

ORDINANCE NO. 2020-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 3.16.060 AND CHAPTER 5.95 OF THE NEWPORT BEACH MUNICIPAL CODE RELATING TO SHORT TERM LODGING

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("City") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, the City is a popular beach resort community that serves a large number of tourists during the summer months;

WHEREAS, this influx of tourists' burdens City streets and services with heavy volume of vehicle traffic and heavy demand on parking, sewage, and refuse facilities, paramedics and police services;

WHEREAS, the Police and Fire Departments frequently respond to complaints of noise disturbances, disorderly conduct and other illegal activity at short term lodging units;

WHEREAS, a large number of short term lodging units are located in residential areas where dwelling units are occupied by the property owner or long term tenants and these permanent residents are adversely impacted by the noise, traffic, refuse and demand for parking resulting from occupancy of short term lodging units;

WHEREAS, the presence of such visitors within the City's residential neighborhoods can sometimes disrupt the quietude and residential character of the neighborhoods and adversely affect the community;

WHEREAS, the City has an interest in preserving its housing stock and the quality and character of its existing single and multi-family residential neighborhoods;

WHEREAS, occupants of short term lodging units are generally not residents of the City and the City has limited ability to enforce provisions of the Newport Beach Municipal Code and the Penal Code related to disorderly conduct when violated by occupants of short term lodging units;

WHEREAS, on May 11, 1992, the City Council adopted Ordinance 92-13, establishing regulations for the operation of short term lodging units within residential zones to mitigate the impact of this use on the residents of the City; and

WHEREAS, the City Council has reviewed and considered evidence and documentation attesting to the need to further regulate and control short term lodging units in residential zones to ensure that short term lodging units are regulated in a way to maintain harmony with surrounding uses and all transient occupancy taxes and visitor service fees are properly collected and remitted to the City.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Section 3.16.060 of Chapter 3.16 of Title 3 of the Newport Beach Municipal Code is hereby amended to read as follows:

3.16.060 Registration of Hotel.

Within thirty (30) days after commencing business each operator of any hotel renting occupancy to transients shall register the hotel with the Finance Director and obtain a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued; and
- D. The following statement: This transient occupancy registration certificate signifies that the person named on the certificate has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance (Chapter 3.16 of the Newport Beach Municipal Code) by registering with the Finance Director for the purpose of collecting the tax from transients and remitting the tax to the Finance Director. This certificate does not authorize any person to conduct any unlawful business, to conduct any lawful business in an unlawful manner or to operate a hotel without strictly complying with all local laws, including those requiring a permit from any board, commission, department or office of the City. This certificate does not constitute a permit.

The requirements of this section shall not apply to the operator of a hotel required to obtain a short term lodging permit pursuant to Section 5.95.020.

Section 2: Chapter 5.95 of Title 5 of the Newport Beach Municipal Code is hereby amended to read as follows:

Chapter 5.95

SHORT TERM LODGING PERMIT

Sections:

- 5.95.005 Purpose and Findings.
- 5.95.010 Definitions.
- 5.95.015 Residential Properties Eligible for Short Term Lodging Permits.
- 5.95.020 Permit Required.
- 5.95.025 Agency.
- 5.95.030 Application for Permit.
- 5.95.035 Denial of Permit.
- 5.95.040 Filing Fee.
- 5.95.045 Conditions.
- 5.95.047 Violations of Permit Conditions by Transient User, Occupant or Guest.
- 5.95.050 Agent and Hosting Platform Responsibilities.
- 5.95.055 Issuance of Administrative Subpoenas.
- 5.95.060 Violations, Penalties and Enforcement.
- 5.95.065 Suspensions and Revocations.
- 5.95.070 Permits and Fees Not Exclusive.
- 5.95.080 License and Permit Closure.

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 increasing the demand for City services and creating adverse impacts in residential zones.
- B. Over a thousand dwelling units within residential zones near the City's beaches and harbor are rented for less than thirty (30) consecutive calendar days with the vast majority of those rentals occurring during the summer when the demand for parking and City services is the 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 this Code and the 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 lodging units overburdens and threatens the City's ability to provide necessary services.

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

G. There has been an increase in the number of lodging units booked on a short term basis where the owner of the unit does not have a short term lodging permit, affecting the ability of the City to properly regulate the impacts caused by the illegal operation.

