

ORDINANCE NO. 2021-xx

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, PROHIBITING THE OPERATION OF SHORT TERM RENTALS IN ALL AREAS OF THE CITY OF COSTA MESA

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY FIND AND RESOLVE AS FOLLOWS:

WHEREAS, the City of Costa Mesa, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and may declare what uses and conditions constitutes a public nuisance; and

WHEREAS, Government Code Section 38771 authorizes the City, through its legislative body, to declare actions and activities that constitute a public nuisance; and

WHEREAS, STRs are not specifically defined in the Costa Mesa Municipal Code, actively regulated or expressly prohibited by the City, but are considered a commercial operation in a residential zone which is not permitted; and

WHEREAS, there is currently a housing crisis state-wide; and

WHEREAS, the use of common online marketplaces for short-term rental listings including but not limited to AirBnB, VRBO, HomeAway, FlipKey, Craigslist, smaller online marketplaces focused on specific destinations, and individual on-line listings by owners has facilitated the conversion of residential units to short term uses throughout California in general and Costa Mesa in particular; and

WHEREAS, the marketing of housing units otherwise available for long term occupancy for transient uses, which has been facilitated by these online marketplaces, further reduces and threatens the availability of housing, including affordable housing, within the City during the state housing crises; and

WHEREAS, STRs are currently operating in the City, such that the City has also begun experiencing an increase in the number of complaints related to these operations, which complaints have included noise, vandalism, gun-related incidents including a drive-by shooting, parking violations, and disturbing the peace, and have negatively impacted local neighborhoods from these nuisance activities; and

WHEREAS, there is currently a state of emergency due to the COVID-19 pandemic. This pandemic, which poses a continuing threat of infection to residents, has an incubation period of up 14 days; research demonstrates that some persons who carry the disease may be asymptomatic and pass it on to other individuals. Individuals who travel without the proper social distancing and adherence to health and safety measures can contribute to the spread of the disease, such that the un-regulated use of short-term rentals without specific health and safety safeguards will serve as a vector of the pandemic; and

WHEREAS, on September 24, 2021, Senate Bill 60, Residential short-term rental ordinances: health or safety infractions: maximum fines, was filed with the Secretary of State, as an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and went into immediate effect. The facts constituting the necessity were found to be that due to the severe strain on public resources as restrictions related to COVID-19 are lifted statewide, it is necessary that this act take effect immediately. SB 60 amends Government Code sections 25132 and 26900 to raise the maximum fines for violation of an ordinance relating to a residential short-term rental, that is an infraction and poses a threat to health or safety, to \$1,500 for a first violation, \$3,000 for a 2nd violation of the same ordinance within one year, and \$5,000 for each additional violation of the same ordinance within one year of the first violation. SB 60 also makes these violations subject to the process for granting a hardship waiver.

WHEREAS, by exempting home-sharing, as defined, it is the express intent and purpose of this Ordinance: 1) that any and all such existing or future home sharing use or uses shall not be considered legally non-conforming within the meaning of Chapter X of the Zoning Code or any other law providing that they would be exempt from future law or regulation; 2) that such uses be subject to any and all other applicable provisions of the Costa Mesa Municipal Code and/or other law; 3) that this exemption be construed narrowly; 4) to maintain the status quo of no affirmative regulation for home-sharing STRs in existence as of December 1, 2020 only; and 5) it is not the intent of this Ordinance to otherwise make home-sharing a legal and/or a permitted use; and

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of Costa Mesa's General Plan; and

WHEREAS, this Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines, in that the City Council hereby finds that it can be seen with certainty that there is no possibility that the passage of this Ordinance will have a significant effect on the environment; and

WHEREAS, the City Council recognizes that there is a need to enact the restrictions contained in this Ordinance immediately as an urgency ordinance to protect the public health, safety and welfare; and

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

Now, therefore, THE COSTA MESA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Recitals. The City Council finds that all the recitals, facts, findings, and conclusions set forth above in the preamble of this Ordinance are true and correct.

Section 2: Findings. The City Council makes and adopts as findings the facts and conclusions set forth above in the preamble of this Ordinance and for the reasons stated in the recitals, finds that the operation of Short Term Rentals in the City constitutes a current and immediate threat to the public health, safety and welfare. The Council further finds that the approval of use permits, variances, interpretations, building permits, and/or any other applicable entitlement for use which is required in order to comply with the City's Zoning Code, codified at Title 13 of the Costa Mesa Municipal Code, would result in these threats to public health, safety, or welfare.

Section 3: Definitions. Unless defined otherwise in this section, the definitions of the Zoning Code, as may be amended, shall apply to this Ordinance; if not defined in this section or the Zoning Code, the definitions set forth elsewhere in the Costa Mesa Municipal Code, as may be amended, shall apply.

Advertise means the publication or dissemination of an *advertisement*.

Advertisement means and includes any written or verbal statement, illustration, or depiction which is calculated to induce, including any written, printed, digital, graphic, or other material, billboard, sign, or other outdoor display, public transit card, other periodical literature, publication, or in a radio or television broadcast, or in any other media.

