



Legislation Text

File #: 19-0024, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Anne McIntosh, Community Development Director
Steve S. Charelian, Finance Director
Nhung Madrid, Senior Management Analyst
Ryan Heise, Building Official

SUBJECT:

Introduction of Ordinance Nos. 19-0001 and 19-0002 Amending the Manhattan Beach Municipal Code and Local Coastal Program to Allow Short-Term Rentals That Meet Certain Zoning Requirements and Performance Standards On a Limited Basis; and Consider Establishing Related Fees (Community Development Director McIntosh).

- a) **CONDUCT PUBLIC HEARING**
- b) **INTRODUCE ORDINANCE NOS. 19-0001 AND 19-0002**
- c) **ADOPT RESOLUTION NO. 19-0011 ESTABLISHING FEES**

RECOMMENDATION:

Staff recommends that after conducting a public hearing, the City Council:

- 1) Introduce Ordinance No. 19-0001 amending the Manhattan Beach Municipal Code (MBMC);
- 2) Introduce Ordinance No. 19-0002 amending the Local Coastal Program (LCP);
- 3) Adopt Resolution No. 19-0011 to establish fees; and
- 4) Direct staff to move forward with developing and implementing a Short-Term Rental Program.

EXECUTIVE SUMMARY:

The unregulated short-term rental of properties in residential neighborhoods can have significant negative impacts on neighborhoods and residents. Regulating such rentals can minimize the potential negative impacts, establish a permit and enforcement process, and require the payment and remittal of Transient Occupancy Tax (TOT) to the City.

If adopted, the proposed ordinances will allow the renting of owner-occupied single family residences, duplexes, and triplexes to single housekeeping units for less than 30 days. Property Owners must: obtain a permit and City Business License; provide parking for the lodgers; and pay TOT for each rental. The rentals must be hosted for all residentially-zoned properties, but may be "un-hosted" for owner-occupied single family residences, duplexes and triplexes located in commercial zones.

If the City Council adopts the ordinances, staff also recommends that the City Council direct staff to develop and subsequently implement a proposed Short-Term Rental Program (“Program”), to include the following:

- Augmentation of staff with consulting services to provide online compliance and contractor, and the fiscal implications associated with those additional resources;
- Potential program revenue estimates;
- Program guidelines for commercial and residentially zoned properties;
- A general overview and requirements for the short-term rental application process.

Staff recommends that the City Council adopt the proposed code amendments and direct staff to move forward with implementing a Short-Term Rental Program.

FISCAL IMPLICATIONS:

Potential Revenues

The implementation of a Short-Term Rental Program will potentially increase general revenue to the extent that TOT and Business Licensing base tax is collected from registered properties.

For the purpose of this report, staff performed a search on Vacation Rental by Owners (VRBO), a popular online STR platform, for Manhattan Beach specific STRs. Through that query, staff discovered over **300 listings** within the City, therefore, staff has used the following assumptions to project potential revenues:

- Based on the VRBO query, staff estimates that 300 Property Owners will submit an application and potentially 100 of those properties will comply with the proposed guidelines and obtain a permit and business license.
- Staff estimates that rental income from the 100 permitted properties will generate TOT revenue based on six days per month, for a total of 72 days annually, at \$300 per night.

Using the above mentioned assumptions as conservative estimates, the City may potentially receive the following fees and revenues at initial application and at subsequent annual renewals.

Initial Application

Application Fee (\$113.00 multiplied by 300): \$33,900

Permit Fee (\$160.00 multiplied by 100): \$16,000

Business License Base Tax (\$125.44 multiplied by 100): \$12,544

The application fee and short-term rental permit fee is based on reasonable cost recovery for City staff to adequately evaluate, process and inspect each permit. The Business License Tax is collected annually in March.

Annual Renewal

Permit Renewal Fee (\$217.00 multiplied by 100): \$21,700

Business License Base Tax (\$125.44 multiplied by 100): \$12,544

The permit period shall coincide and expire concurrently with the City issued Business License.