H. There has been an increase in the number of lodging units booked on a short term basis where the owner of the property has not taken steps to ensure the transient occupancy tax and visitor service fee is collected and/or remitted to the City, resulting in an unfair business advantage to these illegal operations and loss of revenue necessary to provide City services.

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

J. To ensure the effective enforcement of this Code, it is necessary to have the owner include the short term lodging permit number issued by the City on all advertisements for a short term lodging unit so the transient user knows the owner is authorized to rent the lodging unit on a short term basis.

K. To ensure the transient user knows the total cost associated with renting the lodging unit and to prevent fraud, it is necessary for the owner to make sure the transient user is informed of the amount of the transient occupancy tax and visitor service fee prior to completing a booking transaction.

L. The restrictions of this chapter are necessary to preserve the City's housing stock, the quality and character of the City's residential neighborhoods as well as to prevent the continued burden on City services and adverse impacts on residential neighborhoods posed by short term lodgings.

5.95.010 Definitions.

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

A. "Accessory dwelling unit" shall have the same definition as set forth in Chapter 20.70 of Title 20 of this Code.

B. "Agent" shall mean any person who is authorized in writing by the owner to represent and act for an owner.

C. "Booking transaction" shall mean any reservation or payment service provided by a person who facilitates a short term lodging rental transaction between a transient user and owner for the use of a unit for a period of less than thirty (30) consecutive calendar days.

D. "City Manager" shall mean the City Manager of the City or his or her designee.

E. "Finance Director" shall mean the Finance Director of the City or his or her designee.

F. "Gross floor area," shall mean the area of the lodging unit that includes the surrounding exterior walls and any interior finished portion of a structure that is accessible and that measures more than six feet from finished floor to ceiling. Stairwells and elevator shafts above the first level shall be excluded from the calculation of gross floor area.

G. "Home-sharing" shall mean an activity whereby the owner hosts a transient user in the owner's lodging unit, for compensation, for periods of less than thirty (30) consecutive calendar days, during which time the owner of the unit lives onsite, in the unit, throughout the transient user's stay and the owner, the transient user and any other occupants live together in the same unit as a single housekeeping unit.

H. "Hosting platform" shall mean a person, other than an owner or agent, who participates in the short term lodging business by facilitating a booking transaction using any medium of facilitation.

I. "Lodging unit" or "unit" shall mean a "dwelling unit" as that term is defined in Chapter 20.70, of Title 20 of this Code. An accessory dwelling unit shall not be considered a lodging unit or unit for purposes of this chapter.

J. "Owner" shall mean the person(s) that hold(s) legal and/or equitable title to the lodging unit.

K. "Person" shall mean any individual and any form of business entity including, but not limited to, all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, business or common law trusts, societies, or limited liability companies.

L. "Residential district" shall mean those areas of the City so designated by Title 20 of this Code as well as any other area in the City designated for a residential use as part of a Planned Community Development Plan, Specific Area Plan or Planned Residential District.

M. "Short term" shall mean a lodging unit that is rented or leased as a single housekeeping unit for a period of less than thirty (30) consecutive calendar days. This also includes home-sharing.

N. "Short term lodging unit registry" shall mean the published registry maintained by the City that sets forth a list of all owners and the address of all units that have a valid short term lodging permit and business license with the City, a copy of which is available, without charge, to any person who requests a copy and which shall be accessible on the City's website.

O. "Single housekeeping unit" shall have the same definition as set forth in Chapter 20.70 of Title 20 of this Code.

P. "Transient" or "Transient user" shall mean any person or persons who, for any period less than thirty (30) consecutive calendar days either at his or her own expense, or at the expense of another, obtains lodging in a lodging unit or the use of any lodging space in any unit, for which lodging or use of lodging space a charge is made.

5.95.015 Residential Properties Eligible for Short Term Lodging Permits.

Only properties in a residential district that are authorized under Titles 20 and 21 of this Code and this chapter shall be eligible for a short term lodging permit.

Subsequent to June 1, 2004, no annual permit shall be issued to or renewed for any dwelling unit on any parcel zoned for "Single-family Residential (R-1)" or that is designated for a 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 lodging unit and the permit was not subsequently revoked.

