

ORDINANCE NO. 05-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING TITLE 5 OF THE ORANGE MUNICIPAL CODE BY ADDING CHAPTER 5.94 REGULATING THE LICENSING AND ESTABLISHMENT OF SHORT TERM RENTAL BUSINESSES IN THE CITY AND AMENDING TITLE 17 OF THE ORANGE MUNICIPAL CODE BY ADDING A DEFINITION, ZONING REQUIREMENTS AND CONDITIONS FOR SHORT TERM RENTAL USE

WHEREAS, the City Council of the City of Orange, pursuant to its police powers afforded under the California Constitution, Article XI, Section 7, California Government Code Section 37100, et seq., may adopt regulations to protect the health, safety and welfare of the community; and

WHEREAS, California Government Code Section 38771 authorizes the City, through its legislative body, to declare that certain actions and activities constitute a public nuisance; and

WHEREAS, the City of Orange recognizes that properly located and regulated lodging establishments designed for transient, short term occupancy, fill a need for the residents of and visitors to Orange; and

WHEREAS, the proliferation of unregulated short term rentals located in residential neighborhoods in the City have resulted in many disturbances to the residents of the City, including noise, increase in traffic, parking problems, litter, excessive trash, police response to party complaints and public drug use, and the coming and going of strangers not known to the neighborhood; and

WHEREAS, all of the above problems have a tendency to deteriorate the family neighborhood characteristics of areas where unregulated short term rentals are located; and

WHEREAS, for the reasons stated above, the existence of unregulated short term rentals in the City is detrimental to the public health, safety, and general welfare; and

WHEREAS, the City Council finds that requiring licensing and establishing standards for the operation of short term rentals provisions of this Ordinance will eliminate the negative impacts associated with such businesses; and

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt, consistent with the findings in Section II of this Ordinance; and

WHEREAS, the Planning Commission, having considered the proposed changes to Title 17 of the Orange Municipal Code contained herein at a public hearing held on August 17, 2020 including review of the staff report and receiving public testimony on the item, has determined that the proposed Ordinance is justified and recommends approval thereof; and

WHEREAS, the City Council, having conducted a public hearing on April 13, 2021 including review of the staff report and receiving public testimony on the item, has determined that the proposed Ordinance is justified and approves thereof; and

WHEREAS, the City Council does therefore determine that this Ordinance is necessary for the preservation of the public health, safety and welfare of the community.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I:

The recitals stated above are true and correct, incorporated herein, and form the basis for the adoption of this Ordinance.

SECTION II:

- (1) The subject Ordinance is not subject to the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines (Guidelines) Sections 15060(c)(2) and 15060(c)(3) because review and evaluation of potential impact of the Ordinance demonstrate that it will not result in a direct or reasonably foreseeable indirect physical change in the environment and it is not a "project" as defined in Guideline 15378.
- (2) The subject Ordinance is exempt from CEQA per Guideline 15061(b)(3) because it can be seen with certainty, after review and evaluation of the facts regarding short term rentals in the City of Orange, that there is substantial evidence that adoption of this Ordinance would not have a significant effect on the environment and the common sense exemption applies.
- (3) In the unlikely event the Ordinance would constitute a project under CEQA it is categorically exempt from CEQA per Guideline 15305 (Class 5-Minor Alterations in Land Use Limitations), because it involves a minor alteration in permitted land uses in an area with an average slope of less than 20% by allowing short term rental of residential units in zoning districts where residential uses are already allowed and evaluation of the facts surrounding short term rentals demonstrates that the Ordinance will not result in any changes in land use or density.
- (4) In the unlikely event the Ordinance would constitute a project under CEQA, it is categorically exempt from the provisions of CEQA per Guidelins 15321 (Class 21, Enforcement Actions by Regulatory Agencies) because the Ordinance is an action taken by the City as a regulatory agency and involves amendment to the Business Taxes and Regulations and Zoning Codeprovisions of the Orange Municipal Code as authorized by local ordinance, to regulate

the issuance of permits and licenses for short term rental businesses to prevent a public nuisance. As such, no further analysis is warranted or required.

SECTION III:

Section 5.16.020.A of the Orange Municipal Code, “Business Taxes and Regulations – Uniform Transit Occupancy Tax – Definitions,” is hereby amended to read as follows:

- A. Hotel. HOTEL means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, short term rental, or other similar structure or portion thereof.

