

ATTACHMENT B

Chapter 5.95 SHORT TERM LODGING PERMIT

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5.95.005 Purpose and Findings.

The City Council of the City of Newport Beach finds and declares as follows:

- A. An ever increasing number of tourists renting short term lodging units is severely escalating the demand for City services and creating adverse impacts in residential zones.
- B. Several thousand dwelling units within residential zones near the City's beaches and harbor are rented for less than thirty (30) days with the vast majority of those rentals occurring during the summer when the demand for parking and City services is greatest.
- C. Many of the occupants of short term lodging units are permanent; residents of areas distant from Newport Beach and the City has no effective way to prevent occupants from continuing to violate provisions of the Municipal Code and Penal Code relating to noise, disturbances and disorderly conduct. The only effective way to minimize the problems associated with occupancy of short term lodging units is to impose responsibility on

the owner of the property, either personally or through an agent, to control the conduct of guests and occupants.

D. Numerous incidents involving excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking and accumulation of refuse are directly related to short term lodging units which increasingly require response from police, fire, paramedic and other City services.

E. The increase in demand for City services resulting from short term lodgings overburdens, and threatens, the City's ability to provide such services.

F. Many short term lodgings are operated by agents and/or absentee owners who exercise little or no supervision or control of occupants.

G. Problems with short term lodgings are particularly acute in residential districts where the peace, safety and general welfare of the long term residents are threatened.

H. The restrictions of this chapter are necessary to prevent the continued burden on City services and adverse impacts on residential neighborhoods posed by short term lodgings. (Ord. 92-13 § 3 (part), 1992)

5.95.010 Definitions.

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

A. A.—“Floor Area, Gross”

a. For single-unit and two-unit dwellings, the following areas shall be included in calculations of gross floor area:

i. The surrounding exterior walls; and

ii. Any interior finished portion of a structure that is accessible and that measures more than six feet from finished floor to ceiling.

b. The following areas shall be excluded:

i. Stairwells and elevator shafts above the first level.

~~B.~~ “Lodging unit” or “unit” shall mean “dwelling unit” as that term is defined in Title 20 of this Code where the dwelling unit or residence, including the bedroom, kitchen and bath, is rented or leased to a person or group of persons living as a single housekeeping unit.

~~B.—C.~~ “Owner” shall mean the person(s) or entity(ies) that hold(s) legal and/or equitable title to the lodging unit.

~~C.—D.~~ “Short term” shall mean occupancy of a lodging unit for a period of thirty (30) consecutive calendar days or less. This also includes home-sharing where a maximum of one written or oral rental agreement with a lodging unit for a period of thirty (30) consecutive calendar days or less, wherein the owner is the long term occupant of the lodging unit and is residing at the lodging unit during the term of the agreement.

~~D.—E.~~ “Agent or Broker” shall mean any person licensed by the California Department of Real Estate

~~F.~~ “Hosting platform” A person who participates in the short term lodging business by collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting a booking transaction using any medium of facilitation.

~~G.~~ “Booking transaction” Any reservation or payment service provided by a person who facilitates a short term lodging rental transaction between a prospective transient user and a host.

~~H.~~ “Residential district” shall mean those areas of the City so designated by Title 20 of the Municipal Code.

~~E.—I.~~ “City Manager” shall mean the City Manager of the City of Newport Beach or his or her respective assignees.

~~F.—J.~~ “Finance Director” shall mean the Finance Director of the City of Newport Beach or his or her designee. (Ord. 2013-11 § 27, 2013; Ord. 2008-5 § 20, 2008; Ord. 92-13 § 3 (part), 1992)

5.95.020 Permit Required.

No owner of a lodging unit located within a residential district shall rent that unit for a short term without a valid short term lodging permit (permit) for that unit issued pursuant to this chapter. No permit shall be issued subsequent to June 1, 2004 to any dwelling unit on any parcel zoned for “Single-family Residential (R-1)” or is designated for single-family residential use as part of a Planned Community Development Plan, Specific Area Plan or Planned Residential District unless a permit has previously been issued for that dwelling unit and was not subsequently revoked. (Ord. 2004-6 § 1, 2004; Ord. 92-13 § 3 (part), 1992)

A Single-Family Residential (R1) dwelling unit with a valid short term lodging permit issued on or before June 1, 2004 that is demolished, remodeled, altered, or rebuilt may remain valid so long as the new, remodeled or altered dwelling unit has not increased in floor area by more than 25%.