Compensation means and includes, but is not limited to, for any form of monetary or non-monetary consideration, including but not limited to money, goods, or services, as well as in-kind exchanges of goods, services, or premises.

Existing means in existence as of December 1, 2020.

Home-sharing means a rental by a natural person of that person's primary residence or a lawfully existing accessory dwelling unit or junior accessory dwelling unit (where short-term rentals are not otherwise prohibited) on the property thereof as a short-term rental while that person is residing, occupying and physically present on the property, provided that the natural person had already commenced home-sharing for compensation of their existing primary residence and/or lawfully existing accessory dwelling unit or junior accessory dwelling unit no later than December 1, 2020; *home-sharing* does not include: acts by other than natural persons; and/or a boardinghouse.

Primary residence a natural person's residence in which that person holds a legal interest in the property and resides therein for more than nine (9) continuous months of the calendar year.

Rental, rent, rented, or renting means and includes, but is not limited to, any form of monetary or non-monetary compensation, including but not limited to money, goods, or services, as well as in-kind exchanges of goods, services, or premises, for the use or occupancy of any portion of a single family dwelling, multi-family unit, bedroom of a primary residence, accessory dwelling unit or junior accessory dwelling unit.

Short Term Rental or *STR* means a single family dwelling, multi-family unit, bedroom of a primary residence, accessory dwelling unit or junior accessory dwelling unit within all zones that support or include residential uses, whether as a permitted use or conditionally permitted use, which is rented to one or more persons for compensation for the purpose of dwelling, lodging, occupying, and/or hosting of an event or events, for a period of thirty (30) or fewer consecutive days. "Short-term rental" encompasses such dwelling units regardless of whether the owner, permanent occupant or other person in possession and/or control of such unit is present during the rental period except as otherwise set forth herein. *Short Term Rental* or *STR* does not include a *hotel*, *motel*, *single room occupancy hotel*, *group home* including a *sober living home*, a state-licensed *residential care facility*, or a *boardinghouse* unless that boardinghouse rents one or more rooms for compensation for a period of thirty (30) days or less.

Section 4: Short Term Rentals Prohibited. The operation of any and all types of short term rentals other than while home-sharing is prohibited, and no person shall, for compensation, rent, lease, offer to rent or lease, or whether or not compensated, advertise the availability of, a short term rental in any area and/or zoning district within the City of Costa Mesa other than a natural person engaged in home-sharing.

Section 5: Penalties. A violation of this Ordinance is a misdemeanor that may alternatively be enforced as an infraction, and shall constitute a public nuisance. A violation of this Ordinance may be enforced pursuant to the provisions of Section 13-16, Chapter II of Title I and/or Chapter III of Title 20 of the Costa Mesa Municipal Code.

Section 6. Emergency Declaration. The City Council declares this Ordinance to be an emergency measure, to take effect immediately upon adoption pursuant to California Government Code section 36934. The facts constituting the emergency are as follows: There is currently a state-wide housing crisis. The use of common online marketplaces for short-term rental listings including but not limited to AirBnB, VRBO, HomeAway, FlipKey, Craigslist, smaller online marketplaces focused on specific destinations, and individual on-line listings by owners has facilitated the conversion of residential units to short term rental uses throughout California in general and Costa Mesa in particular. The marketing of housing units otherwise available for long term occupancy for transient uses, which has been facilitated by these online marketplaces, further reduces and threatens the availability of housing, including affordable housing, within the City. In addition, STRs are currently operating in the City, such that the City has also begun experiencing an increase in the number of complaints related to these operations, which complaints have included noise, vandalism, gun-related incidents including a drive-by shooting, parking violations, and disturbing the peace, and have negatively impacted local neighborhoods from these nuisance activities. Further, there is currently a state of emergency due to the COVID-19 pandemic. This pandemic, which poses a continuing threat of infection to residents, has an incubation period of up to 14 days; research demonstrates that some persons who carry the disease may be asymptomatic and pass it on to other individuals. Individuals who travel without the proper social distancing and adherence to health and safety measures can contribute to the spread of the disease, such that the un-regulated use of short-term rentals without specific health and safety safeguards will serve as a vector of the pandemic.

Section 7: Compliance with CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b)(3) (General Rule) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the passage of this interim Ordinance will have a significant effect on the environment.

Section 8: Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 9: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 10: Uncodified Ordinance. This Ordinance shall not be codified in the Costa Mesa Municipal Code unless and until the City Council so ordains.

Section 11: Effective Date. This Ordinance shall become effective immediately upon adoption.

Section 12: The City Clerk shall certify the adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

APPROVED AND ADOPTED on this 2nd day of November, 2021.

John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, CITY CLERK of the City of Costa Mesa, California, do hereby certify that the foregoing urgency ordinance was regularly introduced and adopted by the City Council of the City of Costa Mesa, California, at a regular meeting thereof held on the 2nd day of November, 2021, by the following vote of the City Council:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this ^{xx} day of November, 2021.

Brenda Green, City Clerk