

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING AMENDMENTS TO THE FULLERTON MUNICIPAL CODE TITLES 4 AND 15 TO REGULATE SHORT-TERM RENTAL USES CITYWIDE

LRP-2020-0008
APPLICANT: CITY OF FULLERTON

RECITALS:

WHEREAS pursuant to Fullerton Municipal Code (FMC) Section 15.72.020B the City Council of the City of Fullerton adopted a Resolution of Intention on December 15, 2015 authorizing a Zoning Ordinance amendment to develop regulations pertaining to short-term rentals.

WHEREAS the Planning Commission of the City of Fullerton has held a duly noticed public hearing, as required by law, for amendments to Title 15 of the Fullerton Municipal Code to develop regulations pertaining short-term rentals.

WHEREAS the recent growth in short-term rentals through online hosting platforms have been known to be associated with negative impacts, particularly in single-family residential neighborhoods.

WHEREAS while the City currently has regulations for boarding houses, bed and breakfast inns and hotels, short-term rentals are not a clearly defined use in the Municipal Code and the City currently does not prohibit people from renting out rooms in their homes, even in single-family zoning districts.

WHEREAS some cities are addressing complaints on a case-by-case basis, the City would like to take a proactive approach and develop regulations which protect the residential character of neighborhoods while still allowing for a limited number of short-term rentals.

WHEREAS the proposed code amendments will address the use of privately owned residential dwellings as short-term rentals by developing a regulatory framework, providing a mechanism for collection of transient occupancy taxes, and creating an enforcement and revocation process.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ORDAINS AS FOLLOWS:

1. In all respects as set forth in the Recitals.
2. The City Council finds as follows:

Finding: That the proposed Zoning Ordinance Amendment is consistent with the objectives of the Zoning Ordinance and General Plan.

Fact: The amendment is authorized by FMC Chapter 15.72. The City Council adopted a Resolution of Intention in 2015 to update the Municipal Code to regulate this use.

Goal 12, Policy 12.5 - Support programs and regulations pertaining to proactive code enforcement methods which reinforce the proper maintenance of properties, buildings and landscapes and adherence to applicable regulations.

Goal 1, Policy 1.8 – Support projects, programs, policies and regulations to evaluate and consider short- and long-term impacts of significant planning efforts or developments on nearby neighborhoods

Fact: The proposed amendments will allow a viable alternative lodging option for visitors and guests to the Fullerton Community while protecting the properties and neighborhoods in which they are located through regulatory standards.

Fact: The proposed amendments include a process and procedure for the revocation of a Short-term Rental Permit in cases where the operator fails to adhere to the regulations adopted and is operating a short-term rental in a manner that does not promote the health, safety or general welfare of the community.

THEREFORE, the City Council of the City of Fullerton does hereby APPROVE LRP-2020-0008 to modify Fullerton Municipal Code Titles 4 and 15 as follows:

SECTION 1: Title 15 of Fullerton Municipal Code (FMC) is hereby amended as follows:

Chapter 15.04, INTERPRETATION AND DEFINITIONS:

In Section 15.04.040, a new definition for short-term rental shall be added as follows:

Short-term Rental Unit – Shall mean a permanent dwelling or part of a permanent dwelling unit (single or multi-family) where lodging is provided for compensation for fewer than thirty consecutive days and can therefore be subject to applicable city land use regulations, permit/licensing requirements, fees and taxes.

In Section 15.17.020.A, the permitted uses table shall be amended to add Short-term Rentals as a permitted use in residential zones in alphabetical order as follows:

	Additional Requirements	R-1/ R-1P	R-2/ R-2P	R-G	R-3R	R-3/ R-3P	R-4	R-5	R-MH
OTHER USES									
Short-term Rental	15.55.020.F	X	X ¹	X ¹	X ¹	X ¹	X ¹	X ¹	
Notes: X: denotes that the use is permitted. ¹ Up to 10 percent of the units within a multi-family development, or a minimum of 1, whichever is greater may be utilized as a short-term rental subject to compliance with Section 15.55.020.F. A Conditional Use Permit (CUP) shall be required for multi-family developments requesting more than 10 percent of units to be used as short-term rentals.									

In Section 15.55.020 a new subsection (F) will be created which outlines applicability, regulations, application and review process, operational requirements, advertising and revocation for short-term rentals as follows:

15.55.020.F. Short-term Rentals.

1. Purpose

- a. The purpose of this section is to address the use of privately-owned residential dwellings as short-term rentals in order to develop a regulatory framework, provide a mechanism for collection of transient occupancy taxes (TOT) and create an enforcement and revocation process.

