



**COUNCILMEMBER CHRIS CATE
CITY OF SAN DIEGO
SIXTH DISTRICT**

MEMORANDUM

DATE: October 31, 2016

TO: Honorable City Councilmembers

FROM: Councilmember Chris Cate, District 6

SUBJECT: Short-Term Vacation Rental and Home-Sharing Draft Ordinance

Over the past two years, the topic of Short-Term Vacation Rentals and Home-Sharing has received over 15 hours of public comment and input from a number of committees and community groups. In addition to the two meetings of the Smart Growth and Land Use Committee, community groups such as the Community Planners Committee, Technical Advisory Committee, Code Monitoring Team, and Planning Commission have also held public meetings and received testimony.

In response to the input received from members of the public, my office has drafted an ordinance consistent with the Land Development Code and request the draft ordinance be forwarded directly to the City Council for consideration. This ordinance is a balanced proposal that will create a pathway for strong enforcement, certainty for the sharing economy, and protections for residents by ensuring resources are available to address the concerns associated with this use.

This ordinance will:

1. Create a Short-Term Dwelling Unit Rental Permit and Home-Sharing Rental Permit in accordance with Process One;
2. Require permit fees, fines, and penalties be secured in lock box to pay for enhanced enforcement;
3. Create an escalating fine structure and a pathway for revocation of the permit following three (3) verified offenses;
4. Require Short-Term Vacation Rentals and Home-Sharing permit holders to comply with the Transient Occupancy Tax registration process;
5. Require a Local Designated Contact who shall be responsible for proactively discouraging and preventing any nuisance activity at the Short-Term Vacation Rental, including excessive noise, disorderly conduct, overcrowding, and excessive accumulation of refuse; and

6. Require a rental agreement that includes the following information: local Noise Ordinance regulations, parking restrictions for each unit, and the fine structure to be levied in the case of non-compliance with the San Diego Municipal Code.

Thank you for your attention and consideration.

Attachments (1)

cc: Mayor Kevin Faulconer
City Attorney Jan Goldsmith
Andrea Tevlin, IBA

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 113.0103; CHAPTER 13, ARTICLE 1, DIVISION 2 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 131.0222; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 3 BY AMENDING SECTION 131.0322; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4 BY AMENDING SECTION 131.0422; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5 BY AMENDING SECTION 131.0522; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 131.0622; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 3 BY REPEALING SECTION 141.0301; AMENDING SECTION 141.0302; AND ADDING SECTION 141.0310; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6 BY AMENDING SECTION 141.0603; AMENDING CHAPTER 15, ARTICLE 1 BY AMENDING SECTION 151.0103; AMENDING CHAPTER 15, ARTICLE 13, DIVISION 3 BY AMENDING SECTION 1513.0303, ALL RELATING TO HOME SHARING ACCOMMODATIONS ACCESSORY TO A DWELLING UNIT AND TO SEPARATELY REGULATED COMMERCIAL VISITOR ACCOMMODATIONS WITHIN A RESIDENTIAL STRUCTURE INCLUDING SHORT TERM DWELLING UNIT RENTALS.

§113.0103 Definitions

~~*Boarder* means an individual resident who is furnished sleeping accommodations and meals in a residential structure.~~

Guest room means any rented or leased room that is used or designed to provide sleeping accommodations for one or more transients in *hotels, motels*, bed and breakfast establishments and short-term dwelling unit rental facilities, home sharing accommodations, private clubs, lodges, and fraternity or sorority houses.

~~*Lodger* means any person renting a room in a residential *structure* for living or sleeping purposes without having free access to and use of the rest of the *structure*.~~

Ch 13 Use Tables: Open Space, Agricultural, Residential, Commercial, Industrial Zones

Single Dwelling Units and Multiple Dwelling Units:

Clarify the length of stay for a non-owner occupant is 30 days.

Revise Residential Zones Table 131-04B Footnote 5: Non-owner occupants must reside on the premises for at least 7 30 consecutive calendar days, .except that temporary living and sleeping accommodations provided without compensation as customarily incidental to, related to, and subordinate to the primary use as a dwelling unit are permitted. See Sections 141.0310 (Home Sharing

Accommodations) and 141.0603 (Short Term Rental of a Dwelling Unit), which identify additional separately regulated use limitations that apply to various types of short term visitor accommodations within a residential structure.

Repeal the Boarder and Lodger Accommodations Use Category

Home Sharing Accommodations:

Home sharing accommodations in which two or less rooms are rented are permitted by right in all zones that allow single or multiple dwelling units: OR, AR, RE, RS, RX, RT, RM, CN, CR-1, CO-1, CO-3, CV, CC-1, CC-3, CC-4, CC-5, IP-3 and all PDOs that allow residential.

Home sharing accommodations in which three or more rooms are rented are permitted as "limited use" in all zones as indicated above, subject to separately regulated use requirements.

Short Term Dwelling Unit Rental:

Rename bed and breakfast use category to Short Term Dwelling Unit Rental.

- Permitted as limited use in OR, AR, RE, RS, RX, RT, RM, CN, CR-1, CO-1, CO-3, CV, CC-1, CC-3, CC-4, CC-5, IP-3 and Mission Beach PDO zones.
- Permitted with CUP Process Three for deviations to the limited use regulations.

§141.0301 Boarder and Lodger Accommodations

~~Boarder and lodger accommodations are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.~~

- ~~(a) Boarder and lodger accommodations are permitted only as an accessory use to a primary dwelling unit.~~
- ~~(b) No more than two boarders or lodgers are permitted per primary dwelling unit.~~
- ~~(c) In the RM zones and all commercial zones, boarders and lodgers must occupy the premises for a minimum of 7 consecutive calendar days. In all other zones, boarders and lodgers must occupy the premises for a minimum of 30 consecutive calendar days.~~
- ~~(d) Off street parking shall be provided at a rate of 1 space for each 2 boarders or lodgers. Within the beach impact area of the Parking Impact Overlay Zone, off street parking shall be provided at a rate of 1 space for each boarder or lodger.~~

§141.0310 Home Sharing Accommodations

The home sharing accommodations use category applies to temporary lodging provided for a term of less than 30 consecutive days in a dwelling unit by a resident host in exchange for compensation. For the purposes of Section

141.0310, a resident host refers to the responsible person who resides in the dwelling unit and is party to the exchange of short term lodging for compensation.

Home sharing accommodations are permitted only as an accessory use to a primary dwelling unit. The resident host shall reside in the dwelling unit during the temporary lodging period.

(a) Zoning Regulations

(1) In the zones indicated with a "P" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), home sharing accommodations are permitted by right and are not required to comply with Section 141.0310.

(2) In the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), home sharing accommodations are permitted as a limited use, subject to the following limited use regulations.

(b) Limited Use Regulations

(1) While home sharing accommodations are provided, the resident host shall remain available to respond in person as a local contact to help address, actively discourage, and prevent any nuisance activity from occurring.

- (3) The resident host shall maintain and enforce a rental agreement with transients that advises of the following:
- (A) That the home sharing accommodations is located in a residential neighborhood and transients are expected to be respectful and maintain the residential character of the neighborhood;
 - (B) The number of bedrooms and maximum number of transients for the rental;
 - (C) The rules for trash and recycling containment and disposal;
 - (D) Information related to the location of fire extinguishers, smoke detectors, carbon monoxide detectors and emergency exit routes; and
 - (E) The City noise limits per San Diego Municipal Code Section 59.5.0401 and remedies available to the City to address and enforce noise violations, including the issuance of individual administrative citations in an amount up to \$1000 to each guest and to the *record owner*.
- (4) A copy of the rental agreement required by Section 141.0310(b)(3) shall be provided to transients prior to their rental of the *dwelling unit*, and shall be provided to the City upon request by a City official.

(5) Home sharing accommodations shall not exceed 2 transients per bedroom plus an additional 2 transients. The total number of transients in a home sharing accommodations unit cannot exceed 8. Children ages 12 and younger shall not be counted towards the maximum number of transients.

§141.0603 Short Term Dwelling Unit Rentals

A short term *dwelling unit* rental is a *dwelling unit* that is rented as a whole for a term of less than 30 consecutive calendar days. Section 141.0603 does not apply to home sharing accommodations that comply with the regulations in Section 141.0310. Short term dwelling unit rentals are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) and in the Mission Beach Planned District subject to the following regulations.

(a) Limited Use Regulations

(1) The *record owner* or operator shall maintain and enforce a rental agreement with transients that advises of the following:

(A) That the short term *dwelling unit* rental is located in a residential neighborhood and occupants are expected to be respectful and maintain the residential character of the neighborhood;

- (B) The number of bedrooms and maximum number of transients for the rental;
- (C) The rules for trash and recycling containment and disposal;
- (D) Information related to the location of fire extinguishers, smoke detectors, carbon monoxide detectors and emergency exit routes; and
- (E) The City noise limits per San Diego Municipal Code Section 59.5.0401 and remedies available to the City to address and enforce noise violations, including the issuance of individual administrative citations in an amount up to \$1000 to each guest and to the record owner.
- (2) A copy of the rental agreement required by Section 141.0603(d)(1) shall be provided to transients prior to their rental of the *dwelling unit*, and shall be provided to the City upon request by a City official.
- (3) The *record owner* or operator shall designate a local contact that shall remain available to respond in person during visitor stays and shall address and actively discourage and prevent any nuisance activity at the rental, including excessive noise, disorderly conduct, overcrowding, and excessive accumulation of refuse.

- (A) The record owner or operator shall post notice on the premises in a location visible to the general public that includes the contact number for the designated local contact. The notice shall be maintained in good condition with current contact information while the dwelling unit is operated as a bed and breakfast establishment or is rented out as a short term dwelling unit rental.
- (B) The designated local contact shall respond within 1 hour to all complaints reported to the local contact regarding violations of the San Diego Municipal Code associated with the rental.
- (4) Short term dwelling unit rentals shall not exceed 2 transients per bedroom plus an additional 2 transients. The total number of transients in a short term dwelling unit cannot exceed 8. Children ages 12 and younger shall not be counted towards the maximum number of transients.
- (5) The record owner or operator shall obtain a Short Term Dwelling Unit Rental Permit in accordance with Section 123.0702;
- (b) A Process Three Conditional Use Permit may be requested in accordance with Section 126.0303 to deviate from the requirements in Section 141.0603(a).

- (1) The applicant shall identify any requirement in Section 141.0621(a) where a deviation is being requested and shall specify why the deviation is needed.

General Provisions for Planned Districts

§151.0103 Applicable Regulations

- (a) The applicable zoning regulations in a planned district are those included in the planned district and any Land Development Code zoning regulations expressly incorporated into that planned district. Planned district regulations shall supersede any zoning regulations in the Land Development Code that are inconsistent or not expressly incorporated into the planned district regulations, except as follows:

(1) through (3) [No change in text.]

- (b) The following regulations apply in all planned districts:

(1) through (9) [No change in text.]

- (10) Home Sharing Accommodations in accordance with Section 141.0310, and Short Term Dwelling Unit Rentals in accordance with Section 141.0603.

Mission Beach Planned District Ordinance:

§1513.0303 Permitted Uses - Residential Subdistricts

No building or improvement or portion thereof shall be erected, constructed, converted, established, altered or enlarged, nor shall any lot or premises be used except for one or more of the following purposes:

(a) Primary Uses

(1) through (5) [No change in text.]

(b) Accessory Uses

Accessory uses and buildings customarily incidental to any of the foregoing permitted uses including the following:

(1) through (2) [No change in text.]

~~(3) Lodgers, permitted as follows:~~

~~(A) For a single dwelling unit which is the only dwelling unit on the premises, not more than 2 lodgers with each being provided a bedroom and with more than one full bathroom facility within the dwelling unit.~~

~~(B) For duplexes and multiple dwelling units, not more than one lodger being provided with a bedroom and with more than one full bathroom facility on the premises. Home sharing accommodations in accordance with Land Development Code Section 141.0310.~~

(4) Short Term Dwelling Unit Rentals for less than 30 consecutive calendar days are permitted in accordance with Section 141.0603

(4)(5) [No change in text.]

Chapter 12 Article 3 Division 7 Short Term Dwelling Unit Rental & Home Sharing

Accommodations Permit

§123.0701 Purpose of a Short Term Dwelling Unit Rental & Home Sharing

Accommodations Permit

The purpose of these procedures is to provide for annual review of short term dwelling unit rentals and home sharing accommodations for conformance with the applicable zoning regulations.

§123.0702 When a Short Term Dwelling Unit Rental & Home Sharing Accommodations

Permit Is Required

- (a) A Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit is required for any dwelling unit that is rented as a short term dwelling unit rental in accordance with Section 141.0603 or home sharing accommodations in accordance with Section 141.0310.
 - (1) Prior to the rental or sale of a dwelling unit, the property owner shall disclose the requirement for a Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit to prospective buyers.
 - (2) The Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit requirement shall apply to a short term

dwelling unit rentals and home sharing accommodations regardless of whether the dwelling unit was used for such purposes as described in Section 141.0603 and 141.0310, respectively, prior to the effective date of this ordinance.

§123.0703 How to Apply for a Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit

- (a) An applicant shall apply for a Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit in accordance with Section 112.0102.
- (b) Applications for Short Term Dwelling Unit Rentals shall include a site plan and floor plans including details sufficient to demonstrate compliance with Section 141.0603(a). The application shall also include a copy of a draft rental agreement as described in Section 141.0603(a)(1).
- (c) The Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit application and \$100 fee shall be resubmitted annually by the property owner to ensure compliance with the provisions of this division.

§123.0704 Decision on a Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit

A decision on an application for a Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit shall be approved in accordance with Process One. The Director of Development Services, or his or her designee, shall approve and issue a Short Term Dwelling Unit Rental Permit if the application

demonstrates conformance with the separately regulated use requirements in Section 141.0603(a). The Director of Development Services, or his or her designee, shall approve and issue a Home Sharing Accommodations Permit if the application demonstrates conformance with the Section 141.0310

§123.0705 Issuance of a Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit

- a) The Director of Development Services, or his or her designee shall issue the Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit when the required fees have been paid and the permit has been approved.
- b) A Short Term Dwelling Unit & Home Sharing Accommodations Permit shall not be issued to a property with a pending code violation case.
- c) The permit shall be valid for a 12 month period.

§123.0706 Enforcement and Administrative Remedies

- (a) Violations of this Division are subject to the judicial and administrative enforcement remedies identified in Section 121.0311 of this Code.
- (b) Final adjudication of three or more Administrative Citations issued to transients and/or resident hosts within a 12-month period pursuant to Article 2, Division 9 shall result in revocation of a previously approved Short Term Dwelling Unit and Home Sharing Accommodations Permit for

the remaining duration of the permit plus an additional 12 months.

- (c) Notwithstanding the provisions of Section 12.0908, the penalty for an Administrative Citation for a violation related to a Short Term Dwelling Unit Rental & Home Sharing Accommodations Permit shall be assessed on an increasing and graduated basis for each Administrative Citation adjudicated against a transient, resident host, and/or property owner within a 12-month period. Such graduated penalties may be assessed in an amount exceeding the penalties identified in Section 12.0908(c) in accordance with Section 12.0908(d).

§123.0707 Establishment of Short Term Dwelling Unit & Home Sharing

Accommodations Fund

- (a) There is hereby established a fund to be known and denominated as the San Diego Short Term Dwelling Unit & Home Sharing Accommodations Fund. The Short Term Dwelling Unit & Home Sharing Accommodations Fund shall consist of funds derived from the issuance of Short Term Dwelling Unit Rental & Home Sharing Accommodations Permits paid to the City pursuant to Section 127.0703 of the San Diego Municipal Code.

§123.0708 Purpose and Use of Short Term Dwelling Unit & Home Sharing

Accommodations Fund

- (a) The Short Term Dwelling Unit & Home Sharing Accommodations Fund shall be used for administrative support and enforcement of Chapter 12 Article 3 Division 7 of this Code.