Transient Occupancy Tax

TOT (100 properties multiplied by 72 days multiplied by \$300 daily rate multiplied by 10% TOT):
\$216,000*

*The City has a measure on the March 2019 election ballot to increase the TOT rate. If the measure is passed, the effective date of the new TOT rate of 12% would be May 1, 2020.

The impact (all-inclusive cost) to Property Owners that wish to pursue a short-term rental permit is approximately \$400 the first year, and \$340 in renewal years. These fees include the initial application, annual permit issuance and Business License Taxes. After the conclusion of the public testimony portion of this public hearing, staff requests that the Council consider adopting the proposed Resolution to establish the fees contained in the attachment to the Resolution.

The Program guidelines will also include provisions to allow for the issuance of citations for program non-compliance. Therefore, additional revenues may be received through citations, per Title 1, which provides that any code violation, is a misdemeanor or infraction, and violators are subject to a fine up to \$1,000 for each violation, and can be criminally prosecuted. At this juncture, providing estimates related to citations and fines is not feasible. Additionally, it is staff's intent that with a simplified program, there would be greater compliance with Owners. Finally, with dedicated Program staff, proactive engagement with Owners will deter non-compliance.

Code Enforcement

Based on the proposed Program, the Code Enforcement Division will require additional resources including an agreement with a compliance monitoring service, and contract services to augment staff. To initiate the program, \$80,000 in the fiscal year 2019-20 budget has already been allocated for consulting services to implement a Short-Term Rental Program. Staff believes that the funding that is currently allocated is sufficient to initiate the Program. An explanation and justification for these resources are further described below:

Compliance Monitoring Service

Assistance from an online compliance service will be necessary to continually search online platforms to provide staff with information about short-term rentals operating in the City. A preliminary search for such services shows that this service can be provided at an estimated annual cost of \$35,000. This cost is assuming the number of listing increases from 300 to 500 once a program is established. The information obtained from the online compliance service is in a raw format, therefore, staff will be required to confirm each listing, and enforce violations per the Program guidelines.

Augmentation of Staff

Currently, there are three Code Enforcement Officers in the Building Division. Enforcement related to the proposed Program cannot be absorbed by existing staff, given the current workload. Therefore, the Division would initially augment staff with a contractor to implement the Program. The contractor's duties would solely be related to the Program, and would include, but not be limited to: reviewing, processing and approving applications; meeting with Owners; site inspections; code compliance; fielding questions/concerns/complaints; and working with the compliance monitoring service to perform all research and follow-up.

Potential Future Fiscal Impacts

Because the proposed Program is new, staff is recommending a tiered approach for additional resources through the use of contract staff. If the Program is much more robust than staff anticipates, the next step would be for the City Council to consider hiring a full-time Code Enforcement Officer to run the Program in lieu of a contract staff person. This option would still require maintaining a contract with a compliance monitoring service.

Currently, all three Code Enforcement Officers report directly to the Building Official. With the current size and workload of the Code Enforcement Division and the proposed added staff member to focus on transient land uses, staff would propose that a Senior Code Enforcement Officer position be added to oversee the operations of the Code Enforcement Division. The initial annual cost to add a Senior Code Enforcement Officer position is approximately \$150,000. This estimated cost includes salary, benefits, and one-time costs such as a City vehicle, computer/laptop, mobile phone, and other miscellaneous costs. The ongoing annual cost for the Senior Code Enforcement Officer would be approximately \$107,000.

Although staff is not requesting City Council to authorize any full-time positions at this time, if the program proves to be robust, the Division may require the addition of a full-time Senior Code Enforcement position. However, until the program is in place and operating, staff believes that using part-time contract staff will provide sufficient staff support to get the Program up and running. If additional resources are necessary, staff will return to City Council with additional information at a later date.

It is important to note that additional costs borne by the City in regulating Short Term Rentals may be offset through the fees charged to participating Property Owners.

