desire to visit the coast but are especially sensitive to the high costs of travel and accommodation. As discussed in this report, the counties of California's Inland Empire, where a visit to the coast on a hot summer day likely requires an overnight trip, are virtually all Latino majorities. For many inland families, the cost of a necessary overnight stay is a major impediment to visiting the beach.

Indeed, California's coast has become increasingly inaccessible—with the majority of areas far more affluent, less diverse, and older than the state overall. This exclusivity produces an inequity that runs counter to the aims of the California Coastal Act. Access to the resources and opportunities associated with California's coast is not distributed fairly among California's diverse population. Often, those who can afford to spend the least to visit the coast must spend the most as lower-income communities inland face the highest travel costs and accommodation burdens.

As the case studies in this report indicate, cities that have become less and less affordable, like Santa Barbara or Del Mar, have also enacted restrictive legislation limiting short-term rentals. Just as these cities have often imposed restrictive ordinances and zoning laws to limit affordable housing for their residents, they have also imposed similar restrictions on short-term rentals with similar results.

Financial Resilience

As communities across California discuss and debate adapting to climate change, one issue is clear: adaptation will be expensive. For example, a recent study (Aerts et al. 2018) estimated that Los Angeles County will face climate change costs of $4.3 to $6.4 billion by 2100. All of these expenses will be on top of existing financial obligations for education, public safety, affordable housing and many other issues facing California today. Local governments will need new or enhanced sources of revenue to pay their share of climate resilience.

The California Coastal Commission and Coastal Conservancy have sponsored work on numerous local coastal programs (LCPs) aimed at helping coastal communities adapt to sea level rise. While these LCPs differ, all have one thing in common—their implementation will be costly and must be financed somehow, including local participation.

Transient occupancy taxes (TOTs) offer local governments a revenue stream that can easily grow. Unlike property taxes or sales taxes, in California 100% of TOT revenues go to local communities. While TOT rates vary by local jurisdiction, most coastal communities in southern California have a TOT rate of at least 12%. However, efforts to block STRs often lead to the development of black or grey markets where STR operators do not pay TOTs to their local community. This deprives these communities of revenues necessary to fund the additional public services required, such as lifeguards, public safety, improving beaches or other facilities.

Encouraging coastal communities to make STRs properly regulated and tax-paying is critical for financing resilience. Expanding STRs not only increases access but also increases financial resilience through increases in TOT revenues. Moreover, as discussed in detail in this report, other potential sources of local financing, e.g., Geologic and Hazard Abatement Districts (GHADs) or other levies on property taxes tend to promote resilience pathways that protect private property (e.g., armoring) at the expense of public property.

Coastal California Case Studies

The case studies provided in this report illustrate some of the issues facing coastal communities. All communities want to keep their residents safe and preserve their environment. However, some communities have done so in a manner that excludes many visitors, particularly lower income households, erecting barriers to entry such as high permitting fees for STRs and severe restrictions on who can offer STRs and in what neighborhoods.

The STRs policies of three distinct regions along California's coast were examined, and each provides a specific understanding of the impacts of local policy on the affordability of STRs. As these case studies indicate, short-term rentals can coexist with residential neighbors. Oceanside's Good Neighbor Policy for short-term rentals provides an excellent example. The city has strict policies on issues that matter to local residents, including trash, parking, noise, and extra visitors. Oceanside's Good Neighbor Policy includes serious fines for people who violate these rules.

Another common argument against STRs is that they drive up local real estate prices, facilitating gentrification. Some empirical studies indicate STRs can have a modest impact on property values, but these impacts must be taken into context. The residential real estate in most of these coastal communities is already beyond the means of the vast majority of Californians. Therefore, reducing STRs in coastal communities simply reduces access to those who cannot afford to buy such properties but can afford to rent them for a short time. Indeed, in our case studies, communities, such as Del Mar and Santa Barbara which already have significantly higher home prices, higher rents, and higher median incomes, were also the same communities which placed more serious restrictions on STRs.

North San Diego County

The first case study in this report examined five coastal communities in North San Diego County: Del Mar, Solana Beach, Encinitas, Carlsbad, and Oceanside. All of these communities are very popular beach destinations in the summer and have significant regulations on STRs. Our analysis of STR policies in North San Diego County indicates that communities that have restricted short-term rentals the most have the highest overnight rates. The City of Oceanside has more affordable accommodations than its neighbors to the south while at the same time also providing more affordable accommodations for its long-term residents as well.

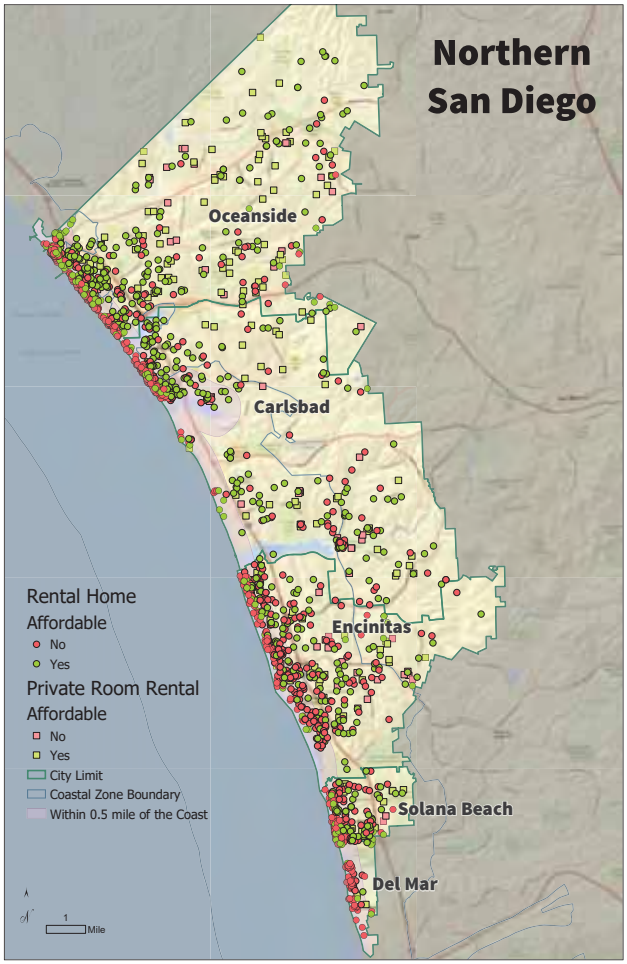


Figure E3: Affordability of STRs in North San Diego County.

Figure E3 above graphically illustrates the affordability issue in North San Diego County. The darker (redder) areas indicate more affordability; the lighter (more yellow) areas indicate less affordability. As one would expect, the areas along the coast are less affordable. However, pockets of affordability still remain farther north, particularly in Oceanside, which has a more accommodating STR policy. On the other hand, more exclusive communities like Del Mar offer fewer affordable overnight accommodations.

City of Santa Barbara

In Santa Barbara the regulatory environment is particularly difficult. The city's enforcement and zoning policies towards STRs has been described as a "ban" since STRs are classified as hotels. As a result, STRs are only permitted in areas zoned for hotels, and operators are required to submit to many of the same regulations as a hotel owner, including frequent inspections and renovations. Since 2015 the city has begun aggressively enforcing this zoning ordinance. This policy has resulted in a lack of affordable accommodation in the City of Santa Barbara since few areas are zoned for hotels. The added enforcement risk to operators has reduced supply and increased costs, reducing affordability. The maps in Figures E4 and E5 below show the results of Santa Barbara's restrictive STR policies. There are few affordable accommodations, and those that are available are away from the coast. Easing STR regulations, and thereby allowing a greater supply of STRs in other areas of the city, would significantly increase affordability and access.

Recently, the ban on STRs in Santa Barbara's coastal zone was overturned in the Kracke v. The City of Santa Barbara case. Judge Borrell ruled that the enforcement significantly changed the ability for Californians to visit and access the coast and that such a development would have required the approval of the California Coastal Commission. The ruling effectively allows rentals in the coastal zone to be operated immediately in the same manner as they were prior to 2015 during when operators obtained a permit and collected TOTs. The city is appealing the ruling.

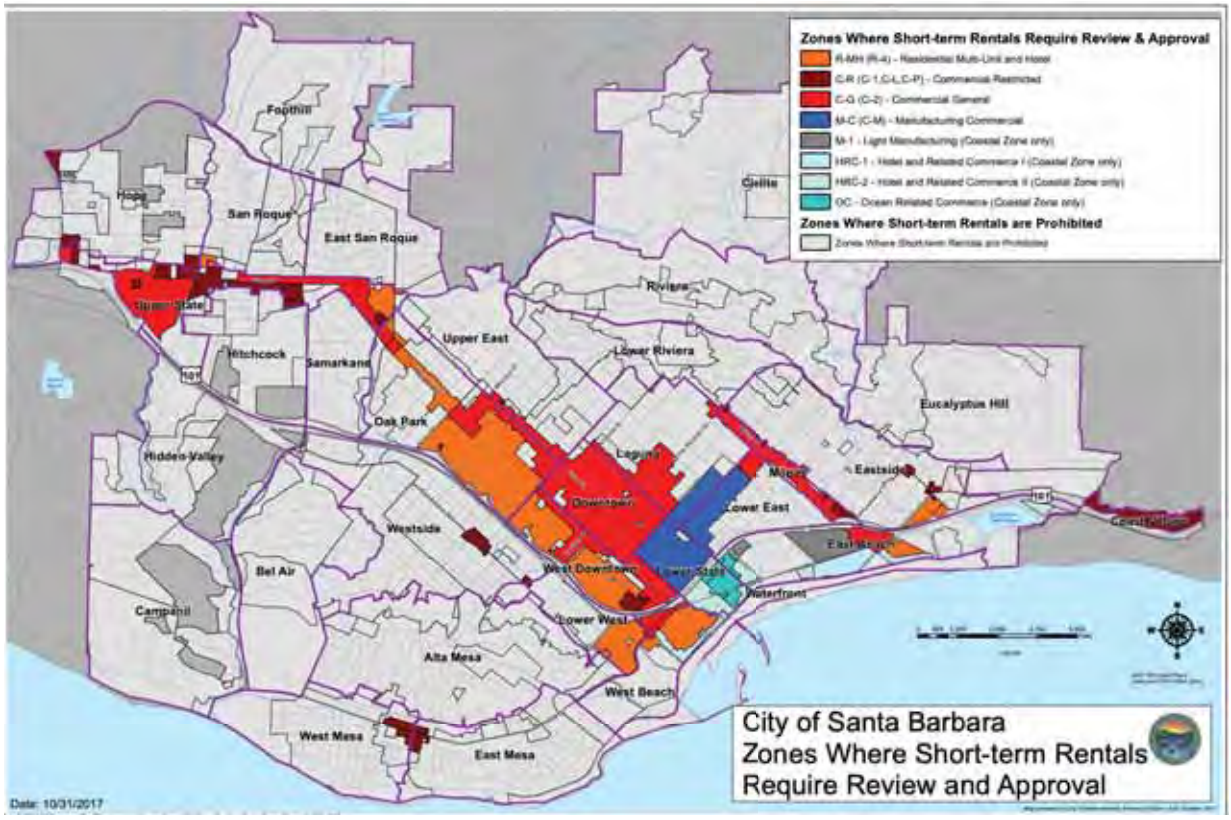


Figure E4: Santa Barbara's zoning limits STRs to areas already zoned for hotels.

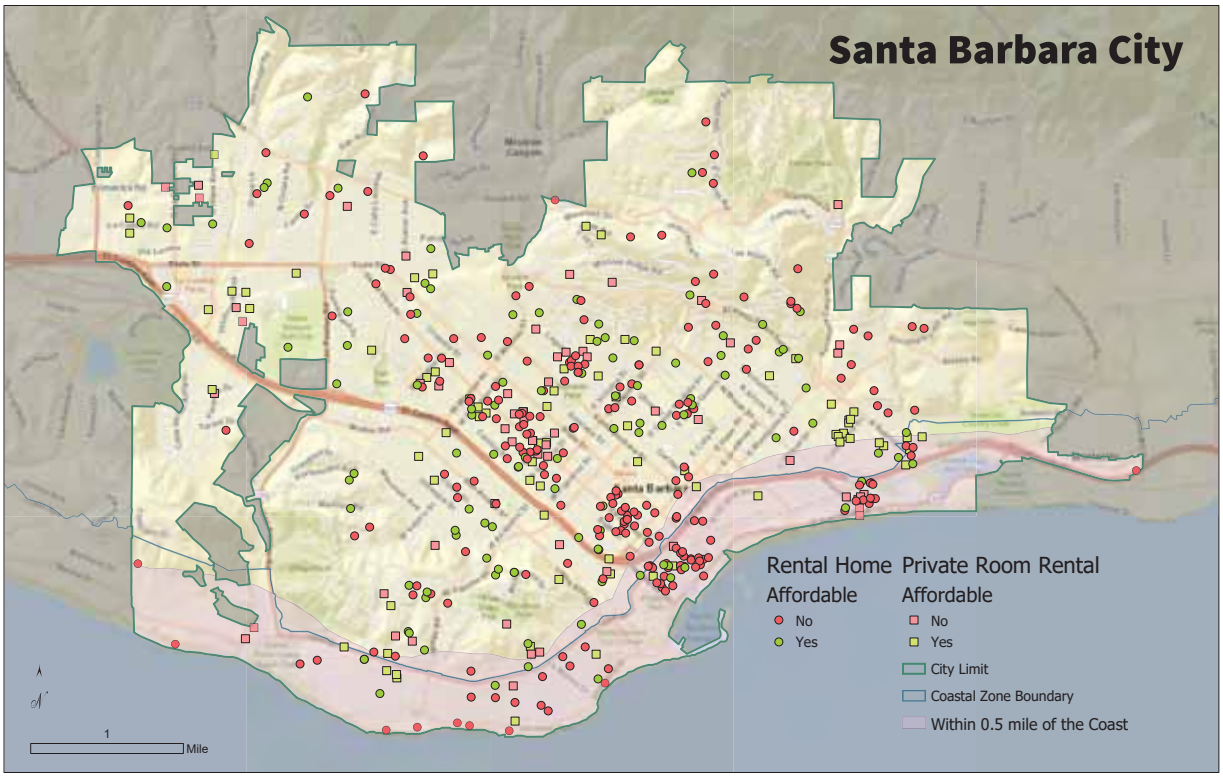


Figure E5: Affordability of STRs during peak season in Santa Barbara.

City of Pismo Beach

The California Coastal Commission has suggested that Pismo Beach's short-term rental ordinance is a model for other communities. However, as this study indicates, Pismo Beaches' permitting fees, coupled with a required business tax, imply that STR landlords must pay over $450 for the right to rent out their property even if only for a week or two. The high fees represent an obstacle and possible deterrent to residents who might consider home sharing as a means to supplement their income. This might explain why Pismo Beach's STRs are less affordable than many other communities in this study.

Regulations on short-term rentals can help communities promote public safety alongside access and respond to the valid complaints of residents around issues such as noise, traffic, etc. These regulations, however, should not constitute barriers or bans which prohibit STRs or make STRs too expensive for low and moderate-income families, thus reducing coastal access. A well-regulated supply of STRs can also provide significant revenues for local communities in the form of transient occupancy taxes (TOTs). In addition to paying for the increased costs of public safety, these revenues can be used by coastal communities to help strengthen resilience in order to adapt to sea level rise.

Potential Solutions and Recommendations

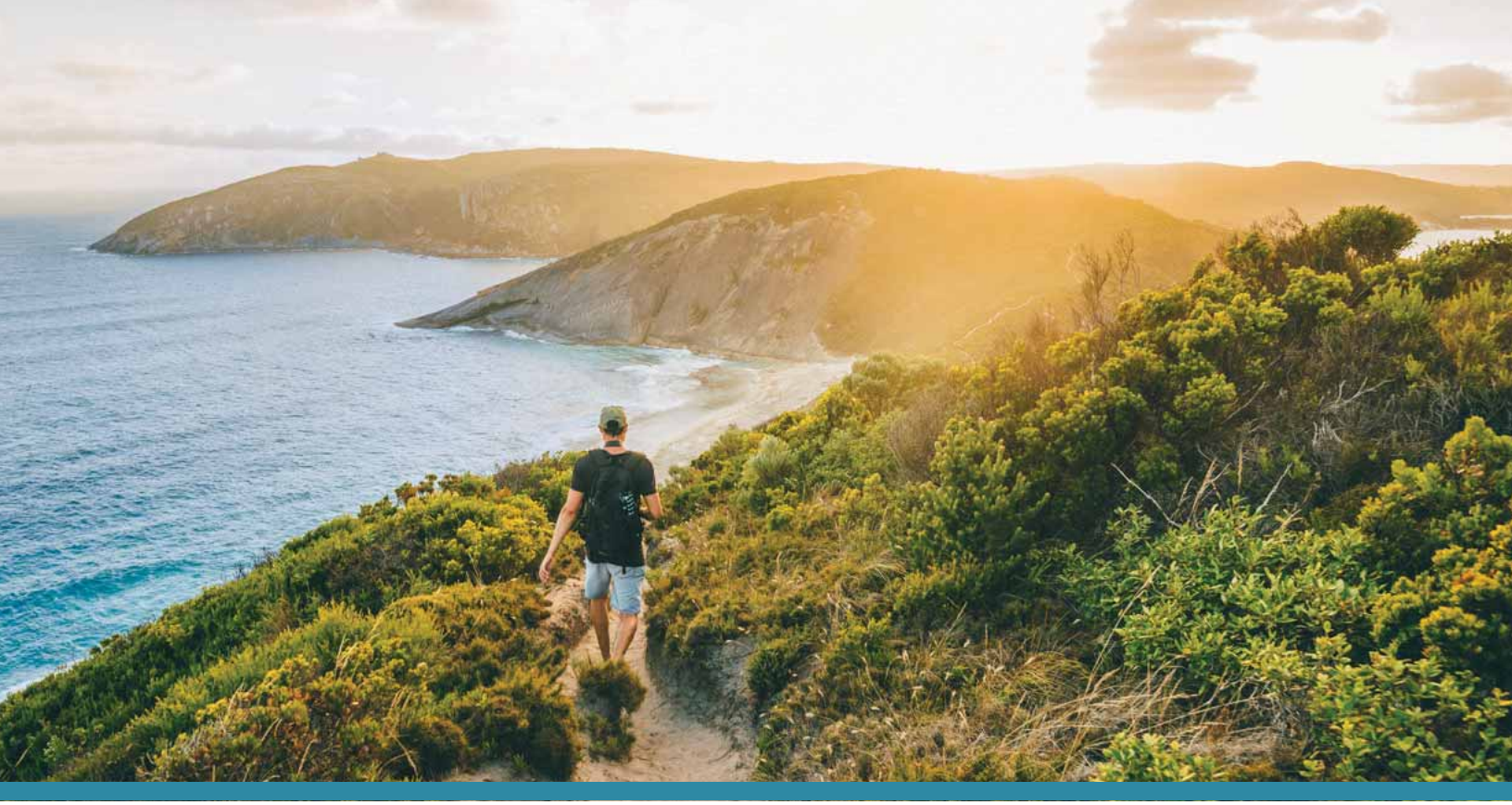
After evaluating the impacts of regulations on the availability and affordability of STRs, this report makes the following recommendations for how local jurisdictions can maximize access to the coast. These simple policy changes will help reduce the costs, delays, and confusion, thereby encouraging compliance and regulations as well as affordability.

Best Practice	Rationale
Simple, streamlined registration	Reduces the costs to operators, costs which are passed on to renters and reduce affordability
Make permitting easy and swift	Allows for more affordability by making it easier to increase the supply of STRs; also encourages registration with the City
Cities require TOT payment and cooperate with STR platforms where possible	Ensures TOTs are collected from all operators
Allow STRs in most or all coastal neighborhoods	Increases affordability near the coast, helping increase coastal access for those who need it most
No minimum on number of nights	Ensures that families who cannot afford multiple nights can still visit the coast
Maximum night cap of 180 nights or more. No night cap on shared space rentals	Helps promote affordability via greater supply of STRs, supported by Commission
Ensure compliance with "Good Neighbor Policies" and make renters aware of rules	Promotes harmony between STRs and the residents neighboring them, and promotes public safety
Require parking be provided by STRs where reasonable	Reduces traffic associated with STRs and promotes agreement with local residents. Reduces parking costs for visitors

The City of Oceanside's Good Neighbor Policy (in appendix) and other policies generally provide a good example for other cities to follow when implementing STR policies. In communities where parking is an issue, communities should require STRs come with adequate parking depending upon the number of guests. These same communities may also wish to encourage transportation modes other than cars, such as local buses and shuttles, bike rentals, etc.

Additionally, this report recommends that the state, local governments, and non-governmental organizations (NGOs) play an active role in developing programs that target underserved communities and households with low or moderate income in order to increase the affordability of, and hence access to, the coast.

Recommendation	Rationale
State agencies, local governments, foundations and community organizations could **support and fund programs that encourage or subsidize low-income families or those from underserved communities to stay overnight near the coast.** STRs should be part of the solution.	Cooperation with NGOs helps these programs reach those most in need of easy access to the coast. STRs better serve large groups and families and provide additional amenities for families. Many STRs are more affordable.
Expand the Explore the Coast Overnight Program to include STRs, and include STRs in other pilot programs	It is easier to expand the supply of affordable accommodations through STRs, unlike other lodging, which requires new construction on the coast.
Create **affordable STR program with eligibility criteria.**	Establishing eligibility criteria ensures that Californians most in need of affordable accommodation have access.



Access Issues on the California Coast

The Coastal Act

California's beaches have an almost mythological allure worldwide. The California coastline is not only a crucial aspect of the identity of the state and its residents but also one of its prized tourist attractions. Millions flock to the state's beaches every year, especially during the peak summer season. In fact, of the more than 200 million in-state leisure trips California residents took in 2016, over 20% were to the beach (Conservancy 2019, 14).

As the California population continues to grow, especially inland where summer temperatures are increasingly hot, beach trips will likely become even more popular, but only if Californians can afford to visit. Access to the coast is threatened by rising costs. A 2017 study found that 62% of California families felt that a visit to the coast is simply too expensive (Christensen & King 2017, 3). These families are primarily concerned with the high costs of parking and lodging along the coast, a problem which is especially concerning for minority residents and residents of inland counties (Christensen & King 2017, 3). The high cost of a coastal visit can mean that middle- and low-income families cannot afford coastal access at all.

This disparity is especially disheartening in a state where access to the coast is guaranteed by law. In California, the coast (below the mean high tide line) and waterways are public land and intended for beneficial public use. The 1976 California Coastal Act aims to protect California's beaches and coastline and promote visitation. The California Coastal Act defines the coast as a "distinct and valuable resource belonging to all" and ensures

> "maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights." (Coastal Act, Section 30210)

The Coastal Act not only places importance on coastal protection but also includes an imperative mandate that all Californians should have maximum access to coastal recreation regardless of income.

Several recent reports by the California Coastal Commission and the California Coastal Conservancy noted that this mandate goes above and beyond protection and preservation. It necessitates the promotion of access for those who would otherwise be unable to afford it. Specifically, the California Coastal Act requires the protection, encouragement, and "where feasible" provision of "lower cost visitor and recreation facilities" (Conservancy 2019, 14; Ainsworth 2016, 1). This stipulation in the California Coastal Act gives the State government the capacity to ensure and protect access to the coast. The requirement for the preservation and provision of lower cost facilities is vital to providing equitable access to all Californians. Without lower cost overnight accommodations, many individuals with low or moderate incomes will be, and in many cases already are, unable to afford the high cost of visiting the coast. This results in unjust inequity (Ainsworth 2016, 8). It is not sufficient for the coast to be legally accessible by the public; there must be a diverse set of options that allow everyone, regardless of income, an ability to access the coast. Presently, the majority of Californians cannot afford overnight accommodations in coastal areas (Ainsworth 2016, 24).

Despite the California Coastal Act's promise of access for all, inequity persists and is perhaps more pervasive than in recent decades. The high cost of living in coastal counties has pushed lower and moderate-income Californians inland. This has resulted in longer drives and in many cases, requires an overnight stay if families wish to visit the coast. **Desire to visit the coast is relatively high among all of California's diverse demographics, yet important barriers to access persist which make visits to the coast too costly for lower income communities.** In fact, one study found 62% of California voters perceive coastal access as a problem (Christensen & King 2017, 3). Historically, public access has been unequally distributed among different groups. High land costs and explosive economic growth on and near the coast have exacerbated this situation. While the Coastal Act aimed to remedy these issues, it has fallen short.

The Coastal Act's stipulation for lower cost facilities includes the promotion, preservation, and provision of lower cost overnight accommodations (Ainsworth 2016, 1). These protections are meant to address one of the most significant barriers facing visitors to the beach: the cost of overnight accommodation and the scarcity of alternative, affordable accommodations. As mentioned, many low- and middle-income Californians have to travel greater distances to reach the coast and may need accommodation. This is a pressing issue as income inequality in the state

deepens. In a recent survey, 75% of respondents cited the lack of lower cost accommodation options as a reason they do not visit the coast as much as they would like (Christensen & King 2017, 3). Travel costs—the chief barrier to coastal access—are not equitably distributed among California's diverse demographics. High costs to travel to and stay in coastal communities more heavily burden lower income populations and prohibit some from visiting.

Associated Costs and the Value of Beach Recreation

Although the California Coastal Act guarantees access to the coast to all Californians, recent studies show that costs associated with visiting the coast impose barriers that prevent many lower income and minority communities from visiting. Many families, despite strong desire to visit the coast, simply cannot accommodate high nightly rental rates into their budgets. Understanding the value California residents place on a trip to the coast will better help to illustrate the significance of high costs.

Californians visit the coast for many reasons; the coast provides recreational opportunities, which benefit psychological and physiological health as well as provide much needed leisure, a connection to the ocean, and an escape from the scorching summers inland (Christensen & King 2017, 3; Reineman 2016, 91). In other words, all visitors place some value on their visits—although perhaps not in dollars. This value is not always fully captured in the cost of the trip, especially since beaches in California are generally free. Thus, coastal visits have a non-market value, or a worth to visitors that is not explicit in commercial costs. Understanding the value of a beach trip can help illustrate the decisions which go into a visit, allowing economists to model consumer surplus. In this case, consumer surplus is the value of the visit once the costs have been accounted for, or how much "bang for your buck."

While the average visitor may not calculate their exact costs and associate an explicit, monetary value to their visit, costs do play a role in decisions to visit the coast. The amount a visitor is willing to pay for a trip can reveal the implicit value of the trip (Christensen & King 2017,5; Medford 2018). This is especially important regarding trips to the beach, as beach access is generally free and thus has a "non-market value." Economists have developed a wide variety of models to estimate the "non-market value" of visiting natural resources where access is free. One of the most common models is the "travel cost model." In a 2017 survey, Christensen and King used this model to conduct an intercept survey of select beaches in Southern California to estimate a visitor's "willingness to pay" (WTP) to visit the coast.

Researchers have compared the value of a beach visit to the associated costs to better understand the economic barriers that impact coastal access (Christensen & King 2017; Medford 2018). Medford (2018, 3) determined the value of beach recreation in Southern California using a visitor's choice of site and the number of trips taken to reveal his/her willingness to pay, and thus, the value assigned to the trip. The study found higher income demographics have a higher willingness and ability to pay for coastal accommodation. Medford (2018) sought to understand how consumer surplus and WTP varied by ethnic and racial group—an important aspect of creating equity in coastal access. Minority populations historically have faced both cultural and

legal barriers to beach access. These barriers have carried over into feelings of marginalization and being unwelcome, resulting in a lower desire to visit. Medford (2018, 1) found evidence of this phenomenon, noting that Black and Asian populations on average visit the beach less. More significant than race alone, however, was "travel cost." Minority groups were on average more responsive to high travel costs. Higher sensitivity to travel cost suggests these populations derive a lower consumer surplus, or benefit, from their visits. In order to ensure access for all Californians, these preferences need to be taken into account.

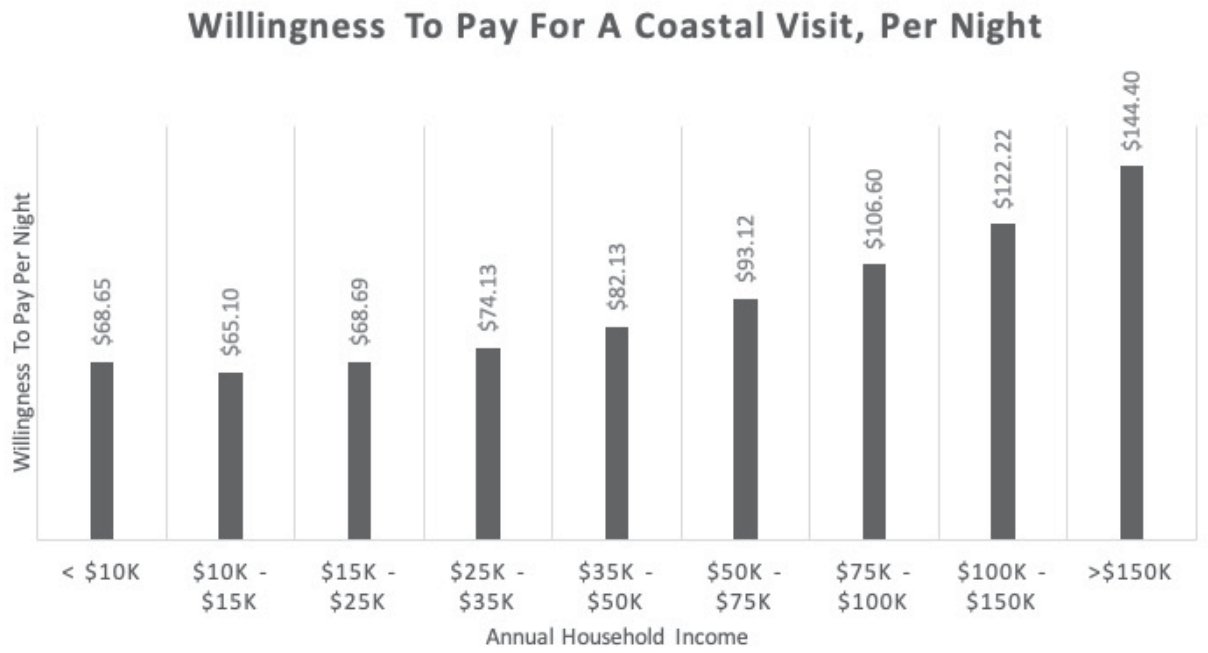


Figure 1: Willingness to pay for a visit to select Southern California beaches by income bracket (Christensen & King, 2017).

Latino residents in particular consider the cost of accommodation as a major barrier to visiting the coast. Christensen and King (2017) found that Latino voters rated affordable accommodation a major issue and were on average able to pay $16 less per night than respondents overall. This is especially significant during the summer holidays when demand for coastal recreation is at its peak and prices are the highest. Latino populations are especially vulnerable to the lack of affordable coastal accommodations given that Latinos in California have a 52% lower median income, at $51,853 in 2017, compared to the median income for white, non-Latino residents of $78,903 according to the latest numbers (US American Community Survey, 2017).

For households in Southern California's non-coastal counties—particularly those with high Latino populations, such as the Inland Empire—access to affordable overnight accommodations is critical since accessing the coast for a daytrip is difficult given traffic patterns and travel costs. According to data from the U.S. Census 2018 American Community Survey (ACS), Latino households make up the majority of the population in virtually all Southern California inland counties. Table 1 below shows these counties have a higher percentage of Latino households than the rest of the state overall.

Table 1: Latino/Latino Residents as a Percentage of Population in Southern California Inland Counties. Data from the U.S. Census 2018 American Community Survey.

County	Total Population	Latino Population	Percent Latino, 2018 ACS
Fresno	994,400	531,677	53.5
Imperial	181,827	153,757	84.6
Kern	896,764	483,846	54
Kings	151,366	83,200	55
Madera	157,672	91,939	58.3
Merced	274,765	165,438	60.2
Riverside	2,450,758	1,214,445	49.6
San Bernardino	2,171,603	1,171,925	54
Tulare	465,861	303,657	65.2
Southern Valley	**7,745,016**	**4,199,884**	**54%**
Rest of State	**31,301,112**	**11,211,879**	**36%**
California, total	**39,557,045**	**15,540,142**	**39.3%**

While high travel and accommodation costs are particularly significant for residents of inland counties, these costs weigh heavily in planning a coastal visit for all California residents. Naturally, if the associated costs of the trip are too high, those with fewer means would choose not to go. Survey work from UCLA on beachgoers found this to be the case, concluding that lodging and transportation costs are the paramount concerns, and indeed barriers, to beach access (Christensen & King 2017, 4). While the UCLA study did not analyze lodging costs, they illustrated part of the affordability problem. They "calculated that the average value of a multi-day trip to the coast was $605.05, meaning that visitors were on average willing to budget roughly $605 for the trip. Round trip travel costs amount to on average $194.41—not including the price of overnight stays—leaving $410.64 in the typical budget for all other expenses. With overnight visitors staying an average of four nights on the coast, the surplus value 'left over for accommodations is just $102.66 per day'" (Christensen & King 2017, 6). That $102 is likely insufficient as many coastal zone accommodations ask more in their daily rate. Furthermore, that nightly rate leaves nothing left over for excursions or even food.

The already high costs of lodging on the coast are prone to increases as demand for coastal accommodation exceeds supply. Hotels dramatically raise rates during the peak season, making it even harder for the majority of Californians to visit the coast. While this creates a barrier for many Californians to visit the coast, the UCLA study also found that willingness to pay for lodging

increases with income where wealthier populations are willing to pay premiums. For the aims of the Coastal Act to be met, accommodations need to exist along the coast that offer lodging for more than just the wealthy.

Lack of Supply of Affordable Accommodation

The cost of coastal accommodations concerns the majority of visitors to the beach. High travel costs—and in particular the exorbitant cost of lodging on the coast—can prohibit coastal visits and impede access to the coast. In fact, the only California populations who reliably stay on the coast are white, age 55 or older, who earn more than $200,000 annually (Conservancy 2019, 16). Another study found that this demographic already has higher ability to access the coast. Reineman (2016, 101) mapped census demographics in relation to coastal access points and found that "by virtue of their place of residence, white, wealthy, senior Californians live disproportionately closer to public coastal access points than other groups" (Reineman 2016, 99). The coast, according to this research, is overwhelmingly white and is also predominantly wealthy. The average annual household income increases with proximity to the coast, such that those living closest to the ocean make 20% more than the state average, and low income communities are largely concentrated inland (Reineman 2016, 97). Inland Californians, therefore, face not only higher travel costs but also a greater cost burden in comparison to their incomes. This compounds coastal access inequality.

Inland California populations are on average less wealthy, younger, and more diverse than the communities on the coast. This is true for those in coastal counties but also for those who must travel much further to reach the coast, such as those who live in the San Joaquin or San Fernando Valley. As demonstrated in table 2 below, data from the US Census indicates that households in inland counties in southern California have annual incomes $25,000 lower than households in coastal counties, reducing their ability to afford a coastal visit. These are the communities most in need of affordable accommodation if all Californians are to have access to the coast. Recall that those of lower incomes budget less for a coastal trip, and this is especially true for communities of color. Compared to the communities with the closest proximity, and therefore easiest access to the coast, those who live inland face high travel costs coupled with fewer means.

Table 2: Demographic data from the U.S. Census shows that the California coastal population is wealthier, whiter, and older than the populations of inland counties.

Comparing California Coastal Communities to Inland Counties[4]			
	Age, Percent of Population Over 65	Percent White, Non-Latino	Average Median Household Income
Coastal Sample	16.3	49.2	$ 83,995.00
Inland Counties	12.3	34.0	$ 58,082.83

4 "Coastal Sample" includes the counties of Marin, San Francisco, San Mateo, Santa Cruz, Orange, and the cities of Monterey, Pismo Beach, San Diego, Oceanside, Los Angeles, Malibu, Long Beach, Oakland, Oxnard, and Huntington Beach. The "Inland Counties" are those counties within reasonable travel distance to the coast and large populations: Sacramento, Fresno, Riverside, San Bernardino, Stanislaus, and Merced. Bakersfield city was also included as Inland.

These Californians have to travel the furthest to the coast and therefore have the highest travel costs. At the same time, inland populations are less able to pay the high asking prices for accommodation (Christensen & King 2017, 4). According to US Census data, populous areas inland—including Sacramento, Fresno, San Bernardino, and Bakersfield—have lower median incomes and larger Latino populations than cities along the coast (see Table 2, above). Californians inland face higher travel costs with tighter budgets. Thus, it follows that inland populations visit less often, especially those from the Central Valley, "with 39 percent visiting less than once a year" (Christensen & King 2017, 3). If the aims of the 1976 California Coastal Act are to be met, more low-cost coastal accommodations need to be provided or else this disparity will persist.

Presently, those with greater means have more opportunities to access overnight accommodation and the coast itself, and this is not a result of their place of residence alone. There are simply not enough affordable accommodations on the coast, and during the peak summer season there is not enough accommodation overall. Lodging is often the most expensive part of a coastal vacation, making its scarcity critical. Publicly owned options can help keep the cost of accommodations low, but these are typically campsites or lodges and a few hostels. They act as a bulwark against the increasing lack of affordability on the coast, especially important given that the California coast has lost 24,720 economy hotel rooms since 1989[5], more than twice the number of non-economy rooms (Ainsworth 2016, 1). While the population in California has grown, affordable accommodation options for lower income residents on the coast have shrunk.

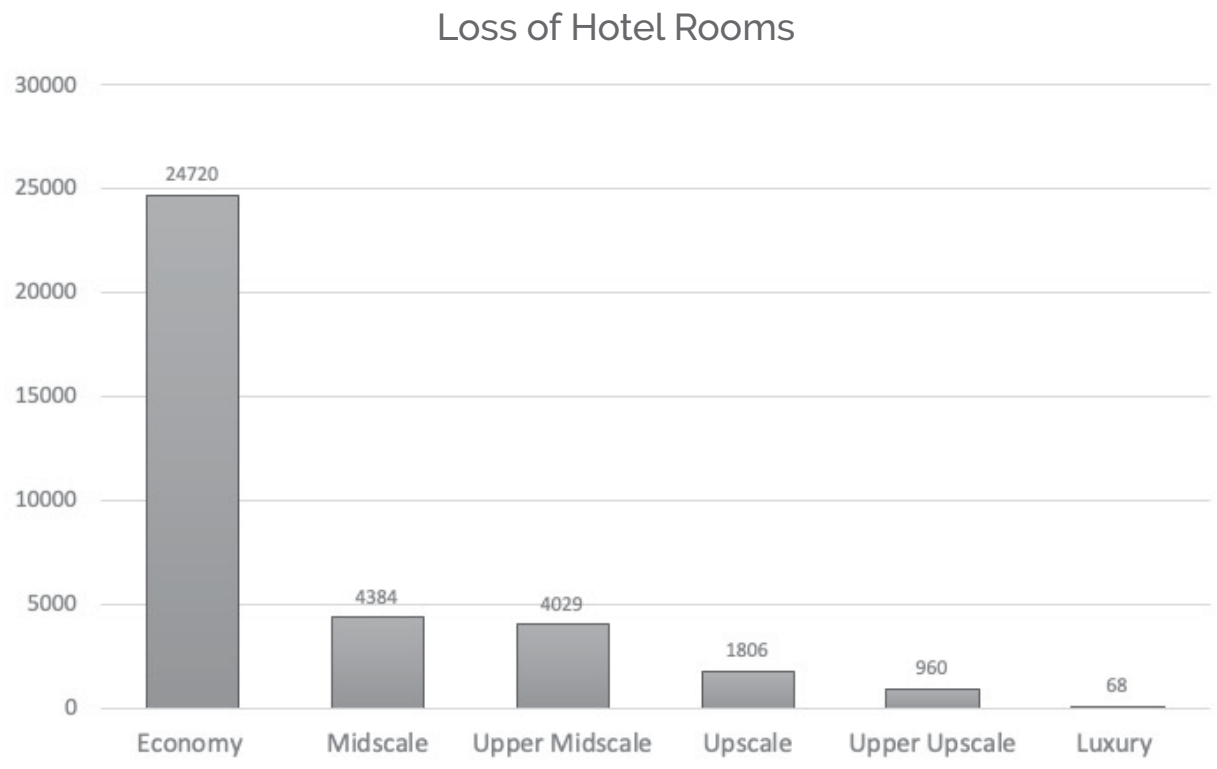


Figure 2: Loss of hotel rooms in California by class (Ainsworth 2016).

