



## Legislation Details (With Text)

**File #:** 18-0526 **Version:** 1  
**Type:** Consent - Staff Report **Status:** Agenda Ready  
**In control:** City Council Regular Meeting  
**On agenda:** 12/4/2018 **Final action:**  
**Title:** Consideration of the City of Del Mar's Request to Prepare and File an Amicus Brief Opposing the Coastal Commission's Decision to Require Short-Term Rentals in Del Mar's Residential Districts, or as an Alternative, Join in an Amicus Brief Prepared by Another Jurisdiction to Support Local Control (Community Development Director McIntosh).  
AUTHORIZE

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Request Letter from City of Del Mar

Date	Ver.	Action By	Action	Result
12/4/2018	1	City Council Regular Meeting	continued	

**TO:**  
Honorable Mayor and Members of the City Council

**THROUGH:**  
Bruce Moe, City Manager

**FROM:**  
Anne McIntosh, Community Development Director

**SUBJECT:**  
Consideration of the City of Del Mar's Request to Prepare and File an Amicus Brief Opposing the Coastal Commission's Decision to Require Short-Term Rentals in Del Mar's Residential Districts, or as an Alternative, Join in an Amicus Brief Prepared by Another Jurisdiction to Support Local Control (Community Development Director McIntosh).  
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**RECOMMENDATION:**  
Staff recommends that the City Council direct the City Attorney to join in an amicus brief in support of the City of Del Mar in its writ action against the Coastal Commission (California Coastal Commission San Diego Superior Court Case No. 37-2018-00039254-CU-WM-CTL).

**FISCAL IMPLICATIONS:**  
If City Council chooses to move forward with an amicus brief the City Attorney will be prepared to provide legal cost estimates at the City Council meeting.

**BACKGROUND:**  
The City Manager received a letter from the City Manager of the City of Del Mar asking for support on a writ of mandate filed by Del Mar against the California Coastal Commission (CCC) (attached). The

case challenges the CCC position that it can compel coastal cities to allow short term rentals (STR) as a matter of right if those cities have a “permissive” zoning code that does not expressly prohibit STRs. “Permissive” zoning codes are traditional zoning codes that provide if a use is not specifically permitted, it is prohibited.

Del Mar, Manhattan Beach and scores of other cities have permissive zoning codes which do not expressly permit STRs, which means STRs are prohibited, until such time a zone text amendment that expressly permits STRs is adopted. Del Mar adopted an STR ordinance and applied for a Local Coastal Program (LCP) Amendment. The CCC denied the amendment because it was too restrictive. Similarly, Manhattan Beach recently requested an LCP amendment for the Downtown Specific Plan and the CCC conditionally approved the Plan only if the City allowed STRs as part of the Downtown Specific Plan. This resulted in the City rejecting the CCC’s conditions of approval and subsequently repealing the Downtown Specific Plan.

### **DISCUSSION:**

A number of coastal cities have expressed frustration about the CCC’s position on STRs. Nothing in the Coastal Act suggests that the CCC can interfere with a city’s local zoning regulations. Likewise, the CCC’s position on permissive zoning codes is contrary to established law. Del Mar asserts that the CCC’s actions impede a local government’s ability to establish land use regulations. This is a similar stance the Manhattan Beach City Council took when rejecting the decision of the CCC on the Downtown Plan.

### **ALTERNATIVES**

**Option 1:** Decline to join as amicus.

**Option 2:** Direct the City Attorney’s firm to prepare an amicus brief as requested by the Del Mar City Manager. This would incur additional legal expenses not covered by the existing retainer for general services.

### **ENVIRONMENTAL REVIEW**

This is not a project pursuant to CEQA.

### **LEGAL REVIEW**

The City Attorney concurs with the position taken by Del Mar.

### **Attachment:**

1. Request Letter from City of Del Mar