SECTION IV:

Title 5 of the Orange Municipal Code, “Business Taxes and Regulations,” is hereby amended to add Chapter 5.94 to the Orange Municipal Code, which shall read as follows:

Chapter 5.94 - Short Term Rental Businesses

5.94.010 Definitions.

"Short term rental" or "short term rental business" shall mean the rental of a dwelling unit or a portion thereof, or a habitable accessory structure associated with a dwelling, by the owner to another person or group of persons for occupancy, dwelling, lodging or sleeping purposes for a period of fewer than thirty (30) consecutive calendar days. The rental of units within city-approved hotels, motels, or bed and breakfasts shall not be considered a short term rental.

“Short term rental platform” or “platform” shall mean a person or entity that provides a means through which a short term rental property owner may offer a unit for short term rental use, and from which the person or entity financially benefits.

“Short term rental property” shall mean a parcel of real property, as shown on the latest equalized tax assessment roll maintained by the Orange County Assessor, upon which a short term rental unit (or units) is maintained. “Short term rental property” includes the premises upon which a short term rental unit is located, including parking areas, driveways, landscaping, accessory structures, fences, walls, swimming pools, hot tubs, spas, tennis and paddleboard courts, and other similar and related improvements.

"Short term rental unit" shall mean a dwelling, or any portion thereof, or a habitable accessory structure associated with a dwelling, which is being rented, or is intended to be rented, as a short term rental to a person or group of persons.

5.94.020 Purpose.

The purpose of this chapter is to promote the public peace, morals, health and safety by regulating the location, occupancy and operations of short term rentals to protect residential neighborhoods against:

- A. Undue noise;
- B. An unsafe increase in traffic and parking problems;
- C. Excessive litter and trash;
- D. Disturbances caused by parties and the accompanying police response;
- E. Public drug use; and
- F. The frequent coming, going and transient occupation of residential homes by strangers not known to or invested in the neighborhood quality of life.

5.94.030 Permit Required.

- A. No person shall operate a short term rental business unless a permit has been obtained in accordance with this chapter.
- B. A permit obtained under this chapter does not constitute a vested right, shall not run with the land, and shall be personal and limited to the owner listed on the application.
- C. Any permit obtained under this chapter shall expire one year from the date of issuance and shall be renewed annually.

5.94.040 Application for Permit.

The application for a short term rental permit shall contain all of the following:

- A. The name, address and telephone number of the owner of the short term rental and the name and address of the person to whom any notice pursuant to this chapter should be given. Only the owner may apply for a short term rental permit.
- B. The location of the short term rental property, including a diagram identifying the location of the short term rental structure or portion of structure on the property and the location of the required parking.
- C. An executed document, approved as to form by the City Attorney, by which the permittee agrees to indemnify and hold harmless the city, its officers, employees and agents from any claim, demand or judgment in favor of any person, arising out of activities or inactivities of the permittee with respect to the operations of the short term rental.

- D. A completed Business License application.
- E. A completed Uniform Transient Occupancy Tax Registration Form.
- F. Proof of liability insurance as required herein.

5.94.050 Permit Fee.

Each application shall be accompanied by a permit fee in such amount as is established from time to time by resolution of the City Council.

5.94.060 Short Term Rental Regulations.

A. Ownership. A short term rental permit shall only be issued for a property owned by an individual or a personal trust. No short term rental permit shall be issued to a corporation, a limited liability company, or any form of business trust. Not more than two (2) short term rental permits shall be issued to the same individual or personal trust.

B. Number of Permits. The maximum number of active short term rental permits in the city shall be as established from time to time by resolution of the City Council. Short term rental permits shall be issued on a first come first served basis, with priority as determined by the City Council. A permitted short term rental business that ceases operation shall obtain, complete and submit a Business License Closing form terminating its business license within thirty (30) days of ceasing operations.

C. Permitted Locations.

1. Zones. A short term rental business shall be allowed only in zones which allow residential uses as specified in Table 17.13.030 of this code. Legal nonconforming residential uses in zones not otherwise allowing residential uses will not be eligible for a short term rental permit.

2. Distance Separation. No permitted short term rental shall be located within three hundred (300) feet of another permitted short term rental, as measured from the closest property line by linear block frontage. The following short term rental businesses are exempt from and not considered in this distance separation requirement:

a. Short term rentals in existence as of the effective date of this ordinance, but only for so long as such business continuously maintains a short term rental permit.

b. Short term rental businesses at an owner-occupied dwelling in the form of an individual room rental or the rental of a habitable accessory structure.

