

RESOLUTION NO. 2018-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, ADOPTING A POLICY FOR SHORT-TERM RENTAL HARDSHIP EXTENSIONS FOR THE TERMINATION AND AMORTIZATION OF SHORT-TERM RENTALS WITHIN THE CITY IN R-1 AND R-2 ZONES

WHEREAS, the City Council of the City of Palm Desert, California, did on the 10th day of May, 2018, considered a request by the City of Palm Desert adopting a policy for short-term rental hardship extensions for the termination and amortization of short-term rentals in the R-1 and R-2 zones; and

WHEREAS, pursuant to the authority granted to the City of Palm Desert ("City") by Article XI, Section 7 of the California Constitution, the City has the police power to regulate the use of land and property within the City in a manner designed to promote public convenience and general prosperity, as well as public health, welfare, and safety; and

WHEREAS, according to the California Environmental Quality Act (CEQA), the City must determine whether a proposed activity is a project subject to CEQA. If the project is subject to CEQA, staff must conduct a preliminary assessment of the project to determine whether the project is exempt from CEQA review. If a project is not exempt, further environmental review is necessary. The application has complied with the requirements of the "City of Palm Desert Procedure for Implementation of the California Environmental Quality Act," Resolution No. 2015-75, in that the Director of Community Development has determined that the policy for short-term rental hardship extensions is exempt from CEQA review pursuant to Section 15061(b)3 in that the amendments to further regulate the use of short-term rentals will not have a significant negative impact on the environment; and

WHEREAS, the City Council of the City of Palm Desert, California, did on the 14th day of December, 2017, hold a duly noticed public hearing and approved staff's recommendation with clearly specified modifications, including elimination of certain Short-Term Rentals in R-1 and R-2 Zones in specified time frames; and

WHEREAS, the City Council of the City of Palm Desert, California has determined that the proposed policy, are consistent with the General Plan and applicable state law; and

WHEREAS, at said meeting, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, said City Council did find the following facts and reasons to exist to approve said resolution:

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palm Desert, California as follows:

SECTION 1. Adoption of Recitals. The City Council hereby adopts the foregoing recitals as its findings in support of the following regulations to add a hardship extension process and further finds that the following regulations, including the eventual elimination of certain Short-Term rentals in R-1 and R-2 zones are beneficial and appropriate to protect the health, safety and welfare of the residents and businesses of Palm Desert within the City limits.

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SECTION 2. Adoption of Policy for Hardship Extension. The City Council hereby adopts the Policy for Hardship Extensions attached hereto as Exhibit "A".

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Palm Desert, California, at its regular meeting held on the **10th** day of **May, 2018**, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

SABBY JONATHAN, MAYOR

ATTEST:

RACHELLE D. KLASSEN, CITY CLERK
CITY OF PALM DESERT, CALIFORNIA

Exhibit "A"

POLICY FOR HARDSHIP EXTENSIONS

PURSUANT TO PDMC SECTION 5.10.075

A. If an owner believes that termination of the short-term rental use by December 31, 2019, will not provide the owner a reasonable period of time within which to recover the costs that the owner reasonably invested for short-term rental use, and that such costs cannot be recovered once the short-term rental use is terminated, the owner may apply to the director of community development for a hardship extension. The duties and responsibilities of the director of community development under this policy may be performed by the director of community development's designee. The application for a hardship extension shall be made, processed, and acted on in accordance with the following provisions:

1. The department of community development will begin receiving applications for hardship extensions on June 1, 2018. An application will be reviewed for completeness and the owner will be notified of any deficiencies, or that the application is complete, within thirty (30) days. The city will endeavor to complete review, hear appeals and make a final determination within five (5) months of receipt of a complete application, assuming the owner reasonably cooperates in the process. Consequently, owners desiring a final decision by December 31, 2018 should have a complete application on file by no later than August 1, 2018. An extension of a Short-Term rental permit past December 31, 2019 will not be granted simply because an application for a Hardship Extension is pending

2. The owner shall sign the application under penalty of perjury. The application shall set forth the amount of additional time that the owner contends is necessary, beyond December 31, 2019, to recover the costs that the owner reasonably invested for short-term rental use and that cannot be recovered once the short-term rental use is terminated. The application shall fully set forth the owner's justification for such additional time and shall include, along with whatever other information the owner believes to be relevant, the following information.

(a) Internal Revenue Service Schedule E (Supplemental Income and Loss), Schedule C (Net Profit from Business (Sole Proprietorship), or a Schedule K-1 (Partner's Share of Current Year Income, Deductions, Credits, and Other Items) from Owner's federal income tax returns for the years since commencement of operation of the Short-Term rental.