2. Definitions

- a. For purposes of this Section, the words and phrases below shall have the following meaning:
 - i. **AUTHORIZED REPRESENTATIVE**, shall mean any person, firm or agency specifically authorized to represent and act on behalf of a property owner and to act as an operator, manager and contact person of a short-term rental.
 - ii. **LOCAL CONTACT PERSON**, shall mean either the property owner or authorized representative who shall be identified on the short-term rental permit application and shall be available by phone at all times when the short-term rental unit is occupied to address nuisances and/or complaints.
 - iii. **GOOD NEIGHBOR GUIDELINES**, shall mean a document provided by the City to each applicant that summarizes the general rules of conduct, consideration and respect, including all provisions of the Fullerton Municipal Code and other applicable laws, rules or regulations pertaining to the use and occupancy of short-term rentals.
 - iv. **SHORT-TERM RENTAL PERMIT**, shall mean a permit issued by the Community and Economic Development Department that allows the use of a privately owned residential dwelling as a short-term rental unit pursuant to the provisions of this Chapter. Any applicant who has been issued a Short-term Rental Permit must also obtain a transient occupancy certificate and Business Registration required by Chapter 4 of the Fullerton Municipal Code.
 - v. **WHOLE-HOUSE RENTAL**, shall mean the use of a dwelling unit for the purpose of short-term rental where the property owner does not reside within the dwelling unit while it is utilized as a short-term rental.

3. Short-term Rental Permit and Renewal Required

- a. The owner or the owner's authorized representative is required to obtain a Short-term Rental Permit, Business Registration and have received instruction on completing the Transient Occupancy Tax application prior to renting or advertising the availability of a short-term rental unit.
- b. An issued Short-Term Rental Permit shall be valid for three years from the date issued unless revoked by the Community and Economic Development Director pursuant to this Chapter.

- c. A fee shall be charged for the review, issuance and renewal of the Short-term Rental Permit as established by City Council, but not to exceed the reasonable cost of providing the service.
 - d. A minimum of 30 days prior to the date of expiration of the Short-term Rental Permit, the applicant shall apply for renewal on a form provided by the City. The owner or owner's authorized agent shall update the information contained in the original permit application required per this Section, if any information has changed. The owner or owner's authorized agent shall sign a statement affirming that there is either no change in the information contained on the original permit application and any subsequent renewal applications or that any information that has been updated is accurate and complete.
 - e. Upon renewal of a property's Short-term Rental Permit, the owner or owner's authorized agent shall be required to provide notice to adjacent properties which includes the Local Contact Person information. Adjacent properties shall include all properties which share a property line with the subject property and the property(ies) directly across a street or alley from the subject property.
 - f. An application for permit renewal received after the expiration of the current permit shall be treated as an application for a new permit as set forth in this Section.
 - g. Any changes in the contact information for the Local Contact Person shall be provided to the adjacent properties and to the City within 72 hours of the change or before the property is next rented, whichever is sooner.
4. Maximum number of Whole-House Rentals permitted issued. To preserve single-family homes for use as long-term rentals (more than 30 days) or for home ownership, the City Council, by Resolution, shall establish a maximum number of Whole-House Short-term Rental Permits which may be issued in the City.
5. Short-term Rental Permit – Application
- a. The owner or the owner's authorized representative must submit the following information on a Short-term Rental Permit application form provided by the Community and Economic Development Department:
 - i. Contact information of the owner or authorized agent of the short-term rental unit for which the permit is to be issued.
 - ii. Contact information of a local contact person if not the owner or authorized agent.
 - iii. A site plan of the property and floor plan of the dwelling to be used for short-term rental which indicates the number and location of bedrooms in the short-term vacation rental unit.
 - iv. Indicate whether the short-term rental will be for whole-home rental, as that term is described, or rental of bedrooms with the owner residing on the property.
 - v. Payment of the application and processing fee established by City Council.
 - vi. Evidence of a valid Business Registration issued by the City for the separate business of operating a short-term rental.
 - vii. Written approval from the Property Owner and Homeowner's Association or Property Manager as applicable, authorizing the dwelling unit or portion of the dwelling unit to be used as a short-term rental.

- viii. Such other information as the Community and Economic Development Director deems reasonably necessary to administer this Section.
 - b. The Property Owner must complete the Transient Occupancy Tax application form in accordance with Title 4 of the Fullerton Municipal Code.
- 6. Procedure for review of application
 - a. A decision to approve or deny an application for a Short-term Rental Permit shall be made by the Director of Community and Economic Development or their designee.
 - b. Upon receipt of a completed application, the Community and Economic Development Director or their designee will mail notice of an applicant's request to properties which share a common property line with the subject property. The Director will consider any written comments received within ten calendar days of the mail of the notice, in his or her decision on the application.
 - c. If the Director determines that an applicant has satisfied the application requirements, and that the short-term rental complies with the provisions of this Chapter, the Director shall provide written notice to the applicant that the Short-term Rental Permit is approved or conditionally approved, subject to compliance with the conditions identified by the Director in the notice.
 - d. If the Director determines that a public hearing is warranted in order gather supplemental evidence to determine whether an applicant will adequately mitigate potential adverse impacts to the public health, safety, or welfare due to substantial concerns raised by neighbors, the Director shall notice a public hearing of the Planning Commission in accordance with Chapter with 15.76. The Planning Commission is authorized to deny, approve or conditionally approve the permit in accordance with the criteria set forth in this section. The Planning Commission's decision shall be final.
 - e. The applicant may appeal any Short-term Rental Permit denied by the Community and Economic Development Director to the Planning Commission pursuant to the provisions FMC 15.76.170.
 - f. Upon final approval of this ordinance by the City Council, the Community and Economic Director, or their designee, shall prepare written procedures to govern the initial application submittal period, process and prioritization of applications regarding the issuance of Short-Term Rental Permits.
- 7. Non-transferability. Short-term Rental Permits are not transferable to other properties or to future property owners or authorized agents of the subject property. If the residence is sold to a new owner, the permit is void and the new owner will need to apply for a new Short-term Rental Permit in their own name.
- 8. Separation Requirements for Whole-House Rentals
 - a. No more than one Short-term Rental Permit for Whole-House Rental shall be allowed within three-hundred feet of another Short-term Rental Permit for Whole-House Rental.
 - i. The 300-foot shall be measured as a lineal distance from the nearest property line to property line for houses located on the same street.
 - ii. For corner lots, the measurement shall be reduced to 150-feet and is measured as a lineal distance on both streets that the parcel has frontage on.

- iii. For any other non-regular street configurations, the Community and Economic Development Director shall determine the 300-foot measurement based on the intent of this separation provision.
 - iv. The Community and Economic Development Director may consider a whole-house rental within 300-feet of another whole-house rental (Director Determination) based on a determination that the reduced separation between whole-house rentals does not have the potential to negatively impact the surrounding neighborhood.
- b. For Short-term Rental Permits that are not Whole-House Rental, there is no separation required.
- c. Residential units within a multi-family residential development utilized for short-term rental shall not be subject to the whole-house rental separation requirements contained in this subsection.

9. Operational Requirements

- a. The owner or owner's authorized agent shall ensure that the short-term rental is used in a manner that complies with all applicable laws, rules and regulations pertaining to the use and occupancy of the subject short-term rental unit.
- b. While a short-term rental is occupied, a Local Contact Person shall be available for the purpose of responding to complaints regarding the condition, operation or conduct of occupants of the short-term rental unit or their guests.
- c. The owner or the owner's authorized agent shall, upon notification by the City of Fullerton that any occupant or guest of the short-term rental unit has committed violations of any applicable law, rule or regulation pertaining to the use and occupancy of the short-term rental, take appropriate action to immediately abate the disturbance as determined by the Community and Economic Development Director or applicable department.
- d. Failure to respond to notifications from the City of Fullerton regarding violations of the Municipal Code or any state law shall be grounds for revocation of the Short-term Rental Permit as well as any applicable legal or Code Enforcement actions pursuant to Title 6 of the Fullerton Municipal Code.

10. Good Neighbor Guidelines

- a. Short term rental owners or authorized agents shall be responsible for informing their renters of the Good Neighbor Guidelines. These Guidelines shall include, at a minimum:
 - i. Renter and/or guests of the short-term rental unit shall maintain the property free of debris, on-site and in the immediate vicinity.
 - ii. Trash cans shall be maintained in a clean and sanitary manner and shall not be placed on the street prior to 24-hours before pick up day and shall be promptly removed from the street following service.
 - iii. Quiet times shall be from 10:00 p.m. to 7:00 a.m. pursuant to the noise standards referenced in FMC Chapter 15.90.
 - iv. The renters and/or guests of the short-term rental shall not create unreasonable noise or disturbances, engage in disorderly conduct or violate provisions of this Code or any State law pertaining to noise or disorderly conduct.

- v. Parking for renters, guests and/or property owners shall be provided on-site within a legal garage, carport or driveway to the extent possible.
- 11. Non-Residential Uses Not Permitted. Weddings, auctions, commercial filming, unless permitted pursuant to Chapter 3.80 of the FMC, commercial functions, or other similar events that are inconsistent with the residential character of the neighborhood as determined by the City Manager are prohibited within a short-term rental.
- 12. Advertising. There shall be no visible on-site advertising of a short-term rental on the subject property.
- 13. Short Term Rental Permit – Modification / Revocation
 - a. The Director of Community and Economic Development is authorized to revoke or modify the conditions attached to the Short-term Rental Permit if at any time they determine that:
 - i. The applicant has provided materially false or misleading information in the application.
 - ii. The applicant is in violation of the Municipal Code or any state law.
 - b. The applicant shall be provided with written notice of such modification or revocation. The applicant may file an appeal to Planning Commission with the City Clerk within (10) ten calendar days of the date of mailing of the notice of modification/revocation. If no appeal is filed, the modification/revocation shall become effective upon expiration of the period for filing appeals.
- 14. Short Term Rental Permit – Enforcement
 - a. Any host violating any provision of this Section, any person other than a hosting platform who facilitates or attempts to facilitate a violation of this Chapter, or a hosting platform that violates its obligations under this Section, shall be guilty of an infraction, which shall be punishable by a fine not exceeding \$500, or a misdemeanor, which shall be punishable by a fine not exceeding \$1,000, or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment.
 - b. Any person convicted of violating any provision of this Chapter in a criminal case or found to be in violation of this Chapter in a civil or administrative case brought by a law enforcement agency shall be ordered to reimburse the City and other participating law enforcement agencies their full investigative costs, pay all back TOTs and remit all illegally obtained rental revenue to the City so that it may be returned to the home-sharing visitors or used to compensate victims of illegal short-term rental activities.
 - c. Any host who violates any provision of this Chapter, any person other than a hosting platform who facilitates or attempts to facilitate a violation of this Chapter, or a hosting platform that violates its obligations under this Section, shall be subject to administrative fines and administrative penalties pursuant to Chapters 6.01 of this Code.
 - d. Any interested person may seek an injunction or other relief to prevent or remedy violations of this Chapter. The prevailing party in such an action shall be entitled to recover reasonable costs and attorney's fees.

- e. The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding short-term rental listings located in the City, including, but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the short-term rental listings comply with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days from the date of service. A person that has been served with an administrative subpoena may seek judicial review during that 30 day period.
- f. The remedies provided in this Section are not exclusive, and nothing in this Section shall preclude the use or application of any other remedies, penalties or procedures established by law.

SECTION 2: Title 4 of Fullerton Municipal Code (FMC) is hereby amended as follows:

In Section 4.06, subsection (B) shall be added to include short-term vacation rentals as follows:

4.06.025 Residential rental units.

- A. Notwithstanding any other provisions of this title, every person or entity conducting, managing or carrying on the business of renting four or more residential housing units shall pay an annual registration tax of twenty-five dollars plus five dollars for each additional residential housing unit. (Ord. 2766 Section 2, 1991).
- B. **Notwithstanding any other provisions of this title, every person or entity conducting, managing or carrying on the business of renting a permanent dwelling or part of a permanent dwelling unit for the purposes of short-term rental as that term is defined in 4.92.020 shall pay an annual registration tax of twenty-five dollars.**

In Section 4.92, a new definition for Short-term Rental Unit shall be added as well as amendments to other pertinent definitions already contained with Title 4 as follows:

4.92.020 Definitions.

OPERATOR. The term "operator" means the person who is proprietor of the hotel **or short-term rental**, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

SHORT TERM RENTAL UNIT. The Term "Short-Term Rental Unit" means a permanent dwelling or part of a permanent dwelling unit (single or multi-family) where lodging is provided for compensation for fewer than thirty consecutive days and can therefore be subject to applicable city land use regulations, permit/licensing requirements, fees and taxes.

4.92.030 Tax imposed.

For the privilege of occupancy in any hotel **or short-term rental**, each transient is subject to and shall pay a tax in the amount of ten percent of the rent charged by the operator. The tax constitutes

a debt owed by the transient to the City which is extinguished only by payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel **or short-term rental** at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel **or short-term rental**. If for any reason the tax is not paid to the operator of the hotel **or short-term rental**, the Tax Administrator may require that such tax shall be paid directly to the Tax Administrator.

4.92.060 Registration.

Within thirty days after commencing business each operator of any hotel **or short-term rental** renting occupancy to transients shall register said ~~use hotel~~ with the Tax Administrator and obtain from him a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel **or short-term rental**;
- C. The date upon which the certificate was issued;

D. The words: "This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the transient occupancy tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel **or short-term vacation rental** without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."

SECTION 3: CEQA

The City Council finds that, pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA), the proposed ordinance is exempt from environmental review as there is no possibility that it would have a significant effect on the environment.

SECTION 4: SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5: The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law. This Ordinance shall become effective thirty days from and after its passage.

ADOPTED BY THE FULLERTON CITY COUNCIL ON _____.

Jennifer Fitzgerald
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

Date