

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ANAHEIM AMENDING CHAPTER 4.05 (SHORT-TERM RENTALS) OF TITLE 4 (BUSINESS REGULATION) OF THE ANAHEIM MUNICIPAL CODE RELATING TO SHORT-TERM RENTALS, PROVIDING FOR AMORTIZATION OF CERTAIN PRE-EXISTING SHORT-TERM RENTAL USES AND FINDING AND DETERMINING THAT THIS ORDINANCE IS NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO SECTIONS 15060(C)(2) AND 15060(C)(3) OF THE STATE CEQA GUIDELINES, BECAUSE IT WILL NOT RESULT IN A DIRECT OR REASONABLY FORESEEABLE INDIRECT PHYSICAL CHANGE IN THE ENVIRONMENT AND IS NOT A PROJECT, AS DEFINED IN SECTION 15378 OF THE CEQA GUIDELINES.

WHEREAS, by the adoption of Ordinance No. 6299 on May 13, 2014, the City Council of the City of Anaheim (“City Council”) added Chapter 4.05 (Short-Term Rentals) to Title 4 (Business Regulation) of the Anaheim Municipal Code (the “Code”) for the purpose of establishing a permit program for owners of residential dwelling units who rent, offer to rent, or advertise for rent said dwelling units to a person or group of persons for occupancy, dwelling, lodging or sleeping purposes for a period of less than thirty (30) consecutive calendar days, *i.e.*, “Short-Term Rentals”; and

WHEREAS, Chapter 4.05 (Short-Term Rentals) is known and referred to as the “Short-Term Rentals Ordinance”; and

WHEREAS, the Short-Term Rentals Ordinance, as subsequently amended by the adoption of Ordinance No. 6317 on March 3, 2015, permitted the short-term rental of dwelling units within the Single-Family Residential Zone, the Multiple-Family Residential Zone and the Mixed Use (MU) Overlay Zone, and established standards and regulations relating to the issuance of permits for Short-Term Rentals; and

WHEREAS, by the adoption of Ordinance No. 6317 on March 3, 2015, the City Council also added “Short-Term Rental Units,” as defined in Chapter 4.05 (Short-Term Rentals) of the Code, as a permitted use within the Mixed Use (MU) Overlay Zone subject to a short-term rental permit as provided in the Short-Term Rentals Ordinance; and

WHEREAS, on September 15, 2015, the City Council adopted Ordinance No. 6343, an urgency ordinance pursuant to California Government Code Section 65858 for the purpose of imposing a temporary 45-day moratorium, expiring on October 30, 2015, on the commencement, establishment and/or operation of new Short-Term Rentals and on any applications for renewal of Short-Term Rental Permits existing on the date of adoption of Ordinance No. 6343, pending completion of the City's study of the potential impacts and regulation of Short-Term Rentals, and possible amendments to the City's zoning ordinance and related provisions of the Code to ensure

that adequate development standards and implementation regulations, which may include a repeal of the Short-Term Rentals Ordinance and related provisions of the Code, are in effect to protect the public peace, health, safety and/or welfare prior to any decision on future applications for Short-Term Rentals; and

WHEREAS, on October 20, 2015, the City Council adopted Ordinance No. 6347 for the purpose of extending all of the terms and provisions of Ordinance No. 6343 for a period of one hundred eighty-six (186) days so that the interim measure would expire at 11:59 p.m. on Tuesday, May 3, 2016; and

WHEREAS, on April 12, 2016, the City Council adopted Ordinance No. 6369 for the purpose of extending all of the terms and provisions of Ordinance No. 6343 for an additional one (1) year period so that the interim measure would expire at 11:59 p.m. on Wednesday, May 3, 2017; and