5 Ainsworth (2016) reported that nearly 70% of the rooms lost since 1989 have been economy rooms whereas 10% have been upscale and less than 0.2% luxury hotel rooms.

The existing accommodations on the coast are also under threat from rising property values and conversion to higher cost lodging. Lower cost hotels are critically threatened, closing at more than double the rate of moderate and high price hotels, resulting in the dramatic loss of hotel rooms indicated in Figure 2 (Ainsworth 2016, 1). They are being replaced by expensive condominiums, resorts, and hotels, thereby decreasing the supply of more affordable accommodations and increasing rates such that many coastal cities only offer 5% of the available rooms at a lower cost—those with a daily rate less than 75% of the California average, which qualifies a room as "affordable" (Ainsworth 2016, 2). Historically, low-cost accommodations were more accessible, but now the percentage of economy rooms has decreased dramatically with proximity to the coast. Furthermore, an "economy" room on the coast is likely to be more expensive than its equivalent inland. The supply of roughly 13,000 affordable overnight accommodations on the coast (only 7,500 rooms in Southern California) does not come close to matching the needs of the 12.6 million households within 150 miles of the coast, approximately half of which are low income (Conservancy 2019, 13). Staying overnight at the coast is simply unaffordable for many California residents. Presently, 45% of Californians find accommodation options on the coast to be too expensive or inconvenient (Conservancy 2019, 14).

The California Coastal Act's mandate allows the Coastal Commission some leeway in providing lower cost accommodation options, primarily in dealing with development. The Coastal Commission has required some builders of new hotel developments to construct 25% of their rooms to be designated as affordable rooms and assesses an in-lieu fee of $100,000 for lower cost rooms (Commission 2019, 25). Some hotels meet this requirement not by reducing the rates of their rooms, but with offsite solutions, such as hostels (OC Register; Commission 2019, 24). While this measure helps provide affordable options, it fails to match the preferences of the majority of beachgoers who wish for privacy. Instead, this policy essentially provides separate, and not equal, accommodations for low- and moderate-income groups. The replacement of lower cost hotels with hostels also creates a dichotomy for visitors and may prevent some from being able to visit (Commission 2019, 23). In this new scenario, mid-range accommodation options vanish.

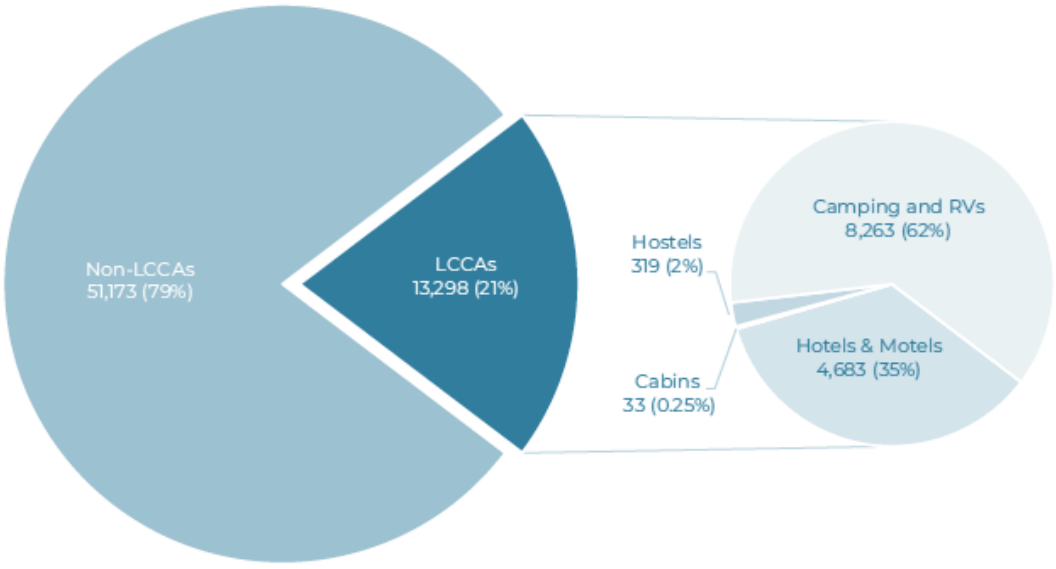
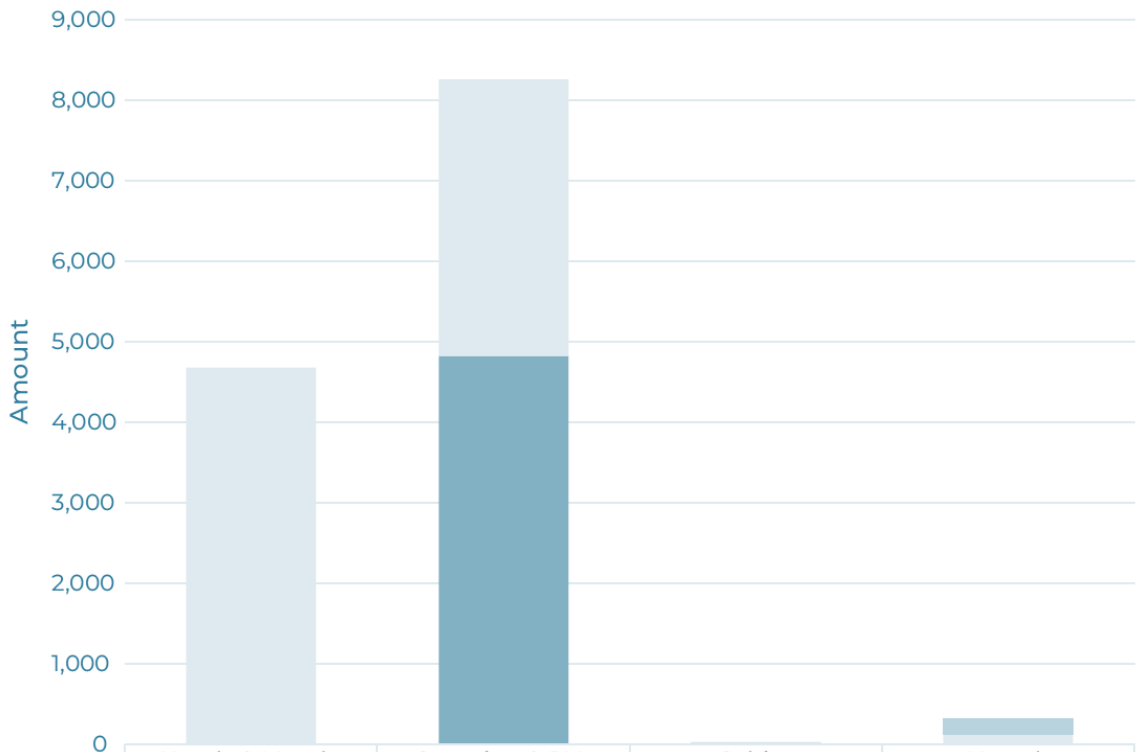


Figure 3: Distribution of lower cost coastal accommodation types (Conservancy 2019).

Furthermore, enforcement of the in-lieu fee often falls to local governments who see the policy as a suggestion rather than a rule (Access Denied, 2019). This results in developers getting away with drastically reducing the supply of affordable hotels along the coast without any hope of replacing those lost. Additionally, former commissioners interviewed by the Southern California public television station KCET explained that the fees collected, some $22 million, have been untouched despite plans to build lower cost options including campgrounds and hostels (Access Denied, 2019).

Sky high coastal property values motivate developers to build luxury condos and resorts rather than affordable hotels which may not be fully booked all year. Coastal communities seem to prefer these developments over those that would service lower-income residents. In one case, Malibu residents stymied the construction of a campground for foster children despite earmarked funding (Access Denied, 2019). However, when luxury developments curtail residents' access to beaches, public opposition combined with the backing of the Coastal Commission can prevent privatization, such as with the Miramar Hotel in Santa Barbara where the Commission threatened a fee of $11,000 a day for restricting access to the public beach (Access Denied, 2019). The Commission has the power to enforce the goals of the Coastal Act, but they are understaffed and often impeded by the actions of coastal municipalities.



	Hotels & Motels	Camping & RVs	Cabins	Hostels
NGO	0	0	0	188
Private	4683	3433	13	131
Public	0	4830	20	0

Figure 4: Accommodation ownership distribution on the coast (Conservancy 2019, 12).

The current supply of lower cost coastal accommodations also tends to fall disproportionately toward camping and RV parks. A recent study by the Coastal Conservancy focused on "lower coast coastal accommodations"—defined as those with a rate of 75% or less of the statewide average—and found that 62% of these options are camping or RV sites (Conservancy 2019, 11). These are often publicly owned. Campsites are in very high demand and often reserved long before the peak season begins. However, surveys of beachgoers reveal that many do not wish to camp or stay in a hostel (Ainsworth 2016, 12, 26). Others, especially those from low income or minority households, may lack the necessary camping equipment. The costs of starting to camp are high with the average first-time camper spending $181.61 for gear that first trip (Coleman 2017, 2). Camping, although a more affordable option, is not equitable either.

Furthermore, despite the lower fees for overnight camping, campers tend to skew toward more affluent groups and minority representation among campers is limited. Providing more campsites may not increase access for underserved groups as noted in one study which found 78% of campers were white (Coleman 2017, 8). While campgrounds continue to grow in popularity, they are not an option for everyone, nor do they meet the needs of all potential visitors. The majority of overnight beachgoers choose to stay in hotels (54%) or with friends or family (29%) (Christensen & King 2017, 6). Many campgrounds near the coast are also threatened by coastal erosion and campsites may be lost. For example, South Carlsbad State Beach in North San Diego County, has a number of campsites threatened by erosion.

Table 3: Availability of Lower Cost Coastal Accommodation Types vs. Demonstrated Demand (Christensen & King 2017, 6)

Type of Lodging	Popularity (Survey data)	Supply of LCAAs
Hotel/Motel/STR	54%	35%
Family or Friends	29%	N/A
Camping/RV/Boat	10%	62%
Visitors' Second Home	4%	N/A

A shortcoming of many coastal accommodations is the lack of facilities, such as kitchen access or group spaces. An overnight stay typically carries other costly expenses, especially the cost of eating out. Staying in a motel or hotel forces a family to dine out, which increases the cost of their visit. Alternative accommodation types can offer families the ability to cook and also can accommodate larger groups than a traditional hotel rooms, further reducing costs.

Overwhelmingly, studies of beachgoers illustrate that low-income and moderate-income families, people of color, and those from inland communities in California simply cannot afford to stay at the coast and therefore do not visit as much as they would like. Many barriers exist, such as the cost associated with travel and the lack of options for large groups or families. The lack of lower cost coastal accommodation in particular—and especially for those who do not wish to camp—creates a significant barrier for many Californians and undermines the aims of access for all.

Table 4: Insufficient Number of Lower Cost Coastal Accommodations in 2016, Coastal Conservancy

Number of Rooms in the Coastal Zone + 1mi	Population: Coastal Counties	Population: Inland
13,332	20,301,136	15,857,484

Figure 5: Lower cost coastal accommodations by county (Coastal Conservancy 2019).

At the same time, coastal accommodations also exhibit seasonality in prices; the cost of an overnight stay during the peak season from June to September is significantly higher than other times of the year. Hotels respond to increases in demand by increasing prices as they cannot readily adjust their supply of rooms (Zervas 2016, 1). The result is that while the travel costs associated with a visit to the coast for a family from inland California may not increase during peak season, it is likely the cost to stay overnight increases dramatically should they choose to stay at a hotel—if they can find a room.

In order to ensure all Californians have access to California's coast, one must recognize these demographic disparities. Indeed, it is not unreasonable to state that the biggest barriers to coastal access in the State of California are economic barriers: the cost of travel is highest for the families who can least afford to pay. Consequently, the State of California, in partnership with local communities and other stakeholders, needs to address these economic barriers to coastal access if it is committed to ensuring access for all. The state needs measures that promote easier access for low- and moderate-income families and communities who live inland, particularly families who cannot take a daytrip to the coast. Further, to achieve equity in access, California must address these barriers, and increase the volume of affordable accommodations, and identify strategies to decrease the price hikes during peak season.

Short-Term Rentals Aid in Providing Lower Cost Accommodations

Limits of the Coastal Act and an Alternative

Despite the mandate to promote, encourage, and provide affordable opportunities for coastal access, the California Coastal Act does not give the California Coastal Commission the authority to regulate the price of overnight accommodations. They lack oversight of private entities' rates to ensure affordability. In fact, the Coastal Act was amended in 1981 to prohibit the Commission from regulating the cost of overnight accommodations. The amendment expressly states that "the commission shall not [sic]: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities." This prohibits the Commission from interfering directly in the coastal accommodation market (Ainsworth 2016, 6) and makes it more challenging to provide lower cost accommodations, which are a necessary part of providing coastal access for all.

However, while the Commission lacks regulatory authority over the price of overnight accommodation, it can influence the supply of lodging. Increasing this supply, particularly if it encourages more affordable options, would reduce rates and increase access. Greater supply of affordable accommodations can provide competition and in turn help drive down nightly rates across all accommodation types along the coast. Various government agencies are in the process of making renovations and expansions to existing public options, such as campgrounds and cabins (Conservancy 2019; Christensen & King 2017). While these expansions will help to alleviate some of the burden, they do not address the "desire for privacy, comfort, convenience, or security" that

discourages some visitors from staying at lower cost coastal accommodations, such as campsites and hostels (Conservancy 2019, 18).

Hotels, motels, and the like on the coast are almost all privately owned—and expensive. In light of the lack of lower cost coastal accommodations and the need to expand access for all, the Commission has recognized the role of short-term rentals in providing distinct amenities and more affordable options (Schwing et al 2018, 2).

Despite their historical presence along the California coast, short-term rentals have not been thoroughly evaluated or considered as a means to help meet the state's demand for lower cost accommodations. There are a wide variety of such rentals at a range of costs more suited to the varying needs of consumers and the distinct attributes they may seek to find in an accommodation (Ainsworth 2016, 13; Midgett 2017, 64; Choi 2015, 16). The availability of short-term rentals brings a new selection of lodging options that may open up more opportunities for coastal access and reduce barriers in the form of more inexpensive coastal accommodations. They also offer a variety of accommodation types better suited to a wider range of travelers. For example, some groups may wish to cook their own food, which is rarely an option with traditional lodging options, and others may be part of a large group or family and be facing the prohibitive cost of two, three, or even four hotel rooms. Short-term rentals can help meet the needs of these travelers.

Short-term rentals (STRs) are not a new phenomenon. In fact, Californians have been using STRs to vacation at the beach for decades (Ainsworth 2016, 7; Midgett 2017, 55). The planning documents supporting the California Coastal Act mentions vacation home-sharing in 1975[6]. What has changed in recent years is the advent of new technologies to connect consumers and short-term rental operators, thus increasing the ability to short-term renting of residences that would otherwise sit empty (Midgett 2017, 54). This means that families can now more readily rent out a small beach house, with a variety of amenities, that might be another family's vacation home. A resource that would have sat unused now offers Californians the chance of a more affordable vacation.

Not only does the wide variety of short-term rental options draw consumers but so does the affordability. Price, as explored in the coastal surveys and research into hotels, is one of the major factors in accommodation selection and the decision to vacation overall (Choi 2015, 2; Christensen & King 2017, 6). Short-term rentals provide a lower cost option, especially for larger groups, families, and those who may not be able to afford hotel accommodations (Ainsworth 2016, 11, 13, 50; Renau 2018, 2; Choi 2015, 2). While there is wide variation in the cost of short-term rentals, the range largely reflects the variety in attributes and size. Rentals, in some studies, were not the lowest priced option[7]. However, when considering rentals as an option for families or larger groups, a home sleeping three to four people would, in many cases, be much more affordable than booking two rooms in a hotel[8]. This also does not take into account other benefits

6 From the California Coastal Plan of 1975, which outlines policy recommendations which became the California Coastal Act. (California Coastal Zone Conservation Commission 1975, 155) https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1090&context=caldocs_agencies

7 CBRE found that Airbnb rentals could be more expensive with "the average rate paid for an Airbnb unit over the 12 months ending in September 2015 was $148.42. This is 25% higher than the average hotel rate of $119.11. Part of the reason for higher rates can be attributed to the amenities found at some Airbnb units... 34% of the Airbnb units have 2 or more bedrooms and the rates for units with 2 or more rooms are offered at a considerable premium to single room units" (CBRE 2017, 10).

8 An entire home sleeping three to four people may cost US$60 a night in Paris on Airbnb (the median rate is US$96), making a family stay in the city far more affordable than booking two rooms in a hotel. This could help explain why the occupancy rate for entire homes is in general higher than for private rooms. In these cases, Airbnb is likely bringing into the market some visitors who would not otherwise have been able to afford to make the trip (Coyle et al. 16).

of home sharing—such as access to a kitchen, parking space(s), or perhaps even bikes or beach equipment—which impart an additional value to the visitor. Additionally, since many short-term rental services focus on the price-value relationship for the customer, they offer a better value than similarly priced hotels (Choi 2015, 2).

The increased affordability and flexibility of short-term rental accommodations offer low- and middle-income visitors more options. Studies have shown that many visitors would not have been able to go on vacation without access to STRs in a variety of locations (Renau 2018, 3; Interian 2016, 132; Coyle 16). Furthermore, given that families were especially sensitive to lodging costs on the California coast and often seek specific attributes and larger spaces, short-term rentals may be particularly crucial in increasing access for that demographic.

Short-Term Rentals Can Reduce Accommodation Costs and Increase Diversity of Supply

One of the most attractive features of short-term rentals is their value. Travelers are seeking the most "bang for their buck" on vacation, and often, rentals provide that. STRs meet the needs of many travelers for a diverse set of amenities and facilities. As mentioned earlier in this report, STRs provide a better value per visitor due to their increased capacity to host families and large groups and the wide range of amenities they offer visitors, such as parking, kitchen access, gathering spaces, etc. These facilities can help reduce the overall cost of a vacation.

The increased popularity of STRs benefits vacationers outright through better value but also by providing increased supply and perhaps competition to hotels, forcing them to lower their prices. In one of the landmark studies on this topic, Zervas examined hotel revenues and the Airbnb market in Texas and found that the impact of STRs appears most clearly in "less aggressive hotel room pricing," which benefits all travelers, including those who do not utilize STRs (Zervas 2016, 1).

The impact of STRs may not always negatively impact hotel revenues as STRs can bring in new visitors and help the tourism economy overall. Increasing demand for STRs reflects a desire for diverse options and better value; however, their presence can also indicate more demand for the area overall, which might counteract the reduction in average daily rates for hotels. Aznar found that more rentals correlated with an increase in hotel return on equity, explained by the fact that a high number of rentals indicates an attractive location (Aznar 2017, 147). Coyle also found a positive impact on hotels when examining the London market where increased Airbnb presence actually increased the rate received by hotels (2016, 3).

The sharing economy can compete with hotels by offering a different sort of service with a unique structure. STRs pop up throughout cities where there is demand for lodging. They do not require centralization or maintaining inventory, which helps lower costs (Interian 2016, 130). Rentals offer a more sustainable option that requires fewer resources and helps increase access with more diverse accommodation options and better value. STRs also fulfill the desire for sustainable travel options. Furthermore, they capitalize on collaboration and efficient use of property hosts already own, eliminating the high fixed costs faced by hotels (Interian 2016, 130; Aznar 2017, 150). These fixed costs are what force hotels to adjust their prices rather than their supply. In contrast, the sharing economy is an "asset light business model" which can easily scale to meet demand (Blal 2018, 2). This allows short-term rental hosts to capitalize on unused assets and consumers to find a better value in their accommodation options.

While the presence of short-term rentals can indicate a particularly attractive location and directly compete with hotels in an area, many rentals lie outside of main hotel districts. A study in Texas **found that 70% of Airbnb properties are outside hotel-rich districts, suggesting that rentals not only compete but also compliment hotels, offering more options to travelers (Zervas 2016, 2).** In the case of the California coast, this may include areas with great waterfronts and beaches where there has not been sufficient investment to build many accommodations.

Several studies have evaluated what makes a short-term rental competition for a hotel. The degree of competitiveness depends on several factors, including the supply of rooms, the neighborhood, character of the structure, and type of sleeping accommodation (CBRE 2016; Aznar 2017, 152). Taking into account these factors, these studies clearly found that in areas with a high number of STRs alongside hotels, rentals compete with hotels. Hotels face greater price pressure in areas with large numbers of rentals in comparison to traditional hotels and where there is growth in the number of rentals available (CBRE 1). As hotels face costs that are fixed in the short run, they need to keep occupancy high even with this level of competition (Neeser 2015, 8). The hotel industry is forced to respond to the presence of STR with price—rather than inventory—cuts, and so naturally pushes back against the sharing economy.

The impact of this newfound competition is not felt evenly throughout the hotel industry. In areas where there is sufficient supply of rooms to meet demand, such as parts of Texas, the hotels most impacted by the presence of short-term rentals are low end, economy options. There is clear segmentation in adverse effects on hotels with lower end hotels the most negatively impacted (Midgett 2017, 65). Zervas discovered this impact, noting the impact on revenue was magnified at lower price tiers (Zervas 2016, 4). This was especially the case when looking at those hotels that did not have conference facilities. However, this is less of a concern on the California coast and in the large cities examined in these studies as business travel is not the primary motive for visitation. While studies note the vulnerability of low-end accommodation providers to competition from short term-rentals, they did not find evidence of exits from the market (Blal 2018; Neeser 2015; Zervas 2016). Budget hotels may lose more revenue comparatively when STRs enter the market, but this does not appear to force them to shut down.

On the California coast, the distinct lack of lower cost options and insufficient supply of economy hotels may mitigate the concern of STRs competing with economy hotels. Rather, the presence of STRs on the coast enables more budget conscious visitors to access the coast when they may not have been able to afford it previously. Within the hotel market there is not only differentiation in type of hotel (economy, midscale, upscale, and luxury) but also within consumer preferences. Some consumers may prefer to stay in a hotel and be less open to staying in a STR. Others may like the ambiance of a rental and be early adopters. Considering the aim of increasing access to the coast, it is possible that the competitive effect of the sharing economy would reduce the price of hotels, enabling more options and more access—and also increase the "economic pie"--enabling those who otherwise would not have come to visit the coast (Blal 2018, 2). Further study is needed, however, to understand the effect of the sharing economy in a market quite distinct from major cities and business hubs, such as the California coast.

Reducing Price Hikes at Peak Periods

The most popular time to visit the California coast is the summer when temperatures soar inland and the allure of the ocean grows. The increase in demand also makes summer the most expensive time to visit due to the dramatic increase in the price of coastal accommodations and the lack of availability. Campsites are often booked up months in advance, and for those who prefer not to camp or cannot secure a campsite, hotels are in short supply and far more expensive than at other times during the year. With the high cost of coastal land, it is not profitable to build low cost hotels or similar lodging. High fixed and startup costs not only restrict the construction of new hotels but also influence the price of hotel rooms at peak times. Hotels cannot increase supply, due to high fixed costs, so they increase rates (Zervas 2016, 22). For consumers, this means that an "economy" hotel may be affordable to some visitors only during the off-season (Ainsworth 2016, 15). Additionally, there are enormous differences in prices for similar accommodations between inland and coastal hotels, including accommodations within the same brand. This increased disparity during peak periods limits the ability of even moderate-income Californians to visit the coast.

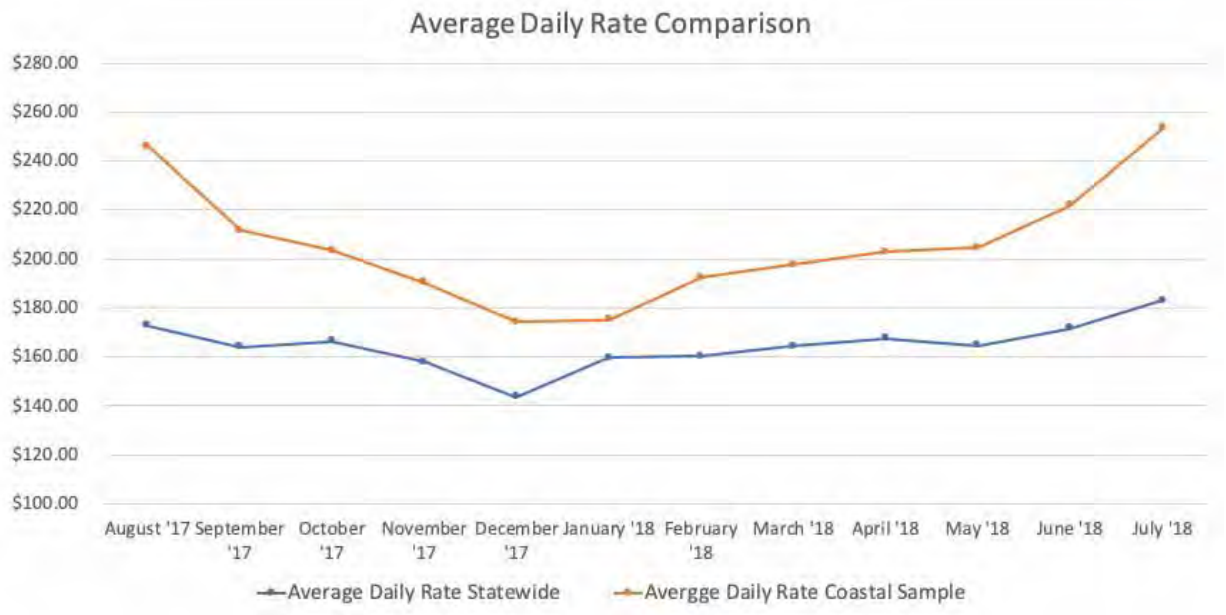


Figure 6: Average Daily Rates (ADRs) for hotels in California 2018 (California Hotel and Lodging Association).

STRs could drive competition and reduce hotels' ability to dramatically increase rates during peak periods, an effect that would be especially desirable along the coast. During the high season, June to September, hotels are often fully occupied and respond to this increased demand by raising prices. The figure above shows the prices for hotels from February to July in 2018. Coastal zone hotels clearly increased their rates more dramatically in the summer—the peak season—than the statewide average. Given that these hotels are already more expensive than those off the coast, this can then severely hinder travel plans for lower income and working-class families.

Unlike hotels, the availability of STRs can offer greater supply of overnight accommodations during peak times without the fixed costs required for owning and maintaining a hotel year-round (Zervas 2016, 2). This is particularly true for "Mom and Pop" STRs where the owners rent out their first and second home as a way to supplement their income. This fluid supply has been shown to mitigate the pricing power and price premiums of hotels during peak demand (CBRE 2017, 13; Zervas 2016, 25). Consumers now have more options due to the greater supply and are able to opt-out from the more expensive hotel rates. In other words, the competition and increased supply provided by STRs can force hotels to charge less in the peak season. This effect, then, can help keep prices down and offer more volume and variety of accommodations, thus increasing access to the coast.

Equity, Affordability, and Displacement on the Coast

Reducing the cost of overnight accommodation has become especially critical as more and more Californians move inland and are therefore forced to stay overnight on the coast when they visit. The California Coastal Act recognized the importance of providing and encouraging lower cost accommodations long before the housing crisis created the acute need seen today. The growth in volume and ease of accessibility of short-term rentals (STRs), rather than precipitating this crisis, is a symptom of the lack of affordability in the coastal region. STRs offer a more affordable lodging solution for those who cannot afford to live near the coast or who have been pushed out of the communities nearest to the coast. The housing crisis is, therefore, not a crisis caused by STRs but rather an affordability crisis stemming from increased income disparities, exorbitant housing costs, and decades-long policies that make it harder to build denser, multi-family residential developments. In California, development does not always respond to demand due to complex zoning laws and a maze of regulatory policies and processes. Furthermore, homeowners in desirable, often high-income communities push back against development and exacerbate the problem. This creates exclusivity and a lack of affordability that pushes low- and middle-income

residents to move inland. This creates the acute need for lower cost accommodations along the coast that STRs can help address. The rising popularity of STRs, therefore, is a democratic solution to the crisis—a way for those who have been priced out of the region to still access the coast.

Acute Lack of Affordability

California faces a particularly acute affordability crisis. **In the coastal region, the lack of affordable housing and development is more severe than in the rest of the state. California's most expensive cities cluster along the coast, concentrating economic opportunity where housing is scarcest. Low-income and working-class families cannot afford to live in the coastal region due in large part to the lack of affordable housing supply. As the rent burden has increased, the lack of affordability has expanded to middle-income households as well (Chapple 2016, 88). While low-income households can apply for vouchers and federal aid, middle-income households are especially squeezed.**

Once, decades ago, these areas possessed a naturally occurring affordable housing stock—housing that the average family could afford without government aid. Today, however, housing prices in the coastal counties have skyrocketed and there is less and less affordable housing every day. Formerly affordable areas have also been converted into upper-middle and upper-class neighborhoods. There is a critical lack of affordability in small California coastal communities, especially in Southern California.

Housing prices have greatly outpaced incomes for many Californians, and this, in turn, has placed an undue financial burden on residents that is unsustainable. Faced with unsustainable costs, low- and middle-income residents cannot remain in coastal communities. Presently, housing costs are so high in the Los Angeles area that "households earning up to 115 percent of area median income, or $69,800 per year, are unable to afford local housing costs," while in San Francisco a "household earning $140,000 per year, or 179 percent of area median income" struggles (McKinsey & Company 2019). These high costs largely stem from a shortage of housing supply, which disproportionately impacts the lower and middle-class residents of impacted areas. The most dramatic housing shortages are near powerhouse cities along the coast—Los Angeles and the greater Bay Area. Families priced out of these regions tend to move inland.

Rising costs overburden these households with a majority in some areas spending over 30% of their income on housing (Freeman & Schuetz 2016, 227; Marcus & Zuk 2017, 4). The situation in California is such that most nurses, teachers, and service industry workers cannot afford to live where they work. Even a decade ago, before the housing crisis reached present day levels, a majority of residents in coastal counties were unable to afford rents as shown in Figure 7 below. As a result, low and moderate-income households cannot afford to live in the coastal areas of California. This reduces coastal access for all but a small segment of the population, forcing inland residents to travel further and pay expensive lodging costs to enjoy the beach.

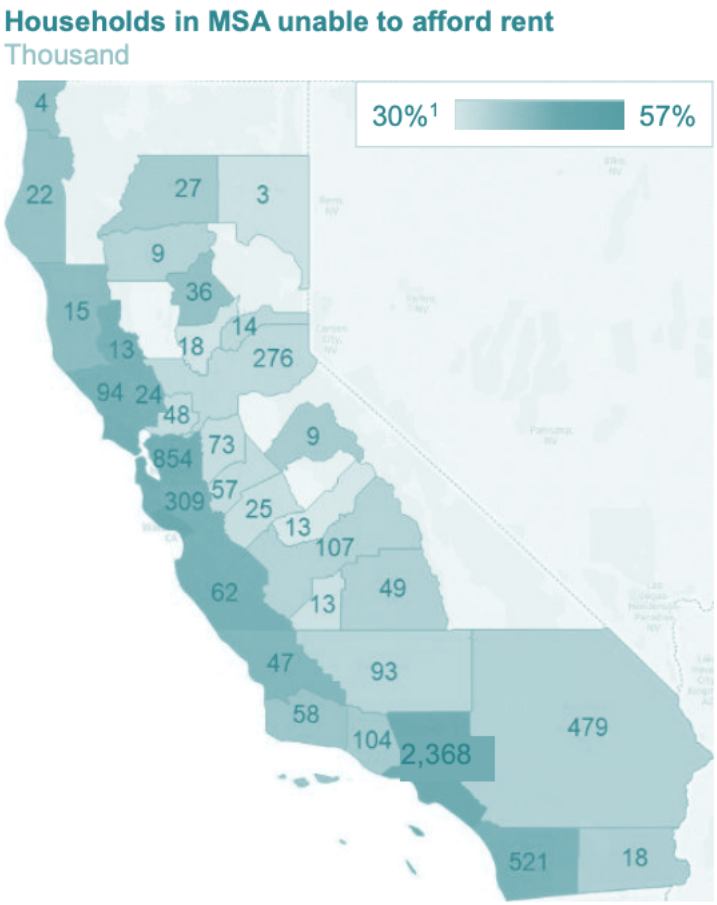


Figure 7: Percent of California residents by metropolitan statistical area unable to afford rent (Quigley 2005).

Lack of Development

The affordability crisis is largely due to high demand and lack of supply in California's powerhouse cities and the regions surrounding them. As demand has risen, there has not been a corresponding spike in development. Experts argue that in order to reduce prices, California needs to substantially increase housing production (Smith-Heimer 2019, 69; McKinsey 2019). It would be expected that in a market with high rents and high demand, there would be a great deal of construction—and that this construction would be focused on higher density housing (typically multifamily housing rather than detached single-family dwellings). However, many California cities have not built enough housing to meet this demand (Chapple 2016, 90). This is especially problematic as the resulting lack of supply drives up the cost of existing units and reduces options for those in need of affordable housing in a market where price increases have long-since outpaced incomes (Freeman & Schuetz 2016, 224). Low- and moderate-income families can no longer afford existing units or find new ones. As Figure 8 shows below, development, particularly in coastal counties, largely occurs only in the luxury sector with profit only for those who supply high-income households (Chapple 2016, 85). Thus, what little construction there is does little to bring down prices, and units that were once affordable are converted into high-income housing.

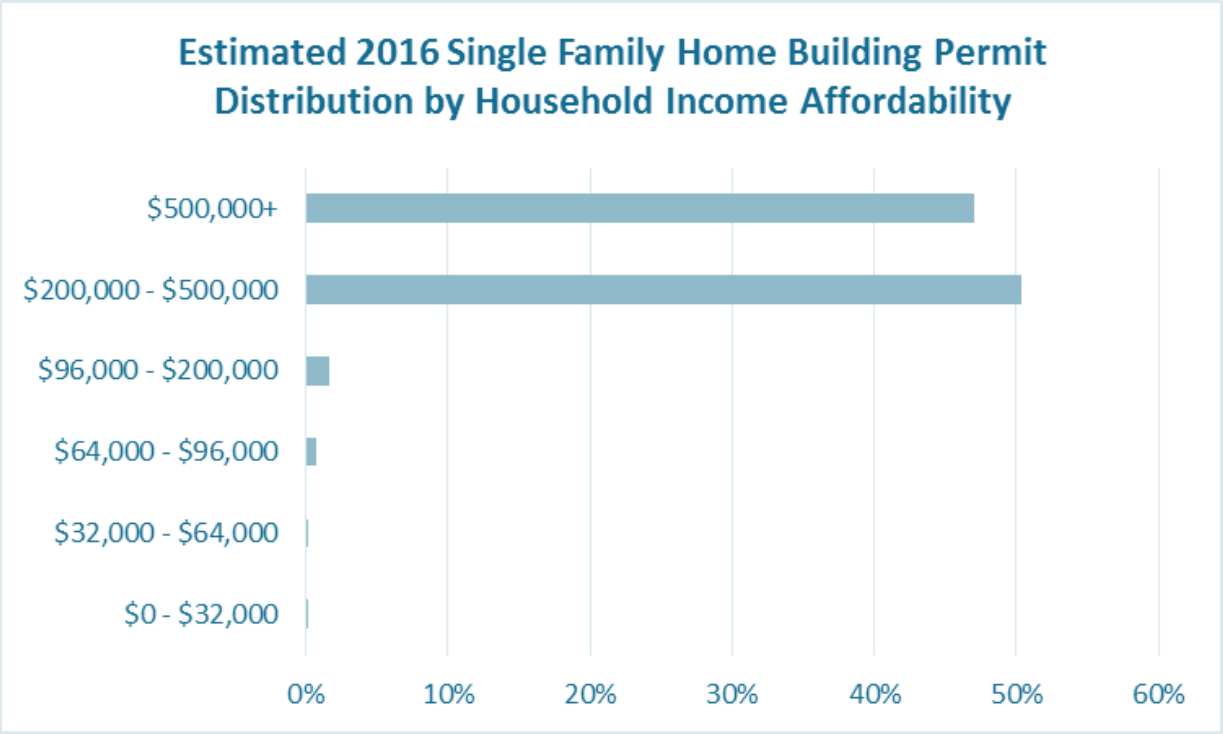


Figure 8: Single family home building permits in California skew towards high-income homes.

While there is certainly demand for new housing, potential projects are curtailed by California's especially chaotic and restrictive system, rooted not only in regulatory but also political, economic, and cultural factors (McKinsey & Company 2019). There are various regulatory measures which reduce development and affordable housing stock. Zoning, which often reserves little land for multifamily housing, imposes serious restrictions. However, Mckinsey (2019) identified many units throughout the state that could be developed on vacant land already zoned for multifamily development. The lack of multifamily zoning presents less of a barrier than the ad hoc process of informal barriers which slows down development and imposes various unpredictable costs (Murray & Schuetz 2019). Delays, committees, and various other measures stall the permitting process and increase costs. This creates chaos in the regulatory environment and imposes unnecessary delay and permit costs on developers.

Rather than encourage new construction, studies have shown that the regulatory environment severely inhibits, and indeed prohibits, the expansion of much needed affordable housing. In the most expensive cities, regulations and informal controls have reduced construction nearly to zero. The most expensive cities—which are also near the coast—have built very few apartments over the past five years and largely issued no permits for their construction (Murray & Schuetz 2019, 10). These cities benefit from booming economies and strong tax bases and would rather have a higher ratio of jobs to housing to avoid negatives like high public expenses and traffic, and they see less tax revenue from large multifamily projects (Metcalf 2018, 70).

The segment of the housing market most lacking development is also most needed: multifamily housing. It would be expected that in areas with expensive land costs, developers would be incentivized to build at higher density—and thus prioritize multi-family rather than single family

housing—but that is not happening in California (Murray & Schuetz 2019, 3). The market for housing has broken down, and the development of apartments does not seem to be correlated with rents. High rents should motivate high levels of development, but in California that is not the case. The lack of development, especially of high-density development, keeps rents high and prioritizes the construction of expensive, single-family housing aimed at the wealthiest homeowners. Multi-family units increase density and lower costs in the face of high demand, yet these projects face strong opposition. As a result, affordable housing tends to be built where land is cheap and political opposition is weak. These areas—often outside economic opportunity zones—limit the ability of low-income families to move to opportunity and lead to the construction of housing in outer lying suburbs (Freeman & Schuetz 2016, 228; Chapple 2016, 90).

Opposition to multifamily housing stems not only from the lack of profitability but also from the difference between potential renters and existing homeowners. In California, particularly in the coastal zone, owners tend to be older, wealthier, and whiter than potential renters (Reineman 2017; Murray & Schuetz 2019; Bliss 2019). When considering designated or subsidized affordable housing in addition to market-rate housing, this difference is all the more apparent. Opposition to multi-family (and especially designated affordable) housing in expensive cities and the coastal zone preserves the exclusivity of access to the wealth of resources there, including easy access to the coast (Owens 2019, 499 518). These actions undermine the aims of access for all outlined in the California Coastal Act and help create the acute need for affordable lodging in these elite areas.