5.95.025 Agency.

An owner may retain ~~ana licensed real estate agent or a representative~~ to comply with the requirements of this chapter, including, without limitation, the filing of an application for a permit, the management of the short term lodging unit or units, and the compliance with the conditions to the permit. The permit shall be issued only to the owner of the short term lodging unit or units. The owner of the short term lodging unit or units is responsible for compliance with the provisions of this chapter and the failure of an agent to comply with this chapter shall be deemed non-compliance by the owner. (Ord. 92-13 § 3 (part), 1992)

5.95.030 Applicant for Permit.

An application for a permit shall be filed with the Finance Director upon forms provided by the City and shall contain the following information:

- A. The name, address and telephone number of the owner of the unit for which the permit is to be issued.
 - B. The name, address and telephone number of the agent, if any, of owner of the unit.
 - C. Evidence of a valid business license issued by the City for the separate business of operating short term lodgings.
 - D. ~~Evidence~~Floor Area of ~~a valid transient occupancy registration certificate issued by the City for~~ the lodging unit and number of bedrooms.
 - E. Acknowledgement of receipt and inspection of a copy of all regulations pertaining to the operation of a short term lodging unit.
 - F. Such other information as the Finance Director deems reasonably necessary to administer this chapter.
- (Ord. 92-13 § 3 (part), 1992)

5.95.035 Denial of Permit.

No application shall be denied unless a short term lodging permit for the same unit and issued to the same owner has been revoked pursuant to Section 5.95.065 of this chapter. (Ord. 92-13 § 3 (part), 1992)

5.95.040 Filing Fee.

~~An~~[An application or renewal](#) application for a short term lodging permit shall be accompanied by a fee established by resolution of the City Council, provided, however, the fee shall be no greater than necessary to defer the cost incurred by the City in administering the provisions of this chapter. (Ord. 92-13 § 3 (part), 1992)

5.95.050 Conditions.

A. All permits issued pursuant to this chapter are subject to the following standard conditions:

1. The owner shall, by written or oral agreement, limit overnight, occupancy of the short term lodging unit to a specific number of occupants, with the number of occupants not to exceed that permitted by the provisions of Title [15](#) of the Newport Beach Municipal Code.
2. The owner shall use best efforts to ~~insure~~[ensure](#) that the occupants and/or guests of the short term lodging unit do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of this code or any State Law pertaining to noise, disorderly conduct, the consumption of alcohol, or the use of illegal drugs.
3. The owner shall, upon notification that occupants and/or guests of his or her short term lodging unit have created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of this code or State Law pertaining to noise, disorderly conduct, the consumption of alcohol or the use of illegal drugs, promptly use best efforts to prevent a recurrence of such conduct by those occupants or guests.
4. The owner of the short term lodging unit shall use best efforts to ~~insure~~[ensure](#) compliance with all the provisions of Title [6](#) of the Municipal Code (garbage, refuse and cuttings).
5. The owner of the short term lodging unit shall post a copy of the permit and a copy of the conditions set forth in this section in a conspicuous place within the unit. [The notice shall contain the following:](#)

- a. The name of the local contact person and phone number at which that person may be reached on a 24 hour basis. The local person must be located within 25 miles of the unit.
- b. The number and location of on-site parking spaces.
- c. The date and location for on-street parking affected by street sweepers.
- d. The trash pickup day for the unit and notification of current Municipal Code rules and regulations concerning the storage and placement containers.
- e. Notification that the occupant/guest is responsible for all activities occurring on the property and that the occupant(s)/guest(s) may be cited and fined for creating a disturbance or violating any provision of the Municipal Code.

6. With respect to any short term lodging unit that is located in any Safety Enhancement Zone, the owner of the unit and any agent retained by the owner shall take immediate action during the period that the Safety Enhancement Zone is in effect to prevent occupants or guests from engaging in disorderly conduct or committing violations of this code or State Law pertaining to noise, disorderly conduct, the consumption of alcohol or the use of illegal drugs.

7. The owner, in coordination with any agent or hosting platform, shall collect and remit transient occupancy tax to the City and otherwise comply with all transient occupancy tax requirements as set forth in Chapter 3.16.

8. The owner shall provide the City with the name and 24-hour phone number of a local contact person (as defined as a person residing within 25 miles of the property) who shall ensure compliance with this Chapter in a timely manner. The owner or agent must provide a new local contact person and his or her phone number within 5 business days of a change in the local contact person.

9. The owner shall ensure that all available parking spaces onsite, which may include garage, carport, and driveway spaces, and tandem parking are available for the occupant(s)/guests of the short term lodging unit. For units which do not have on-site parking available and only on street parking is available shall limit the number of vehicles to a maximum of 2 vehicles per unit.

10. The owner shall maintain a valid business license and short term lodging permit when engaging in short term lodging.

11. Owner must include the City issued short term lodging permit number and the applicable transient occupancy tax percentage on all advertisements.