D. Occupancy Restrictions. The occupancy limit for a short term rental shall be two (2) persons per bedroom, plus an additional two (2) persons. Children under the age of two shall not be counted toward the occupancy limit.

E. Length of Stay. There shall be a minimum two-night stay for any booking of a short term rental.

F. Property Manager. The owner of a short term rental shall provide each adult occupant with the name and telephone number of a property manager who is able to physically respond to the short term rental location within thirty (30) minutes. The property manager may be the owner or other responsible person able to respond within the timeframe indicated. This information shall also be provided as part of the Good Neighbor Policy and shall be provided to the city Business License coordinator. All property manager information shall be kept up to date.

G. Good Neighbor Policy.

1. The owner of a short term rental shall notify each adjacent and facing property owner and each adult resident of said property, of the existence of the short term rental business and provide a written list of the rules and restrictions and up-to-date property manager contact information.

2. All occupants of the short term rental over the age of fourteen (14) shall receive and sign a list of the rules and restrictions imposed on the short term rental, as published by the city. A copy of said list of rules and restrictions shall be posted in a prominent location in the short term rental at all times occupants are present. The list of rules and restrictions signed by occupants shall be made available to the city upon reasonable request.

H. Parking. Off-street parking shall be required and shall conform to the provisions of Section 17.34.060 and Table 17.34.060.A of this code, "Required Number of Parking Spaces for Residential Uses," as determined by the Director of Community Development. All vehicles of short term rental occupants shall be parked only in an approved driveway or garage on the short term rental property.

I. Noise. The hours between 10:00 p.m. and 9:00 a.m. are designated as "quiet time," so that no outdoor activity will disturb the peace and quiet of the neighborhood adjacent to a short term rental property or cause discomfort or annoyance to any reasonable person of normal sensitivity residing in the area.

J. TOT. Payment of Transient Occupancy Tax as provided in Chapter 5.16 of this code shall be made for each short term rental occupancy.

K. Inspections. The city shall have the authority to conduct random inspections of the short term rental property as it deems necessary or prudent to ensure compliance with the provisions of this chapter, including without limitation, inspections based upon any complaints or violations that occur, and inspections prior to issuance or renewal of a permit. No inspection shall

occur that is inconsistent with an individual's Fourth Amendment rights under the United States Constitution or otherwise in violation of rights guaranteed by law.

L. Insurance. The owner shall maintain liability insurance appropriate to cover the short term rental use in an amount not less than \$1,000,000 general aggregate. Proof of such insurance in the form of a certificate of insurance shall be provided to the city upon submittal of short term rental permit application. In the alternative, the owner may submit proof satisfactory to the city that short term rental transactions will be conducted solely through a platform that provides equal or greater liability insurance.

5.94.070 Violation/Penalty.

A. Owner, Property Manager. The city may issue to the owner and/or property manager a citation for any violation of this chapter or this code by the owner, the property manager or the occupants of the short term rental as follows:

1. First offense: a fine shall be assessed for a minor offense or a major offense, as defined herein.

2. Second offense within any continuous period of twelve (12) months in connection with the same property: a fine shall be assessed for a minor offense or a major offense, as defined herein.

3. Third and subsequent offenses within any continuous period of twelve (12) months in connection with the same property: a fine shall be assessed for a minor offense. The short term rental permit shall be revoked for a major offense.

4. The amount of the fines shall be as established from time to time by resolution of the City Council.

B. Offenses.

1. The following shall constitute a minor offense:

a. Property manager response more than thirty (30) minutes but less than sixty (60) minutes after a complaint.

b. Occupancy limit exceeded by up to two persons.

c. Failure to resolve noise complaint during “quiet time” within thirty (30) minutes.

d. Other violations deemed minor by the City Manager or designee.

2. The following shall constitute a major offense:

- a. Property manager response sixty (60) or more minutes after a complaint.
- b. Occupancy limit exceeded by more than two persons.
- c. Rental of fewer than two nights.
- d. Failure to abide by Good Neighbor Policy.
- e. More than one complaint of occupant vehicles parked on the street during any one occupancy.
- f. More than one noise complaint during any one occupancy.
- g. Failure to pay required Transient Occupancy Tax when due.
- h. Criminal activity on the short term rental property.
- i. Two prior minor offenses within any continuous period of twelve (12) consecutive months.
- j. Failure to renew short term rental permit and/or business license by the due date.
- k. Other violations deemed major by the City Manager or designee.

C. Revocation.

1. A short term rental permit shall be revoked upon the occurrence of any of the following:
 - a. Three major offenses within any continuous period of twelve (12) months.
 - b. Any major offense deemed so egregious by the City Manager or designee, that revocation is in the best interest of preserving the public health, safety and welfare of the community.
2. Prior to revoking a short term rental permit, written notification of the grounds for revocation shall be given to the owner. The owner may, within thirty (30) days of the date of the notification, request a meeting with the City Manager or designee to present evidence showing why the revocation should not take place.
3. After the revocation meeting, the City Manager or designee shall issue a written determination whether the permit shall be revoked, modified, or fines assessed. The decision of the City Manager or designee shall be final and may not be appealed.

4. An owner of a short term rental whose permit has been revoked may not apply for another short term rental permit for a period of twelve (12) months after revocation. Revocation of a short term rental permit shall not affect the validity of any other short term rental permit held by the same owner.

5. No short term rental property for which the permit has been revoked is eligible for another short term rental permit for a period of twelve (12) months after revocation.

5.94.080 Short Term Rental Platforms.

A. General Provisions. All platforms that display short term rental listings for properties in the city shall comply with the following:

1. Require that all owners using the platform include a city business license number in any listing for a short term rental on the platform.

2. Provide the following information in an electronic format to the city on a quarterly basis. These reports shall be due at the end of the month following the end of each calendar quarter:

a. The total number of short term rentals in the city listed on the platform during the applicable reporting period; and

b. The total number of nights all short term rental units were rented through the platform during the applicable reporting period.

B. Enforcement.

1. The city shall have the authority to subpoena information from short term rental platforms. Any such subpoena shall

a. Be submitted in writing by the city attesting that the city has a reasonable belief based on evidence that a short term rental may be in violation of this chapter;

b. Be served on the platform via its registered agent;

c. Be related to a specific investigation by the City relating to a short term rental that is identified in the subpoena; and

d. Identify the alleged violations of this chapter.

2. The platform shall notify the owner of the information requested in the subpoena within ten business days of receiving the subpoena and produce responsive records within 21 days of providing notice to the owner, except to the extent that the owner has sought relief in a court of competent jurisdiction.

C. Violations. It is a violation of this chapter for any platform to fail to comply with any provisions of this code.

1. Investigation and notice of violation.

a. If the City Manager or designee determines that any provisions of this code applicable to platforms have been violated, a notice of violation may be issued to the platform or other person responsible for the violation.

b. The notice of violation shall state the provisions violated, necessary corrective action, and the compliance due date and shall be served upon the platform, agent or other responsible person by personal service or regular first-class mail addressed to the last known address for the platform, agent, or responsible person.

c. Unless a request for review before the City Manager or designee is made as provided herein, the notice of violation shall become the final order.

2. Review by the City Manager or designee.

a. Any platform may obtain a review of the notice of violation by requesting such review in writing within ten business days of the date of the notice. Within 15 days of the request for review, the platform may submit additional information in the form of written material for consideration as part of the review.

b. The review will be made by the City Manager or designee, who will review all additional written material received by the deadline for submission of information. The reviewer may also request clarification of information received. After review of the additional information, the reviewer may sustain, withdraw or modify the notice of violation, or continue the review to a date certain for receipt of additional information.

c. The reviewer shall issue an order containing the decision and shall cause the same to be mailed by first-class mail to the person or persons requesting the review and the persons named on the notice of violation.

3. Penalties

a. A violation of this chapter applicable to platforms that persists after notice of violation or order of the City Manager or designee shall be subject to the following penalties per violation for each listing from the date the violation occurs until compliance is achieved:

1) Two hundred dollars (\$200) per day for each violation for the first ten days; and

2) Five hundred dollars (\$500) per day for each violation for each day beyond ten days of noncompliance until compliance is achieved.

b. In cases where the city has issued a notice of violation or order, the violation will be deemed to begin, for purposes of determining the number of days in violation, on the date that compliance is required on the notice of violation or order.

5.94.090 Public Nuisance.

In addition to the penalties provided herein, any violation of this chapter shall constitute a public nuisance and may be abated as provided in Chapter 1.08 of this code and/or under state law.

