

# **RESIDENTS' SHORT-TERM VACATION RENTAL INITIATIVE PROPOSED CHAPTER 5.38 OF DANA POINT MUNICIPAL CODE**

## **Petition for Submission to Voters of Proposed Chapter 5.38 of the Dana Point Municipal Code**

### **To the City of Dana Point and its City Council (Legislative Body):**

We, the undersigned registered and qualified voters of the State of California, residents of the City of Dana Point, pursuant to Section 3 of Article XI of the California Constitution, present to the City of Dana Point and its City Council (Legislative Body) this Petition and request that the following Residents' Short-Term Vacation Rental Initiative with the proposed Chapter 5.38 of the Dana Point Municipal Code ("DPMC" or "Code") be submitted to the registered and qualified voters of the City of Dana Point for their adoption or rejection at a special election to be held pursuant to Section 1405, subdivision (b) of the California Elections Code. Or, in the alternative, at the next regular and/or statewide election pursuant to Section 1405, subdivision (a), of the California Elections Code.

### **The Following is the Full Text of the Proposed Measure:**

#### **The People of the City of Dana Point, California do ordain as follows:**

**Section 1 Name:** The ballot measure shall be known and may be cited as "Residents' Short-Term Vacation Rental Initiative" and shall be referred to as the "Act" or "Measure".

#### **Section 2 Statements of Purpose and Intent:**

**WHEREAS:** Dana Point consists of about seven square miles along the coast of the Pacific Ocean where millions of visitors have and will come to enjoy its coastline, its state, county and city parks, with abundant free or affordable parking, and to enjoy the friendly nature of its people and businesses.

**WHEREAS:** Many private businesses (hoteliers, inn-keepers, bed & breakfast proprietors, a campground, etc.) in Dana Point provide overnight accommodations at all price levels that support the goals of the California Coastal Act. In addition,

several large projects in the City could include hundreds of additional rooms, a hostel and other low-cost accommodations for visitors.

**WHEREAS:** STRs can negatively impact available housing stock and raise the cost of living for the approximately 38% of Dana Point residents who rent (do not own) their homes, and can affect the lives of low income and minority residents.

**WHEREAS:** The City has stated that the purposes of requiring STR regulations are to protect public health safety and welfare by limiting the total number of STRs which may exist, to safeguard the peace, safety and general welfare of the residents of Dana Point, their guests, and out of town visitors; and the need to eliminate excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking and the accumulation of refuse associated with STRs.

**WHEREAS:** On or about February 7, 2023, Dana Point enacted Chapter 5.38 of the Municipal Code, which creates the possibility for significant growth in the number and density of STRs within residential neighborhoods, including unlimited Home-Stay and Primary STRs (for entire homes or rooms in homes) in the coastal zone.

Through this Act, the registered and qualified voters of Dana Point, seek to codify Chapter 5.38 to protect housing stock; to prevent the potential proliferation of STRs that could endanger the public health, safety and welfare of the City and its residents; to preserve the quality and character of residential neighborhoods; and to prohibit public or private nuisances that might exist in the absence of regulations, including the specific nuisances associated with special events such as weddings, parties, bachelor/bachelorette parties, conferences, corporate meetings, or similar events.

### **Section 3:**

## **New Text of Dana Point Municipal Code, Chapter 5.38**

### **Chapter 5.38 SHORT-TERM VACATION RENTAL PERMITS**

5.38.010 Purpose

5.38.020 Definitions

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- 5.38.050 Application for Permit
- 5.38.060 Hosting Platform Responsibilities
- 5.38.070 Awarding Permits
- 5.38.080 Conditions of Permit Issuance
- 5.38.090 Short-Term Vacation Rental Operator Regulations
- 5.38.100 Violations/Penalties
- 5.38.110 Procedure for Imposition of Penalties/Revocation

### **5.38.010 Purpose:**

This Chapter shall establish permit requirements and regulations for all short-term vacation rentals ("STRs") within the City of Dana Point. Any conflicts with other codes, regulations, or permits (such as a Coastal Development Permit), etc. are to be resolved in favor of the provisions contained within this Chapter.

It is the intent of this Chapter to establish a permit requirement for all short-term vacation rentals within the City of Dana Point, that is intended to and shall apply to STRs located both within and outside of the City's Coastal Zone. The purpose of the regulations set forth herein is to protect public health safety and welfare by limiting the total number of STRs which may exist, and to require the owner or owners of a residential dwelling that operates as an STR to apply for and secure a permit that will protect housing stock ,and safeguard the peace, safety and general welfare of the residents of Dana Point, their guests, and out of town visitors by addressing known nuisances including excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse.

It is also the purpose of this Chapter to prohibit public or private nuisances that might exist in the absence of regulations, including the specific nuisances associated with special events such as weddings, parties, bachelor/bachelorette parties, conferences, corporate meetings, or similar events that might negatively impact nearby residents.