WHEREAS, at the same time as this ordinance is being proposed and considered, the City Council is considering the adoption of a proposed ordinance that would provide for a comprehensive amendment to the Short-Term Rentals Ordinance regulating the issuance of and operating conditions applicable to Short-Term Rental permits (“STR Regulations and Ban on New STRs Ordinance”), which ordinance would, among other things, prohibit short-term rentals as an allowable use on any property within Single-Family Residential Zones (as defined in Section 18.04.020 of this code), Multiple-Family Residential Zones (as defined in Section 18.06.020 of this code), or any other zoning district in the City, including all underlying or base zones, overlay zones and adopted specific plans, in which residential uses are a permitted or conditionally permitted use, except for (1) short-term rental permits duly issued prior to the effective date of the STR Regulations and Ban on New STRs Ordinance, and (2) short-term rental permits issued in response to pending applications as defined in the STR Regulations and Ban on New STRs Ordinance, which are renewed by the Planning Director in accordance with that ordinance, which two categories of exceptions are referred to as “Pre-Moratorium Short-Term Rentals,” and (3) short-term rentals that have been authorized within the C-G General Commercial Zone pursuant to a conditional use permit approved in accordance with the provisions of this code prior to the adoption of the moratorium on September 15, 2015; and

WHEREAS, this ordinance is intended to go into effect only if the STR Regulations and Ban on New STRs Ordinance is duly enacted and effective, and would provide for the ultimate termination of the Pre-Moratorium Short-Term Rentals within zones in which residential uses are a permitted use, pursuant to a reasonable amortization schedule, aimed at providing for a reasonable period of time for the owners of properties with Pre-Moratorium Short-Term Rentals to recoup the costs they reasonably invested for short-term rental use to the extent such costs could not already have been reasonably recouped during the period of short-term rental use of the property and cannot be recouped once the short-term rental use is terminated; and

WHEREAS, termination of short-term rental uses does not prohibit reasonable use of the affected properties for all other purposes allowed under applicable laws, rules, and regulations because only short-term rental uses are prohibited and the properties may still be used for other uses, including permanent residence, rentals in excess of 30 days, lease, sale and other permitted or conditionally permitted purposes; and

WHEREAS, the City Council has determined that the owners of properties with Pre-Moratorium Short-Term Rentals shall be provided with a reasonable period of time within which to recoup the costs they reasonably invested for short-term rental use to the extent such costs could not already have been reasonably recouped during the period of short-term rental use of the property and cannot be recouped once the short-term rental use is terminated, subject to an extension in the event of demonstrated hardship pursuant to the provisions of this ordinance; and

WHEREAS, the use of residential dwelling units within the City of Anaheim as Short-Term Rentals for periods of less than thirty (30) consecutive calendar days can, in certain circumstances, escalate the demand for City services, negatively affect surrounding residential neighborhoods, and place increased demands on public services; and

WHEREAS, the City Council intends by this ordinance to ameliorate the disruption to those owners of Pre-Moratorium Short-Term Rentals that might otherwise occur if those owners were required to cease operations immediately upon the effective date of this ordinance; and

WHEREAS, pursuant to the City's police power, as granted broadly under Article XI, Section 7 of the California Constitution, this City Council has the authority to enact and enforce ordinances and regulations for the public peace, health, safety and/or welfare of the City and its residents; and

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; herein referred to as "CEQA") and the State of California Guidelines for Implementation of the California Environmental Quality Act (commencing with Section 15000 of Title 14 of the California Code of Regulations; herein referred to as the "State CEQA Guidelines"), the City is the "lead agency" for the preparation and consideration of environmental documents for this ordinance; and

WHEREAS, the City Council finds and determines that this ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as that term is defined in Section 15378 of the State CEQA Guidelines; and

WHEREAS, the City Council finds and determines that the regulation of Short-Term Rental uses in accordance with this ordinance is a matter of City-wide importance and necessary for the preservation and protection of the public peace, health, safety and/or welfare of the community and is a valid exercise of the local police power and in accord with the public purposes and provisions of applicable State and local laws and requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANAHEIM DOES ORDAIN AS FOLLOWS:

SECTION 1. Provided that the STR Regulations and Ban on New STRs Ordinance referenced above is duly enacted and effective, Section 4.05.180 shall be, and the same is hereby,

added to Chapter 4.05 (Short-Term Rentals) of Title 4 of the Anaheim Municipal Code to read in its entirety as follows:

4.05.180 TERMINATION AND AMORTIZATION OF PRE-MORATORIUM SHORT-TERM RENTALS.

.010 Notwithstanding anything to the contrary in Chapter 4.05, which may allow pre-moratorium short-term rentals as described in paragraph B of Section 4.05.020, subject to the hardship provisions that are further detailed in this section, all such pre-moratorium short-term rentals are prohibited in zones where residential uses are a permitted or conditionally permitted use after () years following ***[insert the effective date of this ordinance]***. The purpose of so deferring the termination of pre-moratorium short-term rentals is to provide a reasonable amortization period to the owners of properties with pre-moratorium short-term rentals within which they may recoup the costs they reasonably invested for short-term rental use to the extent such costs could not already have been reasonably recouped during the period of short-term rental use of the property and cannot be recouped once the short-term rental use is terminated. The provisions of this section shall supersede any other provisions of this code relating to the continuation or amortization of a non-conforming use. The provisions of this section, including without limitation the foregoing amortization period, shall not be applicable to those short-term rentals within the C-G General Commercial Zone that have been authorized pursuant to a conditional use permit approved in accordance with the provisions of this code prior to the adoption of the moratorium on September 15, 2015.

0.20 In the event an owner believes that termination of the short-term rental use within the period provided in subsection .020 of this section will not provide the owner a reasonable period of time within which to recoup the costs the owner reasonably invested for short-term rental use, and that such costs cannot be recouped once the short-term rental use is terminated, the owner may apply to the Planning Director for a hardship extension. The duties and responsibilities of the Planning Director under this section may be performed by the Planning Director's designee. Any application for a hardship extension shall be made, processed, and acted on in accordance with the following provisions:

.0201 Not earlier than ninety (90) calendar days but no later than one hundred eighty (180) calendar days after the effective date of this ordinance, the owner may file an application with the Planning Director for the hardship extension, along with such fee or fees as may be established by the City Council by resolution. The owner shall sign the application under penalty of perjury. The application shall set forth the amount of additional time that the owner contends is necessary, beyond the period provided in subsection .020 of this section, to recoup the costs the owner reasonably invested for short-term rental use which cannot be recouped once the short-term rental use is terminated. The application

shall fully set forth the owner's justification for such additional time. The application shall also include the following information:

(a) The date the property was acquired by the owner, the price and other terms of the acquisition that materially affected the price, and the purpose for which the property was acquired by the owner. If the property was acquired by a means other than an arms-length purchase (including without limitation a gift or inheritance), then the owner shall provide information concerning the most recent arms-length purchase involving the property.

(b) Each use the owner has made of the property since the owner's acquisition and the period of each such use. If the property was acquired by a means other than an arms-length purchase (including without limitation a gift or inheritance), then the owner also provide information concerning the most recent arms-length purchase involving the property.

(c) A detailed listing of expenditures made by the owner for capital improvements to the property for the purpose of putting the property to short-term rental use, since it was acquired, including the purpose of each expenditure, the amount, the date, the payee, and any other relevant information for each expenditure. The owner shall provide receipts, executed construction contracts and/or other written proof of each expenditure.

(d) A detailed listing of expenditures made by the owner for capital improvements to the property other than those made for the purpose of putting the property to short-term rental use, since it was acquired, including the purpose of each expenditure, the amount, the date, the payee, and any other relevant information for each expenditure. The owner shall provide receipts or other written proof of the each expenditure.

(e) A detailed listing of all expenditures incurred by the owner for the purpose of putting the property to short-term rental use, other than capital expenditures, including the purpose of each expenditure, the amount, the date, the payee, and any other relevant information for each expenditure. The owner shall provide receipts or other written proof of each expenditure.

(g) A detailed listing of all gross receipts received in connection with the use of the property for short-term rental purposes during such time as it was lawful to use the property for such purposes.

(h) For each short-term rental use that has been made of the property since such uses were permitted, the owner shall provide details on the duration of the rental, the amount of rent and other payments made to the owner for the rental, and the expenses directly associated with that rental (including but not limited to commission fees). The owner shall provide the date the property first was used as a short-term rental, the number of days that the property has been

occupied as a short-term rental since that use commenced, and the average rent paid per day for short-term rental use since that use commenced. The owner shall state whether during the period that short-term rental use has been allowed for the property, the property has been put to any other uses (including without limitation residential use by the owner or others) and, if so, detail the number of days for each such use and any income generated from each such use.