BACKGROUND:

The unregulated short-term rental of properties in residential neighborhoods can have significant negative impacts on neighborhoods and residents. Regulating such rentals can minimize the potential negative impacts, establish a permit and enforcement process, and require the payment and remittal of TOT to the City.

Since 2015, the Planning Commission and City Council have held numerous meetings to discuss various concerns and policy issues related to transient land uses, primarily focused on short-term rentals.

Those meetings are as follows:

- May 13, 2015: Planning Commission Public Hearing
- June 2, 2015: City Council Public Hearing
- June 16, 2015: City Council Meeting
- May 3, 2017: City Council Retreat & Strategic Planning Session
- March 6, 2018: City Council Meeting
- July 19, 2018: City Council Study Session
- November 6, 2018: City Council Meeting

After conducting a public hearing, the Planning Commission recommended that transient uses be

allowed once every three months. On November 6, 2018, the City Council directed staff to prepare a draft ordinance to consider allowing STRs with the following options:

- Allow hosted stays at properties located in residential zones citywide
- Allow hosted and un-hosted stays at properties located in commercial zones
- Guidelines for hosted vs. un-hosted stays
- Application and permitting process for short-term rental Owners
- Guidelines for the number of stays/contracts for hosted vs. un-hosted short-term rentals
- Budgetary impacts to augment Code Enforcement resources (i.e. additional staff, Compliance vendor)
- Information sharing requirement with online platforms (i.e. Airbnb, VRBO, HomeAway)
- Specific advertisement related to short-term rental discussion.

DISCUSSION:

Based on the direction provided by the City Council, draft Ordinance No. 19-0001 amending the Manhattan Beach Municipal Code, and draft Ordinance No. 19-0002 amending the Local Coastal Program (LCP) have been prepared to allow STRs that meet certain zoning requirements and performance standards.

If adopted, the proposed ordinances will allow the renting of owner-occupied single family residences, duplexes and triplexes for less than 30 days. Additional provisions require owners to provide adequate parking and obtain a permit and City Business License and pay TOT. The rentals must be hosted for all residentially-zones property, but do not have to be hosted for residential properties located in commercial zones. The key features of the ordinances are:

- The rental is considered “a transient use” and the duration is less than 30 days.
- The rental is considered an accessory use (but not ADU) to a single-family unit (could be a house, condominium, duplex, or triplex). If a Property Owner owns a duplex or triplex and one of the units is his or her primary residence, the Property Owner can rent on a short-term basis only the unit that is his or her primary residence.
- The unit to be rented is owner-occupied AND the primary residence of the owner.
- Two types of rentals of residential structures are contemplated in the ordinance:
 - 1) In residential zones, the rental is hosted (property owner on-site during stay);
 - 2) In commercial zones, the rental can be un-hosted (property owner not on-site during stay).
- Rentals are NOT permitted in any other multi-family rental properties, or in accessory dwelling units constructed according to Chapter 10.74 (Accessory Dwelling Units).
- At least one on-site parking space must be available for the lodger, not including any required parking for the host as the resident of the property.

Note: If a Property Owner is not receiving any remuneration from the lodger, then the activity is NOT a short-term rental. Likewise, if a lessee has a lease for longer than 30 days, the short-term regulations do not apply.

The details and operating procedures of the Program have been purposely excluded from proposed Code and LCP amendment language in order to allow for flexibility in the Program’s implementation, and staff intends to outline the City’s operating procedures in the Program’s guidelines.

Staff has also developed Program guidelines applicable in certain residential and commercial zones, with varying restrictions based on the parcel's zoning designation and other site characteristics. All STRs must meet the following standards:

Applicable Standards Applicable to All Transient Land Uses

- The Property Owner may only rent one unit in the City on a short-term basis, which must be his or her primary residence.
- No commercial parties or events are permitted.
- Accessory Dwelling Units (ADUs) cannot be rented on a short-term basis.
- The permit application must be renewed annually.
- A Business License must be renewed annually.
- The Property Owner is required to remit Transient Occupancy Tax (TOT) payments within a month of the lodger's stay.
- A self-certification inspection is required prior to issuance of the permit to confirm that the rental unit meets life/safety requirements.
- At least one on-site parking space must be provided to the lodger. During the application review period, the Director may require additional parking depending on the intensity of the proposed rental.
- No signs shall be posted advertising the use or vacancies.
- Owner must comply with the Manhattan Beach Municipal Code related to noise, trash and all other applicable regulations.
- Owner is responsible for adhering to applicable Homeowner's Association (HOA) and Covenants, Conditions and Restrictions (CC&Rs) at all times. A City permit does not supersede HOA or CC&R regulations.
- The City issued permit number must be included in all advertisements and listings of the property.
- The Owner is required to send out/deliver a neighborhood notification letter to all properties directly adjacent, abutting, above, below, as well as properties directly across the street from the unit.
- Three violations involving the same unit will result in revocation of the permit. Listing without a permit is considered a violation. Failure to include the permit number in a listing is also considered a violation.

Residential Properties in Commercial Zones

For residential properties that are located in certain commercial zones (CL, CD, CNE), the following requirements will apply:

- Hosted or un-hosted stays are permitted.
- Owner must be the Property Owner of the unit to be rented.
- Owner need not be present during lodger's stay but must retain a local contact person or property manager/management company that is available 24 hours every day (when the unit is occupied by a lodger) to respond to complaints and disturbances.
- Only owner-occupied dwelling units are eligible. "Owner-occupied" means that the Owner lives in the subject dwelling unit for at least 270 days a year.
- No limit on the number of stays per calendar year.

- In multi-family units (i.e. duplexes, triplexes) the property owner may short-term rent their primary residence unit only.

Residentially Zoned Properties

For those properties that are located in the following residential zones (RS, RM, RH, RPD), the following requirements will apply:

- Only hosted stays are permitted.
- Owner must be the Property Owner of the unit to be rented.
- The Property Owner lives in the unit to be rented and remains there throughout the lodger's stay (except during daytime and/or work hours).
- Only owner-occupied dwelling units are eligible. "Owner-occupied" means that the Owner lives in the subject dwelling unit for at least 270 days a year.
- No limit on the number of stays per calendar year.
- The unit must be the primary dwelling unit; ADUs cannot be rented out on a short-term basis.
- In multi-family units (i.e. duplexes, triplexes) the Property Owner may short-term rent their primary residence unit only.

The majority of the guidelines are fairly consistent for residentially-zoned properties versus commercially-zoned properties. One important difference, however, is that only hosted stays are permitted in residentially-zoned properties, while both un-hosted and hosted stays are permitted in commercially-zoned properties.

Application Process

Property Owners wishing to rent their property on a short-term basis would need to complete and submit the following documents, which will be available on the City's website and at City Hall:

STEP 1: Short-Term Rental Permit Application

The permit application requires the Owner to provide information about the owner-occupant and the property. The application will also require the Owner to provide additional information such as location of on-site parking, proof of primary residency, health and safety requirements (completed through a property self-inspection), photos of the short-term rental unit, neighborhood noticing, and notarized affidavit for the short-term rental.

The Owner must complete the permit application, provide required documents and submit the application fee to the Finance Department. Once submitted, the application will be routed to Code Enforcement staff to schedule an appointment to review the application and discuss the various Program guidelines and requirements with the Owner. Once the application has been deemed complete and approved, the Owner will be required to pay for the permit and Business License.

STEP 2: Home Occupation Business License Tax Application

When an individual is conducting business in the City, the individual is required to procure a Business License. Renting a primary residence on a short-term basis is considered a commercial use and thus a Home Occupation Business License would be the most appropriate mechanism to collect this tax.