There are currently existing STR permits in the City. These existing STR permits are subject to the provisions of this Chapter.

The Act (as codified herein) allows a limited number of STR permits and prioritizes the categories of STRs that best minimize the loss of housing stock and reduce neighborhood nuisances arising from STR operations.

### **5.38.020 Definitions:**

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

- a. "Accessory dwelling unit (ADU)" shall mean an attached or a detached residential dwelling that provides complete independent living facilities for one or more persons and is located on a lot also containing 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 multiple family dwelling is or will be situated. An accessory dwelling unit also includes the following: (1) an efficiency unit; and (2) a manufactured home, as defined in Section 18007 of the Health and Safety Code.
- b. "Agent" shall mean a representative, if any, of the owner who performs actions such as management, bookings or advertising, hosting platforms such as Airbnb or VRBO, collectors or depositors of fees, payers of "TOT" to the City, vendors, cleaning and setup companies, or any person who acts in accordance with Section 5.38.040.
- c. "Bedroom" shall mean any habitable space in a dwelling unit other than a kitchen or living room that is intended for or capable of being used for sleeping, is at least seventy square feet in area, separated from other rooms by a door, and is accessible to a bathroom without crossing another bedroom.
- d. "Booking Transaction" shall mean any reservation or payment service provided by a person who facilitates a home-stay or vacation rental transaction between a prospective visitor and a host.
- e. "City Manager" shall mean the City Manager of the City of Dana Point or his/her designee.
- f. "Coastal Zone" shall mean the portion of Dana Point under the jurisdiction of the California Coastal Commission. The rest of the City is designated as the Non-Coastal zone.
- g. "Commercial Zone" shall mean as described in Municipal Code, Chapter 9.11.

- h. “Community Development Director” shall mean the Community Development Director of the City of Dana Point or his/her designee.
- i. “Dwelling Unit” or “Dwelling” shall have the same meaning as set forth in Section 9.75.050 of the Municipal Code. The number of Dwelling Units in Dana Point shall use the City of Dana Point General Plan 2021-2029 Housing Element (February 1, 2022) to establish the starting number for purposes of setting limits on STRs (16,172 Dwellings in Dana Point). The number of Dwelling Units shall be updated three years from the passage of this act by the Community Development Director based on statistical data available to the public.
- j. “Eligible Resident” shall mean any natural person who is the legal owner of the dwelling unit and uses that Dwelling Unit as his or her Primary residence.
- k. “Home-Stay Short-Term Rental” shall mean renting, for less than thirty (30) days of one or more bedrooms in a dwelling unit which is the primary residence of the owner of the home, while the owner lives on site during the visitors’ stay. A dwelling unit rented out for home-staying is referred to as a “Home-Stay”.
- l. “Host” shall mean any natural person who is an eligible owner of a dwelling unit offered for use as a home-stay.
- m. “Hosting Platform” shall mean a person who participates in the home-stay or vacation rental business by conducting any of the following: collecting or receiving a fee, conducting a booking transaction, offering advertising, using internet-based transactions or any medium of facilitation.
- n. “Junior Accessory Dwelling Unit” shall mean a unit that is no more than five hundred (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.
- o. “Lives On Site” shall mean a natural person who maintains a physical presence in the dwelling unit, including, but not limited to, sleeping overnight, preparing and eating meals, and engaging in other activities in the dwelling unit, of the type typically maintained by a natural person in the dwelling unit in which he or he is an eligible resident.

- p. "Mixed-Use Parcel" shall mean a parcel upon which the city's zoning permits commercial and residential uses to exist at the same time i.e., commercial on first floor and residential on upper floors. By way of example, this includes parcels located in the zoning districts in the city as defined by the Dana Point Zoning Codes Chapter 9.13.
- q. "Mixed-Use STR Permit" shall mean a permit for either a Primary STR or a multifamily Home-Stay STR located in a structure on a mixed-use parcel (Municipal Code chapter 9.13).
- r. "Multifamily Home-Stay Primary Short-Term Rental" shall mean an STR at a structure in which a multiple family dwelling (i.e., a duplex, triplex, etc.) lawfully exists, and at which all the following conditions also exist: (1) the property owner owns two (2) or more dwellings in the structure; and (2) the property owner resides in one (1) of the dwellings in the structure and such dwelling unit is the property owner's primary residence; and (3) one (1) of the dwellings owned by the property owner is used as an STR.
- s. "Non-Primary Short-Term Rental" shall mean an entire dwelling being rented when the dwelling is not the owner's primary and principal residence and who is not present during the renters' stay.
- t. "Permittee" shall mean the holder of an STR permit.
- u. "Person" shall mean any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, or organization of any kind.
- v. "Primary Residence" shall mean a dwelling which a permittee uses as his or her domicile and permanent principal home for legal purposes.
- w. "Primary Residence Short-Term Rental" shall mean an STR at a dwelling which is the property owner's primary and principal residence, as evidenced per the provisions hereof, which is being rented for STR purposes when the property owner is traveling or living elsewhere subject to the limitations stated in 5.38.030.
- x. "Priority Code" shall mean the rating assigned to categories of STRs.
- y. "Property Owner" shall mean a person who holds a recorded interest in a parcel upon which a dwelling exists which is used for, or proposed to be used for an STR. "Property owner" shall mean any person who, alone or with others, has

legal or equitable title to a dwelling unit. A person whose interest in a dwelling unit is solely that of a tenant, subtenant, lessee, or sublessee under an oral or written rental housing agreement shall not be considered an owner.