(b) Depreciation Schedule from the most recent income tax year showing the depreciable basis in the short-term rental, as well as any depreciable improvements or assets used it the Short-Term rental.

(c) The date that the property was acquired by the owner, the price and other terms of the acquisition that materially affected the price, the closing escrow documents, and the purpose for which the property was acquired by the owner. If the property was acquired by a means other than an arms-length purchase (including without limitation a gift or inheritance), then the owner shall provide information concerning the most recent arms-

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length purchase involving the property and the fair market value of the property on the date of owner's acquisition.

(d) Finance terms of the short-term rental, if financed, documenting amount financed, interest rate and term of financing.

(e) Each use that the owner has made of the property since the owner's acquisition and the period of each such use, indicating the start and end date for each consecutive use, including each period of personal use, each period of compensated use by friends or other acquaintances, each short-term rental tenancy, each long-term rental tenancy, each period in which the property was put to some other use, and each period in which the property was left vacant and unused. The owner should also include the following information for each use period:

- (1) the number of days in each use period (end date less start date),
- (2) the amount of rent or other charges collected,
- (3) the amount of transient occupancy tax remitted to the city (if short-term),
- (4) the expenses directly associated with that period of use (including but not limited to commission fees).

(f) A detailed listing of expenditures made by the owner for capital improvements to the property for the purpose of putting the property to short-term rental use, since it was acquired, including the purpose of each expenditure, the amount, the date, the payee, and any other relevant information for each expenditure. The owner shall provide receipts, executed contracts, or other written proof of each expenditure.

(g) A detailed listing of expenditures made by the owner for capital improvements to the property other than those made for the purpose of putting the property to short-term rental use, since it was acquired, including the purpose of each expenditure, the amount, the date, the payee, and any other relevant information for each expenditure. The owner shall provide receipts, executed contracts, or other written proof of the each expenditure.

(h) A detailed listing of all expenditures, other than for capital expenditures, incurred by the owner for the purpose of putting the property to short-term rental use, including the purpose of each expenditure, the amount, the date, the payee, and any other relevant information for each expenditure. The owner shall provide receipts, contracts, or other written proof of each expenditure.

(i) A detailed projection of the income and expenses that are anticipated if the requested hardship extension is approved.

(j) An identification and description of any contract with a third party that commits the property to a future short-term rental use, including the dates of the committed use, the rent to be charged for the use, any other amount to be charged or paid (e.g., cleaning fees, commissions, transient-occupancy tax), and any other relevant

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information relating to the contracted future use. The owner shall provide written evidence of the contracts identified.

(k) An identification and description of any long-term commitment, whether a lease, mortgage, or other commitment, that has been made by the owner in reliance on the ability to use the property for short-term rental purposes. The owner shall provide written documentation for each such commitment.

(l) The fair market value ("FMV") of the short-term rental property within six (6) months of the application. The owner shall provide the factual basis and analysis substantiating the FMV, including comparable-sales information, income-approach elements, and cost-approach elements.

(m) A financial analysis demonstrating the amount of time that will be required for the owner to recover the costs reasonably invested for short-term rental use to the extent that such costs could not already have been reasonably recovered during the period of short-term rental use of the property and cannot be recovered once the short-term rental use is terminated. The analysis should identify reference sources for each item of data included and set forth the basis for each assumption made. The director of community development may provide the owner with a requested form or format for the financial analysis, and if provided, such form or format shall be completed and submitted by the owner.

3. After receiving a timely filed application, the director of community development may request any additional information that the director deems in his or her discretion to be reasonably necessary to ascertain relevant facts and circumstances; and, if requested, the owner shall provide the requested information within thirty (30) calendar days of the director's request, unless the director provides for a longer period. The director may deem an application to be incomplete, and return it to the owner for additional information, if the information set forth in the application or requested by the director is not provided in a manner that is comprehensive and understandable and that demonstrates how the factual information provided leads to the conclusion that the requested hardship extension is necessary. If an application is returned as incomplete, the owner shall correct the deficiencies and provide the requested information within thirty (30) calendar days of the director's request, unless the director expressly provides in writing for a longer period. The director, in his or her sole and absolute discretion, may waive one or more of the items listed above if he or she determines that the purpose and intent of this policy can be adequately achieved without the submittal of such item or items, but no waiver shall be effective unless in writing and signed by the director.