Restrictive Housing Policies

Many homeowners in more affluent parts of the coastal region oppose additional housing development, specifically through restrictive zoning rules that limit multi-family and other affordable housing options. Similarly, restrictive policies target short-term rentals and keep the price of coastal accommodations high. Reineman's (2017) work demonstrated that the immediate coastal zone is already wealthy and white and existing economic pressures have driven coastal counties toward further homogeneity. By reducing the affordable housing stock these areas are kept expensive and exclusive as low- and middle-income households are forced out.

The Costs of Restrictive Regulations

Restrictive regulations result in less development, especially affordable and multi-family development. This drives up home prices and forces those of middle-and low-incomes to move. As in many other states, regulation and zoning are left to local municipalities in California and even sometimes directly decided by the voters via referendum (Metcalf 2018, 67). Because homeowners often make up the voting base, governments frequently adopt laws that reflect their preferences over those of renters and other less politically connected groups (Murray & Schuetz 2016, 13; Metcalf 2018, 70). Advocates of up-zoning and increasing density have not managed to clearly address how more housing in an expensive area helps everyone.

The lack of consistency in local zoning regulations impose costs on developers who must negotiate a confusing labyrinth of rules and restrictions. The costs associated with this process are passed on to renters or buyers and increase the already high housing prices. Quigley (2005, 327)

examined the responsiveness of housing stock to demand and the construction of new housing and found that both are lower in highly regulated cities. This finding was especially pronounced in the rental market. This means that in one of the fastest growing areas in the country—and an economic powerhouse that attracts workers seeking opportunities—there are fundamental barriers to development which keeps costs high. Furthermore, the promise of property taxes encourages local governments to prioritize single-family over multi-family development (Freeman & Schuetz 2016, 218). Additionally, cities in California glean a share of sales tax. This creates another incentive in favor of retail and upper-class housing over more dense, affordable options (Quigley year, 323).

Thus, affordable housing tends to be constructed in less-desirable, outer lying suburbs, further from economic opportunity (Freeman & Schuetz 2016, 228; Chapple 2016, 90). Such is the case in the coastal region where the lack of supply in comparison to demand has led the cost of housing to soar. The regulatory chaos, incentives against affordable housing, high level of income inequality, and local opposition to eliminating restrictive zoning rules are the foundational pillars of California's affordability crisis. Combined, these barriers precipitate a crisis in California far greater than what STRs might impact.

Displacement Inland Reduces Coastal Access

The lack of housing options for low- and middle-income families in the coastal region of California has forced many of these families to move inland. When residents are displaced to the more affordable areas inland, it results in inequitable access to not only the benefits of living near a strong city economy but also inequitable access to the California coast. **Unequal access to housing exacerbates the disparities in coastal access already discussed in this paper.** Moving inland also means that for Californians of moderate incomes to visit the coast, they will likely need affordable accommodations. With the loss of economy options and overall lack of supply of traditional lower cost coastal accommodation, an acute need arises for alternative forms of lodging to meet this growing need.

Table 5: Median Income and Home Price Comparison, Coastal and Inland (U.S. Census Bureau and Zillow Data)

Region	Median Income	Median Listing Price	Price as a Percent of Income
Coastal Sample	$83,995.00	$1,059,306.25	1261%
Inland Sample	$58,082.83	$338,021.86	582%

As previously stated, many households are forced to move inland because their incomes have not kept up with the increase in housing prices. As Table 5 shows, the median listing price of a home in the coastal region is over 12.5 times the median income for that region. Inland, the median listing price is under 6 times the median income. The relative affordability of inland communities attracts families priced out of the markets in the coastal zone.

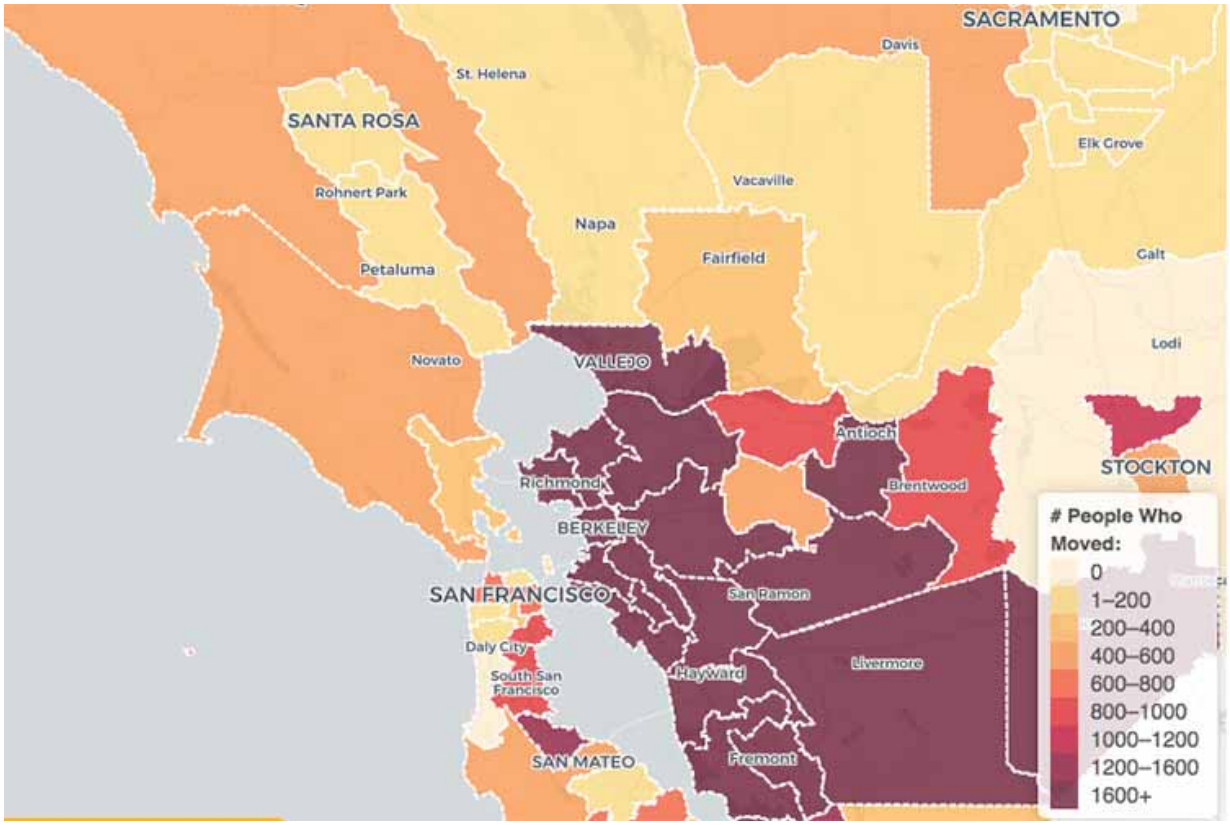


Figure 9: Displacement from the Bay Area (Berkeley News 2018).

Given that the modern economy is primarily service-driven, pushing service workers out of middle-class housing markets is concerning. This is especially true in the coastal region where the disparity in incomes is so high. **These workers—both low- and middle-income—simply cannot earn enough to remain in the strained housing market near the coast.** Forcing these households inland increases their travel costs, especially if they choose to stay overnight on the coast. Short-term rentals can help alleviate some of this burden both for visitors and those who wish to fight to remain living in the coastal region amid skyrocketing prices. **Some families may find themselves able to alleviate some of these pressures through STRs by renting their homes part-time to visitors.**

In this way, some residents may be able to afford to remain in their neighborhoods despite increasing costs. The sharing economy may offer less-wealthy residents of coastal communities a way to continue living there by shifting some of the economic burdens of ownership (Jefferson-Jones 2015, 558). In markets such as the coast, where the costs of living are increasingly high, the supplemental income from short-term rentals can offset expenses and allow residents to remain (Horn 2017, 14; McNamara 2015, 169). This could also help owners afford maintenance or

renovations, which would mean that short term-rentals may increase property value in the long run (Jefferson-Jones 2015, 573). These expensive real estate markets are particularly suited to short term rentals as most areas with high hotel premiums also have high land costs (CBRE 2017, 11). Being able to rent out their home might help some owners retain residence in the coastal zone or to afford a vacation home when they otherwise could not. This increases their access to the coast and offers a method of access for renters.

This model of the sharing economy focuses on the small homeowners who rent out extra space or a sporadically used vacation home. These "Mom and Pop" rentals sometimes make up the majority of operators. Airbnb notes that 95% of all hosts have one listing (CBRE 2017, 9). While some short-term rental operators may have excess housing, which is marketable—such as a family vacation rental—many are simply renting out extra rooms and spare space in their home (Lee 2016, 243). This extra revenue has many uses, especially in an expensive area like coastal California. As mentioned, the income enables hosts to live where they might otherwise not be able to afford, but it may also help cover groceries or pay for college (McNamara 2015, 155; Wachsmuth & Weissler 2015, 1148).

The costs of living on the coast are high and pose a distinct barrier to access. **Allowing, and indeed promoting, STRs on the coast would likely simultaneously result in some residents being able to remain when they would otherwise be forced out by the high cost of living or housing scarcity and in increased options and affordability for visitors. The benefit of STRs on the coast comes from increased access for those that cannot afford to live there—the majority of Californians—so that the coastal zone becomes not an exclusive enclave of the wealthy but a shared resource available to and accessible for all.**

The Housing Crisis and Coastal Affordability

The situation in many coastal communities is one of profound neighborhood changes—a pushing out of low-and middle-income residents as more wealth concentrates in the region. This change in neighborhoods appears to be a form of gentrification: the influx of middle- and upper-class residents which revitalize a neighborhood at the expense of its lower-income residents. However, displacement from coastal cities is not necessarily gentrification in the classical sense but rather a function of the rent burden placed on low- and moderate-income households (Chapple 2016, 86). As incomes in an area grow and market-rate housing is built, the value of those formerly affordable homes rises such that residents are pushed out or cannot afford to move in. This severe mismatch between housing costs and incomes displaces low-income communities, especially communities of color (Marcus & Zuk 2017, 3). The demand for housing in the coastal region displaces less wealthy residents who cannot keep paying rising rents nor find similar accommodations. As discussed, this has pushed many residents inland--away from the striving economies in coastal cities and away from easy coastal access. This situation is not created by short-term rentals but rather by the high demand and lack of sufficient affordable development. Many critics of STRs claim that the presence of rentals can lead to gentrification; however, in the context of the coastal region of California, this argument is profoundly flawed.

The argument that short-term rentals induce gentrification applies less in the coastal region of California because most communities have already gentrified. For rentals to promote gentrification, the presence of STRs must (a) offer far more revenue than the traditional housing market and (b) induce a high degree of displacement and neighborhood change that would not otherwise occur. In the coastal areas of California, this displacement occurs from the broken housing market with or without short-term rentals. In fact, Chapple (2016, 85) argues that the potential revenue gains in these areas has "long since been recaptured," and that gentrification has already taken place. Indeed, in looking at cities like San Francisco, price pressures are so extreme that the entire city is expensive (Freeman & Schuetz 2016, 219). Nearby in San Mateo County, one study (Marcus & Zuk 2017) found that 33% of households had left San Mateo County, largely for the Central Valley or further out in East Bay. In their survey, of the 20% that remained in their same neighborhood, many moved into crowded conditions (Marcus & Zuk 2017, 6). In order to find housing comparable or superior to what they had been forced to leave, residents moved to areas with fewer services and away from economic opportunity. In these areas, the economic growth, income disparity, and housing shortage engineered a situation where displacement and gentrification rapidly ensued. On the coast, there are simply fewer affordable areas left.

In these areas, it is hard to argue that STRs will displace residents of lesser means when the housing market continues to displace most of them. Coastal communities, already expensive compared to those inland, lack the affordable housing that critics argue is threatened by STRs. In a classic case of gentrification, STRs would bring in an influx of investment which would transform a disadvantaged community. In California, few of these communities remain in the coastal region as formerly blighted areas have long since been transformed by the housing crisis. Rather than protecting affordability and the character of low-income neighborhoods, what those who wish to ban STRs perceive as "threatened" is the character of already expensive, exclusive coastal areas. Without affordable lodging options, former residents of coastal communities face an undue and unjust burden in visiting the coast. Much like the arguments against affordable housing, residents seek to protect their exclusive access to the coast and see increased access for a wider swath of Californians as a threat.

Resilience

> "Resilience is the ability of an urban asset, location and/or system to provide predictable performance … under a wide range of circumstances."
>
> **Jeb Brugman, Financing the Resilient City (2009), p. 217** [9]

The housing crisis is only one demand on local governments and the State of California's limited resources. Climate change will adversely impact communities across the state with coastal communities under threat from sea level rise and possibly other threats, such as mudslides and fires. Local communities across California are now engaged in the process of planning for sea level rise and other hazards exacerbated by climate change. Although there is currently a strong debate about the nature of these adaptation strategies, often couched in terms of green (emphasizing coastal restoration or retreat) versus gray (armoring), all of these adaptation strategies have one thing in common: they are all extremely expensive. For example, a recent study published in the Annals of the New York Academy of Science (Aerts et al. 2018) estimated that Los Angeles County alone will face climate change related costs of between $4.3 and $6.4 billion by 2100. A study in Oceanside, CA estimated coastal adaptation costs of over $250 million by 2040. Costs for other coastal cities will be similarly high.

9 Brugman, Jeb, Financing the Resilient City, Environment and Urbanization, V. 24(1): 215-232, p. 217.

These coastal communities will have to come up with the money for adaptation. Many of the large capital costs of these projects will likely be financed by various state and local bond issuances (Resources Legacy Fund, 2018). However, like any loan, bonds simply shift costs forward; cities and other government and private entities will ultimately need to raise large sums of money in order to pay for resilience. In many cases, cities will either be expected to cost share or will be expected to take over certain aspects of the project (e.g., maintenance). This will all be on top of the services that cities currently provide and which are already underfunded in many areas. Therefore, cities will need to find new revenue sources, and increasing taxes is not only unpopular but extremely difficult to legislate.

Although cities can and should expect help from the State of California and U.S. government agencies, these sources of funds have been in decline as revealed when examining the percentage of the average California's city government total budget. In 1974–75, Federal and State Grants accounted for 21% of a city's budget; today that figure is less than 10% on average[10] (Coleman 2016). Much of this money is also tied to particular programs and projects, so that city governments have little say or discretion over how the money is spent.

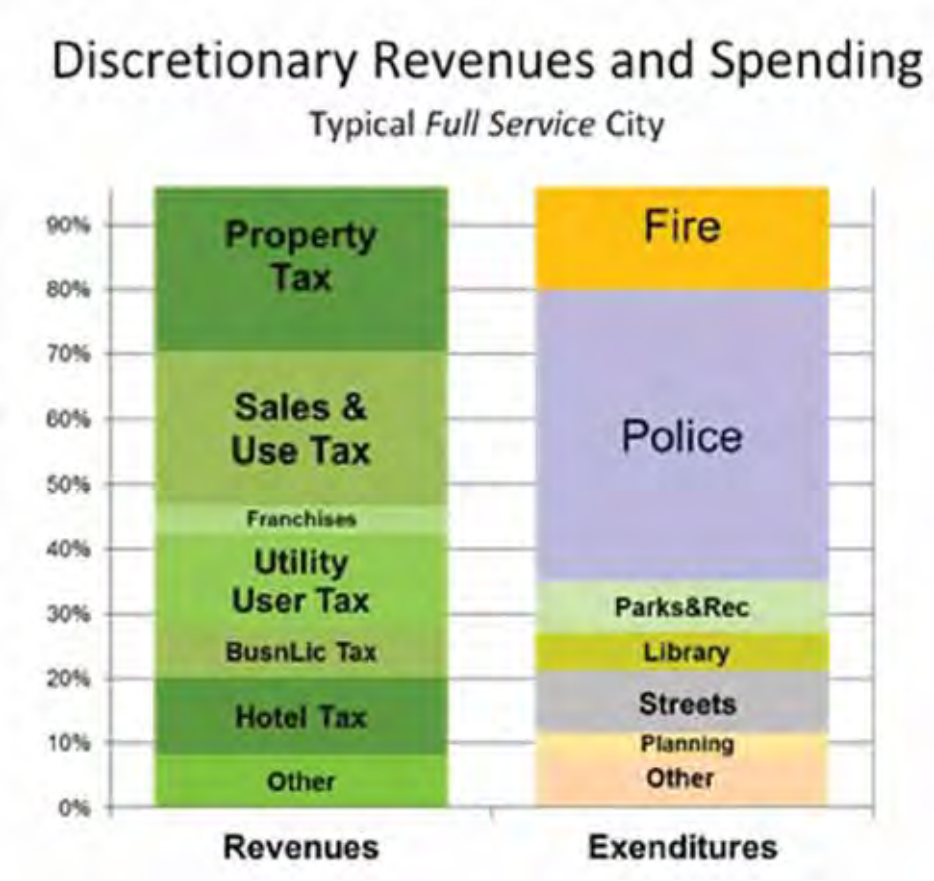


Figure 10: Revenue (taxes and fees) vs. spending for average California city.

10 Coleman, Michael, A Primer on California City Revenues, Part Two: Major City Revenues, Western City, December 1, 2016 http://www.westerncity.com/article/primer-california-city-revenues-part-two-major-city-revenues

Sales taxes, another significant source of local revenue, have also failed to keep up with overall economic activity in California. In California, as in many states, sales taxes only apply to goods and not services. In the last 30 years, consumers' spending patterns have shifted toward more services and fewer goods, resulting in slower rates of growth for sales taxes. Moreover, since wealthier households tend to spend a greater proportion of their income on services than poorer households, the failure to tax services makes the sales tax more regressive (California Budget Center 2011). With growing populations already straining cities revenue and increasing demand on public services, the relative decline in sales tax revenues further reduces cities' discretionary budgets. The lack of funds curtails the potential cash flow for necessary resiliency projects. The transient occupancy taxes generated by STRs can help make up for the slower growth in sales tax revenues.

Where Do California Cities Get Their Revenues?

While city governments obtain some of their budget from the state and federal governments, the primary source of revenue is their tax base. Figure 10 in the previous section presents data on revenue versus spending for the average California city (which can vary from city to city). The majority of most city budgets are dedicated to public safety, such as fire and police departments. These services are necessary and only increase in need as California populations grow and natural disasters plague the state. The majority of the remaining budget goes to other traditional city services, such as parks and recreation, planning, street services, libraries, etc.

On the government revenue side, property and sales taxes still make up over half of a typical city's general fund revenues. However, as noted above, sales taxes have failed to keep up with economic growth since services are not taxed and have become an increasing share of California consumer's spending. Sales taxes are regressive; even with food and rent excluded from sales taxes, lower income households pay a higher percentage of their income than wealthier households on sales taxes.

Outside of sales taxes, municipalities in California rely on a combination of other tax sources. One such additional revenue stream, Utility User Taxes (UUTs), have become more important as a source of general funds for cities, representing, on average, 15% of general fund revenues for cities that have a UUT. These are taxes on a consumers' usage of utility services, such as electricity, sewage, water, sanitation, and cable television. Local governments assess UUTs based on the consumer's usage of the service.

Business licenses and fees (e.g., recreational fees for a swimming pool) account for just under 10% of a typical California city budget and are generally used to partially offset corresponding city services. Transient Occupancy Taxes (TOT), also known as hotel taxes, represent just over 10% of taxes for the average city. These taxes are primarily paid by visitors to the area, rather than the residents, making them more popular. While TOT represents a small part of the average city's revenue, coastal cities with significant visitation can have much higher TOT revenues. These taxes can be a crucial revenue source useful for offsetting the cost of tourist services in addition to the general public services.

Increasing City Revenues to Pay for Resilience

Increasing local resilience to climate change will require cities to raise more revenues. Raising revenues from each of these sources poses different challenges. The primary source of municipal government revenues is through the various tax sources. Measures in California law restrict the ability of jurisdictions to alter their taxes even when the needs for revenue are critical. Adapting to climate change and promoting climate change resistance poses one such critical circumstance, especially for those communities most adversely impacted by rising sea levels. Without a new revenue source, or expanding an existing one, these governments will likely lack the revenue to either directly pay for resilience or to pay back future bond issuances. The discussion below highlights the major sources of revenue for California's cities, each with their own limitations, and also discusses the prospect of Transient Occupancy Taxes as a revenue stream.

Property Taxes

In California, unlike many other states, property taxes, though collected at the county level, are distributed via the State Board of Equalization back to local governments. While property taxes constitute a significant portion of city and county revenues, the ability to increase property taxes is limited. In 1996, California voters approved Proposition 218, "The Right to Vote on Taxes Act," which "substantially expanded restrictions on local government revenue-raising including taxes, assessments and property related fees" (League of California Cities 2019). Furthermore, these property tax increases must go to support "the acquisition or improvement of real property" (California City Finance, 2019). This means that the uses of collected taxes are limited to the state's purchase of property or improvements to structures on government property. The definition of real property includes various trees and mines but does not include waterways or the coast, which would assist in its use for necessary resiliency work on the coastline. Prop 213 requires a two-thirds majority for all property tax supported bond measures, except for school districts, which have a lower threshold of 55%. The two-thirds supermajority requirement put a damper on bond measures, and less than half of bond measures requiring a two-thirds vote have passed since 2001, whereas 84% of measures requiring a 55% measure (for schools) have passed. Since the 55% measures include schools, their high success rate may also be related to continued local support for schools. Overall, the limitations on property taxes have reduced the state's ability to collect them and thereby reduced the budget.

In addition to property tax levies to support school or other bond issues, California law also supports a number of special property tax districts, including independent financing districts (IFDs) which can issue additional fees (e.g., Mello Roos) or property tax levies generally on new or substantially improved property. For protection of existing property, the state has created geological hazard abatement districts (GHAD)s. A GHAD comprises an independent agency focused on the abatement and prevention of geological hazards in the area for which it was created. They have defined boundaries of that area and obtain their funding within it. A number of GHADs have been created across the state to help homeowners and other property owners protect their property against geologic hazards, such as earthquakes or coastal erosion (e.g., in Malibu). One potential disadvantage of GHADs on the coast, however, is their focus on protection of private property over other uses. For example, a GHAD may favor coastal armoring over other adaptation scenarios since armoring will protect coastal property. However, this armoring may also diminish coastal recreation if already eroding beaches erode further.

Sales Taxes

As discussed, another primary revenue source for cities are sales taxes. Sales tax revenues largely do not meet the needs of California cities, and measures to expand them have a low success rate. Under Bradley Burns Uniform Local Sales and Use Tax legislation, California allocated 1% of sales subject to sales taxes to incorporated cities or counties with another 0.25% allocated for local transportation, which are typically allocated to counties (California State Auditor 2017, 8). California law allows local jurisdictions to add on sales taxes at the city or county level to support other services. Since 2001, many measures have been passed to add-on sales taxes for local transportation; many of these were extensions of already existing sales taxes that needed to be ratified. However, if one examines sales tax increases not allocated to transportation, the success rate for new sales tax measures in California since 2001 has been less than 50%. The most successful other tax measures have involved libraries, street/roads, and public safety, but the majority of these ballot measures have failed (Ca City Finance 2019. 11-14). The lower likelihood of passing a sales tax increase diminishes the ability of municipalities to use sales tax as a source for their much-needed resiliency budgets.

As noted above, sales taxes have two other problems. First, they are regressive—lower income houses pay a higher percentage of their income in sales taxes since they spend more of their income on items subject to sales taxes. This creates an equity problem as it is unjust for those with fewer means to pay more for public services. Second, sales tax revenues in California have failed to keep up with economic growth since services (e.g., haircuts) are not subject to sales taxes and services have become a larger part of California consumers' budgets.

Utility Users Taxes

Taxes based on a consumer's use of a service, Utility Users Taxes (UUTs), have increasingly yielded important revenue streams. However, utilities will be especially stressed by climate change, and taxes or utility rates will have to increase substantially to pay to make key infrastructure more resilient. Climate change will increase the need for certain services, such as electricity (for uses such as air conditioning), and likely damage some existing systems, necessitating repair. UUTs are typically levied by cities on utilities such as electricity, water and telephone use. While voters have generally approved continuing existing UUTs, most ballot initiatives attempting to increase existing UUTs have failed in California since 2001 (CA City Fin 2019).

Additionally, local phone calls were traditionally a significant source of UUT revenue, but the advent of new technologies in telecommunication has made charges for local telephone calls a relic of the past. To respond to these changes, many cities have revised/modernized UUTs, however the majority of these ballot measures resulted in reductions in UUT fees. Climate change will have a significant impact on many utilities as cities will be required to modernize, harden, and relocate many power, gas, electric, water, and telecommunications lines. Voters facing the prospect of power outages or loss of other valuable utilities may be willing to approve UUTs targeted at improving utility infrastructure. Consequently, it's unlikely that UUT revenues can be used to fund resilience projects, other than supporting and moving existing infrastructure, requiring funding from other sources for other resilience tasks.

Business Licenses and Fees

These fees are generally collected for services rendered by a city or county and may include licenses for operating businesses within the community, recreational fees for community services such as a local swimming pool, and parking fees. These licenses and fees are generally subject to a vote by a city council or county Board of Supervisors. Parking fees may be used to support resilience projects in cases where parking lots/structures are threatened by coastal erosion.

Transient Occupancy Taxes

In looking for potential revenue sources to fund resiliency projects, cities (especially those on the coast) could look toward Transient Occupancy Taxes (TOTs). Sometimes referred to as hotel taxes, TOTs are levied on hotels and short-term rentals of less than 30 days. Under California law, cities and counties (for hotels and rentals in unincorporated areas) may levy TOTs with a two-thirds vote. According to the California State Controller's Office[11], the vast majority (over 90%) of cities and counties have some sort of TOT. The most common rate is 10%, but quite a few popular destinations in California have significantly higher rates that allow them to capitalize on the demand for tourism in the area. For example, Anaheim has the highest rate (15%), while Los Angeles, San Francisco, and a few other high-demand cities charge 14%. Although TOTs require a two-thirds vote, **these taxes are often popular since non-residents generally pay for them and they are often seen as a mechanism for reimbursing the costs of hosting visitors** (e.g., public safety, beach recreation). Since 2001, the majority of TOT measures have passed despite the requirement of a two-thirds vote.

One potential issue with TOTs is non-compliance. STRs offer a potentially lucrative source of TOTs if they are brought into compliance while still encouraging the existence of the rental. As discussed in the next section, TOTs from STRs have increased substantially as STRs have become increasingly popular and as more have been brought into compliance.

Transient Occupancy Taxes from Short-Term Rentals

Easier access to STRs through new platforms has not only increased access to popular destinations, such as the California coast, but also the potential to greatly increase revenues in these areas. In the City of Los Angeles, for example, revenue from short-term rental transient occupancy taxes go to the city's general fund and help pay for community services. However, in order to capitalize on this possibility, cities need to find a way to regulate STRs without imposing high costs on hosts. These costs, such as the murky regulatory environment or high permit fees mentioned above, can impose barriers to entry. This reduces the number of rentals the cities can collect taxes from, discourages small "Mom and Pop" hosts who cannot pay the high fees, and may force some STRs to continue without permits.

Table 6 below summarizes the revenue sources available to local governments in California, along with the typical use for any tax /fee increases, the political hurdles necessary for an increase, and the potential advantages and disadvantages of each tax/fee.

11 California Cities Transient Occupancy Tax Revenue, Tax Rate, and Effective Date, Fiscal Year 2016-2017 https://sco.ca.gov/Files-ARD-Local/LocRep/2016-17%20Cities%20TOT.pdf

Table 6: Examination of Revenue Sources for California Cities

Local Fund Source	Often Used For:	Necessary Approval	Possible Advantages	Possible Shortcomings
Property Tax Levy	School Districts	Requires Ballot Measure: 2/3 for general levy; 55% for schools	Involves entire community	Raises Housing Costs
Special Assessment District (e.g., GHAD, IFD)	Protection against Geological Hazards	Requires Formation of District and Approval of Special Tax	Coastal Property Owners may have higher Ability to Pay	GHADs emphasize property protection over other uses
Sales Tax	Transportation	Revenues have lagged economic growth; Requires 2/3 Ballot Measure	Spread evenly across consumers	Lower income groups pay higher percentage (Regressive tax)
Developer Fee	Low Income Housing. Environmental Mitigation	Requires New Development	Often used to support Affordable Housing	Academic Studies indicate these fees raise the cost of housing in CA
Utility/User Fees	General Fund, Utility Improvement	Requires 2/3 Ballot Measure	Can be used to support utility resilience	Most increase measures have failed
Business Licenses and Fees	Providing Services, General Revenue	Requires City Counsel (or similar) Vote	Helps offset cost of public services	May be regressive. Limited ability to raise revenue
Transient Occupancy Tax	Parks and Recreation, General Fund Revenue	Requires 2/3 Ballot Measure or Increasing Hotels/ STRs	Increased Coastal Access correlated with higher TOTs	Requires new hotel construction or lowering STR restrictions

Financing Resilience for Local Communities

To return to the quote at the beginning of this section, resilience can be defined as "the ability of an urban asset, location and/ or system to provide predictable performance … under a wide range of circumstances" (Brugman, 2009). Facing the threat of climate change, California cities need to increase their ability to fund and execute resilience. In all likelihood, climate change adaptation will require local governments to increase taxes and fees in a wide variety of ways, including property and sales tax increases as well as increases in utility rates or user fees to pay for infrastructure improvements.

In California, cities are limited in terms of their ability to raise revenues between the taxes and fees discussed above. As indicated in Table 6 above, each type of tax/fee has advantages and disadvantages. TOTs offer one of the most feasible methods of increasing taxes, particularly for

services oriented for visitors, such as maintenance of beaches and other public parks. Additionally, the potential to increase TOT revenue exists in the prospect of bringing existing STRs into compliance and promoting better regulations. For communities on the California coast, TOTs can provide needed revenues to offset the cost of serving visitors (e.g., public safety) as well as help preserve beaches and other sensitive coastal habitats. In addition to increasing TOT rates, many local communities have the opportunity to increase TOT revenue by allowing for more STRs or by bringing existing STRs into compliance (by paying TOTs). This would allow coastal communities to improve their resilience without burdening their populations and simultaneously increase coastal access for visitors by helping legitimize STRs as a source for affordable accommodations along the coast.

Table 7: Potential for City Revenue Sources to Finance Climate Resilience

Local Fund Source	Potential for Climate Resilience Finance
Property Tax Levy	Can help support property protecting infrastructure, especially for schools.
Special Assessment District (e.g., GHAD, IFD)	Can help support protection of private property, in particular shoreline protection.
Sales Tax	Can help support transportation infrastructure.
Developer Fee	Can make new developments more resilient.
Utility/User Fees	Can help support utility infrastructure resilience.
Business Licenses and Fees	Can help support local programs. Parking fees can help offset threats to parking.
Transient Occupancy Tax	Can help support beaches, parks, and visitor supporting services.

Case Studies—The Potential for Affordability on the Coast

California's coast is available to all, which makes California's coastal communities some of the most in-demand real estate in the country. California's coastal cities tout beachfronts, plentiful coastal access, and offer a calm respite from the larger cities—or at least an escape from the Inland Empire's heat. Unfortunately, many of California's coastal communities have become unaffordable. Not everyone in California can afford to live in, or even visit, them.

This section examines a few case studies of different coastal communities in California. The first case study examines North San Diego County, specifically the Cities of Del Mar, Solana Beach, Encinitas, Carlsbad, and Oceanside. This region showcases how affluent communities not only discourage construction of affordable housing and lodging but also have the most restrictive regulations on short-term rentals. Data from a summer 2018 sample of STRs demonstrates that

wealthier areas—in particular Del Mar—impose more restrictions and a higher degree of exclusivity in lodging, keeping costs high and inaccessible to most Californians.

Unlike North San Diego County, the second case study examines the different regulatory environments for STRs in Pismo Beach and the City of Santa Barbara. While STRs are legal in Pismo Beach, they are expensive to operate due to the burden of high permitting fees. Additionally, Santa Barbara's near ban on STRs demonstrates how restrictive regulations increase the cost of accommodations and forces budget conscious visitors away from the coast.

In all of the sample cities, coastal access is limited due to the cost of housing, cost of overnight accommodations, and acute lack of supply for lodging in the high season. However, there are differences in the way each of these communities have approached the issue of providing coastal access via increased affordability and lodging supply. These differences contribute to dramatic disparities in affordability, which could be addressed through policy changes.

North San Diego County

The communities in North San Diego County line a popular stretch of the California coast and offer access to prime beaches, such as Del Mar City Beach, Carlsbad State Beach, Torrey Pines, Moonlight, Fletcher Cove, Oceanside, and many others. These seaside towns offer smaller communities and a well-maintained coastline often amenable to families. However, due to the lack of affordable real estate and accommodation, many Californians cannot afford to live in or visit these towns.

Despite many similarities and close proximity, the five sample cities differ greatly in their degree of affordable accessibility as well as in demographic makeup. As Reineman's (2017) work predicts, these communities are predominantly comprised of individuals who are wealthy, white, and typically older than the median age for California. The population of Del Mar is the oldest, wealthiest, and least diverse of the focus cities. On the other hand, Oceanside is much less expensive and more diverse.

Table 8: Demographics in North San Diego County Communities, SANDAG data 2018

City	Median Household Income	Median Age	Single Family Homes
Del Mar	$ 129,880.00	48.6	60%
Solana Beach	$ 111,476.00	44.2	47%
Encinitas	$ 106,960.00	41.9	63%
Carlsbad	$ 107,605.00	41	55%
Oceanside	$ 67,754.00	36.8	53%

San Diego Association of Governments (SANDAG) statistics indicate that Del Mar is the least diverse with over 85% white residents, the most affluent, and also the oldest by median age. Encinitas and Solana Beach are also predominantly white and older. All three coastal communities are significantly less diverse than the rest of California overall. Homogeneity along racial and socioeconomic lines is a trend along the coast; the Californians with the easiest access to the coast by virtue of their residence tend to be white, affluent, and older (Reineman 2017). This is especially evident in Del Mar.

While North Coastal San Diego adheres to this trend, and the lack of access overall, Oceanside is an interesting outlier. The city is much more diverse than the others in the study. Additionally, housing is more affordable. Oceanside demonstrates that more affordability is possible, especially in terms of affordable housing and accommodation, if regulations are in place to promote supply and affordability.

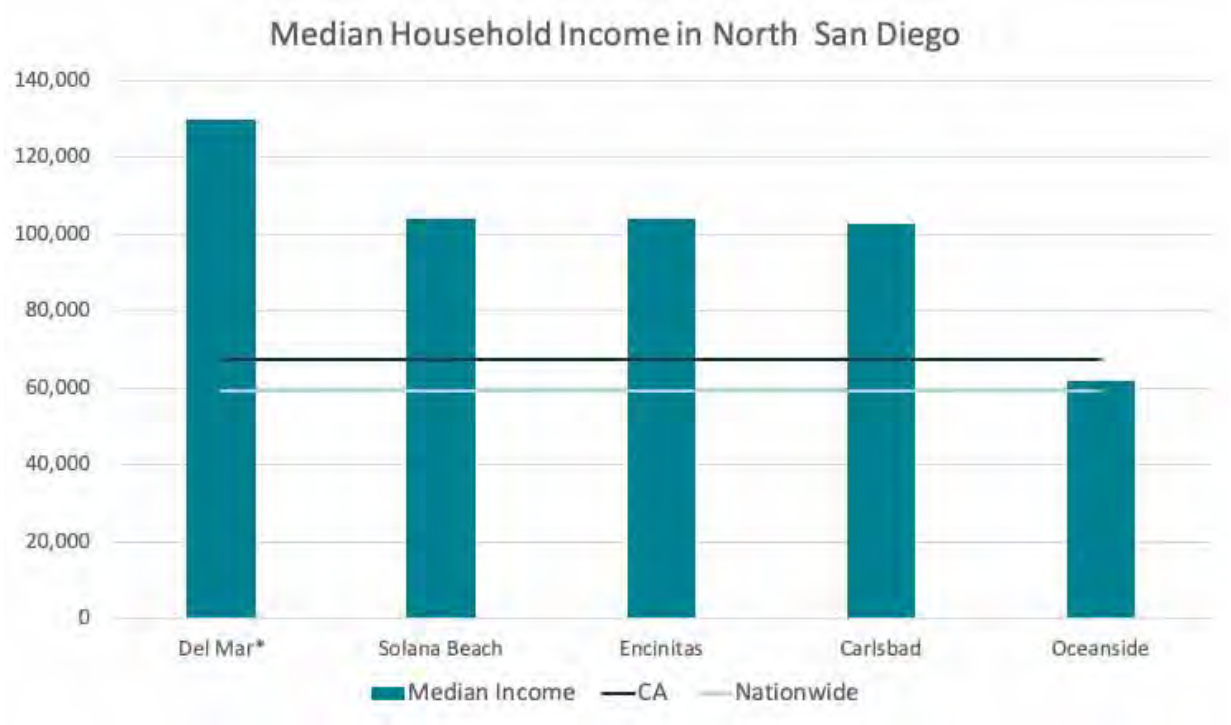


Figure 11: Median household income in North Coastal San Diego is higher than the statewide and national average.

Affordability on the North Coast

Housing affordability is especially important because coastal communities are not only more affluent on average than the rest of the state but also more expensive to live in. The housing shortage—and in particular the lack of affordable housing—is more severe in coastal cities. Simply put, a low-income household cannot afford to live in most of these communities due to a severe lack of more affordable options and multi-family housing. Typically, this lack of affordability creates an enclave of wealthier residents on the coasts and reduces access for lower-income households as they are pushed further inland. While the vacancy rates, according to a 2018 SANDAG assessment, are relatively high, the vacant homes are not affordable for most Californians. Furthermore, many homes in Coastal North San Diego County are second homes which sit unused for much of the year.

In most of the small coastal communities, median home prices and rent are much more expensive than the average for San Diego County. The notable exception is Oceanside. On the other extreme is Del Mar with a median home price nearly 3x the rest of the county. The high cost of living in these communities creates an especially acute need for affordable housing. The lack of affordable housing has been addressed in the San Diego Area Governments (SANDAG) housing needs assessment. This study helps planners determine how much housing needs to be constructed and to target that housing for specific income brackets: Very Low, Low, Moderate, and Above Moderate. The 2017 assessment found that the coastal communities in this case study alone need 5,521 homes for Very Low- and Low-Income households. The diversity in affordability, demographics, and housing needs between these coastal communities allows for comparison. Del Mar, for example, would be expected to have less ease of coastal access than Oceanside and more restrictive attitudes in local politics.

Figure 12: Housing costs in most coastal communities are far higher than the county as shown by percentages.

Affordable Accommodations

Finding affordable overnight accommodations in North San Diego coastal communities is nearly impossible during the summer high season. The meager number of affordable rooms does not begin to meet the needs of the surrounding population. The Coastal Conservancy defines Lower Cost Coastal Accommodations (LCCAs) as those with an average daily rate (ADR) 75% or less of the state average. For July 2019 (high season) this is estimated at $140.70 per night. A prospective visitor might struggle to find such options in the coastal zone. Some cities, such as Del Mar, appear to have no affordable options at all. Del Mar, despite its popularity as a destination, offers only six hotels—with only 355 rooms between them—a scarcity which helps drive up prices (Schwing 2018, 2). Furthermore, hotels with rates less than $140 in July typically offer that rate for a single full bed—hardly enough room for a family.