(i) A detailed projection of the income and expenses that are anticipated if the requested hardship extension is approved.

(j) An identification and description of any contracts with third parties that commit the property to a future short-term rental use to a third party, including the dates of the committed use, the rental to be charged for the use, and any other relevant information relating to the contracted future use. The owner shall provide written evidence of the contacts identified.

(k) An identification and description of any long term commitments, whether leases, mortgages, or other commitments, that have been made by the owner in reliance on the ability to use the property for short-term rental purposes. The owner shall provide written documentation for each such commitment.

(l) The fair market value of the short-term rental property had there been no prohibition on short-term-rentals in zones permitting or conditionally permitting residential uses compared to the value of the short-term rental property as affected by the amortization provisions of this Section 4.05.180. The owner shall provide the factual basis and analysis substantiating these values, including comparable sales information, income approach elements and/or cost approach elements.

(m) Whether there has been or will be an increment in value accruing to the property as a result of the STR Regulations and Ban on New STRs Ordinance that will effectively limit the number of short-term rentals available in zones that permit or conditionally permit residential uses for the pre-moratorium short-term rental, and the factual basis and analysis substantiating that increment in value.

(n) Whether there has been or will be an increment in potential monthly rental income that the short-term rental property could generate from short-term rental use for the remaining period of allowed short-term rental use, by having a pre-moratorium right to short-term rental use while other properties (in zones permitting or conditionally permitting residential uses) could not be used for short-term rental purposes, other than those properties that benefitted from the pre-moratorium right to short-term rental use. If so, the owner shall provide the factual basis and analysis substantiating the increment in potential monthly income for the period of permitted use.

(o) The amortized or depreciated value of the short-term rental property used for tax purposes.

(p) A financial analysis demonstrating the amount of time that will be required for the owner to recoup the costs reasonably invested for short-term rental use to the extent such costs could not already have been reasonably recouped during the period of short-term rental use of the property and cannot be recouped once the short-term rental use is terminated. The analysis should identify reference sources for each item of data included and set forth the basis for all assumptions made. The Planning Director may provide the owner with a requested form and/or format for the financial analysis, and if provided, such form and/or format shall be completed and submitted by the owner.

After receiving the application, the Planning Director may request any additional information reasonably necessary to ascertain relevant facts and circumstances; and if requested, the owner shall provide the requested information within thirty (30) calendar days of the Planning Director's request. The Planning Director may deem an application to be incomplete, and reject the application or return it to the owner for additional information, if the information set forth in the application is not fully provided in a manner that is comprehensive and understandable and that demonstrates how the factual information provided leads to the conclusion that the requested extension is necessary. The Planning Director, in his or her sole and absolute discretion, may waive one or more of the items listed above if he or she determines the purpose and intent of the amortization provisions of this section can be adequately achieved without the submittal of such item(s), but no waiver shall be effective unless in writing and signed by the Planning Director.

.0202 The burden shall be on the owner to establish the need and grounds for a hardship extension and to establish the reasonableness of the requested duration of the extension. Any alleged hardship that is based upon action or expenditures not reasonably taken or made in light of the circumstances, shall not be grounds for an extension. Any expenses for modifications or improvements to the short-term rental property incurred after ***[insert effective date of the ordinance]*** shall be presumed not to be reasonably incurred unless proven that they were reasonably necessary to operate the short-term rental in a way that would ultimately reduce the duration of the extension otherwise necessary, because the modifications or improvements will allow for quicker recoupment of the owner's qualifying costs. If there is a sale of the short-term rental property after ***[insert effective date of the ordinance]***, the costs to be considered for purposes of a hardship extension shall be those of the owner prior to ***[insert effective date of the ordinance]***, and the new owner's purchase price and costs shall not be a basis of qualifying for a hardship extension. The Planning Director shall approve an extension upon determining that the owner has shown that since the commencement of the use of the owner's property as a short-term rental

property, the owner has not had and will not have, within the time limit set forth in Section .020 above, a reasonable period of time within which to recoup the costs the owner reasonably invested for short-term rental use, and that the costs cannot be recouped once the short-term rental use is terminated. In the event an extension is approved, the Planning Director may only approve an extension of time for such period as is necessary to allow the owner a reasonable time for such recoupment of such costs.