5.95.020 Permit Required.

No owner of a lodging unit shall advertise for rent or rent a lodging unit located within a residential district for a short term without a valid short term lodging permit for that unit issued pursuant to this chapter.

5.95.025 Agency.

An owner may retain an agent to comply with the requirements of this chapter, including, without limitation, the filing of an application for a short term lodging permit, the management of the short term lodging unit or units, and the compliance with the conditions to the short term lodging 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.

5.95.030 Application for Permit.

An application for an annual short term lodging permit, or renewal thereof, 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 short term lodging permit is to be issued.
- B. The name, address and telephone number of the agent, if any, of the owner of the unit.
- C. Evidence of a valid business license issued by the City for the separate business of operating a short term lodging unit or units.
- D. The number of bedrooms in the lodging unit.
- E. The gross floor area of the lodging unit.
- F. The number of parking spaces available onsite and a description indicating the location and size of each parking space.
- G. A nuisance response plan, which sets forth the owner's plan for handling disruptive guests.
- H. A certification that the applicant has reviewed the covenants, conditions and restrictions, if any, and a short term use is permitted at the location pursuant to the terms of the covenants, conditions and restrictions, if any.
- I. Acknowledgement of receipt and inspection of a copy of all regulations pertaining to the operation of a short term lodging unit.

J. Such other information as the Finance Director deems reasonably necessary to administer this chapter.

5.95.035 Denial of Permit.

If permits are available for issuance, no application filed by an owner for an annual permit or renewal of a permit for a unit eligible to be used as a short term lodging unit, as provided for in Section 5.95.015 and this Code, shall be denied unless: the owner does not have a current valid business license; the owner has failed to pay transient occupancy tax, the visitor service fee, a penalty, a fine or inspection cost, due and owing to the City; the nuisance response plan is deemed inadequate by the Finance Director; or the short term lodging permit for the same unit and issued to the same owner has been revoked.

5.95.040 Filing Fee.

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 and for providing the answering service.

5.95.045 Conditions.

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

1. The owner shall prohibit a lessee of a lodging unit from renting the lodging unit to a transient user for a short term and from home-sharing.
2. The owner shall not rent a lodging unit to a transient user that is under the age of 21.
3. The owner shall enter into a written agreement with the transient user that requires:
 - a. All persons residing in the short term lodging unit to live together as a single housekeeping unit; and
 - b. Limits the overnight occupancy of the short term lodging unit to the maximum permitted by the Building Code and Fire Code.
4. The owner shall ensure that the transient user complies with all terms of the written agreement set forth in Subsection 5.95.045 A (3).

5. The owner shall use best efforts to ensure that the transient user, 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 or federal law pertaining to noise, disorderly conduct, the consumption of alcohol, or the use of illegal drugs.

6. The owner shall, upon notification that any transient user, occupant and/or guest of his or her short term lodging unit has created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of this Code or any state or federal 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 any transient user, occupant or guest.

7. The owner of the short term lodging unit shall use best efforts to ensure compliance with all the provisions of Title 6 of this Code.

8. The owner of the short term lodging unit shall provide the transient user with a copy of Sections 5.95.047, 10.28.007, 10.28.010, 10.28.020, 10.58.030, and 10.66.020 of this Code.

9. The owner of the short term lodging unit shall provide the transient user with a copy of the good neighbor policy created by the City and available on the City website, post a copy of the short term lodging permit and post a copy of the conditions set forth in this subsection in a conspicuous place within the unit. The notice shall be in substantial compliance with a template created by the City, which shall be available on the City website, and contain the following:

a. The name of the local contact person(s) and phone number at which that person(s) may be reached on a twenty-four (24) hour basis. The local person(s) must be located within twenty-five (25) miles of the unit and shall respond to any call related to the unit within thirty (30) minutes;

b. The number and location of onsite parking spaces;

c. The street sweeping schedule for all public rights-of-way within three hundred (300) feet of the unit;

d. The trash collection schedule for the unit, and the Code rules and regulations concerning the timing, storage and placement of trash containers and recycling requirements;

e. Notification that no amplified sound or reproduced sound is allowed outside or audible from the property line between the hours of 10:00 p.m. and 10:00 a.m.; and

f. Notification that any transient user, occupant or guest is responsible for all activities occurring on the property and that any transient user, occupant or guest may be cited and fined for creating a disturbance or violating any provision of this Code.