12. A permitted short term lodging unit shall only be used for residential purposes. All non-residential uses, including but not limited to large commercial or non-commercial gatherings, commercial filming and non-owner wedding receptions are strictly prohibited.

12. No amplified sound or reproduced sound shall be used outside or audible from the property line between the hours of 10:00 p.m. to 10:00 a.m.

B. The City Manager shall have the authority to impose additional standard conditions, applicable to all short term lodging units, as necessary to achieve the objectives of this chapter.

C. The City Manager shall have the authority to impose additional conditions on any permit in the event of any violation of the conditions to the permit or the provisions of this chapter subject to compliance with the procedures specified in Section 5.95.065. (Ord. 2003-5 § 10, 2003: Ord. 92-13 § 3 (part), 1992)

5.95.055 Agent and Hosting Platform Responsibilities

A. Agents and hosting platforms shall disclose, at the City's request, a short term lodging listing of all properties they represent and or advertise. The listing shall include:

1. The name, mailing address and phone of the person responsible for each such listing.

2. The address of each such listing.

3. The length of stay for each such listing.

4. The price paid for each such listing.

B. Agents and hosting platforms, at the City's request, be responsible for collecting all applicable transient occupancy taxes and remit the same to the City pursuant to Chapter 3.16.

C. Agents and hosting platforms shall not complete any booking transaction for any short term lodging unit unless the unit has obtained and holds a valid business license and short term lodging permit from the City, at the time the agent and or hosting platform receives a fee for the booking transaction.

D. Agents and hosting platforms shall not collect or receive a fee, directly or indirectly for facilitating or providing services ancillary to an unpermitted short term lodging unit including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the short term lodging unit.

E. **Safe Harbor.** A hosting platform operating exclusively on the Internet, which operates in compliance with subsection (A) (B) (C) and (D) above, shall be presumed to be in compliance with this Chapter, except that the hosting platform remains responsible for compliance with the administrative subpoena provisions of this Chapter.

F. The provisions of the Section shall be interpreted in accordance with otherwise applicable State and Federal law(s) and will not apply if determined by the City to be in violation of, or preempted by, such law(s).

5.95.060 Violations/Penalties/Revocation.

A. Violations. ~~Except~~A violation of this Chapter is punishable as provided in ~~subsections (C)~~Chapter 1.04 and ~~(D)~~Chapter 1.05 of this section, the Code.

B. ~~Penalties.~~ following conduct shall constitute a violation for whichNotwithstanding the foregoing, in the event the City brings an enforcement action pursuant to Chapter 1.05, the penalties ~~specified in subsection (B) of for a third and fourth violation of this section~~Code may be imposed, or the permit revoked~~include:~~

1. ~~The owner has failed to comply with the standard conditions specified in Section 5.95.050(A);~~

2. ~~The owner has failed to comply with conditions imposed by the City Manager pursuant to the provisions of Section 5.95.050(B) or (C);~~

3. ~~The owner has wilfully violated the provisions of this chapter; or~~

4. ~~The owner has failed to pay the transient occupancy tax as required by Chapter 3.16 of this Code.~~

1. ~~B. Penalties.~~ The penalties for violations specified in subsection (A) of this section shall be as follows:

4.— For ~~the first~~ third violation within any twelve (12) month period, the ~~penalty~~ short term lodging permit shall ~~range from~~ be suspended for a notice period of violation to a fine not to exceed ~~two hundred~~ one year; and ~~fifty dollars (\$250.00);~~

2.— _____ For a ~~second~~ fourth violation within any ~~twelve (12) month period, the penalty~~ shall ~~range from a fine not to exceed five hundred dollars (\$500.00) to revocation of the permit;~~

3.— For a ~~third~~ violation within any ~~twelve (12) month period, the penalty shall range from a fine~~ not to exceed ~~one thousand dollars (\$1,000.00) to revocation of the permit; and~~

4.— For a ~~fourth~~ violation within any ~~twelve (12)~~ twenty four (24) month period, the permit shall be revoked in accordance with the provisions of Section 5.95.065.

C. In the case of a short term lodging permit for a dwelling that is located in a Safety Enhancement Zone, the penalty for the failure to comply with any standard condition during the period that the Safety Enhancement Zone is in effect shall be a fine of one thousand dollars (\$1,000.00) and/or revocation of the permit for a period not less than sixty (60) days.

