

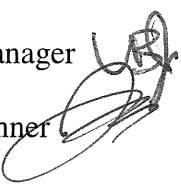


**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
MEMORANDUM**

TO: Planning Commission

FROM: Marisa Lundstedt, Director of Community Development 

THROUGH: Laurie B Jester, Planning Manager 

BY: Jason Masters, Assistant Planner 

DATE: May 13, 2015

SUBJECT: Consideration of Amendments to the Municipal Code and Local Coastal Program (LCP) to include a Council review procedure for quasi-judicial decisions and modernizing Chapters 10.100 and A.96.160 (Appeals), and Chapters 10.12 and A.12 (Residential Districts) and related Municipal Code and LCP Sections regarding commercial and transient uses in residential zones.

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT** the Public Hearing and **ADOPT** the attached draft Resolution recommending to the City Council approval of the proposed Municipal Code and Local Coastal Program (LCP) Amendments.

APPLICANT

City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

BACKGROUND

Based upon its periodic review of the Zoning Code, staff is recommending that the Code be amended to address (1) recent case law concerning Council review of Planning Commission quasi-judicial decisions and (2) commercial and transient uses of residential properties. Staff also recommends related Zoning Code cleanup as to both areas. Pursuant to state law, the Planning Commission shall make recommendations to the City Council after conducting a public hearing as to the recommended changes to the Zoning Code.

DISCUSSION

1. Council review of Planning Commission decisions

There have been a series of California appellate decisions finding that an “appeal” of a Planning Commission decision by a Councilmember or the full Council may violate due process principles. Appeals filed by individual Councilmembers may give rise to the

appearance that the decisionmaker has pre-judged a matter, prior to considering the evidence. It is important that Councilmembers maintain an open mind and do not take any positions, for or against an application, until after the public hearing before the Council. The courts have explained this rule, which stems from the Due Process clauses of the federal and state constitutions, as follows:

“A public hearing contemplates a fair and impartial hearing at which competent evidence may be presented before a fair and impartial tribunal.”

Saks & Co. v. City of Beverly Hills, 107 Cal.App.2d 260, 265 (1951). See also *Bullock v. City and County of San Francisco*, 221 Cal.App.3d 1072, 1091 (1990) (“Fair trial in a fair tribunal is a basic requirement of due process”); *Rosenblit v. Superior Court*, 231 Cal.App.3d 1434, 1448 (1991) (“The right to a fair procedure includes the right to impartial adjudicators”); *Sinaloa Lake Owners' Ass'n v. City of Simi Valley*, 882 F.2d 1398, 1408-10 (9th Cir. 1989) (City violated applicant’s substantive due process rights). Further, if a Councilmember has a personal interest or involvement in the outcome of the matter or with any participants which precludes that Councilmember from making his or her decision based on the merits of the application, disqualification is required. *Fairfield v. Superior Court*, 14 Cal.3d 768 (1975); *Mennig v. City Council*, 86 Cal.App.3d 341 (1978). *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996) (Council member who voted to deny permits for a condominium project near his house had impermissible bias due to his interest in preserving his ocean view and his personal animosity toward the applicants); *Cohan v. City of Thousand Oaks*, 30 Cal. App. 4th 547 (1994).

The most recent opinion on this subject—*Woody’s Group, Inc. v. City of Newport Beach*—was issued on January 1, 2015. In *Woody’s*, the court of appeal ruled that a Councilmember’s appeal of a Planning Commission decision to approve a use permit and variance, and the City Council’s subsequent reversal of the Planning Commission’s approval, violated the due process of the applicant. The court ruled that the appeal by the Councilmember was, in essence, impermissible because the Councilmember was both the appellant and appellate judge. Further, the court ruled that the appeal violated Newport Beach’s Municipal Code because there was no provision allowing appeals for Councilmembers acting in their role as Councilmembers.

In 1994, in the case of *Cohan v. City of Thousand Oaks*, 30 Cal. App. 4th 547 (1994), the full City Council appealed a decision of the Planning Commission after residents opposed to the Commission’s decision appeared at the next City Council meeting. The Court found that such appeal violated due process and that the Council had exhibited impermissible bias. See also *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996) (Council member who voted to deny permits for a condominium project near his house had impermissible bias due to his interest in preserving his ocean view and his personal animosity toward the applicants); Many Zoning Ordinances, including Manhattan Beach’s, were amended in response to the *Cohan* case to provide a Council review process that affords due process to applicants. MBMC Section 10.100.030 currently states that appeals may originate from the City Council, and MBMC Section 10.100.040B currently provides “The Mayor or City Council members appealing any

matter under this section shall only do so if the appeal is made in the public interest or welfare and the appealing council member has no predisposition for or against the matter being appealed.”

Similar provisions in other cities have been upheld by the court. E.g., *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1233 (2000) (Councilmember’s calling up commission decision for review was consistent with City’s procedure and did not constitute bias).

The primary purpose of this proposed change is to supplement the Code’s existing appeal procedure with a new “City Council review” procedure. Staff would notify the City Council (and the public) of any quasi-judicial decision on the next day after the Planning Commission meeting, and again in the City Manager’s weekly report distributed on Friday of each week. Any Councilmember could seek review of that decision at any time within 15 days after the Planning Commission decision. If two Councilmembers request review, City Council review would be initiated. This is in contrast to the existing “appeal” procedure, which allows an appeal to be filed by a single Councilmember, and only at the next Council meeting. If a call for review is made there shall be a presumption applied that the reason for the review is that the decision may have significant and material effects on the quality of life within the City, or the subject matter of the decision may have City-wide importance warranting review and determination by the elected officials of the City. No inference of bias shall be presumed due to such a request for review being made by Council members.” If review is initiated, then a review hearing shall be noticed and conducted in the same manner as is required for appeals. The City Council would be able to uphold, overturn or modify the Planning Commission’s original action, and also to remand the application back to the Planning Commission for further consideration.

Establishing a City Council review procedure as proposed would help diffuse any perception of bias that may arise in the mind of a project applicant, or members of the public, when a Councilmember appeals a Planning Commission decision to the City Council and then participates in the decision by the City Council. One reason for this is that, under the new review procedure, a Planning Commission decision could be brought to the City Council’s jurisdiction by two Councilmembers without a Councilmember identifying himself or herself as an “aggrieved person” or stating reasons why the decision should be reviewed (which could suggest a predisposition on the matter). Another reason for this is that there would be an express standard for initiation of review while, by contrast, an appeal can be filed for any reason.

The secondary purpose of this recommendation is to perform some minor “clean up” of the existing appeal procedure. In particular, the ordinance would revise the Code to specify that appeal hearings by the City Council are “de novo,” which means the hearing is “as new” and the appellate body is not bound by the findings of the original decision-maker. Additionally, the ordinance would revise the Code to specify that a tie vote by the City Council on an appeal results in the Planning Commission’s decision being final and conclusive. In the event of a tie vote by the Planning Commission, the decision of the

Community Development Director would be effective. These changes will make the Code consistent with the City's current practice.

2. Code Cleanup to Address Commercial and Transient Uses of Residential Properties.

In the process of reviewing the Zoning Code, staff observed that the Code does not adequately address recent trends where residential properties are leased or rented for short-term commercial or transient uses, such as bed and breakfasts, vacation rentals and other transient uses. In 2005, a single family home was rented as a "party house," which created noise, traffic and undue burden on scarce on-street parking. More recently in 2012, the City Council examined the negative impacts, including noise, crime, traffic congestion and consumption of available parking on and in residential neighborhoods, arising from short-term vacation rentals of residences during the Charlie Saikley 6-Man Beach Volleyball Tournament.

Common in City's throughout California, the Zoning Code in the Manhattan Beach Municipal Code (MBMC) and LCP prohibits most commercial uses in residential zones. MBMC 10.12.020 identifies the types of uses that are permitted in the single- and multi-family residential zones, and short-term transient uses are not listed. (As a result of the 2012 discussions, short-term vacation rentals are currently regulated under Business Licenses in Chapter 6.24 of the MBMC specifically related to the Charlie Saikley 6-Man Beach Volleyball Tournament. Short-term vacation rentals are defined in MBMC Section 6.24.20 as "a dwelling unit that is rented by the owner to another party for a period of not more than thirty (30) consecutive days in exchange for any form of monetary or non-monetary consideration such as, but not limited to, trade, fee, swap, or any other consideration in lieu of cash payments." Short-term vacation rental permits apply only to dwelling units within the area of the City bounded by 1st Street on the south, Ardmore Avenue and North Blanche Road on the east, Marine Avenue on the north, and the beach on the west, and are granted only to those dwelling units that are rented as a short-term vacation rental at any time between 12:00 a.m. PST on the Thursday before and 12:00 p.m. PST on the Monday after the Charlie Saikley 6-Man Beach Volleyball Tournament.) Nothing in the Zoning Code permits short-term vacation rentals of residential units. The City has become aware of the degree to which dwelling units in the City are being used for short-term rentals through such websites as Airbnb (www.Airbnb.com), Vacation Rentals By Owner (www.vrbo.com), and similar on-line short-term vacation rental websites.

Left unchecked, short-term rentals of residential properties have the potential to change the character and stability of the City's residential neighborhoods. The Land Use Element of the City's General Plan, includes Goal LU-4, which aims to preserve the features of each neighborhood, and develop solutions tailored to each neighborhoods unique characteristics. Goal LU-4 which is supported by Policy LU-4.1 aims to protect public access to and enjoyment of the beach while respecting the privacy of beach residents. The Land Use Element also includes Goal LU-5: "Protect residential neighborhoods from the intrusion of inappropriate and incompatible uses." Consistent with this goal, Policy LU-5.1: "Require[s] the separation or buffering of residential areas from businesses which

produce noise, odors, high traffic volumes, light or glare, and parking through the use of landscaping, setbacks, or other techniques.”

The City’s Housing Element includes Goal I “Preserve Existing Neighborhoods.” which is bolstered by Policy 1 “Continue to enforce provisions of the Zoning Code which specify District Development Regulations for height, lot coverage, setbacks, open space, and parking.” Unlike hotel uses, where additional parking is a requirement to ensure residential areas are minimally affected, and onsite managers ensure compliance with other City Codes such as noise, left unchecked, residential transient uses can diminish the character quality of residential neighborhoods. Goal I memorializes the City’s commitment to preserving and maintaining its single-family residential neighborhoods from incompatible and character changing uses such as short-term rental of single family residences.

The impact of short-term transient uses in residential neighborhoods have been discussed in various news articles, including a April 23, 2015 article on KPBS in which beach-area residents of San Diego noted that “the noise and negative impacts make it so that neighbors are unable to enjoy their houses and backyards.” On September 2, 2013 an article in the Los Angeles Times expressed concerns of residents of the Silver Lake neighborhood in Los Angeles about the operation of “virtual hotels, packing homes with throngs of visitors whose sheer presence alters the community feel.”