4. The burden shall be on the owner to establish the need and grounds for a hardship extension and to establish the reasonableness of the requested duration of the extension. An owner's failure to produce appropriate information or documentation shall be grounds for denying or reducing a hardship extension. Any alleged hardship that is based on action or expenditures not reasonably taken or made in light of the circumstances, shall not be grounds for an extension. Any expense for modification or improvement of the short-term rental property that was incurred after December 14, 2017, shall be presumed not to be reasonably incurred unless (i) the owner proves that the expense was reasonably necessary to operate the short-term rental in a way that would ultimately reduce the duration of the extension otherwise necessary by allowing for a quicker recovery of the owner's qualifying

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costs, or (ii) the expense was incurred to satisfy a requirement of the city for the continued use and operation of the property.

5. The director of community development shall approve an extension upon determining that the owner has shown that since the commencement of the use of the owner's property as a short-term rental property, the owner has not had and will not have by December 31, 2019, a reasonable period of time within which to recover the costs that the owner reasonably invested for short-term rental use, and that those costs cannot be recovered once the short-term rental use is terminated.

6. In determining whether the owner has had and will have a reasonable period of time for recovery of costs, the director of community development shall consider the period of time that the owner has had for short-term rental use since the owner began to incur such costs, as well as the time available for continued short-term rental use until December 31, 2019. In addition to the information contained in the application submitted by the owner, the director of community development may consider such additional competent and relevant information that the director may obtain by staff investigation or from other sources as the director may choose to consult or obtain; however, the director shall not be obligated to conduct any independent investigation or to seek information outside the scope of the owner's application. Upon request of the director, the owner shall be reasonably available to respond to questions or to review and discuss relevant information.

7. In considering the application and making a decision, the director of community development may take into account all relevant information that relates to the determination of whether the owner has had or will have a reasonable period of time to recover the costs that the owner reasonably invested for short-term rental use, and to the possibility that the costs can be recovered before the short-term rental use is terminated, including but not limited to any of the following matters:

- (a) The information submitted in the owner's application.
- (b) The period of time that the owner has had for short-term rental use since the owner began to incur such costs.
- (c) The amount of investment or original cost incurred by the owner.
- (d) The income potential of the property since it was allowed to be used for short-term rental purposes and the income actually received by the owner from short-term rental use since it was allowed to be used for short-term rental purposes.
- (e) Any amortization or depreciation of the improvements to the property that has been prepared for tax purposes and any tax benefit that the owner might have derived from claiming depreciation.
- (f) The extent of the owner's investment that is unique to the short-term rental use and does not serve any conforming use of the property.
- (g) The extent of the owner's investment that could not be recovered on sale of the property.

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(h) The owner's investment-backed expectations in light of current and pending regulation at the time that the investment was made.

(i) The replacement cost of improvements that might have been made that only serve the short-term rental use; and the length of time that the owner has had the benefit of the investment before the termination of the use.

(j) Any other information that bears on the reasonable period of time for the owner of a terminating short-term rental to recover the costs reasonably invested for short-term rental use.

8. A decision by the director of community development to deny an application for a hardship extension, in whole or in part, or to limit the duration of an extension to a shorter period than requested by the owner, may be appealed to the city manager. At the city manager's option, a hearing may be conducted by a hearing officer appointed by the city manager or the city manager may conduct her or his own independent review. The deadline for filing an appeal shall be thirty (30) calendar days after the date that the written notice of the director of community development's decision is mailed (via first class delivery) to the owner. Such an appeal may be filed only if the owner timely submitted a complete application to the director of community development for a hardship extension.

9. If appointed by the city manager, the hearing officer shall conduct an independent analysis of the information already submitted in the matter to the director of community development and, at the hearing officer's discretion, a hearing; however, neither the city nor the owner may submit additional information to the hearing officer other than that which was submitted to the director of community development in connection with the owner's application for hardship extension, except to the extent the information: (i) could not have reasonably been provided to the director of community development with the application; (ii) is necessary to rebut or respond to information submitted by the other party or any other person to the director of community development; or (iii) in response to a request by the hearing officer. The hearing officer's recommendation shall be based on all relevant information, including the categories of information set forth in this section. The burden shall be on the owner to establish the need and grounds for the hardship extension and to establish the reasonableness of the requested duration of the extension. Any hardship that is based on actions or expenditures not reasonably taken or incurred in light of the circumstances shall not be grounds for an extension based on the criteria provided in this section. The recommendation of the hearing officer shall be considered by the city manager, who may adopt or modify the recommendation of the hearing officer. Whether or not a hearing officer was appointed, the decision of the city manager shall be final.