SECTION V:

Section 17.04.038 of the Orange Municipal Code, “Definitions – ‘S’ Definitions,” is hereby amended to add the following definition:

SHORT TERM RENTAL – the rental of a dwelling unit or a portion thereof, or habitable accessory structure associated with a dwelling unit, by the owner to another person or group of persons for occupancy, dwelling, lodging or sleeping purposes for a period of fewer than thirty (30) consecutive calendar days. The rental of units within city-approved hotels, motels, or bed and breakfasts shall not be considered a short term rental.

SECTION VI:

Table 17.13.30 of the Orange Municipal Code, “Master Land Use Table – Permitted Uses,” is hereby amended to add “Short Term Rental” as a recognized land use and permitted subject to special provisions in specified residential zones as follows:

(Table excerpt)

ZONING	RESIDENTIAL							COMMERCIAL						MIXED USE				INDUS-TRIAL		AGRICULTURAL OPEN SPACE			PI	OVERLAY		SAND & GRAVEL	
LAND USE	R1-5	R1-6 to R1-15	R1-20 to R1-40 & R1-R	R2-6 to R2-8	R-3	R-4	MH	OP	CP/C1	CTR	C2	C3	CR	OTMU-15S	OTMU-15	NMU-24	UMU	M1	M2	A1	RO	SH	PI	FP-1	FP-2	SG	
Housing – Includes all structures permitted as living quarters whether they be for short or long-term occupancy. Includes all uses identified in California Building Code definitions that are preceded with main entry words (key terms) that include one of the following: Dwelling, unit, house, housing, congregate, residence, multi-family, dormitory, home(s), hotel, motel, residential care facility, residential facility or lodging.																											
Rest home	-	-	-	-	C	C	-	C	C	C	C	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sanitarium	-	-	-	-	C	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Senior citizen housing development	-	-	-	-	C+	C+	-	C+	C+	C+	C+	C+	-	C+	C+	C+	C+	-	-	-	-	-	-	-	-	-	-
Senior housing	P	P	P	P	P	P	P	C+	C+	C+	C+	C+	-	P	P	P	P	-	-	-	-	-	-	-	-	-	-
<u>Short term rental</u>	<u>P*</u>	<u>P*</u>	<u>P*</u>	<u>P*</u>	<u>P*</u>	<u>P*</u>	<u>z</u>	<u>P*</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>P*</u>	<u>P*</u>	<u>P*</u>	<u>P*</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>	<u>z</u>
Single-family dwelling	P#	P	P	P	P	P	-	P	-	-	-	-	-	P*	P*	P*	-	-	-	-	P	-	-	-	-	-	-
Sober living facility	P*	P*	P*	P*	P*	P*	P*	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Supportive housing (6 or fewer persons)	P*	P*	P*	P*	P*	P*	P*	-	-	-	-	-	-	P*	P*	P*	-	-	-	-	-	-	-	A*	-	-	-

SECTION VII:

Section 17.13.040 of the Orange Municipal Code, “Master Land Use Table - Special Use Regulations,” is hereby amended to add a new lettered section to read as follows:

Short Term Rental. All short term rentals are subject to the regulations contained in Chapter 5.94 of this code. They shall otherwise be treated as a residential dwelling unit for purposes of development standards and required parking related to the zoning district in which they are located and the type of dwelling unit they are associated with.

1. Short term rentals at a property where the owner will not be present, shall be located at least three hundred (300) feet from another permitted short term rental, as measured from the closest property line by linear block frontage. This restriction applies to short term rentals located in Single Family Residential and Duplex zoning districts only.
 - a. For short term rentals at an owner-occupied dwelling in the form of individual room rental or the rental of a habitable accessory structure, there shall be no separation requirement from another short term rental.
2. Short term rentals in multi-unit buildings in Multi-family and Mixed Use zoning districts shall be limited as follows:
 - a. For multi-unit buildings with up to ten units, no more than 20% of the units on the property shall be used as a short term rental, regardless of the number of buildings on the site.
 - b. For multi-unit buildings with 11 units or more, no more than 10% of the units on the property shall be used as a short term rental, regardless of the number of buildings on the site.

SECTION VIII:

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, 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 section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION IX:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause a summary of the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this ____ day of _____, 2021.

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2021, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2021 was duly passed and adopted by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange