



# Council Agenda Report

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

Prepared by: Heather Glaser, City Clerk

Approved by: Reva Feldman, City Manager

Date prepared: November 6, 2020 Meeting date: November 23, 2020

Subject: Second Reading and Adoption of Ordinance No. 472

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**RECOMMENDED ACTION:** Conduct second reading, unless waived, and adopt Ordinance No. 472 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.

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

**WORK PLAN:** This item was included as item 4d in the Adopted Work Plan for Fiscal Year 2020-2021.

**DISCUSSION:** On November 5, 2020, the Council introduced on first reading Ordinance No. 472.

**ATTACHMENT:** Ordinance No. 472

## 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:

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

<b>STR</b>	<b>Use requires valid short-term rental permit approved by the City</b>
·	<b>Not permitted (Prohibited)</b>

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
<b>RESIDENTIAL</b>																
Short-term rental	STR <sup>21</sup>	·	·	·	·	·	·	·	·	·	·	·				

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 <sup>32</sup>	.	.	.	.	.	.	.	.	.	.	.				

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 \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
MIKKE PIERSON, Mayor

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk

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

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

\_\_\_\_\_  
CHRISTI HOGIN, City Attorney