After the Owner has obtained a Business License, the Owner will be permitted to rent his or her unit

on a short-term basis. The Business License will also be used to track and collect TOT, which will be self-reported and submitted by the Owner within a month of the lodger's stay. Staff will also work with the on-line platforms to assist in any way possible with documentation that would assist in determining the required TOT. The TOT may be subject to audit.

Code Enforcement

Overall, the proposed Program and permitting process has been kept fairly simple to gain maximum compliance from Owners. However, to ensure maximum compliance and for the Program to run smoothly, staff is proposing to augment staff with a part-time contract staff person, as mentioned within the Fiscal Implications section of the staff report.

This proposed contractor will be responsible for application intake, review and approval, annual inspections, patrol, fielding complaints, citations, and proactive enforcement. In order to provide proactive enforcement, the contractor will work closely with the online compliance service to research and identify online listings and perform follow-up, as needed. The online compliance service would help City staff identify those properties that may not be registered, therefore, not reporting and/or paying or underpaying the appropriate TOT. Additionally, having a contractor dedicated to the Program will ensure the following:

- A direct City contact with prompt follow-up for all issues and concerns.
- Expedited application review and one-on-one meetings with Owners prior to permit approval.
- Consistent and proactive enforcement.
- Annual inspections.
- Process violations, citations, and follow-up in a timely manner.

Following program implementation, which is expected to take four to six months, staff will return to City Council with a progress update in late 2019.

POLICY ALTERNATIVES:

ALTERNATIVE #1 - Limited time frame (cap) option:

Modify guidelines from unlimited stays for residential and commercially zoned rentals to a maximum of four non-consecutive months per calendar year for residential rentals, and maintain the unlimited stays for residential properties in commercial zones. Short-term rentals located within a commercial zone are considered a commercial activity. Therefore, whether hosted or un-hosted, a cap is not recommended for residential properties in commercial zones. Conversely, rentals within a residential zone require the Owner to be present during the stay, therefore, resulting in less stays than those in a commercial zone. If the City Council desires a cap for residential properties in residential zones, as an alternative, the rental cap can be modified from unlimited stays per calendar year to four non-consecutive months per calendar year. For instance, an Owner could apply for a permit to rent his or her house for June, August, December, and April (but not June and then July, etc.).

PROS:

Requiring a cap on stays in residential properties in residential zones would minimize impacts to neighborhoods by protecting and maintaining the neighborhood character and sense of community.

CONS:

Requiring a cap for stays in residential properties in residential zones will require staff to continually monitor and track each property to ensure that they are within their cap limit. A cap makes the Program more restrictive, which will likely result in additional code compliance complaints, enforcement, and follow-up with Owners.

ALTERNATIVE #2 - No Change Option (Status Quo)

Keep current prohibition in place.

PROS:

Continues the status quo which may minimize impacts to neighborhoods.

CONS:

City forgoes TOT revenue. Does not allow for any flexibility. Existing Code Enforcement staff is currently deployed to enforce the ban on a complaint basis, which has not eliminated short-term rentals.

PUBLIC OUTREACH/INTEREST:

Tonight's public hearing was noticed in The Beach Reporter on January 3, 2019, with a quarter-page display ad. The City also sent notices to individuals previously operating short-term rentals in the City. Based on City Council's direction on next steps, staff will prepare community outreach and notification, as appropriate.

ENVIRONMENTAL REVIEW

It can be seen with certainty that there is no possibility that the adoption of this Ordinance and the establishment of the regulations hereby will have a significant effect on the environment. This Ordinance does not have the potential for causing such effects as it is a mechanism to ensure the collection of transient occupancy taxes, institutes a permit requirement to regulate the rental of homes on a short-term basis, and imposes limitations on such rentals in the City. This Ordinance will serve to reduce potential significant adverse environmental effects. The Ordinance is therefore exempt from review under the California Environmental Quality Act, pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

LEGAL REVIEW

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

Attachments:

1. Ordinance No. 19-0001
2. Ordinance No. 19-0002
3. Resolution No. 19-0011
4. PowerPoint Presentation