

ORDINANCE NO. 2020- 26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING PORTIONS OF 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 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, requiring a three (3) night minimum stay has been shown to reduce the number of disturbances at short term lodging units, thereby reducing the demand on Police and Fire Department personnel;

WHEREAS, the City has more short term lodging units than any other southern California city of a similar size, and limiting the number of short term lodging units will reduce the demand for City services, preserve the housing stock and quality and character of the City's neighborhoods; and

WHEREAS, the City Council has reviewed and considered evidence and documentation attesting to the need to limit the number of short term lodging permits and 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.

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

Section 1: The table of contents for 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 Applicant for Permit.
- 5.95.035 Denial of Permit.
- 5.95.040 Filing Fee.
- 5.95.042 Maximum Number of Permits.
- 5.95.043 Transfer of Permit.

- 5.95.045 Conditions.
- 5.95.047 Violations of Permit Conditions by Transient User, Occupant or Guest.
- 5.95.050 Agents 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.

Section 2: Section 5.95.005, Subsection (L), of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby amended to read as follows:

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 and address the impacts on residential neighborhoods posed by short term lodgings.

Section 3: Section 5.95.025, of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby amended to read as follows:

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 an annual permit, the renewal of a permit, the reinstatement of a permit or the transfer of a permit; the management of the short term lodging unit or units; and the compliance with the short term lodging permit conditions. 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.

Section 4: Section 5.95.030, of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby amended to read as follows:

5.95.030 Applicant for Permit.

An application for an annual short term lodging permit, renewal of a short term lodging permit, reinstatement of a short term lodging permit or transfer of a short term lodging permit shall be filed with the Finance Director upon forms provided by the City.

A. An application for a new permit, renewal permit, the reinstatement of a permit or the transfer of a permit shall contain the following information:

1. The name, address and telephone number of the owner of the unit for which the short term lodging permit is to be issued.

2. The name, address and telephone number of the agent, if any, of the owner of the unit.

3. Evidence of a valid business license issued by the City for the separate business of operating a short term lodging unit or units.

4. The number of bedrooms in the lodging unit.

5. The gross floor area of the lodging unit.

6. The number of parking spaces available on site and a description indicating the location and size of each parking space.

7. A nuisance response plan, which sets forth the owner's plan for handling disruptive transient users.

8. 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.

9. Acknowledgement of receipt and inspection of a copy of all regulations pertaining to the operation of a short term lodging unit.

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

B. An application for the renewal of a short term lodging permit shall be filed within thirty (30) calendar days of the short term lodging permit's expiration, or the short term lodging permit shall be deemed abandoned.

C. An application for the reinstatement of a short term lodging permit closed by the Finance Director pursuant to Section 5.95.080, shall be filed within thirty (30) calendar days of the date the permit was closed by the Finance Director, or the short term lodging permit shall be deemed abandoned.

D. An application for the reinstatement of a previously suspended short term lodging permit, shall be filed within thirty (30) calendar days of the end of the suspension period, or the short term lodging permit shall be deemed abandoned.

E. If any application is deemed incomplete, which shall be determined in the sole discretion of the Finance Director, the application shall be completed within thirty (30) calendar days of the service of notice that the application is incomplete, which shall be served in accordance with Section 1.08.080, or the application and any associated permit shall be deemed abandoned.

F. If good causes exist, as determined in the sole discretion of the Finance Director, the Finance Director may extend the deadlines set forth in Subsections (B) through (E).

G. For purposes of calculating the maximum number of permits under Section 5.95.042, a short term lodging permit shall be deemed valid until the applicable permit has been deemed abandoned.

Section 5: Section 5.95.035, of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby amended to read as follows:

5.95.035 Denial of Permit.

If permits are available for issuance, no timely application filed by an owner for an annual permit, renewal of a permit, reinstatement of a permit or transfer 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.

Section 6: Section 5.95.040, of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby amended to read as follows:

5.95.040 Filing Fee.

An application for a new annual permit, the renewal of an existing permit, the reinstatement of a permit, or the transfer of a 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.

Section 7: Section 5.95.042 of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby added to read as follows:

5.95.042 Maximum Number of Permits.

A. The maximum number of short term lodging permits shall be limited to fifteen hundred and fifty (1,550) permits at any time. If there are more than fifteen hundred and fifty (1,550) valid permits that have been issued as of the effective date of this section, an owner shall be permitted to renew, reinstate, or transfer a valid permit in accordance with the provisions of this chapter; however, no new permit shall be issued to anyone on the waiting list, as described in Subsection (D), until the total number of permits does not exceed the fifteen hundred and fifty (1,550). For purposes of calculating the maximum number of permits available, a permit shall be deemed valid and unavailable until it is abandoned in accordance with Section 5.95.030, (B) through (F), and/or Section 5.95.043 (B).

B. An owner who has a short term lodging permit or an owner seeking to reinstate a short term lodging permit, that has not been abandoned in accordance with Section 5.95.030 (B) through (F), shall have priority to renew or reinstate the permit over anyone on the waiting list, as described in Subsection (D).

C. An owner seeking to transfer a valid short term lodging permit, that files an application within the timeframes set forth in Section 5.95.043 (A), shall have priority to transfer the permit over anyone on the waiting list, as described in Subsection (D).

D. If the City has issued the maximum number of permits available, the City shall maintain a waiting list. An application for placement on the waiting list shall be submitted to the Finance Director, on a form approved by the Finance Director, and shall be accompanied by a fee established by resolution of the City Council. In the event a short term lodging permit becomes available, the Finance Director shall notify the person or persons next in order on the waiting list. The notice shall specify that applications will be accepted for ten (10) calendar days after the date of the notice, and that failure to apply within the ten (10) calendar day period shall result in removal of the person or persons receiving notice from the waiting list. Notice shall be deemed given when deposited in the United States mail, with the first class postage prepaid, and addressed as specified by the person or persons on the waiting list. The City shall not be liable for a failure to notify any person or persons on the waiting list since placement on the list does not create any property right in any person or persons on the list nor any contractual obligation on the part of the City.

Section 8: Section 5.95.043, of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby added to read as follows:

5.95.043 Transfer of Permit.

A. A short term lodging permit that is valid and has not been abandoned in accordance with Section 5.95.030 (B) through (F), may be transferred to any of the following:

1. If the owner transfers the ownership of the lodging unit to an inter vivos trust, family trust, or other similar type of trust estate, a valid short term lodging permit may be transferred to the inter vivos trust, family trust, or other similar type of trust estate, if an application to transfer a valid permit, in accordance with Section 5.95.030, is filed within three hundred and sixty-five (365) days of the date title is transferred to the inter vivos trust, family trust, or other similar type of trust estate.

2. If the owner transfers the ownership of the lodging unit to a corporation, limited liability company, partnership, limited partnership, or similar business entity, a valid short term lodging permit may be transferred to the business entity, if an application to transfer a valid permit, in accordance with Section 5.95.030, is filed within three hundred and sixty-five (365) days of the date title is transferred to the business entity.

3. If the owner transfers the ownership of the lodging unit to an immediate family member, which shall include a spouse, domestic partner, child, stepchild, grandchild, parent, stepparent, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, great grandparent, brother, sister, half-brother, half-sister, stepsibling, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin (that is, a child of an aunt or uncle), a valid short term lodging permit may be transferred to the immediate family member, if an application to transfer a valid permit, in accordance with Section 5.95.030, is filed within three hundred and sixty-five (365) days of the date title is transferred to the immediate family member.

4. If the owner sells the lodging unit to a bona fide purchaser for value, a valid short term lodging permit may be transferred to the purchaser, if an application to transfer a valid permit, is filed in accordance with Section 5.95.030, within sixty (60) days of the date title is transferred to the purchaser.

5. If the owner is deceased, the short term lodging permit for the short term lodging unit may be transferred to the heir(s) once the estate is closed and the assets distributed, if an application to transfer a valid permit, is filed in accordance with Section

5.95.030, within ninety (90) days of the date the heir(s) becomes the owner of the short term lodging unit.

B. The deadlines set forth in Subsection (A) are established for purposes of setting deadlines for the transfer of a valid permit that has not been deemed abandoned in accordance with Section 5.95.030 (B) through (F). The deadlines set forth in Section A shall not extend the deadlines set forth in or in accordance with Section 5.95.030 (B) through (F). Authorization to transfer a valid short term lodging permit shall be deemed waived and the permit abandoned if an application is not filed to transfer a permit in accordance with the deadlines set forth in this section.

Section 9: Section 5.95.045, Subsection (A), (2), of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby amended to read as follows:

2. The owner shall not rent a lodging unit to a transient user that is under the age of twenty-five (25).

Section 10: Section 5.95.045, Subsection (A), of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby amended to add conditions numbers twenty-one (21) through twenty-three (23), which shall read as follows:

21. Neither an owner or the owner's agent shall rent, let, advertise for rent, or enter into an agreement for the rental of any lodging unit, for less than three (3) consecutive nights.

22. The owner shall:

a. Require every transient user and guest of the transient user to comply with all state and local laws that regulate parking while staying at or visiting the short term lodging unit;

b. Require every transient user to provide the owner with the license plate number for all vehicles, which are used by the transient user or the transient user's guest while staying at or visiting the short term lodging unit; and

c. Provide the City with the vehicle license plate number(s) for every vehicle, which were used by the transient user or the transient user's guest while staying at or visiting the short term lodging, within seven calendar days after the City serves the owner with a notice of request for the vehicle license plate number(s) in accordance with Section 1.08.080.

23. The owner shall be responsible for any violation by a transient user or transient user's guest of any state or local law that regulates parking that occurs while the transient user or transient user's guest is staying at or visiting the short term lodging unit. For purposes of this condition, a transient user or transient user's guest shall be presumed to be staying at or visiting a short term lodging unit if a parking citation is issued to the transient user or the transient user's guest within one hundred (100) feet of the property line of the short term lodging unit during the time the transient user is renting the short term lodging unit.

Section 11: Section 5.95.047, of Chapter 5.95. of Title 5 of the Newport Beach Municipal Code is hereby amended to read as follows:

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

A. 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:

1. Exceed the overnight occupancy limit designated for the short term lodging unit.
2. Use street parking prior to utilizing all available on-site parking space(s) for the lodging unit.
3. Place trash for collection in violation of this Code's rules and regulations concerning:
 - a. The timing, storage or placement of trash containers; or
 - b. Recycling requirements.
4. Amplify or reproduce sound between the hours of 10:00 p.m. and 10:00 a.m.:
 - a. Outside of the lodging unit; or
 - b. That is audible from the property line for the lodging unit.
5. Use the short term lodging for any nonresidential purpose, including, but not limited to, large commercial or noncommercial gatherings, commercial filming and/or nonowner wedding receptions.
6. Rent a lodging unit to any person for a short term.

B. In addition to other provisions of this Code, it shall be unlawful for any lessee to rent a lodging unit to any transient user for a short term.

Section 12: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 13: 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 14: 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 15: 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 16: 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. Section 9, the portion of Section 10, which adds Subsections 22 and 23 to Section 5.95.045, Chapter 5.95. of Title 5, and Section 11, of this ordinance, shall become effective thirty (30) calendar days after its adoption. Sections 1 through 8 and the portion of Section 10, which adds Subsection 21, to Section 5.95.045, Chapter 5.95. of Title 5, of this ordinance, shall become final and effective upon the effective date of approval by the California Coastal Commission of LC2020-007 and adoption, including any modifications suggested by the California Coastal Commission, by resolution(s) and/or ordinance(s) of the City Council.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 13th day of October, 2020, and adopted on the 27th day of October, 2020, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY