

# **SOUTH COAST HOMEOWNERS ASSOCIATION**

## **ANNUAL LEGISLATIVE FORUM**

February 20, 2018



The statements set forth below are provided to assist participants in following the program. They should not be interpreted as absolute statements of law. The actual application of any statute or court decision is dependent upon the facts and circumstances presented in each case.

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## New Legislation

### Annually, Association Management Companies Must: (1) Disclose Referral Fees and; (2) Confirm Documents Provided Are the Property of the Association

AB 690; Business and Professions Code § 11504

A. **Annually** management companies have been required to disclose to Associations that set forth in *Business and Professions Code § 11504 & Civil Code § 5375*.

B. As amended, *Business and Professions Code § 11504* now requires the following additional disclosures to the Board:

1. Management companies now must also disclose to the Board whether they receive a referral fee or other monetary benefit from a third-party, who distributes for the management company those documents required to be distributed by *Civil Code § 5300* and;

2. Management companies must make an affirmative representation to the Board that the documents provided to a member or potential member, under the provisions of *Civil Code § 4528*, and/or *Civil Code § 5300*, are the property of the Association, not the management company.

### Before Contracting to Manage an Association, Management Companies Must Disclose Fees & Profit Sharing Agreements Vendors

AB 690; Civil Code § 5375 (d) (e)

A. **Not more than 90 days before** entering into a management contract, management companies must make certain disclosures regarding identification of owners, licenses held and professional certifications.

B. Management companies now must also disclose:

1. All businesses and companies which the management company has any ownership in;

2. Profit sharing agreements or other monetary incentives provided to the management company and;

3. Whether the management company receives any fee or monetary compensation from a third-party vendor who distributes documents to the Association for the management company.

**Disclosures Required When Management  
Companies Present Bids for Services**

AB 690; Civil Code § 5375.5

- A. When presenting a bid for services to an Association, management companies must disclose in writing any actual conflict of interest.
- B. For purposes of *Civil Code* § 5375.5, a conflict of interest exists when:
  - 1. A management company receives a referral fee or other monetary benefit from a business or company providing products or services to an Association; or
  - 2. A management company has any ownership interest or profit-sharing agreement with service providers recommended to, or used by, the Association.

**Obligation of Management Company to Provide Documents**

AB 690; Civil Code § 5376

- A. If a management company is obligated, under its management contract, to provide those documents required to be provided to an owner under the provisions of *Civil Code* § 4530, it shall do so.
- B. This Section (5376) shifts the burden from the Association to the management company to provide the required documents.

**The Form, *Charges for Documents*, Has Been Revised**

AB 690; Civil Code § 4528 & 4530

- A. If requested by an owner demanding production of Association documents under *Civil Code* § 4530, the Association shall provide a schedule of the costs to produce the requested documents.
  - B. The schedule of costs must be set forth on the form, *Charges for Documents*, in the format required by *Civil Code* § 4528.
  - C. The form required by *Civil Code* § 4528 (*Charges for Documents*) has now been revised.
- Revised form, *Charges for Documents*, is attached.

**The Form, *Charges for Documents*, Now  
Must be Distributed Annually to the Owners**

AB 690; Civil Code § 5300 (b) (12)

- A. The form, *Charges for Documents*, must be provided annually to the owners.
- B. The form, *Charges for Documents*, must be distributed with the *Annual Budget Report*.

Revised form, *Annual Budget Report*, is attached. On that form, it is stated that there is attached the form *Charges for Documents*.

**Owner Contact Disclosure to Association**

AB 1412; Civil Code § 4041

- A. Annually Owners are required to disclose to their Association the information required by *Civil Code* § 4041.
- B. At least 30 days prior to distributing the Annual Budget Report, which must be distributed not less than 30 days and not more than 90 days before the end of the fiscal year, Associations must remind Owners to provide the information required by *Civil Code* § 4041.
- C. Section 4041 has now been amended to state:
  - 1. If an Owner fails to provide the information requested, the last address provided will be deemed the property address for the Owner; or
  - 2. If no address has ever been given, it is presumed that the Owner's Unit is deemed to be the Owner's address of record.

Revised form, *Owner Contact Information*, is attached.

**Officer & Director Immunity for Mixed Use Developments**

AB 1412; Civil Code § 5800

A. *Civil Code* § 5800 provides immunity to Officers and Directors of **residential** Common Interest Developments for monetary damages arising from personal injury and property damage where:

- 1. They have acted in good faith; and
- 2. The Association carries the required levels of insurance.



## New Cases

### *Isaac Castillo v. Cinnamon Tree HOA* (2017) 4th Appellate District [not published]

[Criminal Liability Case]

- A. Associations are not insurers against all criminal conduct that may occur within a Complex.
- B. Associations have a duty to prevent reasonably **foreseeable criminal acts that are likely to occur absent precautionary measures.**
- C. The greater the financial burden the more foreseeable the criminal act must be.

### *Ocean Window HOA v. Spataro* (2017) 4th Appellate District [not published]

[Amending CC&R's /Short Term Rental Case]

- A. When Amending CC&R's, the issue is not whether the amendment is necessary. The issue is whether the amendment is reasonable.
- B. Short Term Rental Restrictions (i.e. rentals for a period of less than 30 days, also known as vacation rentals) are deemed reasonable where it is established that:
  - 1. A large percentage of an Association's complaints concern the conduct of Short-Term Renters versus other occupants; and/or
  - 2. Short Term Rentals lead to increased costs for an Association.

### **Dealing with Short-Term Rentals**

- A. Many Associations are, or will be, faced with Short-Term Rentals.
- B. If an Association is opposed to Short-Term Rentals that does not necessarily mean an Association needs to amend its CC&R's to prohibit Short-Term Rentals.
- C. The City of Santa Barbara, Goleta and Carpinteria have adopted zones where Short-Term Rentals are prohibited or strictly governed.
- D. Associations that do not believe local ordinances will provide sufficient protection from Short-Term Rentals should consider amending their CC&R's.

**Walters v. Cowpet HOA**  
**(2017) 853 F. 3d 96**

[Service Animal Case]

- A. When a resident requests an accommodation for a disability, unless the disability and accommodation requested are obvious, an Association can and should take the following steps:
1. Confirm the nature and extent of the disability to ensure the individual is disabled as defined by the Federal Fair Housing Act, Americans with Disabilities Act and/or the California Fair Employment and Housing Act.
  2. Confirmation can be done by way of a properly drafted *Medical Provider's Certification Letter*.
  3. The letter should confirm: (a) the qualifications of the medical provider to provide the letter; (b) that the applicant is disabled as defined by federal and/or state law; (c) the need for the accommodation that is being prescribed by the Medical Provider and; (d) that the accommodation, if granted, will assist the applicant in using and enjoying their Unit.
  4. If an Association has no reason to dispute the authenticity of the letter, the qualifications of the medical provider, and the need for the requested accommodation, then the Association should consider granting the requested Accommodation.
  5. If the Association has legitimate grounds to question the authenticity of the letter, the qualifications of the medical provider, or the need for the requested accommodation, then further inquiry should be made.
- B. An accommodation cannot impose an undue financial or administrative burden on an Association.
- C. The Fair Housing Act (42 USC 3617) makes it unlawful for anyone to intimidate, threaten or interfere with any person exercising their right under the Fair Housing Act.
- D. An Association is obligated, under the provisions of Civil Code § 4760 to allow owners to make alterations to their Unit, and the public way leading to their Unit, at the Members expense, to facilitate access for persons who are blind, visually handicapped, deaf or physically disabled.



## CHARGES FOR DOCUMENTS

### THIS DOCUMENT IS PROVIDED TO YOU AS REQUIRED BY CALIFORNIA CIVIL CODE Sections 4525 & 4528

CHARGES FOR DOCUMENTS PROVIDED AS REQUIRED BY SECTION 4525\*

The seller may, in accordance with Section 4530 of Civil Code, provide to the prospective purchaser, at no cost, current copies of any documents specified by Section 4525 that are in the possession of the seller.

A seller may request to purchase some or all of these documents, but shall not be required to purchase ALL of the documents listed on this form.

Property Address: \_\_\_\_\_

Owner of Property: \_\_\_\_\_

Owner's Mailing Address: \_\_\_\_\_  
(If known or different from property address.)

Provider of the section 4525 Items:

Print Name	Position or Title	Association or Agent	Date form Completed
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Check or Complete Applicable Column or Columns Below:

DOCUMENTS	CIVIL CODE SECTION	FEE FOR DOCUMENT	Not Available (N/A), Not Applicable (N/App), or Directly Provided by Seller and confirmed in writing by Seller as a current document (DP)
Articles of Incorporation or statement that not incorporated	4525(a)(1)		
CC&R's	4525(a)(1)		
Bylaws	4525(a)(1)		
Operating Rules	4525(a)(1)		
Age restrictions, if any	4525(a)(2)		
Rental restrictions, if any	4525(a)(9)		
Annual budget report or summary, including reserve study	5300 and 4525(a)(3)		



Assessment and reserve funding disclosure summary	5300 and 4525(a)(3)		
Financial statement review	5305 & 4525(a)(3)		
Assessment enforcement policy	5310 and 4525(a)(4)		
Insurance summary	5300 and 4525(a)(3)		
Regular assessment	4525(a)(4)		
Special assessment	4525(a)(4)		
Emergency assessment	4525(a)(4)		
Other unpaid obligations of seller	5675 and 4525(a)(4)		
Approved changes to assessments	5300 and 4525(a)(4), (8)		
Settlement notice regarding common area defects	4525(a)(6), (7), and 6100		
Preliminary list of defects	4525(a)(6), 6000, and 6100		
Notice(s) of violation	5855 and 4525(a)(5)		
Required statement of fees	4525		
Minutes of regular meetings of the board of directors conducted over the previous 12 months, if requested	4525(a)(10)		

Total fees for these documents: \$ \_\_\_\_\_

\*The information provided by this form may not include all fees that may be imposed before the close of escrow. Additional fees that are not related to the requirements of Section 4525 may be charged separately.

**"Caution"**

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## ANNUAL BUDGET REPORT

Unless the Governing Documents of the Association impose more rigid standards, within 30 to 90 days before the end of the Association’s fiscal year, California Civil Code section 5300(a) requires the Association to distribute an *Annual Budget Report* to the Members containing the information specified in California Civil Code section 5300 (b) (1) – (9).

Pursuant to California Civil Code section 5320(a)(2), all Members of the Association are hereby notified that wherever in this *Annual Budget Report* there is reference to a “summary” of a report or document, any Member may request a complete copy of the summarized report or document by contacting the Association’s Manager as follows:

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The *Annual Budget Report* for the Association follows:

### **I** **Pro Forma Budget**

Pursuant to California Civil Code section 5300(b)(1), the Association’s *Pro Forma Budget*, showing the estimated revenue and expenses on an accrual basis must be provided. A copy of the *Pro Forma Budget* is attached hereto.

### **II** **Summary of Reserves**

Pursuant to California Civil Code section 5300 (b)(2), a summary of the Association’s reserves, prepared pursuant to California Civil Code section 5565, must be provided to the Members. A summary of the Association’s reserves, prepared in the format required by California Civil Code section 5570(a), is attached hereto entitled *Assessment and Reserve Funding Disclosure Summary*.

California Civil Code section 5565(a) also requires there be provided an inventory of the major components the Association is responsible for maintaining and/or replacing together with the current estimated replacement cost, estimated remaining life and estimated useful life of such components. Attached hereto you will find the Association’s *Inventory of Major Components* as required by section 5565(a).

**III**  
**Reserve Funding Plan**

Pursuant to California Civil Code section 5300(b)(3), a summary of the reserve funding plan adopted by the Board, as described in subparagraph (5) of subdivision (b) of California Civil Code section 5550, must be provided to the Members of the Association. A summary of the Association's reserve funding plan prepared in the format required by 5570(a) is attached hereto entitled *Assessment and Reserve Funding Disclosure Summary*. A copy of the complete Reserve Study and Funding Plan may be obtained by contacting the Association's Manager or Board.

**IV**  
**Deferral of Repairs and/or Replacement**

Pursuant to California Civil Code section 5300(b)(4), a statement as to whether the Board has determined to defer or not undertake repairs and/or replacement of any major components with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement, must be provided to the Members of the Association.

The Association has / has not elected to defer repairs and/or replacement.  
Circle One

If the Association has elected to defer repairs and/or replacement of major components with a remaining life of 30 years or less, the components which the Association has elected not to repair and/or replace are as follows:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

The reason (s) the Board has elected not to repair and/or replace the identified items is as follows:

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**V**  
**Need for Special Assessments**

Pursuant to California Civil Code section 5300 (b)(5), a statement as to whether the Board, consistent with the reserve funding plan adopted pursuant to section 5560, has determined or anticipates the need for the levy of one or more special assessments must

be provided to the Members. Said statement, prepared according to the format required by California Civil Code section 5570(a), is found in paragraphs 3 and 4 of the attached *Assessment and Reserve Funding Disclosure Summary*.

## VI Funding of Reserves

Pursuant to California Civil Code section 5300(b)(6), a statement as to the mechanism or mechanisms by which the Board will fund reserves, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms must be provided to the Members of the Association. The Board will fund reserves consistent with that set forth in this *Annual Budget Report* as well as the *Assessment and Reserve Funding Disclosure Summary* attached hereto and the Reserve Study and Funding Plan adopted by the Board pursuant to California Civil Code sections 5550 and 5560. A copy of the complete Reserve Study and Funding Plan may be obtained by contacting the Association's Manager or Board.

## VII Procedure Used for Calculation and Establishment of Reserves

Pursuant to California Civil Code section 5300(b)(7), a statement addressing the procedure used for the calculation and establishment of reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain must be provided to the Members of the Association.

**Calculation of Reserves:** As provided in California Civil Code section 5570(b)(4), the reserve fund amounts required to be disclosed per California Civil Code sections 5565, 5570(a)(6) and 5570(a)(7) were calculated by computing the current cost of replacement or repair of each reserve component multiplied by the number of years each component has been in service, divided by the useful life of each component. These amounts were then totaled to yield the net depreciation as of the date of the reserve study for all listed reserve components the Association is obligated to maintain. The resulting total is listed as the "amount required in the reserve fund" per California Civil Code section 5570(a)(7) and shown in the attached *Assessment and Reserve Funding Disclosure Summary*. (Note, however, that California Civil Code section 5570(b)(4) also states: "This shall not be construed to require the board to fund reserves in accordance with this calculation.") The percent-funded estimates as shown in the *Assessment and Reserve Funding Disclosure Summary* are then calculated by dividing the Association's total reserve funds by the total depreciation to date of all reserve components as calculated above.

**Establishment of Reserves:** The procedure used for the establishment of reserves was determined by either of the following calculations:

1) As provided in California Civil Code section 5570(b)(4), determine annual depreciation per reserve component and thereafter fund reserves annually at a rate

corresponding to the annual depreciation for all reserve components, including funding prior shortfalls in reserve funding; or

2) Use a traditional funding method, such as cash flow analysis, to establish a proper reserve funding plan to pay for projected reserve component expenses during the required 30-year period.

Refer to the Association's actual reserve funding plan and most recent reserve study to determine which reserve funding method was utilized.

Pursuant to California Civil Code section 5300(b)(7), the rate of return on the cash reserves was computed at a sum not in excess of 2% above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

### **VIII** **Disclosure of Outstanding Loans**

Pursuant to California Civil Code section 5300(b)(7), the Association must disclose any outstanding loans it has with an original term of more than one year, including identification of the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired. The outstanding loans which the Association has, falling within the scope of California Civil Code section 5300(b)(7), are:

1. \_\_\_\_\_
2. \_\_\_\_\_

### **IX** **Summary of Association's Insurance Policies**

Pursuant to California Civil Code section 5300(b)(7), the Association must disclose to its Members a summary of the Association's property, general liability, earthquake, flood, and fidelity insurance policies. A summary of said policies is attached herewith entitled *Summary of Association's Insurance Policies*.

### **X** **FHA Certification**

Pursuant to California Civil Code section 5300(b)(10), when a Common Interest Development is a condominium project, the following statement must be provided describing the status of the Common Interest Development with respect to Federal Housing Administration Certification.

*"Certification by the Federal Housing Administration may provide benefits to members of an association, including an improvement in an owner's ability to refinance*

*a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.*

*This common interest development [is / is not / (circle one)] a condominium project. The association of this common interest development [is / is not] certified by the Federal Housing Administration. ”*

The Association believes the above FHA Certification disclosure, when made, was accurate. However, you can check the current statues of the Association’s FHA Certification yourself by contacting the US Department of Housing and Urban Development. Therefore, before relying on the above FHA Certification disclosure, you should check with U.S. Department of Housing and Urban Development to confirm the current statues of the Association’s FHA Certification.

