

ORDINANCE NO. 888-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA REPEALING AND REPLACING ARTICLE 49 "SHORT-TERM RENTALS" OF CHAPTER 4 OF TITLE 9 OF THE PACIFICA MUNICIPAL CODE TO ESTABLISH A CAP OF 150 SHORT-TERM RENTAL PERMITS ISSUED CITYWIDE AND VARIOUS OTHER CONFORMING AMENDMENTS RELATING TO THE REGULATION AND PERMITTING OF SHORT-TERM RENTALS AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, Chapter 7 of Title 3 the Pacifica Municipal Code imposes a transient occupancy tax on any persons occupying space, for thirty consecutive calendar days or less, in any structure or portion of any structure for dwelling, lodging or sleeping purposes, based on a percentage of rent charged; and

WHEREAS, on June 11, 2018, the City Council of the City of Pacifica adopted Ordinance 835-C.S. adding Article 49 "Short-Term Rentals" ("STRs") to Chapter 4 of Title 9 of the Pacifica Municipal Code to establish regulations governing the short-term rental of residential property within the City of Pacifica; and

WHEREAS, on June 13, 2022, City staff provided a comprehensive update to the Council on implementation of the City's STR Program, which included information regarding STR locations in Pacifica, the TOT collections from STRs, the impact STRs have on the City's housing stock, unpermitted STRs and City enforcement activities; and

WHEREAS, following the June 13, 2022 City Council meeting, members of the public expressed their concerns relating to the sale of residential property in Pacifica for the singular purpose of using the property as an STR as these types of purchases can have a negative impact on the community as they remove an entire housing unit from the housing stock available for long-term residential use; and

WHEREAS, on October 10, 2022, the City Council discussed public concerns relating to the sale of residential property in Pacifica for the singular purpose of using the property as an STR and directed staff to prepare a text amendment to cap the STR permits to 150 citywide; and

WHEREAS, there are areas within the City where there are concentrations of STRs, including West Sharp Park and Pedro Point and that there are a high number of STR permits located in the Coastal Zone of the City; and

WHEREAS, the total percentage of housing units in the Coastal Zone being used as unpermitted and permitted STRs is approximately 3.2 percent as of December 2022; and

WHEREAS, STRs can be conducted so as to safeguard neighborhood integrity, promote coastal access, and protect coastal resources; and

WHEREAS, one method of ensuring that housing stock is available for long-term residential use and to maintain affordable housing in the City is to regulate the number of short-term rentals through a maximum limit on the number of short-term rental permits issued by the City; and

WHEREAS, the proposed Ordinance, which includes a cap on the number of STRs in the City, is consistent with the California Coastal Act and the City's certified Local Coastal Land Use Plan which includes policies addressing residential land use, short-term vacation rentals, affordable housing, coastal access and the need for lower cost visitor serving accommodations; and

WHEREAS, Coastal Policy No. 5 specifically provides that "Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided. [...]" Removing housing units from the Coastal Zone, even temporarily, to allow STRs to operate at a greater pace than development of new long-term housing will conflict with this policy and will significantly impact the availability of housing; and

WHEREAS, the proposed Ordinance, is also consistent with the General Plan. While the City's General Plan does not directly address the balance of STRs and their relationship with housing availability. Guiding Policy CD-G-3 of the General Plan states "Neighborhood Conservation. Preserve the unique qualities of each of Pacifica's residential neighborhoods." Additionally, the goals, objectives, and programs contained in the City of Pacifica Housing Element "strive to encourage and incentivize the maintenance, preservation, improvement, and development of housing affordable to persons of all income levels and special needs categories." The profusive use of the City's existing housing stock for STRs would impact the City's Housing Element goals of encouraging and incentivizing the preservation of housing. Furthermore, due to the attributes of STRs, the use of them can prompt consideration of their compatibility with the unique qualities of a residential neighborhood; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments contained in Text Amendment TA-123-22 (File No. 2022-036) on January 17, 2023, and adopted Resolution No. 2023-001 by a vote of 5-0 initiating and recommending City Council approval of Text Amendment TA-123-22; and

WHEREAS, the City Council held a duly noticed public hearing on the proposed ordinance on February 13, 2023, and considered all correspondence, staff reports and other materials presented.

NOW, THEREFORE, the City Council of the City of Pacifica does ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Amendment. Article 49, "Short-Term Rentals" of Chapter 4 of Title 9 of the Pacifica Municipal Code is hereby amended by repealing and replacing, in its entirety, to read as follows:

“Article 49. Short-Term Rentals

Sec. 9-4.4900. Purpose and intent.

The purpose of this article is to establish regulations governing the short-term rental of residential property within the City of Pacifica in order to ensure the health, safety, and welfare of the residents of the City of Pacifica, and to allow for the short term rental of single-family and multi-family dwelling units for less than thirty (30) consecutive days, while still preserving the single-family character of neighborhoods, and preventing short-term rental activities from becoming a nuisance or a threat to public health, safety or welfare.

Sec. 9-4.4901. Definitions.

For the purposes of this article, unless otherwise apparent from the context, the following words and phrases are defined as set forth below:

- (a) "Administrator" means the Assistant City Manager or designee.
- (b) "Advertising platform" means any online site that provides a means for the host to advertise or otherwise offer for rent a short-term rental.
- (c) "Operate" means the operation of a short-term rental, and includes the acts of establishing, offering, maintaining, or listing for rent a short-term rental with an advertising platform.
- (d) "Permit" or "Short-term rental permit" means a permit issued by the City pursuant to this Article to allow the use of a dwelling unit property, or portion of it, as a short-term rental.
- (e) "Permittee" means a property owner and/or authorized representative of the property owner, who has been issued a short-term rental permit by the City.
- (f) "Rental" means the occupancy or use of a dwelling unit property, in exchange for any form of rent that may be valued in money, including cash, credit, goods, labor, or property, regardless of whether such rent is actually received.
- (g) "Short-term rental" means the use of a dwelling unit, or portion of it, for a rental of less than thirty (30) consecutive days.
- (h) "Short-term rental permit cap" means the maximum number of short-term rental permits that may be issued at any given time by the City.

Sec. 9-4.4902. Short-term rental permit cap.

The short-term rental permit cap shall be one hundred fifty (150) at any given time. The Administrator shall not approve any applications for short-term rental permits once the Administrator has determined that the short-term rental permit cap has been reached. The Administrator may create a waiting list for those applications received after the issuance of 150 short-term rental permits.

Sec. 9-4.4903. Short-term rentals permitted.

Short-term rentals are permitted in all residential zones, subject to compliance with the following requirements:

- (a) No person may operate a short-term rental without first obtaining a short-term rental permit issued pursuant Section 9-4.4904.
- (b) In accordance with Section 9-4.453(a)(6) and 9-4.454(a)(6), no person may operate a short-term rental in any accessory dwelling unit or junior accessory dwelling unit.

- (c) Each person operating a short-term rental shall comply with the transient occupancy tax requirements set forth in Chapter 7 of Title 3 of this Code, and shall obtain a Transient Occupancy Registration Certificate pursuant to the Section 3.7-06.
- (d) Each person operating a short-term rental shall obtain a business license and pay the business license tax required pursuant to Chapter 1 of Title 3 of this Code.
- (e) No person shall operate or allow short-term rental of property in any location not approved for use as a permanent dwelling unit including, but not limited to, any vehicle, trailer, tent, storage shed or garage.

Sec. 9-4.4904. Short-term rental permit required.

Subject to those requirements in Section 9-4.4903 and subject to the short-term rental permit cap specified in Section 9-4.4902, a short-term rental permit may be approved by the Administrator, provided that the Administrator determines the applicant has met the following requirements:

- (a) Application. The applicant must complete an application on a form provided by the City, accompanied by a fee established by resolution of the City Council.
- (b) Property owner consent. If the applicant is a tenant, he or she must demonstrate written consent of the property owner to operate short-term rentals on the property.
- (c) Contact information. The applicant must provide current contact information to the City, and information regarding the advertising platform(s) to be used.
- (d) Guest safety. The short-term rental must have a smoke detector, carbon monoxide detector, and fire extinguisher. The applicant must submit a signed safety declaration in a form prepared by the Administrator, to be kept in the property file at the City.

Approval of a short-term rental permit does not legalize any use or structure not permitted by law or contract, including, but not limited to, restrictions imposed by a homeowners association or in a lease agreement.

Sec. 9-4.4905. Permit term and renewal.

- (a) Term. A short-term rental permit is valid for one year from the date of issuance until October 31st of each year, unless suspended or revoked by the Administrator prior to October 31st.
- (b) Renewal. The permittee may renew the permit annually, subject to the Short-term rental permit cap set forth in Section 9-4.4902, by submitting a renewal application and fee between October 1st and October 31st of each year, regardless of when the short-term rental permit was issued. If a renewal application and fee are not filed prior to the October 31st deadline, the short-term rental permit may be deemed revoked by the Administrator.

Sec. 9-4.4906. Operating requirements.

A short-term rental shall, at all times, be operated subject to the following standards:

- (a) Permit required. The short-term rental must be operated under a valid short-term rental permit issued by the City in accordance with Section 9-4.4904.
- (b) Current information. The short-term rental permittee shall, during the term of the permit, promptly inform the Administrator regarding any changes regarding information provided in the application, including contact information and information regarding advertising platforms used by the permittee to advertise the short-term rental.

- (c) Guest safety. The short-term rental permittee must provide the following materials electronically to any guests before arrival and make available printed materials on-site for the guest with the following information:
 - (1) A diagram of exits, fire extinguisher locations, and fire and police contact numbers;
 - (2) The short-term rental permittee's contact information; and
 - (3) The City's noise regulations (Chapter 10 of Title 5 of this Code); and
 - (4) The City's Social Host Liability Ordinance (Chapter 28 of Title 5 of this Code).

Sec. 9-4.4907. Permit revocation and enforcement.

- (a) Permit suspension or revocation. The Administrator may suspend or revoke a short-term rental permit after making a determination that the permittee has violated any of the provisions of this article or is operating the short-term rental in a manner that is detrimental to the public health, welfare or safety or constitutes a nuisance or has failed to renew their short-term rental permit. The Administrator shall provide the permittee with written notice stating the supporting factual basis for the decision. The notice shall contain an advisement of the right to request an appeal before a hearing officer by filing a written appeal.
- (b) Appeal to Hearing Officer. Suspension or revocation issued by the Administrator pursuant to paragraph (a) will be effective ten (10) days from the date appearing on the notice, unless a timely appeal is filed before such date along with the deposit of an appeal fee established by resolution of City Council. A hearing shall be scheduled before the hearing officer within thirty (30) days. The decision of the hearing officer shall be a final administrative order, with no further administrative right of appeal or reconsideration. The hearing officer may sustain a denial, suspension or revocation, overrule a denial, suspension or revocation, reduce a revocation to a suspension and/or reduce the length of a suspension.
- (c) Reapplication. No application for a short-term rental permit will be accepted within one year after a short-term rental permit is revoked.
- (d) Enforcement. The City may enforce this article by any means permitted by law, including, but not limited to, those penalty provisions set forth in Chapter 2 of Title 1 of this Code. The City Council may establish fines for violating this article by resolution.
- (e) The Administrator is authorized to promulgate any policies or procedures necessary to implement and enforce this article, including but not limited to, a process for accepting and prioritizing applications received after the Short-term rental permit cap set forth in Section 9-4.4902 is reached.”

Section 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), under Section 15061(b)(3) of the CEQA Guidelines (14 Cal. Code Regs. 15000 et seq.) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

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

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law. For areas within the Coastal Zone, this Ordinance shall not become effective until the California Coastal Commission certifies an amendment to the City's local coastal program pursuant to Section 30514 of the Public Resources Code.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 27th day of February, 2023, by the following vote:

AYES, Councilmembers: *Beckmeyer, Bier, Bigstyeck, Botes, Vaterhaus.*

NOES, Councilmembers: *n/a*

ABSENT, Councilmembers: *n/a*

ABSTAIN, Councilmembers: *n/a*

Juanitas T. Bigstyeck

Juanitas Twyrls Bigstyeck, Mayor

ATTEST:

Sarah Coffey

Sarah Coffey, City Clerk

APPROVED AS TO FORM:
Michelle Kenyon

Michelle Kenyon, City Attorney