10. 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 any transient user, occupant or guest from engaging in disorderly conduct or committing violations of this Code or state or federal law pertaining to noise, disorderly conduct, the consumption of alcohol or the use of illegal drugs.

11. The owner shall:

a. Ensure that all transient occupancy taxes and visitor service fees are collected and remitted to the City and otherwise comply with all transient occupancy tax and visitor service fee requirements, as set forth in Chapters 3.16 and 3.28.

b. If the owner uses an agent to collect and remit the transient occupancy tax and the visitor service fee, either voluntarily or as directed by the City, the owner shall be responsible for ensuring that the agent collects and remits the transient occupancy tax and the visitor service fee to the City pursuant to the requirements set forth in this chapter, Chapter 3.16 and Chapter 3.28.

c. If the Finance Director directs, in writing, a hosting platform to collect and remit the transient occupancy tax and the visitor service fee, the owner shall: (i) be responsible for ensuring that the hosting platform collects and remits the transient occupancy tax and the visitor service fee to the City in accordance with this chapter; and (ii) when filing a return in accordance with Sections 3.16.070 and 3.28.040, the owner shall provide the City with a copy of all receipts showing the date the short term lodging unit was rented, the name of the hosting platform, the amount of transient occupancy tax and visitor service fee collected by the hosting platform, and proof that the transient occupancy tax and visitor service fee was remitted to the City.

12. The owner shall provide the City with the name and twenty-four (24) hour phone number of a local contact person(s) (who reside within twenty-five (25) miles of the property) who shall respond to contacts from the answering service, respond to any call related to the unit within thirty (30) minutes, and 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 five (5) business days, if there is a change in the local contact person(s).

13. The owner shall ensure that all available parking spaces onsite, which may include garage, carport, and driveway spaces, as well as tandem parking are available for the transient user, occupant or guest of the short term lodging unit. The owner shall disclose the number of parking spaces available onsite and shall inform the transient user, occupant and/or guest that street parking may not be available.

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

15. The owner shall include the City issued short term lodging permit number on all advertisements for the rental of the short term lodging unit and shall ensure the transient user is informed of the amount of the transient occupancy tax and visitor service fee prior to completion of the booking transaction.

16. The owner shall ensure that a permitted short term lodging unit is only used for residential purposes and not used for non-residential uses, including, but not limited to, large commercial or non-commercial gatherings, commercial filming and/or non-owner wedding receptions.

17. The owner shall ensure that no amplified sound, or reproduced sound is used outside or audible from the property line between the hours of 10:00 p.m. and 10:00 a.m. and that the transient user does not violate the requirements set forth in this chapter, Chapters 10.28, 10.58 and 10.66.

18. The owner shall comply with the nuisance response plan submitted with the application for a short term lodging permit and approved by the Finance Director.

19. The owner shall allow the City to inspect the short term lodging unit to confirm the number of bedrooms, gross floor area, and number/availability of parking spaces, seven (7) calendar days after the City serves the owner with a request for inspection in accordance with Section 1.08.080. If, based on the inspection, it is determined that the information submitted to the City in accordance with Section 5.95.030 was false, in addition to any other remedy set forth in this chapter, the owner agrees that the owner shall be liable for the cost of conducting the inspection.

20. The owner shall provide the City with a copy of any written rental agreement(s) and the good neighbor policy, within seven (7) calendar days after the City serves the owner with a notice of request for written rental agreements and the good neighbor policy in accordance with Section 1.08.080.

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.

5.95.047 Violations of Permit Conditions by Transient User, Occupant or Guest.

In addition to other provisions of this Code, it shall be unlawful for any transient user, occupant or guest of a short term lodging unit to:

- A. Exceed the overnight occupancy limit designated for the short term lodging unit.
- B. Use street parking prior to utilizing all available onsite parking space(s) for the lodging unit.
- C. Place trash for collection in violation of this Code's rules and regulations concerning:
 - 1. The timing, storage or placement of trash containers; or
 - 2. Recycling requirements.
- D. Amplify or reproduce sound between the hours of 10:00 p.m. and 10:00 a.m.:
 - 1. Outside of the lodging unit; or
 - 2. That is audible from the property line for the lodging unit.
- E. Use the short term lodging for any non-residential purpose, including, but not limited to, large commercial or non-commercial gatherings, commercial filming and/or non-owner wedding receptions.

5.95.050 Agents and Hosting Platform Responsibilities.

- A. If directed to do so by the Finance Director, in writing, agents or hosting platforms shall:
 - 1. Collect all applicable transient occupancy taxes and visitor service fees that are imposed on the transient, pursuant to Chapters 3.16 and 3.28, from the transient, or from the person paying for such rental, at the time payment for such rental is made; and
 - 2. Remit to the City any transient occupancy taxes or visitor service fees collected by the hosting platform or agent to the City before the last day of the month following the close of each calendar quarter or on the day specified by the Finance Director if a different reporting period has been established.

Hosting platforms shall not collect or remit such taxes unless expressly authorized to do so by the Finance Director, in writing. Nothing in this subsection shall be deemed to relieve an operator, as that term is defined in Sections 3.16.020 and 3.28.010, from complying with the requirements set forth in Chapters 3.16 and 3.28 of this Code, or to interfere with the ability of an agent or hosting platform and an owner to enter into an agreement regarding fulfillment of the requirements of this subsection.

B. Subject to applicable laws, agents and hosting platforms shall disclose to the City on a regular basis each home-sharing and vacation rental listing located in the City, 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.

C. Agents and hosting platforms:

1. Shall prompt any person utilizing their advertising services to include the City-issued registration number in their listing(s), in a format designated by the City and shall not advertise any short term lodging unit where a registration number is not provided. Upon notice from the City that a listing is non-compliant, agents and hosting platforms shall cease any short-term rental booking transactions for said listing(s) within five (5) business days. An agent or hosting platform shall not complete any booking transaction for any short term lodging unit subject to a City notice that a unit is non-compliant, until notified by the City that the short term lodging unit follows the local registration requirement.

2. 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.

D. A hosting platform operating exclusively on the internet, which operates in compliance with subsection (A), (B), and (C) 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.

E. The provisions of this 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).

5.95.055 Issuance of Administrative Subpoenas.

The City Manager shall have the authority to issue and serve administrative subpoenas to the owner, 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 (30) calendar days from the date of service. A person that has been served with an administrative subpoena may seek judicial review during that thirty (30) calendar day period. Failure to respond to an administrative subpoena in accordance with the terms set forth therein shall be punishable in accordance with Section 5.95.060 and the City may file a judicial action to compel compliance with the subpoena.

5.95.060 Violations, Penalties and Enforcement.

A. It shall be unlawful for any person to violate any provisions or to fail to comply with any of the requirements of this chapter.

B. In addition to, or separate from, the foregoing criminal penalties, any person violating any of the provisions or failing to comply with any of the requirements of this chapter is subject to the issuance of an administrative citation pursuant to the provisions of Section 1.04.010(E) and Chapter 1.05.

5.95.065 Suspensions and Revocations.

In addition to any fine or penalty that may be imposed pursuant to any provision of this Code including, but not limited to Section 5.95.060, a short term lodging permit for a unit may be suspended or revoked as provided in this section.

A. Suspensions/Revocations.

1. Except as otherwise provided in this subsection, if any person violates any short term lodging permit condition two (2) or more times in any twelve (12) month period or any other provision of this Code, state law or federal law, two (2) or more times in any twelve (12) month period, and the violation relates in any way to the unit that has a short term lodging permit, the short term lodging permit for the unit may be suspended for a period of six (6) months in accordance with subsection (B).

2. In the case of a short term lodging permit for a unit that is located in a Safety Enhancement Zone, if there is a violation of any provision of this Code during the period that the Safety Enhancement Zone is in effect, the short term lodging permit for the unit may be suspended for a period of one (1) year or revoked in accordance with subsection (B).

3. If a lodging unit that is subject to a short term lodging permit has been the location of 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 may be suspended for a period of one (1) year or revoked in accordance with the subsection (B). 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 two or more loud or unruly gatherings required to revoke a short term lodging permit.

4. If a person violates Section 5.95.020 regarding any unit that has had a short term lodging permit suspended pursuant to subsection (B), the short term lodging permit for the unit may be revoked in accordance with subsection (B).

5. If any person violates any short term lodging permit condition or any other provision of this Code, state or federal law within six (6) months of having a previously suspended short term lodging permit reinstated for a unit, and the violation relates in any way to the unit that has the short term lodging permit, the short term lodging permit for the unit may be revoked in accordance with subsection (B).

6. If any person violates any short term lodging permit condition three (3) or more times in any twelve (12) month period or provision of this Code, state or federal law three (3) or more times in any twelve (12) month period, and the violation relates in any way to the unit that has a short term lodging permit, the short term lodging permit for the unit may be revoked in accordance with subsection (B).

7. If any person fails to collect and remit transient occupancy tax or the visitor service fee in accordance with the requirements of this chapter, Chapters 3.16 or 3.28 in regards to any unit that has a short term lodging permit, two (2) or more times within any thirty six (36) month period, the short term lodging permit for the unit may be revoked in accordance with subsection (B).

8. If any person is determined to have provided false information on an application for an annual short term lodging permit, or renewal thereof, the short term lodging permit for the unit may be revoked in accordance with subsection (B).

B. Permits shall be suspended or revoked, only in the manner provided in this section.

1. The Finance Director shall investigate whenever he or she has reason to believe that an owner has submitted an application that contains false information or committed a violation of a permit condition, this Code, state or federal law related to a permitted unit. Such investigation may include, but is not limited to, on-site property inspections. Should the investigation reveal substantial evidence to support a finding that warrants a suspension or revocation of the short term lodging permit, the Finance Director shall issue written notice of intention to suspend or revoke the short term lodging permit. The written notice shall be served on the owner in accordance with Section 1.08.080, and shall specify the facts which, in the opinion of the Finance Director constitute substantial evidence to establish grounds for imposition of the suspension and/or revocation, and specify the proposed time the short term lodging permit shall be suspended and/or that the short term lodging permit shall be revoked within thirty (30) calendar days from the date the notice is given, unless the owner files with the Finance Director, before the suspension and/or revocation becomes effective, a request for hearing before a hearing officer, who shall be retained by the City, and pays the fee for the hearing established by resolution of the City Council.

2. If the owner requests a hearing and pays the hearing fee, established by resolution of the City Council, within the time specified in subsection (B)(1), the Finance Director shall serve written notice on the owner, pursuant to Section 1.08.080, setting forth the date, time and place for the hearing. The hearing shall be scheduled not less than fifteen (15) calendar days, nor more than sixty (60) calendar days, from the date on which notice of the hearing is served by the Finance Director. The hearing shall be conducted according to the rules normally applicable to administrative hearings. At the hearing, the hearing officer will preside over the hearing, take evidence and then submit proposed findings and recommendations to the City Manager. The City Manager shall suspend or revoke the short term lodging permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the suspension or revocation is consistent with the provisions of this section. The City Manager shall render a decision within thirty (30) calendar days of the hearing and the decision shall be final.

C. If a short term lodging permit is suspended, it shall be the owner's responsibility to vacate any future bookings and remove all advertisements related to the short term rental of the unit during the term of the suspension. If a short term lodging permit is revoked, it shall be the owner's responsibility to vacate any future bookings and remove all advertisements related to the short term rental of the unit.

D. After any suspension, the owner may reapply for reinstatement of the short term lodging permit which shall be processed in accordance with Section 5.95.030, provided the owner has paid the City all amounts owed the City in accordance with this chapter and Chapters 3.16 and 3.28 of this Code.

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 including, but not limited to, those provisions pertaining to the use and occupancy of the lodging unit or the property on which it is located as well as the collection and remittance of transient occupancy taxes and visitor service fees in accordance with this chapter and Chapters 3.16 and 3.28.

5.95.080 License and Permit Closure.

A. Any owner that 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 shall be closed. The City will send a final transient occupancy tax and visitor service fee bill, which will be due and payable thirty (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 as evidenced by remitting zero dollars on the required transient occupancy tax and visitor service fee forms or has failed to return the transient occupancy and visitor service forms. After any permit closure pursuant to this subsection, the owner may reapply for reinstatement of the short term lodging permit which shall be processed in accordance with Section 5.95.030.

Section 3: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 4: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6: Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall become effective thirty (30) days after the adoption of this ordinance.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 23rd day of June, 2020, and adopted on the 14th day of July, 2020, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

RECUSED: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY