

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	X
CM	X
CA	X

DATE: JUNE 21, 2022

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: BRENDA WISNESKI, DIRECTOR OF COMMUNITY DEVELOPMENT
JENNIFER FARRELL, ASSISTANT CITY ATTORNEY
JEFF ROSALER, COMMUNITY DEVELOPMENT MANAGER
JOHN CIAMPA, SENIOR PLANNER

SUBJECT: AN APPEAL OF PLANNING COMMISSION APPROVAL FOR COASTAL DEVELOPMENT PERMIT CDP22-0010 TO ESTABLISH A SHORT-TERM RENTAL PROGRAM

RECOMMENDED ACTION:

That the City Council deny the appeal and uphold the Planning Commission's approval of Coastal Development Permit CDP22-0010 and adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP22-0010 TO ESTABLISH A SHORT-TERM RENTAL PROGRAM TO REGULATE THE PERMITTING AND OPERATION OF SHORT-TERM RENTALS IN THE CITY

BACKGROUND:

The City has worked towards establishing a Short-Term Rental (STR) Program for several years to address the California Coastal Commission's (CCC) public access requirements and to properly regulate the long-standing use in the community. On July 21, 2020, the City Council directed the Planning Commission to develop a program, develop stricter STR regulations, and conduct public outreach to guide the process. To begin, the Planning Commission appointed an STR Subcommittee, comprised of Commissioners Nelson and Dohner. Extensive public outreach was conducted, including an informational mailer that was delivered to all property owners and residents, two meetings with each stakeholder group (stakeholder groups included STR permit holders, STR management companies, neighbors of STRs, and community groups), and three Planning Commission Workshops. A detailed chronology of the STR efforts since 2018 is included in [Supporting Document C](#).

On June 1, 2021, the City Council amended Dana Point Municipal Code (DPMC) Chapter 5.38 creating new and enhanced STR business regulations. The Code Enforcement Division implements a robust enforcement program that was enhanced through the strengthened business regulations. In addition to inspections and annual renewal of permits, the Code Enforcement Division also manages complaints of both unpermitted STRs and nuisances at permitted STRs. Since summer 2020, enforcement activities have also included after-hour roving patrols during high seasonal visitation periods. This enforcement effort seeks to observe potential violations first-hand, as well as improving communications with homeowners' association security, specifically in the Capistrano Bay Community Services District (Beach Road) and in the Monarch Hills HOA (along Corniche Drive). Coordination with Police Services is also vital to share information on monthly calls for service and provide mutual support in the field.

The City has listened and learned from both the increased enforcement efforts and concerns from the public during the open workshops. One issue concerning the complaint line is that City Code Enforcement is only notified after the complaint via email and often does not respond to complaints until the following business day. The City has shifted to a new company for the complaint line (GovOS) who will be providing increased notification upon receiving complaints. When a complaint is filed, the STR owner will be contacted via phone and text immediately following the complaint. After the owner is notified, City Code Enforcement will be notified by email and text to ensure that the complaint is resolved within the time frame set in the updated DPMC business regulations. The same company, GovOS, has begun an automated and audited collection of Transient Occupancy Tax (TOT) for STR permit holders. All permit holders are now required to set up an online account, and submit TOT on a quarterly basis through the platform set up by GovOS.

With the enforcement regulations updated, the Subcommittee developed a draft STR program that was brought to the full Planning Commission as a Coastal Development Permit (CDP). On May 9, 2022, the Planning Commission approved CDP22-0010 to permit the STR Program 4-1, with Commissioner Gabbard voting against the Program. The decision was subsequently appealed ([Supporting Document B](#)) on May 23, 2022, to the City Council by Kim Tarantino and Mark Zanides ("Appellants"), residents of the City.

DISCUSSION:

The STR Program was developed to establish regulations with the ultimate goal of balancing the following interests: 1) preserving the City's affordable rental stock for its residents; (2) providing low cost, affordable coastal accommodations at a variety of prices, locations, and lodging types; (3) protecting the peaceful and quiet enjoyment of the community by its residents; and (4) respecting the private property rights of all property owners (both those who favor and those who oppose STRs). The result of this process is the draft STR Program, which includes regulations and conditions associated with three types of STRs (Non-Primary, Primary, and Home Stay), a city-wide STR permit cap, and other limitations intended to eliminate potential nuisances that might occur at STRs.

The draft STR Program was developed utilizing the October 1, 2019 City Council policy objectives and the Short-Term Rental Business Regulations ([Supporting Document F](#)) of the DPMC to provide for a series of 'good neighbor' operational restrictions (related to noise, parking, occupancy limits, etc.) and other regulatory elements (including registration, inspection, operation requirements, performance standards, hosting platform regulations, and a revocation process). Additional provisions were included based on public input, CCC comments ([Supporting Document E](#)), researching other cities' STR Programs, and as evaluated by the STR Subcommittee. A summary of the STR Program regulations is as follows:

- **STR Types:** Primary, Non-Primary, and Home Stay STRs, as defined as:
 - "Primary Short-Term Rental" shall mean the property is the owner's primary residence, and it is rented when traveling or living elsewhere.
 - "Non-Primary Short-Term Rental" shall mean that the owner rents out homes other than their primary residence to visitors.
 - "Home Stay Short-Term Rental" shall mean that the owner rents out a portion of their home while continuing to live in the home while visitors are renting. In the case of a multi-family (duplex, triplex, etc.) property, the owner resides in one of the units while the other unit on the same property is rented to visitors.
- **Permitted Zones:** all STR types are permitted in all residential and mixed-use zones in the City.
- **Permit Cap:** Non-Primary STRs are capped at 185 permits city-wide. No cap for Primary and Home Stay STRs (however, these STR types are subject to the one permit per owner limitation).
 - Permit cap will be evaluated in five years. If increased, an amendment to the Coastal Development Permit is required.
- **Multi-Family Structures:** no express limit; however, condominium owners and apartment complex owners would be subject to the one permit per owner limitation. In the apartment scenario, this would result in one STR permit (i.e., one STR) in the apartment community, regardless of the number of apartment buildings that are contained within that community. In the condominium context, this could result in multiple STR permits in a building. However, condominium units would also be subject to the CC&Rs applicable to their community, and the City's Zoning Code (and, in particular, the requirement that a condominium structure could not be converted into a "hotel" which is generally defined as having six or more guest rooms.).
- **Transfer of permits:** only allowed for inherited properties.
- **Permits Per Owner:** limited to one STR permit per owner (individual or entity). Existing owners with multiple permits can retain their permits until the property is sold.
- **Notification:** all abutting properties shall be notified of an STR permit issuance/renewal.
- **HOA Approval:** permit issuance is subject to authorization by HOA, if applicable.
- **Initial Inspection:** the STR shall pass an initial inspection.

- Minimum Age: minimum age for a renter is 25 years.
- Maximum Nighttime Occupancy: two persons per bedroom plus two additional persons.
- Maximum Daytime Occupancy: 2.5 times the overnight occupancy, not to exceed 20 persons.
- Noise: no outside noise from 10:00 pm to 7:00 am.
- Waitlist: establish a waitlist for STR permits to be issued once the cap is met.
- Prohibition(s): STRs are prohibited in Accessory Dwelling Units, Junior Accessory Dwelling Units, Single-Family Residential Duplexes (SB9), and designated affordable housing.
- Operator Regulations: specific regulations for each type of STR:
 - Home Stay – owner must reside in the residence when the property is rented from 10:00 pm to 7:00 am.
 - Primary – rented a maximum of 60 days annually.
- Fines: maximum monetary amount allowed per State law (currently \$1,500 for first violation, \$3,000 for second violation and \$5,000 for third and subsequent violations)
- Penalties: three violations for the life of the permit. Third violation results in revocation of the STR permit.

APPEAL:

The 27 issues raised in the appeal letter ([Supporting Document B](#)) are listed below in italics, and Staff's response and analysis of each item follow (non-italics):

1. *The City Codes Bar STRs Absent a Zoning Code Change and LCP change. The Planning Commission has no legal authority to alter the City's long-standing interpretation of its Zoning Code.*

The issue involves an interpretation of the City's Zoning Code. The Code is silent as to whether STRs are permitted as part of residential uses, or are prohibited as a use that is not expressly permitted. The City's Municipal Code specifically provides that interpretations are to be made by the Director of Community Development with policy input from the Planning Commission and Council. (DPMC § 9.61.020; see also, § 9.75 [Note].) Nothing prevents a change in interpretation from occurring. Here, the change in interpretation is warranted by a change in circumstance, and specifically the fact that in the last year, three Court of Appeal opinions have been published which make it a near certainty that the City's prior interpretation would not survive a legal challenge. Under the interpretation compelled by the new case law, no zone change or Local Coastal Program (LCP) amendment is needed, and the City is adopting the Coastal Commission's (and Court's) position that STRs are the same as other residential uses permitted by both the City's Zoning Code and its LCP.

As to the three cases, the first, *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089, dealt with facts nearly identical to those in Dana Point. There,

the City of Santa Barbara historically took the position that STRs are not expressly permitted by its zoning code, and hence are prohibited under the law applicable to permissive zoning, whereby uses that are not expressly permitted are deemed to be prohibited. This is the exact position the City has taken over the years. Like in Dana Point, hundreds of STRs nevertheless existed, and, as in Dana Point, the City took the position it had simply taken a blind eye to the issue and not enforced its code. The City of Santa Barbara asserted nothing changed when it began enforcing its interpretation of its zoning code other than a decision to allocate resources to address activity that was already prohibited by its zoning and LCP. The Coastal Commission disagreed, and asserted that unless Santa Barbara followed the process outlined in the Coastal Act to change its policy, it had to continue to allow STRs as a residential use, which are permitted by its LCP. The Court of Appeal held in favor of the Commission and found that Santa Barbara's change in policy whereby it began enforcing its zoning code constituted development, as defined by the Coastal Act, because the impact was to reduce the number of STRs that were available to the public. Moreover, the Court found that the City's STR regulations would not be effective unless and until approved pursuant to the process required by the Coastal Act (i.e., adoption of a CDP, or if necessary, adoption of an amendment to the City's LCP). While the City has arguments it might make to distinguish the Santa Barbara decision, if the case were to be applied in Dana Point, it could be interpreted to mean that until STR regulations are approved pursuant to the Coastal Act, any residential property in the Coastal Zone could, by right, operate an STR since residential uses are permitted by the City's LCP. This results from (1) the fact the City previously chose not to enforce what it asserted its zoning code and LCP said (i.e., that such uses were not expressly permitted and hence prohibited), combined with (2) the Court's determination in *Santa Barbara* that a change in policy, whereby a city begins to enforce a long existing interpretation that its LCP/zoning contains an STR ban, constitutes development because of the impact on STR stock, and cannot occur without following the Coastal Act process.

In April another case was decided by the Court of Appeal, *Keen v. City of Manhattan Beach (2022) 77 Cal.App. 5th 142*, which took the underlying logic of the *Santa Barbara* decision a step further. The underlying facts of the case are again strikingly similar to the facts before the City. Manhattan Beach asserted its zoning code and LCP always prohibited STRs since they are not expressly permitted (i.e., using a permissive zoning analysis). Like both Dana Point and Santa Barbara, it was aware STRs existed, but did nothing to enforce its interpretation of its zoning and LCP. Once it started receiving complaints about STRs, the City processed an LCP in which it sought to clarify the law, and ban all STRs. The Coastal Commission made clear it would not support a total ban, and hence the City withdrew its application to amend its LCP, and asserted no amendment was needed since the existing LCP purportedly banned STRs. The Court found that the City's LCP and zoning allowed residential properties, and allowed all such properties to be rented. Moreover, that there was no restriction related to the number of nights allowed for such rentals in either the zoning code

or LCP. It opined that under the City's zoning and LCP, there was no difference between a residence rented for less than 30 days when compared to residential rentals of greater than 30 days. It thus ruled that any change prohibiting rentals of a short duration would require compliance with the Coastal Act (i.e., either a CDP or amendment to the City's LCP). Stated otherwise, it found that unless subject to regulations adopted in accordance with the Coastal Act, any residential property in the Coastal Zone may be rented for a period of less than 30 days. If this case is applied in Dana Point, a similar result would likely occur since neither the City's LCP, nor its zoning code, nor any CDP, regulates or otherwise restricts the number of nights a residential property may be rented; yet, its zoning code and LCP permit residential properties and allows them to be rented.

A third case worthy of note was decided in January this year related to STRs in Palm Springs (*Protect our Neighborhoods v. City of Palm Springs* (2022) 73 Cal. App. 5th 667). While the facts again are perhaps distinguishable from those in Dana Point, the Palm Springs Court in essence ruled that STRs are a permissible use at residentially zoned properties, unless specifically regulated otherwise. This is significant in that, if applied in Dana Point, it would mean the rationale of the *Santa Barbara* and *Manhattan Beach* cases applies both within and outside of the Coastal Zone. In other words, absent regulations applicable to STRs which exist outside the Coastal Zone, an STR could operate at any residentially zoned property.

The above cases were significant in connection with the Staff recommendations that led to the Planning Commission adopting the CDP in question. If the holdings discussed above are applied in the City, the previously held position that the City's zoning and LCP include a ban on STRs in the Coastal Zone will likely not survive a legal challenge. Rather, for a ban to be effective, it would have to be included in either a CDP or amendment to the City's LCP; yet, the CCC has made clear it will not support a ban. Timing becomes important because the longer it takes for either a CDP or LCP amendment addressing regulations to be in place, the more likely it becomes that the City will face arguments that STRs may operate under the existing LCP at any existing residential property in the Coastal Zone, without regulation. Rather than continuing to take the position STRs are not currently permitted as part of the LCP's permitted residential uses (which would be subject to a legal challenge), the Planning Commission adopted Staff's recommended interpretation, which is consistent with the above cases, that STRs are the same as other residential uses which may be rented without any restrictions on the duration of a rental. As such, there is no need for an LCP amendment, or any zoning amendment, because the use is already permitted in connection with any property zoned to allow residential use. Compliance with the Coastal Act, which the courts have made clear is mandatory, occurs by approval of a CDP that places regulations on the use which (we must presume from the new cases) is already authorized by the City's existing zoning and LCP.

With respect to properties located outside of the Coastal Zone, Municipal Code Section 5.38.080(b) provides the Director of Community Development the authority to impose additional standard conditions to all short-term rentals. As a result, the Planning Commission's approval of the CDP, if upheld, enables the Director to adopt its provisions for use throughout the City (for instance, the cap on STR permits), and this can occur without requiring an amendment to Chapter 5.38. Presuming the CDP becomes effective, the Director intends to move forward in this manner to carry out the Council's prior direction that the regulations related to STRs be uniform throughout the City.

2. *The Planning Commission has no legal authority to establish the City's legal position on whether STRs are already permitted in residential zones, and its action is therefore void.*

The Community Development Director and Planning Commission are expressly authorized to interpret the City's Code, and give policy direction on Code interpretation issues. See response to Issue 1 above.

3. *The case the Planning Commission relies on does not hold what the Commission claims they do.*

- a. *Kracke V. Santa Barbara, (2021) 63 Cal. App. 5th 91089. The court did not address the issue of whether "STR uses are the same as residential uses."*

See response to Issue 1 above.

- b. *Keen v. City of Manhattan Beach; Case No. B307538; filed 04/06/22. Neither the LCP or any CDP permits STRs in residential neighborhoods in Dana Point.*

See response to Issue 1 above.

- c. *Protect our Neighborhoods v City of Palm Springs ((2022) 73 Cal. App. 5th 667. Nowhere did the court make the blanket finding that STRs are permissible uses at residentially zoned properties in all cities. Rather, each municipal code must be examined to determine what is or is not permitted in any city.*

See response to Issue 1 above.

4. *The City is trying to evade CCC Review.*

There is no effort, or ability, to avoid CCC review. Rather, the CDP brings the City into compliance with the Coastal Act by ensuring its regulations related to STRs are adopted in a manner that is consistent with the Coastal Act. This includes ensuring any interested party has the opportunity to have the issue heard by (i.e., appealed to) the CCC. In addition, the City has met with CCC staff on multiple

occasions to explore potential approaches to an STR Program that would be supported by the CCC and meet community goals.

The City has a Certified Local Coastal Program which allows the City to issue Coastal Development Permits. The CCC's 2016 STR letter ([Supporting Document D](#)) and the CCC's April 1, 2022 STR Program comment letter acknowledge that the proposed STR Program can be approved with a CDP. The hearing review process is established by the City's LCP and was verified by the CCC. Since the Program applies within the Coastal Appeal Zone, it is appealable to the CCC by any interested person; and in fact, the CCC could appeal it to itself.

5. *The STR Program is based on the fear that the "City will face arguments that STRs may operate at any existing residential property in the Coastal Zone....no such cases have been filed in the fifteen years STRs have been an issue in Dana Point, and we are unaware of any immediate threat...The Planning Commission has assumed there is a threat, and is using that pretext to counsel immediate surrender to STR Interests."*

In the last year, three different cases asserting this position resulted in published Court of Appeal decisions that demonstrate the concerns presented by Staff to the Planning Commission are valid, and that without action on a CDP the City would have no legal ability to take action against a potential wave of unregulated STRs. See response to Issue 1 above.

6. *The proposed STR Program is not required by the Coastal Act and is inconsistent with the Policy Objectives of the Council and would destroy residential neighborhoods.*

The CCC has made clear that it believes STRs are required by the Coastal Act, and has successfully engaged in significant litigation over the last several years in support of this position. The CCC does not support an STR ban because a ban would unduly limit public recreation access opportunities, which is inconsistent with the Coastal Act. It does support reasonable and balanced STR regulations that are tailored to address the specific issues within a community to allow for STRs. The Planning Commission's decision to approve the STR Program was on the basis that it is in compliance with the Coastal Act and the City Council's STR policy objectives.

7. *The CCC has not required more STRs and is not in the process of requiring more.*

The CCC's April 1, 2022, letter indicates their desire to increase the number of STRs in the community by suggesting that Accessory Dwelling Units be utilized as STRs (which conflicts with State law) and requesting justification for the Non-Primary STR cap. The City believes the proposed STR Program provides an acceptable number of STRs in the community based on the existing overnight accommodations while still protecting residential neighborhoods.

8. *The STR Program does not conform to the City Council's policy objectives.*

Objective 1: Maintain the Character of our neighborhoods by not encouraging absentee corporate investment.

The STR Program includes several provisions to discourage absentee corporate investment, including: limiting the number of Non-Primary STRs, one permit per person/entity, 24/7 emergency contact, 30 minute complaint response time, three strike rule for nuisance violations and increasing the fines to the maximum allowed by State law.

Objective 2: Firmly protect against nuisances

The proposed STR Program has several provisions to protect against nuisances, including: an emergency response contact to address issues day and night, 30 minute response time to address complaints, no exterior noise from 10:00pm to 7:00am, annual notification to neighbors with the contact information of the operator to address complaints, renters must be provided the City's Good Neighbor Acknowledgement, limitations are placed on the daytime and night time occupancy, fines are the maximum allowed by state law, and after third nuisance violation, the permit is revoked.

Objective 3: Balance the rights and responsibilities of all residents and homeowners, and honor HOA regulations.

The proposed STR program limits the number of STRs permitted in the City and includes a robust enforcement program to limit potential impacts from STRs. HOA approval is required to obtain an STR permit.

9. *There is a danger of developers purchasing many units as separate LLCs.*

The STR Program limits a person or entity to one permit. This permit limitation applies to all STR types. If an individual has ownership in the LLC with an STR permit, they would be prohibited from obtaining an additional STR permit. Utilizing a process that is applied by the City of Palm Springs, the STR application will include an ownership vetting process.

Municipal Code Section 5.38.050 provides the Director of Community Development the ability to require additional application information as necessary. Therefore, the details of the ownership vetting process does not need to be included in the STR Program, which enables it to be flexible and as expansive as necessary to ensure it is effective. However, if the City Council determines it necessary to incorporate ownership review into the STR Program, it can be incorporated into Section 3 of the Program. This issue is identified in the STR Program Modifications to Consider section of the report as a potential modification.

10. Home Stay STRs have the potential to impact the City's housing stock.

Home Stay and Primary STR types do not impact the housing stock because these units are maintained as the property owner's primary residence. Through Staff's research, Home Stays have low interest in southern California, but the STR type offers a revenue source for struggling homeowners and provides affordable overnight accommodation to low-income families to access the coast. This type of STR creates an affordable option while not impacting the rental housing supply. If an owner lives on the property of a multi-unit development, only one of the units could be offered as a Home Stay STR, and the owner is required to be present from 10:00pm to 7:00am while the unit is used as an STR to ensure nuisance conditions do not exist.

The Appellant claims there are 30 existing STRs that operate as Home Stays and once the STR Program is approved, those will be transferred to Home Stay permits, which will allow for 30 additional Non-Primary STR permits. City records indicate there are six Home Stay permits. If these properties entered into a Home Stay permit under the Program, there would be an additional 6 STR permits.

The City Council could consider a Home Stay cap for the 5,376 multi-family properties in the City. The City of Laguna Beach established a cap of 165 Home Stay STRs which is 1.5 percent of housing stock (10,542 units). If the same percentage cap were applied to Home Stays for the Dana Point, it would result in a maximum of 253 Home Stay STR permits. This potential regulation is included in the STR Program Modifications to Consider section of the staff report. Alternatively, the Council could redefine Home Stays to only include stays within the property owner's primary residence, which would turn the duplex example above into a Non-Primary STR.

11. The Planning Commission appears to not have attempted to determine whether and if the STR Program will discriminate against racial minorities and rental households.

The proposed expansion of the STR program from 129 Non-Primary permits to 185 permits and to allow Home Stay and Non-Primary STRs will not discriminate against racial minorities and rental households. The STR program allows for no more than 185 Non-Primary STRs, representing 1.1 percent of the City's 16,172 housing units, ensuring the housing stock is preserved. The allowance of Home Stay (for single-family residences) and Primary STRs will not impact the housing supply as these units are occupied as the primary residence for the owner. There is no evidence to indicate that the proposed STR Program would impact rental households or discriminate against racial minorities.

As required by the Coastal Act, the STR Program will provide increased access to the coast for more affordable overnight accommodations for low-income families

to enjoy the coast. Rather than discriminate against them, these provisions would lower barriers to disadvantaged communities to access the coast.

12. There are no limits on how many condominiums will be allowed to become STRs.

While there is no express or specific “cap” for the number of condominiums in a community that could be utilized as STRs, the STR Program does establish limits for how many condominiums could be permitted to become STRs. As previously stated, the STR permit cap would limit the number of Non-Primary STRs to 185 (whether those units are condominiums, apartments or single-family dwellings). Additionally, condominium owners would be subject to the CC&Rs that are applicable in their community (which could prohibit or otherwise limit the number of STRs). Moreover, condominiums would be subject to the City’s Zoning Code provisions, which generally prohibits “hotel” uses (defined as a structure including six or more guest rooms) in a single-family or multi-family residential zone.

Importantly, the STR Program only allows one permit per owner, which would limit the number of permits that can be issued in a condominium, even if an owner had multiple units and asserted the additional unit used as an STR qualified as a Home Stay. Stated otherwise, while there is not a specific cap on Home Stay STRs, there is a permit requirement for each unit used as an STR, and each owner can only obtain one permit. This combined with the requirement that the permit holder must be present during the STR stay satisfied the Planning Commission that there would not be nuisance issues at condominiums.

Finally, condominiums that are Primary STRs are limited to a rental period of no more than 60 days a year which would further limit this use.

13. There are no regulations or limitations on the density of STRs

The expansion of the Program from 129 to 185 Non-Primary STR permits would result in an increase of 56 permits. The regulations in the STR Program address nuisance issues that can be associated with STRs whether they are in close proximity or spread out over the City.

14. Seventy five percent of STRs are located in Capo Beach and Lantern District. There are no restrictions to alter this disproportionate burden, which will change the residential character of these two districts and discriminates against these two districts and all non-HOA homeowners.

The concentration of STR permits on Beach Road and Lantern District is reflective of the historic demand of those areas. An increase of permits in those areas would not change the residential character because STRs are already in place. Beach Road has historically operated vacation rentals since the area was developed.

15. No consideration was given to how additional STRs will impact Dana Point hotels.

All of the hotels were notified during regular coordination meetings with the City and in the city-wide notification mailer sent in 2021. None of the hotel operators reached out to the City with concerns or comments on the STR Program.

16. STR platforms should collect STR TOT.

The City has a third-party vendor that collects and audits transient occupancy tax (TOT). The larger STR platforms (Airbnb and VRBO) are able to collect TOT but they do not provide the data necessary to reconcile the payments with the permits. Additionally, there are over 30 online platforms and City is not sure if all of the platforms have the capacity to collect TOT in a consistent and reliable manner. By utilizing the third-party vendor, TOT is collected and audited consistently.

17. The STR Program does not firmly protect against nuisances. Many, if not most, residents consider a full time STR next door, even a well run one, to be a nuisance by its nature.

The proposed STR Program has several provisions to protect against nuisances, including: an emergency response contact to address issues day and night, 30 minute response time to address complaints, no exterior noise from 10:00pm to 7:00am, annual notification to neighbors with the contact information of the operator to address complaints, renters must be provided the City's Good Neighbor Acknowledgement, limitations are placed on the daytime and night time occupancy, fines are the maximum allowed by state law, and after third nuisance violation, the permit is revoked.

18. No enforcement action has been taken on unpermitted STRs.

Since 2016, the City's Code Enforcement Division has successfully acted on 550 cases of illegal STRs. The City's third-party STR vendor "scrubs" multiple rental platforms daily and reports potential illegal operators to the City. These illegal advertisements are issued a Notice of Violation and given notice to remove their listings. If the listings are not removed in a timely manner, the homeowners receive citations until the listings are removed. Additionally, Code Enforcement Staff investigate all claims regarding illegal STRs and take necessary action. Code Enforcement is always open to outside assistance and if the public has knowledge of an STR operating without the required permits, please contact the City immediately.

19. There should be regulations to restrict those who have violated Dana Point's regulations in the past from obtaining a permit.

See Section 5.38.060 Denial of Permit, an application may be denied if the permit is for the same STR that was revoked.

20. How will the City verify primary STR owners.

The Primary STR permit application will be vetted through the Orange County Assessor's database. The City will use the database to verify the owner on record and that owner has filed for the tax exemption status on the property to verify the unit is their primary residence.

21. How will the City audit the 60 day maximum for Primary STRs.

The City's third-party STR vendor will audit the Primary STRs to ensure they do not exceed the 60-day rental maximum. The company has the ability to monitor the number of nights a property is rented and the information can be cross referenced with the TOT to verify compliance.

22. How will the City audit that home stays actually qualify as and are operated as home stays.

The permit application will go through the same verification process as with Primary STR permits to verify the property is the owner's primary residence. Additionally, all advertisements must be listed and advertised as a Home Stay. The property owner must also complete a signed acknowledgment in the application ensuring the property will be operated as a Home Stay STR.

23. How will the City audit TOT.

The City has contracted with a third-party STR vendor to collect and monitor the activity of STRs to verify that the TOT submitted is reported correctly.

24. How to prevent illegal STRs advertising as 30 day rentals.

The City's Code Enforcement Division and the third-party vendor screen all online advertisements and Staff will attempt to book the homes online to identify illegal STRs advertising as 30-day rentals. When the City receives information from the public suggesting that a unit may be booking for less than 30 days, the City surveys the property and the tenant to determine if it is illegally operating and booking less than 30 days. The City has also contacted the business owner or host and attempted to rent the home for less than 30 days over email and phone.

25. Videos, photographs, and noise recordings from witnesses should be accepted as acceptable evidence of a violation.

The use of videos, photographs, and noise recordings from witnesses is allowed. The City recently won a citation appeal concerning a resident that had evidence submitted by a third-party and the citation was upheld. The City's recently amended Municipal Code makes the use of videos, noise recordings and other

third-party evidence easier to use for enforcement purposes due to the specific standards of "no outside noise" after 10:00pm.

26. Council needs comprehensive oversight of STR enforcement.

The City Council receives several updates over the course of a year on STR statistics and enforcement. Code Enforcement provides an annual update to the City Council on STRs and other topics to ensure the Code Enforcement Operations and Strategic Plan is being administered and to update the City Council on any changes to the program. Additionally, the Sherriff's Department provides a quarterly update to the City Council on all City related issues, including STR issues.

27. The STR Program is out of balance, benefiting STR owners and not property owners.

The STR Program is intended to balance the interests of property owners and STR operators. The Program establishes enforceable regulations that strictly limit STRs and protect the character of residential neighborhoods. Regulations to balance the competing interests include: a Non-Primary STR permit cap of 185, which would allow the addition of 56 new permits; a required response time of 30 minutes to any reported nuisances; limiting one permit per owner; the City's Good Neighbor annual notification; prohibiting exterior noise from 10:00pm to 7:00am; requiring an emergency contact that must be available at any time of day; increasing the fines to the maximum allowed by State law; and permit revocation after the third violation. These provisions establish strict and enforceable regulations to ensure STR guests and operators are sensitive to the residential community, and if there are absentee owners that are not properly managing their property, they will quickly lose their permit.

STR Program Modifications to Consider

At the May 9, 2022 Planning Commission meeting, several potential regulations were identified in public comment that could be considered by the City Council. The recommended regulations included the following:

- Amend Section 3 of the STR Program to establish a cap for multi-family Home Stay STR permits in the City.
- Amend Section 7 of the STR Program to formalize the ownership vetting process to prohibit members/owners of corporate entities from acquiring multiple permits.

PUBLIC COMMENTS RECEIVED:

Public comments received in connection with the May 9, 2022 Planning Commission meeting, along with the meeting recording hosted on the City's YouTube channel, are available for viewing on the City's Short-Term Rental webpage (bit.ly/DanaPointSTR).

Public comments received specific to the City Council appeal hearing will be collected and distributed to City Council prior to the meeting, posted on the City's website, and added to the official record.

CONCLUSION:

Based on the above analysis, Staff determined the required findings can be made for the project, and the City Council should deny the appeal and uphold the Planning Commission approval. Staff reviewed the comments raised in the appeal letter and found the project is adequately analyzed and consistent with all provisions of the applicable requirements in the Dana Point Zoning Code and City Council STR policy direction. Therefore, Staff recommends the City Council adopt a resolution denying the appeal and approving Coastal Development Permit 22-0010 to permit the STR Program, allowing for regulations and provisions for the management of STRs in the City.

NOTIFICATION AND FOLLOW-UP:

A 1/8 page Notice of the Public Hearing was published within a newspaper of general circulation on June 3, 2022, and posted on May 26, 2022, at Dana Point City Hall, the Dana Point and Capistrano Beach Branch Post Offices, as well as the Dana Point Library. On May 25 and June 16, 2022, the STR Interested Parties List was emailed notification of the public hearing.

FISCAL IMPACT:

No impact.

ALTERNATIVE ACTIONS:

The City Council could determine that the findings cannot be made to approve the project, continue the public hearing, and direct Staff to bring back a resolution approving the appeal and denying Coastal Development Permit CDP22-0010.

ACTION DOCUMENTS:

Page No.

A. [Draft City Council Resolution 22-6-21-XX](#)..... 17

SUPPORTING DOCUMENTS:

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B. [Appeal Letter](#)..... 31

C. [Planning Commission Staff Report and Minutes of May 9, 2022](#)..... 42

D. [California Coastal Commission's 2016 STR Letter](#)..... 57

E. [California Coastal Commission's 2022 STR Program Comment Letter](#)..... 60

F. [Section 5.38 Short-Term Rental Business Regulations](#)..... 69

ACTION DOCUMENT A – Draft City Council Resolution 22-06-21-XX**RESOLUTION NO. 22-06-21-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP22-0010 TO ESTABLISH A SHORT-TERM RENTAL PROGRAM TO REGULATE THE PERMITTING AND OPERATION OF SHORT-TERM RENTALS IN THE CITY**

The City Council for the City of Dana Point does hereby resolve as follows:

WHEREAS, the City of Dana Point filed a verified application for a Coastal Development Permit to establish a short-term rental program (STR Program) to regulate the permitting and operation of short-term rentals in the City; and

WHEREAS, said verified application constitutes a request as provided by Title 9 of the Dana Point Municipal Code; and

WHEREAS, short-term rentals have historically been a part of Dana Point and enhanced regulatory provisions and fines were adopted in 2021 to limit community impacts and impose strict enforcement measures; and

WHEREAS, relevant court decisions, *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089 and *Keen v. City of Manhattan Beach* (2022) 77 Cal.App.5th 142, provide the framework that any regulation and/or prohibition of short-term rentals in the Coastal Zone requires compliance with the Coastal Act, such as with an amendment to the City's Local Coastal Program (LCP), or issuance of a Coastal Development Permit (CDP); and

WHEREAS, the California Coastal Commission has made clear that it will not support a prohibition of short-term rentals based on its interpretation of the Coastal Act; and

WHEREAS, until short-term rental regulations are established, the City will face arguments that short-term rentals may operate at any existing residential property in Coastal Zone, without regulation or limitation; and

WHEREAS, the City understands that it is the Coastal Commission's position, which has been confirmed by the Courts in the above noted cases, that STRs are already legally authorized as residential uses, which are permitted by the City's existing zoning and Local Coastal Program in various zoning districts in the City; and

WHEREAS, because STRs are already permitted by the City's zoning and Local Coastal Program, in order to comply with the Coastal Act, a CDP is proposed to allow the regulation of STRs; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the project is Categorically Exempt per State Code Sections 15162 and Categorical Exemptions Class 1 - Section 15301 – Existing Facilities; and

WHEREAS, the Planning Commission did, on the 9th day of May, 2022, hold a duly noticed public hearing as prescribed by law to consider said request and the CDP establishing the STR Program (attached hereto as Exhibit A); and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to Coastal Development Permit CDP22-0010, and approved the project 4-1; and

WHEREAS, on the 23rd day of May, 2022, Kim Tarantino and Mark Zanides, submitted an appeal of the Planning Commission approval; and

WHEREAS, on the 21st day of June, 2022, the City Council held a lawfully noticed hearing on the appeal of the Planning Commission's determination with respect to CDP22-0010, and considered all testimony and arguments for and against said appeal.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Dana Point as follows:

- A. That the above recitations are true and correct and incorporated herein by this reference.
- B. Based on the evidence presented at the public hearing, the City Council overrules the appeal, and re-affirms the Planning Commission's decision to adopt CDP20-0010 for the STR Program, attached hereto as Exhibit A (which includes minor typographical corrections), and subject to the following conditions of approval:

Findings:

Coastal Development Permit CDP22-0010

1. That the project is in conformity with the certified Local Coastal Program (LCP) as defined in Chapter 9.75 of this Zoning Code. (Coastal Act/30333, 30604(b); 14 Cal. Code of Regulations/13096) **in that, the STR Program allows the establishment of regulations for STRs in the City. The Coastal Commission has determined, and such determination was confirmed by subsequent court decisions in *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089 and *Keen v. City of Manhattan Beach* (2022) 77 Cal.App.5th 142, that STR uses are the same as any other residential use already permitted by the City's zoning and LCP and**

they are therefore a permitted use in the City's Residential and Mixed-Use zones. The STR Program regulations ensure STRs are compatible with residential neighborhoods and safeguards the peace, safety and general welfare of the residents of Dana Point. The regulations prohibit excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse. The establishment of regulations for STRs and a permitting process ensures the City provides a mix of overnight accommodations to provide coastal access to visitors as required by the Coastal Act and the City's LCP. The City's existing supply of overnight accommodations along with the STR Program's balanced approach increases the availability of overnight (market rate and affordable) accommodations while protecting neighborhoods, long-term housing stock, and public access.

2. If located between the nearest public roadway and the sea or shoreline of any body of water, that the project is in conformity with the public access and public recreation policies of Chapter Three of the Coastal Act. (Coastal Act/30333, 30604(c); 14 Cal. Code of Regulations/13096) **in that, the establishment of the STR Program increases public access in the Coastal Overlay District in the City by creating additional opportunities for overnight accommodations for visitors. The establishment of three types of STRs (Non-Primary, Primary, and Home Stay STRs) allows for improved overnight access to the coast with amenities that provide a mixed range of affordability to ensure all types of visitors can access the coast in Dana Point. The establishment of the STR Program is in addition to the 1,864 hotel rooms and 120 campsites within the City limits. Allowing unlimited Home Stay STRs expands the potential for affordable overnight accommodations since these STRs are, by design, an affordable option by allowing the renting of individual rooms or an attached unit versus an entire house.**

3. That the project conforms to Public Resources Code Section 21000 (the California Environmental Quality Act - CEQA) and following, that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any potentially significant adverse impact that the activity may have on the environment. (Coastal Act/30333; 14 Cal. Code of Regulations/13096) **in that, the project qualifies as Categorical Exempt from review under CEQA pursuant to State Code Sections 15162 in that a Negative Declaration was approved for the STR ordinance in 2013. Additionally, the project qualifies as a Categorical Exemption Class 1 - Section 15301 – Existing Facilities in that the STR use is a residential use as established by the CCC and related case law and is not an intensification of existing, permitted residential use. The STR Program establishes regulations to ensure the use is compatible**

with other, adjacent residential uses.

4. That the proposed development will not encroach upon any existing physical access-way legally utilized by the public or any proposed public accessway identified in an adopted Local Coastal Program Land Use Plan, nor will it obstruct any existing public views to and along the coast from any public road or from a recreational area **in that, the project is for the establishment of an STR Program to establish regulations for the permitting and operation of STRs and does not result in any physical development that would encroach on any access-way or public view identified in the City's LCP. The STR Program creates a range of affordable overnight accommodations to increase access to the coast for visitors of Dana Point. The STR Program requires, at a minimum, permit cap evaluation every five years; however, the City has the authority to review the Program sooner and propose amendments to the CDP to incorporate modifications and/or mitigation to address any impacts of the Program on public access and/or long-term rental housing.**
5. That the project has been sited and designed to prevent adverse impacts to environmentally sensitive habitats and scenic resources located in adjacent parks and recreation areas, and will provide adequate buffer areas to protect such resources **in that, the project is for the establishment of an STR Program to establish regulations for the permitting and operation of STRs and does not result in any physical development that would create adverse impacts to environmentally sensitive habitats and scenic resources identified in the City's LCP. The establishment of the STR Program will improve public access to the coast and not result in adverse impacts to the environment or recreational areas.**
6. That the project minimizes the alteration of natural landforms and will not result in undue risks from geologic and erosional forces and/or flood and fire hazards resources **in that, the project is for the establishment of an STR Program to establish regulations for the permitting and operation of STRs and does not result in any physical development.**
7. That the project is visually compatible with the character of surrounding areas, and, where feasible, will restore and enhance visual quality in visually degraded areas resources **in that, the project is for the establishment of an STR Program to establish regulations for the permitting and operation of STRs and does not result in any physical development. The STR Program creates a range of affordable overnight accommodations to increase access to the coast for visitors of Dana Point. The Program requires, at a minimum, permit cap evaluation every five years; however, the City has the authority to review the Program sooner and propose amendments to the CDP to incorporate modifications and/or mitigation to address any impacts of the Program on public access and/or long-**

term rental housing.

8. That the project conforms with the General Plan, Zoning Code, applicable Specific Plan, Local Coastal Program, or any other applicable adopted plans and programs **in that, the establishment of the STR Program allows for the establishment of regulations for STRs in the City. The Coastal Commission has determined, and such determination was confirmed by subsequent court decisions, that STR uses are the same as any other residential use that is already permitted by the City's zoning and LCP and is therefore a permitted use in Residential and Mixed Use zones in connection with existing residential or mixed use structures. The establishment of STR regulations ensures the use is compatible with residential neighborhoods and establishes regulations to safeguard the peace, safety and general welfare of the residents of Dana Point and their visitors and guests by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse which are directly related to short-term rentals. The establishment of regulations for STRs and a permitting process ensures the City provides a mix of overnight accommodations to provided coastal access to visitors as required by the Coastal Act and the City's LCP. The City's existing supply of overnight accommodations along with the STR Program's balanced approach increases the availability of overnight (market rate and affordable) accommodations while protecting neighborhoods, long-term housing stock, and public access.**

Conditions:**General:**

1. Approval of this application permits the STR Program authorizing permitting, regulations, and penalties for short-term rentals.
2. The STR Program shall be reviewed by the Community Development Director at least every five (5) years to re-evaluate the permit cap, regulations, penalties, and all other aspects of the STR Program to determine if amendments should be made. Amendments to the Program must be processed as an amendment to the Coastal Development Permit.
3. As authorized by Municipal Code Section 5.38.080, the Community Development Director will apply the additional standards set forth in the STR Program as a condition of all permits issued for STRs outside of the Coastal Zone to ensure a uniform approach to the regulation of STRs throughout the City.

- 4. Within six (6) months of approval of this application, applications for new short term rental permits shall be accepted by the City for review.
- 5. Approval of this application is valid for a period of 24 months (two years) from the noted date of determination. If the development approved by this action is not established, the approval shall expire and shall thereafter be null and void.

PASSED AND ADOPTED this _____ day of _____, 2022.

 JOSEPH L. MULLER
 MAYOR

ATTEST:

 SHAYNA SHARKE
 CITY CLERK

STATE OF CALIFORNIA)
 COUNTY OF ORANGE) §
 CITY OF DANA POINT)

I, Shayna Sharke, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 22-06-21-xx was duly adopted and passed at a regular meeting of the City Council on the 21st day of June, 2022, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

 SHAYNA SHARKE
 CITY CLERK

Exhibit A

DRAFT Coastal Development Permit Short-Term Rental Program

1. Introduction

The following sets forth the rules and regulations for the City of Dana Point's Short-Term Rental Program (the "STR Program"), the purpose of which is to require the owner or owners of a residential dwelling unit that operates as a Short Term Rental ("STR"), as defined herein, to apply for and secure a permit authorizing such use in the manner provided for by this STR Program to safeguard the peace, safety and general welfare of the residents of Dana Point, their guests, and out of town visitors, by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse which are directly related to STR.

2. Definitions

This following definitions shall apply to the STR Program:

- (a) "Accessory Dwelling Unit" shall mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multi-family dwelling is or will be situated. An accessory dwelling unit also includes the following: (A) An efficiency unit, and (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code."
- (b) "Agent" shall mean the representative, if any, designated by the owner in accordance with Section 5.38.040.
- (c) "City Manager" shall mean the City Manager of the City of Dana Point or designee.
- (d) "Community Development Director" shall mean the Community Development Director of the City of Dana Point or designee.
- (e) "Dwelling, Multiple Family" shall mean a structure or structures designed to contain three or more dwelling units on one lot under single or separate ownership.
- (f) "Home Stay Short Term Rental" shall mean that the owner rents out a portion of their home while continuing to live in the home while visitors are renting. In the case of a multi-family (duplex, tri-plex, etc.) property, the owner resides in one of the units while the other unit on the same property is rented to visitors.
- (g) "Junior Accessory Dwelling Unit" shall mean a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or share sanitation facilities with the existing structure."
- (h) "Non-Primary Short-Term Rental" shall mean that the owner rents out homes other than their primary residence to visitors.

- (i) "Owner" shall mean the person(s) or entity(ies) that hold(s) legal and/or equitable title to the subject property.
- (j) "Primary Short-Term Rental" The property is the owner's primary residence, and it is rented when traveling or living elsewhere.
- (k) "Short term rental" is defined as the rental of any structure or any portion of any structure for occupancy, dwelling, lodging, or sleeping purposes for at least two (2) consecutive nights, but no more than thirty (30), consecutive calendar days in duration in a zoning district where residential uses are allowed, including, but not limited to, detached single-family dwellings, condominiums, duplexes, triplexes, townhomes, and multiple-family dwellings. "Short-term rental" historically and continues to be included in the definition of "hotel" for purposes of collecting transient occupancy tax pursuant to Chapter 3.25 of the City's Municipal Code.
- (l) "Transient" means any person who occupies or is entitled to occupy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel is a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator(owner) and the occupant providing for a more extended period of occupancy. In determining whether a person is a transient, an uninterrupted period of time extending both prior to and after the effective date of the STR Program may be considered.

3. Number of Short-Term Rentals Allowed

A maximum of 185 permits may be issued for Non-Primary STR for properties inside and outside the Coastal Zone. There is no limit to the total number of permits issued for Home Stay and Primary STR in the City.

- (a) When a property is sold, the STR permit expires and does not transfer to the new owner. The new owner must apply for an STR permit.
- (b) Upon reaching the maximum number of Non-Primary STR permits, the City will establish a waitlist for the issuance of permits when they become available.
- (c) New STR permits shall be limited to one permit for a Home Stay, Non-Primary, or Primary STR per owner regardless if it is a single-family or multi-family residence.
- (d) The number of STR permits that may be issued within a multifamily structure may be further limited to prevent the use of the structure to be defined as a "hotel", as defined by the Dana Point Zoning Code.
- (e) An Owner with more than one STR permit issued before the effective date of this STR Program may retain the permits until the property is sold or permit(s) are revoked.
- (f) After five years of the STR Program, the Community Development Director will review the Program to determine if an increase in the maximum number of permits should be considered. If demands warrants an increase to be considered, an amendment to the Coastal Development Permit shall be required.

4. Permit Transfers

STR permits shall not transfer to a new property owner, with the exception of when a property changes ownership through an inheritance. Upon the inheritance of the property, the new owners shall apply for

a permit transfer. The permit transfer is subject to City approval. The permit transfer shall be approved by the City prior to the first rental of the property after the change of ownership.

5. Agents

An owner may retain an agent or a representative to comply with the requirements of this STR Program, including, without limitation, the filing of an application for a permit that has been signed and notarized by the owner, the management of the STR, and the compliance with the conditions to the permit. The permit shall be issued only to the owner of the STR. The owner of the STR is responsible for compliance with the provisions of this STR Program, and the failure of an agent to comply with this STR Program shall be deemed non-compliance by the owner and agent and subject to fines as if a violation of the City's Municipal Code.

6. Permit Required

No owner of an STR located within a zoning district where residential uses are permitted shall rent, offer to rent, or advertise for rent the STR to another person without a valid STR permit approved and issued by the City of Dana Point.

7. Application for Permit

The owner or owners shall submit an application for an STR permit to the Director of Community Development. The application for an STR permit shall be upon forms provided by the City and shall contain the following information:

- (a) The name, address, email, and telephone number of the owner of the STR for which the permit is to be issued.
- (b) The name, address, email, and telephone number of the agent, if any, of the owner of the STR.
- (c) Evidence of a valid transient occupancy tax registration certificate issued by the City for the STR.
- (d) Proof of general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit and an executed agreement to indemnify, defend, and save the City harmless from any and all claims and liabilities of any kind whatsoever resulting from or arising out of the STR.
- (e) Acknowledgment of receipt and inspection of a copy of all regulations pertaining to the operation of an STR within the City.
- (f) Such other information as the Director of Community Development deems reasonably necessary to administer this STR Program.
- (g) Permits shall be limited to one per person/entity.
- (h) Permit fees shall be established by the City Council.

8. Application for Waitlist

The owner or owners of the property shall submit a waitlist application to be added to the City's waitlist for an STR permit. Owners on the waitlist must provide an application annually to verify continued eligibility; however, the position on the waitlist will not change. The application for the STR waitlist shall be upon forms provided by the City and shall contain the following information:

- (a) The name, address, email, and telephone number of the owner of the STR for which the permit is to be issued.
- (b) Additional information as the Director of Community Development deems reasonably necessary to administer this STR Program.
- (c) The waitlist fee shall be the same as the STR permit fee. Upon selection and permit issuance, the first year's permit fee will be paid by the waitlist fee.
- (d) Upon selection from the waitlist, the property owner shall have 14 days to submit a complete application to the City.

9. Renewal of Permit

The owner or owners shall apply for and renew the STR permit annually on March 1st or an alternative date as determined by the Director of Community Development. Permit renewals shall include any changes to the information or requirements set forth in these regulations, proof of current general liability insurance, and proof of the property's homeowners tax exemption status for Primary and Home Stay STRs.

Permits that are inactive during a permit year will be revoked. The inactivity requirement can be waived if the property is under renovation with permits that have resulted in inactivity or other issues subject to the Community Development Director's discretion. In no event shall a permit remain inactive for more than two permit years.

10. Conditions of Permit Issuance and Renewal

- (a) Permits and renewals issued pursuant to this STR Program are subject to the following standard conditions:
 - (1) The owner shall ensure that the STR complies with all applicable codes regarding fire, building and safety, and all other relevant laws and ordinances.
 - (2) The owner shall provide proof that STRs are not prohibited by its Homeowners Association Conditions, Covenants, and Restrictions ("CC&Rs") or any other community standards/guidelines applicable to the proposed STR.
 - (3) Concurrent with the issuance of the STR permit and annually upon its renewal, City Staff shall provide notice to all abutting property owners and tenants that the property is operating as an STR. The notice shall also provide the contact information for the STR owner and property manager and their twenty-four (24) hour emergency contact phone number. The notification package shall also identify the City's twenty-four (24) hour STR hotline phone number, Code Enforcement phone number, and Orange County Sheriff's Department phone number. The notice shall not afford the abutting property owners any protest, appeal, or other related rights; rather, its intent is to provide the abutting property owners with an annual reminder as to the contact information for the various individuals and entities responsible for enforcement in the event that an issue arises with the operation of the STR.
 - (4) The STR unit in which a permit is being requested must pass an initial inspection by the City prior to permit issuance. The City may conduct additional inspections as deemed necessary or prudent prior to subsequent renewals.

- (5) The owner shall provide a twenty-four (24) hour emergency contact that will be available to respond to issues at the STR.
- (6) The STR must have a minimum of two (2) off-street parking spaces.
- (7) The STR must have a visible house number easily seen from the street, day or night.
- (8) All advertising for the STR shall include the City issued STR permit number in the subject description of the property. In addition, all photographs, maps, and diagrams of the property that are used for advertising purposes shall impose the City-issued STR permit number in the lower right-hand corner in an appropriate font, style, size, and color to be legible.
- (9) The primary overnight and daytime renter, who shall also be residing as a guest of the STR unit, must be an adult twenty-five (25) years of age or older. This adult must provide a telephone number to the owner and shall be accessible to the owner by telephone at all times.
- (10) Prior to occupancy, the owner or agent shall obtain the name, address, and driver's license number or a copy of the passport of the primary adult occupant of the STR. The owner or agent shall require that same adult to sign a formal acknowledgment that he or she is legally responsible for compliance by all occupants and guests of the STR with the provisions of this STR Program, as well as a copy of the City's Good Neighbor Acknowledgment. An unsigned copy of the City's Good Neighbor Acknowledgment shall be posted in a conspicuous location within the STR, along with a copy of the City's STR regulations. This information shall be readily available upon request of any police officer or employee of the City authorized to enforce this STR Program or State law.
- (11) The owner shall require all occupants to agree to a minimum stay of two (2) consecutive nights.
- (12) The maximum overnight occupancy of the STR shall be limited to two (2) persons per bedroom plus two (2) additional persons within the STR. The Director of Community Development may, when unusual size, interior layout, parking, or other physical characteristics are shown, approve a greater maximum number of overnight occupants as part of a permit application or renewal. The maximum daytime occupancy shall be limited to two and a half (2.5) times the overnight occupancy and not exceed twenty (20) persons; however, the Director of Community Development may, when unusual size, or other physical characteristics, approve a greater maximum number of daytime occupants as part of a permit application or renewal.
- (13) The maximum number of vehicles allowed at the STR shall be limited to one (1) vehicle per one (1) bedroom unit or two (2) vehicles maximum with two (2) or more bedrooms within the STR. The Director of Community Development may, when unusual size, parking, or other physical characteristics are shown, approve a greater maximum number of vehicles as part of a permit application or renewal. The owner must make a sufficient number of parking spaces accessible to tenants to accommodate the maximum number of vehicles allowed.
- (14) No on-site exterior signs are to be posted advertising an STR.
- (15) Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the responsible trash hauler and between the hours of 5:00 p.m. the day before and 8:00 a.m. the day after the scheduled trash collection days, as provided in Chapter 6.10 of the Dana Point Municipal Code. In the event the property owner fails to comply with this provision, he/she shall be required to sign up for walk-up trash service provided by the City's waste disposal contract company and provide proof to the City of the same. The owner

of the STR shall provide sufficient trash collection containers and services to meet the demand of the occupants.

- (16) Each lease or rental agreement for an STR shall include the following terms, notifications, and disclosures, which shall also be posted in a conspicuous location inside the STR:
- (A) The maximum number of occupants that are permitted and notification that failure to conform to the maximum occupancy is a violation of this STR Program.
 - (B) The number of parking spaces provided and, if not adjacent to the STR, the location of assigned parking and the maximum number of vehicles that are permitted.
 - (C) The trash pick-up day(s) and applicable rules and regulations pertaining to leaving or storing trash on the exterior of the property.
 - (D) Notification that the occupant may be cited or fined by the City and/or immediately evicted by the owner for violating any and all applicable laws.
 - (E) The name of the managing agency, agent, rental manager, local contact person or owner of the unit, and a telephone number at which that party may be reached at all times and 9-1-1 Emergency information.
 - (F) Summary of applicable Homeowners Association Conditions, Covenants, and Restrictions (CC&Rs) and bylaws, including pool location and hours.
 - (G) The terms, notifications, and disclosures must be posted during the registration process.
- (17) The owner shall ensure that the occupants of the STR do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the Municipal Code or any State Law pertaining to noise, disorderly conduct, overcrowding, alcohol consumption, or the use of drugs. Owners are expected to take any measures necessary to abate disturbances, including, but not limited to, directing the tenant, calling for law enforcement services or City code enforcement officers, evicting the tenant, or any other action necessary to immediately abate the disturbance.
- (18) The Owner, property manager, or emergency contact shall, upon notification, that occupants or tenants of his or her STR have created unreasonable noise or disturbances, engaged in disorderly conduct, or committed violations of the Municipal Code or State Law pertaining to, but not limited to, noise, disorderly conduct, and/or overcrowding, take action to abate the issue within thirty (30) minutes of the owner, property manager, or emergency contact being notified of a complaint and prevent a recurrence of such conduct by those occupants or guests. In some instances, the owner, property manager, or emergency contact may be required to arrive on site within thirty (30) minutes of a received complaint to address the issue and ensure there is not a re-occurrence.
- (19) No outside noise from the STR shall be heard during quiet hours of 10:00 p.m. to 7:00 a.m.
- (20) The operator shall include ADA information, if available, in the advertisement of the STR (e.g., stairs, signage, ingress/egress, parking, storage, utilities, showers and lavatories, air conditioning, etc.).
- (21) Advertisements and information must be provided in the unit to disclose whether bicycles or other means of transport (scooters, skateboards, carpooling, rideshare, etc.) are available.

- (b) The Director of Community Development shall have the authority at any time to impose additional standard conditions, applicable to all STR, as necessary to achieve the objectives of this STR Program.
- (c) The Director of Community Development shall have the authority to impose additional conditions on any permit in the event of any violation of the conditions to the permit or the provisions of this STR Program subject to compliance with the procedures specified in Section 5.38.100.
- (d) The owner must maintain a valid transient occupancy tax registration certificate issued by the City for the STR; the owner must collect and remit transient occupancy tax as required by Chapter 3.25 of the Municipal Code.

11. Short-Term Rental Operator Regulations

The following are additional regulations and clarifications for all STR operators. These regulations may be updated periodically for clarification of situations that may develop based on the implementation of the STR regulations within the City.

- (a) Accessory Dwelling Units, Junior Accessory Dwelling Units, units created as Single-Family Residential Duplexes, and designated affordable housing units shall not be permitted for any STR.
- (b) Home Stay STR shall:
 - (1) An owner must be in the residence, or in another residence on the property, during the rental period between the hours of 10:00 p.m. to 7:00 a.m.
 - (2) A Home Stay STR permit may be issued for a maximum of one unit when there are multiple units on the property.
 - (3) In no instance shall a Home Stay STR permit holder utilize an on-site camper, RV, or stay in a tent on the property to qualify for a Home Stay STR permit.
- (c) Primary short-term rentals shall:
 - (1) Limited to renting their home a maximum of 60 days a year (date started at issuance of primary residence STR permit) unless further restricted by CC&R regulations. Compliance will be monitored by the Transient Occupancy Tax annual submittal.

12. Violations and Penalties

- (a) Violations are described in Conditions of Permit Issuance and Renewal. The following conduct shall constitute a violation for which the penalties specified in Conditions of Permit Issuance and Renewal Subsections (b) and (c) may be imposed, or the permit revoked:
 - (1) The owner and/or agent has failed to comply with the standard conditions specified in Conditions of Permit Issuance and Renewal Section (a);
 - (2) The owner and/or agent has failed to comply with conditions imposed by the Director of Community Development pursuant to the provisions of Conditions of Permit Issuance and Renewal Section (b) or (c);
 - (3) The owner and/or agent has willfully violated the provisions of this Program;
 - (4) The owner and/or agent has failed to comply and pay any fines imposed pursuant to subsection (b) within thirty (30) days of the date of notification; or

- (5) The owner and/or agent has failed to comply and pay the transient occupancy tax or submit a report as required by Chapter 3.25 of the Municipal Code within the required time limit.
- (b) Penalties. The penalties for violations specified in subsection (a) shall be the responsibility of the owner and are issued per day per violation as follows:
- (1) For the first violation, the penalty shall be the maximum monetary amount allowed per State law;
 - (2) For a second violation, the penalty shall be the maximum monetary amount allowed per State law;
 - (3) For a third violation, the penalty shall result in the immediate revocation of the STR permit. In the event the STR permit has been revoked, the property owner shall be forbidden from re-applying for another STR permit for the same property indefinitely.

13. Procedure for Imposition of Penalties/Revocation

Penalties, including notice of violation, shall be imposed, and permits shall be revoked only in the manner provided in this Section.

The Director of Community Development, or designee, shall conduct an investigation whenever he or she has reason to believe that an owner has committed a violation described in Section 5.38.090(a). Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Director of Community Development shall issue written notice of intention to impose a penalty and/or revoke the permit.

The written notice shall be served on the owner, shall specify the facts which, in the opinion of the Director of Community Development, constitute substantial evidence to establish grounds for imposition of the penalties and/or revocation, and specify that the penalties will be imposed and/or the permit will be revoked within thirty (30) days from the date the notice is given unless the owner and/or operator files, with the City Clerk and before the penalties or revocation becomes effective, a request for hearing before the City Manager or designee.

SUPPORTING DOCUMENT B

Mark Zanides

May 23, 2022

RECEIVED

2022 MAY 23 PM 1:34

**CITY OF DANA POINT
CITY CLERKS DEPARTMENT
BY HAND**

Ms. Shayna Sharke
Office of the Clerk
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

RE: Notice of Appeal of Planning Commission Action Taken on May 9, 2022 Adopting a Resolution Approving Coastal Development Permit CDP22-0010 with associated Short Term Rental Program.

Dear Ms. Sharke:

I. Notice of Appeal

Pursuant to Section 9.61.110 (a) and (b) of the Municipal Code, Kim Tarantino and I hereby file this appeal of the action taken on May 9, 2022 by the Planning Commission whereby it adopted a Resolution approving Coastal Development Permit CDP22-0010, thereby effectively amending and expanding the City's Short Term Rental Program.

Ms. Tarantino is not able personally to sign this Notice of Appeal but authorized me to sign on her behalf.

Accompanying this Notice of Appeal is the required check for \$250.

II. Standing of Appellants

A. Appellants

1. Kim Tarantino is a resident of Capistrano Beach.
2. Mark Zanides is a resident of the Lantern District.
3. Each of us believes, as do many other residents of Dana Point, that the short term rental program (STR) adopted by the Planning Commission is inconsistent with the preservation and quiet enjoyment of not only our neighborhoods, but residential neighborhoods throughout the City. Since the STR program affects all residential

neighborhoods within the City, including our own, we have standing to prosecute this appeal.

III. Grounds for Appeal

A. The City Codes Bar STRS Absent a Zoning Code Change and LCP Change: The Planning Commission Has No Legal Authority to Alter the City's Longstanding Interpretation of Its Zoning Code

We, and many others, have observed that zoning regulations in Dana Point **already** "balance the rights and responsibilities of residents and homeowners." Those zoning regulations **do not permit** businesses to operate in residential zones.

Since it first addressed this issue in 2007, the City has always interpreted the City Codes to bar STRs in residential neighborhoods.¹ Even the current staff Agenda Report of May 9,

¹ 04/02/2013 City Council Meeting Agenda Item 8 Staff Report link:

<https://www.danapoint.org/Home/ShowDocument/11839>. The following paragraph from this report has consistently been restated by City staff since the first City Council meeting on STRs on 01/30/2007.

Status of Existing Short-Term Rentals

As the Council is aware, it is estimated that over 250 short term rentals are operating in the City. Per the Council's direction pending the review of this issue, staff has not expended resources taking action against persons operating such uses, even though they are currently prohibited by the City's zoning code. Understand, that to legally operate, all regulations must be complied with, and in the regulatory process proposed, this means a short term use must be in a zone approved by the proposed Zone Text Amendment and must comply with the proposed operating regulations ordinance. Knowing there will be a need for existing operations to have time to come into compliance with the proposed regulations, and also As far back as I have knowing there may be some (perhaps significant) delay in obtaining Coastal Commission approval, the current proposal is structured so that all existing operators will be expected to obtain a Short Term Rental Permit by January 15, 2014. This will give them time to come into compliance with the operating regulations ordinance. In addition, by that time the Zone Text Amendment ordinance for areas outside the Coastal Zone will presumably be effective. The Coastal Commission's approval of the Zone Text Amendment ordinance within the Coastal Zone is outside the control of the Council, and will likely not occur (if at all) until well after January 15, 2014. Persons operating short term rentals in the Coastal Zone will be expected to comply with the operating regulations ordinance by January 15, 2014. However, in the event that the Coastal Commission does not approve the Local Coastal Plan Amendment associated with the proposed Zone Text Amendment, short term rental uses in the Coastal Zone will remain illegal (and presumably action to preclude them will follow). Importantly, compliance with the operating regulations ordinance, including obtaining a Short Term Rental Permit, will not be deemed sufficient to allow a short term rental use to continue in the event the Coastal Commission denies the Zone Text Amendment in Coastal Zone districts. Hence, any person desiring to operate a short term rental prior to all zoning changes becoming effective will be doing so at their own risk, knowing they are violating current City regulations which may not be changed if the Coastal Commission does not grant its approval.

09/06/2016 City Council Meeting Agenda Item 6 Staff Report link:

<https://www.danapoint.org/Home/ShowDocument/19277>. This staff report is for the second reading of the STR ordinance after it was modified to include changes recommended by the Coastal Commission. This

2022 (hereafter "AR" or "Report") recognized this. See, AR p 2. This position has been publicly confirmed by the City Attorney on numerous occasions.

In this matter, the City Attorney was and has been correct. His stated reason for concluding that STRs are banned is that Dana Point is a permissive zoning city, which means that unless specifically permitted, an activity is prohibited. Since STRs were not expressly permitted, they are prohibited.

A textual analysis of the City codes supports this view. Reading all of the codes together leads to the inescapable conclusion, not only are the STRs not specifically permitted, they are, by negative implication, prohibited.

- a. Under the Zoning Code several classes of use are allowed in Residential Districts. **Each of these classes must promote the residential character of the individual districts.** (Dana Point Zoning Code Ch. 9.09.020), emphasis supplied.)
- b. One of the specifically permitted uses in Residential Districts is a "dwelling unit, single family" (Ch. 9.09.020.) Dwelling unit is defined as:

Dwelling Unit —a self-contained group of interconnected rooms designed, occupied or intended as separate living quarters, with sleeping and sanitary facilities and one cooking facility, provided within a permanent structure or portion thereof, for **residential** occupancy by a single household, not including hotels, motels or timeshares. Municipal Code Section 9.01.090 "D".² (Emphasis supplied.)
- c. The Code thus permits "residences" and "residential occupancy" in residential areas. It does not specifically permit STRs or any other kind of occupancy that could be deemed even similar to STRs.
- d. There appears to be no definition of "residence" in the Codes. However, the commonly accepted definition of "residence" is:
 1. The place in which one lives; a dwelling.
 2. The act or a period of residing in a place.
 3. A medical residency.

The American Heritage® Dictionary of the English Language, 5th Edition.

- e. Similarly Webster's Dictionary defines "residence" as follows:

report also contains a letter from the Director of Community Development responding to Betty Hill's questions and concerns about the proposed ordinance.

- 1a:** the act or fact of dwelling in a place for some time
- 1b:** the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit
- 2a(1):** the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn.

"Residence." *Merriam-Webster.com Dictionary*. Merriam-Webster, <https://www.merriam-webster.com/dictionary/residence>. Accessed 20 May 2022.

- f. The Zoning Code specifically excludes from residential neighborhoods the following: communal houses, multifamily dwellings, single room exceptions not relevant here. Ch. 9.09.020.
- g. The Code defines hotel: "**Hotel** — shall mean a structure or group of structures containing six (6) or more guest rooms or suites offering transient lodging, lobby and an interior hallway(s). Such a facility may include incidental services that customarily are provided by a hotel such as food service, recreational facilities, retail services provided for the convenience of hotel guests and banquet, reception, and meeting facilities." Ch. 9.75.270.
- h. The Code defines guest room: "**Guest Room** — any room which is used or designed to provide transient occupancy and sleeping accommodations for one or more guests. Guest rooms occur in hotels, motels, time-shares, bed and breakfast, private clubs, lodges, fraternal organizations, and **other transient occupancy uses.** *Id.*
- i. The Municipal Code, and the new proposed STR Code, for purposes of the Transient Occupancy Tax, defines "**Transient**" as any person "who is entitled to occupy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel is a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, an uninterrupted period of time extending both prior and subsequent to the effective date of the ordinance codified in this Chapter may be considered." Muni. Code Ch. 3.25.020.

Thus the city codes require the **residential** use of neighborhoods zoned residential, and "Residence" and "residential" mean dwellings where people reside permanently, i.e. the place where individuals actually live. STRs by definition provide "transient" accommodation, and STRs are not otherwise specifically permitted. STRs are thus barred in the absence of rezoning and amendment of the

LCP. To the extent that provisions of various adopted codes may differ, "the more restrictive provisions shall apply, except as may be superseded by resolution or ordinance." Ch. 9.01.070.³

It is clear that the CCC and the courts have held that changes to STR ordinances which affect coastal access constitute a "development" within the Coastal Act, and thus require CCC approval, be it through a CDP, LCP amendment or amendment waiver. See, *Kracke v. Santa Barbara*, (2021) 63 Cal. App. 5th 91089). The City knew and recognized this in connection with its drafting and ultimate passage of its 2016 STR ordinance [later overturned by referendum]. You will recall that in 2014 the City had added Municipal Code section 5.38 - Short-term Rentals to its municipal code without approval of the CCC. The City Council then approved a Zone Text Amendment (ZTA) to allow STRs in residential zones, and sent an LCPA to the CCC that would have approved the ZTA. The CCC, among other things, replied that section 5.38 had to be part of the LCPA since it restricted the number of STRs that could be permitted. Including section 5.38 in the LCPA was the change that both Council Members Viczorek and Muller didn't like, and on that basis they voted against the ordinance. But the LCPA was legally proper and required then as it is now.

Notwithstanding that for years the City's consistent position was that STRs are NOT permitted residential uses, Finding 1 of the Planning Commission Resolution is "that the [STR] project is in conformity with the certified Local Coastal Program in that the STR Program allows the establishment of STR regulations in the City." The staff report then states: "[a]s such, there is no need for an LCP Amendment, or any other zoning amendment, because the use is already permitted within any residentially zoned property. In order to comply with the Coastal Act, a CDP is proposed to allow the regulation of STRs, which we must presume are already legally authorized by existing zoning and the City's LCP." Report at 4.5.

In making these findings, the Planning Commission has reversed longstanding City legal policy. Preliminarily, we submit that the Planning Commission has no legal authority to establish the City's legal position on whether STRs are already permitted in residential zones, and its action is therefor void. This is especially so where, as here, the adoption of this Resolution is based on its reversal of the City Council's longstanding legal position. We submit it has no authority to do so.

The Planning Commission is also wrong. For the reasons set forth above, the City's codes do bar STRs in residential neighborhoods.

³ Section 5.38 of the Business Code, cannot supersede the existing ordinances as it has not been incorporated into the LCP and has not been approved by the Coastal Commission.

Moreover the cases on which the Planning Commission relies do not hold what the Commission claims they do. For example, it claims that *Kracke supra* “determined that “STR uses are the same as residential use and they are therefore a permitted use in Residential and Mixed Use zones.” Resolution, p 2. *Kracke* did not so hold. The Court there held only that when Santa Barbara reversed its STR policy and reinterpreted its codes to bar STRs, since that bar altered previously granted access to the coast it constitute a “development” under the Coastal Act which required CCC approval. The Court did **not** address the issue of whether “STR uses are the same as residential uses.”

The Planning Commission also appears to rely on *Keen v. Manhattan Beach* for the proposition that the “Court found the [Manhattan Beach’s] LCP allowed properties to be rented and did not place a limit [on] the number of nights allowed for such rentals. Hence any change prohibiting rentals of a short duration would require compliance with the Coastal Act. If this case is applied to Dana Point, a similar result would occur since neither the City’s LCP, nor any CDP regulates or otherwise restricts the number of nights of a residential property rental. AR at 4. *Keen* does not help the Planning Commission: as demonstrated above neither the LCP or any CDP permits STRs in residential neighborhoods in Dana Point.

The Commission also relies on *Protect our Neighborhoods v City of Palm Springs* ((2022) 73 Cal. App. 5th 667) for the proposition that the Fourth District Court of Appeal “in essence ruled that STRs are a permissible use at residentially zoned properties.” Agenda Report at 4. Not so: the Court was interpreting the Palm Springs Municipal Code, which differs markedly from the Dana Point codes. Nowhere did the Court make the blanket finding that STRs are permissible uses at residentially zoned properties in all cities. Rather, each municipal code must be examined to determine what is or is not permitted in any city.

While it is not entirely clear from the Agenda Report, it appears that the staff and Planning Commission may be attempting to evade CCC review of the STR program. If that is the goal, it is doomed to fail. First, as set forth above, our codes do bar STRs and require a zone text amendment and an LCP amendment. It does not matter that we are authorizing more STRs: the STR program will **change** zoning density and thus constitutes a development under the Coastal Act requiring CCC approval.

Even if the Planning Commission were correct, and STRs are permitted in existing residential neighborhoods, the City would still need CCC approval. This is so because if unlimited STRs are actually permitted now in residential neighborhoods, the new STR regulations will be **limiting** access to the coast, which constitutes a development under the Coastal Act and requires CCC review and approval.

Finally, to the extent that this STR program is based on the fear that the “City will face arguments that short term rentals may operate at any existing residential property in the Coastal zone”, it bears reminding that no such cases have been filed in the fifteen years STRs have been an issue in Dana Point, and we are unaware of any immediate threat. In

short, the Planning Commission has assumed there is a threat, and is using that pretext to counsel immediate surrender to STR interests. Even if there were a threat of such litigation, there is no emergency: the Council is not required immediately to adopt an STR program which will so markedly affect [and ruin] the City. See, discussion below. Rather, the Council should reject this Resolution and carefully consider a comprehensive STR regulatory program which will protect the residents of our city.

C. The Proposed STR Program is Not Required by the Coastal Act and is Inconsistent with the Policy Objectives of the Council and Would Destroy Residential Neighborhoods

One of the fundamental assumptions underlying this STR proposal is that this process “ensures the City provides a mix of overnight accommodations to provide coastal access to visitors as required by the Coastal Act and the City’s LCP.” Finding I in Resolution.

This statement is highly misleading. To be sure, the Coastal Act requires us to provide coastal access. But we already have more free beach access and more visitor accommodations per 1,000 population at every price point than almost any other city in California. We are already permitting 131 STRs under the current program. The Coastal Commission has NOT required more and IS NOT in the process of requiring more.

The Resolution also claims: “The City’s existing supply of overnight accommodations along with the STR Program’s balanced approach increases the availability of overnight (market rate and affordable) accommodations while protecting neighborhoods, long term housing stock and public access. *Id.* It is certainly true that the STR program as set forth increases the availability of overnight accommodations, but for the reasons set forth below it is simply a false statement to assert that it protects neighborhoods and long term housing stock.

Nor does it conform to the City Council’s STR Program own policy objectives. They are: 1) maintain the character of our neighborhoods by not encouraging absentee corporate investment; 2) firmly protect against nuisances; and 3) balance the rights and responsibilities of all residents and homeowners and honor HOA regulations. The Planning Commission’s proposed STR program does not promote those policy objectives: quite the contrary, it does violence to them.

Objective 1: Maintain the character of our neighborhoods by not encouraging absentee corporate investment.

Much of the public support for STRs in Dana Point has been made by local residents complaining that they need STR income to help pay for their home or duplex or triplex. Sixty four per cent of the current registered STRs are owned by out of town investors. The Planning Commission was aware of this, and even discussed the danger of developers purchasing many units as separate LLCs. But **there is nothing whatsoever in**

the regulations to discourage absentee corporate investment. This alone provides a sound and adequate basis for this Council to grant this appeal.

The staff, and apparently the Planning Commission, assert that the primary residents cap of 185 is designed to “ensure the City’s limited rental housing stock is preserved and avoids saturation of STRs.” Agenda Report at p.7. Not only does the new limit add almost 80 investor STRs once about 30 of the current STRs are reclassified for the new definition of “home stay” (there are approximately 30 existing permits in multi-family buildings) but it clearly removes 80 more homes from existing housing stock. In addition, the proposed regulations **do not cap “home stay” STRs** which, as defined, could have a devastating effect on the city.

The proposed STR regulation states “Home Stay Short Term Rental shall mean that the owner rents out a portion of their home while continuing to live in their home while visitors are renting. In the case of a multi family (duplex, tri-plex etc.) property, the owner resides in one of the units while the other unit on the same property is rented out to visitors.” Section 2(f). The proposed regulation appears not to limit “home stay” STRs to one unit per multi unit building, though it does state that “the number of permits that may be issued in a multi-family structure may be further limited to prevent the use of the structure to be defined as a “hotel” as defined by the Dana Point Zoning Code.” Draft STR at 3(d).

There are an estimated 7,000 multifamily dwelling units in Dana Point. The City has been unable or unwilling to produce the total number of buildings these units occupy, but we estimate it is over 2,000 at least based on the city’s RHNA data. It is impossible to assess with certainty how many home stay STRS could be operating legally in Dana Point, but it is certainly potentially thousands. Even if home stay STRs were limited to one per multifamily dwelling, the number of home stay STRs in multifamily buildings could easily exceed 1,000. This of course would be in addition to the 185 non-home stay (investor) STRs expressly permitted.

The Planning Commission fails to recognize that each STR means one fewer house, or one fewer long term rental in Dana Point’s tight housing market. It appears to have failed to consider the enormous impact of STRs in multifamily dwellings, on housing stock and particularly on low income housing. This itself will be significant issue with the Coastal Commission. See, CCC comment letter to Draft STR program at p. 5: “Commission staff also understand that the City is undergoing a housing crisis and therefore wants to ensure that current housing stock is not depleted by STRs.”

The Planning Commission appears not to have attempted to determine whether and if so how much this policy will discriminate against racial minorities (35% of Lantern District (District 4) residents and 29% city wide) and rental households (62% in District 4 and 36% city wide) many of whom cannot afford the average Dana Point rent. In District 4, 34% of the households earn less than \$50,000, and 49% less than \$75,000. A household income of \$100,000 is needed to afford the average Dana Point rent of \$2,500 per month (which is typical rent for only a very small or studio apartment). This City made a great

show of wanting to appear to be sensitive to the concerns of minorities when it redistricted in 2018. This contradicts that concern.

There are **no limits** on how many condominiums will be allowed to become STRs. This would allow an entire building of condos to become STRs, essentially creating a small hotel and significantly degrading the character of neighborhoods.

There are no regulations or limitations on density of STRS on a block or street or in an otherwise defined neighborhood. In short, STRS will be allowed cluster and potentially create STR zones, thus inevitable and permanently altering the essential character of heretofore residential neighborhoods.

Seventy five percent of STRs are located in Capo Beach and Lantern District. There are no restrictions to alter this disproportionate burden, which will change the residential character of these two districts while others are far less affected. This discriminates not only against these two districts, but against all non-HOA homeowners.

It appears that no consideration was given to how additional potentially thousands of new STRs will impact Dana Point hotels. We already have 1,714 market rate rooms plus 177 lower cost rooms, with another 650+ rooms coming on line. We have 120 campground spaces, 24 cottages, with another 52 hostel rooms coming. This represents a total of almost 2,700 (including 373 lower cost) visitor accommodations once planned developments are completed. There are also another 359 campground spaces and 357 lower cost hotel rooms located in close proximity to Dana Point. It is folly to assume a potentially massive STR program will not negatively affect our corporate citizens. It bears reminding that unlike many STRs, the hotels do pay their TOT, which constitutes a significant portion of the City's budget, and they do so honestly and promptly. It is certain that the addition of potentially thousands of STRs will negatively impact our hotel and motel citizens and their employees, many of whom live in Dana Point. Hotel workers will risk not only losing their homes to STR investors, but may lose their jobs as well.

Though many residents suggested that the STR regulations mandate collection of STR TOT by the marketing platforms, this is not included in the STR plan. Given the City's woeful record on collection of STR TOTs, it is absolutely necessary.

Objective 2: Firmly protect against nuisances.

Many, if not most, residents consider a full time STR next door, even a well run one, to be a nuisance by its nature. While Commissioner Nelson speculated that STRs make better neighbors and many people want them next door, the Planning Commission has no data supporting that speculation. For example the Planning Commission took no steps to test that speculation by allowing those residents who want an STR next door to join an

interest list that could be used by investors to locate them where they are wanted. No specific polling on this subject was conducted as far as we know.

Residents have complained about unpermitted STRS for years. Virtually no enforcement action has been taken against them. See, e.g. my discussion of this issue in my letter of May 9, 2022, to this City Council at pp. 5.

There is nothing to preclude those who have violated Dana Point's regulations in the past from obtaining a permit. Essentially, the City will reward those who have flouted their regulations and/or created a nuisance by trusting them with a permit and inviting them to do so again.

There are no provisions for auditing or strongly enforcing many of the regulations to prevent nuisances. Some examples:

- a. Primary STRs are allowed without caps but there are no provisions outlining how the City will determine that an owner is indeed a primary owner.
- b. Primary STRs will be allowed 60 days of rental per year but there are no regulations outlining how or even if this will be audited.
- c. There are no provisions for auditing that homestays are indeed homestays.
- d. There are no provisions for auditing TOT to ensure that all taxes are paid.
- e. There are no provisions or other indications of any effort to prevent illegal STRs or follow up on the inordinate number that purport to be 30 day rentals. Roughly 69% of current Dana Point listings are 30 day rentals per the city staff report to the Planning Commission vs an industry average of 24%. Staff was not curious about this anomaly.
- f. While neighbors will be given phone numbers to contact STR owners or their managers, (shifting some of the burden for enforcement from police and code enforcement to residents) there is no provision for accepting videos, photographs or noise recordings from witnesses.
- g. There is no mechanism for Council to provide comprehensive oversight of STR enforcement which has been basically missing in the past.

Objective 3: Balance the rights and responsibilities of all residents and homeowners, and honor HOA regulations.

The current zoning code balances the rights and responsibilities of homeowners. It does not permit STRs in residential areas. The new regulations clearly state that longstanding residents who have an expectation of quiet enjoyment with neighbors will have **no** right

of objection nor appeal as their neighbor is replaced by an STR investor, particularly an absentee one, and their property values and quality of life are significantly diminished.

The entire regulation is severely out of balance, benefiting STR owners with rights and profits, while leaving non-HOA owners and renters with all the burdens, nuisances and potential loss of property values.

The regulations call for neighbors of STRs to be provided with contact information, tacitly shifting the responsibility for enforcement to residents, creating ill will and potential resentments to fester in heretofore peaceful neighborhoods.

Because of typically lax code enforcement and failure to acknowledge the problem of illegal STRs, all residents, even those in HOAs, will be burdened with nuisances and responsibilities while "rights" will go to privileged STR owners.

CONCLUSION

This matter will affect fundamentally the character of our neighborhoods. The burden will fall disproportionately on the Lantern and Capistrano Beach neighborhoods. There is no need for haste to approve such a flawed program.

For all of the foregoing reasons, we respectfully submit that the Council should grant our appeal, and reverse the decision of the Planning Commission in its entirety.


Kim Tarantino by 
Mark Zanides 
 Kim Tarantino  Mark Zanides 

SUPPORTING DOCUMENT C

CITY OF DANA POINT
PLANNING COMMISSION
AGENDA REPORT

DATE: MAY 9, 2022

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT
BRENDA WISNESKI, COMMUNITY DEVELOPMENT DIRECTOR
JEFF ROSALER, COMMUNITY DEVELOPMENT MANAGER
JOHN CIAMPA, SENIOR PLANNER

SUBJECT: COASTAL DEVELOPMENT PERMIT CDP22-0010 TO ESTABLISH A SHORT-TERM RENTAL PROGRAM

RECOMMENDATION: That the Planning Commission adopt the attached resolution approving Coastal Development Permit CDP22-0010

APPLICANT: City of Dana Point

REPRESENTATIVE: City of Dana Point

REQUEST: Approval of a Coastal Development Permit to establish a program allowing Short-Term Rentals

LOCATION: City-wide

NOTICE: A 1/8 page Notice of the Public Hearing was published within a newspaper of general circulation on April 25, 2022, and posted on April 25, 2022, at Dana Point City Hall, the Dana Point and Capistrano Beach Branch Post Offices, as well as the Dana Point Library. On April 28, 2022, the STR Interested Parties List was emailed notification of the public hearing.

ENVIRONMENTAL: Pursuant to the California Environmental Quality Act (CEQA), the project is found to be Categorical Exempt per Section Categorical Exempt per State Code Sections 15162 and Categorical Exemptions Class 1 - Section 15301 – Existing Facilities.

**PLANNING COMMISSION AGENDA REPORT
CDP22-0010 – SHORT-TERM RENTAL PROGRAM
MAY 9, 2022
PAGE 2**

ISSUES:

- Consistency with the Dana Point General Plan, Dana Point Zoning Code (DPZC), and Local Coastal Program (LCP);
- Compatibility with surrounding neighborhoods; and
- Satisfaction of all findings required pursuant to the DPZC and LCP for approval of a Coastal Development Permit (CDP).

BACKGROUND:

Short-term rentals (STRs) have historically been a part of Dana Point and many other coastal communities. The increased popularity of STRs due to the growth of online platforms resulted in the need to establish regulations to ensure they are compatible in residential neighborhoods. The City historically took the position that STRs are not a permitted use in the City. However, several hundred had come to exist without regulation or enforcement. In 2013, the City Council addressed the issue by adopting an ordinance which contained business regulations related to STRs and requiring a business permit for their use. While the City's transient occupancy tax (TOT) ordinance would have always applied to STRs (even if operating illegally), upon creation of the permit program, the City began collecting TOT for the first time in connection with this use.

The Council subsequently adopted a zoning amendment to designate STRs as a permitted use in all residential districts, provided any such use would also have to comply with the business regulation ordinance, business permit requirements, and TOT payment. The zoning regulation required an amendment to the City's Local Coastal Program (LCP) by the California Coastal Commission (CCC). Hence, it did not become effective until 2016, when the ordinance, along with modifications required by the CCC, were formally approved by the Council. While the zoning ordinance was pending CCC approval, per Council direction, the City issued permits for STRs pursuant to the business regulations that were adopted in 2013. It did this for a variety of reasons, including to avoid the cost of litigation that might otherwise occur related to whether STRs that had historically operated were legal non-conforming uses as many operators had asserted.

Following the approval of the zoning regulations that would have become part of the City's LCP, a referendum petition was circulated which effectively required that the City Council either rescind the STR zoning ordinance, or put it to a vote. The Council chose to rescind the ordinance, but knowing the CCC viewed STRs as a use that cities must allow, it directed staff to allow the existing 183 permitted STRs to continue operating (although directed that no new permits should be issued) until a new zoning ordinance was adopted. It further directed staff to develop alternative regulations in an effort to address community concerns with more restrictive enforcement and fines. The City's efforts to implement the City Council direction have included the following actions:

**PLANNING COMMISSION AGENDA REPORT
CDP22-0010 – SHORT-TERM RENTAL PROGRAM
MAY 9, 2022
PAGE 3**

- In 2018, the City Council formed a Subcommittee to re-evaluate STRs and guide the development of new regulations to address community concerns.
- On October 1, 2019, the City Council adopted policy objectives to be used when drafting the STR regulations ([Supporting Document 4](#)): (1) Maintain the character of our neighborhoods by not encouraging absentee corporate investment; (2) Firmly protect against nuisances; (3) Balance the rights and responsibilities of all residents and homeowners, and honor HOA regulations.
- In March 2020, the City Council commissioned a statistically valid resident survey focused on short-term rentals. Results are available on the [City's website](#).
- On July 21, 2020, City Council directed staff and the Planning Commission to develop an STR Program and conduct public outreach to guide the process.
- On September 28, 2020, the Planning Commission formed an STR Subcommittee with the appointments of Commissioners Dohner and Nelson to guide the development of new and enhanced regulations and conduct public outreach.
- On January 18-21, 2021, the Subcommittee conducted virtual Zoom meetings with stakeholder groups to obtain comments on new and enhanced regulations.
- On April 12, 2021, the Planning Commission conducted a Public Workshop to obtain comments on new and enhanced regulations for STRs.
- On June 1, 2021, the City Council approved new and enhanced STR business regulations.
- On August 16-19, 2021, the Subcommittee conducted virtual Zoom meetings with stakeholder groups to obtain their comments on the development of an STR Program.
- On November 8, 2021, and April 11, 2022, the Planning Commission held Public Workshops to obtain public input on the STR Program.
- On April 1, 2022, the Subcommittee received comments from the CCC District Staff on the draft STR Program.
- On April 11, 2022, the Planning Commission conducted a workshop to review the draft STR Program developed by the Subcommittee and receive public input.

In addition to the public meetings identified above, the Subcommittee conducted extensive public outreach to engage the community to ensure all interested parties were informed of the City's efforts to establish STR regulations. The notification efforts included an informational mailer that was sent to all property owners and residents in the City (16,000 recipients), social media posts, notifications to an interested parties list of 600 individuals, and updates provided to at all Planning Commission meetings.

STR Court Cases

Since the City adopted its enhanced regulatory provisions in 2021, various court decisions have made clear that compliance with the Coastal Act is needed for any regulation of short-term rentals. While several relevant cases exist, three of are worthy of particular note. First, the Court of Appeal issued a decision overturning the City of Santa Barbara's ban on short term rentals, based largely on the fact it determined that short term rentals were

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permitted uses as part of any approved residential use, and that they were authorized since residential uses were authorized by Santa Barbara's Local Coastal Program. Moreover, the Court held that any regulations aimed at STRs are not effective in the Coastal Zone unless they are adopted in compliance with the Coastal Act (*Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089.) While the City has arguments it might make to distinguish the *Santa Barbara* decision, if it were to be applied in Dana Point, it would mean that any residential property in the Coastal Zone could, by right, operate a STR since residential uses are permitted by the City's LCP. Moreover, that the City's existing regulations would not be effective unless and until approved by a Coastal Development Permit (CDP), or amendment to the City's LCP.

In April, another case was decided by the Court of Appeal, in which it determined the City of Manhattan Beach's prohibition on short term rentals was invalid for lack of Coastal Commission approval. The Court found that the City's LCP allowed properties to be rented, and did not place a limit the number of nights allowed for such rentals. Hence, any change prohibiting rentals of a short duration would require compliance with the Coastal Act (i.e., either a CDP or amendment to the City's LCPA.) (*Keen v. City of Manhattan Beach*; Case No. B307538; filed 04/06/22.) If this case is applied in Dana Point, a similar result would occur since neither the City's LCP, nor any CDP regulates or otherwise restricts the number of nights of a residential property rental.

A third case worthy of note was decided in January this year related to STRs in Palm Springs. (*Protect our Neighborhoods v. City of Palm Springs* (*Protect our Neighborhoods v. City of Palm Springs* (2022) 73 Cal. App. 5th 667.) While the facts again are perhaps distinguishable from those in Dana Point, the *Palm Springs* Court in essence ruled that STRs are a permissible use at residentially zoned properties. This is significant in that, if applied in Dana Point, it would mean the rationale of the *Santa Barbara* case applies both within and outside of the Coastal Zone. In other words, absent regulations applicable to STRs which exist outside the Coastal Zone, a STR could operate at any residentially zoned property.

Bearing in mind the above cases, it is important to understand the legal framework surrounding the proposed action. Notably, if the holdings discussed above are applied in the City, any sort of ban or prohibition on STRs in the Coastal Zone would have to be included in either a CDP or amendment to the City's LCP to be valid, and the CCC has made clear it will not support such a ban. Moreover, until such time as either a CDP or LCP amendment addressing regulations is in place, the City will face arguments that STRs may operate at any existing residential property in Coastal Zone, without regulation.

Rather than continuing to take the position STRs are not currently permitted as part of approved residential uses (which would be subject to a legal challenge), staff is recommending that the Planning Commission recognize the trend in the reported cases is to find STRs are permitted as part of any residential use. As such, there is no need for an LCP amendment, or any other zoning amendment, because the use is already permitted with any residentially zoned property. In order to comply with the Coastal Act, a CDP is

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proposed to allow the regulation of STRs, which we must presume are already legally authorized by existing zoning and the City's LCP.

With respect to properties located outside of the Coastal Zone, Municipal Code Section 5.38.080(b), provides the Director of Community Development the authority to impose additional standard conditions to all short term rentals. As a result, if the Planning Commission approves the CDP, the Director could adopt its provisions for use throughout the City (for instance, the cap on STR permits), and this can occur without requiring an amendment to Chapter 5.38. Presuming the CDP becomes effective, the Director intends to move forward in this manner to carry out the Council's direction that the regulations related to STR's be uniform throughout the City.

STR Program Comparison with 2016 STR Ordinance

During the April 11, 2022, Planning Commission Public Workshop, speakers stated that the proposed STR Program is the same as the 2016 STR regulations that were rescinded following a potential referendum. Table 1 highlights the key differences between the 2016 regulations and the proposed STR Program. Notable modifications from the 2016 regulations include (1) establishing a non-primary STR permit cap of 185; (2) 30 minute nuisance response time; (3) prohibiting outside noise from 10:00 pm to 7:00 am; (4) limiting one permit per owner, and (5) limit one permit per multi-family apartment building.

Table 1 - 2016 STR Ordinance vs. Proposed STR Program

Regulations	2016 Ordinance	Proposed STR Program
Notification	None	Notify abutting neighbors
Permit Cap	None	185 non-primary
Minimum renter age	18	25
Maximum daytime occupancy	None specified	2.5 times the overnight occ. Not to exceed 20
Trash regulations	No cans in public 5pm day before and 8am day after service	Additionally, provide walkup trash service after first trash violation
Noise	No creation of unreasonable noise or disturbances	No outside noise from 10pm-7am
Multi-Family	No permit limit	1 permit per building (apartments)
Permit Limit	None	1 per owner
Nuisance Reponse Time	None specified	30 minutes
Fines	1 st violation \$250, 2 nd \$500, 3 rd \$1,000, 4 th \$1,000 – to revocation (within a 12 month period)	Maximum allowed per state law - 1 st nuisance violation \$1,500, 2 nd \$3,000, 3 rd \$5,000 (over the life of the permit).

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Regulations	2016 Ordinance	Proposed STR Program
Violations	4 th violation in a 12 month period revocation	3 rd violation revocation (over the life of the permit)

STR Program Comparision with Laguna Beach STR Ordinance

The Subcommittee reviewed the City of Laguna Beach's STR regulations (certified by CCC on September 18, 2020) to incorporate appropriate provisions into the proposed Program. The certified regulations were also useful in providing relevant insight into the CCC approved approaches to manage STRs. The Laguna Beach STR Ordinance was also referenced by several public speakers as a model for the City to follow. Table 2 below compares key regulations from the Laguna Ordinance to the STR Program.

The Laguna Beach STR allows existing STRs (approximately 79 permits) in residential zones to continue, but new STRs would be limited to commercial districts. Justification for this approach is that there are approximately 772 residential dwellings existing in Laguna Beach's commercial zones which are distributed throughout the city. This unconventional distribution of residential uses in the Laguna Beach commercial zones is inconsistent with Dana Point in that residential uses in commecrical zones are only permitted in the mixed use zones in Town Center and Doheny Village. The limited number of potential STR units that results would not be supported by CCC.

Table 2 – Laguna Beach vs. Dana Point STR Regulations

Regulations	Laguna Beach	Dana Point
Residential Zones	No new permits. 79 existing permits run with the land	Permitted
Comercial/Mixed Use Zones	Permitted in Commercial and Mixed-Use Zones	Permitted in Mixed-Use Zones
Existing Permits	Continue to operate. Run with the land.	Continue to operate. Annual renewal.
Permit Transfer	Transferable	Not transferable
Cap (Non-Primary)	300	185
Multi-Family Limitation	20% of building	1 per building (not applicable to condominiums)
Daytime Occupation	2 per bedroom, max 20	2.5 night occ., max 20
Home Share STRs	Permitted in SFR/MFR. Additional 165 permit cap	Permitted in SFR/MFR/Mixed Use - unlimited

CCC Comment Letter on Draft STR Program

STRs supplement traditional visitor-serving overnight accommodations that promote public access and visitor-serving opportunities to coastal communities. The provision of overnight

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visitor-serving accommodations, such as STRs, serves a significant purpose as a subset of visitor-serving uses that promote public coastal access and provides California residents and visitors one way to enjoy the coast.

In order to be consistent with Chapter 3 of the Coastal Act, the City's approach is to appropriately regulate the establishment and operation of STRs rather than overly restrict this use or otherwise significantly diminish its visitor-serving utility. On February 18, 2022, the STR Subcommittee directed staff to request input from the CCC in connection with the draft STR Program. On April 1, 2022, the City received comments from the CCC (Supporting Document 2) and incorporated the necessary modifications into the Program to ensure Coastal Act compliance. A summary of the CCC comments and responses is provided below.

1. *Establish provisions on how the STR permit fee is set and modified.*
The City Council established an STR permit fee of \$150 which is reflective of the cost of administering the permit process. Cities are limited to charging fees which do not exceed the estimated reasonable cost of providing the services for which the fee is charged. Any modification of the fee would require supporting documentation and subject to a public hearing before the City Council.
2. *Explore the use of Accessory Dwelling Units (ADU) as STRs to provide lower-cost overnight accommodations.*
The State identified that there is a housing crisis and established ADU regulations to increase the supply of affordable housing units, therefore, ADUs are restricted from operating as STRs per State Law.
3. *The City should consider mitigating the inherent obstacle of HOAs that restrict STRs.*
Potential restrictions posed by HOAs have not limited the vast array of overnight accommodations for visitors in the City including hotels, timeshares, STRs, and campsites. Therefore, the City will continue honor CC&R regulations established by HOAs.
4. *Justify the 185 non-primary cap.*
As noted above, the City began issuing STR permits per the Council action that occurred in 2013. The City issued these permits to STR operators at a time when no limitation or cap on the number of permits was in place. When it stopped issuing STR permits in 2016, 183 such permits were in existence. Currently, with permit transfers having occurred and no new permits having been issued since 2016, the number of permits in the City is 131. The proposed permit cap is based upon, and consistent with the historic demand for STR permits when no limitation existed. The cap does not apply to primary and home stay STRs, which will offer additional permit options. The cap is to ensure the City's limited rental housing stock is preserved and avoids saturation of STRs. The cap would be revisited every five years, and if modifications are proposed, an amendment to the STR Program CDP would be required.

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5. *Justify the daytime cap of 20 persons.*
The proposed daytime cap is consistent with STR regulations approved by the CCC for other coastal municipalities. The daytime cap is based on the size of the STR unit. For example, a two bedroom STR would be limited to six (6) overnight occupants with nine (9) daytime guests.
6. *Encourage equal and fair treatment of all people participating in the STR process by requesting STR operators to include ADA information in the listings.*
The requested ADA provision is incorporated into the draft STR Program under Section 10(a)(20).
7. *Modify Section 10(a)(16) to include the terms, notifications, and disclosures be posted during the registration process.*
The requested modification is incorporated into the draft STR Program.
8. *Disclose whether bicycles or other means of non-automobile transport are available.*
Section 10(a)(21) is added to the Program to identify alternative modes of transportation in the marketing of an STRs.
9. *Analyze the cumulative impact of the STR Program on public access.*
The City's existing supply of overnight accommodations (Supporting Document 4) along with the STR Program's balanced approach increases the availability of overnight (market rate and affordable) accommodations while protecting neighborhoods, long-term housing stock, and public access.

The City has established a balanced approach for STRs by proposing primary, non-primary, and home stay STRs to create a range of affordable options for visitors. The City's balanced Program with the existing hotel and campsite amenities adequately meets the demand for overnight accommodations in the City and protects long-term rental housing. Home stay STRs are, by design, an affordable option by allowing the renting of individual rooms or an attached unit versus an entire house. Additionally, by not establishing a cap for this permit type, the opportunity for lower-cost overnight accommodations are increased in the City.

The establishment of the proposed STR Program with the allowance of non-primary, primary, and home stay STRs further increases the City's availability of affordable overnight accommodations, which surpass other coastal cities based on Dana Point's size.

DISCUSSION:

The Subcommittee developed the STR Program with the ultimate goal of balancing the following interests: (1) preserving the City's affordable rental stock for its residents; (2)

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providing low cost, affordable coastal accommodations at a variety of prices, locations, and lodging types; (3) protecting the peaceful and quiet enjoyment of the community by its residents; and (4) respecting the private property rights of all property owners (both those who favor of those who oppose short term rentals). The result of this process is the draft Program, which includes regulations and conditions associated with three types of STRs (non-primary, primary, and home stay), a city-wide short term rental permit cap, permit limitation for multi-family structures, procedures for short term rental permit transfers, and ownership limitations.

The draft STR Program was developed utilizing Section 5.38 Short-Term Rental Permits (Supporting Document 5) of the Dana Point Municipal Code as the foundation which was amended on June 1, 2021, to 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, operation requirements, performance standards, hosting platform regulations, and a revocation process). Additional provisions were included based on City Council policy, public input, CCC comments, researching other City's STR Programs, and as evaluated by the STR Subcommittee. Modifications were made to the definitions for clarification per comments made at the April 11, 2022 public workshop. A summary of the STR regulations is as follows:

- **STR Types:** three types: primary, non-primary, and home stay STRs, as defined as:
 - "Primary Short-Term Rental" The property is the owner's primary residence, and it is rented when traveling or living elsewhere.
 - "Non-Primary Short-Term Rental" shall mean that the owner rents out homes other than their primary residence to visitors.
 - "Home Stay Short-Term Rental" shall mean that the owner rents out a portion of their home while continuing to live in the home while visitors are renting. In the case of a multi-family (duplex, triplex, etc.) property, the owner resides in one of the units while the other unit on the same property is rented to visitors.
- **Permitted Zones:** all three STR types are allowed in all residential and mixed-use zones in the City.
- **Permit Cap:** non-primary STRs are capped at 185 permits city-wide. No cap for primary and home stay STRs.
 - Permit cap will be evaluated in five years. If increased, an amendment to the Coastal Development Permit is required.
- **Multi-Family Structures:** apartments one STR per building. No limit for condominiums.
- **Transfer of permits:** only for inherited properties.
- **Permits Per Owner:** one STR permit per owner. Existing owners with multiple permits can retain their permits until the property is sold.
- **Notification:** all abutting properties shall be notified of an STR permit issuance that includes operator contact information.
- **HOA Approval:** permit issuance is subject to authorization by HOA, if applicable.
- **Initial Inspection:** the STR shall pass an initial inspection.

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- Minimum Age: minimum age for a renter is 25 years.
- Maximum Nighttime Occupancy: two persons per bedroom plus two
- Maximum Daytime Occupancy: 2.5 times the overnight occupancy, not to exceed 20 persons.
- Noise: no outside noise from 10:00 pm to 7:00 am.
- Waitlist: establish a waitlist for new STR permits to be issued once the cap is met.
- Prohibition(s): STRs are prohibited in Accessory Dwelling Units, Junior Accessory Dwelling Units, Single Family Residential Duplexes (SB9), and designated affordable housing.
- Operator Regulations: specific regulations for each type of STR
 - Home Stay – owner must reside in the residence when the property is rented from 10:00 pm to 7:00 am.
 - Primary – rented a maximum of 60 days annually
- Fines: maximum monetary amount allowed per state law
- Penalties: three violations for the life of the permit. Third violation results in revocation of the STR permit.

CORRESPONDENCE: As of the date the report was written, no correspondences had been received since the April 11, 2022 public workshop.

CONCLUSION: Staff finds that the proposed STR Program is consistent with the policies and provisions of the City of Dana Point General Plan, Dana Point Zoning Code, and Local Coastal Program by allowing of STRs that are limited and regulated to ensure affordable overnight accommodations are provided to visitors while protecting neighborhoods and housing stock. As the STR Program is found to comply with the City's LCP, staff recommends the Planning Commission adopt the attached draft Resolution, approving Coastal Development Permit 22-0010 subject to the findings and conditions of approval contained therein. The CDP, upon adoption will apply to regulate STRs in the Coastal Zone in a manner consistent with the Coastal Act. As authorized by Municipal Code Section 5.38.080, the Community Development Director will apply the additional standards set forth in the CDP as a condition of all permits issued for STRs outside of the Coastal Zone. In this manner, a uniform approach to the regulation of STRs will exist throughout the City.


John Ciampa, Senior Planner


Brenda Wisneski, Director
Community Development Department

**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING ACTION MINUTES**

May 9, 2022
6:00pm - 8:17pm

City Hall Offices
Council Chamber (#210)
33282 Golden Lantern
Dana Point, CA 92629

CALL TO ORDER REGULAR MEETING

Chair Gabbard called the Regular Meeting of the Dana Point Planning Commission to order at 6:00pm.

PLEDGE OF ALLEGIANCE

Commissioner Nelson led the Pledge of Allegiance.

ROLL CALL

Planning Commission Members Present: Chair John Gabbard, Vice-Chair Ashok Dhingra, Commissioner Mary Opel, Commissioner Eric Nelson, Commissioner Roy Dohner

Planning Commission Members Absent: None

Staff Present: Brenda Wisneski (Director of Community Development), Jennifer Farrell (Deputy City Attorney), Jeff Rosaler (Community Development Manager), Belinda Deines (Principal Planner), John Ciampa (Senior Planner), Allison Peterson (Management Analyst), and DJ Sutorius (Senior Administrative Assistant)

ITEM 1: Minutes of the Regular Planning Commission Meeting April 25, 2022

ACTION: Motion made by Vice-Chair Dhingra, seconded by Commissioner Dohner, to approve the Minutes of the Regular Planning Commission Meeting of April 25, 2022, with an amendment to Vice-Chair Dhingra's Commissioner Comment. Motion carried 5-0-0.

AYES: Gabbard, Dhingra, Nelson, Dohner, Opel
NOES: None
ABSENT: None
ABSTAIN: None

B. PUBLIC COMMENTS

There were no Public Comments.

C. CONSENT CALENDAR

There were no items on the Consent Calendar.

**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING ACTION MINUTES**

May 9, 2022

6:00pm – 8:17pm

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D. PUBLIC HEARING

ITEM 2: Conditional Use Permit CUP21-0014 to construct a 1,168 square-foot addition and an attached three-car garage to a nonconforming duplex located in the Residential Single Family 4 (RSF 4) zoning district at 34071 Calle La Primavera.

- Applicant: Stan Andrade, Architect
- Location: 34071 Calle La Primavera (APN: 682-142-04)
- Request: Approval of Conditional Use Permit CUP21-0014 to construct a 1,168 square-foot addition and an attached three-car garage to a nonconforming duplex located in the Residential Single Family 4 (RSF 4) zoning district.
- Recommendation: That the Planning Commission adopt the draft Resolution approving Conditional Use Permit CUP21-0014.
- Environmental: Pursuant to the California Environmental Quality Act (CEQA), the project is found to be Categorically Exempt per Section 15301(e) (Class 1 – Existing Facilities) in that the project involves additions to existing structures less than 50 percent of the floor area before the addition, or 2,500 square feet, whichever is less.

Belinda Deines (Principal Planner) provided a presentation and answered questions from the Planning Commissioners.

PUBLIC COMMENTS

Luella Townsend (Dana Point) spoke in opposition of the project.

Neal Hunstein (Dana Point) spoke in opposition of the project.

Stan Andrade (Architect) spoke in favor of the project.

ACTION: Motion made by Commissioner Nelson, seconded by Vice-Chair Dhingra, to approve Conditional Use Permit CUP21-0014 to construct a 1,168 square-foot addition and an attached three-car garage to a nonconforming duplex located in the Residential Single Family 4 (RSF 4) zoning district at 34071 Calle La Primavera.

AYES: Gabbard, Dhingra, Nelson, Dohner, Opel,

**CITY OF DANA POINT
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NOES: None
ABSENT: None
ABSTAIN: None

ITEM 3: Coastal Development Permit CDP22-0010 to establish a Short-Term Rental Program.

Applicant: City of Dana Point

Location: Citywide

Request: Approval of Coastal Development Permit CDP22-0010 to establish a Short-Term Rental Program.

Recommendation: That the Planning Commission adopt the Resolution approving Coastal Development Permit CDP22-0010.

Environmental: Pursuant to the California Environmental Quality Act (CEQA), the project is found to be Categorical Exempt per State Code Sections 15162 and Categorical Exemptions Class 1 - Section 15301 – Existing Facilities.

John Ciampa (Senior Planner) provided a presentation and answered questions from the Planning Commissioners.

PUBLIC COMMENTS

Matthew Agua (Capo Beach) spoke on behalf of Rodger Malcom who was in opposition of the Short-Term Rental Program.

Kelly Chapman (Dana Point) spoke in opposition of the Short-Term Rental Program.

Marilyn Gardner (Dana Point) spoke in favor of the Short-Term Rental Program.

Paul Wyatt (Dana Point) spoke in opposition of the Short-Term Rental Program.

Miriam Rupke (Dana Point) spoke in favor of the Short-Term Rental Program.

Yuri Cramer (Dana Point) spoke in neutrality about the Short-Term Rental Program.

Betty Hill (Dana Point) spoke in opposition of the Short-Term Rental Program.

Patty Kindoll (Dana Point) spoke in opposition of the Short-Term Rental Program.

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Charlaine Brown (Dana Point) spoke in opposition of the Short-Term Rental Program.

Barbara Wilson (Dana Point) spoke in opposition of the Short-Term Rental Program.

Ken Piloti (Dana Point) spoke for in favor of the Short-Term Rental Program.

Toni Nelson (Dana Point) spoke in opposition of the Short-Term Rental Program.

Shaun Hurley (Dana Point) spoke in neutrality about the Short-Term Rental Program.

Alyssa Hendrie (Dana Point) spoke in favor of the Short-Term Rental Program.

Doug Robinet (Dana Point) spoke in favor of the Short-Term Rental Program.

Sari Hardola (Dana Point) spoke in neutrality about the Short-Term Rental Program.

Elsa Pugarini (Dana Point) spoke in favor of the Short-Term Rental Program.

ACTION: Motion made by Commissioner Nelson, seconded by Commissioner Dohner, to approve Coastal Development Permit CDP22-0010 to establish a Short-Term Rental Program. Motion carried 4-1-0.

AYES: Dhingra, Nelson, Dohner, Opel
NOES: Gabbard
ABSENT: None
ABSTAIN: None

E. OLD BUSINESS

There was no Old Business.

F. NEW BUSINESS

There was no New Business.

G. STAFF REPORTS

There were no Staff Reports.

H. COMMISSIONER COMMENTS

Chair Gabbard presented a plaque and award for Commissioner Nelson for his tenure as Chair for the Planning Commission.

**CITY OF DANA POINT
PLANNING COMMISSION
REGULAR MEETING ACTION MINUTES**

May 9, 2022

6:00pm – 8:17pm

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Commissioner Nelson congratulated Chair Gabbard for taking the role as Chair. He also thanked City Staff for their hard work on the Short-Term Rental Program.

Commissioner Dohner thanked City Staff for their efforts on the Short-Term Rental Program.

I. ADJOURNMENT

Chair Gabbard adjourned the meeting at 8:17pm. The *next* Regular Meeting of the Planning Commission will be held on Monday, May 23, 2022, in the City Council Chambers located at 33282 Golden Lantern, Suite 210, Dana Point, California.

John Gabbard, Planning Commission Chair

DRAFT

SUPPORTING DOCUMENT D

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., GOVERNOR

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94108-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5855



December 6, 2016

TO: Coastal Planning/Community Development Directors

SUBJECT: Short-Term/Vacation Rentals in the California Coastal Zone

Dear Planning/Community Development Director:

Your community and others state and nationwide are grappling with the use of private residential areas for short-term overnight accommodations. This practice, commonly referred to as vacation rentals (or short-term rentals), has recently elicited significant controversy over the proper use of private residential stock within residential areas. Although vacation rentals have historically been part of our beach communities for many decades, the more recent introduction of online booking sites has resulted in a surge of vacation rental activity, and has led to an increased focus on how best to regulate these rentals.

The Commission has heard a variety of viewpoints on this topic. Some argue that private residences should remain solely for the exclusive use of those who reside there in order to foster neighborhood stability and residential character, as well as to ensure adequate housing stock in the community. Others argue that vacation rentals should be encouraged because they often provide more affordable options for families and other coastal visitors of a wide range of economic backgrounds to enjoy the California coastline. In addition, vacation rentals allow property owners an avenue to use their residence as a source of supplemental income. There are no easy answers to the vexing issues and questions of how best to regulate short-term/vacation rentals. The purpose of this letter is to provide guidance and direction on the appropriate regulatory approach to vacation rentals in your coastal zone areas moving forward.

First, please note that vacation rental regulation in the coastal zone must occur within the context of your local coastal program (LCP) and/or be authorized pursuant to a coastal development permit (CDP). The regulation of short-term/vacation rentals represents a change in the intensity of use and of access to the shoreline, and thus constitutes development to which the Coastal Act and LCPs must apply. We do not believe that regulation outside of that LCP/CDP context (e.g., outright vacation rental bans through other local processes) is legally enforceable in the coastal zone, and we strongly encourage your community to pursue vacation rental regulation through your LCP.

The Commission has experience in this arena, and has helped several communities develop successful LCP vacation rental rules and programs (e.g., certified programs in San Luis Obispo and Santa Cruz Counties going back over a decade; see a summary of such LCP ordinances on our website at:

https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals

[.pdf](#)). We suggest that you pay particular attention to the extent to which any such regulations are susceptible to monitoring and enforcement since these programs present some challenges in those regards. I encourage you to contact your [local district Coastal Commission office](#) for help in such efforts.

Second, the Commission has not historically supported blanket vacation rental bans under the Coastal Act, and has found such programs in the past not to be consistent with the Coastal Act. In such cases the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act. However, in situations where a community already provides an ample supply of vacation rentals and where further proliferation of vacation rentals would impair community character or other coastal resources, restrictions may be appropriate. In any case, we strongly support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for vacation rentals, while providing appropriate regulation to ensure consistency with applicable laws. We believe that appropriate rules and regulations can address issues and avoid potential problems, and that the end result can be an appropriate balancing of various viewpoints and interests. For example, the Commission has historically supported vacation rental regulations that provide for all of the following:

- Limits on the total number of vacation rentals allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a vacation rental (e.g., disallowing vacation rentals in affordable housing contexts, etc.).
- Limits on maximum vacation rental occupancies.
- Limits on the amount of time a residential unit can be used as a vacation rental during a given time period.
- Requirements for 24-hour management and/or response, whether onsite or within a certain distance of the vacation rental.
- Requirements regarding onsite parking, garbage, and noise.
- Signage requirements, including posting 24-hour contact information, posting requirements and restrictions within units, and incorporating operational requirements and violation consequences (e.g., forfeit of deposits, etc.) in rental agreements.
- Payment of transient occupancy tax (TOT).
- Enforcement protocols, including requirements for responding to complaints and enforcing against violations of vacation rental requirements, including providing for revocation of vacation rental permits in certain circumstances.

These and/or other provisions may be applicable in your community. We believe that vacation rentals provide an important source of visitor accommodations in the coastal zone, especially for larger families and groups and for people of a wide range of economic backgrounds. At the same time we also recognize and understand legitimate community concerns associated with the potential adverse impacts associated with vacation rentals, including with respect to community character and noise

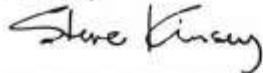
Short-Term/Vacation Rentals in the California Coastal Zone

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and traffic impacts. We also recognize concerns regarding the impact of vacation rentals on local housing stock and affordability. Thus, in our view it is not an 'all or none' proposition. Rather, the Commission's obligation is to work with local governments to accommodate vacation rentals in a way that respects local context. Through application of reasonable enforceable LCP regulations on such rentals, Coastal Act provisions requiring that public recreational access opportunities be maximized can be achieved while also addressing potential concerns and issues.

We look forward to working with you and your community to regulate vacation rentals through your LCP in a balanced way that allows for them in a manner that is compatible with community character, including to avoid oversaturation of vacation rentals in any one neighborhood or locale, and that provides these important overnight options for visitors to our coastal areas. These types of LCP programs have proven successful in other communities, and we would suggest that their approach can serve as a model and starting place for your community moving forward. Please contact your [local district Coastal Commission office](#) for help in such efforts.

Sincerely,



STEVE KINSEY, Chair
California Coastal Commission

SUPPORTING DOCUMENT E

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

GAVIN NEWSOM, Governor

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E Ocean Blvd, Suite 300
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April 1, 2022

Johnathan Ciampa, Senior Planner
City of Dana Point, Community Development Department
33282 Golden Lantern, Suite 209
Dana Point, California 92629

Delivered via electronic mail: JCiampa@DanaPoint.org

Re: City of Dana Point Draft Short-Term Rental (STR) Program

Dear Johnathan Ciampa:

Coastal Commission staff appreciate the opportunity to review and comment on the City of Dana Point's Draft Short-Term Rental (STR) Program. We acknowledge the significant collaboration that has taken place to date between interested stakeholders, and City and State agency representatives, in the development of the Program. Given the impacts of the project on public access, recreational amenities, and coastal resources along the Coastal Zone of Dana Point, additional and more thorough review will be required as part of a necessary coastal development permit (CDP) or Local Coastal Program amendment (LCPA) for the proposed Program.

The following comments address, in a preliminary manner, the issue of the Program's consistency with existing policies and regulations of the City's LCP and of the California Coastal Act of 1976 (specifically Chapter 3). This letter is an overview of the main concerns Commission staff have identified at this time based on the information that has been presented. The comments contained herein are preliminary in nature, and those of Coastal Commission staff only, and should not be construed as representing the official opinion of the Coastal Commissioners.

Background:

On February 3, 2014, the City submitted LCPA Request No. 1-14 (LCP-5-DPT-14-0105-1) to amend the Implementation Plan (IP) for both the '1996 LCP' and the '1986 LCP' for Coastal Commission certification regarding short-term rentals (STRs), as defined in Chapter 5.38 of the City's Municipal Code. At that time, STRs grew in popularity through the increased use of electronic reservation systems and online platforms, and Dana Point's coastal location has been especially appealing to out-of-town visitors. In general, STRs have provided an important opportunity to increase visitor-serving overnight accommodations throughout the Coastal Zone, in accordance with Coastal Act Sections 30210, 30211, and 30213. Nonetheless, it has been noted that STRs can also cause problems for coastal residential neighborhoods, and there has been extensive discussion among interested stakeholders regarding impacts from their uses, including but not limited to: changes to community character, rental housing stock reduction, public safety concerns, increased traffic and parking issues, noise impacts, and increased litter accumulation, which are coastal resource issues of concern in part referenced in Coastal Act Section 30214. As

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such, the City's position has been to attempt regulating and permitting STR uses, rather than outright banning them.

The City had asserted that the proposed regulations set forth in the LCPA would safeguard the peace, safety, and general welfare of the residents of Dana Point, while also facilitating public access throughout the Coastal Zone for residents and visitors alike. The City's original submittal included conditions of approval and operation of STRs, which identified aspects such as the minimum number of parking spaces, maximum number of guests, removal of trash, noise controls, and transient occupancy tax (TOT). No land use plan changes were proposed. The Commission suggested minimal modifications to the City's submitted LCPA, which included further clarification that if the Program is to change in the future, the City would require an additional LCPA.

The Commission approved LCPA No. 1-14 on April 14, 2016 with the suggested modifications. Concurrence with the Executive Director's determination that the action of the City of Dana Point accepting certification with suggested modifications of the LCP amendment was scheduled for November 4, 2016. Ahead of the hearing, the City received two referendum petitions against the underlying ordinances encompassing the LCPA, and on November 2, 2016, the City notified the Commission that the City was withdrawing the STR LCPA from final consideration and certification. Since then, City staff has been in communication with Commission staff with regard to efforts by the City to implement a new STR Program.

Shortly thereafter, on December 6, 2016, the Commission published a resource for local governments on short-term/vacation rentals in the California Coastal Zone, which can be found on the Commission's website.¹ Per the Commission's guidance, short term/vacation rental regulation in the coastal zone should occur within the context of the certified Dana Point Local Coastal Program (LCP) and/or be authorized pursuant to a coastal development permit (CDP).

In response to a conference call between City and Commission staff, the City provided a letter to the Commission on September 9, 2019, which detailed the City's existing visitor-serving amenities as part of its STR ordinance evaluation process, to ensure that there is an appropriate balance of visitor-serving amenities available within the coastal zone. Most recently, the City has circulated its latest draft STR Program on February 17, 2022, which is the next step in the process toward new STR regulations.

Comments:

1.) Existing and Proposed STR Policies

The Commission has historically supported vacation rental regulations that provide for all of the following:²

¹https://documents.coastal.ca.gov/assets/la/Short_Term_Vacation_Rental_to_Coastal_Planning_&_Devt_Directors_120616.pdf

²https://documents.coastal.ca.gov/assets/la/Sample_of_Commission_Actions_on_Short_Term_Rentals.pdf

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- Limits on the total number of vacation rentals allowed within certain areas (e.g., by neighborhood, by communitywide ratio, etc.).
- Limits on the types of housing that can be used as a vacation rental (e.g., disallowing vacation rentals in affordable housing contexts, etc.).
- Limits on maximum vacation rental occupancies.
- Limits on the amount of time a residential unit can be used as a vacation rental during a given time period.
- Requirements for 24-hour management and/or response, whether onsite or within a certain distance of the vacation rental.
- Requirements regarding onsite parking, garbage, and noise.
- Signage requirements, including posting 24-hour contact information, posting requirements and restrictions within units, and incorporating operational requirements and violation consequences (e.g., forfeit of deposits, etc.) in rental agreements.
- Payment of TOT
- Enforcement protocols, including requirements for responding to complaints and enforcing against violations of vacation rental requirements, including providing for revocation of vacation rental permits in certain circumstances.

The short-term rental regulations proposed by the City must conform with existing LCP policies and the Chapter 3 polices of the Coastal Act, namely Section 30213 which encourages the provision of lower-cost visitor-serving facilities and overnight room rentals, as well as also other policies such as adequate parking, protection of scenic and aesthetic qualities and community character of an area, and prioritization of coastal-related and visitor-serving uses in the coastal zone.

The Draft STR Program currently under review is substantially similar to the STR program proposed as part of LCPA No. 1-14.³ However, there are a few key differences. First, the City now defines “primary” and “non-primary” short-term rentals, which is differentiated by whether the property that is being rented out is the owner’s primary residence or not. The City also adds nuance by defining a variety of other rental configurations (e.g., junior/accessory dwelling units, multiple family dwellings, and home stay short-term rentals). The City then contemplates a cap (i.e., a maximum number of STRs allowed) of 185 permits that may be issued for non-primary short-term rentals, yet does not limit the total number of permits that can be issued for home stay and primary STRs. The City also lays out permit transfer, permit waitlist, and annual renewal procedures. Finally, the City contemplates minor changes to the conditions of permit issuance and violations and penalties, removes the amortization and amnesty period, and adds additional stipulations for the operation of STRs in different rental configurations.

In general, the City’s Draft STR Program is comprehensive and addresses many of the issues and points that the Commission has historically considered for STRs in other jurisdictions along the Coastal Zone. In the following sections, Commission staff outline where there may still be areas of concern.

³ <https://documents.coastal.ca.gov/reports/2016/4/th10a-4-2016.pdf>

2.) Lower-Cost Overnight Accommodations

LUP Land Use Element Policy 3.3 states that “priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.” Section 30213 of the Coastal Act further states that developments providing public recreational opportunities are preferred.

Short-term rentals may provide increased public enjoyment of the coast by offering overnight accommodations at various price points and types. In many instances, STRs may provide a lower cost alternative to renting hotel or motel rooms for families and groups of individuals, and in all cases, STRs increase the range of options available to coastal visitors. The staff report for LCP Amendment No. 1-14 further discusses the link between the provision of STRs and lower-cost overnight accommodations and recreational opportunities in the Coastal Zone.

There are many factors that go into establishing costs for STRs. Permit fees and TOT typically get incorporated into the cost of the STR as an administrative or overhead fee. Under the Draft STR Program proposal, the TOT will be assessed and exacted per Chapter 3.25 of the Municipal Code, and permit fees will be established by the City Council. On February 24, 2022, Commission staff reached out to City staff to gather additional information about how the permit fees are determined. City staff explained that the fees will likely be the same as in previous years at \$150. While Commission staff find no issue with the permit fee as currently set, it is very important that the Draft STR Program include additional provisions about how the fee is generally set. If the permit fees are entirely at the discretion of City Council with no recourse to petition changes, as is currently implied, then the administrative or overhead costs may affect the overall affordability of some of the STRs offered in Dana Point, which will get passed onto visitors and potentially impact the availability of lower-cost overnight accommodations in general. Therefore, Commission staff ask that the City develop a fee-setting mechanism, preferably adjusted per the Consumer Price Index (CPI), that will promote, rather than inhibit, the availability and operation of lower-cost overnight accommodations and public recreational opportunities along the coast.

Commission staff also ask the City to explore and flesh out the currently proposed restrictions on using accessory dwelling units, onsite campers, RVs, or tents as home stay STRs. In the past, the Commission has discouraged hotel developers from providing dormitories or other micro-room arrangements to fulfill affordability obligations. The rationale is that to encourage true lower-cost overnight accommodations and recreational opportunities for wide segments of the public, the rooms offered should be inviting and appealing to prospective visitors. As such, Commission staff understand that placing restrictions on certain types of STRs may actually be in furtherance of Section 30213 and other Chapter 3 policies of the Coastal Act. It is also important that STRs are not operated at the expense of designated affordable housing. Nevertheless, Commission staff recognize that it is important to encourage lower-cost overnight accommodations at a wide range of price points and types, even if they may not be conventional. For example, if operated

properly, an ADU that is converted to a STR for brief periods of time may prove to be an excellent lower-cost overnight accommodation, while also minimizing impacts on the neighboring residences and surrounding land uses. Thus, Commission staff ask that the City further expound on the rationale behind some of the restrictions proposed for the operation of short-term rentals.

3.) Public Access and Visitor-Serving Uses

The Coastal Act contains numerous public access and recreation policies in Chapter 3 (Sections 30210-30214, 30221-30223, 30252, 30253, 30255), and the Dana Point certified LUP further supports maximum public access and recreational opportunities (LUP Land Use Element Policies 2.10, 2.12, 3.3, 3.11, 3.12, 4.3). As discussed earlier, STRs may encourage public access to the coast. Generally, the Draft STR Program provides balance between the needs of visitors and residents in Dana Point's Coastal Zone. Nonetheless, there are a few remaining issues that Commission staff would like to address.

First, a component of obtaining a STR permit as identified in the Draft STR Program is that the owner shall provide proof that the STRs are not prohibited by its Home Owners Association (HOA) Conditions, Covenants, and Restrictions (CC&R's) or any other community standards/guidelines applicable to the proposed STR. The City has previously decided to remain impartial and avoid acting as arbitrator in disputes between the individual homeowners and their HOAs, and the City has stated that they cannot issue STR permits and cannot intervene if an HOA prohibits use of STRs in their CC&R's as it involves private property rights and not zoning. However, the most recent 2020 STR Survey has shown that approximately forty-two percent (42%) of participants are residents of HOAs. While this does not correlate to an exact figure, it appears that an outsized portion of the City's population may be excluded from participating in the STR Program. This means that large portions of Dana Point's Coastal Zone may not be eligible for the provision of STRs, which may public access. Commission staff are aware of this issue, and it has been discussed at length in the staff report for LCP Amendment No. 1-14; however, Commission staff urge the City to find ways to mitigate for this inherent obstacle to providing equitable public access and recreational opportunities along the coast.

Second, Commission staff would recommend that the City further develop details around the 185 cap for non-primary STR permits. Commission staff understand that the City is currently undergoing a housing crisis and therefore wants to ensure that current housing stock is not depleted by STRs. However, it remains unclear how the City has arrived at the 185 figure. Other local jurisdictions in the Coastal Zone have placed caps on the number of non-primary STRs (or non-occupied STRs), but it has historically been a point of contention for members of the public when there has been an unsubstantiated or unconvincing rationale.⁴ Furthermore, Goal 3 of the LUP Land Use Element is to direct growth of the community as to maintain and improve the quality of life, which may be accomplished by Policy 3.1, which requires new development to contribute its share of the cost of providing necessary public services and facilities through equitable development fees and exactions. Commission staff believe that this LUP Policy would also apply to the

⁴ <https://documents.coastal.ca.gov/reports/2021/12/W13b/w13b-12-2021-addenda.pdf>

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availability of STR permits in the first place, as well as the associated fees exacted. Thus, as further mentioned in the Cumulative Impacts section of this letter, the City should be prepared to provide a type of mechanism that allows for the increase in the STR permit issuance cap over time based on the growth of the City's population, infrastructure, and visitor-serving uses. Currently, the City's cap would be static, which is not in full conformance with LUP Land Use Element Policy 3.1, 3.2, 3.3, and 3.4. In previous Commission actions, local jurisdictions have also specified whether the cap would be exhausted in the Coastal Zone first, or if a particular portion of the STR permits would be earmarked for the Coastal Zone only, which the City of Dana Point currently does not include in its Draft STR Program and should consider.

Similarly, the Draft STR Program includes a new maximum daytime occupancy of two and half (2.5) times the overnight occupancy and not greater than twenty (20) persons, in lieu of a previous requirement that STRs could not be used for "weddings, parties, bachelor/bachelorette parties, conferences or similar events." The maximum overnight occupancy remains at two (2) persons per bedroom plus two (2) additional persons within the STR, but the Director of Community Development may grant an exception when there are extenuating circumstances that may allow for a greater maximum number of overnight occupancies. However, there are no similar allowances or variances that would allow for DCD exceptions in case there is a demonstrated need to have greater daytime occupancies. Commission staff agree that the new language is better tailored to avoid overcrowding, noise, and nuisance resulting from large gatherings at STRs, since it allows for certain events and get-togethers to take place while avoiding potential for overuse of the STRs (which may result in "unreasonable noise or disturbances, engage[ment] in disorderly conduct, or violat[ion] provisions of the Municipal Code"). However, the new blanket maximum daytime use requirement needs to be further detailed, since it has important public access implications. If there is a rationale behind a cap of twenty (20) persons, it should be better demonstrated in order to substantiate the need for this requirement. The primary overnight and daytime occupant of the STR is also now required to be twenty-five (25) years of age or older, rather than eighteen years of age or older (as previously approved by the Commission), which also needs further substantiation and explanation.

In recent Commission actions,⁵ maximizing public access for all people included a commitment to non-discriminatory, fair, and equal operation of STRs by providing Americans with Disabilities Act (ADA)-accessible features and safeguards for protected classes. As currently proposed, the Draft STR Program does not include language that would maximize public access for all individuals in the community as required by the LCP. To ensure that the Program's policies are adequately carried out, Commission staff suggest that the City include language encouraging equal and fair treatment of all people participating in the STR process. In particular, it would be helpful to have additional provisions regarding the availability of ADA-accessible features during STR registration, and the City should ask STR operators to include additional ADA information in their listings (e.g., stairs, signage, ingress/egress, parking, storage, utilities, showers and lavatories, air conditioning, etc.) It would also be beneficial to include enforcement of

⁵ <https://documents.coastal.ca.gov/reports/2021/12/W13b/w13b-12-2021-report.pdf>

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penalties in cases where a STR operator is alleged to be practicing discriminatory behavior on the basis of race, sex, color, religion, etc.

Lastly, the Draft STR Program changes the penalties associated with violations of the STR permit conditions and operation regulations. The penalties “shall be the maximum allowed per State law.” Is the City referring to monetary fines imposed by SB-60? If so, it does not necessarily need to be explicitly stated in the Program’s language, but there should be indication that the first two violations result in penalties that are monetary in nature. Will the Director of Community Development also have discretion in applying penalties in cases where violations are particularly egregious, leading to the preemptive revocation of the STR permit? This section also states that “the property owner shall be forbidden from re-applying for another STR permit for the same property indefinitely.” What if the property changes ownership, or the same person (who has committed violations) moves to another property? Would the penalties mentioned herein still apply or carry over? These unresolved issues may inherently affect the availability of STRs in particular locations throughout Dana Point, which thus directly relate to issues of public access and recreation and must be thoroughly considered or specified as part of the Program.

4.) Transportation and Mobility

Section 30252 of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Land Use Plan (Land Use Element) Policy 1.8 states:

The location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service, providing non automobile circulation within the development, providing adequate parking facilities or providing substitute means of serving the development with public transportation, and assuring the potential for public transit for high intensity uses.

The Draft STR Program contains language that is substantially similar to the provisions of LCP Amendment No. 1-14. Condition of Permit Issuance and Renewal No. 6 states that “the short-term rental must have a minimum of two (2) off-street parking spaces,” and Condition No. 13 requires that “the maximum number of vehicles allowed at the short-term

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rental shall be limited to one (1) vehicle per one (1) bedroom unit or two (2) vehicles maximum with two (2) or more bedroom within the short-term rental.” However, Commission staff have now identified potential inconsistencies with LCP policies, namely Section 9.35.080(e). In order to reconcile these inconsistencies and sufficiently meet the parking demand of the STR, Commission staff recommend that the City reference relevant sections of the Zoning Code or Implementation Plan (IP) so that the parking requirements more appropriately suit the relevant Coastal Act sections and LCP policies.

LUP Land Use Element Policy 3.7 “encourage[s] safe and convenient bicycle and pedestrian access throughout the community.” Commission staff recommend that as part of Condition of Permit Issuance and Renewal No. 16, which dictates the terms, notifications, and disclosures that must be posted within the STR, the City include an additional requirement that the STR operator disclose whether bicycles or other means of nonautomobile transport are available (e.g., scooters, skateboards/longboards, carpooling and ridesharing options, proximity to public transit, etc.). We also recommend that Condition No. 16 be modified to include the requirement that the terms, notifications, and disclosures be posted during the registration process as well. Finally, continued coordination with community members and local and regional stakeholders is encouraged in order to enhance multimodal transportation availability and improve the connectivity of STRs to the City’s existing public transportation system and mobility strategies in the future, thereby conforming with LUP Land Use Element Policy 1.8, 3.6, 3.7, and Coastal Act Section 30252.

5.) Cumulative Impacts

Since implementation of the Draft STR Program may have public access and recreation considerations, Section 9.27.030(a) (Development Standards, Coastal Access) of the Zoning Code/IP is relevant for the issuance of STR CDPs. In particular, this section establishes that development shall not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources. STRs provide recreational coastal access as defined in IP Section 9.75.030 but may also have cumulative impacts that impact existing residential communities and surrounding land uses, and as such, regulatory mechanisms must be provided to achieve compatibility and enhance relationships among land uses and coastal access in the community per LUP Land Use Element Policy 2.1, 2.2, 2.3, and Coastal Act Section 30250.

Please include additional detail in the Draft STR Program regarding how cumulative impact will be measured and mitigated. In cases where implementation of the Program may adversely affect coastal access or other coastal resources by, for example, overcrowding or conflicting with existing recreational and visitor-serving land uses, please describe the methods and metrics that the City would use to study, identify, and attempt to solve the cumulative impact issue. For example, would the City change the permit cap, suspend issuance of permits, increase penalties and enforcement, or enact any combination of these measures? If the Program is found to be too restrictive by requiring unreasonable limits on STRs that discourage visitor-serving and recreational opportunities, would the City consider augmenting the permit cap or change operation regulations to encourage additional STRs in the Coastal Zone? In short, additional discussion on balancing visitor-

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serving uses with existing residential and coastal-dependent uses is paramount to finding the Draft STR Program consistent with the Coastal Act and LCP.

Thank you again for the opportunity to review and comment on the City's Draft STR Program. If you have any questions or concerns, please do not hesitate to contact us at the Coastal Commission's Long Beach office.

Sincerely,



Shahar Amitay
Coastal Program Analyst

cc: Brenda Wisneski, City of Dana Point
Jeff Rosaler, City of Dana Point
Belinda Ann Deines, City of Dana Point
Shannon Vaughn, California Coastal Commission
Eric Stevens, California Coastal Commission

SUPPORTING DOCUMENT F

4/4/22, 9:41 AM

Chapter 5.38 SHORT-TERM RENTAL PERMITS

Dana Point, California Municipal Code

Title 5 BUSINESS REGULATIONS

Chapter 5.38 SHORT-TERM RENTAL PERMITS

5.38.010 Purpose.

5.38.020 Definitions.

5.38.030 Permit Required.

5.38.040 Agents.

5.38.050 Application for Permit.

5.38.055 Renewal of Permit.

5.38.060 Denial of Permit.

5.38.070 Filing Fee.

5.38.080 Conditions of Permit Issuance and Renewal.

5.38.090 Violations/Penalties.

5.38.100 Procedure for Imposition of Penalties/Revocation.

5.38.110 Permits and Fees Not Exclusive.

5.38.120 Amortization and Amnesty Period.

5.38.010 Purpose.

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Chapter 5.38 SHORT-TERM RENTAL PERMITS

The purpose of this Chapter is to require the owner or owners of a residential dwelling unit that is used as a short-term rental, as defined herein, to apply for and secure a permit authorizing such use in the manner provided for by this Chapter in order to safeguard the peace, safety and general welfare of the residents of Dana Point and their visitors and guests by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse which are directly related to short-term rentals. It is the express purpose of this Chapter to prohibit nuisances that might exist in the absence of regulations, including specific nuisances associated with special events such as weddings, parties, bachelor/bachelorette parties, conferences, corporate meetings, or similar events that might negatively impact residents. (Added by Ord. 13-01, 4/2/13; amended by Ord. 21-02, 6/1/21)

5.38.020 Definitions.

For the purpose of this Chapter, the following definitions shall apply:

- (a) "Agent" shall mean the representative, if any, designated by the owner in accordance with Section 5.38.040.
- (b) "City Manager" shall mean the City Manager of the City of Dana Point or designee.
- (c) "Community Development Director" shall mean the Community Development Director of the City of Dana Point or designee.
- (d) "Owner" shall mean the person(s) or entity(ies) that hold(s) legal and/or equitable title to the short-term rental.
- (e) "Short-term rental" is defined as the rental of any structure or any portion of any structure for occupancy, dwelling, lodging or sleeping purposes for at least two (2) consecutive nights, but no more than thirty (30), consecutive calendar days in duration in a zoning district where residential uses are allowed, including, but not limited to, detached single-family dwellings, condominiums, duplexes, triplexes, townhomes and multiple-family dwellings. "Short-term rental" historically and continues to be included in the definition of "hotel" for purposes of collecting transient occupancy tax pursuant to Chapter 3.25 of this Code.
- (f) "Transient" means any person who occupies or is entitled to occupy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel is a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, an uninterrupted period of time extending both prior and subsequent to the effective date of the ordinance codified in this Chapter may be considered. (Added by Ord. 13-01, 4/2/13)

5.38.030 Permit Required.

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Chapter 5.38 SHORT-TERM RENTAL PERMITS

No owner of a short-term rental located within a zoning district where residential uses are allowed shall rent, offer to rent, or advertise for rent the short-term rental to another person without a valid short-term rental permit approved and issued in the manner provided for by this Chapter. (Added by Ord. 13-01, 4/2/13)

5.38.040 Agents.

An owner may retain an agent or a representative to comply with the requirements of this Chapter, including, without limitation, the filing of an application for a permit that has been signed and notarized by the owner, the management of the short-term rental, and the compliance with the conditions to the permit. The permit shall be issued only to the owner of the short-term rental. The owner of the short-term rental is responsible for compliance with the provisions of this Chapter and the failure of an agent to comply with this Chapter shall be deemed non-compliance by the owner. (Added by Ord. 13-01, 4/2/13)

5.38.050 Application for Permit.

The owner or owners shall submit an application for a short-term rental permit to the Director of Community Development. The application for a short-term rental permit shall be upon forms provided by the City and shall contain the following information:

- (a) The name, address and telephone number of the owner of the short-term rental for which the permit is to be issued.
- (b) The name, address and telephone number of the agent, if any, of the owner of the short-term rental.
- (c) Evidence of a valid transient occupancy tax registration certificate issued by the City for the short-term rental.
- (d) Proof of general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit and an executed agreement to indemnify, defend, and save the City harmless from any and all claims and liabilities of any kind whatsoever resulting from or arising out of the short-term rental.
- (e) Acknowledgement of receipt and inspection of a copy of all regulations pertaining to the operation of a short-term rental within the City.
- (f) Such other information as the Director of Community Development deems reasonably necessary to administer this Chapter. (Added by Ord. 13-01, 4/2/13)

5.38.055 Renewal of Permit.

The owner or owners shall apply for and renew annually at permit issuance anniversary date with any changes to the information or requirements set forth in Section 5.38.050 and shall provide a current proof of general liability insurance pursuant to Section 5.38.050(d). (Added by Ord. 13-01, 4/2/13)

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Chapter 5.38 SHORT-TERM RENTAL PERMITS

5.38.060 Denial of Permit.

No application for an original permit or a subsequent renewal shall be denied if it meets the conditions of permit issuance pursuant to Section 5.38.080 unless a permit for the same short-term rental has been revoked or is in the process of being revoked pursuant to Section 5.38.100 of this Chapter. (Added by Ord. 13-01, 4/2/13)

5.38.070 Filing Fee.

An application for a short-term rental permit shall be accompanied by a fee established by resolution of the City Council; provided, however, the fee shall be no greater than necessary to defer the cost incurred by the City in administering the provisions of this Chapter. (Added by Ord. 13-01, 4/2/13)

5.38.080 Conditions of Permit Issuance and Renewal.

(a) Permits and renewals issued pursuant to this Chapter are subject to the following standard conditions:

(1) The owner shall ensure that the short-term rental complies with all applicable codes regarding fire, building and safety, and all other relevant laws and ordinances.

(2) The owner shall provide proof that short-term rentals are not prohibited by its Homeowners Association Conditions, Covenants and Restrictions ("CC&Rs") or any other community standards/guidelines, applicable to the proposed short-term rental.

(3) Concurrent with the issuance of the short-term rental permit, and annually upon its renewal, City Staff shall provide notice to all abutting property owners and tenants that the property is operating as a short-term rental. The notice shall also provide the contact information for the short-term rental owner and property manager, and their twenty-four (24) hour emergency contact phone number. The notification package shall also identify the City's twenty-four (24) hour short-term rental hotline phone number, Code Enforcement phone number, and Orange County Sheriff's Department phone number. The notice shall not afford the abutting property owners any protest, appeal, or other related rights; rather, its intent is to provide the abutting property owners with an annual reminder as to the contact information for the various individuals and entities responsible for enforcement in the event that an issue arises with the operation of the short-term rental.

(4) The short-term rental unit in which a permit is being requested must pass an initial inspection by the City prior to permit issuance. The City may conduct additional inspections as deemed necessary or prudent prior to subsequent renewals.

(5) The owner shall provide a twenty-four (24) hour emergency contact that will be available to respond to issues at the short-term rental.

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Chapter 5.38 SHORT-TERM RENTAL PERMITS

- (6) The short-term rental must have a minimum of two (2) off-street parking spaces.
- (7) The short-term rental must have a visible house number easily seen from the street, day or night.
- (8) All advertising for the short-term rental shall include the City issued short-term rental permit number in the subject description of the property. In addition, all photographs of the property that are used for advertising purposes shall impose the City issued short-term rental permit number in the lower right-hand corner in an appropriate font, style, size, and color to be legible.
- (9) The primary overnight and daytime occupant of the short-term rental must be an adult twenty-five (25) years of age or older. This adult must provide a telephone number to the owner and shall be accessible to the owner by telephone at all times.
- (10) Prior to occupancy, the owner shall obtain the name, address and driver's license number or a copy of the passport of the primary adult occupant of the short-term rental. The owner shall require that same adult to sign a formal acknowledgment that he or she is legally responsible for compliance by all occupants and guests of the short-term rental with the provisions of this Chapter, as well as a copy of the City's Good Neighbor Acknowledgment. An unsigned copy of the City's Good Neighbor Acknowledgment shall be posted in a conspicuous location within the short-term rental, along with a copy of the City's short-term rental regulations including, but not limited to, this Chapter 5.38. This information shall be readily available upon request of any police officer or employee of the City authorized to enforce this Chapter or State law.
- (11) The owner shall require all occupants to agree to a minimum stay of two (2) consecutive nights.
- (12) The maximum overnight occupancy of the short-term rental shall be limited to two (2) persons per bedroom plus two (2) additional persons within the short-term rental. The Director of Community Development may, when unusual size, interior layout, parking or other physical characteristics are shown, approve a greater maximum number of overnight occupants as part of a permit application or renewal. The maximum daytime occupancy shall be limited to two and a half (2.5) times the overnight occupancy and not to exceed twenty (20) persons.
- (13) The maximum number of vehicles allowed at the short-term rental shall be limited to one (1) vehicle per one (1) bedroom unit or two (2) vehicles maximum with two (2) or more bedrooms within the short-term rental. The Director of Community Development may, when unusual size, parking or other physical characteristics are shown, approve a greater maximum number of vehicles as part of a permit application or renewal. The owner must make a sufficient number of parking spaces accessible to tenants to accommodate the maximum number of vehicles allowed.
- (14) No on-site exterior signs are to be posted advertising a short-term rental.

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(15) Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the responsible trash hauler and between the hours of 5:00 p.m. the day before and 8:00 a.m. the day after the scheduled trash collection days, as provided in Chapter 6.10. In the event the property owner fails to comply with this provision, he/she shall be required to sign up for walk-up trash service provided by the City's waste disposal contract company and provide proof to the City of the same. The owner of the short-term rental shall provide sufficient trash collection containers and service to meet the demand of the occupants.

(16) Each lease or rental agreement for a short-term rental shall include the following terms, notifications and disclosures, which shall also be posted in a conspicuous location inside the short-term rental:

(A) The maximum number of occupants that are permitted and notification that failure to conform to the maximum occupancy is a violation of this Chapter.

(B) The number of parking spaces provided and, if not adjacent to the short-term rental, the location of assigned parking and maximum number of vehicles that are permitted.

(C) The trash pick-up day(s) and applicable rules and regulations pertaining to leaving or storing trash on the exterior of the property.

(D) Notification that the occupant may be cited or fined by the City and/or immediately evicted by the owner for violating any and all applicable laws.

(E) The name of the managing agency, agent, rental manager, local contact person or owner of the unit, and a telephone number at which that party may be reached at all times and 9-1-1 Emergency information.

(F) Summary of applicable Homeowners Association Conditions, Covenants and Restrictions (CC&Rs) and bylaws, including pool location and hours.

(17) The owner shall ensure that the occupants of the short-term rental do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the Municipal Code or any State Law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol, or the use of illegal drugs. Owners are expected to take any measures necessary to abate disturbances, including, but not limited to, directing the tenant, calling for law enforcement services, or City code enforcement officers, evicting the tenant, or any other action necessary to immediately abate the disturbance.

(18) The Owner, property manager, or emergency contact shall, upon notification that occupants or tenants of his or her short-term rental have created unreasonable noise or disturbances, engaged in disorderly conduct, or committed violations of the Municipal Code or State Law pertaining to, but not limited to, noise, disorderly conduct, and/or overcrowding, take action to abate the issue within thirty (30) minutes of the owner, property manager, or emergency contact being notified of a complaint and prevent a recurrence of such conduct by those occupants or guests. In some instances, the owner, property manager, or emergency contact may be required to arrive on site within thirty (30) minutes of a received complaint to address the issue and ensure there is not a re-occurrence.

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(19) No outside noise from the short-term rental shall be heard during quiet hours of 10:00 p.m. to 7:00 a.m.

(b) The Director of Community Development shall have the authority at any time to impose additional standard conditions, applicable to all short-term rentals, as necessary to achieve the objectives of this Chapter.

(c) The Director of Community Development shall have the authority to impose additional conditions on any permit in the event of any violation of the conditions to the permit or the provisions of this Chapter subject to compliance with the procedures specified in Section 5.38.100.

(d) The owner must maintain a valid transient occupancy tax registration certificate issued by the City for the short-term rental; the owner must collect and remit transient occupancy tax as required by Chapter 3.25 of the Municipal Code. (Added by Ord. 13-01, 4/2/13; amended by Ord. 21-02, 6/1/21)

5.38.090 Violations/Penalties.

(a) Violations. Except as described in Section 5.38.080(c), the following conduct shall constitute a violation for which the penalties specified in Subsection (b) may be imposed, or the permit revoked:

(1) The owner and/or agent has failed to comply with the standard conditions specified in Section 5.38.080(a);

(2) The owner and/or agent has failed to comply with conditions imposed by the Director of Community Development pursuant to the provisions of Section 5.38.080(b) or (c);

(3) The owner and/or agent has willfully violated the provisions of this Chapter;

(4) The owner and/or agent has failed to comply and pay any fines imposed pursuant to subsection (b) within thirty (30) days of the date of notification; or

(5) The owner and/or agent has failed to comply and pay the transient occupancy tax or submit a report as required by Chapter 3.25 of this Code within the required time limit.

(b) Penalties. When imposed by way of an administrative citation, the penalties for violations specified in Subsection (a) shall constitute infractions and shall be the responsibility of each responsible party. Each citation may be issued per day and per violation as follows:

(1) For the first violation the penalty shall be the maximum allowed per State law;

(2) For a second violation the penalty shall be the maximum allowed per State law;

(3) For a third violation the penalty shall result in the immediate revocation of the short-term rental permit. In the event the short-term rental permit has been revoked, the property owner shall be forbidden from re-applying for another short-term rental permit for the same property indefinitely.

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(d) For fines imposed under this Section for second and subsequent violations of the same ordinance, regulation, condition, or permit within one (1) year from the date of the first violation, the citation recipient of a fine may request a hardship waiver by completing a hardship waiver form and returning the form to the City Clerk within ten (10) days of the date stated on the citation. The waiver request shall include a sworn affidavit and any supporting documents or materials demonstrating to the satisfaction of the City Manager or his or her designee that: (1) the recipient of the fine has made a bona fide effort to comply after the first violation, and (2) payment of the full amount of the fine would impose an undue financial burden on the recipient. The City Clerk shall serve written notice of the determination of the City Manager's or his or her designee on the recipient of the fine by first class mail. Service shall be deemed complete at the time the notice is deposited into the mail and addressed to the person at the address indicated on the hardship waiver form. The notice shall include a brief description of the reasons for the determination to approve or not approve the hardship waiver. The written determination of the City Manager shall be final. If the City Manager determines not to approve a hardship waiver, the recipient of the fine shall within ten (10) days of service of that determination either remit the deposit amount to the City Clerk or appeal the citation in compliance with the applicable procedures in this Code. (Added by Ord. 13-01, 4/2/13; amended by Ord. 21-02, 6/1/21; Ord. 21-08, 11/16/21)

5.38.100 Procedure for Imposition of Penalties/Revocation.

Penalties, including a notice of violation, shall be imposed, and permits shall be revoked, only in the manner provided in this Section.

The Director of Community Development, or designee, shall conduct an investigation whenever he or she has reason to believe that an owner has committed a violation described in Section 5.38.090(a). Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Director of Community Development shall issue written notice of intention to impose a penalty and/or revoke the permit. The written notice shall be served on the owner, shall specify the facts which, in the opinion of the Director of Community Development, constitute substantial evidence to establish grounds for imposition of the penalties and/or revocation, and specify that the penalties will be imposed and/or the permit will be revoked within thirty (30) days from the date the notice is given unless the owner and/or operator files, with the City Clerk and before the penalties or revocation becomes effective, a request for hearing before the City Manager or designee. (Added by Ord. 13-01, 4/2/13)

5.38.110 Permits and Fees Not Exclusive.

Permits and fees required by this Chapter shall be in addition to any license, permit or fee required under any other chapter of this Code. The issuance of any permit pursuant to this Chapter shall not relieve the owner of the obligation to comply with all other provisions of this Code pertaining to the use and occupancy of the short-term rental or the property on which it is located. (Added by Ord. 13-01, 4/2/13)

5.38.120 Amortization and Amnesty Period.

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Owners of short-term rentals shall apply for a permit pursuant to this Chapter by no later than January 15, 2014. Owners of short-term rentals who, prior to the effective date of the ordinance codified in this Chapter, failed to obtain a transient occupancy registration certificate pursuant to Chapter 3.25 of this Code,

may do so without penalty notwithstanding the provisions of Chapter 3.25, if an application for the certificate is filed by January 15, 2014. (Added by Ord. 13-01, 4/2/13)

Contact:

City of Dana Point: 949-248-3500

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