

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON,  
CALIFORNIA, APPROVING AMENDMENTS TO FULLERTON MUNICIPAL  
CODE TITLE 15 REGULATING SHORT-TERM RENTAL USES CITYWIDE

LRP-2020-0008  
CITY OF FULLERTON

RECITALS:

WHEREAS pursuant to Fullerton Municipal Code (FMC) Section 15.72.020.B 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 City Council of the City of Fullerton held duly noticed public hearings, as required by law, on May 5, 2020, June 2, 2020, June 16, 2020, July 21, 2020, September 15, 2020 and October 20, 2020 for amendments to Fullerton Municipal Code Title 15 to develop regulations pertaining short-term rentals.

WHEREAS on November 2, 2020, City Council adopted Ordinance No. 3290 approving amendments to the Fullerton Municipal Code Titles 4 and 15 regulating short-term rental uses citywide which became effective on December 2, 2020.

WHEREAS on December 16, 2020 the City received notice from Attorney Jordan R. Sisson of Gideon Kracov stating his intention to file legal action against the City on behalf of several individuals and UNITE HERE Local 11 regarding the adequacy of the environmental analysis of the approved ordinance.

WHEREAS, the current City Council considered the legal challenge, re-examined the ordinance, and directed City staff to draft amendments for Planning Commission and then City Council consideration to amend the Ordinance in part to settle the lawsuit threat.

WHEREAS, on March 31, 2021, the Planning Commission recommended by a 4 – 1 vote (No: Castaneda) that City Council not amend Ordinance No. 3290 based on concerns regarding property rights and amendments to an ordinance to settle threat of legal action.

WHEREAS, the action by the Planning Commission is only a recommendation to the City Council who have final authority to either concur with the Planning Commission recommendation or not at their discretion.

WHEREAS, Ordinance No. 3290 would remain in effect should City Council not adopt the proposed ordinance.

WHEREAS the proposed code amendments address the current use of privately owned residential dwellings as whole-home short-term rentals by prohibiting any new whole-home rentals in the residential zones of the City and provide a reasonable amortization period for short-term rentals already operating with a permit. The amendments leave in place a regulatory framework for collection of transient occupancy taxes and create an enforcement and revocation process for short-term rentals in violation of City regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, ORDAIN 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: FMC Chapter 15.72 authorized the amendment. The City Council adopted a Resolution of Intention in 2015 to update the Municipal Code to regulate this use.

Fact: The amendment supports the following Fullerton Plan policies:

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

Finding: That the proposed Zoning Ordinance promotes the public health, safety and welfare of the community.

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.

Finding: That a one-year maximum amortization period for legally operating Whole-House Short-Term Rentals to cease being used as Whole-House Short-term Rentals is legally and factually sufficient to address and recoup any investment-backed expectations of property owners.

Fact: Single family and multi-family residences in Fullerton values and sales prices are based upon the use of those residences as homes for owners or tenants and any improvements made to such properties to facilitate their use as Whole-Home Short-Term Rentals enhance the value of the property for use as a long-term residential use in the same manner and to the same degree.

Fact: Current real estate prices, interest rates and demand ensure that owners of properties currently used as Whole-Home Short-Term Rentals can easily recoup their investment by selling those properties or renting them out to long-term tenants.

THEREFORE, the City Council of the City of Fullerton does hereby APPROVE LRP-2020-0008 to amend Fullerton Municipal Code Title 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 <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	
Notes: X: denotes that the use is permitted. <sup>1</sup> Up to 10 percent of the units, rounded to the nearest whole number, 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.									

Section 15.55.020 (F) will be amended to read 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. DIRECTOR, shall mean the Community and Economic Development Director.
  - iii. 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.

- iv. 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.
- v. 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 as required by Chapter 4 of the Fullerton Municipal Code.
- vi. 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. Except as otherwise provided in this Ordinance, 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. No Whole-House Rentals permitted.

- a. To preserve single-family homes for use as long-term rentals (more than 30 days) or for home ownership, Whole-House Short-term Rentals shall not be permitted in the City.
- b. Any Whole-House Short-term Rental already established as of the effective date of Ordinance No. XXXX, and which otherwise complies with the requirements of this Section, whose owner wishes to continue in operation during the amortization period provided in this subsection shall obtain a Short-term Rental Permit within 60 days of the effective date of Ordinance No. XXXX, which permit shall expire one year after the effective date of this Ordinance No. XXXX. Documentation demonstrating the existing operation of any property as a Whole-House Rental shall be required.
- c. Any and all Whole-House Short-term Rentals shall be discontinued and cease to operate as Whole-House Short-term Rentals upon transfer of the real property or by one year from the effective date of this Ordinance No. XXXX, whichever is sooner.

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 defined, 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 their 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 during Amortization Period
- 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, 300-foot measurement shall be 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. 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. Short-term Rental Permits that are not Whole-House Rental, do not have a separation requirement.

10. 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.

11. 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.

12. 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.

13. Advertising. There shall be no visible on-site advertising of a short-term rental on the subject property.

14. 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.

#### 15. Short Term Rental Permit – Enforcement

- a. Any Property Owner or Authorized Representative who violates any provision of this Chapter, who facilitates or attempts to facilitate a violation of this Chapter, shall be subject to administrative fines and administrative penalties pursuant to Chapter 6.01 of this Code.
- b. 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.
- c. 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: CEQA

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. The revised ordinance requires any existing whole-house rentals to obtain a permit and operate in compliance with the regulatory provisions of the Code, and to cease use as a whole-house rental by the end of a one-year amortization period. Restricting short-term rentals to dwellings that are occupied by the owner, and are subject to all regulations of the Code, ensures that such properties will maintain their residential character and they will not create negative environmental impacts on the community because there is no fundamental change in the use of the properties.

#### SECTION 3: 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 4: 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 \_\_\_\_\_.

\_\_\_\_\_  
Bruce Whitaker  
Mayor

ATTEST:

\_\_\_\_\_  
Lucinda Williams, MMC  
City Clerk

\_\_\_\_\_  
Date