D. Revocation for Loud or Unruly Gathering. If a lodging unit that is subject to a short term lodging permit has been the location of ~~three~~ two or more loud or unruly gatherings, as defined in Chapter 10.66 of this Code, while the lodging unit was occupied on a short term basis within any twenty-four (24) month period, the permit shall be revoked. A loud or unruly gathering that occurred prior to the passage of fourteen (14) calendar days from the mailing of notice to the owner in compliance with Section 10.66.030(D) shall not be included within the calculation of the three or more loud or unruly gatherings required to revoke a short term lodging permit. (Ord. 2011-13 § 2 (part), 2011: Ord. 2003-5 § 11, 2003: Ord. 92-13 § 3 (part), 1992)

E. The City shall have the authority to issue and serve administrative subpoenas to the owner, licensed agent or hosting platform 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 listing complies with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than thirty days from the date of service. A person that has been served with an administrative subpoena may seek judicial review during that thirty-day period.

5.95.065 Procedure for Imposition of Penalties/Suspensions/Revocation.

Penalties, including a notice of violation, shall be imposed, and permits shall be revoked, only in the manner provided in this section.

A.— The Finance Director or designee shall conduct an investigation whenever he or she has reason to believe that an owner has committed a violation described in Section 5.95.060(A), (C) D or (~~DE~~). Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Finance Director shall issue written notice of intention to impose a penalty and/or revoke the permit. The written notice shall be served on the owner, shall specify the facts which, in the opinion of the Finance Director, constitute substantial evidence to establish grounds for imposition of the penalties and/or revocation, and specify that the penalties will be imposed and/or the permit will be revoked within thirty (30) days from the date the notice is given unless the owner and/or operator files, ~~with the City Clerk and~~ before the penalties or revocation becomes effective, a request for hearing before the City Manager or Hearing Officer.

B.— If the owner requests a hearing within the time specified in subsection (A) of this section, the ~~City Clerk~~ Finance Director, or designee, shall serve written notice on the owner, by written mail, of the date, time and place for the hearing. The hearing shall be scheduled not less than fifteen (15) days, nor more than sixty (60) days, from the date on which notice of the hearing is served by the ~~City Clerk. The City Manager~~ may Finance Director. A Hearing Officer will preside over the hearing ~~or may designate a hearing officer to~~, take evidence and submit proposed findings and recommendations to the City Manager. The City Manager shall impose the penalties or revoke the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the penalty or revocation is consistent with the provisions of Section 5.95.060(B), (C) or (D). The hearing shall be conducted according to the rules normally applicable to administrative hearings. The City Manager shall render a decision within thirty (30) days of the hearing and the decision shall be final. (Ord. 2011-13 § 2 (part), 2011: Ord. 92-13 § 3 (part), 1992)

C. In the case of a short term lodging permit suspension, the Finance Director or designee shall inform the owner in writing. The suspension shall be effective on the seventh day from the date of notice. It shall be the owner's responsibility to vacate any future bookings during the term of the suspension. The owner may reapply for reinstatement of a provisional permit one year from the date of suspension and shall be accompanied by a fee established by resolution of the City Council which shall be no more than necessary to cover costs of processing and investigation. The provisional period shall last for a period of six months. Once the City has confirmed there is no outstanding violations or debts owed to the City the short term lodging permit will be reinstated to an active valid status. Should the owner obtain any violations related to short term lodging during the suspension or provisional period the permit will be automatically revoked effective immediately.

5.95.070 Permits and Fees Not Exclusive.

Permits and fees required by this chapter shall be in addition to any license, permit or fee required under any other chapter of this Code. The issuance of any permit pursuant to this chapter shall not relieve the owner of the obligation to comply with all other provisions of this Code pertaining to the use and occupancy of the lodging unit or the property on which it is located. (Ord. 92-13 § 3 (part), 1992)

5.95.075 License and Permit Closure.

A. Any owner which has ceased operating a short term lodging unit shall inform the Finance Director in writing of the date of the last rental, and having done such, the short term lodging permit and business license shall be closed. The City will send a final transient occupancy tax bill which will be due and payable 30 days from the date of the invoice.

B. The Finance Director shall close any permit that has no short term lodging activity for a period of two consecutive years by remitting zero dollars on the required transient occupancy tax forms and or has failed to return the transient occupancy form.

5.95.080 Penalty.

Any person violating the provisions of this chapter by operating a short term lodging unit without a valid permit shall be guilty of a misdemeanor. (Ord. 92-13 § 3 (part), 1992)

5.95.090 Amortization and Amnesty Period.

~~Owners of short term lodging units shall make application for a permit pursuant to this chapter within sixty (60) days after the effective date of this ordinance. Owners of short term lodgings who, prior to the effective date of this ordinance, failed to obtain a transient occupancy registration certificate pursuant to Chapter 3.16 of this Code, may do so without penalty notwithstanding the provisions of Chapter 3.16, if an application for the certificate is filed no later than sixty (60) days after the effective date of the ordinance codified in this chapter. (Ord. 92-13 § 3 (part), 1992)~~