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# W14b

**Prepared February 24, 2023 for March 8, 2023 Hearing**

**To:** Commissioners and Interested Persons

**From:** Stephanie Rexing, North Central Coast District Manager

**Subject: City of Half Moon Bay LCP Amendment Number LCP-2-HMB-21-0078-2  
(Short Term Rentals and Home Occupations)**

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## SUMMARY OF STAFF RECOMMENDATION

The City of Half Moon Bay proposes to amend its Local Coastal Program (LCP) Implementation Plan (IP) to establish regulations for short-term rentals (STRs) within residential units in the City and to update existing home occupation standards. With respect to the latter, the home occupation standards will facilitate work from home opportunities for small home businesses, while addressing their potential impacts (e.g., requirements to limit new traffic, provide adequate parking, address employees, etc.) in such a way as to avoid any significant coastal resource concerns.

The amendment primarily focuses on STRs, allowing for STRs in most dwelling units in the City (other than in open space and agricultural zoning districts, and in a variety of lower-cost housing settings). While the proposed amendment provides some important and necessary standards to ensure STRs are appropriately operated and regulated through a series of 'good neighbor' operational requirements (as well as registration and performance standards) the City's ordinance on the whole represents a fairly restrictive approach to STR regulation as compared to other coastal jurisdictions, in a city that already has a small STR market. It does this in four ways.

First, in residential areas, the STR must be the "primary residence" of the STR operator, meaning the operator must reside in the unit a majority of the time. Second, all STRs would be classified as hosted or unhosted, where the former means the primary resident is present (and "hosting") and the latter meaning the primary resident is not present during an occupant's stay. In all areas, unhosted rentals would be limited to a maximum of 60 rental nights per calendar year (i.e., about 16% of the year). Third, the number of people and cars allowed per STR would be limited to a max of 8 and 3 respectively, regardless of the STR's ability to accommodate more than that number of people and cars. Finally, the ordinance would prohibit STRs on smaller lots in residential zoning districts, affecting about 100 residential lots in the City. These provisions would simultaneously limit both the capacity and number of STRs near prime visitor destinations (particularly near the immediate shoreline and popular beaches seaward of Highway 1), and would significantly limit the ability of STRs to provide for an

important overnight accommodation option to those not fortunate enough to live in Half Moon Bay, including larger groups and families for which STRs provide a unique service not available through other types of accommodations such as hotels or campsites.

The Commission has long recognized that STRs can provide a unique and important source of visitor-serving accommodations in the Coastal Zone, especially for larger families and groups, and has typically found that bans or undue restrictions on this type of lodging are inconsistent with Coastal Act and/or LCP policies prioritizing public access and visitor-serving uses. At the same time, the Commission has in limited cases recognized a need to restrict STRs in some coastal communities where evidence showed that the STR market was having impacts on coastal resources, or even significantly impacting the availability of housing. The Commission has always supported “good neighbor” operational standards, which are important tools to address concerns about community character while maintaining STRs as an option for overnight accommodations in coastal areas.

The LCP’s Land Use Plan (LUP) provides the standard of review for the proposed amendment and calls for a balance between facilitating short-term rentals in the City while also providing for adequate housing stock and maintaining residential community character. The City acknowledges one intent of this ordinance is to limit the number of STRs in order to preserve as many housing units in the City as possible. Encouraging housing is a legitimate purpose, but the City’s approach does not strike an appropriate balance, especially when visitor-serving uses and activities are a higher priority than residential under both the Coastal Act and the LCP. In actuality, the City’s STR market is fairly modest, with the City identifying only 46 registered STRs currently (and perhaps up to 20 others operating without registration), which is less than 1% of the housing stock in a city with approximately 4,700 total housing units. Further there is a lack of evidence suggesting that existing STR operations are causing any significant coastal resource impacts, including as it relates to inappropriate user behaviors and harm to community character, or are causing a significant loss of housing units from the housing market. In fact, per the City’s estimates (in October 2021), less than ten STRs in the City were used primarily as STRs (or 0.2% of the City’s housing units), and the rest were used primarily as longer-term housing units. In other words, the ‘problem’ that the City’s proposal purports to address is unclear, and the solution appears to be a poor fit for this context.

In particular, while much of the proposed amendment provides rational standards designed to ensure STRs are appropriately operated and regulated (including through ‘good neighbor’ provisions and a process for City STR permitting and monitoring), the primary residency requirement, the rental night limitation, the person/vehicle limits, and the lot size limitations together would result in significantly limiting STRs even further than the existing already limited STR market. These provisions would simultaneously limit both the capacity and number of STRs near prime visitor destinations (particularly near the immediate shoreline and popular beaches) in the City and would significantly limit the ability of STRs to provide an important and unique overnight accommodation option, including for larger groups and families for which STRs are sometimes the best and/or only financially feasible option.

At the same time, staff respects that the City feels strongly that these provisions are an important means to safeguard housing, and given that the STR market is so limited, staff has worked with the City to accommodate a compromise that can meet the City's primary objectives while still accommodating a modest STR market, particularly in light of its importance to the mix of accommodation types available in the City. A number of alternatives were discussed, and one option considered in depth was the idea of applying a cap that would limit the number of unhosted STRs in the City (or possibly just seaward of Highway 1) while eliminating the primary residency requirement. STR caps are perhaps the most common type of STR restriction that the Commission has applied in other cases where warranted and could serve to ensure that the STR market would be allowed to essentially provide the amount of STR options as are available currently. Given there are 46 registered STRs in the City, which equates to about 1% of housing stock, the cap could be placed at or near that number, such as at 50. Then, if there were to be a user night limit as requested by the City, that cap number would need to be multiplied in order to at least maintain a similar amount of STR availability (e.g., if the allowed nights were to be limited to half the year (e.g., roughly 180 days), then the cap would need to be doubled to make up for the loss of the other half the year of the STR market). Thus, one option considered was exactly that, a roughly 50 unit unhosted STR cap west of Highway 1 with no primary residency requirement, doubled to 100 if combined with a 180-night limit. The City indicated that they did not prefer this approach, including due to the complexity of oversight such an approach might require.<sup>1</sup> But really, the City indicated that the primary residency requirement was their primary objective.

Toward that end, staff offered a different option to compromise that would keep intact the City's proposed primary residency requirement, provided the number of allowed rental nights for unhosted rentals was increased from 60 as proposed to 180. In staff's view, this makes sense as the primary residency requirement means that a house operating as an unhosted STR could only operate in that way for half the year regardless (where 180 days is just less than that half a year time period). Such an outcome would help to reach multiple goals, including the City's to ensure that housing units are used for longer-term housing at least half the year, while also maintaining a range of visitor-serving accommodations by ensuring that the unhosted STR market is not simply eliminated over time in the City, as staff believes could be the case with the proposed amendment. As of the date of the staff report, City staff indicates that they appreciate the primary residency portion of this alternative but are still considering the manner in which the change in the maximum allowed number of user nights might be acceptable to the City. In any case, staff's recommendation accommodates this option, and not the cap option above, including as it appears to be the most acceptable to the City.

In any case, Commission and City staff were able to reach agreement on other aspects of the proposed amendment, including ensuring that use limitations are dictated by the house/lot's ability to accommodate STR use, thus providing a direct and clear correlation between size and potential use intensity; applying such use limitations to all

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<sup>1</sup> To be fair, all such restrictions require oversight, and it is not clear to staff how enforcing the primary residency requirement will be any more straightforward.

potential sites, including those on smaller lots (which would have lower use intensity allowances as a general rule); allowing existing STRs in good standing to continue to operate even if they do not meet the primary residence standard, including as a matter of fairness to these existing operators (estimated by the City to be less than 10 homes) until such homes change hands and/or they no longer operate an STR; and ensuring that STR enforcement is through the LCP, and not other non-LCP standards otherwise applicable in the City.<sup>2</sup>

Staff notes that the Commission postponed this matter in October 2022, in part to allow time for Commission and City staffs to seek as much consensus as possible, and staff believes that the current staff recommendation provides just that, and appropriately balances competing objectives consistent with the LUP. Thus, staff recommends that the Commission approve the proposed LCP amendment if it is modified as suggested. The two required motions and resolutions to do so can be found on page 5 below.

**Staff Note: LCP Amendment Action Deadline**

This proposed LCP amendment was filed as complete on March 15, 2022. The proposed amendment affects the LCP’s IP only, and the 60 working day deadline for the Commission to take action on it was June 15, 2022. However, on May 13, 2022 the Commission extended the action deadline by one year as allowed by the Coastal Act, and therefore the Commission has until June 15, 2023, to take a final action on this LCP amendment.

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**EXHIBITS**

Exhibit 1: Proposed LCP Amendment

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<sup>2</sup> This is especially important because non-LCP Municipal Codes are not vetted and approved by the Commission, and should not be allowed to impact implementation of the LCP.

## 1. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment with suggested modifications. The Commission needs to make two motions on the amendment in order to act on this recommendation.

### **A. Deny the Amendment as submitted**

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the City's proposed LCP 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.

**Motion:** *I move that the Commission reject LCP Amendment Number LCP-2-HMB-21-0078-2 as submitted by the City of Half Moon Bay, and I recommend a yes vote.*

**Resolution to Deny:** *The Commission hereby denies LCP Amendment Number LCP-2-HMB-21-0078-2 as submitted by the City of Half Moon Bay, and adopts the findings set forth below on grounds that the Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the 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 Amendment as submitted.*

### **B. Certify the Amendment with Suggested Modifications**

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the LCP Implementation Plan Amendment if it is modified as directed by the suggested modifications and adoption of the following resolution and the findings. The motion to certify with suggested modifications passes only by an affirmative vote of a majority of the Commissioners present:

**Motion:** *I move that the Commission certify LCP Amendment Number LCP-2-HMB-21-0078-2 as submitted by the City of Half Moon Bay if it is modified as suggested pursuant to the staff recommendation.*

**Resolution to Certify:** *The Commission hereby certifies LCP Amendment Number LCP-2-HMB-21-0078-2, if modified as suggested, and adopts the findings set forth below on grounds that the Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the 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 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.*

## 2. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed LCP Implementation Plan amendment, which are necessary to make the requisite LCP Land Use Plan consistency findings. If the City of Half Moon Bay accepts the suggested modifications within six months of Commission action (i.e., by September 8, 2023), by formal resolution of the City Council, the modified amendment will become effective upon the Executive Director's reporting to the Commission that this acceptance has been properly accomplished. Where applicable, text in underline format denotes text to be added by the Commission, and text in ~~strikethrough~~ format denotes text to be deleted by the Commission.

### 1. Modify IP Section 18.06.025(F)(10) as follows:

**Violations.** *Violations of the provisions of this section or other city requirements shall be enforced according to Title 4 of the Municipal Code. Nothing in Chapter 18.06.025 limits the City's authority to enforce violations of the Municipal Code pursuant to Title 4 of the Municipal Code.*

### 2. Modify IP Section 18.06.025(G)(2)(j) as follows:

**Municipal services.** *The short-term vacation rental property shall have an adequate water and sewer connections and shall be served by local utility agencies for water and sewer service. In the event that the short-term vacation rental property is served by a well for potable water and/or by a private sewage treatment system such as a septic system, the short-term vacation rental operator shall provide written proof of safe yield and/or adequate capacity by San Mateo County Environmental Health Services or other applicable oversight agency. Short-term vacation rental use shall not qualify for priority infrastructure service.*

### 3. Modify IP Section 18.06.025(G)(3)(h) as follows:

**Compliance.** *The property on which the short-term vacation rental will be located has not had two (2) or more violations of ~~the City's Municipal Code~~ Section 18.06.025 within the last twelve (12) months from registration submittal and has not been denied registration or had registration revoked within the preceding twelve (12) months. The operator has not had two (2) or more violations of ~~the City's Municipal Code~~ Section 18.06.025 within the last twelve (12) months from registration submittal related to any short-term vacation rental, has not been denied registration for any other short-term vacation rental within the preceding twelve (12) months, and has not had a short-term vacation rental registration revoked at any time.*

### 4. Modify IP Section 18.06.025(G)(5)(a)(i) as follows:

*Single-family and residential condominium dwelling unit: One short-term vacation rental may operate as an accessory use to a single-family unit or residential condominium dwelling unit. ~~; provided, however that minimum lot sizes for short term vacation rental use on any single-family lot developed with a detached single-family home is as follows:~~*

~~R-1, R-2, R-3, and C-R zoning districts: 4,125 square feet~~

~~PUD zoning district: The lot size established for the site when the coastal development permit was issued for the applicable subdivision in place as of the effective date of this ordinance~~

~~PUD-X zoning district: 10,500 square feet~~

**5. Modify IP Section 18.06.025(G)(5)(c) as follows:**

**Maximum Number of Rental Nights.** An unhosted short-term vacation rental shall be operated no more than ~~sixty (60)~~ one hundred and eighty (180) nights per calendar year. There are no rental night limitations for hosted short-term rentals. (i) An unhosted short-term vacation rental is defined as a short-term vacation rental use where a ~~primary~~ no resident is ~~not~~ present during the course of the rental. (ii) A hosted short-term vacation rental is defined as a short-term vacation rental use where a ~~primary~~ resident, who is the operator and acting as host, occupies one or more bedrooms in a dwelling unit while other areas of the unit are rented for the purpose of transient overnight lodging.

**6. Modify IP Section 18.06.025(G)(5)(h) as follows:**

**Maximum Overnight Occupancy.** Overnight occupancy for short-term vacation rentals shall be limited to a maximum of up to two (2) persons per bedroom ~~up to a total of eight (8) occupants~~. For a hosted short-term vacation rental, the bedroom(s) occupied by the host shall not be used in determining the maximum overnight occupancy for guests.

**7. Modify IP Section 18.06.025(G)(6)(e) as follows:**

**Parking.** ~~The maximum number of vehicles allowed overnight at the Parking for short-term vacation rental users shall be provided at a rate of at least one off-street parking space per bedroom, which shall be dedicated and available to guests during the period of the rental. limited to one (1) vehicle per one-bedroom unit, two (2) vehicles per two- or three-bedroom unit, and one (1) additional vehicle for four or more each additional bedrooms. On-site parking spaces shall be provided for at least fifty percent of the maximum allowed number of vehicles (half spaces shall be rounded up).~~ No vehicles shall be used for overnight occupancy. Parking exceptions may be considered by the planning commission subject to Section 18.36.085; provided that the planning commission shall consider whether a prior parking exception was previously granted for the property. In the Commercial-Downtown zoning district, exceptions must also comply with Section 18.07.045.

**8. Delete IP Section 18.06.025(G)(7) (and adjust subsequent numbering/lettering accordingly).**

**9. Modify IP Section 18.06.025(G)(9)(a)(iii) as follows:**

That two (2) violations of ~~the Municipal Code~~ Section 18.06.025(G) have occurred on the property on which the short term vacation rental is located within the preceding twelve (12) months;

...