- z. "Residential Zone" shall be as described in Dana Point Municipal Code, Chapter 9.09.
- aa. "Short-Term Rental" or "STR" shall mean 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.
- bb. "STR Permit" shall mean a permit issued to the property owner to authorize use of a dwelling for STR purposes pursuant to this Chapter.
- cc. "STR Register" shall mean the official list of all permitted STRs currently operating in Dana Point, which shall be kept up to date weekly by Dana Point staff. The specifics of the STR Register requirements are set forth in Section 5.38.045 below.
- dd. "Transit Occupancy Tax" shall mean the fee paid to the city for a dwelling unit's use as an STR and is referred to herein as TOT.
- ee. "Vacation Rental" shall mean an STR as defined above.

### **5.38.030 Short-Term Vacation Rental Permit Limitations:**

- a) The total number of STRs to be permitted within the Coastal Zone shall be limited to no more than 1% of the total identified Dwelling Units within the Coastal Zone. The number of Dwelling Units that may be permitted within the Coastal Zone shall be adjusted every three years after the passage of this Act as the number of Dwelling Units changes.

- b) The total number of STRs to be permitted in the Non-Coastal Zone shall be limited to no more than 0.5% of the total Dwellings Units. The number of Dwelling Units in the Non-Coastal Zone shall be adjusted every three years after the passage of this Act as the number of Dwellings Units changes.
- c) Permits may be issued as set forth in this Chapter whenever the total number of STRs within and outside of the Coastal Zone are under the limits set forth above.
- d) When a parcel upon which a Dwelling Unit exists for which an STR permit has been issued is sold, the STR permit shall expire upon the date the title to such parcel transfers to the new owner(s), and the STR permit shall become invalid. Should the new property owner(s) desire to use any Dwelling Unit on the parcel as an STR, such new property owner(s) must apply for and receive a new STR permit from the City.
- e) **Priority Codes:** One goal of this Chapter is to utilize a Priority Code to grant STR permits for properties within and outside of the Coastal Zone that promote the purposes of this Chapter as stated in Section 5.38.010. Thus, as set forth below, STRs are listed by category from 1 to 7 with number 1 having the least possible negative impacts on residential neighborhoods and housing stock, and number 7 having the most possible negative impacts on residential neighborhoods and housing stock. Should an applicant be reapplying for an STR permit and have had a violation on record during the prior year, the application will be placed in the next highest numbered priority code.
  - 1. **Home-Stay STRs in COMMERCIAL and MIXED- USE zones** where the Dwelling is the owner's Primary Residence and where the owner is on-site during every rental. (See Chapter 9.11 and 9.13 of the Dana Point Municipal Code.)
  - 2. **Primary STRs in COMMERCIAL and MIXED-USE zones** shall mean an STR at a dwelling which is the property owner's primary residence, as evidenced per the provisions hereof, which is being rented for STR purposes when the property owner is traveling or living elsewhere, where the owner of the Dwelling is permitted to have ten (10) rental stays for no more than a combined total of sixty (60) days during the permitted year when the owner is not on-site during any rental.
  - 3. **Multifamily Primary STRs in COMMERCIAL and MIXED-USE zones** where the owner lives in the structure in a separate Dwelling Unit and is on-site during any rental.



4. **Home-Stay STRs in RESIDENTIAL zones (see Chapter 9.09 of the Dana Point Municipal Code)** where the Dwelling is the owner's Primary residence and the owner is on-site during any rental.
5. **Primary STRs in RESIDENTIAL zones** shall mean an STR at a dwelling which is the property owner's primary residence, as evidenced per the provisions hereof, which is being rented for STR purposes when the property owner is traveling or living elsewhere, where the owner of the Dwelling is permitted to have ten (10) rental stays for no more than a combined total of sixty (60) days during the calendar year when the owner is not on-site during any rental.
6. **Multifamily Primary STRs in RESIDENTIAL zones** where the owner lives in the structure in a separate Dwelling Unit and is on-site during any rental.
7. **NON-PRIMARY STRs in RESIDENTIAL, COMMERCIAL and MIXED-USE zones** where the Dwelling is not the property owner's Primary Residence and who is not on site during any rental.

The goals of this STR program are accomplished by using the Priority Code assigned to each category of STR to annually issue the limited number of STR permits within and outside of the Coastal Zone. Upon compliance with this Chapter, STR applications with the lowest numbered priority code will be issued permits prior to the issuance of permits for properties in a higher numbered priority code group.

