

ORDINANCE NO. 17-

Ordinance Of The City Council Of The City Of Emeryville Adding Article 21 To Chapter 5, And Amending Chapters 2, 3 And 7, Of Title 9 Of The Emeryville Municipal Code Regarding Short-Term Rental Of All Or Part Of A Dwelling

WHEREAS, in 2015, the City Council directed staff to report on short-term rentals and options for regulating them; and

WHEREAS, on March 24, 2016, the Planning Commission held a study session and expressed concern on the land use impacts of short term rentals, namely that short-term rentals could result in loss of residential character of neighborhoods, exacerbate the shortage of affordable housing stock within the City; and

WHEREAS, on July 13, 2016, the Housing Committee considered the impacts of short-term rental as it related to housing issues including use of residential space for commercial use and reduction of housing supply driving up rents; and

WHEREAS, on July 19, 2016, and October 18, 2016, the City Council held study sessions where the Council echoed the concerns expressed by the Planning Commission and the Housing Committee as well as the loss of units from the long-term rental market; and

WHEREAS, at the October 18, 2016, study session, the City Council indicated its desire to allow for short-term rentals because of their potential to generate revenue but to adopt regulations to mitigate against the impacts expressed by the Planning Commission, the Housing Committee and the City Council itself, and desires to limit and regulate Short-term Rentals; and

WHEREAS, on January 26, 2017, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed ordinance and unanimously recommended its adoption by the City Council; and

WHEREAS, on March 7, 2017, the Emeryville City Council held a duly and properly noticed public hearing on the proposed ordinance; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed amendments to Title 9 of the Emeryville Municipal Code, as set forth below, and the applicable provisions of the Emeryville Municipal Code;

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

SECTION ONE. PURPOSE AND INTENT.

The purpose and intent of this ordinance is to amend the Planning Regulations in Title 9 of the Emeryville Municipal Code to regulate the short-term rental of all or part of a residential unit.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE.

The City Council makes the following findings, pursuant to Section 9-7.1305 of the Emeryville Municipal Code:

(a) The proposed amendment is consistent with the General Plan.

The proposed amendment helps to implement General Plan goal LU-G-5 “Preservation of residential neighborhoods” because it will preserve the residential use and character of residential neighborhoods. By restricting the number of days for non-hosted short-term rentals, and requiring the primary, permanent resident to be in residence for hosted short term rentals, the ordinance ensures that single family homes will not be converted into hotels, which would be detrimental to the residential character, limiting and regulating a use that could have negative impacts on adjacent residential uses.

(b) The proposed amendment is necessary for public health, safety and welfare or will be of benefit to the public.

The proposed amendment is necessary for public health, safety and welfare because it protects both guests and neighbors of the short-term rental. By requiring operators to post fire and safety information and provide smoke and carbon monoxide detectors, the ordinance ensures that the lodging meets certain safety standards, protecting the safety of the health, safety and residents of guests. By limiting short-term rentals to single-unit detached house and primary permanent residents as operators, the ordinance eliminates welfare issues such as removal of units from the long-term housing market.

(c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 of the State CEQA Guidelines regarding existing facilities, specifically operation and leasing of

existing structures, and under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.

SECTION THREE. ADDING ARTICLE 21 TO CHAPTER 5 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE.

Article 21 of Chapter 5 of Title 9 of the Emeryville Municipal Code is hereby added to read as follows:

ARTICLE 21. SHORT-TERM RENTALS

9-5.2101 Purpose.

The purpose of this Article is to establish criteria and procedures for rental of all or part of a dwelling unit for fewer than 30 days. The City finds it necessary to establish such requirements to regulate Short-term Rentals in the interest of the public health, safety, and welfare.

9-5.2102 Permit Required.

No person shall establish, operate, or maintain a Short-term Rental without first obtaining a valid Short-term Rental permit pursuant to this Article.

9-5.2103 Where and How Permitted.

Short-term Rentals are permitted only in single-unit detached houses, and only as an accessory use. All other short-term rental of dwellings and parts of dwellings is prohibited. This Article is not to be construed to prohibit weekly rentals in Group Residential uses. By issuing a Short-term Rental permit, the City is not conferring a vested right.

9-5.2104 Standards.

All Short-term Rentals shall conform to the following standards:

- (a) Non-hosted Short-term Rental of an entire Single-unit detached house is limited to a total of 90 calendar days per permit term. Portions of calendar days shall count as full days.
- (b) Short-term Rental of part of a Single-unit detached house must be hosted; the primary, permanent resident shall continue to occupy the Single-unit detached

house in his/her usual manner, while operating the Short-term Rental of a room or other space that is a portion of the dwelling.

- (c) The house that includes the Short-term Rental must be the permittee's primary, permanent residence.
- (d) If the permittee is not the owner, the permittee must have the owner's written permission to operate a short-term rental on the property.
- (e) The dwelling must have a smoke detector, a fire extinguisher, a carbon monoxide detector, and adequate egress, as determined by the Chief Building Official.
- (f) The permittee shall post a diagram of exits, fire extinguisher locations, Fire and Police Department phone numbers, the operator's contact information, and the City Noise Ordinance hours.
- (g) The permittee must obtain and maintain a current Business Tax Certificate and pay Transient Occupancy Tax as may be required by the Emeryville Municipal Code.
- (h) The operator must inform and update the City regarding what advertising platforms are used to advertise the unit or room for Short-term Rental.
- (i) The Short-term Rental shall not result in a nuisance.

9-5.2105 Application.

Application for a Short-term Rental permit shall be submitted to the Planning Division on a form provided by the Director, accompanied by a fee as set forth in the Master Fee Schedule and application materials as determined necessary by the Director, including but not limited to the following, all including the applicant's name and the address of the dwelling where the Short-term Rental would occur:

- (a) Driver license or State identification card;
- (b) If the operator/permanent primary occupant is not the owner, written permission from the owner to operate Short-term Rentals, with owner contact information;
- (c) Photos of smoke detector, carbon monoxide detector, and fire extinguisher in the area of the dwelling to be rented, and egress from the rental space to the exterior of the building;

- (e) One of the following documents to prove that the applicant/permittee is the primary, permanent resident of the property where the Short-term Rental is proposed to occur:
 - (1) Proof of Homeowner's Tax Exemption,
 - (2) Voter Registration Card or Certificate,
 - (3) Proof of vehicle registration,
 - (4) Original proof of car insurance,
 - (5) One original utility bill from EBMUD, Waste Management, or PG&E,
 - (6) Lease;
- (g) Statement of what advertising platforms will be used to advertise the space to be rented;
- (f) Current Business Tax Certificate.

9-5.2106 Approval Procedure.

The Director shall consider applications for Short-Term Rentals in consultation with the Chief Building Official, Fire Marshal, and Police Chief. The Director, at his/her discretion, may give such notice as is deemed appropriate to adjacent property owners or other interested parties. However, the Director may, instead, refer any application to the Planning Commission for consideration. If considered by the Commission, the application shall be heard at a public hearing noticed by types C, D, and E and optionally by types A and F, as these notice types are defined in Section 9-7.208(b). The Director or Commission, as the case may be, may approve or disapprove an application or impose conditions of approval which, in his/her/its judgment, are necessary to ensure conformity with the provisions of this Article. The decision may be appealed as set forth in Section 9-5.2110.

9-5.2107 Required Findings.

In order to approve a Short-term Rental permit, the Director or the Planning Commission shall find that the proposed Short-term Rental conforms to the standards in Section 9-5.2104.

9-5.2108 Renewal.

A Short-term Rental permit shall expire on December 31st of the calendar year in which it was issued or renewed. A valid permit which has not been surrendered, suspended, or revoked may be renewed for subsequent periods of no longer than one year upon the following terms and conditions:

- (a) All annual Short-term Rental permits issued under this Article, except the first permit issued for a newly established Short-term Rental, shall be considered to be issued on January 1st of each year and shall expire on December 31st of the same year.
- (b) An application for renewal of a Short-term Rental permit shall be filed with the Planning Division before the Short-Term Rental permit expires, on a form provided by the Director, accompanied by a statement indicating whether any information required by Section 9-5.2105 has changed for the renewal period.
- (c) The Director shall review the renewal application in consultation with the Chief Building Official, Fire Marshal, and Police Chief, to ensure the Short-term Rental's continued compliance with the provisions of this Article and any conditions of approval, and to assess any outstanding violations or complaints. The Director may request additional information in order to complete his/her review. To renew a Short-term Rental permit, the Director must make the same findings as for approval of an initial permit.
- (d) Upon completion of the review, the Director shall determine whether to renew the application, and shall promptly inform the renewal applicant of his/her decision. If the permit is renewed, the Director shall provide a new permit for the renewal period. In renewing the Short-term Rental permit, the Director may modify or delete any existing conditions of approval, and impose any new conditions of approval, as he/she deems appropriate. If the permit is not renewed, the Director shall provide a written explanation to the renewal applicant detailing the reasons for the non-renewal. If the permit is not renewed, the renewal applicant shall immediately cease operating the Short-term Rental.

9-5.2109 Revocation.

A permit issued pursuant to this Article shall be subject to suspension, revocation, or modification for the violation of any provisions of this code or for any grounds which would warrant the denial of the issuance of such original permit. The Director may issue a notice of violation for any failure to comply with any requirement of this Article or any condition of the permit. Such notice shall set forth the action necessary to come into compliance and a time frame for compliance. If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may revoke, suspend, or modify the permit, upon 30 days' notice. If the Director

decides to revoke or suspend the permit, the operator shall cease operation of the Short-term Rental immediately.

9-5.2110 Appeals.

- (a) A decision of the Director on a new Short-term Rental permit pursuant to Section 9-5.2106 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final.
- (b) If the Director refers a new Short-term Rental permit application to the Planning Commission for consideration pursuant to Section 9-5.2106, the decision of the Planning Commission may be appealed to the City Council as provided in Article 14 of Chapter 7.
- (c) A decision by the Director to revoke, suspend, or modify a Short-term Rental permit pursuant to Section 9-5.2109 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final. If the Commission decides to revoke or suspend the permit, the operator shall cease operation of the Short-term Rental immediately.

9-5.2111 Enforcement.

The City Attorney shall have authority to initiate a civil action to enforce the provisions of this Article without prior City Council approval. In make such determination, the City Attorney shall consult with the code enforcement officer.

9-5.2112 Definitions.

As used in this Article:

- (a) "Hosted" means that the primary occupant of the dwelling within which the rental takes place occupies the dwelling during the entire rental period.
- (b) "Non-hosted" means that the primary occupant of the dwelling within which the rental place is absent from the dwelling for some or all of the rental period.
- (c) "Single-unit detached house" means a dwelling that is a structure not attached to another structure, but which may be on the same lot as another dwelling.

SECTION FOUR. AMENDING CHAPTERS 2, 3, 5, AND 7 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE.

Chapter 2 Use Classification

Chapter 2 of Title 9 of the Emeryville Municipal Code is hereby amended as follows, with deletions shown in ~~strikeout~~ type and additions shown in double-underlined type.

9-2.333 Lodging.

Establishments engaged in the provision of commercial sleeping accommodations on a primarily short-term basis to the general public. This use type excludes Residential use types.

- (a) **Hotels.** Sleeping accommodations that are not in a ~~residential dwelling~~ unit for stays of generally less than two weeks 30 consecutive calendar days or less in duration, where access to rooms is primarily from interior lobbies, courts, or halls. Typical uses include hotels, extended stay hotels, and hostels. This use type includes related facilities such as restaurants, meeting rooms and spas.
- (b) **Motels.** Sleeping accommodations that are not in a dwelling unit for stays of generally less than two weeks 30 consecutive calendar days or less in duration, where access to rooms is primarily from the exterior of the building. This use type includes related facilities such as restaurants, meeting rooms and spas.
- (c) **~~Bed and Breakfast~~ Short-term Rental.** A commercial lodging establishment that is all or part of a ~~residential dwelling~~ unit. This use type excludes Group Residential uses. See also ~~Section 9-5.206~~ Article 21 of Chapter 5.

In Section 9-2.702 Uses That Are Always Accessory Uses, the following paragraph is added:

- (p) **Short-term Rental.** Rental of all or part of a dwelling for fewer than 30 days.

Chapter 3 Zoning Districts

In Table 9-3.202 Uses Permitted, Conditionally Permitted and Prohibited, under Lodging, the row for *Bed & Breakfast* is hereby deleted.

Chapter 5 Citywide Use and Development Regulations

Section 9-5.206 Lodging, *Bed and Breakfast*, is hereby deleted.

Chapter 7 Administration and Permits

In Table 9-7.202 Decision Making, Public Hearing and Notice Requirements, the following row is hereby added in the Discretionary Quasi-Judicial Actions section, between Sidewalk Café and Design Review, a new footnote 5 is added, and footnotes 5-10 are renumbered 6-11:

Permit or Action Type	Reference	Decision Process			Public Hearing Required?	Type of Notice		Required Findings	Combined or Concurrent Processing
		Advisory	Decision	Appeal		Required	Optional		
Sidewalk Café Permit ⁴	Chapter 5 Article 15	N/A	Director	PC ²	No	None	A, B, F	Section 9-5.1508	N/A
<u>Short-term Rental</u> ⁵	<u>Chapter 5 Article 21</u>	<u>N/A</u>	<u>Director</u>	<u>PC²</u>	<u>No</u>	<u>None</u>	<u>A, B, F</u>	<u>Section 9-5.2107</u>	<u>N/A</u>
Design Review including Signs ⁶	Chapter 7 Article 4							Section 9-7.407	Combined ^Z
Minor ⁸		N/A	Director	PC ²	No	None	A, B, F		
Major		Director	PC	CC ²	Yes	A, C, D, E	F		

5. In granting a short-term rental permit, the Director shall consult with the Chief Building Official, Fire Marshal, and Police Chief. The Director may refer the application to the Planning Commission, in which case a public hearing would be required, with required notice of Types A, C, D, and E and optional notice of Type F, and the Commission's decision would be appealable to the City Council.

SECTION FIVE. CEQA DETERMINATION.

The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 of the State CEQA Guidelines regarding existing facilities, specifically operation and leasing of existing structures, and under the "general rule" at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.

SECTION SIX. SEVERABILITY.

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION SEVEN. CODIFICATION.

Sections Three and Four of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Five, Six, Seven, and Eight shall not be codified.

SECTION EIGHT. EFFECTIVE DATE AND POSTING.

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, March 7, 2017, and passed and adopted by the City Council at a regular meeting held on Tuesday, March 21, 2017 by the following vote:

AYES:

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NOES:

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☐

ABSTAIN:

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ABSENT:

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MAYOR

ATTEST:

APPROVED AS TO FORM:



CITY CLERK

CITY ATTORNEY