

URGENCY ORDINANCE NO. 4327

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA CALIFORNIA, ADDING DIVISION 4 TO CHAPTER 30, ARTICLE VIII (RENTAL UNITS) OF THE CITY OF POMONA MUNICIPAL CODE PERTAINING TO REGULATING SHORT-TERM RENTALS; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA

WHEREAS, the proliferation of online vacation rental websites such as Airbnb.com and vrbo.com have encouraged and enabled City of Pomona (“City”) property owners, tenants, and occupants to rent their local, residential properties on a short-term basis to travelers or transients; and,

WHEREAS, these short-term rentals (“STRs”), generally numbering less than 30 days, are often associated with excessive noise, parking problems, trash, and loss of long-term residential character of city neighborhoods; and,

WHEREAS, the loss of long-term residential character of city neighborhoods and the conversion of housing to STR use exacerbates the current housing crisis; and,

WHEREAS, the City has received numerous complaints from residents about the negative secondary effects of STR uses in their residential neighborhoods; and,

WHEREAS, the Pomona Municipal Code (“PMC”) does not expressly place regulations on STRs in residential zoned districts, but the City has a permissive zoning code that prohibits uses that are not expressly allowed; and,

WHEREAS, the City Council desires to amend the PMC to expressly allow but appropriately regulate STRs within the City to preserve the residential character of City neighborhoods and stem the negative, secondary effects caused by those uses; and,

WHEREAS, adoption of this urgency ordinance is not subject to the California Environmental Quality Act (“CEQA”) under CEQA Guidelines section 15061(b)(3), the general rule that states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. The amendments made by this ordinance do not have the potential to cause a significant effect on the environment because they authorize no new development or use. Moreover, the restrictions imposed by the amendments help ensure that the use of residential properties remains consistent with that which is contemplated by the City’s General Plan, which was subject to prior CEQA review; and

WHEREAS, Government Code sections 36934 and 36937 expressly authorize the City Council to enact urgency ordinances, which take effect immediately upon introduction, for the immediate preservation of the public peace, health, or safety, containing a declaration of the facts constituting the urgency. Under the City Charter, Sec. 510, paragraph (c), the City Council must be passed by a five-sevenths vote; and

WHEREAS, based on the foregoing, it is urgent the City adopt regulations in order to minimize the adverse impacts that STRs may have on surrounding residential properties and the City's limited law enforcement resources; and

WHEREAS, the City Council has determined that the public health, safety, and welfare will be served by regulating STRs within the residential districts of the City and declaring those STRs that do not abide by the regulations a public nuisance punishable under the City's Code.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pomona as follows:

SECTION 1. Recitals Incorporated. The City Council hereby finds that the foregoing recitals are true and correct, relies upon them in passing this ordinance, and incorporates them herein as substantive findings of this Ordinance.

SECTION 2. Immediate Threat. The City Council hereby finds that the proposed Code Amendment is in the public interest and in the interest of the furtherance of the public peace, health and safety. The proliferation of un-hosted short-term rentals poses a threat to the public peace, health and safety of the City's residential areas due to the insufficiency of regulations under the Pomona Municipal Code. This ordinance is necessary as an urgency measure to address said threats.

SECTION 3. Urgency Findings. In accordance with California Government Code, section 36937, and in order to protect the public health, safety, and welfare, the City Council of the City of Pomona find as follows:

A. The rise of short-term rentals within the City has become a public nuisance that has caused numerous complaints from residents about the negative secondary effects such as excessive noise, parking problems, trash, and degradation of residential zoning districts. The Council, therefore, adopts this Urgency Ordinance to become effective immediately upon adoption pursuant to Pomona City Charter section 510 and Government Code section 36937 and to remain in effect until rescinded to regulate short-term rentals within the City's residential districts and provide City enforcement officials with a means to enforce the newly enacted Division.

B. The City wishes to have these new regulations immediately in place to preserve the residential characteristics of residential zoning districts and to mitigate the harm to the residential zoning districts that result from short-term rentals.

C. The City Council further finds that this Urgency Ordinance is necessary to promote the immediate preservation of the public health, safety and welfare by regulating short-term rentals within the City's residential zoning districts.

D. Finally, the City Council finds that the regulations contained in this Urgency Ordinance are reasonable in order to preserve the public health, safety and welfare of its residents.

SECTION 4. Division 4 is hereby added to Chapter 30 (Licenses, Permits and Miscellaneous Regulations), Article VIII (Rental Units) of the City of Pomona Municipal Code to read in its entirety as follows:

DIVISION 4. SHORT-TERM RENTALS

Section 30-580 DEFINITIONS

A. "Dwelling unit" means one or more rooms designed, occupied or intended for occupancy as separate living quarters. A dwelling unit includes a single-family residence, an apartment or other leased premises, or residential condominium unit. A dwelling unit shall include a detached Accessory Structure (e.g. guest house) that is intended for human habitation (i.e. living quarters) when the entire property is designated for a single family residential use. Dwelling unit does not include individual hotel or motel guest rooms, condominium timeshare units, cabins, or similar guest accommodations rented to transient guests in a hotel, inn, or similar transient lodging establishment operated by an innkeeper.

B. "Host" means the natural person or persons, at least one of whom occupies the property as the person's permanent residence and legal domicile and who is the owner of record of the property or operates the property and resident. Host includes a natural person who is a beneficiary of a personal or family trust or who is the trustee of such trust. Host includes a natural person who is a managing member of a limited liability company that owns the property and who is authorized by the LLC to occupy the property as the managing member's personal primary residence and legal domicile.

C. "Hosted stay" means a short-term rental activity whereby the host remains on-site and resides in a habitable dwelling unit or portion thereof throughout the guest's stay (except during daytime or work hours).

D. "Hosting platform" means a person or entity that participates in the short-term rental business by collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting a booking transaction or hosting a listing using any medium of facilitation.

E. "Local contact person" means the person designated by the operator to respond to and take remedial action regarding STR complaints.

F. "Resident" means primary resident of a dwelling unit, when a person occupies a dwelling, typically a house or an apartment, which serves as the person's primary residence, though they may share the residence with other people. A person may only have one primary residence. A primary residence is considered to be a legal residence for the purpose of income tax or acquiring a mortgage.

G. "Short-term rental ("STR")" means a residential dwelling unit, or portion thereof, that is offered or provided to a paying guest by a short-term rental operator for 30 or fewer consecutive nights. The term "short-term rental" does not include a hotel, motel, inn, or bed and breakfast inn.

H. "Short-term rental advertisement" means any method of soliciting use of a

dwelling unit for short-term rental purposes.

I. "Short-term rental operator" or "operator" means any person who is the fee owner or leasehold tenant of a dwelling unit, or portion thereof, who offers or provides that dwelling unit, or portion thereof, for short-term rental use.

J. "Tenant" means a person who has a rental agreement for (and leasehold interest in) a dwelling unit in which the rental payments are paid on a monthly or other periodic basis in exchange for occupancy of the dwelling unit.

K. "Transient" means any occupant who, for a period of not more than 30 consecutive days, either at his or her own expense or at the expense of another, obtains the right of occupancy of a guestroom, for which occupancy rent is charged

L. "Transient occupancy tax" ("TOT") means local transient occupancy tax as set forth in Division 50 of the Pomona Municipal Code.

M. "Un-hosted stay" means a short-term rental activity whereby the host, as that term is defined herein, resides off-site during the guest's stay.

SECTION 30-582 Regulations

A. No person or entity shall advertise, list, rent, or operate a short-term rental in the City unless a short-term rental (STR) permit has been issued by the City in accordance with this Division. An operator of the STR shall register with the City, obtain an STR permit, and be responsible for all requirements of this Division. Application for a STR permit shall be in a form prescribed by the Director with all information determined by the Director to be necessary to evaluate the eligibility of the operator, consistent with this Division.

B. Only a fee owner may hold an STR permit and operate an STR (though the owner may use an agent, such as a property manager, to act on the owner's behalf in operating the STR, without relieving the owner of full responsibility). Lessees (aka, tenants or renters) may not hold an STR permit or sublet their leased dwellings as STRs.

C. No accessory dwelling unit, junior accessory dwelling unit, or dwelling created under Gov. Code Sections 65852.2 or 65852.22 may be used for short-term rental.

D. Eligibility requirements. The following requirements must be met at the time of submitting a STR permit application:

1. The permittee must have lived in that home for a minimum of 60 days prior to applying for a STR permit.
2. Owner-occupancy requirement: Meet Host definition requirements.
3. Only hosted stays are permitted. Un-hosted stays are prohibited.
4. Received a Zoning Clearance Letter from the City verifying that the property is zoned for residential use.

E. The STR permit application shall include the full legal name, street and mailing addresses, the email address, and the telephone number of the owner of the dwelling and in all cases where a business entity or trust is the owner of the dwelling, the individual who has responsibility to oversee the ownership of the dwelling on behalf of the business entity or trust, including the street and mailing address, the email address and the telephone number of the individual having such responsibility.

F. If the owner of a dwelling is a business entity, information and documentation pertaining to the owner's status with the California Secretary of State.

G. The STR host shall sign a notarized affidavit confirming that:

1. The STR is his/her primary residence and that the local responsible contact person or property management company will be available 24 hours per day
2. The abutting property owners and occupants will be notified prior to the start of activity that the host's primary residence will be used for short-term rental.

H. An STR owner owning a multi-unit building may lease the units as STRs if the STR owner lives on-site in one of the other units year-round.

I. STR renters and their guests shall only utilize the designated, legal on-site parking spaces; they shall not have more vehicles at the STR property than the number of designated, legal parking spaces; and the STR owner shall give notice to renters and contractually bind them to observe this requirement in a written rental agreement.

J. The STR owner shall provide a 24-hour emergency contact that will respond, on-site if requested, within 30 minutes to complaints about the condition, operation, or conduct of STR renters or their guests.

K. All marketing and advertising of a STR, including any listing on a hosting platform, shall clearly list the City-issued STR permit number and expiration date.

L. STRs shall be used only for overnight lodging accommodations. At no time shall any portion of an STR property be used or advertised for activities in excess of the occupancy limits established and issued by Building and Safety or the Fire Department, e.g., for weddings, receptions, parties, commercial functions, advertised conferences, swimming-pool-only rentals, or other similar assemblies that are separate from the purpose of lodging.

M. The STR host shall demonstrate that an accessory structure being rented is legally permitted and habitable based on building permit history. In the absence of a building permit record demonstrating such, the Building Official shall determine if the accessory structure is suitable for habitability and an inspection of the accessory structure may be required.

N. If a primary residence is subject to the rules of a homeowners' or condominium association, allowance to engage in short-term rental through this Section shall not be inferred to grant any permission that invalidates or supersedes provisions in those documents.

O. The host shall sign an indemnification and hold harmless agreement in a form approved by the City Attorney.

P. All short-term rentals shall be subject to the city's transient occupancy tax.

Q. All short-term rentals shall be subject to the city's business license tax.

R. A STR permit is valid for one (1) year from the date of issuance. It may not be transferred or assigned and does not run with the land. A STR permit may be renewed annually if the operator: (1) pays the renewal fee; (2) provides information concerning any changes to the previous application for, or renewal of, the STR permit; (3) submits all Transient Occupancy Tax remittances on time; (4) keeps Business License current; (4) submits records described in Section 50-90 for the last year to demonstrate compliance with this Division.

S. Failure to submit a renewal application to the City at least 30 days prior to the expiration of the registration render the permit and permission to operate an STR null and void.

T. Denial of STR permit. The Finance Director shall issue an STR permit if each of the following is true:

1. The owner has fully complied with the provisions of this Division 4.
2. The STR property has not previously been the subject of an STR permit that was revoked or restricted under within the previous 24 months, and
3. The STR owner has not previously held an STR permit that was later revoked or restricted under city ordinance.

SECTION 30-584 - Enforcement

A. It is unlawful to violate the provisions of this Division. Violations include, but are not limited to:

1. Failure of the local contact to take action to respond to a complaint within one (1) hour after the complaint is received or a contact is attempted and the local contact cannot be reached;
2. Failure to notify the City within five working days after the local contact information changes;
3. Providing false or misleading information on a STR registration application or other documentation required by this Division;
4. Any attempt to rent an unpermitted STR by advertising the property for short-term rental purposes;

5. Completing a booking transaction in the City without a valid City-issued permit number;
6. Completing a booking transaction where the STR permit has been revoked or suspended by the City;
7. Conduct or activities that constitute a public nuisance or that otherwise constitute a hazard to public peace, health, or safety.

B. The City may issue an administrative citation, in accordance with section 2-1184, to any or all of the following: the responsible party, any person leasing or occupying the property, the property owner of the STR,

C. The city council may establish an administrative fine for violations of this division by separate resolution

D. If three (3) violations have been issued against an STR operator within a 12-month period, the STR permit may be revoked or suspended or additional restrictions may be imposed by the Director by providing written notice to the operator setting forth the basis of the intended action and giving the operator an opportunity, within 14 calendar days, to present responding information to the Director. After the 14-day period, the Director shall determine whether to revoke the registration, suspend the registration, or impose additional conditions upon the registration and thereafter give written notice of the decision to the operator. If a STR permit is revoked, the STR may not be re-registered with the City for a period of 24 months from the date of revocation, regardless of who is registered as the STR operator.

E. The City hereby finds and declares that repeated violations of this Division constitute a public nuisance that may be enjoined under all applicable laws including Code of Civil Procedure Section 731.

F. Any person, hosting platform, or STR operator convicted of violating any provision of this Division in a criminal case or found to be in violation of this Division in a civil or administrative action brought by the City shall be ordered to reimburse the City its full investigative and enforcement costs, pay back all unpaid TOT if applicable, and remit all illegally obtained rental related revenue to the City.

G. The City may take any other action permitted by law or equity to ensure compliance with this Division including, but not limited to, general code enforcement procedures set forth in Section 2-1184 of this Code.

H. Any person, hosting platform, or STR operator aggrieved by a decision of the Director with respect to the provisions of this Division may appeal the decision to pursuant to Section 2-1188.

The remedies provided in this Section are cumulative and not exclusive, and nothing in this Section shall preclude the use or application of any other remedies, penalties, or procedures established by law.

Section 30-586 - Fees.

A. The City Council may establish and set by resolution all fees and charges as may be

necessary to effectuate the purpose of this Division.

Section 30-588 – Administration

A. The City Manager, or designee, shall have the authority to establish administrative rules and regulations consistent with the provisions of this Division for interpreting, clarifying, carrying out, furthering, and enforcing the requirements and the provisions of this Division.

B. If any provision of this Division conflicts with any provision of the Pomona Zoning Code, the terms of this Division shall control.

C. Any violation of this Division is unlawful, is hereby declared a public nuisance, and constitutes a misdemeanor punishable as set forth in the Pomona Municipal Code Chapter 2, Article X, Division 2. At the discretion of the City Prosecutor, a violation of this Division may be prosecuted as an infraction or misdemeanor. In any civil action brought pursuant to this Division, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party. Pursuant to Municipal Code section 2-1184, the City may issue an administrative citation for any violation of this Division. Such administrative remedy may be exercised in place of, or in addition to, any administrative, criminal, civil, or equitable remedy allowed by law."

SECTION 6. Severability. If any section, subsection, sentence, clause, phase, or portion of this Urgency Ordinance 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 portions of this Urgency Ordinance. The City Council hereby declares that it would have adopted this Urgency Ordinance, and each section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions might subsequently be declared invalid or unconstitutional.

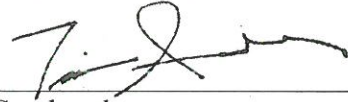
SECTION 7. CEQA Determination. The City Council finds that this Urgency Ordinance is not subject to the requirements of the California Environmental Quality Act, pursuant to (Guidelines) Section 15060(c)(2) & (3) as there is no potential for physical changes to the environment. The amendments made by this ordinance do not have the potential to cause a significant effect on the environment because they authorize no new development or use. Moreover, the restrictions imposed by the amendments help ensure that the use of residential properties remains consistent with that which is contemplated by the City's General Plan, which was subject to prior CEQA review.

SECTION 8. Effective Date. This Urgency Ordinance was adopted by the necessary vote of the members of the City Council in accordance with California Government Code sections 36934 and 36937 and the City Charter and takes effect immediately upon its adoption for the preservation of the public health, safety and welfare.

SECTION 9. The City Clerk shall certify the adoption of this Urgency Ordinance and shall cause the same to be posted as required by law. The Clerk shall cause a notice of exemption to be filed in accordance with law within five working days of adoption.

PASSED, APPROVED, AND ADOPTED this 23rd day of January 2023.

CITY OF POMONA:



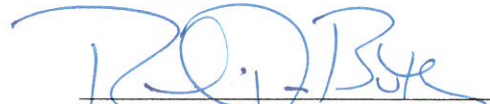
Tim Sandoval
Mayor

APPROVED AS TO FORM:



Sonia Carvalho
City Attorney

ATTEST:



Rosalia A. Butler, MMC
City Clerk

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, ROSALIA A. BUTLER, MMC, CITY CLERK of the City of Pomona do hereby certify that the foregoing Urgency Ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on January 23, 2023 and was adopted at second reading at a regular meeting of the City Council of the City of Pomona held on January 23, 2023, by the following vote:

AYES: Garcia, Lustro, Nolte, Ontiveros-Cole, Preciado, Torres, Sandoval
NOES: None
ABSENT: None
ABSTAIN: None



Rosalia A. Butler, MMC
City Clerk