When a priority code group has more STR applications for permits than would be allowed within or outside of the Coastal Zone, the STR permit will be issued to the applicant(s) via selection from a random drawing among applicants within that priority code group.

- f) Permits issued shall not exceed the limits set for STR permits within and outside of the Coastal Zone
- g) Notwithstanding the foregoing, if a parcel upon which a Dwelling exists for which an STR permit has been issued changes ownership through inheritance (death of an owner), or as a result of a family transfer that results in no new property tax assessment of the parcel, the STR permit may be transferred provided the new property owner(s) is/are family members of the prior property owner. In such circumstance, the new property owner may apply for an STR permit transfer. The STR permit transfer shall be subject to such requirements as may be imposed by the Community Development Director to confirm the new property owner(s) is(are) a family

member(s) of the prior property owner(s). Prior to the first use of any Dwelling on a parcel as an STR after a change of ownership as a result of an inheritance or other family transfer, an STR permit transfer must be approved by the city. The Community Development Director shall determine if a familial relationship exists, and shall base that decision on the totality of the facts of any given circumstance in a manner that carries out the intent of this provision consistent with applicable laws.

- h) Upon the effective date of this Chapter, STR permits shall be limited to one STR permit for all the Dwelling's property owner(s) (whether that owner is an individual, partial owner, trust, entity, etc.) without regard to the category of STR to which such STR permit applies (i.e., whether for a Home-Stay STR, a Non-Primary STR, a Multifamily STR or a Primary STR).
- i) An STR permit shall not be issued for a Dwelling located in a multiple family structure if issuance of such a permit would result in the creation of a "hotel", as defined by the Dana Point Zoning Code (i.e., six (6) or more guest rooms or suites located in a structure or group of structures). Additionally, properties with five (5) or fewer residential units that are located in a structure or group of structures, may only convert a maximum of one (1) unit into an STR, and properties with six (6) or more residential units that are located in a structure or group of structures, may only convert a maximum of ten percent (10%) of the total number of residential units into STRs.

### **5.38.040 Permit Holder/Agents:**

- a) STR permits shall be issued only to the legally designated property owner(s) of the parcel upon which a Dwelling exists that is proposed to be used as an STR. The property owner(s) shall be responsible for compliance with the provisions of this Chapter and the regulations pertaining to any STR permit.
- b) A property owner may retain an agent or a representative to comply with most requirements of this Chapter including the filing of an application for an STR permit, the management of the STR, and the compliance with the conditions of the STR permit. The property owner shall sign and notarize an agreement satisfactory to the Community Development Director demonstrating the creation of an agent relationship. The failure of an agent to comply with this Chapter or any STR permit condition shall be deemed non-compliance by both the property owner

and agent, and both shall be subject to any adverse action by the City related to a violation, including imposition of fines and STR permit revocation.

### **5.38.045 Permit Required—Permit Compliance:**

- A. No person shall rent, offer to rent, or advertise for rent a dwelling for use as an STR without a valid STR permit approved and issued by the City of Dana Point for the dwelling and listed on the City's STR Register of permitted STRs. The STR Register shall be published on the City's website and, subject to applicable laws, include for every STR currently permitted the following information: the address, permit number, the effective period of the permit, whether it is located within or outside the Coastal Zone, the priority code assigned, the property owner (name, address, phone number, email), agent or other responsible party if any (name, address, phone number, email), a telephone number at which the responsible party may be reached at all times, any substantiated violations on record for that STR location, and the TOT paid year to date or for the previous 18 months if prior permits were issued. The entries in the Register shall be arranged in the following order: alphabetical by street name, then on each street-by-street number and in addition by the unit number where multiple units exist at that street number address. When STR information on the Register changes, the STR Register must be updated by the City and posted on its website within 5 working days of the change.
- B. The Community Development Director shall report monthly to the City Council and the public on all enforcement procedures underway, including the violations, fines or permit revocations for the month and year to date. The monthly report shall contain a list of complaints, by STR, reported to Code Enforcement, the police department or to any outsourced or city administered hotline or other nuisance reporting service. The Community Development Director shall also post monthly the number of STR permits still available under the limits for the Coastal and Non-Coastal Zones, which could be awarded pursuant to 5.38.080.
- C. The Community Development Director shall use all available technology and reports from on-line platforms, when available, to actively locate and take action against unauthorized STRs operating in the City and report the results in the monthly report. The TOT income received by the City and enforcement costs incurred shall be reported quarterly and year-to-date, and published on the Dana Point website within 30 days after the end of each quarter.

- D. The reporting data from the hosting platforms, when submitted to the City, shall be published on the city's website.
- E. Every permittee shall be required to comply with the provisions of this Chapter whether the permittee's STR permit applies to a dwelling located within or outside of the City's Coastal Zone.

### **5.38.050 Application for Permit:**

The property owner of the parcel upon which a Dwelling exists that is proposed to be used as an STR shall submit an application by March 1<sup>st</sup> for an STR permit to the Community Development Director. The application for an STR permit shall be made upon forms provided by the City and shall contain the following information:

- A. The name, address, email, and telephone number of the property owner, and all persons or entities that are property owners of the parcel upon which a Dwelling exists that is proposed for use as an STR and for which the STR permit is requested.
- B. The name, address, email, and telephone number of the property owner's Agent, if any.
- C. The address of the Dwelling proposed to be used as an STR.
- D. Evidence of a valid transient occupancy tax registration certificate issued by the City in connection with the proposed STR.
- E. Proof of a general liability insurance policy, in force during the 12 month period of the permit, that recognizes the use of the property as an STR in the amount of one million dollars (\$1,000,000) combined single limit and an executed agreement to indemnify, defend, and save the City and California Coastal Commission harmless from any and all claims and liabilities of any kind whatsoever resulting from or arising out of the issuance of the STR permit or the use of the Dwelling to which the STR permit applies as an STR.
- F. In connection with an application for a Primary STR, the property owner shall provide evidence that the Dwelling proposed to be used as an STR is the Property Owner's Primary Residence which shall at a minimum include evidence that the Property Owner has filed for and received a homeowner's exemption for the Dwelling as part of

its most recent property tax assessment and a secondary form of evidence designating the dwelling as the property owner's domicile such as an income tax return, car registration, driver's license or similar official record satisfactory to the Community Development Director.

- G. In the case of an application for a Home-Stay STR, the Property Owner must be the person that intends to remain in residence during all rental stays for the entire duration of the permit. No home stay permit nor the responsibilities thereunder can be transferred to another person. Any changes to the information provided in the application must be reported to the Community Development Director within 30 days.
- H. In connection with an application for a Multifamily Home-Stay STR, the property owner shall provide evidence that one (1) of the Dwellings on the parcel where the proposed STR is located is the property owner's Primary Residence, which shall at a minimum include evidence that the property owner has filed for and received a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the dwelling as the property owner's domicile such as an income tax return, car registration, driver's license or similar official record satisfactory to the Community Development Director.
- I. Acknowledgement that the property owner (and Agent if applicable) received a copy of, reviewed and understands the regulations pertaining to the operation of an STR within the city.
- J. No permit shall be issued to any STR that is prohibited by any legal Homeowners' Association conditions, covenants, and restrictions ("CC&Rs") applicable to the parcel where the Dwelling to be used as an STR.
- K. Such other information as the Community Development Director deems reasonably necessary to administer this Chapter.
- L. Permits shall only be issued to the property owner of the parcel upon which a Dwelling exists that is proposed to be used as an STR. If multiple property owners exist, one (1) such owner may be designated as the Agent, subject to the provisions hereof related to Agents.

- M. Only one (1) STR permit, for one (1) Dwelling, shall be issued to any person or entity that meets the definition of a property owner hereunder; and, when an STR permit is issued for a Dwelling, it is deemed to be issued to all property owners of such Dwelling.
- N. Permits shall be issued and be placed on the STR Register on or before May 1<sup>st</sup> of each year and shall be valid for the period July 1 to June 30 of the following year. All those seeking to obtain an STR permit shall submit their application to the City by March 1.
- O. Permits can be issued during the year if available under the limits. Those permits shall be limited to priority code levels 1 through 6, and awarded by priority code, with a random drawing of applications within the highest numbered priority code if applications exceed the number allowed by limits. Any permit issued during the year after July 1 shall be in force from the date of issue until June 30 of the following year.
- P. The fee for issuance of all STR permits shall be established by the Community Development Director or the City Council, but not less than that in force on March 31, 2023. The permit fee for Home-Stay STRs and Primary STRs shall be 75% of the fee established for all other STRs

### **5.38.060 Hosting Platform Responsibilities:**

- 1) Hosting Platforms will require all listings for rental dwellings or rooms for rent in the City of Dana Point in zip codes 92624 and 92629 to identify a City permit number valid for the booking date(s), which shall be taken from the STR Register, in order for the Hosting Platform to advertise or list any such property on its on-line systems or any other form of advertisement.
- 2) Hosting Platforms shall be responsible for collecting all applicable TOT and remitting the same to the City by quarter or preferably by month if possible. The Hosting Platform shall be considered an agent of the host for purposes of TOT collections and remittance responsibilities as set forth in the City's Municipal Code.
- 3) Subject to applicable laws, Hosting Platforms shall disclose to the City on a quarterly basis each STR listing located in the City, the permit number, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing rental and the price paid for each stay.

- 4) The provisions of this Section shall be interpreted in accordance with all applicable State and Federal law(s), and will not apply if it is determined by the City, in writing with specific findings, to be in violation of, or preempted by, any such law(s).
- 5) Hosting Platforms shall only allow each owner to list one home or dwelling with no more than two listings per residence (one home may have two rooms available, for example). The Hosting Platform shall immediately remove listings that are in violation of this requirement.

### **5.38.070 Awarding Permits:**

- (a) Subject to the provisions in this Chapter, all Property Owners shall submit an application for an STR permit by March 1 of each year. On or before March 15 of each year, the City will announce the applications which have been provisionally selected to receive permits based on the priority system. The City will then ensure that requirements to operate as an STR have been met and can finalize the award of a permit and assign a permit number to be listed on the STR Register. On or before May 1, all STR permits will have been awarded and listed on the Register. All permits shall be valid for the period July 1 through June 30 of the following year.
- (b) In the case of STR permits to be issued for Primary STRs and Home-Stay STRs, the Dwelling proposed to be used as an STR will continue to be the property owner's primary residence for the duration of the permit and for which the property owner shall include evidence that the property owner has filed for and continues to receive a homeowner's exemption for the Dwelling as part of its most recent property tax assessment and a secondary form of evidence designating the Dwelling as the Property Owners domicile, such as an income tax return, car registration, driver's license or similar official record satisfactory to the Community Development Director.

### **5.38.080 Conditions of Permit Issuance:**

Permits issued pursuant to this Chapter are subject to the following conditions:

- A. Applications for a permit shall be submitted by March 1st of each year. Any information provided for a prior permit shall be updated and include a certification for insurance coverage as required for the permitted period.
- B. On March 1 the City will begin a selection of permits to be awarded for the following year. In the selection of permit awards two (2) Home-Stay STR permits and two (2) Primary STR permits, within Priority Code categories one through six, shall be reserved in both the Coastal and Non-Coastal zones to be awarded during the year after July 1<sup>st</sup>. The Priority codes shall be used to select STR permits to fill the allowed limits. See 5.38.030 (e).
- C. On March 15th of every year, the Community Development Director shall announce provisional winners of permits for the next year.
- D. The Community Development Director will promptly assure that provisional winners' applications are validated and any inspections required completed as soon as possible. On or before May 1st following adoption of the Act and each year thereafter on or before May 1st, permits will be finalized and granted to be valid for the period July 1st through June 30th of the following year. For priority codes 3 and 6, if there is more than one application to operate an STR in the same structure, Section 5.38.030 (i) will prevail and a random drawing will be held to determine which applicant is awarded the permit. Two or more city staff will be present during any drawing.
- E. The award of the reserved permits for Priority Codes 1 to 6 will begin on July 1 of each year when applications will be accepted. On the first workday of August or any month thereafter the reserved permits can be awarded per the Priority Code system (see 5.38.030 (e)). In the same manner any other permits that become available during the year can also be awarded monthly. All permits awarded after July 1 expire on the following June 30. Available permits shall be listed on the STR Register when they become available.
- F. All STR permits shall comply with the terms of this Chapter and the provisions of this Chapter are deemed to be included in all STR permits and will be verified before issuance of a permit. Permittees shall agree to the requirements in Section 5.38.045 regarding the STR Register and reporting information.
- G. The property owner (or agent if applicable) shall ensure that the STR unit complies with all applicable codes regarding fire, building and safety, and all other relevant laws and ordinances.



- H. Should a Permittee choose to use a Hosting Platform to advertise their STR, Permittee agrees to use platforms that submit TOT to the City and that fulfill the requirements pursuant to this Chapter.
- I. The property owner (or agent if applicable) shall provide proof that the STR to which the permit applies is not legally prohibited by any homeowners' association conditions, covenants and restrictions ("CC&Rs") or any other community standards/guidelines applicable to the parcel where the dwelling to be used as an STR is located.
- J. Concurrent with the issuance of the STR permit, City staff shall provide notice of the proposed action on the STR permit to all property owners and tenants within 100 yards of the parcel. The notice shall also provide the contact information for the property owner (and agent if applicable) 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.
- K. The dwelling for which an STR permit is requested must pass an initial inspection by the city, which will be documented, prior to STR permit issuance. The city may conduct additional inspections as deemed necessary or prudent at any reasonable time, including prior to subsequent renewals.
- L. The property owner shall provide a twenty-four (24) hour emergency contact that will be available to respond to issues at the STR.
- M. The STR must have and maintain a minimum of two (2) off-street parking spaces.
- N. The STR must have a visible house number easily seen from the street, day or night.
- O. All advertising for the STR shall include the City issued STR permit number in the subject line and in the description of the STR. In addition, all photographs, maps, and diagrams of the STR that are used for advertising purposes shall impose the city-issued STR permit number in the lower right-hand corner in a font, style, size, and color to be reasonably legible.
- P. The primary overnight and daytime renter, who shall also be residing as a guest in the STR during any STR rental period must be an adult twenty-five (25) years of age or older. This adult must provide a telephone number

to the property owner (or agent if applicable) and shall be accessible to the property owner by telephone at all times.

- Q. Prior to occupancy, the property owner (or agent if applicable) 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 property owner (or agent if applicable) 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 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 STR, along with a copy of this Chapter. 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.
- R. The property owner (or agent or hosting platform if applicable) shall rent the STR for a minimum stay of two (2) consecutive nights.
- S. 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 maximum daytime occupancy shall be limited to two (2) times the overnight occupancy and shall not exceed twenty (20) persons.
- T. 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. Parking for daytime guests cannot exceed 2 public parking places. The property owner must ensure a sufficient number of parking spaces are accessible to tenants to accommodate the maximum number of vehicles allowed.
- U. No on-site exterior signs are to be posted on a parcel advertising an STR or Vacation Rental at the location including on street signs.
- V. 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 and such containers shall be removed within 12 hours after collection per Chapter 6.10 of the Municipal Code. In the

event the property owner fails to comply with this provision, he or she shall be required to obtain walk-up trash service provided by the City's waste disposal franchisee and provide proof to the City of the same. The property owner shall provide sufficient trash collection containers and services to meet the demands of the occupants of the STR.

- W. 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 Chapter.
  - (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 buildings on the parcel.
  - (d) Notification that the occupant may be cited or fined by the City and/or immediately evicted by the property owner (or agent as applicable) for violating any and all applicable laws.
  - (e) The name of the property owner or agent, 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.
- X. The property 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 illegal drugs. Property

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.

- Y. The property owner or agent as applicable shall, upon notification that occupants or tenants of an 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 property owner or agent being notified of a complaint and prevent a recurrence of such conduct by those occupants or guests. In some instances, the property owner or agent 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 recurrence. A video taken of the disturbance will qualify as evidence of a violation.
- Z. No outside noise from the STR shall be heard during quiet hours of 10:00 p.m. to 8:00 a.m.
- AA. The property owner or agent as applicable shall include ADA information, if available, in all advertisements for the STR (e.g., stairs, signage, ingress/egress, parking, storage, utilities, showers and lavatories, air conditioning, etc.).
- BB. Advertisements, and information provided in the STR itself, shall disclose whether bicycles or other means of transport (scooters, skateboards, carpooling, rideshare, etc.) are available.
- CC. The Community Development Director shall have the authority at any time to impose additional standard conditions, applicable to all STRs, as necessary to achieve the objectives of this Chapter. Major changes to the STR program, including increasing the number of STRs allowed, shall be submitted to the voters for approval. No changes shall be made effective for STRs within the Coastal Zone until approved by the Commission and its Executive Director to ensure that the changes would comply with the requirements of the Coastal Act and the California Code of Regulations.
- DD. The Community Development Director shall have the authority to impose additional conditions on any STR 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 5.38.010.

EE. The property owner or agent as applicable shall maintain a valid transient occupancy tax registration certificate issued by the City for the STR, and shall remit transient occupancy tax as required by Chapter 3.25 of the Municipal Code.

### **5.38.090 Short-Term Rental Operator Regulations:**

The following are additional regulations and clarifications applicable to all Property Owners or Agents, if applicable, for the operation of STRs. These additional regulations may be updated periodically by a vote of the registered voters of Dana Point for clarification of situations that may develop based on the implementation of this Chapter within the City.

- A. No person shall rent, offer to rent, or advertise for rent a dwelling for use as an STR if such dwelling is an accessory dwelling unit, junior accessory dwelling unit, created as part of single-family residential duplex (as defined by Zoning Code Section 9.72), or designated as an affordable housing unit, and no STR permit shall be issued for any such dwelling.
- B. Except as allowed in Section 5.38.030, subdivision (a) and (b), no person shall rent, offer to rent, or advertise for rent a Dwelling in a commercial or mix-use zoning district for use as an STR unless residential uses are allowed, including, but not limited to, detached single family dwellings, condominiums, duplexes, triplexes, townhomes, and multiple family dwellings, and no STR permit shall be issued for a dwelling that does not meet this criterion.
- C. In no instance shall an STR Permittee allow the use of an on-site camper, RV, or tent by renters as part of the STR use on a parcel.
- D. Notwithstanding any other provision of this Chapter to the contrary, the property owner of a Home-Stay STR or a Multifamily STR shall be present at the parcel upon which the STR is located during the rental period between the hours of 8:00 p.m. to 8:00 a.m. and during any events held at the STR
- E. The penalties for violations imposed per subsections above, or per the Municipal Code, shall be the responsibility of the Property Owner, and/or the Agent if applicable, and are issued per day and per violation.

- F. Hosting Platforms or other rental services shall not complete any booking transaction for any short-term rental unless it is listed on the City's STR Registry of permitted short-term rental units at the time the Hosting Platform or rental service receives a fee for the booking. A violation would subject the platform or rental service to fines to be determined by the Community Development Director.
- G. A Primary STR shall be subject to the following: A Property Owner to whom an STR permit for a primary residence STR is issued shall be limited to renting the residence ten (10) times and a total of sixty (60) days during the period for which the permit applies. Compliance will be monitored, by among other things, the TOT submittals to the City and such other means as deemed necessary and appropriate by the Community Development Director.