## **XI** **VA Certification**

Pursuant to California Civil Code section 5300(b) (11), when a Common Interest Development is a condominium project, the following statement must be provided describing the status of the Common Interest Development with respect to Department of Veterans Affairs Certification.

*“Certification by the federal Department of Veteran Affairs may provide benefits to members of an association, including an improvement in an owner’s ability to refinance a mortgage or obtain secondary financing and an increase in the pool of potential buyers of the separate interest.*

*This common interest development [is / is not (circle one)] a condominium project. The association of this common interest development [is / is not (circle one)] certified by the federal Department of Veteran Affairs. ”*

The Association believes the above VA Certification disclosure, when made, was accurate. However, you can check the current statues of the Association’s VA Certification yourself by contacting the US Department of Housing and Urban Development. Therefore, before relying on the above VA Certification disclosure, you should check with U.S. Department of Housing and Urban Development to confirm the current statues of the Association’s VA Certification.

## **XII** **Distribution of Annual Budget Report**

Pursuant to California Civil Code section 5300(c), this *Annual Budget Report* is to be made available to the Members of the Association as required by California Civil Code section 5320. Section 5320 requires this Report to be individually delivered to the Members as required by California Civil Code section 4040.

\_\_\_\_\_ ASSOCIATION

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

**Notes**

To comply with California law, there must be attached to this *Annual Budget Report* the following:

- 1) *Pro Forma Budget*;
- 2) *Assessment and Reserve Funding Disclosure Summary*;
- 3) *Inventory of Major Components*; and
- 4) *Summary of Association's Insurance Policies*.
- 5) *Charges for Documents*

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## OWNER CONTACT INFORMATION

California Civil Code section 4041 requires that each Homeowners Association, not less than 30 days prior to making the annual disclosure required under California Civil Code section 5300, solicit from each Owner of a Unit in the Development the following information:

1. Please state the address of your Unit: \_\_\_\_\_  
\_\_\_\_\_

2. Please state the full and complete name of the owner (s) of the above noted Unit:  
\_\_\_\_\_

3. Please state the address or addresses to which notices from the Association are to be delivered: \_\_\_\_\_  
\_\_\_\_\_

4. Please state the secondary address, if any, to which notices from the Association are to be delivered: \_\_\_\_\_  
\_\_\_\_\_

5. Please state the name and address of your legal representative, if any, including any person with power of attorney or other person who can be contacted in the event of your extended absence from your Unit: \_\_\_\_\_  
\_\_\_\_\_

6. Please note whether the Unit is owner occupied, rented or vacant: \_\_\_\_\_

7. Please provide your phone number and email address: \_\_\_\_\_

After you have filled out the above information, please return this form to:

\_\_\_\_\_  
**Please Note: (1) If you fail to provide the information requested in paragraphs 3 and 4 above to the Association, the last address you provided to the Association will be deemed the address to which notices from the Association will be delivered or; (2) If you have never provided an address to the Association for delivery of notices, your Unit address will be deemed the address to which notices from the Association will be delivered Please fill out one form for each Unit you own.**

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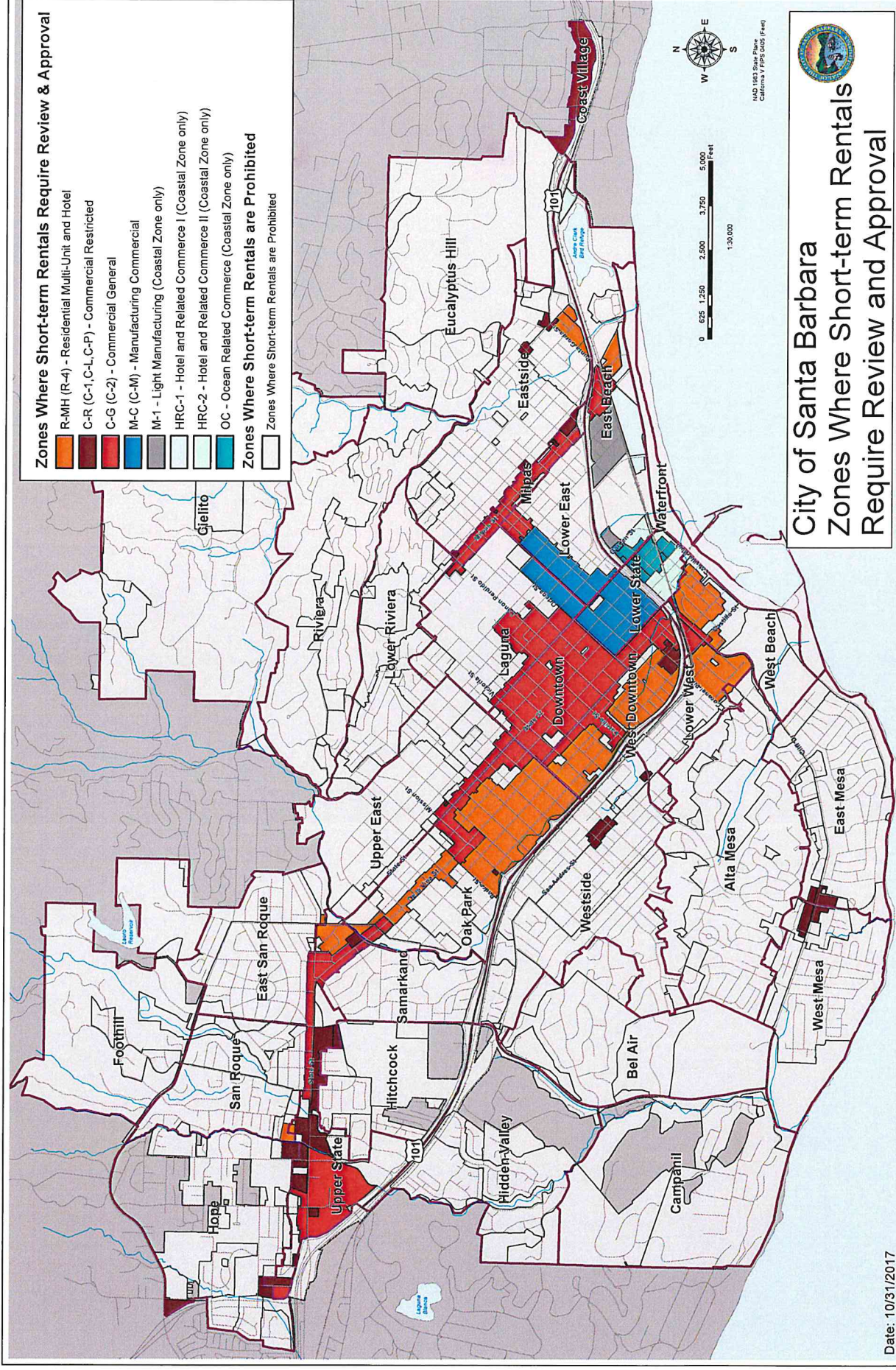


**Zones Where Short-term Rentals Require Review & Approval**

- R-MH (R-4) - Residential Multi-Unit and Hotel
- C-R (C-1, C-L, C-P) - Commercial Restricted
- C-G (C-2) - Commercial General
- M-C (C-M) - Manufacturing Commercial
- M-1 - Light Manufacturing (Coastal Zone only)
- HRC-1 - Hotel and Related Commerce I (Coastal Zone only)
- HRC-2 - Hotel and Related Commerce II (Coastal Zone only)
- OC - Ocean Related Commerce (Coastal Zone only)

**Zones Where Short-term Rentals are Prohibited**

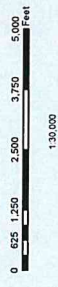
- Zones Where Short-term Rentals are Prohibited



**City of Santa Barbara  
Zones Where Short-term Rentals  
Require Review and Approval**



NAD 1983 State Plane  
California V FIPS 005 (Feet)



Date: 10/31/2017

Path: R:\GIS\WORK\MapServer\MapInfo\arcgis\shp\Review\Review\_ShortTerm\_Rentals\_Review\_Schedule\_11.17.2017.mxd

Map prepared by City of Santa Barbara Planning Division A/N, October, 2017