Although camping can provide a more affordable alternative for these families, there are limited options. In many of the coastal communities there are no tent camping sites, only RV parks. This imposes high equipment costs if visitors do not own an RV. In Carlsbad and Encinitas, there are State Beaches which offer tent camping, but these few sites are booked months in advance. This might be particularly problematic for a working-class family with less certainty of the stability of their financial situation and less predictability in time off. Furthermore, camping is not an option for all families as it has high equipment costs (Christensen & King 2017; Coleman 2016). Due to the barriers to entry and the limited availability, many families would not be able to turn to camping in the North San Diego Coastal area as an affordable accommodation option.

As discussed, the coast has lost many of its affordable options since 1989. The coastal region's tourism is especially seasonal, proving a challenge to the hotel business. Zervas (2016) discussed this issue, explaining that hotels face high fixed costs. This makes it especially difficult to adjust their supply of rooms to match demand—to scale up in the summer high season and scale down in the cooler months. As the cost of land on the coast has increased, economy range hotels have increasingly closed down and been replaced by upscale hotels and condominiums (Ainsworth 2017). In San Diego County, no discounted rooms have been included in new developments despite the mandate to provide affordability where feasible (Weisberg, 2015). Most recent hotel projects have been for the construction of upscale and luxury resorts (Access Denied, 2019). These new developments not only take existing LCAAs away from visitors but they also increase the associated costs of a visit by bringing in more high-end clientele and thus more upscale restaurants and shops. The areas with the most expensive hotels and fewest LCCAs typically impose the most restrictive policies on STRs, keeping prices high and lower-income visitors out.

Short-Term Rentals Provide Affordable Access

In order to evaluate the affordability of short-term rentals in North San Diego County, this paper examines data on the rental price of STRs in Del Mar, Solana Beach, Encinitas, Carlsbad, and Oceanside from summer 2018. For example, the average listing in Oceanside is $150 per night, whereas in Del Mar the average is $265. The data confirms the expectation that the more exclusive areas have less affordability. Furthermore, mapping the rental listings and their distance from the coastal zone shows that prices increase with proximity to the coast. Therefore, affordability decreases.

Table 9: Average Price for a Short-Term Rental in Select North San Diego County Cities for Two-Person Occupancy. Prices Determined by Capacity of the Rental.

City	All Listings	Private Room	Entire Home	Listings within .5mi of Coast	Private Room within .5 mile	Home within .5 mile
Del Mar	$265.20	$90.36	$269.99	$268.33	$90.36	$273.41
Carlsbad	$153.72	$133.90	$156.50	$174.27	$152.05	$175.20
Oceanside	$150.62	$117.55	$157.00	$166.10	$126.52	$167.82
Solana Beach	$199.46	$137.45	$204.27	$215.87	$154.48	$217.79
Encinitas	$177.66	$176.20	$178.23	$194.60	$200.62	$194.50

Figure 13 below shows a scatterplot of short-term rental listings from the summer (June, July, and August) of 2018 obtained from an independent source, Transparent Data (https://www.seetransparent.com). In this figure, affordable rentals (as defined by the California Coastal Conservancy) are depicted in green and unaffordable listings are depicted in red. As one gets closer to the coast, most listing become unaffordable; although, as indicated in Table 9 above, Oceanside still has many affordable listings within half a mile of the coast.

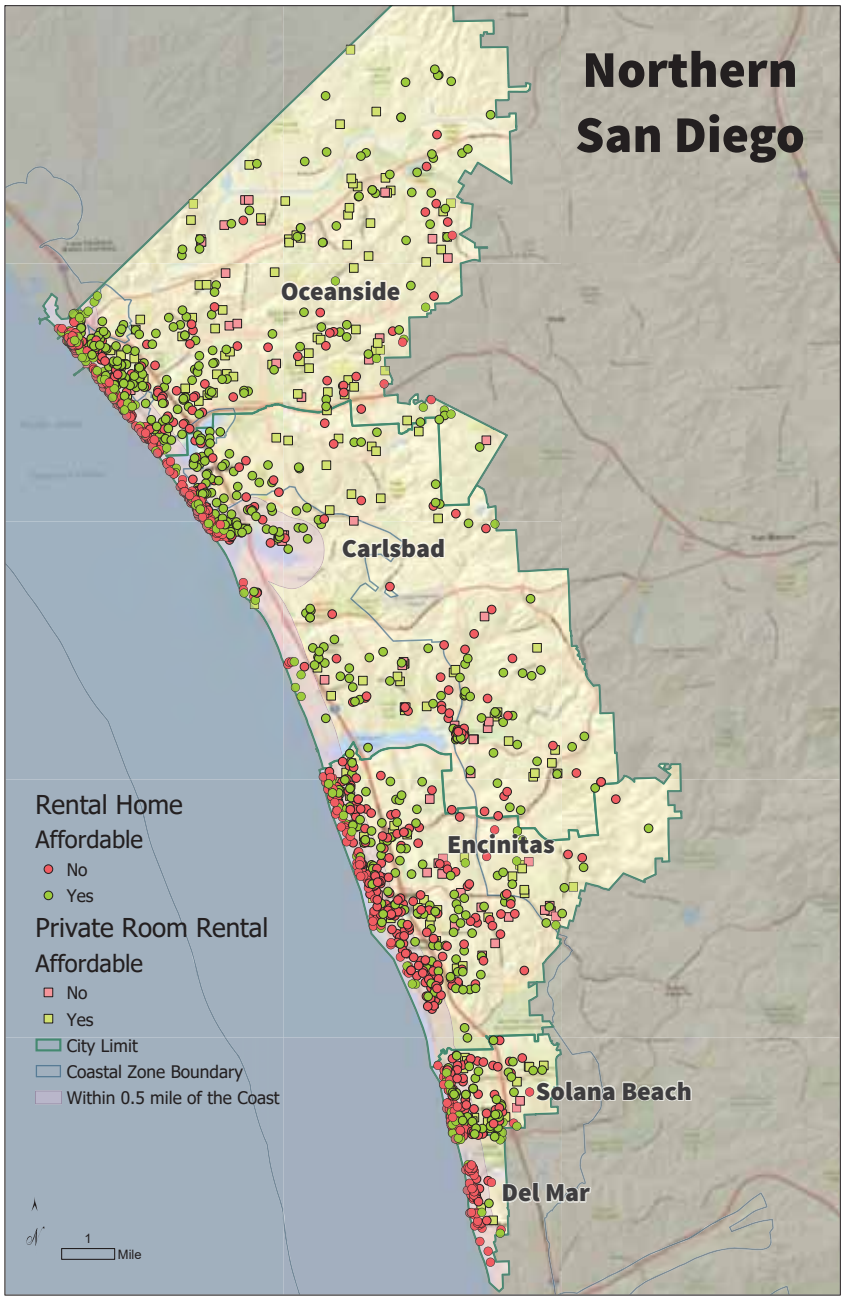


Figure 13: Distribution of STRs in North San Diego County Showing Affordability Increasing Further from the Coast. Special thanks to Dr. Kiersten Patsch for mapping.

Additionally, STR listings in North San Diego County appear to be affordable or expensive in clusters. Figure 14 below constructs an average cost map which grouped the listings in 100-meter segments around average cost and color codes the average price for each 100-meter area. The map shows that prices of STRs cluster into groupings of high costs (for example, greater than $500 a night) and low costs (less than $100). Average prices are noticeably lower (the darker red) in Oceanside and further inland. Del Mar has more high-priced clusters (pale yellow, indicating more than $500 per night). While in some areas STRs are largely unaffordable according to the cost per two people per night, in many cases they are still more affordable than hotels, partially because a group or family would need many rooms at a hotel rather than a single home. Additionally, the supply of STRs helps lower prices and reduce the price hikes in the summer season as discussed in previous sections (Zervas 2015).

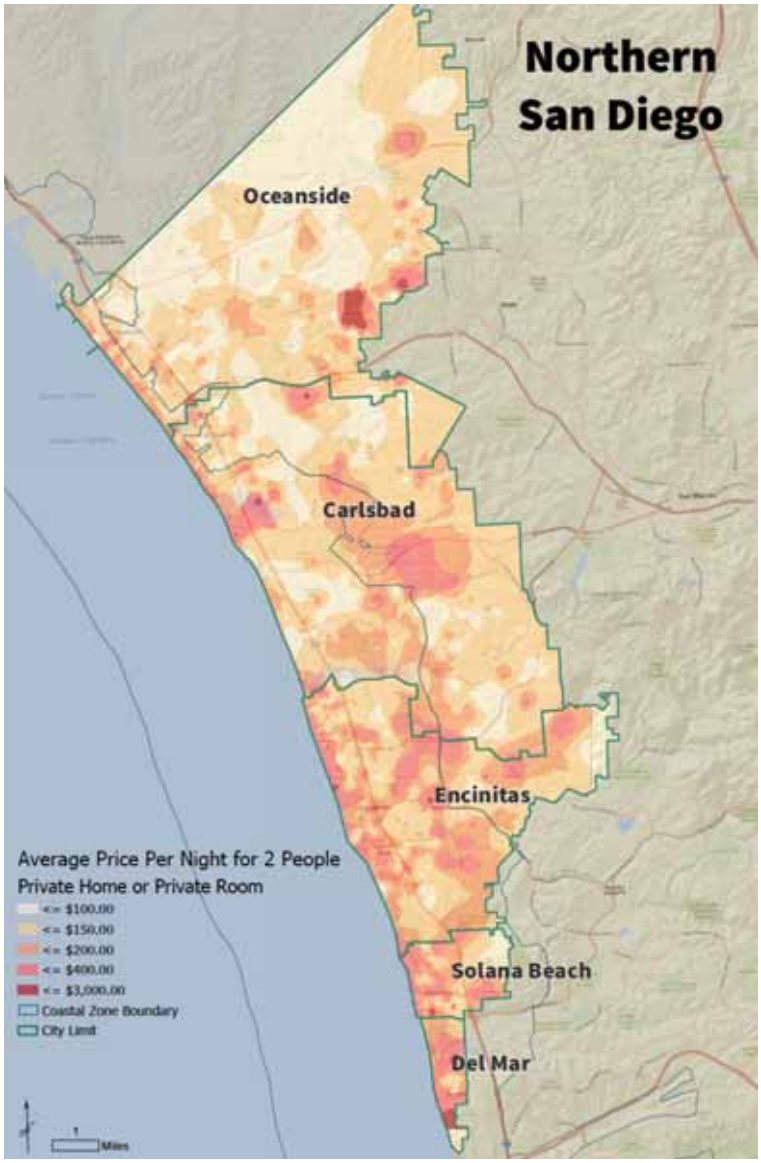


Figure 14: Distribution of Average Price of STRs in North San Diego County Showing Affordability Increasing Further from the Coast. Note that Del Mar, Solana Beach, and Encinitas have far fewer listings at less than $100, or even $150.

Finally, Table 10 and 11 below present affordability by number of listings. As the maps above suggest, the City of Oceanside has both the highest percentage and the highest number of affordable rentals, both homes and private rooms. The City of Carlsbad has similar percentages of affordable rentals, and Solana Beach and Encinitas also providing some affordability. Once again, Del Mar has the lowest percentage of affordable listings no matter how one looks at the data.

Table 10: Affordability (Defined here as 75% of California Average Daily Rate) for All Listings, compared to those within a half mile of the coast.

	Affordable by Statewide ADR			
City	**Number**	**Percent of Listings**	**Within 0.5 mi of coast**	**Percent of Listings**
Del Mar	12	16%	10	13%
Solana Beach	80	30%	40	15%
Encinitas	183	41%	78	17%
Carlsbad	229	52%	89	20%
Oceanside	455	52%	232	26%

Table 11: Comparing affordability of listings when defined using California ADR or the ADR of San Diego County, which is higher. Although there are more listings at 75% or less of SD ADR, Del Mar still lacks affordability.

	Affordable by Statewide ADR		Affordable by Local ADR	
City	**Number**	**Percent of Listings**	**Number**	**Percent of Listings**
Del Mar	12	16%	19	25%
Solana Beach	80	30%	103	39%
Encinitas	183	41%	233	52%
Carlsbad	229	52%	278	63%
Oceanside	455	52%	551	63%

Tourism as a Revenue Source

The lack of affordable accommodations not only impinges on access for low- and moderate-income Californians but also reduces the potential tax revenue of the municipalities. All of these coastal communities rely on tourism, and the coast is the primary draw. The cities of North San Diego County draw a large share of their tax revenues from the tourism industry, and one of the primary ways in which they do this is through Transient Occupancy Taxes (TOTs). As discussed, TOTs impose a tax on visitors when they stay in the community. Traditionally this tax was collected primarily through the hotel sector, but increasingly STRs have made important contributions to TOT revenues. In all of the North San Diego County cities examined here, TOTs make up a significantly higher portion of the tax revenue for that city when compared with the county overall.

TOTs have been rising over time, despite there not being a drastic boom in hotel construction or dramatic change in consumer preferences. This is likely due to the increased presence of STRs in the coastal accommodation market and efforts by municipalities to collect TOTs from them. Carlsbad and Oceanside are larger cities with greater tourist draw. They also tend to be more affordable and less exclusive than the Encinitas, Solana Beach, and especially Del Mar. These three smaller, more exclusive communities have seen similar growth in TOT revenues, although on a much smaller scale due to their smaller size and reduced number of lodging options. It is harder—and more expensive—to stay in one of these areas.

TOTs can offer municipalities a crucial source of funding for projects such as adaptation to climate change, affordable housing, and public services which tourists place increased demand on. They offer an alternative to GHADs where the residents pay for an independent authority tasked with protection from geological hazards such as sea level rise. Wealthier communities, such as Del Mar and Encinitas, possess GHADs. Solana Beach is also considering adopting a GHAD (City of Solana Beach 2019, 7). Oceanside, less wealthy and more diverse, does not possess a GHAD. The potential problem with GHADs is they tend to focus on armoring rather than more sustainable coastal options, which can reduce coastline and therefore coastal access. Due to the nature of the funds, they can also reinforce exclusivity as the residents nearest a particular stretch of coast pay for its protection.

In order to increase potential TOT revenues, coastal communities could turn towards STRs as a reliable source of revenue. While it takes years and millions in investment to build a hotel, STRs capitalize on and expand the use of existing property. To benefit from this revenue source, municipal governments need to embrace rules that balance the legitimate concerns of neighbors, particularly in residential neighborhoods, with California's stated goal of access for all. Restrictive STR regulations can hinder small, "Mom and Pop" rentals from the market through commercial zone restrictions and exorbitant permitting and licensing fees. The fewer the number of nights available in STRs, then the smaller the TOT revenue leading to a lost opportunity for a community to capture the benefits of the tourism market.

Regulating STRs

The policies cities enact determine how they structure the market for STRs and can affect access to the coast. Del Mar and Oceanside illustrate this dilemma well. They have chosen divergent responses to STRs that reflect the makeup of their communities. Del Mar has very restrictive regulations that prohibit STRs in residential zones and limit their operation to the Residential-Commercial (RC) zone and the Visitor Commercial (VC) zone. This means that homeowners in a residential zone cannot rent out their vacation home or spare room without risking fines. In 2017, the city attempted to pass additional restrictions to limit STRs to no more than 28 days out of the year and impose a minimum seven day stay for visitors, while restricting STRs to the Residential Commercial and Visitor Commercial areas of the city. In the interest of providing greater access to the coast, the law was rejected by the California Coastal Commission on the grounds the proposed ordinance would negatively impact public access and affordability (Schwing 2018, 2). The staff recommended no nightly minimum and a 180-day cap, while the Commissioners themselves eventually settled on a 3-day minimum and 100-night annual cap. Del Mar rejected the Coastal Commission position and is suing the state to overturn the decision. The attempt is indicative of the attitude in Del Mar towards STRs and the various ways cities enact policies which curtail affordability and reduce lodging supply.

Another policy which can detrimentally impact the affordability and supply of short-term rentals in these communities is permitting. While municipalities need to keep track of their STRs and collect transient occupancy taxes, the high cost of these permits prevents many potential hosts from renting and increases the costs of the rental. Permits range in costs and often come with secondary fees, such as costly inspections and business licenses. Cities in North Coastal San Diego attach a variety of fees to their STR permits. Solana Beach, for example, charges $100 for a new permit and $55 annually to renew; Encinitas' permit costs $150; in Carlsbad the permit is free, but a business license is required at a cost based on revenue; and Oceanside's permit costs $250. Information on Del Mar's permitting was unavailable due to the pending ban. These high costs can drive some hosts towards renting illegally and others to pass the costs on to their renters, reducing coastal access. These fees are summarized below in Table 12.

Even in cities that allow short-term rentals, there can be high costs that pose a barrier to entry for potential STR operators. Permitting is one example, and punitive fines are another. As discussed earlier in this paper, some regulations on STRs can impose high risks to the host. Fines accomplish just that. Imposed for violations of ordinances, these fines can work to enforce bans on STRs. In many cities the fines are aimed at long-term zoning compliance and obtaining back taxes. The crackdown in Encinitas showcases this with fines starting at $250. Ordinance violations in Solana Beach start at $500, and a second violation costs $1000. While many areas impose these penalties, the amounts and causes are not easily discerned. Oceanside—which has the most permissive policies of this study—makes the penalty known, stating that a violation of policies will result in a misdemeanor and a fine up to $1000. However, unlike many of the more exclusive communities their policy provides for a greater range of legal STRs. If cities wish to bring operators into compliance and preserve affordability, high penalties undermine this goal.

Oceanside, more affordable and diverse, is much more accommodating to visitors wishing to rent a home or room for a short stay and visit to the coast. Oceanside's policies make a trip to the beach and coast an affordable luxury to many Californians. The city allows short-term rentals in the residential areas provided rentals meet certain limits and adhere to its Good Neighbor Policy. Oceanside has many more STRs but it is also larger than Del Mar or Solana Beach. The higher

number of STRs offers visitors many more accommodation options, especially in high season when rooms on the coast are hard to find and campsites are booked. Similarly, Carlsbad offers more affordable STRs than the other North San Diego County coastal cities. The city requires short-term rental operators to comply with its Good Neighbor Guidelines as well, which include provisions about noise, trash, and parking.

Table 12: Short-Term Rental Regulations

Jurisdiction	Attitude toward STRs	Key Regulations
Del Mar	Very **restrictive**. The City attempted a limit of 28 days per year (blocked by California Coastal Commission). In Court proceedings with California Coastal Commission.	Attempt to prohibit almost all STRs **Zone Restrictions:** Not permitted in Residential Zones, only permitted in Residential Commercial and Visitor-Commercial and where the development allows it **Night Caps:** Proposed 28 days per calendar year. 7 night minimum for all stays
Solana Beach	Fairly **restrictive**. Rentals allowed in Residential areas if stay is over 7 days, but enforcement of penalties is strict.	**Zone Restrictions:** Prohibited in Residential areas if less than 7 days **Fees and Permit:** $100 new permit fee with $55 renewal, $500 fine for first STR policy violation **Taxes:** Host has to collect TOTs
Encinitas	Recent crackdown to be more **restrictive**.	**Zone Restrictions:** Single family and duplex dwellings only. Multi-family dwellings and condominiums are prohibited from usage as short-term rentals in residential zones. **Fees and Permits:** $140 permit annually, policy violation fines starting at $250 **Taxes:** 10% transient occupancy tax hosts are to collect from renter
Carlsbad	Very **restrictive** except in the coastal zone.	**Zone Restrictions:** Banned in residential areas except in the coastal zone; required to comply with "Good Neighbor Guidelines" **Permits and Fees:** Permit required (free) and business license required (cost variable) **Taxes:** STRs are subject to a 10 percent transient occupancy tax as well as a $1 per room per night Carlsbad Tourism Business Improvement District assessment due monthly to the city.
Oceanside	**Permissive** in coastal zone.	**Permits and Fees:** All STR operators are required to apply for a STR permit (fee required) unless the STR property is a hosted unit or part of a gated HOA; violations are a misdemeanor with up to $1000 fine **Policies:** Minimum 2-night stay, curfew on daytime guests at 10pm, and limits on overnight occupancy **Taxes:** TOT collected by Airbnb in agreement with City **Night Caps:** Minimum 2-night consecutive stay

The different approaches of Del Mar and Oceanside reflect the nature of regulations in these communities. Del Mar restricts affordability through little affordable development and harsh restrictions on STRs, preserving the exclusivity of the community. Oceanside's policy is not perfect, but the openness to STRs aligns with the diversity of the community and lower housing costs. Oceanside is one of the few coastal communities that has not carved out an affluent, exclusionary enclave for its residents on the coast. Del Mar, and other communities with strict regulations severely limiting the ability of STRs to operate along the coast, reduce the supply and affordability for visitors. Communities with more reasonable regulations—designed to create harmony between STRs and permanent residents—can promote STRs, thereby increasing the supply of accommodations and lowering cost. This helps promote access to the coast without costly investments in new hotels or campgrounds.

City of Pismo Beach

In Pismo Beach the story of short-term rentals and affordability is more complicated. Pismo Beach's policy is touted as one of the model STR ordinances by the California Coastal Commission, yet the city lacks affordability in accommodations. While the City is open to short-term rentals, possibly because of its reliance on tourism for the economy, it's like the majority of the other North San Diego cities: white, wealthy, and older, demographics which have been shown to dominate the coastal zone in the state (Reineman 2017). Despite this similarity, Pismo Beach has a more permissive regulatory environment than Del Mar and other small, wealthy towns. The city is more open to the existence of STRs without attempting bans and stringent restrictions on rental operators. However, without measures to reduce costs there remains a persistent lack of Lower Cost Coastal Accommodations (LCCAs) to meet the needs of the majority of Californians and provide access for all.

Affordability in Pismo Beach

Pismo Beach is an affluent area, like much of the coast, with high median incomes and home values out of reach for most Californians. The concentration of affluence in housing creates a need in Pismo Beach and in Santa Barbara, as it did in North San Diego County, for the construction of intentional housing for those of lower means. The Regional Housing Needs Assessment conducted by Pismo Beach (2019) revealed the city needs 62 homes to meet the needs of extremely low, very low, and low-income families—41% of their overall housing need. Like much of the coastal region, these costs and lack of affordability push families inland and away from coastal access.

Affordable Accommodation and STRs

The lack of affordability in Pismo Beach extends to both traditional lodging options and short-term rentals despite the city's hospitableness. The city appears to lack any affordable hotel options. It is, however, close to state beaches with camping options. As previously mentioned, those options fill up quickly and may not meet the needs of all visitors. In particular, camping may not be an option for those who lack the means to purchase equipment.

While STRs offer lower rates than some hotels, this study found only 38 rentals that would be considered Lower Cost Coastal Accommodations (LCCAs) by the Coastal Conservancy standard. This amounts to only 25% of all rentals in the area. It is worth noting that almost all (96%) of Pismo Beach rentals are within a half mile of the coast where prices tend to be higher, but that percentage of affordability is still very low.

Although Pismo Beach generally embraces STRs, the city requires operators to apply for a permit—at cost of $399—and a business license, totaling over $450 in comprehensive fees. This permit cost has the impact of (1) discouraging homeowners from becoming hosts and therefore reducing the supply of rental, and (2) passing on that high cost on to visitors in the form of higher rates. Overall this reduces affordability. Mapping the location of STRs in Pismo Beach shows that they overwhelmingly are near the coast but also expensive. The location is ideal for visitors, but likely inaccessible to those with stricter budget constraints because of the lack of lower cost accommodations.

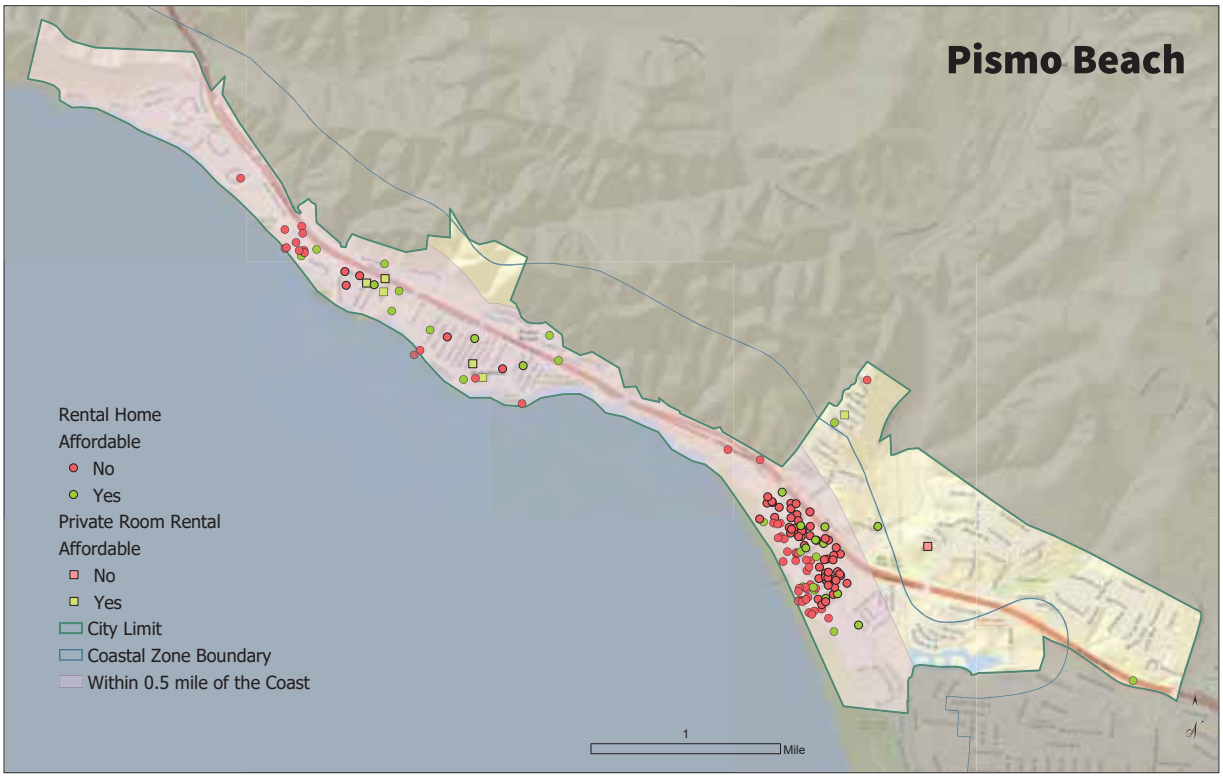


Figure 15: Mapping the STR listings in Pismo Beach shows the close proximity to the coast and general lack of affordability.

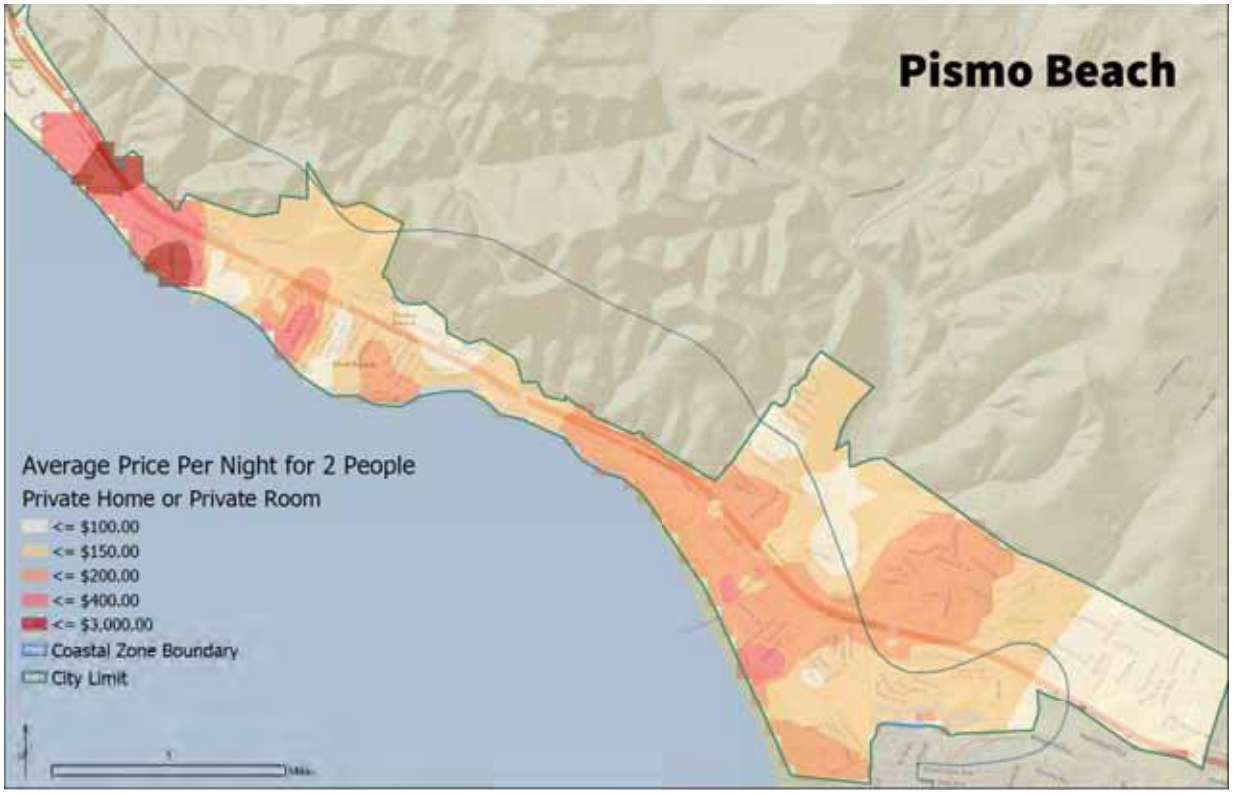


Figure 16: Looking at average cost clusters for Pismo Beach shows the concentration of expensive listings.

Reliance on Tourism

Although there are not sufficient LCCAs in either Santa Barbara or Pismo Beach, there are many hotels. These fill up in the high season and the campgrounds book up far in advance. There are over 150 hotels between these two communities, and both derive much of their economic base from tourism. Pismo Beach collects nearly half its revenue via TOTs, and their collection has increased over time[12]. This reliance on tourism may contribute to Pismo Beach's openness to STRs as part of its efforts to foster tourism and keep the town thriving. In fact, Pismo Beach's STR policy notes that the loss of TOT revenue in part motivated the regulation. With the high cost of new hotel construction, existing informal home sharing and the promise of more STRs via new platforms offer a much faster source of renewable tax revenues. This may explain why Pismo Beach lacks the affordable hotels that Oceanside offers but has a relatively permissive STR policy. The caveat is, of course, the high fees which keep affordability low and impact access to the coast.

Regulating Short Term Rentals

Despite the over $500 cost to operate a legal STR, Pismo Beach has been heralded by the Coastal Commission for its model STR ordinance. However, the combined cost of the permit application, business license, and the added delay of inspections reduce the ability of operators to charge affordable rates for their rental listings. The city allows short-term rental operators to share their primary residence year-round with no nightly cap if they are present for the duration of the stay and pay the $500 in fees associated with obtaining a permit. If the STR is not the primary residence, or the operator is not present, the unit has to be in specific zones. While there is a limit of 182 days per year on unhosted stays, the duration means a unit can be rented for more than the entirety of the high season.

While the City's rules promote the supply of additional accommodations and in turn increased access to the coast, the expensive fees create a barrier to entry for potential short-term rental operators and thus restrict the number of potential accommodations along the coast. As expenses of permitting, licensing, and potential fines are passed on to renters, affordability diminishes. This reduces access for those who need access the most. It also reduces the City's TOT revenue since fewer properties are registered and therefore fewer taxes being collected.

Table 13: Short Term Rental Regulations in Pismo Beach

Jurisdiction	Attitude toward STRs	Key Regulations
Pismo Beach	Relatively Permissive	**Zone Restrictions:** Allowed in almost all residential zones and planned zones at primary residences **Permit and Fees:** $399 permit application fee, business license required (fee required), minimum violation $750 **Taxes:** host collects TOTs **Night Caps:** Limited to 182 days per year *without the owner present*

12 Data compiled from the Comprehensive Annual Report for 2018 in Pismo Beach. https://www.pismobeach.org/DocumentCenter/View/53246/FY-2018-Annual-Financial-Report

Santa Barbara

Unlike Pismo Beach, Santa Barbara has a restrictive policy towards short-term rentals. The city has more in common with Del Mar and their attempted ban on STRs. The City of Santa Barbara regulates STRs as hotels for zoning purposes. Therefore, the City of Santa Barbara considers any listings operating outside of areas already zoned for hotels illegal. With this ban, the city removed the option for many homeowners to rent out unused space to visitors and confined visitors to tourist areas. These rules reinforce the exclusivity of the community and impose great risk to hosts who may be forced to list their vacant property illegally. Such listings also do not contribute to city TOT revenues.

Affordability in Santa Barbara

Santa Barbara's policies towards STRs reflect the expense and exclusivity of the city overall. The median home price in Santa Barbara, according to Zillow.com (2019) is $1.14 Million—almost twice the average for Santa Barbara County let alone California overall. Santa Barbara's assessment reveals the need for 1,461 additional homes in the Very Low- and Low-income categories, or 47% of their total housing need. The lack of affordability extends to hotels as well. In Santa Barbara the ADR in July 2018 was $227.60, and a prospective visitor only finds a couple of options with "affordable" rates in July—two with rates less than $137 nightly. These options are further from the beaches and appear not to offer sufficient beds (at that rate) for a family to stay overnight. Santa Barbara is close to state parks with campgrounds as well as RV parks; however, as previously discussed, there are limitations not only on the number of sites but also on the viability of camping as an option for some families.

STRs, Legality, and Zoning in Santa Barbara

The study of rental listings from summer 2019 reveals the nuances of the Santa Barbara policy on the affordability of STRs. The City of Santa Barbara is unique, in this study, because in 2015 it began a "heightened enforcement program" of its zoning regulations with the objective to remove STRs from areas where they had been allowed before 2015 (Kracke v. City of Santa Barbara, 2019). **By classifying rentals as "hotels," and therefore restricting them to zoning that allows hotels within the city, Santa Barbara has greatly reduced the affordability of rentals near the coast.** These zoning laws, then, allow very few legal rentals within close proximity to the coastline as shown in Figure 16. The crackdown on rentals outside the commercial zone, including those in the coastal zone, constituted a change in policy for the city. Prior to 2015, the city had an informal practice of recognizing and allowing STRs provided they paid TOTs and received no complaints (Kracke v. City of Santa Barbara, 2019). In 2010 and 2014, the city attempted to bring more STRs into compliance, hoping to increase TOT revenues (Kracke v. City of Santa Barbara, 2019).

In 2015, Santa Barbara changed its enforcement and began what constitutes a ban on STRs, because even where zoning allowed for STRs, other requirements and the difficulty of navigating the system prevent operation[13]. As a result, only 7% of all listings in Santa Barbara fall within a half mile of the coast and meet the California Coastal Conservancy's definition of Lower Cost. Although one-third (33%) of citywide listings are affordable, these cluster further from the coast as shown in Figure 17. Many of the more affordable listings for Santa Barbara were actually outside of the city limits where the regulations are less strict. Furthermore, obtaining a permit to legally operate a STR in Santa Barbara is nearly impossible. The City in 2017 had not issued a permit in over two years, according to a recent lawsuit, even for homes in the correct zoning (Santa Barbara Short Term Rental Alliance, 2017). Many homeowners face this obstacle even after going through the costly process of inspections—and even remodels.

The city's ban on STRs violates the California Coastal Act and fails to comply with the California Coastal Commission, according to a recent lawsuit (Kracke v. City of Santa Barbara, 2019). The Court found that Santa Barbara's enforcement of zoning regulations changed the access and use of the coast, and that in order to do so they would have needed permission from the Commission to remove STRs in the coastal zone since STRs allow access for more visitors, especially those of lower incomes. A ban on STRs, because of the access they provide, would not be legally enforceable (Kracke v. City of Santa Barbara, 2019).

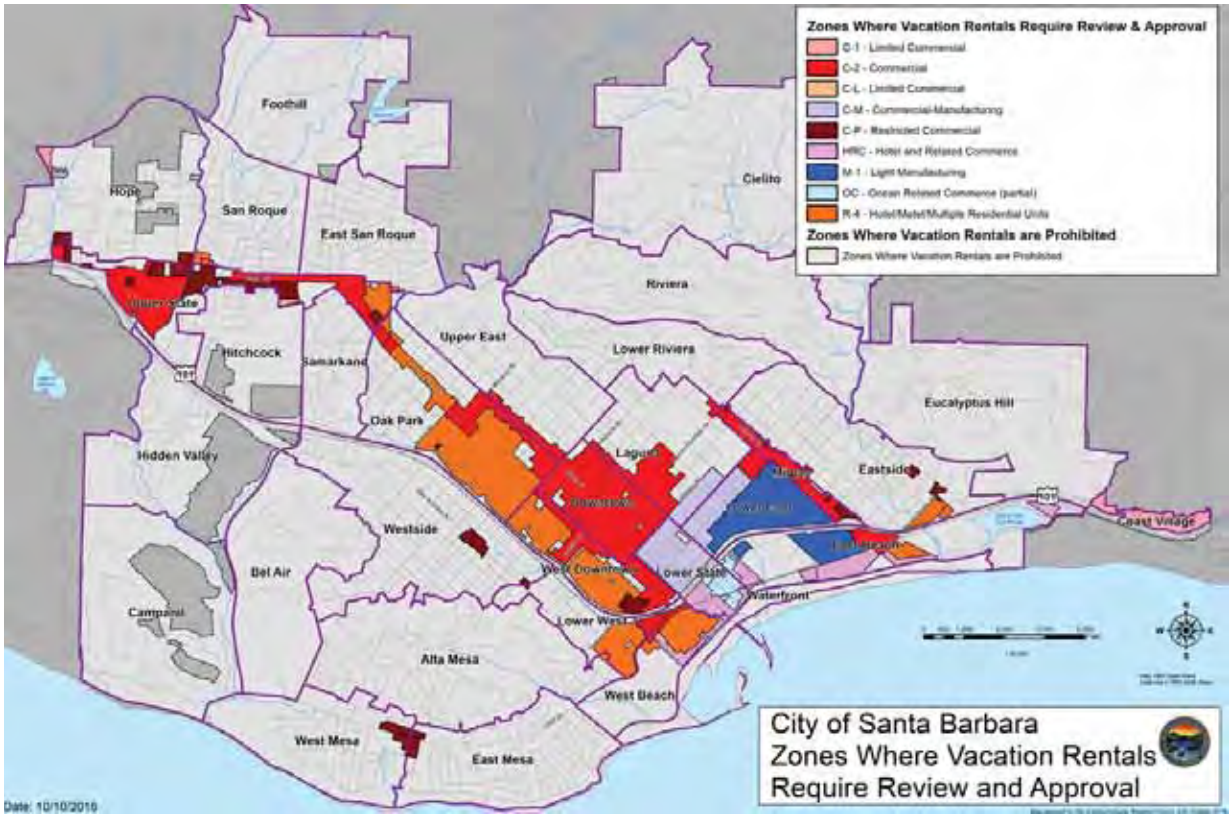


Figure 17: Map provided by the City of Santa Barbara showing zoning where hotels (and STRs) are legal, 2017.

13 Council Member for the City of Santa Barbara is quoted in the Ventura Superior Court findings as stating: "I think it's incredibly confusing…it truly isn't possible, except in very rare circumstances for someone to provide the off-street parking, to meet the code requirements, to actually pull that off, as evidenced by there's only one who—after a two-year process—to successful navigate that system" (Kracke v. City of Santa Barbara, 2019, 9).

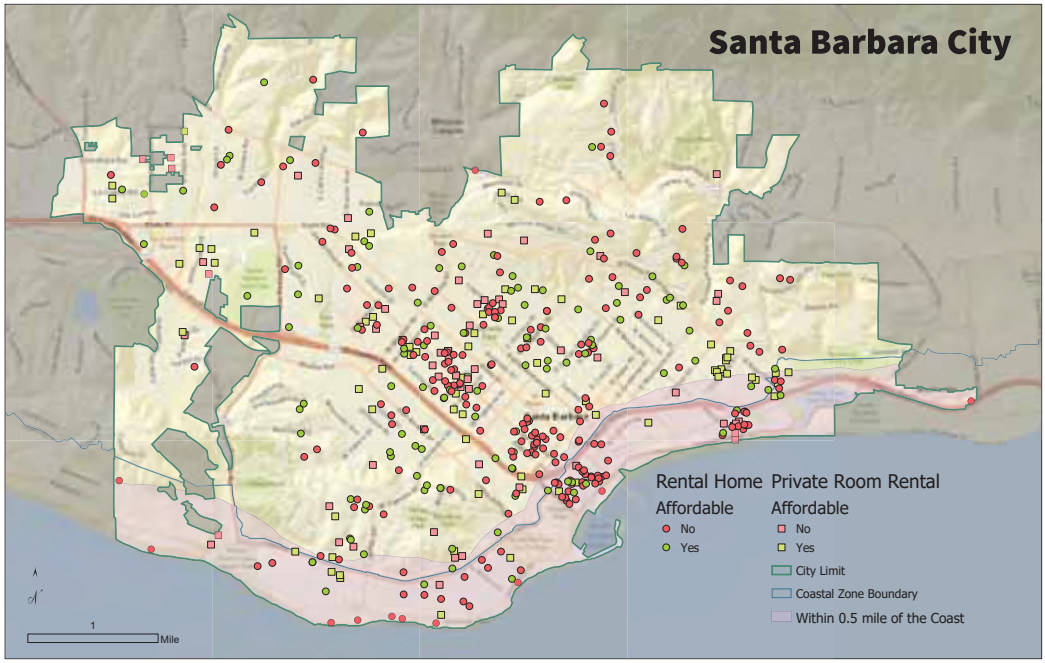


Figure 18: Summer 2018 STR listings for the city of Santa Barbara. Listings do not adhere entirely to the map of legal areas and tend to be less affordable along the coast (only 7% of listings within a half mile are Lower Cost Coastal Accommodations)

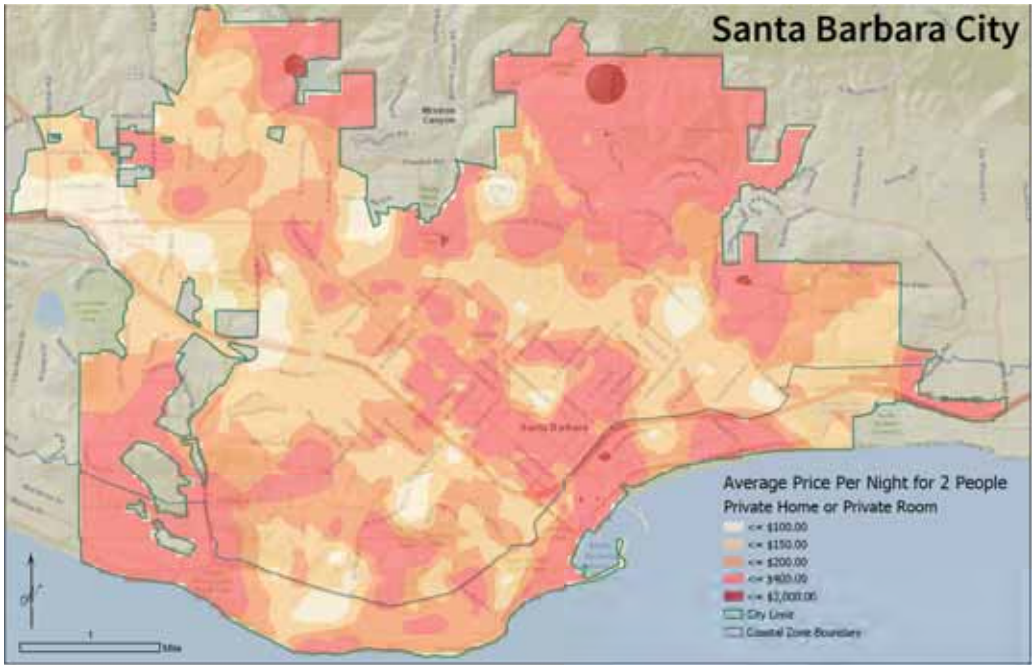


Figure 19: A map of average price clusters in Santa Barbara City, showing the high cost (yellow) along the majority of the coast.

Regulating Short Term Rentals

Santa Barbara and Pismo Beach make an interesting comparison of policy implications since their policies differ significantly in how they regulate STRs. Santa Barbara shares much in common with Del Mar, severely restricting STRs and thereby reducing the supply of coastal accommodation. In Santa Barbara, STRs constitute hotels for zoning purposes and are therefore illegal if operating outside of the areas where hotels are allowed. With this ban, the city removed the option for many homeowners to rent out unused space to visitors and confined visitors to tourist areas. These rules and regulations reinforce the exclusivity of the community. Such listings also do not contribute to city TOT revenues. **Bans on STRs claim to preserve neighborhood characteristics and promote public safety; however, they really succeed in restricting access to expensive coastal communities and preserving their exclusivity.** With little local support for affordable housing development or lower-cost accommodation options (the most feasible being STRs), many inland low-income and underserved populations are effectively barred from visiting the City of Santa Barbara.

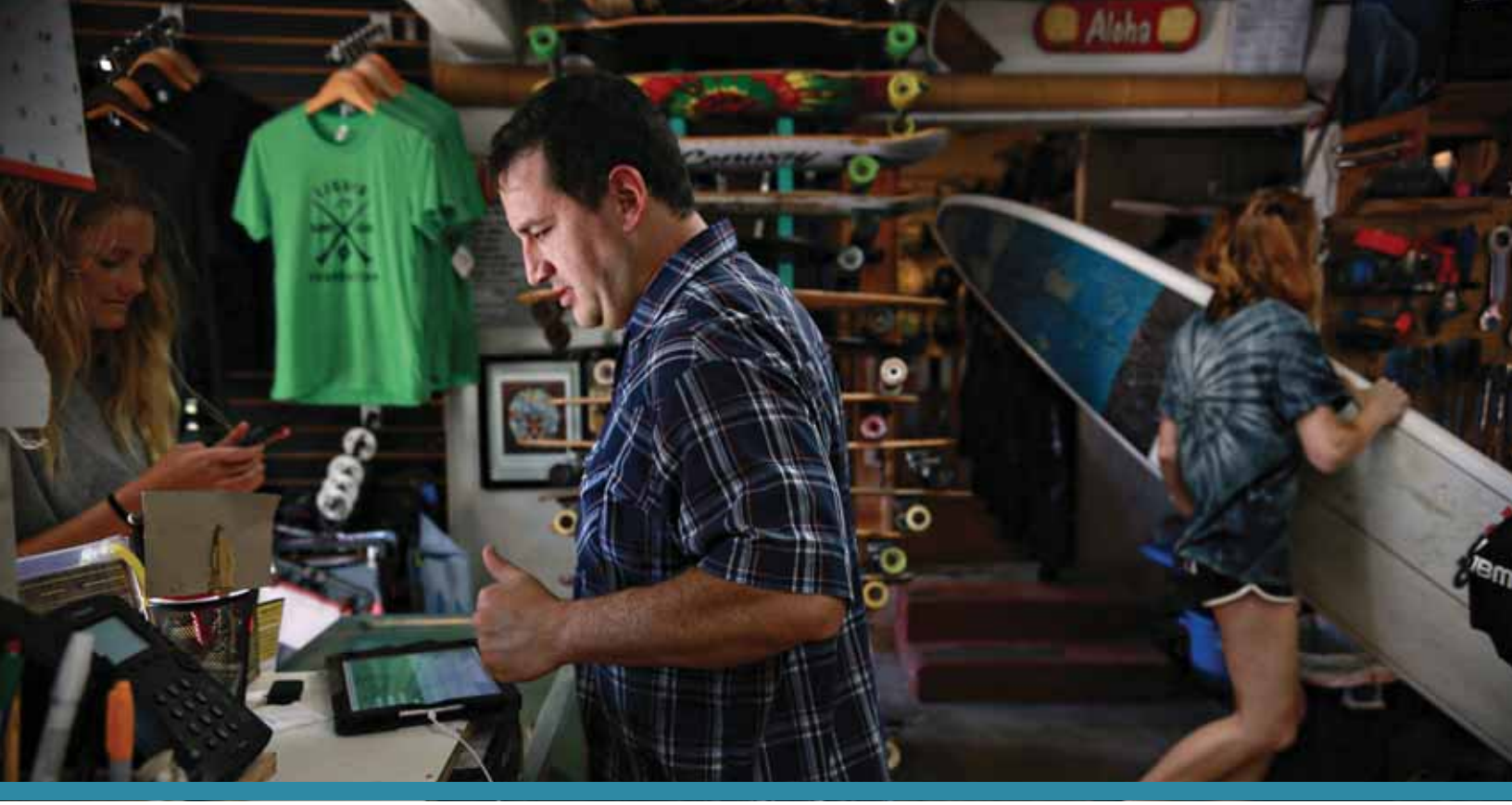
Table 14: STR Regulations in Santa Barbara City

Jurisdiction	Attitude toward STRs	Key Regulations
Santa Barbara	Very Restrictive, STR's effectively banned	**Zone Restrictions:** Considered hotels and therefore illegal outside of areas within the commercial zone that allow hotels **Permits and Fees:** Permit required, if STR is in hotel district and therefore legal **Taxes:** Required to be collected

Discussion

The case studies in this section indicate that restrictions on STRs can take many forms—from outright bans to high permitting/licensing fees to restricting visitors to areas which already serve tourists through more traditional overnight accommodations. Perhaps unsurprisingly, our case studies also show a very strong correspondence between communities, like Del Mar and Santa Barbara, which have limited affordability for traditional long-term rentals and have few affordable options for potential homeowners who are not already affluent and restrictions on short-term rentals. One common argument against STRs is that they increase prices for long term residents and lead to gentrification. However, the case studies in this section indicate that the areas restricting STRs the most (Del Mar and Santa Barbara) are also areas that have already limited affordability for long-term residents. Conversely, the City of Oceanside has more affordability for both long-term and short-term residents than any other coastal city in this study. Oceanside has also created a "Good Neighbor Policy" (included in an appendix to this study), which does levy significant penalties against STR hosts and tenants who violate these policies, indicating that cities can strike a balance between protecting and preserving residential neighborhoods and allowing access to the coast. Our case studies also reveal, however, that many policies that are designed to preserve residential neighborhoods along the coast, already enclaves of affluence, effectively limit options for middle class and underserved communities who not only have been priced out of the residential market but now find themselves restricted out of the short-term rental market as well. Access for all has now become access for the affluent only.

Pismo Beach also represents an interesting case study since its policies have received some support within the coastal community. Unfortunately, a close inspection indicates that Pismo Beach still has a limited number of affordable rentals despite being more accommodating than some other communities. Our analysis reveals that Pismo Beach's permitting and licensing fees are quite high even compared to other communities in this study. Pismo Beach also restricts STRs to primary residents. Ostensibly a policy limiting STRs to primary owners reduces the demand for second homes. However, like most other coastal communities in these studies (except Oceanside), Pismo Beach's home prices are already beyond the means of the vast majority of Californians, restricting STRs to primary homeowners simply restricts affordability of STRs. Similarly, high permitting and licensing fees discourage homeowners with more modest (and hence affordable) accommodations from renting out their homes short-term. In many cases, this may lead to homes that are unoccupied despite a high demand for STRs.



Solutions

Access for All

The California Coastal Act guarantees "maximum access"[14] to California's iconic coast and beaches. To that end, the Coastal Commission has endorsed promoting coastal access and prohibiting private beaches anywhere in California. However, as discussed in more detail in the first section of this study, among many threats to coastal access in California the most significant is the high cost of coastal real estate which has forced millions of Californians to migrate inland to find more affordable housing. This inward migration has disproportionately impacted people of color and Californians from low to moderate-income groups. Those displaced inland face much higher costs for a coastal visit than those living closer to the coast. Today, too many of California's beaches have become effectively inaccessible to minority communities and lower income residents.

One possible method to increase access to the coast is to promote affordable overnight accommodations. Although Californians have a variety of options for staying on the coast, most are expensive and many are unavailable during peak season between June and September. The same factors that have driven up the price of residential real estate along the coast have also driven up the cost of overnight accommodations in that area. Studies by the California Coastal

14 1976 California Coastal Act, Section 30210.

Conservancy and the California Coastal Commission indicate this problem is getting worse: many low-cost accommodations have closed and in many cases, the real estate has been transferred to other uses.

Short-Term Rentals

Short-term rentals (STRs) have long been one of the alternative lodging options available to California's coastal visitors. STRs use existing homes and structures to provide additional accommodation for coastal access. Since most homes are unoccupied some of the time, STRs provide a simple, sustainable solution to the problem of coastal access. When planning for sea-level rise, using short-term rentals in existing structures may be a more sustainable alternative to building new structures for lodging on the coast. Unlike hotels, increasing the quantity of available STRs does not require more construction along California's coast. In simple economic terms, allowing more STRs increases the supply of short-term accommodations on the coast. Further, many STRs provide kitchens and accommodations for multiple households, further lowering the costs of overnight stays, especially for low and moderate-income groups and large families.

Limiting STRs along the coast, particularly during the busy summer months, limits coastal access. During the summer, traditional overnight accommodations are scarce and often must be booked months in advance. Every family that cannot find or afford a short-term rental is a family that cannot stay overnight on the coast and perhaps cannot visit at all.

At the local level, one of the primary reasons given for discouraging STRs is that short-term renters contribute to noise, parking problems, and may otherwise disrupt a quiet residential neighborhood. In many ways, these arguments against STRs are a replay of the arguments used to block other types of housing in coastal communities that led to the housing crisis in the first place. **These STR restrictions imply that Californians, who can no longer afford to *live* near the coast, can now no longer afford to *visit* the coast.**

Best Practices for Regulating STRs

The case studies and literature review contained in this paper point toward regulatory practices that can allow access to the coast while also ensuring that neighborhoods remain safe. However, some regulations pertaining to STRs can also have the effect of limiting access, especially for lower income households and underserved communities. To ensure regulations promote access, we recommend the following best practices.

Best Practice	Rationale
Simple, streamlined registration	Reduces the costs to operators as costs are passed on to renters and reduce affordability
Make permitting easy and swift	Allows for more affordability by making it easier to increase the supply of STRs and also encourages registration with the City
Cities require TOT payment and cooperate with STR platforms where possible	Ensures TOTs are collected from all operators
Allow STRs in most or all coastal neighborhoods	Increases affordability near the coast, helping increase coastal access for those who need it most
No minimum on number of nights	Ensures that families who cannot afford multiple nights can still visit the coast
Maximum night cap of 180 nights or more. No night cap on shared space rentals	Helps promote affordability via greater supply of STRs supported by Commission
Ensure compliance with "Good Neighbor Policies" and make renters aware of rules	Promotes harmony between STRs and the residents neighboring them and promotes public safety
Require parking when reasonable	Reduces traffic associated with STRs and promotes agreement with local residents. Reduces parking costs for visitors

Best Practice: Simple, streamlined registration, especially for owners renting out their homes for limited periods.

The case study of Pismo Beach in this report is particularly instructive. Although Pismo Beach is accommodating to STRs in many regards, its permitting fee, coupled with a business license requirement, push costs up to over $450 per rental per year. By comparison, a California Driver's License costs $37 and is typically good for several years. Costly inspections of residences already in compliance with local codes should be limited to properties that are rented more frequently.

Best Practice: Make permitting easy and the process swift.

In addition to lowering permitting fees, communities should make it easy and quick for owners to legally register their property for as a short-term rental and pay the required transient occupancy taxes. Allowing online registration, providing a one-page registration sheet, and ensuring the permitting process is straightforward and efficient are among the ways communities can achieve this goal.

Best Practice: Cities should require and enforce the payment of TOT taxes on STR rentals, collaborating, when possible, with STR Platforms to ensure maximum collection.

The generation of TOT taxes by STRs is an important benefit to the communities where rentals are allowed, and communities should maximize the collection of those taxes to support local services. When possible, cities should collaborate with STR platforms to ensure that all taxes are collected. This practice is already underway in some coastal areas, including the City of Carlsbad. These practices ensure that all STRs are in compliance with the tax policies and generate revenues that can be used to increase resilience.

Best Practice: Allow STRs in most or all coastal neighborhoods.

Some coastal cities (e.g., Carlsbad) allow STRs to operate in the Coastal Zone, promoting coastal access with fewer restrictions. However, many communities (e.g., Santa Barbara) have restricted STRs to commercial zones where hotels already exist. This practice significantly reduces the availability of short-term rentals and often pushes visitors into already busy tourist areas. If this commercial area is away from the coast (as is the case for much of Santa Barbara) then such policies may also increase traffic/parking problems along the coast as more families decide to drive to the beach. Restricting rentals to commercial zones further from the coast also increases the rates of those STRs nearest the coast, pushing low- and moderate-income Californians to less sought-after areas. The net effect here is, once again, a reduction in access to the coast for low- and moderate-income households.

Best Practice: To ensure maximum access, communities should not place minimum restrictions on the number of nights that a residence can be rented.

Del Mar and many other coastal communities have placed restrictions on the minimum number of nights a visitor must stay. Placing three-night or seven-night restrictions on renting limits access, especially for families who can only afford a one- or two-nights' stay.

Best Practice: Discourage restrictions which limit the total number of nights a residence can be leased as an STR.

Some jurisdictions have imposed a maximum number of nights per year that a residence can be leased as an STR. These restrictions also reduce the supply of overnight accommodations on the coast. For example, when Del Mar imposed a 28-day maximum, the California Coastal Commission staff recommended that this restriction on coastal access be modified to a 180-night maximum (or "cap"); however, the final Commission recommendation was for a 100-night cap.

Best Practice: Communities should expect short-term renters to adhere to all rules and regulations regarding noise, excess visitors, and trash. All short-term renters should be made aware of this when they check-in.

The City of Oceanside's **Good Neighbor Policy** (in appendix) provides a good example of this best practice. The city provides all short-term renters with a one-page overview of city rules for STRs including fines for those who violate these rules. These rules limit noise and trash and additional visitors are limited to day-time hours. The City of Oceanside's policies include serious fines (and in some case eviction) for those who violate these policies.

Best Practice: In communities where parking is an issue, communities should require STRs provide adequate parking. Communities and short-term rental owners should also encourage local modes of transportation besides cars, such as STR-provided bicycles, local buses and shuttles, bike rentals, etc.

By encouraging rental owners to provide parking, hosts and cities can reduce the impact of traffic on the surrounding neighborhoods and also makes the cost of visiting less expensive for visitors who avoid parking costs or the cost of citations for illegal parking. It should also be noted, however, that some cities (e.g., Santa Barbara) have used parking requirements to create barriers to entry for new STRs. The increasing availability of short-term bike rentals by private vendors may also reduce parking at busy beaches and other coastal sites.

Enforcing these regulations will require some additional city resources. However, the transient occupancy and other taxes generated by STRs and the visitors they bring in should generate more than sufficient revenue to cover these costs. These regulations should also be enforced fairly, and enforcement should not be aimed at reducing the supply of STRs but rather at making sure all operators are following city regulations and tax policies.[15]

Creating Policies that Encourage Access for Low Income and Underserved Communities

Increasing STRs along California's coast will, by definition, increase access and will also likely lower prices. However, given the high price of accommodation, there may still be an affordability gap for many coastal visitors. The state, local governments, non-governmental organizations, homeowners, and short-term rental platforms must work together as stakeholders in order to ensure access for all. This process will likely involve a give and take among all stakeholders, but the ultimate goal should be clear: to make California's coast more accessible to everyone.

15 The importance of fair enforcement is illustrated by the ruling in *Kracke v. City of Santa Barbara*. The case centers around a change in enforcement by the City. Prior to 2015, Santa Barbara had conducted amnesty programs to "bring into compliance" STR owners and increase their collection of TOTs. However, after 2015 the City began "aggressive" enforcement of its zoning regulations, resulting in reducing the number of STRs, many of which were in the coastal zone. The key issue in the case was that by reducing the number of rentals in the coastal zone, the City effectively limited access, and this "development" required approval from the California Coastal Commission. The judge ruled that in light of this, and the lack of Commission approval for the change in enforcement, the City must return to the practices from prior to 2015 and allow STRs in the coastal zone.

In order to encourage access for low and moderate-income groups as well as underserved communities, the state or local communities may need to take other steps. We believe the following steps should be given serious consideration:

Recommendation	Rationale
State agencies, local governments, foundations and community organizations could **support and fund programs that encourage or subsidize low-income families or those from underserved communities to stay overnight near the coast.** STRs should be part of the solution.	Cooperation with NGOs helps these programs reach those most in need of easy access to the coast. STRs better serve large groups and families due to multiple rooms and varied facilities, such as kitchens. Many STRs are also more affordable for these groups.
Expand the Explore the Coast Overnight Program to Include STRs and include STRs in other pilot programs	It is easier to expand the supply of affordable accommodations through STRs, unlike other lodging forms such as hotels and campgrounds which require new construction on the coast.
Create **affordable STR program with determined eligibility**	Eligibility criteria helps ensure that Californians most in need of affordable accommodation have access to those STRs with affordable rates

Recommendation: State agencies, local governments, foundations and community organizations could support and fund programs that encourage or subsidize low-income families or those from underserved communities to stay overnight near the coast. STRs should be part of the solution.

A number of non-governmental organizations could be involved in sponsoring programs that would encourage greater access from underserved communities. For example:

- **Jr. Lifeguards:** Most coastal communities in Southern California have Jr. Lifeguard programs. However, access to these programs is often limited by how far households are willing to take their kids to these programs. Since these programs are typically during weekday mornings, STRs may help a group from underserved areas stay during the week.
- **Churches:** Coastal community churches may wish to sponsor church groups from underserved communities. Cities may wish to devote a share of transient occupancy taxes to support outreach efforts between communities of faith, which also create access to the coast.
- **Environmental and Social Justice Groups:** Environmental and social justice groups may wish to support or foster programs that encourage access to the coast. This could include subsidizing programs such as the Jr. Lifeguard and interfaith programs mentioned above.
- **YMCAs or Similar Organizations: (e.g., Scouts):** Local YMCAs, scouting, and similar organizations can sponsor overnight trips to coastal communities. Affordable STRs can provide part of the solution.

- **Surfing Organizations:** Local or national surfing organizations may wish to sponsor surfing events that encourage surfers from underserved areas.
- **Other Community Organizations:** Organizations such as Veterans of Forign Wars (VFW), Chambers of Commerce, and various other local groups could sponsor alliances with underserved groups to sponsor coastal access.
- **Foundations:** Both community foundations and larger foundations may wish to sponsor or subsidize programs that encourage visitors from underserved communities to come to the coast. Local governments can partner with these foundations.

Recommendation: The state or local governments should expand pilot programs which increase coastal access. STRs should be part of the solution.

For example, in 2017, the California legislature approved AB 250, which requires the State Coastal Conservancy to develop and implement a specified Lower Cost Coastal Accommodations (LCCA) Program intended to facilitate improvement of existing and development of new lower cost accommodations within one and a half miles of the coast. Although current lower-cost accommodations categories include hotel and motels, hostels, camping, RV's and trailers, dorm rooms, and residential outdoor education facilities (ROEFs) they do not include short-term rentals. We recommend that the State Coastal Conservancy work with the legislature to recognize short-term rentals as an additional category as part of the Explore the Coast Overnight program. As discussed in this paper, unlike other coastal accommodations, it's relatively easy to expand the supply of affordable STRs if the correct programs and incentives are in place. In contrast, creating new hotel rooms or other overnight accommodations is much more costly and also leads to more development along the coast, which many coastal groups oppose.

Recommendation: Create an Affordable STR program which provides reasonably priced overnight accommodations for eligible households.

Even with reduced restrictions on STRs in coastal communities, many families may be left out. Inexpensive STRs may be booked long in advanced by more experienced users. To ensure maximum access, the state (or possibly local governments) should consider a program which makes affordable STRs available eligible households. Eligibility might include means testing using household income or other legal criteria. The end goal would be to encourage access to the coast for families who might not go otherwise. Local governments may consider waiving or lower taxes and STR providers may consider waiving or lowering their booking fees.

Such a policy is also consistent with several recent Coastal Commission decisions involving the development of hotels along the coast. For some hotel developments the commission has required that 25% of rooms be set aside as affordable. Providing affordable STRs could be part of a city or county's local coastal program or could be used to mitigate for other development along the coast.

One simple solution would be to create a lottery which distribute visitor passes (ranked by number or letter) to eligible California households. These households would be allowed to book affordable STRs (and possibly other accommodations) before households with lower lottery outcomes. Eligibility could be based on income, zip code, or any other legal mechanism.

Conclusion

Short-term rentals provide a relatively simple way to increase access to the coast. Since most STRs use already existing property, they should be considered a relatively sustainable solution which can significantly increase the availability of overnight accommodation along the coast.

The expansion of STRs over the past few years has created concern in many coastal communities about neighborhood disturbances and has led many communities to enact severe restrictions on STRs. As stated in the recent *Kracke v. City of Santa Barbara* decision involving the City of Santa Barbara's ban on STRs in the Coastal zone, these restrictions effectively limit access to the coast, particularly for lower income households and underserved communities. STRs need to be properly regulated. However, as the Kracke case demonstrated, too frequently local regulations are designed specifically to restrict access to STRs and hence access to the coast. Increasing coastal access regulations should be simple and transparent to all, and registration should be simple, inexpensive, and swift. Costly inspections on already permitted residential property should be avoided. The goal of any community registration process should be to help STR owners comply with existing rules and regulations and to pay their taxes (generally transient occupancy taxes), not to exclude visitors from accessing the coast.

Glossary

Affordable Housing: In California, housing is designated as affordable based on an area's median household income. Housing is deemed affordable if costs—rent or a mortgage, including utilities—account for no more than 30% of a household's income spent. Communities in California set aside some housing for "very-low income" families, those earning less than 50% of area median income; however, the demand for this housing significantly exceeds the supply.

Business License: Many cities require business licenses to allow individuals/companies to conduct business within a jurisdiction. The cost of a license typically varies by the sales/profit of that business. Some jurisdictions require short-term rental operators, or **hosts**, to obtain a business license at an additional cost to a rental permit.

California Coastal Commission: A twelve-member governmental body established by voter initiative in 1972 and later made permanent by the 1976 California Coastal Act. It plans and regulates the use of land and water along the coastal zone and is tasked with enacting the policies of the California Coastal Act via quasi-judicial authority. The Coastal Commission provides regulatory oversight for land use and public access in the California Coastal Zone.

California Coastal Conservancy: A State agency established in 1976 to protect and preserve natural lands and waterways, improve access to the coast, and support coastal economies. A non-regulatory agency, the Conservancy supports projects and resource plans on issues pertaining to the coastline and watersheds.

Coastal Zone: The region where a body of water borders and intersects with land. Generally, the California coastal zone extends 1,000 yards from the mean high tide line of the ocean, or to the first major ridgeline in rural/recreational areas.

Gentrification: The process of investing in, repairing, or rebuilding an area that is deteriorating or blighted, which is accompanied by an influx of more affluent households. Gentrification typically changes the character of a neighborhood and displaces low-income families.

Geologic Hazard Abatement District (GHAD): GHADs allow the formation of local property tax districts for the purpose of prevention, mitigation, or control of geological hazards. These projects are funded by additional property tax levies within a GHAD. GHADs may be used to protect property against coastal erosion.

Good Neighbor Policy: Typically, part of a broader city ordinance, this policy regulates disturbances in residential neighborhoods, particularly for short-term rentals. These policies require occupants of short-term rentals to limit noise, trash, late night visitors, and other behavior that could damage the quality of life in the neighborhood. The City of Oceanside has a Good Neighbor Policy—which is included in this report—and this policy provides an example of legislation which could be used to govern conduct in short-term rentals.

Host: The owner of a residential property who rents out some or part of that space to visitors on a short-term (less than 30 day) basis.

Hotel Tax: See Transient Occupancy Tax.

Lower-Cost Coastal Accommodation (LCCA): The California Coastal Conservancy defines LCCAs as accommodations which have a daily rate that is 75% or less of the statewide average daily rate (ADR) for an overnight accommodation for a given time period. This report uses the LCCA rate for July 2019, $140.72.

Non-market good or service: Economists refer to goods, which are provided for free (often by nature), as non-market goods. Unlike market goods, which have prices and are valued accordingly by the market, non-market goods are often undervalued since their provision is free.

Maximum Capacity: The number of people who may legally inhabit a short-term rental, often defined as the number of beds + 2; although, the number may be fewer in certain cities due to local ordinances or host restrictions.

Mean High Tide Line: The average of the maximum line of intersection between the water at high tide and the land. This defines the coastal boundary and in California, the boundary of public land. According to the California Coastal Act, all land seaward of the mean high tide line is public property. Note that the mean high tide line will shift with sea level rise.

Mello-Roos: The 1982 Mello-Roos Community Facilities Act was created in the wake of Proposition 13 to provide an alternate method of financing necessary public improvements and services. It allows an authority to set up a Community Facilities District (CFD) with an associated Special Tax that can be used for necessary improvements and services that otherwise lack funding. The Special Tax is levied against each property in the CFD.

Mom and Pop: While originally a colloquial term applied to any small business, academic literature on short-term rentals often refers to hosts, who lease their own home or a second home, as "mom and pop" operators. Mom and Pop operators are particularly sensitive to restrictions on short-term rentals.

Multi-Family Dwelling: A building or structure that is designed to house several different families in separate housing units. The most common type of multi-family dwelling are apartment buildings. Multi-family dwellings can only be constructed where a certain level of density is permitted. These buildings differ from Single Family Detached Dwellings, where each structure houses one family.

Permit Fee: The cost charged by a city or county to obtain legal documentation of a short-term rental. Typically, these permit fees are non-refundable.

Property Tax: A tax assessed on real estate holdings levied by the governing authority of the jurisdiction where the land or property is located.

Proposition 13: A proposition passed by California voters in 1978 which lowered property taxes by about 57%. Tax increases are limited to no more than 2% per year. As a result of Proposition 13, many homes and businesses are assessed and pay taxes at a much lower rate than the market value of the property.

Registration: In this report, the term refers to the process by which a homeowner notifies the city or municipality that they intend to rent out their space as a short-term rental and agrees to pay the associated transient occupancy taxes.

Resilience (to Climate Change): The characteristic of any system to maintain its integrity despite shocks from extreme weather and other phenomena accelerated by climate change. Financial resilience is the ability of communities to raise funds for climate change adaptation.

Restrictive Zoning: Also referred to as Exclusionary Zoning, restrictive zoning is the use of zoning ordinances to exclude certain types of construction or land use inside a community. Many California cities have restrictive zoning laws which impede the development of multi-family and other types of affordable housing.

Sales Tax: A tax levied on sales, typically retail sales. In California, the state sales tax rate is set at 7.25%. This rate is made up of a base rate of 6% plus a local rate of 1.25% that goes directly to city and county budgets. Cities and counties can add additional sales tax levies to fund local projects, such as transportation.

Short-Term Rental (STR): A home or room available to rent for a period of less than 30 days.

Tax Increment Financing (TIF): TIF refers to additional property tax levies within a set district to raise funding (e.g., for climate change resilience). GHADs and Mello-Roos levies are two examples of TIFs.

Transient Occupancy Tax (TOT): A tax charged to travelers when they rent out a space for less than 30 days, such as a hotel room, home, hostel room, etc. TOTs are levied by cities and counties (for unincorporated areas), and revenues collected go to these jurisdictions. In California, TOT rates range from 10% to 15%.

Utility User Tax (UUT): A tax paid by the users of a public service, such as electricity, water, telephone, sewage, trash, and natural gas.

Willingness to Pay (WTP): An economic concept referring to the largest sum of money an individual will pay for a "non-market" good or service, such as a trip to the beach. WTP is often used as a measure of demand for non-market goods, such as a day at the beach.

Zoning: A legislative process which divides an urban area into different zones with specific uses, such as residential, commercial, industrial, etc. Each zone is regulated with regard to density, location, size, and type of construction permitted. In California, as in most states, local authorities largely determine zoning. Some communities' policies can lead to restrictive zoning, which often limits the development of multi-family housing or use of short-term rentals.

References

Special thanks to Dr. Kiersten Patsch for assistance with the GIS mapping of the rental listings.

Ainsworth, John., Susan Hansch, and Madeline Cavalieri. 2016. Public Workshop: *Lower Cost Visitor Serving Accommodations*. California Coastal Commission. Retrieved from https://www.ioes.ucla.edu/wp-content/uploads/th6-11-2016.pdf.

Aznar, Juan, Josep M Sayeras, Alba Rocafort, and Jorge Galiana. 2017. "The Irruption of Airbnb and Its Effects on Hotels Profitability: An Analysis of Barcelona's Hotel Sector." *Intangible Capital*13, no. 1 (2017): 147–59. https://doi.org/10.3926/ic.921.

Bergman, Ben. *Access Denied. KCET: SOCAL Connected*, KCET, 29 Oct. 2019, www.kcet.org/shows/socal-connected/episodes/access-denied.

Bliss, Laura. 2019. "The NIMBY Principle." *Citylab*, July 26, 2019. https://www.citylab.com/equity/2019/07/nimby-vs-yimby-single-family-zoning-laws-california-housing/594373/.

Blal, Inés, Manisha Singal, and Johnathan Templing. 2018. "Airbnb's Effect on Hotel Sales Growth." *International Journal of Hospitality Management* 73: 85–92. https://reader.elsevier.com/reader/sd/pii/S0278431917305844?-to...841CA2AC90E326224514AC12A625447C93CF57115D3090452DE43B9EF1B4E.

Boarnet, Marion, Raphael Bostic, and Danielle Williams. 2017. "Can Affordable Housing in Transit-Oriented Development Help Solve California's Housing Crisis While Also Addressing Environmental Goals?" *UC Davis Policy Briefs*. https://escholarship.org/uc/item/31t851c6.

Brugmann, Jeb. 2012. "Financing the Resilient City." *Environment and Urbanization*24, no. 1: 215–32. https://doi.org/10.1177/0956247812437130.

California Budget Project. 2011. *"Should California Extend the Sales Tax to Services?"* https://calbudgetcenter.org/wp-content/uploads/111004_Sales_Tax_Services_BB.pdf.

California City Finance. 2019. "An Overview of Local Revenue Measures in California Since 2001." *The California Local Government Financial Almanac*. http://www.californiacityfinance.com/LocalMeasuresSince01.pdf.

California City Finance. 2018. "Local Measure Results."

California City Finance. 2017. "Utility User Tax Facts."

California Coastal Act (1976). https://www.coastal.ca.gov/coastact.pdf.

California Coastal Commission. 2019. *Staff Report: Regular Calendar--Sunshine Enterprises LP (Shore Hotel)*. (Report no. 5-18-0872) Retrieved from https://documents.coastal.ca.gov/reports/2019/5/W16a/W16a-5-2019-report.pdf.

CBRE. 2016. "The Sharing Economy Checks In: An Analysis of Airbnb in the United States." *CBRE Hotels' Americas Research*, January 2016, 1–15.

Chapple, Karen. "Income Inequality and Urban Displacement: The New Gentrification." 2017. *New Labor Forum*26, no. 1: 84–93. https://doi.org/10.1177/1095796016682018.

Choi, Ki-Hong, Joohyun Jung, Suyeol Ryu, Su-Do Kim, and Seong-Min Yoon. 2015. "The Relationship between Airbnb and the Hotel Revenue: In the Case of Korea." *Indian Journal of Science and Technology*,8, no. 26 (October 2015): 1–8. https://doi.org/0974-5645.

Christensen, Jon., and Phillip King. 2017. *Access for All: A New Generations Challenges on the California Coast*. (January). Retrieved from https://www.ioes.ucla.edu/coastal-access/.

Coastal Conservancy. 2019. *Explore the Coast Overnight: An Assessment of Lower-Cost Coastal Accommodations*. Retrieved from https://scc.ca.gov/files/2019/10/Explore-the-Coast-Overnight-Assessment-AB4343.pdf.

Coleman Company. 2017. *American Camper Report*. https://outdoorindustry.org/wp-content/uploads/2015/03/2017-Camping-Report__FINAL.pdf.

Coleman, Michael. 2016. "A Primer on California City Revenues, Part Two: Major City Revenues," *Western City*, December 1 , 2016 http://www.westerncity.com/article/primer-california-city-revenues-part-two-major-city-revenues.

Coyle, Diane, and Timothy Yu-Cheong Yeung. 2016. "Understanding Airbnb in Fourteen European Cities." *The Jean-Jacques Laffont Digital Chair Working Papers*. https://www.tse-fr.eu/sites/default/files/TSE/documents/ChaireJJL/PolicyPapers/2016_30_12_pp_understanding_airbnb_in_14_european_cities_coyle_yeung_v.3.1.pdf.

Freeman, Lance, and Jenny Schuetz. 2017. "Producing Affordable Housing in Rising Markets: What Works?" *Cityscape* 19, no. 1: 217–236. https://www.jstor.org/stable/10.2307/26328307.

Horn, Keren, and Mark Merante. 2017. "Is Home Sharing Driving up Rents? Evidence from Airbnb in Boston." *Journal of Housing Economics*38: 14–24. https://doi.org/10.1016/j.jhe.2017.08.002.

Interian, Johanna. 2016. *Up in the Air: Harmonizing the Sharing Economy Through Airbnb Regulations*, 39 B.C. Int'l & Comp. L. Rev. 129 https://lawdigitalcommons.bc.edu/iclr/vol39/iss1/6.

Jefferson-Jones, Jamila. 2015. "Airbnb and the Housing Segment of the Modern 'Sharing Economy': Are Short-Term Rental Restrictions an Unconstitutional Taking?" *Hastings Constitutional Law Quarterly*42. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2624700.

Kracke v. City of Santa Barbara, 2019. Ventura County Superior Court. 56-2016-00490376-CU-MC-VTA

League of California Cities. "Propositions 26 and 218: Implementation Guide." 2019.

Lee, Dayne. 2016. How Airbnb short-term rentals exacerbate Los Angeles's affordable housing crisis: Analysis and policy recommendations. *Harvard Law & Policy Review*, 10, 229–253. http://harvardlpr.com/wp-content/uploads/2016/02/10.1_10_Lee.pdf.

Marcus, Justine, and Miriam Zuk. 2017. "Displacement in San Mateo County, California: Consequences for Housing, Neighborhoods, Quality of Life, and Health." *UC Berkeley Research Brief 2*. https://escholarship.org/uc/item/0n904028.

Mckinsey & Company. 2016. "Closing California's Housing Gap." Mckinsey Global Institute. https://www.mckinsey.com/featured-insights/urbanization/closing-californias-housing-gap.

McNamara, Brittany. 2015, "Airbnb: a not-so-safe resting place", Colorado Technology Law Journal, Vol. 13 No. 1, pp. 149-69. https://ctlj.colorado.edu/wp-content/uploads/2015/01/McNamara-final.pdf.

Medford, Joel A. 2018. "Estimating the Nonmarket Value of Beach Recreation in Southern California Across Race And Ethnicity: An Onsite Travel Cost Model." PhD diss., University of Georgia

Metcalf, Gabriel. 2018. "Sand Castles Before the Tide? Affordable Housing in Expensive Cities." *Journal of Economic Perspectives*32, no. 1: 59–80. https://doi.org/10.1257/jep.32.1.59.

Midgett, Chelsea, Joshua S Bendickson, Jeffrey Muldoon, and Shelby J Solomon. 2017. "The Sharing Economy and Sustainability: A Case for Airbnb." *Small Business Institute Journal*13, no. 2: 51–71. https://doi.org/1994-1150/69.

Murray, Cecile, and Jenny Schuetz. 2019. "Is California's Apartment Market Broken?" *Terner Center Land Use Working Paper Series*. https://www.brookings.edu/research/is-californias-apartment-market-broken/.

Neeser, David. 2015. "Does Airbnb Hurt Hotel Business: Evidence from the Nordic Countries." Master's Thesis, Universidad Carlos III de Madrid.

Owens, Ann. 2019. "Building Inequality: Housing Segregation and Income Segregation." Sociological Science 6: 497-525.

Quigley, John M, and Steven Raphael. 2005. "Regulation and the High Cost of Housing in California." *American Economic Review*95, no. 2: 323–28. https://doi.org/10.1257/000282805774670293.

Reineman, Dan R., Lisa M. Wedding, Eric H. Hartge, Winn McEnery, and Jesse Reiblich. 2016. "Coastal Access Equity and the Implementation of the California Coastal Act." *Stanford Environmental Law Journal*, no. 36. 89-108. https://law.stanford.edu/publications/coastal-access-equity-and-the-implementation-of-the-california-coastal-act/.

Renau, Luis de Romero. 2018. "Touristification, Sharing Economies and the New Geography of Urban Conflicts." *Urban Science*2, no. 104 (October 15, 2018). https://doi.org/10.3390/urbansci2040104.

Resources Legacy Fund. 2018. "Paying for Climate Change Adaptation in California," https://resourceslegacyfund.org/wp-content/uploads/2018/11/Paying-for-Climate-Adaptation-in-California.pdf.

Sampson, Robert J., Jared N. Schachner, and Robert D. Mare. 2017. "Urban Income Inequality and the Great Recession in Sunbelt Form: Disentangling Individual and Neighborhood-Level Change in Los Angeles." *RSF: The Russell Sage Foundation Journal of the Social Sciences*3, no. 2: 102–28. https://doi.org/10.7758/rsf.2017.3.2.05.

Santa Barbara Short Term Rental Alliance. 2017. *"Lawsuit Filed Against the City of Santa Barbara for Legal R-4 Short Term Rentals."* September 21, 2017. https://www.santabarbarashorttermrentalalliance.com/news/2017/9/21/lawsuit-filed-against-the-city-of-santa-barbara-for-legal-r-4-short-term-rentals.

Smith-Heimer, Janet, and Jessica Hitchcock. 2019. "CEQA and Housing Production: 2018 Survey of California Cities and Counties." *Environmental Practice*21, no. 2 (March 2019): 69–84. https://doi.org/10.1080/14660466.2019.1609848.

Schwing, Karl, Deborah Lee, Kaitlin Carney. 2018. *"Staff Recommendation on City of Del Mar Major Amendment LCP-6-DMR-17-0083-3 (Short-Term Rentals) for Commission Meeting of June 7, 2018."* May 24, 2018. https://documents.coastal.ca.gov/reports/2018/6/th14d/th14d-6-2018-report.pdf.

Wachsmuth, David, and Alexander Weisler. 2018. "Airbnb and the Rent Gap: Gentrification through the Sharing Economy." *Environment and Planning A: Economy and Space*50, no. 6: 1147–70. https://doi.org/10.1177/0308518x18778038.

Wassmer, Robert W. 2002. "Influences of the 'Fiscalization of Land Use' and Urban-Growth Boundaries." *An Economists Perspective on Urban Sprawl--Part II*. https://doi.org/10.1080/00420980220142655.

Weisberg, Lori. 2015. "Commission still trying to preserve affordable lodging along California Coast." *Los Angeles Times*, August 9, 2015. https://www.latimes.com/local/california/la-me-coastal-20150810-story.html

Wisckol, Martin. 2019. “Dana Point hotel plans stalled by Coastal Commission concerns with low-cost lodging needs.” *The Orange County Register*, September 12, 2019. https://www.ocregister.com/2019/09/11/dana-point-hotel-plans-stalled-by-coastal-commission-over-concerns-for-low-cost-lodging/.

Zervas, Georgios, Davide Proserpio, and John Byers. 2015 “The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry.” *SSRN Electronic Journal*, 1–45. https://doi.org/10.2139/ssrn.2366898.

Attachment O

Kathleen Stecko

Subject: Short-Term Rentals and Housing Affordability - Expedia Group
Attachments: image002.png; ATT00001.htm; Expedia_Housingreport_FINAL.pdf; ATT00002.htm; Expedia_Oxford_Infographic_Pie-Charts.pdf; ATT00003.htm

From: "Walter Gonzales (ELCA)"
Date: December 6, 2019 at 7:47:42 AM PST
To: "Walter Gonzales (ELCA)
Subject: Short-Term Rentals and Housing Affordability - Expedia Group

Good Morning –

I am the Expedia Group Government Affairs Manager for the SW United States. I have met with many of you to discuss the benefits of short-term rentals, ways they can be reasonably regulated and ways in which Expedia Group can assist with compliance. Expedia Group is the world's travel platform – connecting travelers with travel services from hotels and rental cars to the increasingly popular vacation rental ecosystem though our vacation rental brand Vrbo; the original vacation rental provider. We occupy a unique place in the ecosystem with insight across travel habits, preferences and the overall travel economy. From this vantage point we know that travelers want a variety of options and that increasingly includes vacation rentals. They are an expected part of the travel accommodation mix. And they aren't going away.

We also know that the rise in vacation rentals has created challenges as cities consider the right approach to balancing this important option for tourists with the needs and considerations of your cities and residents. We are committed to being good partners in the communities in which we operate. We want to ensure that tourism is having a positive impact.

That's why we have worked with elected officials from across the country to collaborate on developing fair and effective vacation rental policy. As we have had these conversations, we've heard concerns that vacation rentals may have an impact on housing affordability. We take this concern seriously. So, we commissioned an independent, in-depth study from Oxford Economics to examine the key drivers of affordable housing challenges, and to what extent vacation rentals play a role.

- Over the course of 4 years and across more than 2500 U.S. counties, Oxford Economics analyzed over 70 unique drivers that contribute to increased housing prices—both in terms of rent and home prices.
- What the study found was that vacation rentals have an extremely minimal impact on rising housing costs. It found that the overwhelming contributor to rent increases was a rise in household earnings, and the biggest contributors to home price increases was labor market improvements (including a major drop in unemployment), household income, housing supply, and building permits. Home building costs, zoning restrictions, and a shortage of skilled labor have also contributed to reduced housing stock.
- Vacation rentals are such a small contributor to house and rent price increases, that median monthly rents would have been just $2 lower in 2018 if STRs had remained at their 2014 levels. And, the average annual mortgage payment would have been only $105 cheaper if STRs had remained at their 2014 levels.
- Over-regulating or even banning STRs in an attempt to address affordable housing concerns is not a solution, because STRs aren't the problem. Vacation rentals have a minimal impact on the market, meaning over-regulation will have minimal impact on the problem.
- While we know that vacation rentals are not the problem, we are committed to working collaboratively with communities to develop fair and effective policy that balances the needs and concerns of community with the positive impact vacation rentals can have.

We are committed to being good partners in the communities in which we operate and we want to ensure that tourism is having a positive impact.

Thank you for all your hard work on this issue. I look forward to continuing this discussion with you and your colleagues. Please feel free to contact me directly with any questions or comments.

Walter R. Gonzales

Vacation Rentals and Housing Affordability

One of the biggest policy issues facing lawmakers is how to responsibly regulate the growing demand for vacation rentals. For the past several years, Expedia Group has worked closely with city and state governments to develop vacation rental policy that meets the needs of locals, travelers, and those who own and operate vacation rentals. Through these conversations, we learned that housing affordability—and the extent to which vacation rentals impact housing affordability—was a top concern for lawmakers. As part of our commitment to creating a healthy travel ecosystem, Expedia Group commissioned Oxford Economics to examine the impact of vacation rentals on housing prices to help inform vacation rental policy.

expedia group

Oxford Economics analyzed more than 70 unique variables to determine the drivers of increased rents and housing prices.

WHEN?

2014–2018

WHAT?

Over 70 variables

ex. STR listings, tourism GDP, unemployment, housing stock

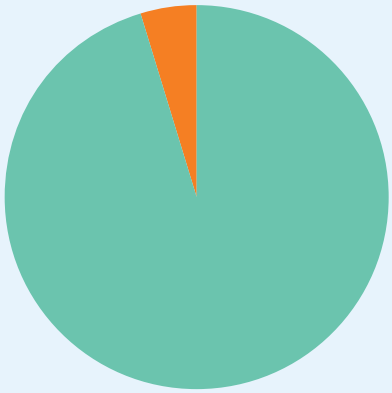
WHERE?

More than 2500 U.S. counties

Mix of large urban, resort, cultural destinations

Drivers of growth in real rents between 2014–2018:

4.3% increase in real rent prices



- STR Density: .2%
- Other contributing factors*: 4.1%

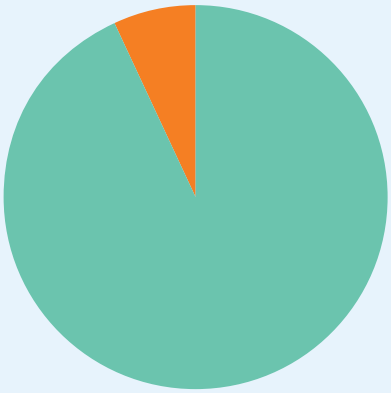
Conclusion: STRs account for .2% of increased rent prices

Pocketbook Impact

Median monthly rents only $2 cheaper without STR growth

Drivers of growth in house prices between 2015–2018:

14.9% increase in real house prices



- STR Density: 1%
- Other contributing factors*: 13.9%

Conclusion: STRs account for 1% of increased house prices.

Pocketbook Impact

Average annual mortgage only $105 cheaper without STR growth

Vacation rentals have had minimal impact on housing and rent prices, meaning over-regulation of the practice would have minimal impact on housing affordability issues.

OXFORD ECONOMICS

* Access the full report here: VrboAdvocates.com/research
Questions? Contact us: GovernmentAffairs@Vrbo.com

OXFORD ECONOMICS

Vrbo

THE DRIVERS OF HOUSING AFFORDABILITY

An assessment of the role of short-term rentals

NOVEMBER 2019

TABLE OF CONTENTS

EXECUTIVE SUMMARY

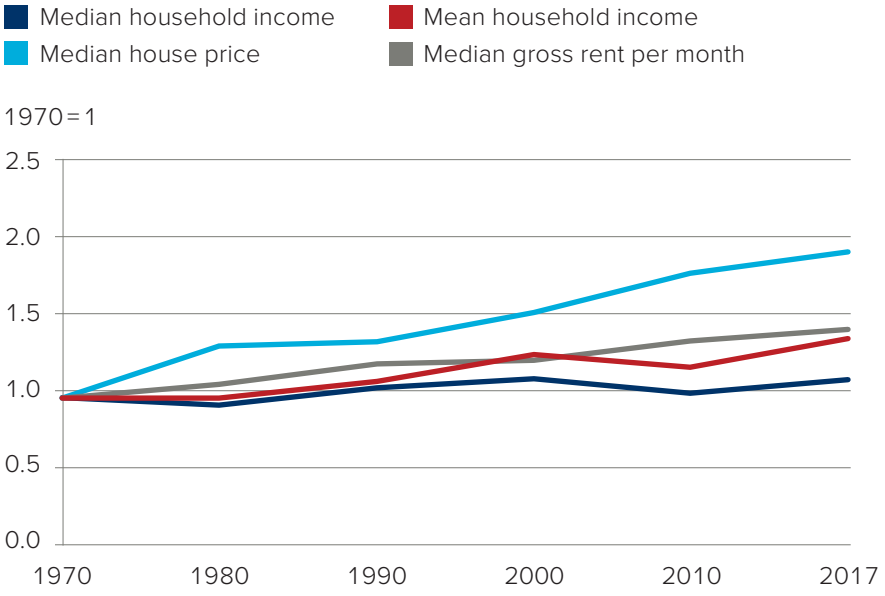
In the past year, **the US-wide affordable housing crisis has consistently made headlines.** Today, some 18 million US households spend more than half their gross income to pay basic accommodation costs.[1]

The root causes of the housing crisis can be traced back to changes that significantly pre-date the growth of the short-term rental (STR) market. The rising unaffordability of housing is a long-term trend reflecting four decades during which rental and house prices have grown consistently faster than incomes (Fig. 1). Indeed, Fig. 1 also provides a strong indication of the underlying causes of the problem. While the income of a typical (median) household stagnated between 1970 and 2010, average US household incomes grew strongly, supporting sustained growth in house prices. These trends were the manifestation of the significant increase in income inequality that occurred in the US during this period.

18.2 million

Number of US households who now spend more than half their income paying basic housing costs.

Fig. 1. Growth rate of median and mean household incomes, median house prices and median gross rent per month, 1970–2017[2]



Source: 1970–2000 Decennial Censuses, 2010 and 2017 ACS

[1] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019", 2019.

[2] It is important to note that rents have been growing faster than incomes over the past decades, as illustrated in Fig. 1. However, over the past few years, incomes have picked up and therefore, during our study period, the real growth in income was greater than that in rents.

> *"The shortfall in new homes is keeping the pressure on house prices and rents—eroding affordability, particularly for modest-income households in high-cost markets."*
>
> *—Joint Center for Housing Studies*

Recently, public attention has increasingly focused on supply side issues in the market, which have been argued to have exacerbated the current crisis. For example, in a recent study, the Joint Center for Housing Studies concluded that the core of this crisis is a supply issue, with net new housing supply held back mainly by high building costs, zoning restrictions, and labor shortages in the construction sector. On the other hand, other commentators have focused on the role of STRs, as they allegedly reduce the supply of affordable housing by removing properties from the rental market, displacing long-term tenants, and raising the cost of living.

Given this context, Oxford Economics was commissioned by Vrbo to carry out a study to:

1) learn the key drivers of increasing house prices and rents; and
2) analyze the role played by STRs with regard to housing affordability.

The dynamics of housing markets have been the subject of academic literature for decades, with the general consensus concluding that:

- **rent** is mainly determined by the number of housing units, the number of households, and income levels; while
- **house prices** depend positively on disposable income and demographic growth, and negatively on housing stock and the "user cost of capital".[3]

Our study borrows the backbone of its modeling framework from this literature. We also included STR density and a mix of other explanatory variables to answer our second research question.

MODEL FINDINGS

For this study we constructed a comprehensive dataset of all US counties over the period 2014–2018.[4] The dataset included over 70 variables, ranging from average household income to the number of residential building permits in each county.[5] We then used this database to build two econometric models, one aimed at determining the drivers of rents, and

[3] The user cost of capital includes the mortgage interest payments that an owner has to make, but also annual property taxes, depreciation costs, and any expected capital gain.

[4] 2014 was the first year covered in the AirDNA database, our data source for STR listings. Listing data were missing for some US counties, so we had to exclude those from our study.

[5] Building permits represent the number of new privately-owned housing units authorized by building permits in the United States. As shown later in this document, we derive our "permits per household" variable by dividing the number of building permits by the number of households.

the second focusing on house prices. In both models, all variables have the expected effect and are statistically significant—for example:

- Household income is found to have a *positive* impact on both rents and house prices—the greater purchasing power afforded by higher incomes enables households to increase expenditure on housing.
- On the other hand, housing supply is found to have a *negative* impact on rents and house prices—more abundant supply, as defined as a higher number of housing units per household, allows house buyers to shop around more, helping to keep a lid on price growth.[6]

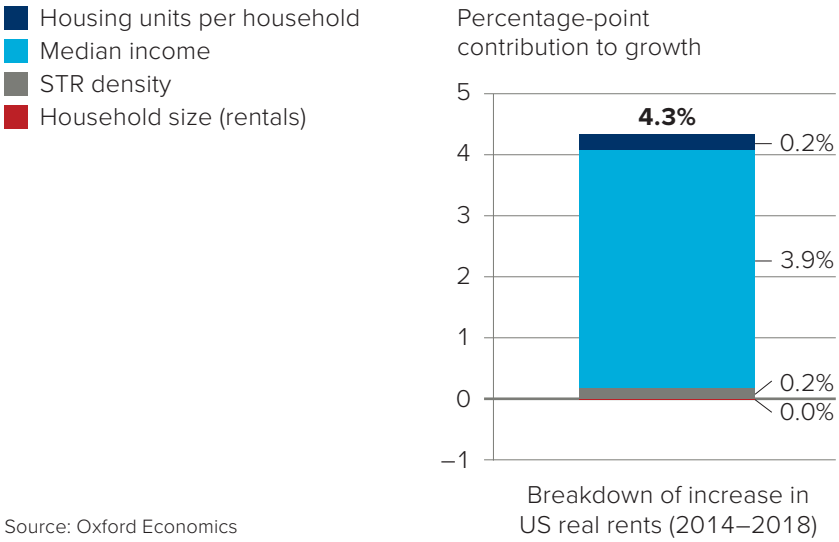
The findings of our rental model, combined with changes in the explanatory variables over the study period, show that the **overwhelming driver of the observed increase in real rental prices during the 2014–18 period was household earnings.** Median income increased by 10.4% in real terms over our study period. We estimate that this growth alone was responsible for around 3.9 percentage points (or 91%) of the overall 4.3% increase in median real rents in this period (see Fig. 2).

3.9 percentage points

Estimated increase in real rents attributed to rising household earnings between 2014 and 2018.

The overall increase was 4.3%.

Fig. 2. Drivers of the growth in real rents between 2014 and 2018



Source: Oxford Economics

[6] Housing supply is measured as the number of housing units divided by the number of households in each county. As a result, our housing supply variable is independent of the STR density. For example, if one unit is subtracted from the STR market and added back to the long-term rental market, this will not have any impact on housing stock per household. In other words, the effect of this change would be fully captured by the impact of STR density and would not "double up" as a boost in housing stock.

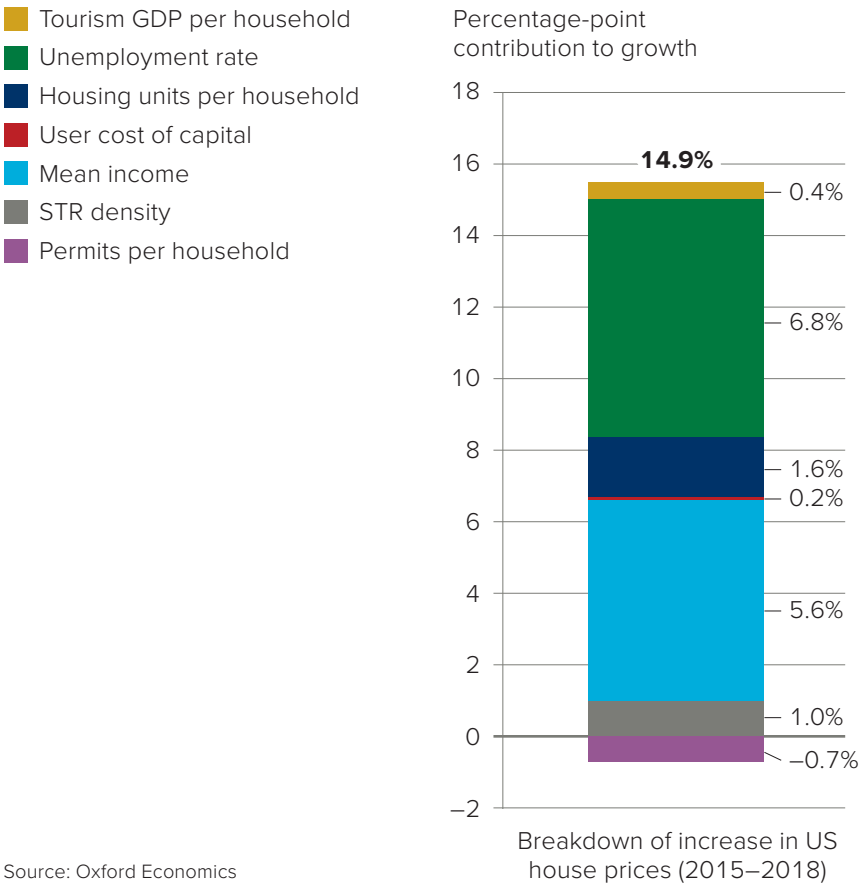
6.8 percentage points

Estimated increase in real house prices attributed to dropping unemployment over the study period.

The overall increase was 14.9% between 2015 and 2018.

In our house price model, we found that **the biggest contribution to the growth in house prices came from labor market improvements.** Specifically, the drop in US unemployment over the study period is estimated to have added 6.8 percentage points to US house prices growth (see Fig. 3). Income was another major contributor, adding 5.6 percentage points to house price growth over the study period. We also find that housing supply and building permits had an impact on house prices growth during the period.

Fig. 3. Drivers of growth in US house prices between 2015 and 2018[7]



Source: Oxford Economics

[7] The inclusion of lagged variables in the house price model implies that their growth between 2014 and 2015 starts affecting prices in 2015–16. For this reason, the contribution analysis for house prices only covers the period 2015–18 and not 2014–18.

THE IMPACT OF SHORT-TERM RENTALS

Our modeling indicates that **the presence of STRs has not substantially driven the US house price and rent increases over the past few years.**

For the period 2014–18, we find that, in the absence of any growth in the number of STRs, real rents would still have grown by 4.1%, as opposed to the actual growth rate of 4.3%. Put another way, **median monthly rents would have been only $2 lower in 2018** if STRs had remained at their 2014 levels. In the homeowners' market, the impact attributable to the growth in STR density represents less than a one-percentage-point difference in house prices growth. In other words, we estimate the **average annual mortgage payment would have been $105 cheaper** if STRs had remained at their 2014 levels.

What do these findings tell us about affordability? To answer this question, we estimated the 2018 median price of a property in the US in a counterfactual scenario where STRs did not grow over the study period. When considering these counterfactual house prices in relation to average household incomes, we found that **the price-to-income ratio would have increased to 2.39 in 2018 in a scenario with no STR growth, as opposed to the actual value of 2.41.**

Interestingly, an extension of our baseline models suggests that, in the long run, **the effect of STRs on both house prices and rents is weaker in highly seasonal areas.**[8] One explanation for this is that, in vacation markets, homes are less likely to be rented on a long-term basis. In addition, home owners of properties in seasonal destinations have been renting out their properties long before the advent of internet platforms offering STRs (through agencies and brokers) and therefore the value from such rental revenue has long been priced in the value of homes in these localities.

Our findings suggest that adopting stricter regulations on STRs is unlikely to solve the housing affordability crisis faced by many American households, in both the rental and homeowners' market. Moreover, it is important to weigh these potentially modest affordability benefits against the associated negative consequences for the local economy, e.g. lower levels of tourist expenditure and tax receipts.

$2

Estimated reduction in median monthly rent for 2018 if STR density remained at its 2014 level.

$105

Estimated increase in average annual mortgage payment attributed to growing STR density over the study period.

> *"Adopting stricter regulations on STRs is unlikely to solve the housing affordability crisis faced by many American households."*

[8] Short-run effects look at the immediate impact of a variable X over Y. Over time, given the dynamic nature of the housing market, there will be several equilibrating adjustments to the short-run effects, as the economy and people readjust. As a result, the long-run effect of a given variable X over Y is different.

1. SCOPE AND STRUCTURE OF THIS REPORT

Oxford Economics was commissioned by Vrbo to carry out a study of housing affordability and short-term rentals. Specifically, our analysis sought to:

- learn the key drivers of house prices and rents;
- analyze the role played by short-term rentals on affordability; and
- establish whether relationships vary across housing market types.

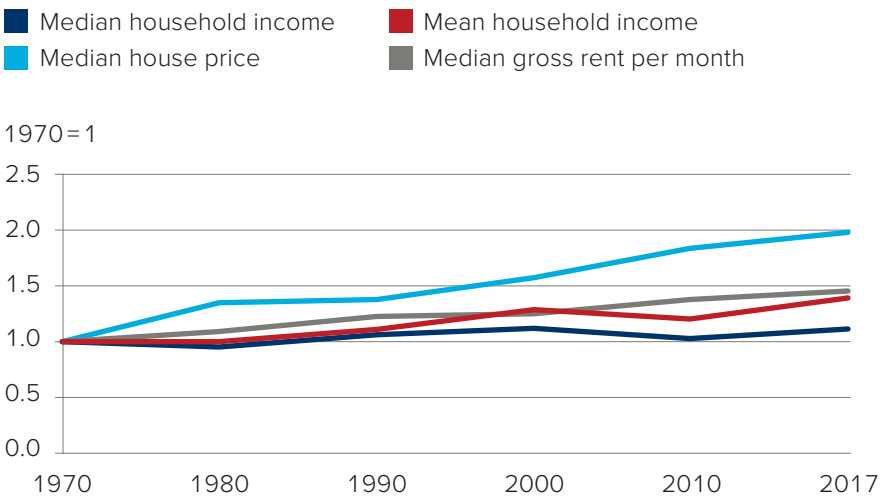
The resulting report begins by introducing the US affordability crisis (Chapter 2), before reviewing existing literature on housing and short-term rentals (Chapter 3). First and foremost, this study aims to contribute to the literature on housing market dynamics, as well as adding to the still limited literature studying the effect of short-term rentals on housing markets.

In Chapter 4, we set out a new approach to modeling house prices and rents, based on a panel dataset covering the period 2014–18, with the objective of identifying which variables are statistically significant drivers of prices and rents.

Our results from this approach, set out in Chapter 5, illustrate the sensitivity of house prices and rents to different macroeconomic drivers, including the supply of housing, cost of capital, and household earnings, as well as STR density. Armed with these results, we then calculated the contribution that each macroeconomic driver made to the housing market variable. We find that economic and labor market conditions explain the lion's share of housing market developments during our study period.

2. AMERICA'S AFFORDABLE HOUSING CRISIS

Fig. 4. Growth rate of median and mean household incomes, median house prices and median gross rent per month, 1970–2017[9]



Source: 1970–2000 Decennial Censuses, 2010 and 2017 ACS

Housing is increasingly an issue of public policy concern, as the US faces an affordable housing crisis. For decades, rents have been growing faster than incomes (Fig. 4), and nearly 200 US cities had a median home value of at least $1 million as of June 2018.[10] After a few years of decline, the number of people experiencing homelessness has grown again over the past couple of years.[11]

Theoretical models and the empirical literature on the housing market suggest that, over the long run, house prices depend positively on disposable income and demographic needs, and negatively on user costs and the housing stock.[12] This last factor in particular has been thoroughly discussed in the policy debate.

Many experts have argued that, at its core, the US housing crisis is a supply issue.[13] Between 2014 and 2018 (the period covered in our study), 5.1 million new households are estimated to have formed in the US, while net new housing supply was up only 4.1 million.[14] This implies the ratio of housing units-to-households declined between 2014 and 2018.

In the remainder of this chapter, we present snapshots of the affordability issue for renters and homeowners in turn. We then introduce the short-term rental market, the growth of which has created debate among local governments, housing activists, and residents about its impact on the availability of affordable long-term housing.

[9] It is important to note that rents have been growing faster than incomes over the past decades, as illustrated in Fig. 4. However, over the past few years, incomes have picked up and therefore, during our study period, the real growth in income was greater than that in rents.

[10] Zillow, "List of $1M (Home Value) Cities Could Grow by 23 in the Next Year", 9 August 2018.

[11] HUD Exchange, "2018 AHAR: Part 1 – PIT Estimates of Homelessness in the U.S.", December 2018.

[12] A variable X is said to have a positive impact on variable Y when an increase in X is associated with an increase in Y. A variable X is said to have a negative impact on variable Y when an increase in X is associated with a drop in Y. IMF, "Fundamental Drivers of House Prices in Advanced Economies", *IMF Working Paper*, July 2018.

[13] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019", 2019.

[14] These numbers represent the net growth in the two variables. In other words, more than 5.1 million households may have formed over the study period, but at the same time some households may have dissolved. The net household formation was 5.1 million between 2014 and 2018.

WHY CAN'T THE US BUILD ENOUGH HOUSES TO MEET THE DEMAND?

Since 2011, residential housing construction has increased, but not enough to meet demand, according to Freddie Mac. There are various reasons for this.

First, the **housing boom in the early 2000s** produced an excess stock of houses, making builders and creditors more cautious of speculative construction projects that would inflate the housing stock too fast. Another contributing factor is **home building cost**, which encompasses the cost of land and raw materials. The price of raw materials has risen by over 20% since the recession, according to Bureau of Labor Statistics' data.

Laws and regulations such as local **zoning restrictions** on lot sizes, building height, and minimum number of parking spots also increase the cost of building a home, in turn reducing the supply of new houses. The National Association of Home Builders (NAHB) estimates that regulatory costs increased by 29% between 2011 and 2016.

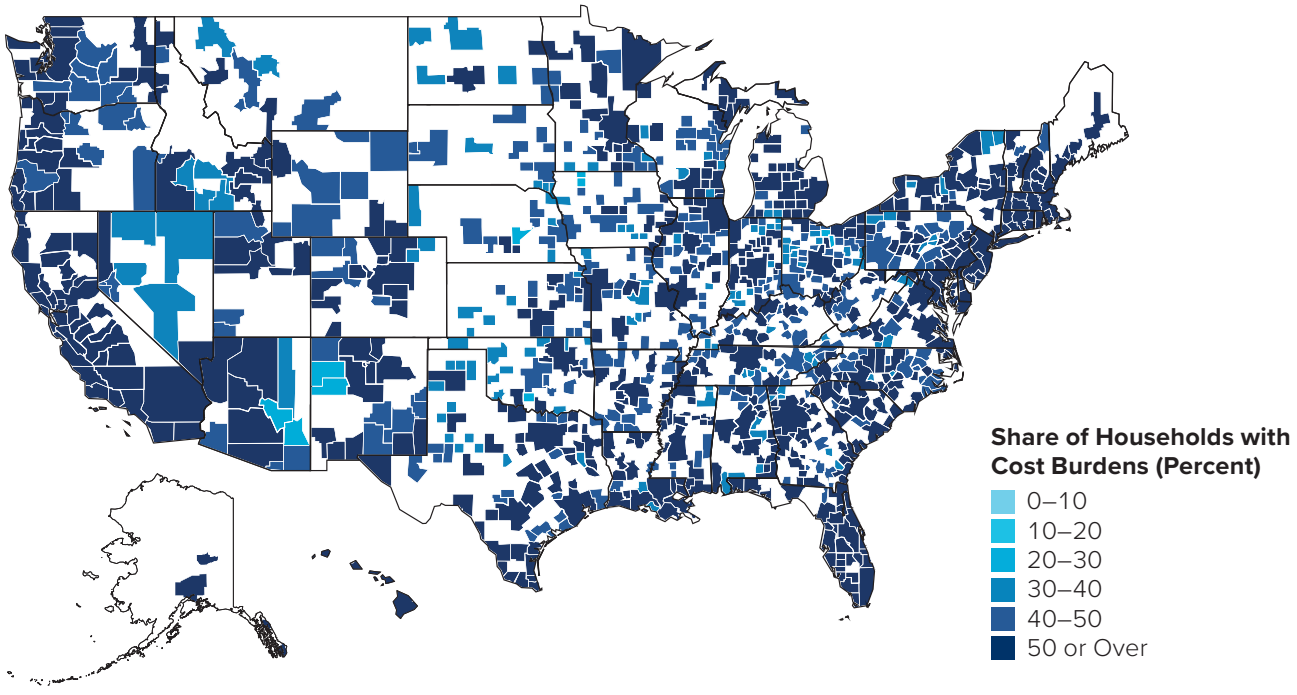
Another reason for the lower level of housing production, relative to the population, is said to be the **shortage of skilled labor** currently faced by the construction industry. The NAHB reports that the number of unfilled jobs in the construction sector reached post-crisis highs in 2018.

2.1. THE RENTAL MARKET

A study by the Joint Center for Housing Studies of Harvard University found that renters appear to be more burdened by housing costs than homeowners, with cost-burdened renters outnumbering cost-burdened homeowners by more than 3.0 million (where cost-burdened is a household paying more than 30% of its gross income for housing).[15] In addition, renters make up 10.8 million of the 18.2 million severely burdened households that pay more than half of their incomes for housing.

The spread of renter cost burdens is most evident in expensive metropolitan areas such as Los Angeles, New York, San Francisco, and Seattle (see Fig. 5). Not surprisingly, households with the lowest incomes have the highest cost-burden rates, although such rates are rising rapidly among renters higher up the income scale. The cost-burdened share is highest among among African American and Latinx American renters, suggesting minorities are heavily hit by America's housing affordability crisis.

Fig. 5. Share of cost-burdened households, renters



Source: Joint Center for Housing Studies of Harvard University

[15] Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2019", 2019.

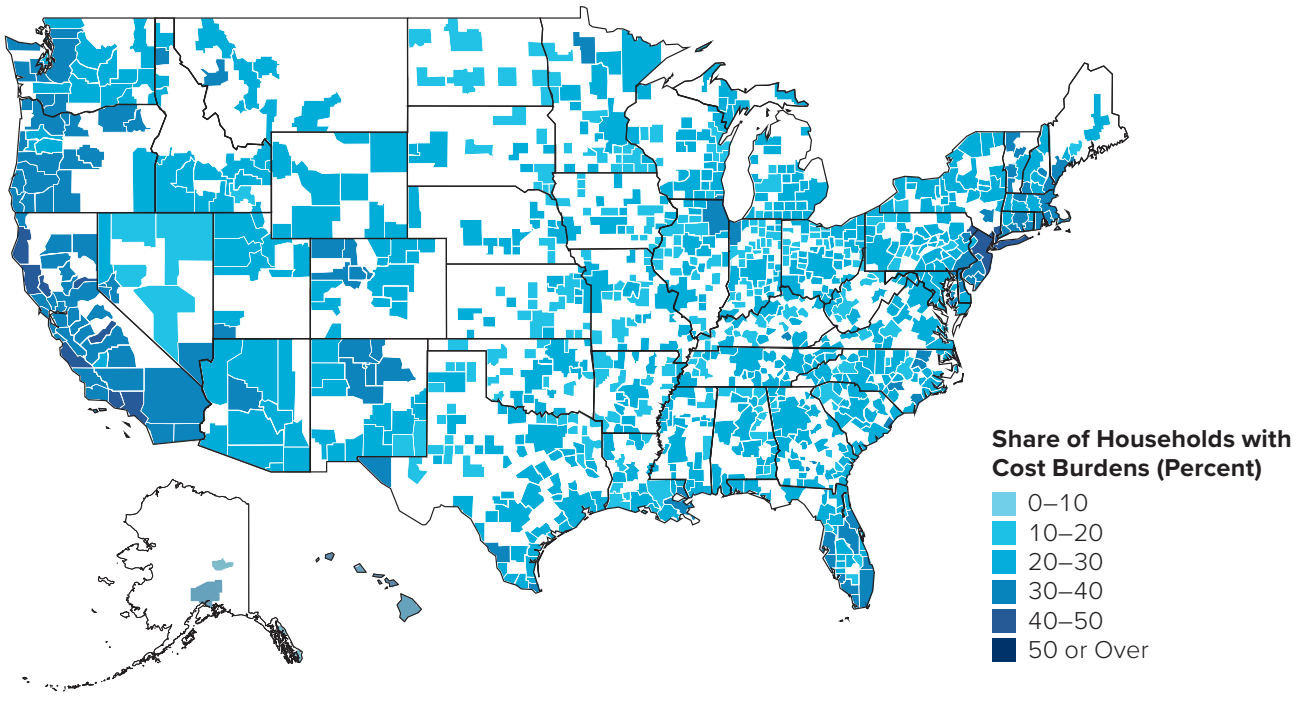
2.2. THE HOME-OWNER MARKET

In the owners' market, much lower proportions of households appear cost-burdened.[16] After falling for over a decade, US homeownership rates edged up in both 2017 and 2018, reaching 64.4%. This rebound in homeownership comes amid worsening affordability, with house prices having climbed steadily since the recession. Nationwide, the ratio of median house price to median household income rose sharply from a low of 3.3 in 2011 to 4.1 in 2018, having reached its peak at 4.7 in 2005.

Interestingly, however, cost burdens are improving for homeowners, with the latest American Community Survey reporting the share of cost-burdened households inched down 0.5 percentage point. Much of this progress was among homeowners, whose overall cost-burden rate declined by nearly 8.0 percentage points in 2010–2017. Its 2017 value was the lowest level since 2000. Among the metropolitan areas characterized by the highest cost-burden shares among owners are Los Angeles, New York, and Miami (Fig. 6).

Even if house prices have made homeownership less accessible

Fig. 6. Share of cost-burdened households, owners



Source: Joint Center for Housing Studies of Harvard University

[16] For homeowners, housing costs include mortgage payments (including interest), taxes and insurance.

for the median US resident, those who are able to move up the housing ladder are less burdened than they used to be a decade ago.

2.3. THE SHORT-TERM RENTAL MARKET

Short-term rentals (STRs) are often cited as intensifiers of the affordability crisis. Increasingly, affordable housing advocates have argued that STRs are displacing long-term tenants and raising their cost of living. Therefore, in the name of protecting affordable long-term housing, several cities are reducing the number and type of housing units that can be offered as short-term rentals.[17] These include Washington, D.C., New York, Chicago, and San Francisco.

On the other hand, short-term rental advocates argue that the presence of STRs lowers travel costs by increasing the supply of travel accommodation. This in turn attracts a wider pool of visitors, whose spending benefits the local economy, supporting jobs and business creation in the area. In addition, the earnings from renting out their properties are likely to be spent locally, further contributing to the economy. Lastly, tax revenues raised on short-term rental income can be used to fund housing services, as demonstrated by the city of Seattle, which earmarked such revenues to support affordable housing.

[17] The Pew Charitable Trusts, "Cities Tell Airbnb to Make Room for Affordable Housing", 18 October 2018.

3. THE HOUSING MARKET: AN ANALYSIS OF EXISTING STUDIES

Our study contributes to two key research questions: (i) what are the key drivers of house prices and rents? and (ii) what is the impact of short-term rentals on these variables? Before we introduce our modeling, this chapter presents a review of some of the existing academic literature addressing these questions.

3.1. EXISTING LITERATURE ON HOUSING MARKET DYNAMICS

Housing market dynamics have been widely studied in academic literature for decades. Because this literature is well established, this section does not point to individual studies, but rather takes a meta-analysis approach by reviewing the key drivers of housing market dynamics.

Academic studies of the rental market show that rent is determined by the **number of housing units, the number of households, and income levels.**[18] Similarly, theoretical models and empirical literature on house prices suggest that, over the long run, house prices depend positively on **disposable income** and **demographic needs**, and negatively on the **housing stock** (undersupply conditions can contribute to housing price gains) and **user cost**.[19]

This last factor—user cost—requires further explanation, as it comprises many elements. These include not just the mortgage interest payments that an owner has to make, but also annual property taxes, depreciation costs, and any expected capital gain. Taken all together, and adjusted for expected inflation, these costs are referred to as the real user cost of capital. Multiplying this by the house price gives us the annual user cost of owning and can be understood as the rent equivalent for homeowners.

Housing market equilibrium is described in Fig. 7. When rents and annual user costs of owning are not aligned, markets automatically move toward equilibrium conditions through adjusting demand for housing investments.

Fig. 7. Housing market equilibrium conditions

RENT = COST OF OWNING

- Equilibrium conditions
- Costs of owning a given house equals the cost of renting it

RENT > COST OF OWNING

- Purchasing a home is more attractive for a given level of rent (for example, when mortgage rates fall)
- More demand for housing for sale in turn bids up house prices to the point where the user cost of owning is brought back in line with rents

RENT < COST OF OWNING

- Purchasing a home is less attractive for a given level of rent (for example, when mortgage rates rise)
- Lower demand for housing for sale in turn depresses house prices to the point where the user cost of owning is brought back in line with rents

[18] For example, C. Swan, "Model of Rental and Owner-Occupied Housing", *Journal of Urban Economics*, 16(2) (1984): 297–316.
[19] For example, IMF, "Fundamental Drivers of House Prices in Advanced Economies", *IMF Working Paper*, July 2018.

3.1.1. Applications for our study

We borrow the backbone of our modeling framework from the studies referenced above. In particular, we exploit the fact that rents are found to have an impact on house prices and, following the example of other studies, in our house price equation we replace real rent with its main determinants—real income, housing stock, and household numbers.

In addition, a recent Oxford Economics (2016) study of the UK housing market found rising employment was among the main drivers of the boom; we therefore also include labor market conditions as an additional driver.[20] Moreover, our price model takes into account the hedonic characteristics of the area, measured by tourism GDP, and supply constraints, measured by building permits per household.

3.2. EXISTING LITERATURE ON SHORT-TERM RENTALS

We are aware of only a handful of academic papers that directly study the effect of short-term rentals on housing costs. There are two main reasons for the dearth of literature. First, the STR phenomenon is relatively recent and therefore a limited amount of data exists. Second, the research question is methodologically challenging, since many cities have become increasingly popular among both locals and tourists in recent years, leading to higher housing prices and a higher number of STR listings. In other words, "popularity" affects both prices and listings positively, as locals and tourists have a preference for living and staying in neighborhoods with high-quality amenities. This "popularity" variable, however, is unobservable, and its omission in the model implies that the impact of STR on prices is biased upwards, as part of the popularity impact gets erroneously captured by STRs.

The study whose methodology most closely aligns with our approach is that of Barron et al. (2018), which assesses the impact of STRs on residential house prices and rents.[21] The authors, however, fail to control for a number of explanatory variables included in our models. Using a dataset of Airbnb listings from the entire United States and an instrumental variables estimation strategy, they find that a 10% increase in the number of Airbnb listings leads to a 0.39% increase in rents and a 0.65% increase in home values. In Section 5.3.3, we show how our results compare to this study and conclude that our findings show a much smaller impact over our study period.

Most other studies, however, differ from ours (and Barron's) in two key respects. First, they focus on specific housing markets, rather than looking at US-wide relationships. Secondly, they use sales-level data to determine whether the proximity to STR-intensive areas affects sale prices.

[20] Oxford Economics, "Forecasting UK house prices and home ownership", November 2016.

[21] Barron, Kyle and Kung, Edward and Proserpio, Davide, "The Effect of Home-Sharing on House Prices and Rents: Evidence from Airbnb", 29 March 2018. More detail on the instruments used can be found in Fig. 18.

Among these studies, Horn and Merante (2017) use Airbnb listings data from Boston in 2015 and 2016 to study the effect of Airbnb on rental rates.[22] Similarly, Sheppard and Udell (2018) present an evaluation of the impacts of Airbnb on residential property values in New York City.[23] A third example is the article by Koster et al. (2019), which studies the effects of STRs in Los Angeles County using a quasi-experimental research design.[24] The main findings of these studies, and their main limitations, are summarized in the Appendix.

Another strand of literature provides descriptive analysis of STRs in specific markets. For example, Lee (2016) focuses on the Los Angeles housing market and makes recommendations on how municipal policymakers can best regulate Airbnb.[25] Other articles simply apply coefficients from other authors' analyses to their specific markets to derive estimates of local STR impacts (for example, Wachsmuth et al., 2018).[26]

3.2.1. Applications for our study

We build upon the studies referenced above to produce a nation-wide estimate of the impact of STRs on the housing market. In particular, this work presents the first econometric estimate that uses comprehensive data from across the US, as well as covering more STR platforms than only Airbnb. This means that we are able to include both owner-occupied home sharing and whole-property STRs. Our study does not have the objective of challenging existing literature, but rather to provide context for the findings and contribute to the body of work on housing dynamics.

As discussed earlier, one of the challenges in determining the impact of STRs on prices (and rents) relates to the fact that neighborhoods (and cities) tend to become popular with residents and tourists at the same time. In order to try to control for the so-called hedonic features of an area, we have used tourism GDP as a proxy. As an area becomes more popular for residents, bars and restaurants will start to appear, and at the same time hotels will start attracting tourists. Astoria in New York City or Corktown in Detroit are great examples of these popularity bursts.

[22] Keren Horn and Mark Merante, "Is home sharing driving up rents? Evidence from Airbnb in Boston", *Journal of Housing Economics*, 38 (2017): 14–24.

[23] Stephen Sheppard and Andrew Udell, "Do Airbnb properties affect house prices?", 1 January 2018.

[24] Hans R.A. Koster and Jos van Ommeren and Nicolas Volkhausen, "Short-term rentals and the housing market: Quasi-experimental evidence from Airbnb in Los Angeles", 8 March 2019.

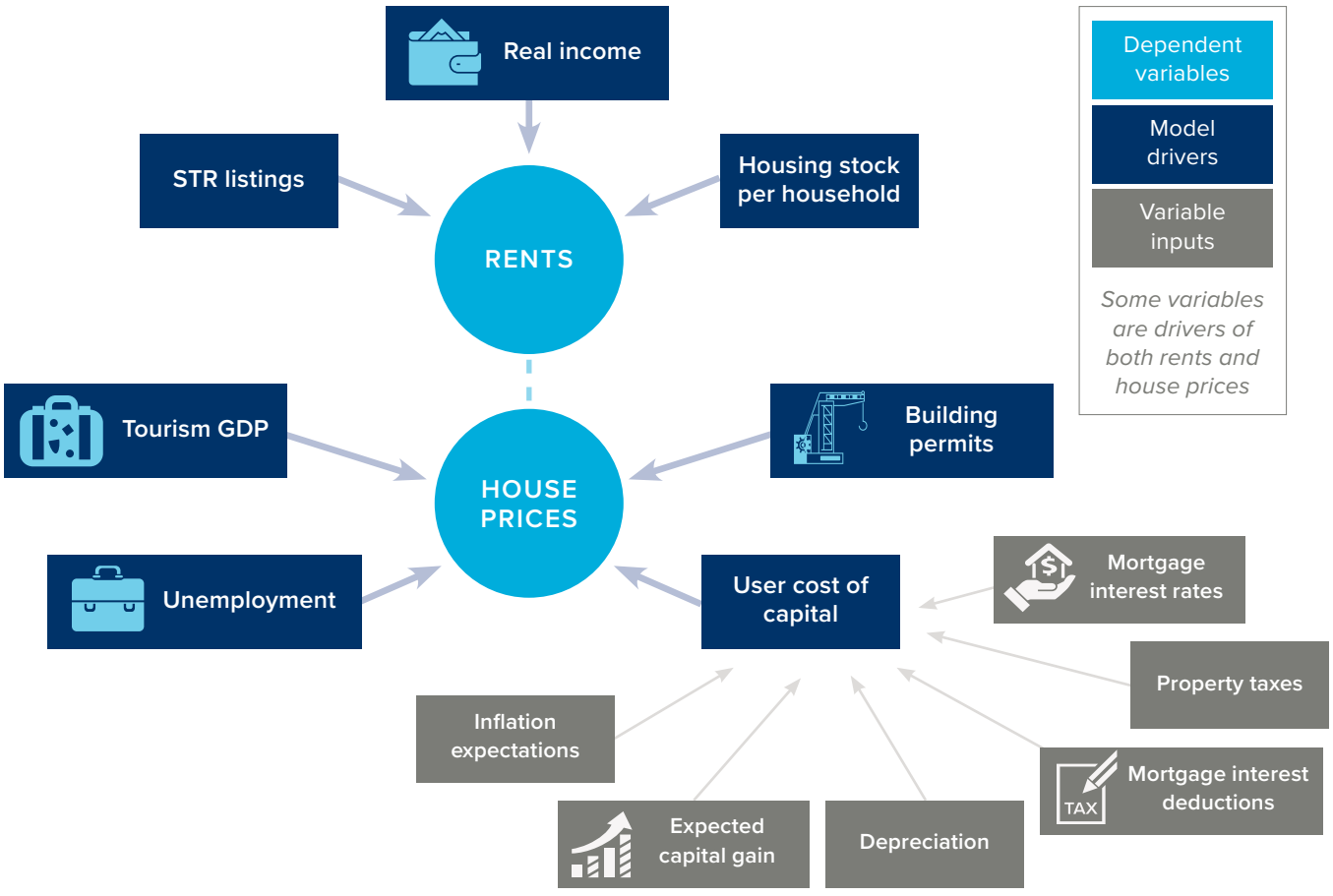
[25] Dayne Lee, "How Airbnb Short-Term Rentals Exacerbate Los Angeles's Affordable Housing Crisis: Analysis and Policy Recommendations", 2 February 2016.

[26] Urban Politics and Governance research group - School of Urban Planning - McGill University, "The High Cost of Short-Term Rentals in New York City", 30 January 2018.

4. MODELING APPROACH AND DATA

This chapter sets out our approach to modeling rents and house prices, in the context of the housing market relationships explained in the previous chapter. For this study we constructed a comprehensive dataset of all US counties over the period 2014–2018. The dataset included over 70 variables, ranging from average household income to the number of residential building permits in each county. This chapter begins by considering how best to model rents, and then moves on to house prices. All the relationships analyzed in this work are illustrated in Fig. 8.

Fig. 8. Drivers of rents and house prices



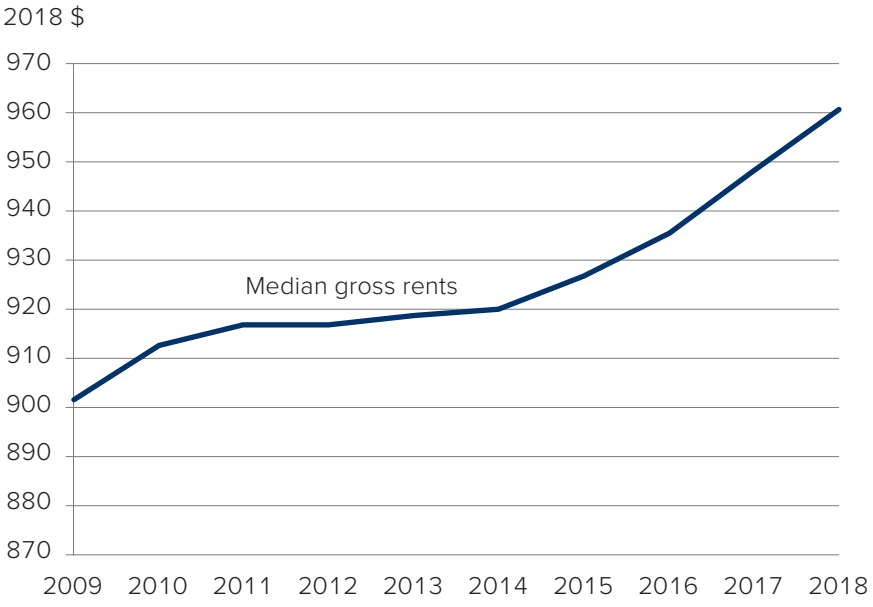
4.1. THE RENTAL MODEL

In this chapter, we argue that household income, housing stock, and the number of households are the main determinants of residential rent. We do so by analyzing rental prices, STRs and several socio-economic features of over 2,500 counties between 2014 and 2018.[27] Each variable is described below in turn.

4.1.1. Median rents

The dependent variable of this first model is real median rent (in logarithmic form, to be more specific). Real rents increased by just over 1% per year over the study period, but they had been flat in the years just before that (Fig. 9). The data were sourced from the American Community Survey (ACS), and the 2018 data point was estimated using historical growth rates.

Fig. 9. Median gross rents



Source: ACS

4.1.2. The STR density variable

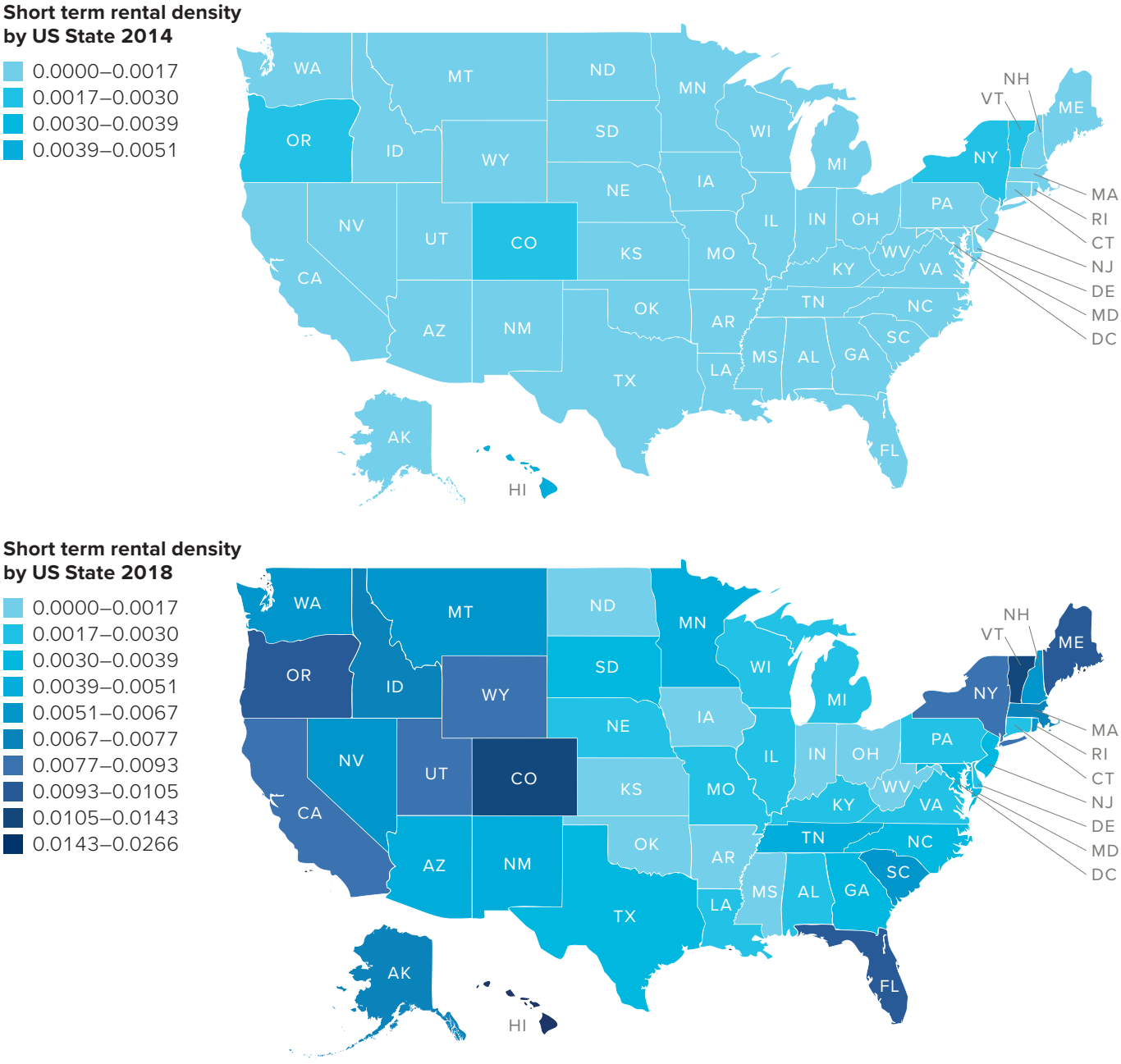
The advent and fast growth of the sharing economy have impacted the accommodation sector. While vacation rentals have been a critical component of communities across the globe for well over a hundred years, the technology revolution in flexible accommodations brought about by platforms like Vrbo and Airbnb has not only opened up millions of unique rental options for travelers but also changed the foundation of the travel ecosystem.

Data provider AirDNA suggests there were over 1.3 million active listings across the US as of June 2019, rising from just over 70,000 five years earlier.[28] Back in 2014, for every 1,000 housing units there was just over one STR listing, while in 2018 this ratio grew to 8 listings per 1,000 housing units.[29]

Fig. 10 shows the geographic distribution of STR density in 2014 and 2018. It shows there is significant geographic heterogeneity in STR density, with most listings occurring in states with large cities and along the coasts. Moreover, there exists significant geographic heterogeneity in the growth of STR density over time. The

[27] Listing data were missing for some US counties, so we had to exclude those from our study.
[28] This study does not distinguish between whole-home rentals and owner-occupied units and includes both types of STRs.
[29] This is how we define STR density, i.e. as the number of STR listings per 1,000 housing units.

Fig. 10. STR density in 2014 and 2018, by state



Source: AirDNA, ACS, Oxford Economics

number of listings per housing unit grew exponentially in some states, while in others there was no growth at all.

4.1.3. Real incomes

Real mean household income data from the Census Bureau show a marked slowdown in growth in 2018 relative to previous years (Fig. 11). Median household incomes also only rose slightly in 2018 and 2017, after registering more impressive gains in the two years prior: a 5.2% gain in 2015 and a 3.2% gain in 2016.

Income data by county and over time were obtained from the American Community Survey and complemented with Oxford Economics' North American Cities and Regions databank to fill the gaps left in 2018 by the ACS (the latest available edition was 2017).

4.1.4. Housing supply

Since reaching their lowest point in 2011 at just 633,000 new housing units that year, additions to the housing stock have grown at a fairly slow pace, partly in response to persistently weak growth in the number of households after the recession. With the economy finally back on track, household growth picked up in 2016–2018, but new construction was still depressed relative to demand, with additions to supply barely keeping pace with the number of new households.

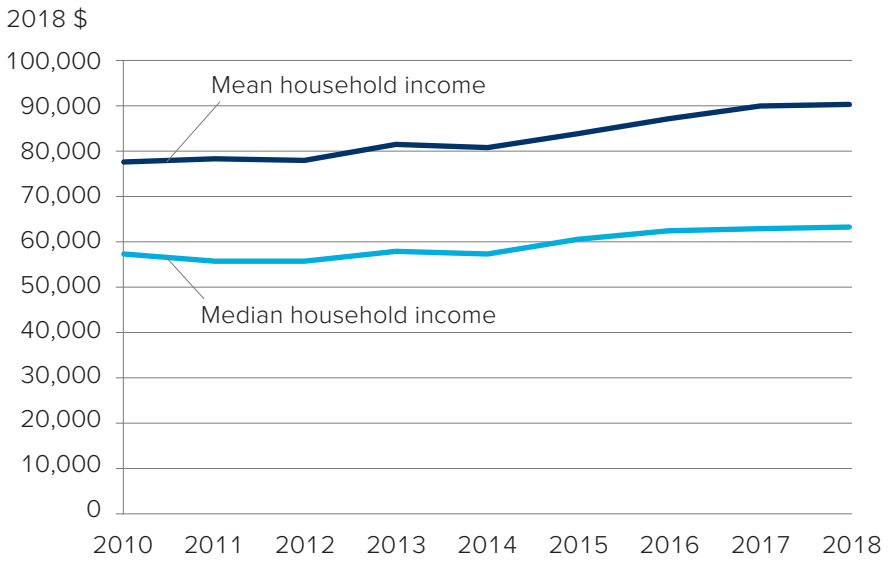
In our dataset, the number of housing units was drawn from the Census' Population Estimates, while the number of households was drawn from the ACS and carried forward to 2018 using Oxford Economics' North American Cities and Regions databank.

4.1.5. Household size

As one might expect, median rents are also related to the size of the average household (average number of people in one household). As this grows, households will require bigger properties, resulting in higher median rents. In particular, we restrict our analysis to households that occupy rented accommodations (i.e., in our rental model, we disregard the size of owner-occupier households as this should not affect rents; only the size of renter households is expected to impact rents).

Generally speaking, household size has been on a declining trend for centuries, with an

Fig. 11. Average and median household income, constant prices, 2010–18



Source: Oxford Economics

average of 5.79 people per household in 1790 to 2.58 in 2010.[30] However, Census Bureau data suggests this might be the decade when this long-term trend is reverted, with 2018 size ticking up to 2.63. Going forward, this might have impacts on housing demand, and therefore housing costs (provided it does not immediately translate into weaker residential construction).

4.2. THE HOUSE PRICE MODEL

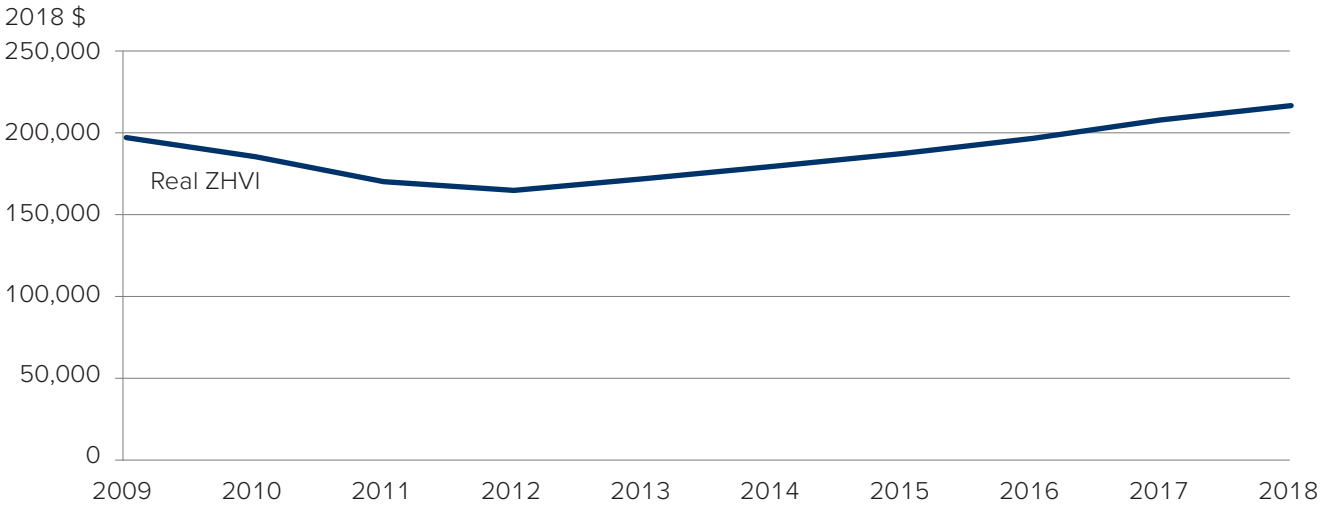
As discussed in Section 3.1, rents are likely to affect home buying decisions, and therefore most of the drivers of rents are also included in the house price model. Above and beyond these, we also included labor market outcomes, the user cost of capital, the availability of building permits, and the size of the tourism sector as additional explanatory variables. The rest of this chapter describes each variable in turn and provides a rationale for inclusion in the model.

4.2.1. House price index

As a dependent variable for our second econometric model, we used the Zillow Home Value Index (ZHVI), a smoothed measure of the median home value across all US counties. This is a dollar-denominated figure, which we then adjusted for inflation using the Consumer Price Index (CPI). This variable was available on a monthly basis for all counties in the US.

Since the recession, house prices have climbed steadily, boosted by low interest rates and the recovering economy (Fig. 12). This study aims at identifying the key drivers of house prices during the period between 2015 and 2018.

Fig. 12. Real US Zillow Home Value Index, 2008–2019



Source: Zillow, Oxford Economics

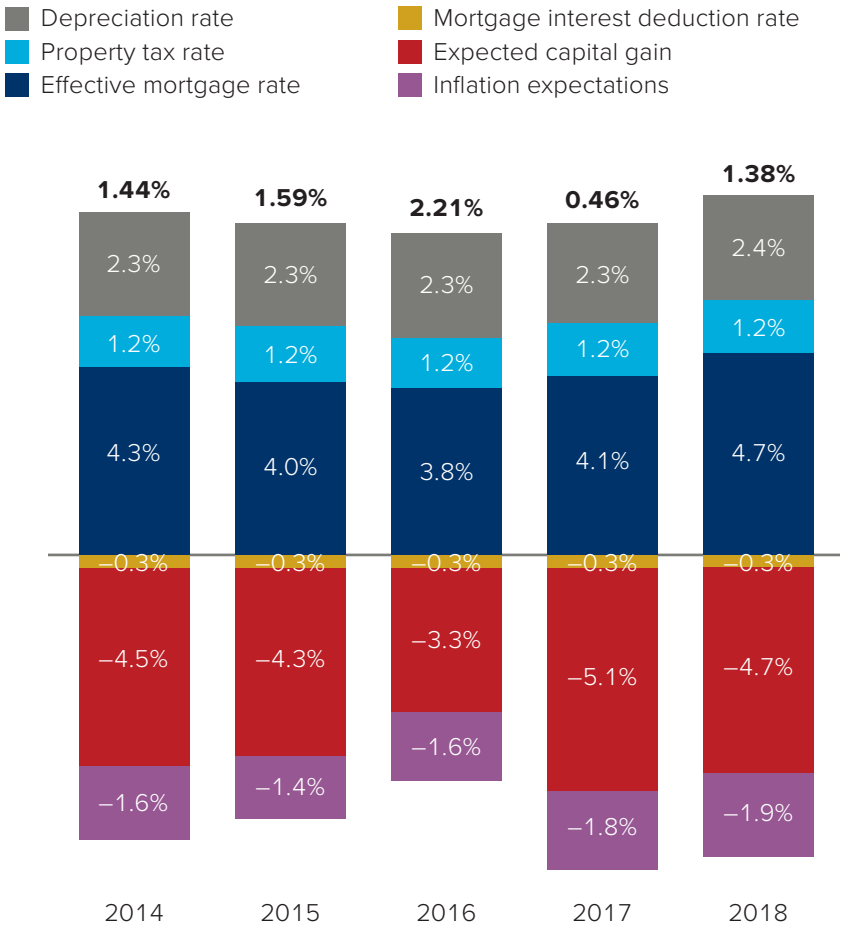
[30] Pew Research Center, "The number of people in the average U.S. household is going up for the first time in over 160 years" <https://www.pewresearch.org/fact-tank/2019/10/01/the-number-of-people-in-the-average-u-s-household-is-going-up-for-the-first-time-in-over-160-years/> [accessed 22 October 2019]

4.2.2. User cost of capital

As discussed in Chapter 3.1, the so-called "user cost of capital" is determined most obviously by the mortgage interest rate (Fig. 13); if this rises so does the cost of owning a property at any given price level. In addition to this, property taxes (minus mortgage interest deductions), expectations of inflation and capital gains, and depreciation rates all affect how costly it is to own a house of any given price.

Not all components of this variable could be gathered at the county level; for example, effective interest rates paid by mortgage holders were obtained from the Federal Housing Finance Agency by state. Expected inflation, capital gains, depreciation and mortgage interest deductions were estimated for the US as a whole. Average property tax rates, however, were estimated using ACS data at the county level, dividing the median tax value by the median property value.

Fig. 13. Estimated user cost of capital, 2014–18



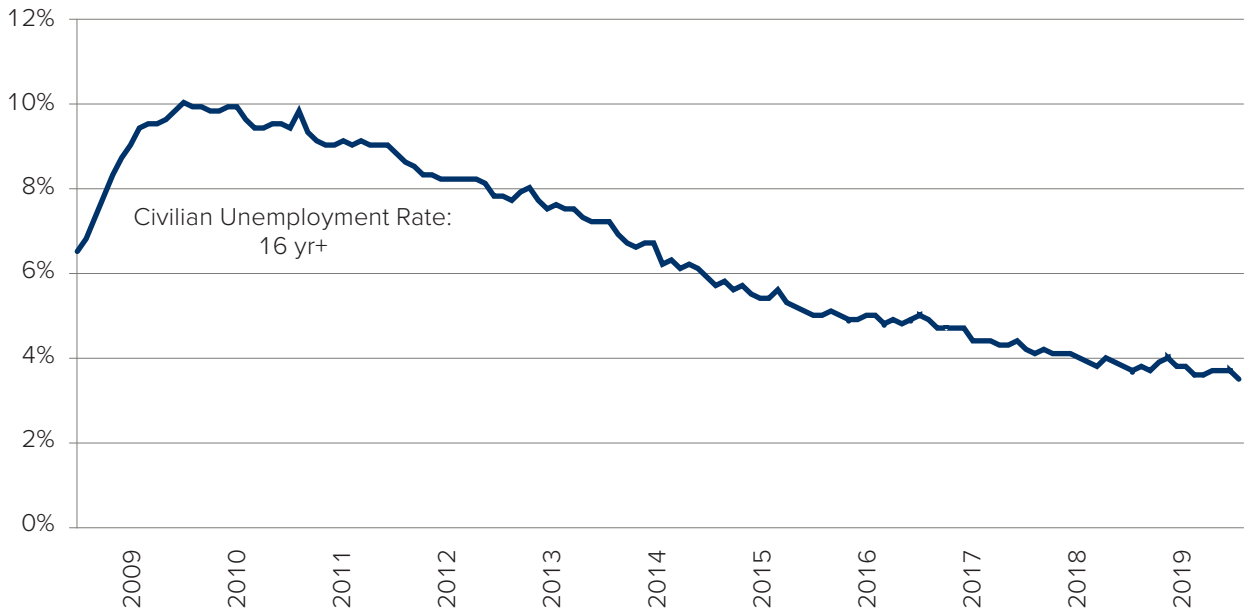
Source: Oxford Economics

4.2.3. Unemployment rate

Existing academic research provides an analysis of the extent to which unemployment influences housing market outcomes (see for example Gan and Zhang, 2018, among others).[31] Intuitively, a stronger local labor market makes an area more desirable to potential migrants and increases willingness to pay for housing in the area, and vice versa.

This channel is particularly relevant in light of the recent positive developments of the US labor market. September's unemployment rate hit a 50-year low, reaching 3.5% (Fig. 14). These labor market improvements are found to have had an impact on house prices, as we will discuss in Chapter 5.

Fig. 14. US unemployment rate



Source: BLS

[31] Li Gan and Qinghua Zhang, "Market Thickness and the Impact of Unemployment on Housing Market Outcomes", *Journal of Monetary Economics*, 98 (2018): 27–49.

4.2.4. Building permits

As described in Section 4.1.4, housing supply is a key determinant of housing market dynamics. However, the actual number of housing units is not the only supply-related factor that is likely to affect house prices. Projected housing supply is also potentially relevant for today's house prices. In our model, building permits are used as a proxy for this. This variable was obtained from the Building Permits Survey, produced by the Census Bureau.

The latest national level data released in September show that permits for future home construction rose to levels last seen in 2007. The recent surge in both housing starts and permits relieved some of the pressure on house prices over our study period, as we will describe in Chapter 5.

4.2.5. Tourism

As discussed earlier, one of the challenges in determining the impact of STRs on prices (and rents) relates to the fact that neighborhoods (and cities) tend to become popular with residents and tourists at the same time. In order to try to control for the so-called hedonic features of an area, we propose using tourism GDP as a proxy.

This work controls for growth in the tourism sector (food and beverage and accommodation services), as we believe **it is important to break down the impact of tourist attractiveness of a locality from the pure impact of STRs**. We measure tourism as the average GDP produced by the hospitality sector for each resident household. Therefore, areas where hospitality GDP has grown at a faster pace than household formation will see a growth in their tourism variable, and vice versa.

In the US as a whole, tourism GDP has grown at a slightly faster pace than households during our study period, thus exerting a slight positive pressure on house prices, as shown in Chapter 5.

5. RESULTS AND DISCUSSION

In this chapter, we set out the results of our models of rents and house prices and explain their interpretation. We also compare our results with those of past studies where comparable analysis has been carried out.

5.1. THE RENTAL MODEL

In the rental model, all variables have the expected impact and are statistically significant. The effect of income is positive and significant, while that of housing stock per household is negative and significant, as expected.

The long-run impact of STR listings is equivalent to 0.0007, or in other words, an increase of one listings per 1,000 housing units is associated with a 0.07% increase in median rents.[32] In a hypothetical county with a $1,000 median rent, if STR density increased by one listing per 1,000 units, the associated long-run increase in median rents is equivalent to $0.7 per month.

The long run coefficients from the model for the other explanatory variables can be interpreted as follows:

- a 10% increase in real median income is associated with an 8.8% increase in median rents.
- a 10% fall in the housing units-to-household ratio is associated with a 4.9% increase in median rents.
- a 10% increase in the average household size is associated with a 2.6% increase in median rents.

How well does this model reflect the reality of how rent is determined? We can calculate a MAPE (Mean Absolute Percentage Error) to assess our model accuracy.[33] We calculated this to be 2%; in other words, considering the average rent across the counties used in our dataset, the margin of error in our model prediction will be around $14.

5.2. THE HOUSE PRICE MODEL

In the house price model, all variables have the expected impact and are statistically significant. The effect of income is positive and significant, while that of housing stock per household is negative and significant, as expected.

Focusing on some of the long-run effects, the coefficient for the variables can be interpreted as follows:

- an increase of one STR listing per 1,000 housing units is associated with a 0.13% increase in the real house price index. In other words, in a hypothetical county with a $100,000 house price index, if STR density increased by one listing per 1,000 units, the associated long-run increase in the price index is equivalent to $130.
- a 10% increase in mean income is associated with a 3.2% increase in the real house price index.
- a 10% fall in the housing units-to-household ratio is associated with approximately a 18.9% increase in the real house price index.
- a 1-percentage-point increase in the unemployment rate is associated with a 2.4% fall in the real house price index.

[32] Short-run effects look at the immediate impact of a variable X over Y. Over time, given the dynamic nature of the housing market, there will be several equilibrating adjustments to the short-run effects, as the economy and people readjust. As a result, the long-run effect of a given variable X over Y is different. Our econometric methodology can distinguish between the long-run and short-run effects. The estimated coefficients presented in Fig. 19 represent the short-run effects, and the long-run effects are estimated using the Delta method, whereby the short-run effects are discounted by one minus the coefficient on the lagged dependent variable.

[33] The mean absolute percentage error (MAPE) is the mean or average of the absolute percentage errors of forecasts. Error is defined as actual or observed value minus the forecasted value (in our case, the model predicted value). This measure is easy to understand because it provides the error in percentage terms.

- a 1-unit increase in the number of building permits per household is associated with a 6.9% fall in the real house price index.

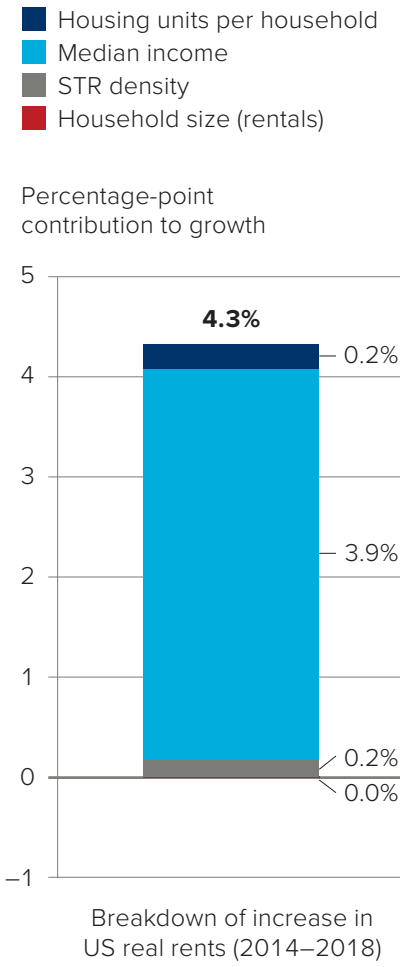
Here too, the house price model fits the actual data well, as illustrated by the MAPE. We calculated this to be 1.7%. In other words, considering the average house price across the counties used in our dataset, the margin of error in our model prediction will be around $2,600.

5.3. CONTRIBUTION ANALYSIS

5.3.1. Rent growth between 2014 and 2018

In the four years between 2014 and 2018, US median rental prices rose by 4.3% in real terms. The findings of our rental model, combined with changes in the explanatory variables over the study period, show that the **overwhelming driver of the observed increase in real rental prices during the 2014–18 period was household earnings.** Median income increased by 10.4% in real terms between 2014 and 2018 and we estimate that this growth alone was responsible for around 3.9 percentage points of the 4.3% increase (Fig. 15).

Fig. 15. Drivers of the growth in real rents between 2014 and 2018[34]



Source: Oxford Economics

Between 2014 and 2018, 5.1 million new households are estimated to have formed in the US, while net new supply was 4.1 million in the same period. This implies the ratio of housing units-to-households has declined between 2014 and 2018, pushing up rents. We estimate this drop contributed about 0.2 percentage point of the 4.3% increase in real rents.

The ratio of STR listings to housing units has grown by a factor of 6 during the study period. This increase, however, contributed to 0.2 percentage point of the increase in rents. Putting it all together, Fig. 15 reveals the contributions of various factors to the 4.3% increase in rents in the four years from 2014 to 2018.

5.3.2. House price growth between 2015 and 2018

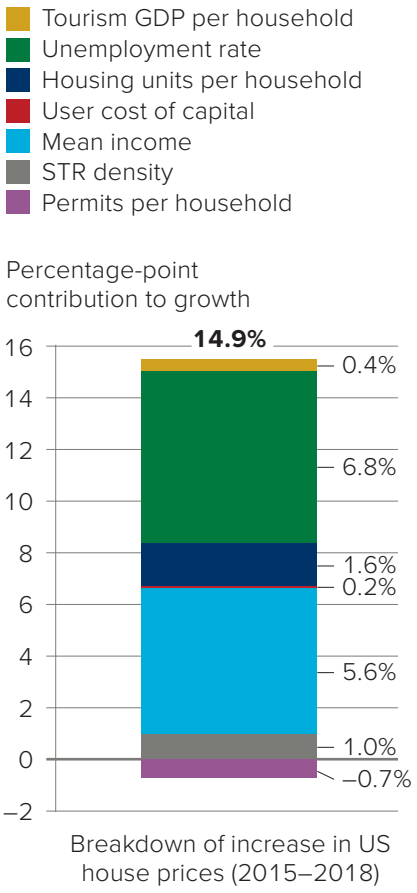
House prices have increased steadily during our study period, with real US median price index estimated to have increased by 14.9% during the period 2015–18.[35] Using the model to break down the causes of this rapid growth, we see that **the biggest contribution to the increase came from labor market improvements.**

[34] This section and chart assume that 100% of the growth in median rents can be explained through the model's explanatory variables. This is a simplifying assumption, and we are aware that our model's variables do not explain the totality of the change.

[35] As the house price model contains some lagged variables, the focus of this contribution analysis will be limited to the period 2015–18. The inclusion of lagged STR in the model implies that STR growth between 2014 and 2015 (the first available year-on-year growth rate) only starts affecting house prices in 2015–16. For this reason, the contribution analysis presented here only covers the period 2015–18 and not 2014–18.

More specifically, the drop in unemployment rate is estimated to have contributed 6.8 percentage points to US house price growth by the end of 2018 (Fig. 16).

Fig. 16. Drivers of the growth in house prices between 2015 and 2018[36]



Source: Oxford Economics

The second-largest contributor to the house price growth was the increase in average incomes. Over the whole period, higher real incomes are estimated to have boosted house prices growth by 5.6 percentage points.