Protection of the City’s residential neighborhoods warrants amendment of the City’s residential zones to limit the number of times per year residential units, including accessory units, can be rented for short-term occupancy. The proposed regulations have been drafted to allow “transient use” of single-family and multi-family dwelling units for 30 days or less once within a six month period, for a total of two within a 12 month period. The Commission may want to consider allowing transient uses once within a three month period, for a total of four within a 12 month period. Please note that rentals for longer than 30 days are not limited by the proposed regulations governing transient uses to a maximum number annually; however they are limited to occupancy by a “single housekeeping unit” as defined in the proposed new regulations. Likewise, the proposed regulations will have no impact on uses in commercial zones (e.g., hotels, motels, etc.)

Attached to this Staff Report (Attachment A) is a Resolution to recommend amending the Municipal Code and Local Coastal Program including Chapters 10.100 and A.96.160 (Appeals) to allow for City Council review of Planning Commission quasi-judicial decisions and make other revisions to the Appeals Sections to bring the Code into conformity with existing practice. In addition, staff recommends amending Chapter 10.12 and A.12 (Residential Districts) and related Municipal Code and LCP Sections to address commercial and transient uses in residential zones. The amendments are underlined in bold text below with the existing MBMC and LCP Sections: There may be other corresponding revisions to the Code to achieve internal consistency.

<p>10.04.030 & A.04.030 – Definitions</p>	<p><u>SINGLE HOUSEKEEPING UNIT: A traditional family or the functional equivalent of a traditional family, whose members are a non-transient interactive group of one or more persons, where if consisting of more than one person, such persons jointly occupy a single dwelling unit, jointly use common areas, share household activities and responsibilities (e.g., meals, chores, and expenses), and where, if the unit is rented or leased, all adult members jointly agree to occupy and be responsible for the entire premises of the dwelling unit under a single written rental agreement or lease and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager.</u></p>
<p>10.08.030 & A.08.030 – Residential Use Classifications</p>	<p><u>Multi-Family Transient Use: Rental or lease of a multi-family dwelling unit for a period of less than 30 days.</u></p> <p><u>Single-Family Transient Use: Rental or lease of a single-family dwelling unit for a period of less than 30 days.</u></p>
<p>10.12.020 & A.12.020 – Land use regulations</p>	<p><u>L-25 A Multi-Family Transient Use, as defined in Section 10.08.030 and A.08.030, of a multi-family dwelling unit is permitted to commence once within a six month period for each multi-family dwelling unit. Use of a multi-family dwelling unit for a multi-family transient use more than twice within a 12 month period is prohibited</u></p> <p><u>L-26 A Single-Family Transient Use, as defined in Section 10.08.030 and A.08.030, of a single family dwelling unit is permitted to commence once within a six month period for each single-family dwelling unit. Use of a single-family dwelling unit for a single-family transient use more than twice within a 12 month period is prohibited.</u></p> <p><u>(P) Each Single-Family Residential and Multi-Family Residential Dwelling Unit may only be occupied by a single housekeeping unit as defined in 10.04.030 and A.04.030.</u></p>

10.100.010 - Appeals.

- A. Decisions of the Community Development Director may be appealed to the Planning Commission, and decisions of the Planning Commission may be appealed to the City Council.**
- B. Anyone wishing to appeal pursuant to this Chapter must timely file with the City Clerk a written notice of appeal, on a form provided by the Community Development Department, and the applicable required appeal fee set by City Council resolution. The notice of appeal shall specify the basis for the appeal. In addition, the appeal must indicate in what way the appellant contends the decision was incorrect, specifically identifying how the decision is not in accord with the provisions of the Municipal Code or the Local Coastal Program, or must provide extenuating circumstances that the appellant contends would justify reversal or modification of the decision.**
- C. The appeal period ends at the close of the business day for City Hall on the fifteenth day following the decision provided however that if the fifteenth day falls on a weekend or City holiday the appeal period shall be extended to the close of business on the next working day.**
- D. An appeal shall be heard at a public hearing *de novo* if the decision being appealed required a public hearing. Notice of such a public hearing shall be given in the same manner required for the decision being appealed.**
- E. The appeal will be heard within 60 days of the City Clerk's receipt of the appeal unless the applicant and appellant consent to a later date.**
- F. Decisions that are appealed shall not become effective until the appeal has been resolved or withdrawn.**

10.100.020 Council Review.

- A. Council Review. A Planning Commission decision shall be set for a review hearing before the City Council if requested in writing by at least two members of the City Council. The City Councilmembers requesting the review shall file a Council review form with the City Clerk. The form must be filed before the close of the business day for City Hall on the fifteenth day following the decision provided however that if the fifteenth day falls on a weekend or City holiday the appeal period shall be extended to the close of business on the next working day.**

**Chapter 10.100 and
A.96.160 A. 1-3. -
APPEALS AND
COUNCIL REVIEW**

CONTINUED

The form shall be prescribed by the City Clerk and may be signed by the members separately or by two members jointly. No fee shall be required. The City Clerk shall schedule the review hearing for commencement within 60 days of the request for review. The review shall otherwise follow the same procedures as appeals in this Chapter. It shall be presumed that the reason for the review is that the decision may have significant and material effects on the quality of life within the City, or the subject matter of the decision may have City-wide importance warranting review and determination by the elected officials of the City. Bias shall not be presumed or inferred due to a request for review.

B. Stay of Decision. The effectiveness of a decision subject to Council review shall be stayed pending completion of the Council review proceedings.

C. Notice. Public notice of the hearing shall be provided in the same manner, if any, as was provided in connection with the consideration by the Planning Commission.

D. Hearing Procedure. The Council review hearing shall be conducted as a hearing *de novo*. The City Council shall apply the same decision criteria as the Planning Commission.

10.100.030 - Decision.

The appellate or reviewing body may uphold, overturn or modify the decision of the inferior body. Any such action shall be made by resolution and shall be supported by findings. Alternatively, the appellate or reviewing body may remand the matter for further consideration by the inferior body. In the event of a tie vote by the Planning Commission, the decision of the Community Development Director shall be effective. In the event of a tie vote by the City Council, the decision of the Planning Commission shall be effective.

10.100.040 - Effective date.

A decision by the City Council regarding an appeal or Council review shall become final on the date of the decision. A decision by the Planning Commission regarding an appeal shall become final on the date of the decision, unless appealed to the City Council, or called up for review by two Councilmembers.

10.100.050 - Resubmittal.

Following a decision on an appeal or Council review, any matter that is the same or substantially the same shall not be considered by the same body within two years, unless the denial is made without prejudice.

ENVIRONMENTAL DETERMINATION

The proposed zone text amendments are exempt from the California Environmental Quality Act (CEQA) requirements pursuant to CEQA guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment.

PUBLIC INPUT

A ¼ page display ad public notice for the proposed MBMC and LCP Code Amendments was published in the Beach Reporter newspaper on April 30, 2015, in compliance with state and local law and mailed to the California Coastal Commission. The draft MBMC and LCP Amendments have been made available at the City Clerk's office and at the Department of Community Development. The staff report, draft Resolution and attachments are also posted on the City website.

CONCLUSION

Staff recommends that the Planning Commission conduct the public hearing, accept testimony, discuss the Amendments, and adopt the attached draft Resolution recommending approval of the Municipal and Local Coastal Program Code Amendments to the City Council.

Attachments:

- A. Draft Resolution No. PC 15-XX
- B. Current MBMC & LCP-Sections 10.100 & A.96.160- Appeals
- C. Current MBMC Section 10.12.020

cc. California Coastal Commission

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RESOLUTION NO. PC 15-XX

A RESOLUTION OF THE MANHATTAN BEACH PLANNING COMMISSION RECOMMENDING TO THE CITY COUNCIL ZONING CODE AND LOCAL COASTAL PROGRAM AMENDMENTS FOR CHAPTERS 10.100 AND A.96.160 (APPEALS) AND FOR CHAPTERS 10.12 AND A.12 (RESIDENTIAL DISTRICTS) AND OTHER PORTIONS OF TITLE 10 AND A – ZONING CODE

THE MANHATTAN BEACH PLANNING COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby makes the following findings:

- A. On May 13, 2015, the Planning Commission conducted a duly noticed public hearing pursuant to applicable law to consider amendments to the Zoning Code and Local Coastal Program for Chapters 10.100 and A.96.160 (Appeals), for Chapters 10.12 and A.12 (Residential Districts), for Chapters 10.04.030 and A.04.030 (Definitions), and for 10.08.030 and A.08.030 (Residential Use Classifications). Specifically, staff has recommended that the Zoning Code's appeal procedure be streamlined, amended to make the Code consistent with the City's practice and changes in the law, and amended to provide for City Council review of quasi-judicial proceedings. In addition, staff has recommended that the Code be amended to address commercial and transient uses in residential zones.
- B. The public hearing was advertised pursuant to applicable law with a ¼ page display ad on April 30, 2015 in the Beach Reporter.
- C. The proposal is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment. The proposed Zoning Code and LCP amendments are modifications to the Appeals process, adding and amending definitions, classifications and uses in the Residential Sections.
- D. The proposed amendments are consistent with the policies of Chapter 3 of the Coastal Act, and LCP Policy II.1 which aims to "Control development within the City of Manhattan Beach Coastal Zone," will not have an impact either individually or cumulatively on coastal resources, and do not involve any change in existing or proposed use of land or water, but will clarify regulation of commercial and transient uses in residential zones.
- E. The proposed amendments are consistent with the goals and policies of the City's General Plan and Local Coastal Program, and with the purposes of the Zoning Codes of the Manhattan Beach Municipal Code (MBMC) and Local Coastal Program, as detailed in the Planning Commission Staff Report. The proposal specifically supports: Goal LU-4, which aims to preserve the features of each neighborhood, and develop solutions tailored to each neighborhoods unique characteristics, Policy LU-4, which aims to protect public access to and enjoyment of the beach while respecting the privacy of beach residents, Goal LU-5, to protect residential neighborhoods from the intrusion of inappropriate and incompatible uses, Policy LU-5.1, which requires the separation or buffering of residential areas from businesses and uses which produce noise, odors, high

**ATTACHMENT A
PC MTG 5-13-15**

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traffic volumes, light or glare, and parking through the use of landscaping, setbacks, or other techniques, and the City's Housing Element Goal I, to Preserve Existing Neighborhoods, which is bolstered by Policy 1, to continue to enforce provisions of the Zoning Code which specify District Development Regulations for height, lot coverage, setbacks, open space, and parking.

SECTION 2. The Planning Commission hereby RECOMMENDS approval of the subject amendments to the MBMC and Local Coastal Program as follows:

SECTION 3. Amend MBMC Chapter 10.100 (APPEALS) and LCP Section A.96.160 A. 1-3 (Appeals) to read as follows with all other portions of Section A.96.160 remaining in effect without amendment:

Chapter 10.100 and A.96.160 A. 1-3.- APPEALS AND COUNCIL REVIEW

Sections:

10.100.010 - Appeals.

- A. Decisions of the Community Development Director may be appealed to the Planning Commission, and decisions of the Planning Commission may be appealed to the City Council.
- B. Anyone wishing to appeal pursuant to this Chapter must timely file with the City Clerk a written notice of appeal, on a form provided by the Community Development Department, and the applicable required appeal fee set by City Council resolution. The notice of appeal shall specify the basis for the appeal. In addition, the appeal must indicate in what way the appellant contends the decision was incorrect, specifically identifying how the decision is not in accord with the provisions of the Municipal Code or the Local Coastal Program, or must provide extenuating circumstances that the appellant contends would justify reversal or modification of the decision.
- C. The appeal period ends at the close of the business day for City Hall on the fifteenth day following the decision provided however that if the fifteenth day falls on a weekend or City holiday the appeal period shall be extended to the close of business on the next working day.
- D. An appeal shall be heard at a public hearing *de novo* if the decision being appealed required a public hearing. Notice of such a public hearing shall be given in the same manner required for the decision being appealed.
- E. The appeal will be heard within 60 days of the City Clerk's receipt of the appeal unless the applicant and appellant consent to a later date.
- F. Decisions that are appealed shall not become effective until the appeal has been resolved or withdrawn.

10.100.020 Council Review.

A. Council Review. A Planning Commission decision shall be set for a review hearing before the City Council if requested in writing by at least two members of the City Council. The City Councilmembers requesting the review shall file a Council review form with the City Clerk. The form must be filed before the close of the business day for City Hall on the fifteenth day following the decision provided however that if the fifteenth day falls on a weekend or City holiday the appeal period shall be extended to the close of business on the next working day.

The form shall be prescribed by the City Clerk and may be signed by the members separately or by two members jointly. No fee shall be required. The City Clerk shall schedule the review hearing for commencement within 60 days of the request for review. The review shall otherwise follow the same procedures as appeals in this Chapter. It shall be presumed that the reason for the review is that the decision may have significant and material effects on the quality of life within the City, or the subject matter of the decision may have City-wide importance warranting review and determination by the elected officials of the City. Bias shall not be presumed or inferred due to a request for review.

B. Stay of Decision. The effectiveness of a decision subject to Council review shall be stayed pending completion of the Council review proceedings.

C. Notice. Public notice of the hearing shall be provided in the same manner, if any, as was provided in connection with the consideration by the Planning Commission.

D. Hearing Procedure. The Council review hearing shall be conducted as a hearing *de novo*. The City Council shall apply the same decision criteria as the Planning Commission.

10.100.030 - Decision.

The appellate or reviewing body may uphold, overturn or modify the decision of the inferior body. Any such action shall be made by resolution and shall be supported by findings. Alternatively, the appellate or reviewing body may remand the matter for further consideration by the inferior body. In the event of a tie vote by the Planning Commission, the decision of the Community Development Director shall be effective. In the event of a tie vote by the City Council, the decision of the Planning Commission shall be effective.

10.100.040 - Effective date.

A decision by the City Council regarding an appeal or Council review shall become final on the date of the decision. A decision by the Planning Commission regarding an

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appeal shall become final on the date of the decision, unless appealed to the City Council, or called up for review by two Councilmembers.

10.100.050 - Resubmittal.

Following a decision on an appeal or Council review, any matter that is the same or substantially the same shall not be considered by the same body within two years, unless the denial is made without prejudice.

SECTION 4. Amending MBMC Section 10.04.030 and LCP Section A.04.030 (Definitions) to insert a new defined term “Single Housekeeping Unit” between the existing defined terms “Sexual Activities, Specified” and “Single Ownership” as follows, with all other portions of Sections 10.04.030 and A.04.030 remaining in effect without amendment:

“SINGLE HOUSEKEEPING UNIT:

A traditional family or the functional equivalent of a traditional family, whose members are a non-transient interactive group of one or more persons, where if consisting of more than one person, such persons jointly occupy a single dwelling unit, jointly use common areas, share household activities and responsibilities (e.g., meals, chores, and expenses), and where, if the unit is rented or leased, all adult members jointly agree to occupy and be responsible for the entire premises of the dwelling unit under a single written rental agreement or lease and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager.”

SECTION 5. Amend MBMC Section 10.08.030 and LCP Section A.08.030 (Residential use classifications) to insert a Use classification “Multi- Family Transient Use” between the existing use classifications “Multi-family Residential” and “Residential Care, Limited” as follows, with all other portions of Sections 10.08.030 and A.08.030 remaining in effect without amendment:

“F. MULTI-FAMILY TRANSIENT USE: Rental or lease of a multi-family dwelling unit for a period of less than 30 days.”

SECTION 6. Amend MBMC Section 10.08.030 and LCP Section A.08.030 (Residential use classifications) to insert a new Use classification “Single-Family Transient Use” between the existing Use classifications “Single-Family Residential” and “Supportive Housing” as follows, with all other portions of Sections 10.08.030 and A.08.030 remaining in effect without amendment:

“I. SINGLE-FAMILY TRANSIENT USE: Rental or lease of a single-family dwelling unit for a period of less than 30 days.”

SECTION 7. Amend the residential use in the table of uses set forth in MBMC Section 10.12.020 and LCP Section A.12.020 (Land Use Regulations) to 1) insert a new row

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immediately before the “Residential Care, Limited” row, entitled “Multi-Family Transient Use”; and 2) insert a new row immediately after the “Single Family Residential” row, entitled “Single-Family Transient Use”; both of which are noted on the table below underlined in bold text, as follows, with all other portions of Sections 10.12.020 and A.12.020 remaining in effect without amendment:

10.12.020/A.12.020 - Land use regulations: RS, RM, RH, RPD, and RSC districts.

RS, RM, RH, RPD, and RSC DISTRICTS LAND USE REGULATIONS				P — Permitted PDP — Precise Development Plan SDP — Site Development Permit U — Use Permit L — Limited, (See additional use regulations) - — Not Permitted		
	RS	RM	RH	RPD	RSC	Additional Regulations
Residential Uses						(A)
Day Care, Small Family Home	P	P	P	P	P	<u>(P)</u>
Day Care, Large Family Home	L-22	L-22	L-22	L-22	L-22	<u>(P)</u>
Group Residential	-	-	U	-	U	
Multi-family Residential						
5 or fewer units	-	P	P	P	U	(B)(C)(L) <u>(P)</u>
6 or more units	-	PDP/SDP	PDP/SDP	PDP/SDP	U	(B)(C)(L)(O) <u>(P)</u>
<u>Multi-Family Transient Use</u>	-	<u>L-25</u>	<u>L-25</u>	<u>L-25</u>	<u>L-25</u>	
Residential Care, Limited	P	P	P	P	P	
Single-Family Residential	P	P	P	P	P	(C) <u>(P)</u>
<u>Single-Family Transient Use</u>	<u>L-26</u>	<u>L-26</u>	<u>L-26</u>	<u>L-26</u>	<u>L-26</u>	

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SECTION 9. Amend MBMC Section 10.12.020 and LCP Section A.12.020 (Land Use Regulations) to add Additional Regulations L-25, L-26, and (P) to read as follows, with all other portions of Sections 10.12.020 and A.12.020 remaining in effect without amendment:

RS, RM, RH, RPD, and RSC Districts: Additional Use Regulations:

L-25 A Multi-Family Transient Use, as defined in Section 10.08.030 and A.08.030, of a multi-family dwelling unit is permitted to commence once within a six month period for each multi-family dwelling unit. Use of a multi-family dwelling unit for a multi-family transient use more than twice within a 12 month period is prohibited

L-26 A Single-Family Transient Use, as defined in Section 10.08.030 and A.08.030, of a single family dwelling unit is permitted to commence once within a six month period for each single-family dwelling unit. Use of a single-family dwelling unit for a single-family transient use more than twice within a 12 month period is prohibited.

(P) Each Single-Family Residential and Multi-Family Residential Dwelling Unit may only be occupied by a single housekeeping unit as defined in 10.04.030 and A.10.04.030.

SECTION 10. The Planning Commission also recommends that the City Council direct the City Clerk to make any other corresponding language changes to the MBMC and the LCP to achieve internal consistency as required.

SECTION 11. If any sentence, clause, or phrase of this resolution is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this resolution. The Planning Commission hereby declares that it would have passed this resolution and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 12. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other resolution of the City, to the extent that they are inconsistent with this resolution, and no further, are hereby repealed.

RESOLUTION NO. 15-XX

SECTION 13. The Secretary to the Planning Commission shall certify to the adoption of this Resolution.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of May 13, 2015 and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marisa Lundstedt,
Secretary to the Planning Commission

Rosemary Lackow,
Recording Secretary

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ZONING CODE SECTIONS

Manhattan Beach Municipal Code

Chapter 10.100 - APPEALS

Sections:

10.100.010 - Purpose.

To avoid results inconsistent with the purposes of this ordinance, decisions of the Community Development Director may be appealed to the Planning Commission, and decisions of the Planning Commission and Board of Zoning Adjustment may be appealed to the City Council.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91)

10.100.020 - Rights of appeal.

Rights of appeal are prescribed in the individual chapters of this title authorizing each decision that is subject to appeal.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91)

10.100.030 - Time limits for appeals.

- A. Any appeal, except an appeal originating from the City Council, must be initiated in writing and filed with the City Clerk within fifteen (15) days from the date of the decision. The appeal period ends at the close of the business day for City Hall on the fifteenth day provided however that if the fifteenth day falls on a weekend or City holiday the appeal period shall be extended to the close of business on the next working day.
- B. An appeal originating with the City Council must be made at or prior to the regularly scheduled City Council meeting when the decision is reviewed by the City Council.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 2, Ord. 1951, eff. July 4, 1996)

10.100.040 - Initiation of appeals.

- A. An appeal filed by the applicant or interested party may be initiated by delivering to the City Clerk a written notice of appeal and any required appeal fee. The notice of appeal shall specify the basis for the appeal.
- B. The Mayor or any member of the City Council may appeal any matter under this chapter by requesting a public hearing on the appeal within the time limit set forth in Section 10.100.030 or pulling an item from the consent agenda which does not legally require a public hearing. The Mayor or City Council members appealing any matter under this section

shall only do so if the appeal is made in the public interest or welfare and the appealing council member has no predisposition for or against the matter being appealed.

- C. Decisions that are appealed shall not become effective until the appeal has been resolved or withdrawn.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 2, Ord. 1951, eff. July 4, 1996, as amended by § 2 (part), Ord. 2118, eff. November 21, 2008)

10.100.050 - Procedures for appeals.

- A. Appeal Hearing Date. An appeal shall be scheduled for a hearing before the appellate body within thirty (30) days of the City's receipt of an appeal unless both applicant and appellant consent to a later date.
- B. Notice and Public Hearing. An appeal shall be heard at a public hearing if the decision being appealed required a public hearing. Notice of such a public hearing shall be given in the same manner required for the decision being appealed.
- C. Notice of Decision. The applicant and any appellant other than the applicant shall be notified in writing of the decision on the appeal and the basis for that decision.
- D. Finality of Decision. The decision of the appellate body shall be final.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91; § 2, Ord. 1951, eff. July 4, 1996)

10.100.060 - Effective date.

A decision by the City Council regarding an appeal shall become final on the date of the decision. A decision by the Planning Commission regarding an appeal shall become final on the date of the decision, unless appealed to the City Council.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91)

10.100.070 - New appeal.

Following a decision on an appeal, any matter that is the same or substantially the same shall not be considered by the same body within two (2) years, unless the denial is made without prejudice.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91, as amended by § 2 (part), Ord. 2118, eff. November 21, 2008)

Local Coastal Program

A.96.160. APPEALS.

Development pursuant to an approved Coastal Development Permit shall not commence until the Coastal Development Permit is effective. The Coastal Development Permit is not effective until all appeals, including those to the Coastal Commission, have been exhausted. In the event that the Coastal Commission denies the permit or issues a permit on appeal, the Coastal Development Permit approved by the City is void.

- A. Action by the Director of Community Development may be appealed to the Planning Commission. Action by the Planning Commission may be appealed only to the City Council. Any appeal by an aggrieved person, except an appeal by a City Councilperson or the Mayor, must be initiated within 15 days from the date of the decision. The appeal period ends at the close of the business day for City Hall on the first City Hall working day no less than fifteen days after the decision maker's action.
1. The matter shall be scheduled for City Council review at the first regularly scheduled meeting following the decision for which the matter can be legally noticed. The Mayor or any City Council member may appeal the permit at the time of or before the City Council meeting at which the decision is reported to the City Council.
 2. An appeal from the decision of the Director of Community Development shall be filed with the Department of Community Development on a form provided by the Director of Community Development. The appeal shall be accompanied by a fee set by resolution of the City Council and a statement of the grounds for the appeal.
 3. An appeal from the decision of the Planning Commission shall be filed with the City Clerk on a form provided by the City Clerk. The appeal shall be accompanied by a fee set by resolution of the City Council and a statement of the grounds for the appeal.
 - a. The Mayor or any member of the City Council may appeal any matter by requesting a public hearing on the appeal within the time limit set forth in Section A.96.160 A. The Mayor or City Council member appealing any matter shall be disqualified from hearing the appeal unless he or she certifies that the appeal was made in the public interested or welfare.
 - b. Decisions that are appealed shall not become effective until the appeal has been resolved or withdrawn.
 4. It shall be the duty of the Director of Community Development to forward a Coastal Development Permit appeal, together with recommendation thereof, to the appropriate body specified in Paragraph A above for its action.
- B. Appeals to the Coastal Commission. Within ten (10) working days from the date of Coastal Commission receipt of the notice of final action, all appealable development, as

defined in §A.96.030, may be appealed to the Coastal Commission in accordance with Coastal Commission regulations by a qualified appellant, as defined in §A.96.160 D.

1. The ground for appeal to the Commission of a final local approval shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of Chapter 3. [30603(b)(1)]
 2. The grounds for appeal to the Commission of a denial of a major public works project or major energy facility shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program or the public access policies of Chapter 3. [30603(b)(2)]
- C. A final decision on an application for an appealable development shall become effective after the 10th working day appeal period to the Coastal Commission has expired unless either of the following occur:
1. an appeal is filed in accordance with the procedures set forth by the Coastal Commission;
 2. the notice of final local government action does not meet the requirements of §A.96.100 F and G above. D. An appeal pursuant to this chapter may only be filed by the applicant for the Coastal Development Permit in question, an aggrieved person as defined in §A.96.030(a) , or any 2 members of the Coastal Commission.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91)

ZONING CODE SECTIONS

Manhattan Beach Municipal Code

10.12.020 - Land use regulations: RS, RM, RH, RPD, and RSC districts.

In the following schedule, the letter "P" designates use classifications permitted in residential districts. The letter "L" designates use classifications subject to certain limitations prescribed under the "Additional Use Regulations" which follows. The letter "U" designates use classifications permitted on approval of a use permit, as provided in Chapter 10.68. The letters "P/U" for accessory uses mean that the use is allowed on the site of a permitted use, but requires a use permit on the site of a conditional use. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule. Where letters in parentheses are opposite a use classification heading, referenced regulations shall apply to all use classifications under the heading.

<hr/>						
RS, RM, RH, RPD, and RSC DISTRICTS LAND USE REGULATIONS					P — Permitted PDP — Precise Development Plan SDP — Site Development Permit U — Use Permit L — Limited, (See additional use regulations) - — Not Permitted	
<hr/>						
	RS	RM	RH	RPD	RSC	Additional Regulations
<hr/>						
Residential Uses						(A)
Day Care, Small Family Home	P	P	P	P	P	
Day Care, Large Family Home	L-22	L-22	L-22	L-22	L-22	
Group Residential	-	-	U	-	U	

Multi-family Residential						
5 or fewer units	-	P	P	P	U	(B)(C)(L)
6 or more units	-	PDP/SDP	PDP/SDP	PDP/SDP	U	(B)(C)(L)(O)
Residential Care, Limited	P	P	P	P	P	
Single-Family Residential	P	P	P	P	P	(C)
Public and Semipublic						(A)(D)
Clubs and Lodges	-	-	L-1	U	-	
Day Care, General	-	-	-	-	-	
Park and Recreation Facilities	L-2	L-2	L-2	L-2	-	
Public Safety Facilities	U	U	U	U	-	
Religious Assembly	L-3	L-3	L-3	U	-	
Residential Care, General	-	-	U	U	U	
Schools, Public or Private	U	U	U	U	-	
Utilities, Major	U	U	U	U	U	
Utilities, Minor	P	P	P	P	P	
Accessory Uses	P/U	P/U	P/U	P/U	P/U	(A)(E)(F)(G)(H)(I) (J)(M)(N)

Temporary Uses						(H)
Commercial Filming, Limited	U	U	U	U	-	
Marketing/Sales Office	-	U	U	P	P	
Personal Property Sales	P	P	P	P	-	(K)
Street Fairs	U	U	U	U	-	
Nonconforming Uses						(I)(J)

RS, RM, RH, RPD, and RSC Districts: Additional Use Regulations

L-1 Use permit required and only neighborhood-oriented uses occupying less than two thousand five hundred (2,500) square feet are permitted.

L-2 Public facilities permitted, but a use permit is required for private noncommercial facilities, including swim clubs and tennis clubs.

L-3 A use permit is required, except for legally existing church facilities, including private schools and day-care contained therein, which do not exceed an overall floor area factor greater than half of the maximum floor area factor permitted by the development standards of the base district.

L-22 Application for an administrative large family day care permit to the Director of Community Development is required and shall be made on forms provided by the City and shall include such information as may be reasonably required by the Director for a complete understanding of the request. The application shall be accompanied by a filing fee and a notification packet including all properties within a one hundred foot (100') radius of the subject property. Said notification shall be completed not less than ten (10) days prior to the date on which the decision will be made on the application.

No hearing on the application for a permit shall be held before the decision is made by the Director unless a hearing is requested by the applicant or other affected person. The Director's decision shall be based on whether or not the proposed use would be compatible with the surrounding neighborhood. The applicant or other affected person may appeal the decision and the appellant shall pay the cost of the appeal. Said appeal shall be made to the Planning Commission by filing a written appeal, on forms provided by the Department of Community Development accompanied by the necessary notification packet (described above). Any such appeal shall suspend the permit until resolution of the appeal by the Planning Commission. Use of a single family dwelling for these purposes shall not

constitute a change of occupancy per the State Housing Law or local building ordinances.

Large family day care homes shall be considered as single family residences per State and local building and fire codes.

Each home used in this manner shall meet the fire and life safety standards adopted by the Community Development Department and Fire Department. The property to be used in this manner shall conform to all applicable development standards as stated in the Manhattan Beach Municipal Code.

(A) See Section 10.52.020, Exterior materials in R districts.

(B) A use permit is required for condominium development or conversion of three (3) or more units; see Chapters 10.84 and 10.88. Condominium development, or conversion, of two (2) units are exempt from the use permit requirement. Any addition or modification to a condominium unit or development subsequent to the original construction of that unit or development that would result in an increase in the amount of liveable space, or a significant exterior structural or architectural alteration, shall require an amendment to the use permit previously obtained. In order for a residential apartment building to qualify for a condominium conversion, a certificate of occupancy must have been issued prior to January 1, 1982.

(C) See Section 10.52.100, Manufactured homes.

(D) Facilities on sites of two (2) acres or more are subject to the regulations of Chapter 10.28 (PS district) precluding those of this chapter. See Section 10.28.020, PS district applicability.

(E) See Section 10.52.070, Home occupation in R districts.

(F) See Section 10.52.050, Accessory structures, which permits guest houses or accessory living quarters as defined in Section 10.04.030.

(G) See Section 10.52.080, Swimming pools and hot tubs.

(H) See Section 10.84.110, Temporary use permits.

(I) See Chapter 10.68, Nonconforming uses and structures.

(J) See Chapter 10.72, Signs.

(K) An administrative permit issued by the Community Development Director is required.

(L) Alternative Parking Plan for Senior Citizen Housing. Applications for a use permit for a senior citizen housing project shall include a contingency plan, addressing what will be done to ensure compliance with parking requirements if occupancy can not be limited to senior citizens because of market conditions or other factors.

(M) The keeping of domestic animals is permitted including: dogs and cats not to exceed five (5) for each residential living unit in any combination thereof and the young thereof not exceeding four (4) months in age, and other small domestic household pets such as rabbits, hamsters, guinea pigs, etc. not to exceed five (5) in any combination thereof. Common

varieties of farm animals, livestock, exotic animals or wild animals (as defined in Section 10.04.030) are prohibited, except for Vietnamese pot-bellied pigs, also known as pygmy pigs or mini-pigs, as permitted by the Animal Control Department.

(N) A maximum of three (3) garage or lawn sale permits per calendar year, of miscellaneous household items of personal property accumulated by the occupant of the residence as a normal matter of course may be held on any building site occupied by residents, provided a permit has been acquired from the City's Licensing Authority. Each permit shall be valid for a maximum of three (3) consecutive days and may include standard regulations on the garage sale permit (in accordance with provisions of Section 6.08.020 of this Code).

(O) Residential developments that qualify for a density bonus pursuant to Chapter 10.94 of this Code shall apply for a precise development plan. Residential developments of six (6) or more units that do not receive a density bonus shall apply for a site development permit.

(Ord. No. 1832, Amended, 01/17/91; Ord. No. 1838, Renumbered, 07/05/91, 10-3.502; Ord. No. 1864, Amended, 02/18/93; Ord. No. 1891, Amended, 01/06/94; § 2, Ord. 1951, eff. July 4, 1996; § 2, Ord. 2049, eff. November 18, 2003 and § 3, Ord. 13-0006, eff. August 1, 2013)

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