### **5.38.100 Violations/Penalties:**

Any violation of this Chapter, any relevant provision of the Municipal Code, or any permit condition, including any of the following, shall constitute a nuisance (public or private) and a violation for which the penalties specified in this Section may be imposed, or for which the STR permit may be revoked:

- (1) The Property Owner and/or agent has failed to comply with any standard conditions which are part of an STR permit;
- (2) The Property Owner and/or Agent has failed to comply with conditions imposed by the Community Development Director on an STR permit;
- (3) The Property Owner and/or agent has willfully violated the provisions of this Chapter;
- (4) The Property 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;
- (5) The Property Owner and/or Agent has failed to comply and pay the TOT or submit a report as required by this Chapter within the required time limit;

(6) The Property Owner was found to be operating as an STR without a permit and without paying the TOT.

The penalties for violations imposed for violations of the above provisions, or per the Municipal Code, shall be the responsibility of the Property Owner, and/or the Agent if applicable, and are issued per day and 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 thereafter be ineligible to receive an STR permit for any category of STR to be operated in Dana Point for 3 years.
- (4) If found to be operating as an STR without a permit, the Property Owner shall be thereafter ineligible to receive an STR permit for any category of STR to be operated in Dana Point for 3 years.
- (5) Hosting Platforms that fail to comply with this Chapter may be subject to a fine as determined by the Community Development Director.

In addition to the rights and remedies available to the City and Community Development Director, a private right of action is hereby adopted to allow any Property Owner or resident of the City to file an action in court for any violation(s) of this Chapter, including, among other things, the right to seek damages, injunctive relief and/or to abate a public or private nuisance. The prevailing party in any such private right of action shall be entitled to recover their reasonable attorney fees and costs.

### **5.38.110 Procedure for Imposition of Penalties/Revocation:**

Penalties shall be imposed, and STR permits shall be revoked, in the manner provided in this section. The Community Development Director shall conduct an investigation whenever he or she has reason to believe that a Property Owner (or Agent as applicable) has committed a violation described in this Chapter or within 2 weeks of police or credible individuals notifying the City of a violation. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Community Development Director shall issue written notice of intention to impose a penalty and/or revoke the STR permit. The written notice shall be served on the Property Owner, and Agent if applicable and all property owners within 200 feet, and shall specify the facts which, in the opinion of the Community Development Director, 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 STR permit will be revoked within thirty (30) days from the date the notice is given unless the Property Owner, or Agent if applicable, files a timely objection or appeal with the City Clerk. During any appeal no new stays shall be booked.

#### **Section 4 Implementation:**

The City Council is hereby authorized and directed, to the extent necessary, to amend any and all plans, zoning codes, ordinances, maps, policies, permits, etc. to implement this Act and gain approval of the California Coastal Commission for portions of this Act that pertain to properties that are within the Coastal Zone as soon as possible and in the manner and time required by any applicable state law, to ensure consistency between the policies adopted in this revised Chapter 5.38 and other elements of the existing laws and policies.

#### **Section 5 Adoption Date and Effective Dates:**

If the City Council approves this Act/Measure, or if a majority of the voters pass this Act, it shall become a valid enactment of the City, binding on the City Council and all other City officials, as of the earliest date allowed by law. Any changes to the "Act" in the future will require approval by a vote of the voters of Dana Point in a municipal election.



## **Section 6 Competing Measures:**

If the Act and another measure on the same subject matter appear on the same ballot, and a majority of the voters vote in favor of both measures, but this measure receives more votes than the other measure, this measure alone shall become valid, binding and adopted in its entirety, and the other measure shall be null and void in its entirety. If a majority of the voters vote in favor of both measures but this measure receives less votes than the other measure, only those provisions of the other measure that are in direct and irreconcilable conflict with the provisions of this measure shall control, and all other provisions of this measure shall become valid, binding and adopted. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure.

## **Section 7 Future Amendments:**

This Act may be amended or rescinded only by a vote of the voters of Dana Point at a municipal election.

## **Section 8 Severability:**

This Act shall be interpreted so as to be consistent with all federal, state and local law, rules and regulations, including the Local Coastal Program. If any section, subsection, subdivision, clause, sentence, phrase or portion of this Act is declared unconstitutional or invalid by a court of competent jurisdiction, the remaining sections, subsections, subdivisions, clauses, sentences, phrases and portions shall remain in full force and effect, and to this end the provisions of this Act are severable. The voters thus declare that they would have passed all sections,

subsections, subdivisions, clauses, sentences, phrases and portions of this Act without the sections, subsection, subdivision, clause, sentence, phrase or portion held unconstitutional or invalid.