The drop in housing stock-per-household has also contributed to house price growth. This reduction contributed to an increase in house price growth over the period of around 1.6 percentage points. The ratio of STR listings to housing units has grown by a factor of 3 during 2015–18. This increase contributed 1.0 percentage point to the house price increase based on our econometric model. The number of building permits per household has grown over this period, which offset some of the increase driven by other factors. Lastly, tourism GDP growth and the drop in user cost of capital contributed around 0.4 and 0.2 percentage points to price growth, respectively.

5.3.3. Discussion

Summing up the findings presented in Fig. 15 and Fig. 16, we estimate the growth in STR density only contributed to 0.2 percentage point of the 4.3% increase in rents (or 6%) and 1.0 percentage point of the 14.9% increase in house prices (or 5%) over our study period.[37]

This result is more modest than than the conclusions drawn by Barron et al., who found that the growth in Airbnb listings contributed to about one-fifth of the average annual increase in US rents and about one-seventh of the average annual increase in US housing prices. Our model includes a number of explanatory variables not considered by Barron et al., suggesting their results are likely to suffer from omitted variable bias.

5.3.4. What does this tell us about affordability?

When interpreting the house price model, it is important to note that, while house prices are interesting per se, housing affordability is a more relevant metric for policy makers. In this work, we measure affordability as the median house price divided by the mean household income.

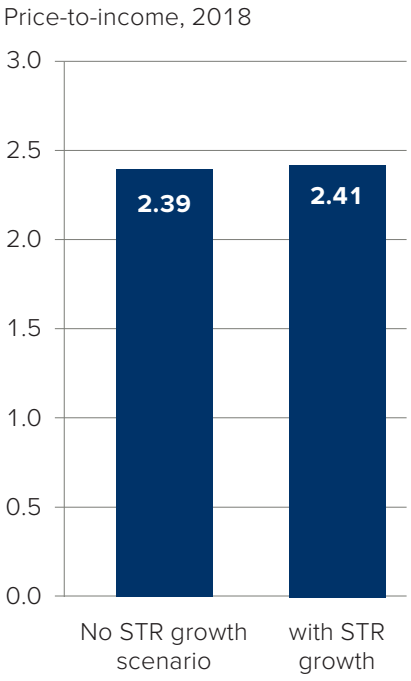
[36] This section and chart assume that 100% of the growth in median house prices is explained through the model's explanatory variables. This is a simplifying assumption, and we are aware that our model's variables do not explain the totality of the change.

[37] Adding up all the individual explanatory variables' contributions (measured in percentage points) results in the total growth rate in the dependent variable (measured as a percent increase).

In this study, we found that house prices have increased by 14.9% during the period 2015–18, and that only 1.0 percentage point of this growth can be attributed to increased STRs. We are therefore able to estimate the 2018 median price of a property in the US in a counterfactual scenario where STR numbers did not grow. We do so by subtracting from the current house price value the amount that was due to STR growth. By dividing this estimated counterfactual house price by the average household income in 2018, we obtained the price-to-income ratio for the scenario where STR did not grow.[38]

We find that the price-to-income ratio would have increased to 2.39 in 2018 (from 2.23 in 2015) in a scenario with no STR growth (Fig. 17). In the current baseline scenario (with STR growth), the price-to-income ratio was at 2.41 in 2018. This suggests that STRs are estimated to be responsible for a 0.02-point fall in affordability (or increase in the price-to-income ratio).

Fig. 17. Price-to-income ratio in 2018, with and without STR growth



Source: Oxford Economics

[38] The underlying assumption here is that the lack of STR growth would have no impact on average incomes.

MODEL EXTENSION 1: THE IMPACT OF STRS IN VACATION DESTINATIONS

Is the impact of STRs on prices and rents different in traditional vacation markets? In both the house prices and the rental model, we find that, in the long run, the effect of STRs on the dependent variable is weaker in these highly seasonal areas.

This result is in line with expectations. As far as the **rental market** is concerned, in vacation markets, homes are less likely to be rented on a long-term basis. That means that STRs have an even smaller effect on rents in these markets. For example, **Tillamook County, OR,** popular for its scenic coastline and rivers, has seen its STR density grow by a factor of 10 between 2014 and 2018, but its median rents have actually fallen in real terms. Some 88% of its vacant housing is for seasonal use in the area.

In the **homeowners' market**, by their very definition, vacation-destination housing markets have higher vacancy rates that reflect more volatile seasonal housing demand. The impact of STRs on house prices is found to be weaker in these areas, as home owners have been renting out their properties long before the advent of internet platforms offering STRs (through agencies and brokers) and therefore the value from such rental revenue has long been priced in the value of homes in these localities. An example of this is **Barnstable County, MA,** home to popular New England beach destination Cape Cod. In this county, over 91% of vacant properties are for seasonal use, and STR density has increased by a factor of four between 2015 and 2018, which was faster than the national average. Real house prices, however, have increased by 11.2% over the same period, a slower pace than the US as a whole.

MODEL EXTENSION 2: THE IMPACT OF STRS IN URBAN AREAS

Does the impact of STRs on prices and rents vary across urban and rural counties? In both the house prices and the rental model, we find that the effect of STRs on the dependent variable does not depend on the level of urbanization. In other words, we do not see a significant difference in the long-run impact of STRs on prices and rents between urbanized and rural areas.

San Diego is an example of how the US-wide results apply to highly urbanized areas. Its house prices have grown by an estimated 15.0% between 2015 and 2018, and its STR density has grown by a factor of 3 within the same period. This compares to a very similar US-wide house price growth of 14.9% and an STR density growth of a factor of 3.

6. CONCLUSION

The aim of this study was to assess the contribution of STR growth on the growth in house price, rental price, and affordability. We have found that **the rapid US house price and rent increases of the past few years have not been substantially driven by STRs.** We estimate the growth in STR density only contributed to 0.2 percentage point of the 4.3% increase in rents and 1.0 percentage point of the 14.9% increase in house prices over our study period. This compares to a 3.9 percentage points impact of median incomes to rental growth and a 6.8 percentage points effect on house price growth stemming from the drop in US unemployment over the study period.

This has important implications for a policy debate that has focused heavily on short-term rentals as both the cause of the problem of high house prices and its solution. It suggests instead that **the major sources of volatility in rental and house prices lie in economic and labor market outcomes.**

Second, this study has found that **additional housing supply and more abundant building permits are likely to have a meaningful impact on house prices.** It is estimated that in the long run, a 10% increase in the housing units-to-household ratio is associated with approximately a 18.9% fall in the house price index, and a one-unit increase in the number of building permits per household is associated with a 6.9% fall in the house price index.

Finally, our analysis has pointed to the fact that **adopting strict regulations on STRs is unlikely to solve the housing affordability crisis faced by many US households.** During the period 2014–18, in the absence of STR growth, real rent would have grown by 4.1%, rather than 4.3%. In other words, monthly rents would have been $2 lower in 2018 if STRs had not increased from their 2014 levels.

Similarly, in the homeowners' market, prices would have been only $1,800 lower in 2018 if STR density had not gone up from its 2014 level. Considering that most households do not pay the full price of a house upfront, but rather apply for long-term mortgages, the expected annual impact attributable to the STR sector is $105.[39]

Interestingly, a model extension suggests that the effect of STRs on both house prices and rents is weaker in vacation destinations. Possible explanations for this are that, in vacation markets, homes are less likely to be rented on a long-term basis and home owners in these destinations have been renting out their properties long before the advent of internet platforms offering STRs. On the other hand, the effect of STRs on both variables does not appear to depend on the level of urbanization.

[39] Mortgage maturity and effective interest rate are assumed to be as reported in the latest Federal Housing Finance Agency's Monthly Interest Rate Survey.

STR LITERATURE FINDINGS

Fig. 18 summarizes the main findings of the studies presented in Chapter 3.2, and their main limitations.

Fig. 18. Summary of existing STR literature

Author	City of interest	Main findings	Main limitation
Barron et al. (2017)	US-wide	A 10% increase in Airbnb listings leads to a 0.39% increase in rents and a 0.65% increase in home values.	The authors construct an instrument based on Google Trends searches for Airbnb. Unfortunately, these are not accurately available at the zip code level, so to obtain an instrument that varies at the zip code level they interact these searches with a measure based on the number of hospitality establishments in the zip code area. The validity of this instruments can therefore be disputed.
Horn and Merante (2017)	Boston	0.4% increase in asking rents associated with a one-standard-deviation increase in Airbnb listings	The authors rely on weekly rent data from September 2015 through January 2016 and Airbnb data from September 2014 to January 2016. Thus their time dimension is fairly limited. We believe this hinders their ability to establish meaningful relationships between the various variables.
Sheppard and Udell (2018)	New York	6.46% increase in NYC property values associated with a doubling in the number of total Airbnb accommodations	The authors do not convincingly account for the fact that neighborhoods tend to become more attractive to residents and tourists at the same time.
Koster et al. (2019)	Los Angeles	3% fall in house prices as a result of Home Sharing Ordinances in Los Angeles	The authors use Airbnb listings as a proxy for tourism demand, which means that they do not control for other tourism variables. That runs the risk of overestimating the impact of Airbnb and attributing the entire “touristic location” effect to the fact that STRs are present. In contrast, this work controls for tourism GDP unrelated to STR activity.

METHODOLOGICAL APPENDIX

INTRODUCTION TO DYNAMIC PANEL MODELS

House prices (or rents) in the current period might be affected by past trends in house prices (or rents), as well as housing supply and general economic conditions. In such cases, dynamic panel methods, such as the Arellano Bond estimator (also known as Difference GMM) and Blundell Bond estimator (System GMM), would allow us to account for the presence of such "dynamic effects." Difference GMM estimation starts by transforming all regressors, usually by differencing, and uses the generalized method of moments (GMM). This work employs Difference GMM.

Dynamic panel models have become increasingly popular in many areas of economic research, and their use has provided new insights. Using dynamic panel models allows us to find overall (long-run) coefficients for the explanatory variables as well as the contemporaneous (or short-run) ones.

The advantages of dynamic models include:

- controlling for the impact of past values of house prices (or rents) on current values;
- estimation of overall (long-run) and contemporaneous (short-run) effects; and
- use of past values of explanatory variables as instrumental variables to mitigate the bias due to: two-way causality between economic conditions and the housing market, omitted variable bias and measurement error.

The need for a dynamic model: Wooldridge test for serial correlation

The Wooldridge test allows us to test whether the errors are serially correlated; if these are found to be autocorrelated, we may infer that there is a need for a dynamic model.[40] The disadvantage of a dynamic panel model, however, is that it can add considerable complexity to the modeling process. A simpler static model might therefore be a preferable approach if the Wooldridge test does not suggest a dynamic panel is necessary.

[40] Strictly speaking, the Wooldridge test is a test for autocorrelation and not a definitive test to choose between static and dynamic panel methods. However, it is commonly applied to inform choices between static and dynamic panels.

Use of instruments

Instruments are used to control for potential endogeneity in a regression. We have found median incomes (rent model), permits per household, housing supply per household and STR density (house prices model) to be endogenous variables, and therefore the instrumental variable method was used to estimate their impact.

MODEL RESULTS

As explained, our model specification is known as Difference GMM; such approach, by virtue of being a dynamic model, has both a short- and long-run impact. The short-run results from the rent and house price models are given in Fig. 19. To obtain the long-run impact, we used the Delta method and discounted the short-run impact by one minus the coefficient on the lagged dependent variable.

Contribution analysis

The modeling results shown in Fig. 19 tell us about the sensitivity of rents and prices to changes in their macroeconomic determinants. But these results can also be used to find out which of the determinants were responsible for past changes in the dependent variables. For instance, Fig. 19 shows that the user cost of capital has a significant negative effect on house prices. But while house prices may be sensitive to changes in the user cost of capital, if there was no (or little) change in the user cost over the study period, then this variable will not have influenced house prices during that period.

The "contribution" of a given variable in explaining changes in house prices or rents is therefore a combination of both the estimated sensitivities and the change in that variable over the period under analysis.

Fig. 19. Models results

Rental price model *Dep var: Log real median rents*	**Short-run coefficients**
Lagged log real median rents	0.706***
STR density	0.0002**
Log median income	0.259***
Log housing units per household	-0.144*
Log household size (rental)	0.076*

House price model *Dep var: Log real median house prices*	**Short-run coefficients**
Lagged log real median house prices	0.719***
Lagged STR density	0.0004*
Lagged log mean income	0.091***
Lagged user cost of capital	-0.161***
Log housing units per household	-0.531***
Lagged unemployment rate	-0.663***
Lagged tourism GDP per household	6.345**
Permits per household	-1.929***

legend: * p < 0.1; ** p < 0.05; *** p < 0.01

Models with interactions

Is the impact of STRs on prices and rents different in traditional vacation markets? The model coefficients described so far measure the average impact of STRs on the dependent variables (prices and rents). Our baseline model looks as follows (in the example of prices):

$$house\ prices_{it} = \alpha \times STR_{it} + \beta X_{it} + \gamma house\ prices_{it-1}$$

However, in order to isolate vacation markets, we added an interaction term to our models, using the percentage of seasonal housing as a proxy to define these areas.[41] The model is now specified as follows:

$$house\ prices_{it} = \alpha 1 \times STR_{it} + \alpha 2 \times STR_{it} \times vacation_{i} + \beta X_{it} + \gamma house\ prices_{it-1}$$

Without the interaction term, α would be interpreted as the total effect of STRs on prices. But the interaction means that the effect of STRs on prices is different for vacation markets and less touristic areas. The effect of STRs on prices in non-touristic counties is equal to $\alpha 1$. However, in vacation markets the effect is equal to $\alpha 1 + \alpha 2$.

In both the house prices and the rental model, the interaction term for vacation markets is negative and statistically significant, suggesting that the effect of STRs on the dependent variable is weaker in these highly seasonal areas.

We run a similar model replacing the vacation dummy variable with an urban dummy variable.[42] In this case, however, the interaction term for urban centers is not statistically significant, suggesting that the long run effect of STRs on the dependent variable (either house prices or rents) does not depend on the level of urbanization.

[41] The vacation variable is a dummy taking value 1 if the county's % of seasonal housing is above average, and 0 otherwise.
[42] The urban variable is a dummy taking value 1 if the county's % of urban population is above average, and 0 otherwise.

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November 2019

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John Choi, Airbnb Public Policy Manager, letter to California Coastal Commissioners, September 3, 2021

September 3, 2021

Coastal Commissioners
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105

Re: Agenda Item W11b: City of Malibu Local Coastal Program Amendment No. LCP-4-MAL-20-0083-2 (Short-term Rentals) Time Extension

Dear Coastal Commissioners:

On behalf of Airbnb we write with respect to the Coastal Commission's consideration of an extension to hear the City of Malibu's request to amend its Local Coastal Program to address short-term rental use. For the last twelve years, Airbnb has worked closely with cities around the world to help communities realize the significant benefits that vacation and other short-term rentals provide to travelers, hosts, and local communities. We commend the Commission for its work over the last several decades to support, encourage, and protect STRs throughout the Coastal Zone and its continuing recognition that STRs serve as important visitor-serving accommodations.

We support the staff's extension request for consideration of Malibu's LCP amendment to ensure there is "adequate time to review and analyze the amendment." As we detailed in our January 13, 2021 letter to staff (attached) on Malibu's proposal, we are extremely concerned with the City's approach. Airbnb explained in that letter the City's cursory "LCP Consistency Analysis" that accompanied its amended application failed to include any evidence supporting its assertion that amendment would not result in the removal of lower-cost opportunities for visitor-serving accommodations.

While the City has provided some additional information to Commission staff since that time, it still has not provided any evidence that its proposal protects and encourages lower-cost opportunities, as required by the Coastal Act and the City's own LCP. To the contrary, as detailed in the August 11, 2021 letter from the Travel Technology Association to Staff, it is estimated that ***Malibu's proposal will reduce the supply of nights in "un-hosted" single-family homes by approximately 95%, effectively banning the most attractive overnight accommodations for families***. As further summarized in the Travel Technology Association letter, Malibu's amendment will:

- Result in the removal of a significant percentage of the most popular overnight accommodation types in Malibu;
- Remove lower-cost overnight accommodations;
- Significantly reduce the affordability of remaining STRs;
- Increase the average daily rate of hotel/motel rooms in Malibu; and
- Make Malibu less affordable to visitors.

Airbnb supports a balanced approach to STR regulation. During the City's administrative process on the LCP amendment, we suggested that the City establish a permit category allowing for existing, legally-operating STRs to continue offering non-hosted accommodations in single-family residences. We also suggested a more permissive regulatory approach for STRs in a small portion of Malibu with direct proximity to coastal resources and the City's commercial and tourist core. Airbnb's proposal to the City largely mirrors the STR regulatory approach the City of Morro Bay has put forward, which the Commission will also consider during its September 2021 meetings. In analyzing the Morro Bay proposal, Commission staff found:

> *The opportunity to rent residences within California's coastal communities represents one way in which California residents and visitors enjoy the coast. In some instances, residential vacation rentals may provide a lower-cost alternative to renting hotel or motel rooms, especially for large families or groups. In all cases, vacation rentals increase the range of options available to coastal visitors, oftentimes in residential areas along the immediate shoreline where other significant commercial overnight opportunities are not available. However, providing overnight access in this context can sometimes compete with the need to protect the residential character of the neighborhoods where STRs are located.*
>
> *In this case, the Commission finds that this STR ordinance strikes that balance between the sometimes-competing objectives of providing STRs and protecting community character. According to the City, as of April 21, 2021, there were 228 licensed STRs in Morro Bay. Of these 228 licensed STRs, 60 are home-shares, meaning there are 168 licensed full-home STRs in Morro Bay. The proposed cap of 175 full-home STRs in residential zones will allow room for managed growth while also preventing potential over-abundance of STRs, especially with the implementation of the 175-foot buffer in between full-home STRs. [footnote omitted] Further, no cap or buffer will be implemented on STRs of any kind in mixed-use and commercial zones, which will allow for continued STR growth if need be (and this is actually an attractive place for STRs in the City as these areas include the downtown and Embarcadero areas that are prime visitor destinations). The proposed amendment thus is designed to provide STRs as a unique and sometimes less expensive overnight option for coastal visitors, while also applying reasonable regulations to protect neighborhoods and the special community character of those neighborhoods that often draws visitors in the first place.*

Morro Bay, despite having approximately 900 hotel/motel rooms, put forward an amendment designed to provide STRs "as a unique and sometimes less expensive option for coastal visitors." Malibu on the other hand, ***which has less than 120 hotel/motel rooms***, has advanced a proposal that effectively prohibits "full-home" STRs in single-family homes, severely restricts full-home STRs in multifamily buildings, and does not allow for any full-home STR growth in any portion of the City.

For these reasons, and those put forward in our prior letter and the Travel Technology Association letter, we respectfully request that, in connection with this extension request, the Commission encourage staff to propose amendments to the City's proposal that will support the protection and encouragement of visitor-serving accommodations. As we have previously suggested, this could be accomplished simply by permitting existing, legally operating STRs to continue offering non-hosted accommodations in single-family residences and allowing new, non-hosted STRs in portions of Malibu closest to its commercial and tourist core. These modest changes would help mitigate the amendments impact on affordability and availability of overnight coastal accommodations and ensure visiting Malibu remains an option for families going forward.

Airbnb looks forward to working with the Commission during the City's LCP amendment process.

Sincerely,

John Choi

Policy Manager

Michael J. Liptak, Travel Technology Association Vice President of Government Relations, letter to Malibu City Council, June 10, 2022

TRAVEL TECH
The Travel Technology Association

Via Electronic Mail

June 10, 2022

Malibu City Council
23825 Stuart Ranch Road
Malibu, CA 90265

Re: Public Comment on Agenda Item 6.A – Short-Term Rental Ordinance Discussion (LCPA No. 19-003)

Dear Mayor Grisanti, Mayor Pro Tem Silverstein, and Honorable Members of the City Council:

On behalf of the Travel Technology Association (Travel Tech) and our members, I am writing to comment on the City's proposed Local Coastal Program Amendment (LCPA) governing short-term rentals. We are a trade association representing the world's leading short-term rental platforms. Short-term rentals play an integral role in increasing the supply of lower- and moderate-cost accommodations and providing families the opportunity to access the California coast.

As you may be aware, in August 2021 we provided a letter to the Coastal Commission regarding the proposed LCPA.[1] The letter attached a CBRE Hotels Advisory report (June 2021) that concluded the LCPA, as submitted to the Commission, would:

- Remove a significant portion of the City's lower-cost overnight accommodations;
- Significantly reduce the affordability of remaining STRs;
- Increase the average daily rate of hotel/motel rooms in Malibu; and
- Make Malibu considerably less affordable to visitors.

In our August 2021 letter, we asked the Commission to recommend changes to the proposed LCPA to foster an inclusionary environment in Malibu where *all* people can experience the City and access the natural beauty of the coast. Today, changes to the proposed LCPA have become even more critical, as the ***City has already lost hundreds of STRs*** since its "Enforcement Ordinance" took effect in January 2021.

Given CBRE's conclusions and the impacts of the Enforcement Ordinance on overnight accommodation availability, we were encouraged to hear that Commission staff was moving towards recommending denial of the proposed LCPA after determining "that the hosted-only provision for single-family properties will reduce the availability of STRs in the City." We were

[1] For your convenience, we are attaching our August 2021 letter to Commission (including attachments) and the June 2021 CBRE report.

also encouraged to learn that City staff "is seeking direction from the [C]ity Council regarding whether they want staff to work with [Commission] staff to find an acceptable alternative …."

At your meeting on June 13, we respectfully request you direct your staff to work with Commission staff to find that acceptable alternative. To ensure consistency with the City's LCP and the Coastal Act, any alternative should recognize the City's historical reliance on STRs to provide overnight accommodations for low- and moderate-income families.

Building on the efforts of other California coastal jurisdictions that have recently adopted amendments to the LCPs to regulate STRs, we believe the City can "find a balance that would not overly restrict STRs while at the same time minimizing impacts on residential neighborhood[s]" with the following modifications to the proposed LCPA: (1) allow STRs with permits issued pursuant to the Enforcement Ordinance to continue offering unhosted rentals in primary and non-primary residences and (2) allow new STRs in a small area of the City with proximity to the Civic Center to offer unhosted stays in primary and non-primary residences up to 180 days per year.

With this approach, the proposed LCPA's impact on the affordability and availability of overnight coastal accommodations would be mitigated and the Malibu coast would remain open for families of modest means.

I. THE CITY HAS ALREADY LOST HUNDREDS OF STRS SINCE THE ADOPTION OF ITS "ENFORCEMENT ORDINANCE"

Prior to adoption of the Enforcement Ordinance and the onset of the COVID-19 pandemic, the City reported there were 523 unique STRs in the City.[2] Now, 18 months into the Enforcement Ordinance regime, the City Manager reported in May 2022 that approximately 216 STR permits had been issued and 60 applications were pending. Even assuming the City issues permits for all 60 pending applications, the Enforcement Ordinance has already substantially reduced the availability of STRs in the City.

Given the impact the Enforcement Ordinance has had on the availability of overnight accommodations in Malibu, the City appears to have violated the Coastal Act by failing to seek the Commission's approval of that law. In its July 2021 decision in *Kracke v. City of Santa Barbara* (63 Cal.App.5th 1089, 1097), the California Court of Appeal held:

> [R]egulation of [STRs] in a coastal zone "must be decided by the City *and* the Coastal Commission." . . . The City cannot act unilaterally . . .

On April 6, 2022, the Court of Appeal issued another published decision holding that the City of Manhattan Beach's regulation of STRs, without seeking Commission approval, violated the Coastal Act. The *Keen v. City of Manhattan Beach* (77 Cal.App.4th 142, 145) court explained:

[2] Malibu Council Agenda Report, Item 4.B: Short-Term Rental Ordinance at p. 3, September 26, 2018, City Council Meeting.

> By law, public access to the beach is a California priority. The . . . Commission enforces this priority by reviewing amendments beach towns make in municipal laws affecting coastal areas. Amendments require approval.

While the City failed to seek Commission approval for the Enforcement Ordinance, our members recognize the Enforcement Ordinance provisions and have endeavored to comply with its provisions and inform their hosts of the same.

Travel Tech and its members support the fair and reasonable regulation of STRs. However, the proposed LCPA is neither fair nor reasonable and, as explained below, would further reduce the City's limited remaining STR supply in violation of the City's LCP and the Coastal Act.

II. THE PROPOSED LCPA WILL REMOVE TENS OF THOUSANDS OF NIGHTS FROM THE CITY'S LIMITED OVERNIGHT ACCOMMODATION MARKET

According to the City, it receives approximately 12 to 15 million visitors per year,[3] yet it has fewer than 120 hotel/motel rooms to serve those visitors. Given the limited supply of hotel/motel rooms, visitors to Malibu rely heavily on STRs. As discussed above, the City reported 523 individual STR listings in the City in 2018. Given this heavy reliance on STRs in the City, CBRE conservatively concluded the proposed LCPA would "lead to a decrease from 105,389 annual room nights in Malibu to 55,882 annual room nights, a nearly 50% reduction."

III. THE PROPOSED LCPA WILL ELIMINATE THE ACCOMMODATIONS MOST ATTRACTIVE TO FAMILIES

As analyzed by CBRE, unhosted, single-family residences are the most sought-after accommodations in the City, accounting for approximately 63% of the analyzed STR supply. Given the proposed restrictions, CBRE estimated that the proposed LCPA would reduce the supply of entire home nights in single-family residences by approximately 95%, effectively banning the accommodations most attractive to families. The staff report for the June 13 meeting suggests the Council could direct City staff to consider allowing non-hosted STRs during certain higher demand periods of the year for primary residents. ***Unfortunately, given the unique makeup of the Malibu overnight accommodation market, allowing STRs in only primary residences would not be sufficient to ensure families of moderate means can continue to experience the City***. CBRE previously estimated that 60% of single-family residences offered as STRs in the City were non-primary residences. It further concluded that prohibiting STRs in non-primary residences would remove thousands of available nights in the City. The anticipated price increases for both remaining STRs and the limited available hotel/motel rooms associated with the loss of thousands of nights associated with non-primary residences is simply not tenable.

Also, demand for STRs in Malibu is relatively static across the year, so seasonal restrictions would result in untenable price spikes during off-peak travel periods when many low- and moderate-income families take vacations. Whether it be an MLK weekend trip, a Presidents' Day weekend trip, a spring break with the kids, a Thanksgiving gathering, a Christmas or Hanukkah get-away,

[3] *See* City of Malibu, Request for Proposals Short Term Rental Administration at p. 2 (October 25, 2017).

or a New Year's weekend, family trips to the coast occur year-round, not just in summer, and there should be no seasonal restrictions.

IV. THE PROPOSED LCPA WILL INCREASE THE COST TO STAY IN MALIBU

When considering the cost per person, the loss of unhosted, single-family residences is quite troubling. The current prevalence of larger STRs in Malibu (the City previously reported approximately 62% of STRs in the City are three bedrooms or more)[4] makes them particularly suitable for families, as the per-person cost to stay in these larger STR units is significantly lower than hotels/motels.

More generally, CBRE determined actual demand for un-hosted STRs during the studied period would have been three times greater than the supply if the proposed LCPA were in effect. It went on to conclude:

- *Given this tremendous decrease in the most popular type of STRs, those STRs that would remain would undoubtedly be in short supply and command a steep price increase. Thus, not only would the Ordinance result in the removal of the most popular overnight accommodation types in Malibu, it would also significantly reduce their affordability*; and

- *The [proposed LCPA] would have increased both the occupancy and average daily rate of the existing hotel/motel rooms in Malibu, again making Malibu even less affordable to visitors.*

We have already seen costs for both STRS and traditional overnight accommodations increase in Malibu since adoption of the Enforcement Order.

Any additional reduction in STR supply will further increase costs and make visiting Malibu even more difficult for low- and moderate-income families.

V. MODEST MODIFICATIONS TO THE PROPOSED LCPA WILL ENSURE CONSISTENCY WITH THE CITY'S LCP AND THE COASTAL ACT

Offer a Limited Number of "Historical Use" Permits

The City's LCP requires "[e]xisting, lower-cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent" and prohibits "[r]emoval or conversion of existing lower-cost opportunities."[5] As reported by City staff, "[Commission] staff believes that the hosted-only provision for single-family properties will reduce the availability of STRs in the City and unlike Santa Monica, the City has fewer other overnight accommodations (hotel rooms and bed and breakfasts) to make up for the loss of those STRs." CBRE concluded the same, finding the Proposed LCPA would remove tens of thousands of "entire home" STR room nights from the market and leave the City with just one-tenth of the room nights needed to meet existing STR demand for single-family residences.

[4] *See* Malibu Council Agenda Report, Item 4.B: Short-Term Rental Ordinance at p. 3, July 9, 2018.

[5] Malibu LCP, Land Use Plan, Ch. 2, § C, subd. 2.34, 2.36.

This result would directly conflict with the LCP and the Coastal Act. To ensure consistency, we respectfully request the City Council to direct its staff to work with the Commission to allow STRs operating pursuant to permits issued in accordance with the Enforcement Ordinance to continue offering unhosted accommodations in both primary and non-primary residences. Preserving existing STRs is critical affordable access strategy that the Commission has approved in a number of jurisdictions, including Santa Cruz and Laguna Beach.

Permit Additional STRs in the City's "Tourist Core"

The City's LCP and Coastal Act also encourage development of ***new*** visitor-serving facilities.[6] To ensure consistency with these policies, we also respectfully request the City Council direct its staff to work with the Commission to allow for new STRs in both primary- and non-primary residences within a limited portion of Malibu that offers proximity to both beaches and the Civic Center. This proposed "tourist core" overlay would extend on the seaward side of Pacific Coast Highway between the Malibu Pier to the west and Duke's Malibu to the east.

Also, as discussed above, demand for STRs in Malibu is relatively static across the year, so instead of a seasonal restriction we recommend a 180-day cap on new STRs within the tourist core. Again, these STRs must be available in both primary and non-primary residences given Malibu's unique overnight accommodation market.

Allowing the limited, additional STR growth in this portion of the City would ensure consistency with the LCP and Coastal Act policies encouraging new opportunities, without overburdening the rural areas of the City located further away from the beach and the City's commercial core. To facilitate the recommended historical use and tourist core concepts, we recommend the additions to the LCPA shown in the redline attached as Exhibit 1 to this letter.

VI. CONCLUSION

On December 2, 2021, the California State Coastal Conservancy adopted new Coastal Access Project Standards, challenging jurisdictions developing LCPs to "improve the ability to access lower-cost overnight accommodations on the coast, particularly for low and middle-income households and organizations that serve underserved communities" and "increase the overall quantity of lower-cost accommodations on the coast."[7] Travel technology can help solve the affordable access problem in California's coastal communities, but it must be allowed to function in a balanced regulatory environment.

If the City Council directs staff to move forward with seeking Commission approval for the amendments we propose in this letter, Malibu will advance the Conservancy's Access Standard, create a balanced regulatory environment, and facilitate the sharing of the Malibu coast with low- and moderate-income families for decades to come. For all of these reasons, we respectfully request that you provide staff with this important direction.

Thank you for your careful consideration of this matter.

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[6] Malibu LCP, Land Use Plan, Ch. 2, § C, subd. 2.34; Pub. Res. Code § 31411(e).

[7] State of California Coastal Conservancy, Coastal Access Project Standards No. 9 (adopted December 2, 2021).

Sincerely,

Michael J. Liptak
Vice President of Government Relations
Travel Technology Association

Enc.

Cc: Steve Hudson, California Coastal Commission
Denise Venegas, California Coastal Commission
Steve McClary, City of Malibu
Richard Mollica, City of Malibu

TRAVEL TECH

The Travel Technology Association

EXHIBIT 1 to The Travel Technology Association's June 10, 2022 Letter to the Malibu City Council – Travel Tech's Proposed Modifications to the City's Submitted Local Coastal Program Amendment No. 19-003.

Note: Travel Tech's proposed modifications to Local Coastal Program Amendment No. 19-003 are shown in red underline below.

Land Use Plan
Changes in ~~strikethrough~~/underline

A. Amend LUP Chapter 5 (New Development), Section C (Land Use Policies), Subsection 2 (Land Use Designations) to replace the land use designation descriptions below with the amended language to read as follows:

RURAL RESIDENTIAL (RR): The RR designation allows sensitively designed, large lot single family residential development, with a range of maximum densities from one dwelling per acre to one dwelling unit per 40 acres. Minimum lot sizes range from 1 to 40 acres, with agricultural uses and animal keeping as accessory uses to approved residential development. Public open space and recreation may be permitted. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City. The following maximum residential density standards shall apply:

RR1	One dwelling unit per acre
RR2	One dwelling unit per 2 acres
RR5	One dwelling unit per 5 acres
RR10	One dwelling units per 10 acres
RR20	One dwelling unit per 20 acres
RR40	One dwelling unit per 40 acres

SINGLE-FAMILY RESIDENTIAL (SF): This land use designation allows single family residential development at higher density than the rural residential category. It is intended to enhance the rural characteristics of the community by maintaining low-density single-family residential development on lots ranging from 1/4 to 1 acre in size. Single-Family Low (SFL) allows a maximum density of 2 dwelling units per acre, with a minimum lot size of 0.5 acre. Single-Family Medium (SFM) allows a maximum density of

4 dwelling units per acre, with a minimum lot size of 0.25 acre. Public open space and recreation may be permitted. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

MOBILE HOME RESIDENTIAL (MHR): The MHR designation is intended to accommodate existing mobile home parks and associated facilities. Short-term rental use of single-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

MULTI-FAMILY RESIDENTIAL (MF): The MF designation provides for multi-family residential developments, such as duplexes, condominiums, stock cooperatives, and apartments. The Multi-family Residential (MF) designation allows a maximum density of six units per acre on a minimum lot size of 20,000 square feet. Public open space and recreation may be permitted. Short-term rental use of multi-family residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

B. Amend LUP Policy 5.20 to read as follows:

5.20 All residential development, including land divisions and lot line adjustments, shall conform to all applicable LCP policies, including density provisions. Allowable densities are stated as maximums. Compliance with the other policies of the LCP may further limit the maximum allowable density of development. Short-term rental use of residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

C. Amend LUP Policy 2.34 to read as follows:

2.34 Existing, lower cost visitor-serving and recreation facilities, including overnight accommodations, shall be protected to the maximum feasible extent. New lower cost visitor and recreation facilities, including overnight accommodations, shall be encouraged and provided, where designated on the LUP Map. Priority shall be given to developments that include public recreational opportunities. New or expanded facilities shall be sited and designed to minimize impacts to environmentally sensitive habitat areas and visual resources. Short-term rental use of residential property may be permitted pursuant to a valid short-term rental permit issued by the City.

Local Implementation Plan
Changes in ~~strikethrough~~/underline

D. LIP Chapter 2.1 “Definitions” is hereby amended by adding the following definitions, inserted in alphabetical order:

DESIGNATED OPERATOR – pertaining to the short-term rental of residential property, any natural person who is required by the owner of a short-term rental unit to: (1) resolve any nuisance or compliance issues with the dwelling unit, (2) produce requested records, (3) allow others including, but not limited, to code enforcement officers and law enforcement personnel, to enter the dwelling unit, and (4) live onsite at any dwelling unit offered for use as a hosted short-term rental for the duration of the rental.

DWELLING UNIT - one or more rooms in a building or portion thereof designed, intended to be used or used for occupancy by one family for living and sleeping quarters and containing only one kitchen. 'Dwelling unit' also includes:

A. One or more habitable rooms within a mobile home which are designed to be occupied by one family with facilities for living, sleeping, cooking, eating and sanitation; and

B. Any room used for sleeping accommodations which contains a bar sink and/or gas, electrical or water outlets designed, used or intended to be used for cooking facilities except a guest room or guest suite in a hotel, motel or bed and breakfast inn; and

C. Each space or pad designed and allocated to accommodate a mobile home within a mobile home park.

GUEST – pertaining to the short-term rental of residential property, a natural person who rents a short-term rental or is an invitee of such person.

GUEST HOUSE - attached or detached living quarters on the same premises as a single family residence for the use of family members, guests or employees of the occupants of such residence, containing no kitchen facilities and not rented or otherwise used as a separate dwelling. The maximum living area of a guest house shall not exceed nine hundred (900) square feet, including any mezzanine or storage space. A guest house may include a garage not to exceed four hundred (400) sq. ft. The square footage of the garage shall not be included in the maximum living area. Guest houses may be used as short-term rentals pursuant to a valid short-term rental permit issued by the City.

HOSTED SHORT-TERM RENTAL – a short-term rental for which the owner or designated operator lives onsite throughout the guests' stay in accordance with the requirements of a hosted short-term rental permit issued by the City.

HISTORICAL USE SHORT-TERM RENTAL – a short-term rental which was offered as a short-term rental pursuant to a permit issued under Ordinance 468 (Short-Term Rental Enforcement Ordinance). A Historical Use Short-Term Rental may be rented unhosted, and it is not required to be the owner's primary residence.

LIVES ONSITE – pertaining to short-term rental of residential property, means maintains a physical presence on the property, including, but not limited to, sleeping overnight, preparing and eating meals, and being present on the property each day of the short-term rental as required by the hosted short-term rental permit.

OWNER – pertaining to the short-term rental of residential property, a person who alone or with others, has legal or equitable title to a dwelling unit. A person whose interest in a dwelling unit is solely that of a tenant, subtenant, lessee, or sublessee under an oral or written rental housing agreement shall not be considered an owner.

SHORT-TERM RENTAL – of property means 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 30 consecutive days or less to a transient.

TOURIST CORE SHORT-TERM RENTAL – a short-term rental located on the seaward side of Pacific Coast Highway between the Malibu Pier to the west and Las Flores Canyon Road to the east. A Tourist Core Short-Term Rental may be rented up to 180 days a year unhosted, and it is not required to be the owner's primary residence.

E. LIP Chapter 3.3(Q)(2)(a) Planned Development (PD) Zone is amended to add subsection (v) to section (a):

v. Hosted short-term rental use only if pursuant to a valid short-term rental permit issued by the City.

F. LIP Section 13.31 is added to LIP Chapter 13 (Coastal Development Permits) to read as follows:

13.31 Short-term Rental of Residential Property

A. No coastal development permit is required nor is the City required to maintain a record of coastal development permit exemption pursuant to LIP Section 13.4.10 for short-term rental of residential property as defined in Section 2.1 of this LIP provided that such use meets all of the following criteria:

1. The short-term rental use is conducted pursuant to a valid short-term rental permit issued by the City.
2. The short-term rental use is conducted in a dwelling unit that was lawfully stablished as described in LIP Section 13.3(F).
3. The short-term rental use will not result in reduction or elimination of public parking for access to the beach, public trails or parklands.

G. LIP Table B – Permitted Uses is amended by inserting the following new use category to the end of the Residential section of the table after the "Home Occupation" category, and by adding a new footnote 21:

USE	RR	SF	MF	MFBF	MHR	CR	BPO	CN	CC	CV-1	CV-2	CG	OS	I	PRF	RVP
RESIDENTIAL																
Short-term rental	STR[21]	STR[21]	STR[21]	STR[21]	STR[21]	.	.	.	.	.	.	.	.	.	.	.

21. Single-family residence properties are limited to hosted short-term rental, Historical Use Short-Term Rental, and Tourist Core Short-Term Rental permits only; one dwelling unit in a duplex may be rented unhosted if the owner or designated operator lives onsite in the other dwelling unit during the rental period; and for multifamily properties, a maximum of two dwelling units per parcel, or 40%, whichever is less, may be devoted to short-term rental use.

H. LIP Table B – Permitted Uses (Key to Table) is amended to include "STR" "Use requires valid short-term rental permit approved by the City"