**10. Modify IP Section 18.06.025(G)(9)(a)(vi) as follows:**

*As used in this Section 18.06.025(G), the term “violation” shall mean any violation of ~~the Municipal Code Section 18.06.025(G)~~, as evidenced by a City-issued citation, unresolved notice of violation, unresolved cease-and-desist order, or other appropriate documentation. Each unique violation of ~~the Municipal Code Section 18.06.025(G)~~ shall constitute one (1) violation.*

**11. Modify IP Section 18.06.025(G)(10) as follows:**

*Violations. Violations of the provisions of this ~~chapter Section~~, ~~or other city requirements~~, shall be enforced according to Title 4 of the Municipal Code. Nothing in Chapter 18.06.025 limits the City’s authority to enforce violations of the Municipal Code pursuant to Title 4 of the Municipal Code.*

**12. Modify IP Section 18.06.025(G)(11)(a) as follows:**

*a. Short-term vacation rentals in operation for at least three (3) months at the time of the effective date of this ordinance and ~~in compliance with all previously existing City regulations, including with proof of payment of all applicable transient occupancy taxes (“Existing STVRs”)~~, shall have six (6) months from the effective date of this ordinance to register. For approved unhosted short-term vacation rental operations, the annual calendar during which up to one hundred eighty (180) ~~sixty (60)~~ days of unhosted operations may occur commences on the date of registration issuance.*

**13. Modify IP Section 18.06.025(G)(11)(b) as follows:**

*~~Existing STVRs shall have one (1) year from the effective date of this Ordinance to come into compliance with Short-term vacation rentals are not required to meet the primary residence requirement if all of the following conditions are met:-~~*

*i. The short-term vacation rental was in operation and registered with the City as of October 14, 2022.*

*ii. The short-term vacation rental has paid all applicable transient occupancy tax owed between October 14, 2022 and the date of registration.*

*iii. The short-term vacation rental is within a single-family or residential condominium unit. No accessory dwelling units qualify for this exemption.*

*This primary residence exemption shall no longer be valid for a property if ownership of the property is transferred, if short-term vacation rental use is discontinued for twelve (12) or more months, or if the short-term vacation rental registration is revoked.*

**14. Modify IP Section 18.02.040 definition of “Short-term vacation rental” as follows:**



*“Short-term vacation rental” means a residential or mixed-use property that contains a dwelling unit or habitable portion thereof that is offered for hire for transient occupancy for periods of thirty days or less ~~as a use that is incidental to the principal residential use of a dwelling unit or property~~. Non-permanent housing such as for seasonal farmworker housing and short-term boarding for researchers and others employed or otherwise affiliated with agricultural uses are not short-term vacation rental ~~transient lodging~~ facilities.*

### 3. FINDINGS AND DECLARATIONS

#### **A. Description of Proposed LCP Amendment and Background**

The proposed amendment would provide new LCP short-term rental (STR) provisions in the LCP’s Implementation Plan (IP) when currently there are no such explicit IP provisions and would update existing IP home occupation provisions. In terms of the latter, the proposed amendment is intended to support work-from-home opportunities for small home-based businesses. The LCP’s current home occupation provisions limit home occupations entirely to the resident of the property, do not account for parking requirements, and restrict all retail businesses. The proposed updates would clarify requirements to limit traffic, provide adequate parking, allow for one non-resident employee (in addition to the resident) per residence that contains a home occupation, and allow for retail businesses that operate entirely by mail. The amendment to the existing ordinance also provides an allowance for limited commercial visitor vehicle trips (such as those done by vendors or clients).

The proposed amendment for STRs would allow for STRs in most dwelling units throughout a majority of the City (i.e., other than in open space and agricultural zoning districts,<sup>3</sup> and other than in a variety of lower-cost housing settings<sup>4</sup>). However, the ordinance establishes a “Primary Resident Requirement”, where the STR operator must also be the primary resident of the unit, aside from in mixed-use commercial areas,<sup>5</sup> which are typically sited further inland from the shoreline. STRs would also be classified as hosted versus unhosted, where the former means the primary resident is present (and “hosting”) with the latter meaning that the primary resident is not present during an occupant’s stay. Unhosted rentals would be limited to a maximum of 60 rental nights per calendar year and hosted rentals would have no limit on rental nights. The proposed amendment would also provide for a series of ‘good neighbor’ operational restrictions (related to noise, parking, occupancy limits, special events, etc.) as well as an overall City authorization process (including required registration, inspection, performance standards, hosting platform regulations, and a revocation and appeals process). Specific details on the proposed STR provisions follow.

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<sup>3</sup> That is, STRs would not be allowed in the Urban Reserve and Open Space Reserve zoning districts.

<sup>4</sup> For example, STRs would be prohibited in designated affordable housing units, mobile homes, farm worker housing units, and multi-family developments with four or more units.

<sup>5</sup> Specifically, the Commercial-Downtown (C-D), Commercial-General (C-G), or Commercial-Visitor-Serving (C-VS) zoning districts, which are primarily located in and around the downtown area and inland of Highway 1.

Application Requirements

The proposed STR provisions would require STR applications (where these do not involve a CDP) that would include: operator identification and information (where the host for hosted STRs would be the operator), including identifying all adults for whom the property is a permanent residence; responsible party identification and information (which, for hosted STRs, would be required to be the host, but could be different people for unhosted rentals); a description addressing how the STR is or would be in compliance with LCP STR provisions; site and floor plans, including an indication of the portions of the unit to be used for the STR; HOA and/or property owner consent, as applicable; proof of operator primary residence;<sup>6</sup> consent to inspection by the City and/or other relevant agencies, as applicable; and, for a renewal of an existing STR, water use information for the preceding year where, should prior year water use exceed 300 gallons per day on average, then the application would also have to include an identification of strategies to reduce water use.<sup>7</sup> To be approved, such applications would have to be found consistent with the proposed LCP STR provisions.

Registration Requirements

STR applications would be reviewed by City staff and would be required to demonstrate there are no outstanding building and fire code violations; proof of indemnification and insurance; business license and transient occupancy tax (TOT) registration; neighbor notification;<sup>8</sup> implementation of water conservation strategies if previous records show use exceeded 300 gallons per day on average; and confirmation by City staff of no recent LCP violations at the site.

Operation Requirements

The proposed amendment would allow STRs in single-family homes and residential condominium dwelling units in nearly all zoning districts, including Planned Unit Development (PUD) districts that are substantially developed and in the Dykstra Ranch PUD district (PUD-X); in a single unit of each duplex or triplex complex; and in a single unit of mixed-use commercial-residential developments (i.e., the C-D, C-G, and C-VS zoning districts). STRs would be prohibited in certain affordable housing types, including mobile homes, recreational vehicles, multi-family housing developments with four or more units, multi-family housing developments containing one or more units restricted to be affordable/lower-income housing, and farmworker housing units. STRs would also be prohibited in Accessory Dwelling Units (ADUs) (unless already authorized under the City's certified ADU regulations);<sup>9</sup> in residential units in the Urban Reserve and Open

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<sup>6</sup> To establish primary residency, the operator must prove that they live in the unit a majority of the time, that they carry on basic living activities during that time, and that they usually return to the unit in the event of travel. Supporting evidence may include utility bills, motor vehicle registration, long-term leases and other documentation of this sort. For a renter-occupied unit to be used as an STR, an operator must have resided there for at least two years.

<sup>7</sup> Where repeated years of water use exceeding 300 gallons per day is grounds for denying a renewal.

<sup>8</sup> The operator would be required to notify any neighbors within 100 feet of the STR and post a temporary sign for 30 days on the property indicating intent to register as a STR.

<sup>9</sup> ADUs that had historically been operated as STRs were essentially 'preauthorized' when the City updated its LCP ADU provisions (most recently updated and certified by the Commission in February 2022). Namely, ADUs were allowed to continue to operate as STRs if they had been rented as a STR for

Space Reserve zoning districts; and in residential units in substantially undeveloped PDs as identified in the LUP.

The proposed amendment contains additional restrictions on STRs which include a primary resident requirement, limits on the number of nights for unhosted STRs, limits on occupancy and parking, limits on the number of STRs an operator can run, and lot size limits on STRs. First, the ordinance stipulates that “no dwelling unit shall be operated for short term rental use unless the dwelling is the primary resident<sup>10</sup> of the operator”, with only dwelling units in C-D, C-G, and C-VS districts which predominantly are inland of Highway 1 and in and around downtown being exempt from this requirement. For duplex and triplex complexes, only one unit at a time would be allowed to be operated as an STR. Further, while there would be no restriction on the number of rental nights for hosted STRs in any of the zoning districts in which STRs are allowed, there would be a 60 rental night restriction on unhosted STRs in all districts where STRs are allowed. STR operators would also be allowed to run both hosted and unhosted rentals in the same STR, as long as they do not exceed the 60 rental night limit for the unhosted portion. In addition, the amendment would limit STRs to one per operator. An operator may register different areas of a site for use as a short-term rental, but only one rental may be operated at a time. The ordinance also establishes a minimum lot size of 4,125 square feet to operate an STR in the R-1, R-2, R-3, and C-R zoning districts (where 4,125 square feet is the LCP’s minimum parcel size when creating new lots), 10,500 square feet in the PUD-X zoning district, and the lot sizes established by the original CDP in developed PUD districts. Finally, the proposed operational requirements would establish guidelines requiring that a nearby responsible party be designated as available to timely respond to complaints, as that record keeping be maintained.

### Performance Standards

The proposed amendment would establish performance standards, including a prohibition on interior and exterior activities related to the STR that would interfere with adjacent residential use; a requirement that the operator ensures that the City STR registration number be included on all advertisements of the STR; a requirement that City STR requirements and standards be provided to guests upon booking and in a manual at the STR; a requirement that STRs must be accessory to the underlying residential use; and requirements to comply with the City’s noise ordinance, building

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at least 30 nights for 6 months prior to December 12, 2018, if they continued to operate as an STR in good standing (including payment of TOT), if they were owner occupied and only allowed hosted rentals, and if they continued to comply with all other applicable City requirements. STRs were and are otherwise prohibited in ADUs under the LCP. While the City has not provided data on whether any ADUs include such preauthorized STRs, the data provided to date would suggest that there are currently no ADUs that offer STRs in the City under these provisions.

<sup>10</sup> Per the City’s proposal, “Primary residence” means residential property at which a person resides a majority of the time, carries on basic living activities, and the place he or she usually returns to, in the event of travel. Evidence, such as motor vehicle registration, voter registration, a homeowner’s exemption on the property tax bill, long-term lease of the residential property, or other similar documentation, may be required by the City to determine whether the property is the primary residence. For a renter-occupied property, a long-term tenant must have resided for a majority of time on the property for at least two years prior to initiating short-term vacation rental use.

and fire codes, applicable state and local laws, and trash and recycling requirements. STRs would also be limited to a maximum of 2 people per bedroom, and a maximum of up to 8 users total, and STR users could arrive in no more than 3 vehicles per STR.<sup>11</sup> Finally, the proposal would also prohibit the use of STRs for commercial purposes (such as corporate retreats/conferences) and special events (e.g., weddings).

#### Hosting Platform Regulations/Revocations and Violations

The proposal would require hosting platforms to maintain records covering the last three years for all STRs that use their platform. Information required to be retained would include the history of all reservations on the property, TOT payments, the length of stay per reservation, and the number of persons per reservation. Hosting platforms would also be required to prompt hosts to include City-issued registration information in their listings and to cease transactions for noncompliant STRs within five days, upon notification by the City that the listing is not in compliance. Finally, the amendment would establish a revocation and appeals process for out-of-compliance STRs and include STRs in the definition of hotels, although only for the purposes of collecting TOT (i.e., adding STRs to that definition would only be relevant within the TOT context).

Please see **Exhibit 1** for the full text of the proposed IP amendment.

## **B. Evaluation of Proposed LCP Amendment**

### ***Standard of Review***

The proposed amendment affects the IP component of the City of Half Moon Bay LCP only, and the standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LCP Land Use Plan (LUP).

### ***Applicable Land Use Plan Policies***

The LUP explicitly calls for a balance as it relates to STRs between facilitating this type of overnight accommodation while also providing for adequate housing stock and maintaining residential character. The LUP also provides for home occupation businesses, as long as they are compatible uses and secondary to the primary residential use of the property. Finally, there are several LUP provisions addressing the need for sufficient water, sewage, and road services for new development and redevelopment in residential and non-residential areas. Applicable provisions include:

#### ***LUP Policy 5-1. Maximum Coastal Access and Recreational Opportunities.***

*Provide maximum coastal access and recreational opportunities for all people consistent with public safety needs and the need to protect public rights, rights of property owners, and natural resource areas from overuse.*

***LUP Policy 5-70. New Overnight Accommodations.*** *Consider the carrying capacity of the coast, visitor demand over a range of affordability levels for various accommodation types, and consistency with all applicable LCP and*

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<sup>11</sup> STR users could bring at most one vehicle per one-bedroom units, two vehicles per two- or three-bedroom units, and three vehicles per four- or more bedroom units. STRs would need to provide at least one off-street parking space for one-, two-, and three-bedroom units, and at least two off-street parking spaces for four- or more bedroom units.

*General Plan policies before approving any new overnight accommodation development proposals. Prioritize lower-cost visitor-serving accommodations over higher-cost lodging.*

**LUP Policy 2-7. Housing Stock Preservation.** *Safeguard existing housing stock so that it is preserved and used as full-time housing through the establishment of programs and ordinances.*

**LUP Policy 2-72. Residential Land Use Compatibility.** *Ensure that development, including a change in intensity of use, in residential land use designations avoids impacts on the residential living environment and the adjacent land uses, including proximate agricultural and agricultural compatible land uses, with respect to noise, lighting, parking, loading, and aesthetics. Consider other aspects of non-residential uses permitted in residential land use designations that may be impactful on a neighborhood setting or the adjacent land uses and require strategies to avoid such impacts.*

**LUP Policy 2-76. Short-Term Rentals.** *Allow short-term rental businesses within the established neighborhoods. Short-term rental uses should be subordinate to primary residential uses such that residential units continue to be used for long-term residential occupancy. Establish land use regulations in the IP with performance standards necessary to protect coastal resources and the residential living environment of the neighborhoods, such as standards for property management, traffic, parking, noise, and trash. Short-term rental businesses shall pay transient occupancy tax to the City. Non-permanent housing such as for seasonal farmworker housing and short-term boarding for researchers and others employed or otherwise affiliated with agricultural uses are not short-term transient lodging facilities or uses and are not subject to transient occupancy tax.*

**LUP Policy 3-6. New Development Requirements and Findings.** *Require that all new development has available municipal water and sewer services and access from a public street or over private streets to a public street where these improvements or facilities are essential to the type of development. Prior to approval of a coastal development permit, the approving authority shall determine if infrastructure, including water connections, is available and adequate; and if so, shall make the finding that such development will be served with water, sewer, and road facilities, including such improvements as are provided with the development. Lack of available services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the Land Use Plan. Some development types may be exempt from the requirements of this policy such as habitat restoration, trails and other coastal recreational uses, and many agricultural and agricultural supplemental and ancillary uses.*

**LUP Policy 3-20. Water Connections for New Development.** *Other than as described in Policies 3-21 and 3-22, new development within the urban boundary shall require a connection to the Coastside County Water District system. The*

*City shall refer coastal development permit applications for new development or redevelopment projects to CCWD for confirmation of water supply adequacy and consistency with water connection requirements.*

**LUP Policy 3-29. Sewer Connections for New Development.** *Other than as described in Policies 3-30 and 3-31, new development within the urban boundary shall require a connection to the municipal sewer system.*

**LUP 3-25. Water Conservation Measures.** *Require water conservation measures for new development and redevelopment of residential and non-residential uses, including but not limited to, the use of high-efficiency fixtures and equipment, storm water capture, gray water collection and reuse, drip or microspray irrigation systems, and native drought-tolerant landscaping. For agricultural and horticultural business uses, water conservation policies in Chapter 4 are applicable.*

**LUP Policy 2-75. Home Occupations.** *Permit home occupations within residences for business types and activities that are compatible with the residential living environment and subservient to the primary residential use of each property. Establish performance standards in the IP for traffic, parking, noise, and other considerations with respect to home occupations.*

### **Consistency Analysis**

Taken together, these LUP objectives and policies seek to protect, provide for, and enhance coastal access and recreational opportunities for the public by prioritizing a range of accommodations, including lower cost visitor-serving accommodations, while also establishing standards to preserve the unique residential environment and coastal resources that attract residents and visitors to the City. In addition, the LUP requires that such visitor-serving development be in harmony with other uses in the City such as housing (and affordable housing) stock and agriculture, be supported by adequate services (water, sewer, and road facilities), and not cause detrimental impacts to surrounding development through excessive noise, incompatible lighting, insufficient parking, or impacts from trash generation. The LUP also explicitly provides for the allowance of home occupations for business activities if they are compatible with the residential living environment.

### **Home Occupations**

The proposed home occupation changes are designed to help facilitate home-based businesses while addressing their potential impacts (e.g., requirements to limit new traffic, provide adequate parking, address employees, etc.) in such a way as to avoid any sort of significant coastal resource concerns. Specifically, the proposed amendment would clarify performance standards regarding traffic, parking, noise, and other considerations in the IP concerning home occupations, in line with LCP Policy 2-75 which requires that home occupation uses be compatible with its surrounding environment. Despite a potentially modest increase in allowances for home occupation uses due to the proposed amendment, the City does not expect that most home occupations will operate much differently from residential uses with regards to occupancy, trip generation rates, parking demand, noise, and water demand, and thus

the changes as proposed align with LUP Policy 2-75. The Commission concurs in this assessment and further sees no evidence that the proposed updated home occupation provisions would lead to any sort of significant coastal resource concerns. As a result, this portion of the proposed IP amendment can be found LUP consistent.

### **Short-Term Rentals**

To put the City's proposed STR provisions in context, the Commission has long recognized that STRs provide a unique and important source of visitor-serving accommodations in the Coastal Zone, especially for larger families and groups, and has found that outright bans or undue restrictions on this type of lodging are inconsistent with Coastal Act policies prioritizing public access and visitor-serving uses. At the same time, the Commission has in some cases recognized a need to restrict STRs in some coastal communities where evidence showed that the STR market having impacts on coastal resources, or even was significantly impacting the availability of housing. Prior Coastal Commission guidance to local governments has emphasized the need to allow, but regulate, STRs in a manner that balances the important public access and visitor-serving benefits of STRs with reasonable regulations to limit adverse impacts on coastal communities.<sup>12</sup> In prior actions, the Commission has focused on "good neighbor" operational standards, which have proven to be an important tool to address concerns about community character while preserving STRs as an option for overnight accommodations in coastal areas, but has also applied caps and other means of STR restriction where warranted.

Examples of the range of types of Commission actions on STR LCP amendments include the Commission's rejection of a City of Santa Barbara STR ordinance that significantly restricted STRs without meaningful benefits to community character or housing in 2018;<sup>13</sup> the Commission's approval of a City of Santa Cruz STR ordinance that significantly restricted STRs in 2018;<sup>14</sup> the approval of the City of Dana Point's STR provisions in 2022 with conditions to allow for a "cap" on unhosted STRs in the Coastal Zone based on the approximate number of STR permits in existence when the City stopped issuing STR permits;<sup>15</sup> the City of San Diego's STR provisions approved in 2022 that capped whole home (unhosted) rentals at various levels for varying neighborhoods and created a "lottery" in order to issue STR permits, due to a demand expected to exceed the caps;<sup>16</sup> and the City of Trinidad's ordinance approved in 2022

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<sup>12</sup> See, for example, the Commission's 2016 guidance to local governments available at: [https://documents.coastal.ca.gov/assets/la/Short\\_Term\\_Vacation\\_Rental\\_to\\_Coastal\\_Planning\\_&\\_Devt\\_Directors\\_120616.pdf](https://documents.coastal.ca.gov/assets/la/Short_Term_Vacation_Rental_to_Coastal_Planning_&_Devt_Directors_120616.pdf).

<sup>13</sup> County of Santa Barbara LCP Amendment LCP-4-STB-17-0086 (among other policies) prohibited the operation of STRs when owner of the property was not present (known here as un-hosted) in residential districts (available at: <https://documents.coastal.ca.gov/reports/2018/5/th19a/th19a-5-2018-report.pdf>).

<sup>14</sup> City of Santa Cruz LCP Amendment LCP 3-STC-17-0073-2-Part B (available at: <https://documents.coastal.ca.gov/reports/2018/4/w20a/w20a-4-2018-report.pdf>).

<sup>15</sup> City of Dana Point CDP A-5-DPT-22-0038 (available at: <https://documents.coastal.ca.gov/reports/2022/11/W13b/W13b-11-2022-report.pdf>).

<sup>16</sup> City of San Diego LCP-6-SAN-21-0046-2 (available at: <https://documents.coastal.ca.gov/reports/2022/3/W14f/W14f-3-2022-report.pdf>).

that capped unhosted (called “full time”) STRs citywide at around 15% of the city’s housing stock in order to protect housing.<sup>17</sup> The Commission also rejected a City of Malibu STR LCP amendment in 2022 because its proposed ban on non-hosted STRs in single-family residences would eliminate existing, lower-cost overnight accommodations in the City and because different alternative approaches existed in that case that would serve to protect public visitor-serving opportunities and affordable housing stock<sup>18</sup>. These examples reflect that the Commission evaluates each STR LCP amendment on a case-by-case basis and in light of specific evidence of local context presented concerning the STR market in a particular jurisdiction.

The proposed STR provisions in the City of Half Moon Bay’s case would establish several requirements that, if adopted, would make this one of the more restrictive LCP’s in terms of STRs along the California coast. While the City’s ordinance does not include a general cap on the absolute number of STRs (or even just unhosted STRs), as is commonly proposed in other areas, this amendment would establish a primary residence requirement for all STRs in residential areas, including those in areas near prime visitor destinations along the coast, a 60 rental night limit for unhosted operations, limits on the total number of people and cars allowed per STR, and a prohibition on STRs for lots smaller than 4,125 square feet. While the other proposed provisions are generally appropriate under the LUP, these more restrictive provisions, both together and independent of one another, have the potential to substantially restrict the number, capacity, and usability of short-term rentals in the City, the entirety of which is in the Coastal Zone. These adverse impacts on the STR market would not adequately implement the LUP’s required balancing of coastal access, visitor-serving uses, and housing preservation objectives.

### ***Primary Residence Requirement***

For residential areas, such as the bulk of the area seaward of Highway 1 that is popular with visitors, the City’s proposed STR provisions provide that “No dwelling unit shall be operated for short-term vacation rental uses unless the dwelling is the **primary residence** of the operator.,”<sup>19</sup> where “primary residence” is defined as follows:

*“Primary residence” means residential property at which a person resides a majority of the time, carries on basic living activities, and the place he or she usually returns to, in the event of travel. Evidence, such as motor vehicle registration, voter registration, a homeowner’s exemption on the property tax bill, long-term lease of the residential property, or other similar documentation, may be required by the City to determine whether the property is the primary residence. For a renter-occupied property, a long-term tenant must have resided*

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<sup>17</sup>City of Trinidad LCP-1-TRN-22-0034-1 (available at: <https://documents.coastal.ca.gov/reports/2022/12/F11a/F11a-12-2022-report.pdf>).

<sup>18</sup> City of Malibu LCP-4-MAL-20-0083-2 (available at: <https://documents.coastal.ca.gov/reports/2022/8/F10a/F10a-8-2022-report.pdf>).

<sup>19</sup> As indicated above, the primary residence requirement would not apply in the City’s commercial and commercial mixed-use areas in and around the downtown area inland of Highway 1.



*for a majority of time on the property for at least two years prior to initiating short-term vacation rental use.*

The City's rationale for the primary residence requirement is essentially twofold. First, the City concluded that such a requirement would safeguard existing housing stock, and affordable housing stock, so that residences are primarily used as full-time housing, and commercial operators or investors would be prevented from buying up property for the express purpose of operating an STR. In essence, the City asserts that the primary residency requirement is needed to preserve current and future affordable housing in Half Moon Bay. To that point, it is important to note that STR operations and the provision of affordable housing are not mutually exclusive, nor are they necessarily even causally linked, especially when viewed in the local context of Half Moon Bay. Put another way, given the small number of STRs currently operating within the City, STRs are not the reason the City lacks housing, or affordable housing. The City has many tools available to it to encourage housing and affordable housing, such as prioritizing multi-family housing, that would not unduly and adversely impact this unique form of visitor-serving accommodation. It is unlikely that the primary residency requirement would return a significant or meaningful amount of housing, especially affordable housing (see also below), back to the housing stock of the City, including when there are only 9 STRs currently operating that are not primary residences.

As to the City's assertion that without the primary residency requirement there is the potential for individuals and/or companies to buy up housing units to use solely for STRs, two things are noted. First, beyond anecdotal observations, the City has not provided any data to support such assertions.<sup>20</sup> The fact that there is not more than roughly 46 registered STRs in the City (and an estimated additional 20 or so that are not registered), and only a handful of those do not currently meet the primary residency requirement (see Correspondence, page 30), also belies the notion that such a phenomenon is occurring. It also suggests that there would be negligible potential housing stock gains (e.g., if using the October 2022 numbers, the 9 STRs that weren't primary residences only represent about 0.2% of City housing units) if it were implemented. Second, the proposed amendment includes a provision that would allow only one STR per STR operator in the City. In other words, a single entity would not be allowed to purchase and operate multiple units and use them solely for STRs, independent of the primary residence requirement.

The second point offered by the City in support of the primary residency requirement the City asserts that existing non-primary residence STR operations are the most problematic in terms of maintaining residential community character, and lead to complaints regarding excess noise, trash generation, and water usage. In terms of housing stock, the City did not provide data on how the primary residence requirement would preserve housing stock other than describing the existing STRs that do not

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<sup>20</sup> The City has stated that they have received calls from realtors asking about purchasing property for the express use of operating the properties as STRs, and describe having performed an informal survey, calling the three major real estate companies in Half Moon Bay to determine how many inquiries these companies were receiving about purchasing properties for STR use. Of the three companies, the City indicated that two stated that at least 50% of their calls had been related to STRs.

currently meet the proposed primary resident requirement (estimated by the City in October 2022 to be about 9 STRs in the City) and describing that there could be more non-primary resident STRs in the future absent adoption of the proposed restriction. In theory, such a restriction could mean that STRs that do not comply with the primary resident requirement would eventually be used for long-term housing, but that is dependent on several factors, many of which are unrelated to the proposed amendment.<sup>21</sup>

As to the City's assertion that STRs with no primary resident are the most "problematic," the City did not provide any specific evidence to this effect beyond anecdotal observations.<sup>22</sup> Likewise, it is not clear from the City's materials how the primary residence requirement would solve such a problem were it clearly identified in the first place. As stated previously, the proposed STR provisions include a series of 'good neighbor' performance standards that – irrespective of the primary residence requirement – are intended to ensure that STR operations do not lead to disturbances or nuisances and do not adversely affect adjacent residential uses. Ultimately, and consistent with other LCP's STR approaches, it is these good neighbor provisions that will prevent STR operations from creating disturbances or harming the character of the surrounding areas.

Thus, while it does not appear that the primary residence requirement will have much effect, if at all, on the City's available housing stock, especially affordable housing stock,<sup>23</sup> what is clear is that the primary residence requirement would mandate that future STRs would have to be occupied by the operator "a majority of the time," limiting STRs, and as a result, limiting unhosted STRs.<sup>24</sup> In particular, owners of second homes

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<sup>21</sup> For example, owners of such units might just leave them empty when they are not personally using them, and some STR operators who have commented to the Commission on the City's proposal have indicated that they would do just that.

<sup>22</sup> It has not been uncommon in the Commission's experience that proposed LCP STR provisions relying on 'problematic STRs' as part of the problem definition are often based on individual and anecdotal observations, and not on data reflecting STR problems (such as documented and investigated complaints, police calls, etc.). It is no different in this case.

<sup>23</sup> STRs would actually be prohibited in a variety of lower-cost housing types, as detailed above, and thus STRs would have no effect on these affordable options. In contrast, homes that are operating as STRs are market rate homes that are located in desirable coastal areas and would not be considered affordable if they were to be used mostly or exclusively for longer-term housing stock. For reference, the current average rental cost for a one-bedroom unit in San Mateo County (where Half Moon Bay is located) is the highest in the state (at nearly \$3,000 per month), and some two and a half times the state average (per RentData.org based on Department of Housing and Urban Development (HUD) data). Even other estimates specific to Half Moon Bay (as opposed to the broader County) show rents in the City to be some two times the state average. In addition, the median home price is roughly \$1.7 million. In other words, here in Half Moon Bay, like the rest of the greater Bay Area, the market rate is quite high, and any homes that might 'convert' from STRs into market rate should be understood in this context and should not be understood as facilitating any type of affordable housing options.

<sup>24</sup> The City has not provided information on the number of hosted versus unhosted rentals operating legally in the City, but it has generally been the Commission's experience that unhosted rentals are the predominant and most popular form of STR in most coastal communities. For reference, although a different community and different context, in the recent City of San Diego LCP amendment regarding

would unlikely be able to satisfy the primary residence requirement, because they would not be able to provide evidence (such as motor vehicle registration or voter registration) establishing that the home is where the owner “resides a majority of the time.” In other words, the proposed primary residency requirement would inform the STR market in a variety of potential ways that are difficult to predict.<sup>25</sup> However, given the City’s proposed restrictions, it seems likely that there would be even fewer STRs and unhosted STRs in Half Moon Bay going forward, including in areas near the shoreline, to the detriment of coastal visitors not fortunate enough to live in Half Moon Bay.

***Maximum 60-Rental Nights Per Year Requirement***

As to the 60-rental night limit for unhosted STRs, the City indicates that 60 nights was chosen based on estimated current and future STR demand, as well as the desire to ensure that STR operations were subordinate to the primary residential use. On the latter, the City believes that hosted rentals better protect the residential character of neighborhoods, such as provided for in LUP Policy 2-72. “Residential Land Use Compatibility” and lead to fewer problems because the host is present to protect against unruly or other such behaviors (e.g., big parties). Regarding this point, first, as indicated above, the City did not provide any sort of detailed information showing that any STRs (much less unhosted STRs) were causing the types of problems suggested as the purpose of the rental night restriction. Given the limited STR market, it would seem that the City would have concrete evidence of STR-related disturbances as there are so few STRs to monitor currently; however, no such evidence has been provided to the Commission. Second, as stated previously the City’s ordinance adequately provides for protecting residential compatibility through a series of ‘good neighbor’ provisions where there currently are no such regulations of STRs in the City. The result should provide an effective regulatory buttress against inappropriate STR behaviors that may exist currently and do so for any new STRs moving forward as well. In other words, the proposed ‘good neighbor’ STR provisions already address this issue without the City’s stated need for a rental night limitation to address any such issues.

In terms of the City’s assertion that a 60 rental night cap is tied to estimated current and future STR demand, the City did not present any information regarding existing or prospective STR demand with its amendment request. Rather, the City suggested that 60 nights was equivalent to 30, two-night weekend stays or 20, three-night weekend stays, and that such a limit would mean that STRs would be subordinate to residential uses for purposes of LUP Policy 2-76 (i.e., per the City’s analysis, 30 weekends out of 52 weekends per year is more than half the weekends). First, it is unclear why 50% unhosted STR use as a general concept would be the correct standard for determining that STR uses are ‘subordinate’ to residential uses under LUP Policy 2-76. For example, another standard for determining that STR uses are subordinate to residential uses could be that STRs are regulated and operated to essentially function and appear as a residential use, and do not outwardly present as anything other than that and that STR

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STRs that was approved by the Commission last year, it was estimated that 84% of STRs were unhosted (see LCP amendment LCP-6-SAN-21-0046-2 approved on March 9, 2022).

<sup>25</sup> For example, under the City’s ordinance, second homes could be left vacant when not actively used by the owner, providing no housing opportunities, as opposed to providing some short-term housing opportunities through the short-term rental market that also benefits coastal access.

activities do not adversely affect adjacent residential uses, both requirements of the City's ordinance. In addition, it is noted that the LUP suggests that STRs "should" be subordinate to residential uses (LUP Policy 2-76), but the LUP does not mandate it, and LUP Policy 2-76 does not specify how STR operations would satisfy the policy's objective.<sup>26</sup> The LUP also requires the provision of maximum coastal access and recreational opportunities, which reasonably encompasses overnight accommodations sufficient to accommodate coastal visitors (LUP Policy 5-1). In other words, the LUP does not mandate that in all cases STRs shall be subordinate to residential uses, a perspective that perhaps presents a false choice between STRs and longer-term housing. The more accurate LUP framing of all of the LUP's policies taken together is that the LUP objective is to strike an appropriate balance that protects housing and also maximizes public access to the coast.

In terms of matching rental night limits to demand, while anecdotally it makes sense that there may be more STR demand on weekends,<sup>27</sup> STRs can also provide a place to stay during the week, and it is not clear that weekends are the proper metric for this type of analysis in the first place. Using the City's hotel data as a proxy, it appears that the City has fairly high occupancy year-round (almost 70%), which could suggest the same applies to STRs.<sup>28</sup> Even using weekends, with a 50% threshold at 26 weekends, applying two-night stays would mean that 52 rental nights would be more on point, and applying three-night stays would equate to 78 rental nights. Second, if weekends are not used, but rather a 50% threshold over a whole year (365 days), that would equate to 182 rental nights to be just under 50% over the year.<sup>29</sup> It appears that the City considered several different rental night limitations as the amendment was developed locally, including ultimately debating between allowing 90 versus 60 unhosted rental nights per year, but the 60-night restriction does not appear to be a number that is tied

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<sup>26</sup> Residential use also does not necessarily mean that the house is lived in by a full-time occupant. For example, in *Keen v. City of Manhattan Beach* (2022) 77 Cal.App.5th 142, 149, the Court of Appeals explained that "[i]t is possible to reside somewhere for a night, a week, or a lifetime." See, for example, *Keen v. City of Manhattan Beach*, 77 Cal.App.5th 142, 149 (Cal. Ct. App. 2022). In *Keen*, the court stated:

*Use of the word "residence" does not imply some minimum length of occupancy. (Cf. People v. Venice Suites, LLC (2021) 71 Cal.App.5th 715, 726, 286 Cal.Rptr.3d 598 (Venice Suites) ["A 'residential building' is used for human habitation without regard to length of occupancy ...."]; Greenfield, supra, 21 Cal.App.5th at p. 899, 230 Cal.Rptr.3d 827 [the city in question historically treated short term rentals as a "residential" activity].)*

***It is possible to reside somewhere for a night, a week, or a lifetime. The City points to no legally precedented way to draw a line between the number of days that makes some place a "residence" and the number that shows it is not. (Cf. Venice Suites, supra, 71 Cal.App.5th at p. 732, 286 Cal.Rptr.3d 598 ["the dictionary definitions for apartment house do not indicate a required length of occupancy"].)*** (emphasis added)

<sup>27</sup> The City cites to Half Moon Bay Chamber of Commerce data showing that hotel occupancy was 68% on average for the past 8 years, with higher occupancy on weekends.

<sup>28</sup> While obviously different places, again, the City of San Diego's recently approved STR LCP provisions help provide some context. In that case, the City's submittal documented STR occupancy at 78% with a peak of 86% in the summer.

<sup>29</sup> In the same City of San Diego LCP amendment case, the average STR stay was estimated to be 4.2 nights.

to the existing or expected STR market, as the City asserts.<sup>30</sup> In short, it is probably best to understand the proposed 60-rental night limitation for unhosted rentals for what it is; namely, a somewhat randomly developed number and a fairly restrictive restriction as LCP STR provisions go. Further, it is a restriction that limits unhosted STR use in any particular STR to about 16% of the nights each year. Such restrictions have the potential to severely affect current and future STR operators, making it less economically desirable to operate an STR, as well as limiting overall capacity and creating the potential for adverse impacts on visitor-serving accommodation availability in the City.

Finally, regarding hosted and unhosted rentals, the City asserts that the proposed provisions contain no limits on rental nights for hosted rentals, and the City makes the argument that unhosted (or “whole house”) rentals are often quite expensive when compared to hosted STRs. The City argues that restricting hosted nights while encouraging the unhosted will allow for more hosted STRs in Half Moon Bay, and therefore allow for more lower-cost visitor-serving accommodations. To this point it is noted that as a general rule a hosted rental of part of a house is going to be generally less expensive than a whole house rental of that same house, including as it is less space and it is not exclusive, and thus economically does not command the same rates. In other words, the comparison is apples to oranges. Further, although rental rates for whole house STRs can be quite high, there is no current standard for estimating what constitutes a “low-cost” STR. For context, there is simply a dearth of any lower cost overnight accommodations in the City, other than camping.<sup>31</sup> What’s more, whole house STRs provide a unique form of coastal accommodation containing amenities that a hotel or campground cannot provide, and while they may be “high cost” for a single person to rent, they may be considered more affordable when rented by a group of people or by two or more families, especially when compared to the alternative, such as renting out multiple hotel rooms. The fact is that there is no ready equivalent accommodation to “whole house” or unhosted STRs on the coast, and restricting the operation of this unique form of accommodation may actually increase the price of other types of

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<sup>30</sup> On this point it is noted that the City also suggests that the 60-rental night limitation and the primary residency requirement are common approaches certified by the Commission in LCPs and should be supported for that reason. However, that is not correct. In fact, these types of approaches are atypical, and the Commission appears to have only approved one other LCP amendment that included a primary residency requirement (in the City of Santa Cruz), and even there, existing STRs were preauthorized and were not required to meet the rental night limitation requirement in that case. Further, the Commission appears to have only approved three LCP amendments with rental night limitations (i.e., a 90-night limit for a very limited tier of STRs in San Diego (where most STRs were unlimited), a 100-night limit in the City of Del Mar, and a 180-night limit in San Mateo County), where such limits were in the context of jurisdictions with much larger STR markets. This differs significantly from the 46 registered STRs in the Half Moon Bay market. Thus, it is probably better to characterize the City’s proposed LCP planning approach here as fairly novel, and very restrictive in relative terms, in the Coastal Zone.

<sup>31</sup> The City presented data showing that more than half of the hotel/motel rooms (315 rooms out of 613 total) in the City are qualified as “luxury” hotels, with 261 of these rooms coming from the Ritz Carlton. For reference, a two-night stay for two adults at the Ritz Carlton in that hotel’s least expensive room comes out to roughly \$2,200. Similarly, a two-night stay at the Half Moon Bay Lodge, which is classified by the City as an upper-midscale accommodation is roughly \$600 dollars for a two-night stay, again only for two people. A two-night stay for two people at the Miramar Inn and Suites, classified as “economy” by the City, is \$340.

accommodations, which could actually operate to reduce the total supply in the Coastal Zone. A hosted STR cannot provide the same service as an unhosted one, and one cannot be substituted for the other.

***Maximum 8-person and 3-car Requirements***

The proposed restrictions on the number of people allowed per STR (2 per bedroom, with a total maximum of 8), and the number of cars in which they can arrive (no more than one car for one-bedroom units, two cars for two- or three-bedroom units, and three cars for four- or more bedroom units), may not adequately account for residences that have the capacity for larger groups of people or parking. The City indicates that these proposed maximum use levels are designed to help the STR use function more like a residential use, and to limit the impacts on water use, circulation, and parking from larger groups. The City also points to the need to protect on-street parking for day-use coastal visitors, particularly in the City’s western neighborhoods that are closer to the beach, and where most STRs operate. Further, the City indicates that while some houses may be able to fit more users and cars, the majority of housing in Half Moon Bay consists of homes with less than 8 occupants and with two-car garages/driveways. While this may be the case, there does not appear to be a logical reason for capping or restricting larger groups of people or additional cars should the residence have the capacity for visitors (additional bedrooms) or larger off-street private parking areas. In addition, if the desire for capping the total number of visitors to 8 is to avoid “party” or “problem” STRs, there is likewise no data to suggest that such user groups lead to those specific problems. In fact, larger groups of people could just as well include an extended family with children looking for affordable accommodation on the coast as it could a so-called “party” group. Further, such concerns about impacts from “party” or “problem” STRs are addressed by the proposed “good neighbor” provisions.

There is likely a fairly small number of units in the City that are large enough to handle more than 8 people at 2 persons per bedroom (i.e., 5- or more bedroom units), and an even smaller subset of those that might provide STR use, and thus any effect from STR users of that size party would be expected to be negligible overall. Therefore, it appears to be a proposed restriction that is not narrowly tailored to a problem, and also would only serve to further restrict the STR market.

***Minimum Lot Size***

The City’s explanation for prohibiting STRs in residential lots that are smaller than 4,125 square feet is that STR usage would exceed the use capacity of the lot. However, these sites that are developed with homes would only be able to accommodate the number of users that could normally use such a house in the first place. In fact, given that STRs would be limited to two people per bedroom, the site capacity to accommodate use is unlikely to be exceeded, including as smaller lots typically have smaller houses with fewer rooms. Therefore, this provision is unnecessary to control for the City’s stated concerns regarding capacity issues on these smaller lots and this provision is not necessary. Further, this restriction must be weighed against the potential impact, which although relatively small, still is significant for lots in residential areas (i.e., the City estimates that there are currently 110 lots in the City that are smaller than 4,125 square feet).

**STR conclusion**

The LCP's LUP provides the standard of review for this proposed IP amendment, and it calls for a balance between facilitating short-term rentals in the City while also preserving housing stock and maintaining residential community character. As detailed above, the City's proposal applies a number of measures designed to curtail STRs, and it would significantly limit STRs in the City. The City indicates its ordinance is intended to restrict STRs in order to protect as many housing units in the City as possible. While the Commission is sympathetic to the City's goal in that regard, the Commission does not believe that the ordinance as proposed strikes the necessary LUP balance, especially when visitor-serving uses and activities are a higher priority than residential under both the Coastal Act and the LCP. The City's STR market is fairly modest, with a total of some forty or so STRs currently registered and operating in the City (less than 1% of housing stock in a City with some 4,700 housing units), where most of these STR operations are primarily used for long-term residential purposes and not STRs in any case. There is simply a lack of evidence to suggest that STR operations in this small subset of units are leading to any type of significant issues, including as it relates to inappropriate user behaviors, and even less data to suggest that the City's proposed STR restrictions will move the needle on increasing housing options and/or affordable housing options in any meaningful way. In other words, the 'problem' that the City's 'solution' purports to address is unclear, and the solution appears to be a poor fit for this context.

In particular, while much of the proposed amendment provides rational standards designed to ensure STRs are appropriately operated and regulated (including through 'good neighbor' provisions and a process for City STR permitting and monitoring), the primary residency requirement, the rental night limitation, the person/vehicle limits, and the lot size limitations together would likely significantly limit STRs even further than the existing limited STR market. These provisions would simultaneously limit both the capacity and number of STRs near prime visitor destinations (particularly near the immediate shoreline and popular beaches) in the City and would significantly limit the ability of STRs to provide an important and unique overnight accommodation option to those not fortunate enough to live in Half Moon Bay, including larger groups and families for which STRs sometimes make overnight access possible at all.

At the same time, the Commission respects that the City feels strongly that these provisions are an important means to safeguard housing, and given that the STR market is so limited, Commission staff worked with City staff to accommodate a compromise that can meet the City's primary objectives while still accommodating a modest STR market, particularly in light of its importance to the mix of accommodation types available in the City. There are a handful of approaches the Commission has approved to achieving this balance of maintaining housing stock, while assuring a range of overnight accommodations remain as discussed earlier, including but not limited to restricting STRs to only certain types of homes (similar to the proposed primary residency here), caps at a percentage of housing stock or at a set number, both within and/or outside of the specific popular areas, allowing currently complying STRs to continue to operate under a new ordinance that would otherwise restrict their operation, lottery systems to control for entry into the market, as well as others (including as previously described).

A number of alternatives were discussed with the City, and one option considered in depth was the idea of applying a cap that would limit the number of unhosted STRs in the City (or possibly just seaward of Highway 1) while eliminating the primary residency requirement. STR caps are perhaps the most common type of STR restriction that the Commission has applied in other cases where warranted and could serve to ensure that the STR market would be allowed to essentially provide the amount of STR options as are available currently. Given there are 46 registered STRs in the City, which equates to about 1% of housing stock, the cap could be placed at or near that number, such as at 50. Then, if there were to be a user night limit as requested by the City, that number would need to be multiplied in order to at least maintain a similar amount of STR availability (e.g., if the allowed nights were to be limited to half the year (e.g., roughly 180 days), then the cap would need to be doubled to make up for the loss of the other half the year of the STR market). Thus, one option considered was exactly that, a roughly 50 unit unhosted STR cap west of Highway 1 with no primary residency requirement, doubled to 100 if combined with a 180-night limit. The City indicated that they did not prefer this approach, including due to the complexity of oversight such an approach might require.<sup>32</sup> But really, the City indicated that the primary residency requirement was their primary objective.

Toward that end, a different option at compromise was considered that would keep intact the City's proposed primary residency requirement, provided the number of allowed rental nights for unhosted rentals was increased from 60 as proposed to 180. In the Commission's view, this makes sense as the primary residency requirement means that a house operating as an unhosted STR could only operate in that way for half the year regardless (where 180 days is just less than that half a year time period). Such an outcome would help to reach multiple goals, including the City's to ensure that housing units are used for longer-term housing at least half the year, while also maintaining a range of visitor-serving accommodations by ensuring that the unhosted STR market is not simply eliminated over time in the City, as staff believes could be the case with the proposed amendment. As of the date of this report, City staff indicates that they appreciate the primary residency portion of this alternative but are still considering the manner in which the change in the maximum allowed number of user nights might be acceptable to the City. In any case, it is a judgement call, and it is the Commission's judgment that the suggested modifications should accommodate this latter option, and not the cap option above, including as it appears to be the most acceptable to the City.

In any case, Commission and City staff were able to reach agreement on other aspects of the proposed amendment, including ensuring that use limitations are dictated by the house/lot's ability to accommodate STR use, thus providing a direct and clear correlation between size and potential use intensity; applying such use limitations to all potential sites, including those on smaller lots (which would have lower use intensity allowances as a general rule); allowing existing STRs in good standing to continue to operate even if they do not meet the primary residence standard, including as a matter of fairness to these existing operators (estimated by the City to be less than 10 homes) until such homes change hands and/or they no longer operate an STR; and ensuring

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<sup>32</sup> To be fair, all such restrictions require oversight, and it is not clear to staff how enforcing the primary residency requirement will be any more straightforward.



that STR enforcement is through the LCP, and not other non-LCP standards otherwise applicable in the City.<sup>33</sup> See suggested modifications.

The Commission finds that this compromise can provide for the LUP-required balancing of sometimes competing visitor-serving uses versus residential objectives and needs and is the most appropriate outcome when measured against the LUP and based on the evidence currently before the Commission, including the very limited STR market in the City. Even if that market were to appreciably increase (which seems unlikely since the current market exists in the absence of LCP regulation, and introducing more regulation seems likely to be a deterrent in comparison), the City's regulation and monitoring of STRs through the new provisions would put the City in a position to better understand the nature of potential issues, if any, and could form the basis for future LCP amendments to refine the program as needed. Such an outcome helps preserve at least some modicum of STRs for overnight visitors to the City, however small that market is, and strikes a more appropriate balance, as required by the LUP. This approach also helps to ensure better access for all to prime Coastal Zone visitor destinations in Half Moon Bay by adding to the mix of overnight accommodation options, particularly for families and larger groups not fortunate enough to be able to live in Half Moon Bay for whom STRs may provide a form of lodging that better serves their needs.

In conclusion, with the suggested modifications outlined above, the Commission finds that the IP amendment regarding home occupations and STRs conforms with, and is adequate to carry out, the certified LUP.

### **C. California Environmental Quality Act (CEQA)**

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are *not* required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, the City exempted the proposed amendment from environmental review (citing CEQA Sections 15301 (existing facilities), 15305 (minor alterations to land use limitations), and 15301(b)(3) (common sense exemption)).

The Coastal Commission is *not* exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal, has addressed all comments received, and has concluded that the proposed LCP amendment is expected to result in significant environmental effects, including as those terms are understood in CEQA, if it is not modified to address the coastal resource

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<sup>33</sup> This is especially important because non-LCP Municipal Codes are not vetted and approved by the Commission and should not be allowed to impact implementation of the LCP.

issues identified herein. Accordingly, it is necessary for the Commission to suggest modifications to the proposed LCP amendment to ensure that it does not result in significant adverse environmental effects. Thus, the proposed LCP amendment as modified will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

#### 4. APPENDICES

##### **A. Substantive File Documents**

- LCP Amendment File for LCP-2-HMB-21-0078-2

##### **B. Staff Contact with Agencies and Groups**

- City of Half Moon Bay Community Development Department