.0203 In determining whether the owner has had and will have a reasonable period of time for recoupment of costs, the Planning Director shall consider the period of time that the owner has had for short-term rental use since the owner began to incur such costs, including periods of time before the STR Regulations and Ban on New STRs Ordinance was enacted and/or before the moratorium was enacted that preceded that ordinance. In addition to the information contained in the application submitted by the owner, the Planning Director may consider such additional competent and relevant information that the Planning Director may obtain by staff investigation or from other sources as the Planning Director may choose to consult or obtain; however, the Planning Director shall not be obligated to conduct any independent investigation or to seek information outside the scope of the owner's application. Upon request of the Planning Director, the owner shall be reasonably available for a conference to respond to questions or to review and discuss relevant information.

.0204 In considering the application and making a decision, the Planning Director may take into account all relevant information that relates to the determination of whether the owner has had or will have a reasonable period of time to recoup the costs the owner reasonably invested for short-term rental use, and that the costs cannot be recouped once the short-term rental use is terminated, including but not limited to any of the following matters he or she deems relevant:

- (a) The information submitted in the owner's application.
- (b) The period of time that the owner has had for short-term rental use since the owner began to incur such costs, including periods of time since the adoption of Ordinance No. 6299, and any period of operation preceding the adoption of Ordinance No. 6299.
- (c) The amount of investment or original cost incurred by the owner.
- (d) The fair market value of the short-term rental property had there been no prohibition on short-term-rentals in zones permitting or conditionally permitting residential uses compared to the value of the short-term rental property as affected by the amortization provisions of this Section 4.05.180.

(e) The increase in value that the property benefitted from due to the market for real estate in the area, independent of any added increase that may have occurred as a result of the availability of the property for short-term rental use.

(f) Any increment of value that the property received by having a pre-moratorium right to short-term rental use while other properties (in zones permitting or conditionally permitting residential use) could not be put to short-term rental use, other than those that benefitted from the pre-moratorium right to short-term rental use.

(g) Any increment in potential income that the property could generate from short-term rental use by having a pre-moratorium right to short-term rental use while other properties (in zones permitting or conditionally permitting residential use) could not be put to short-term rental use, other than those that benefitted from the pre-moratorium right to short-term rental use.

(h) The income potential of the property since it was allowed to be used for short-term rental purposes and the income actually received by the owner from short-term rental use since it was allowed to be used for short-term rental purposes.

(i) Any amortization or depreciation of the improvements to the property that has been prepared for tax purposes.

(j) The extent of the owner's investment that is unique to the short-term rental use and does not serve any conforming use of the property;

(k) The extent of the owner's investment that will not be recovered on sale of the property.

(l) The owner's investment-backed expectations in light of current and pending regulation at the time that the investment was made.

(m) Replacement cost of improvements that might have been made that only serve the short-term rental use; and the length of time that the owner has had the benefit of the investment before the termination of the use.

(n) Any other information that bears upon the reasonable period of time for the owner of a pre-moratorium short-term rental to recoup the costs reasonably invested for short-term rental use to the extent such costs could not already have been reasonably recouped during the period of short-term rental use of the property and cannot be recouped once the short-term rental use is terminated.

.0205 A decision by the Planning Director to deny an application for a hardship extension, in whole or in part, or to limit the duration of an extension to a shorter period than requested by the owner, may be appealed by the owner pursuant to the provisions established in Section 4.05.150 (Appeals and Administrative Hearing Procedure for Administrative Determinations) of this chapter, and subject to the following additional provisions. Rather than the Employee Hearing Officer, the City Hearing Officer, as defined in paragraph .0101 of subsection .010 of Section 1.12.110 of the code, shall conduct the hearing, receive evidence and make the final decision on behalf of the city. The deadline for filing an appeal shall be thirty (30) calendar days after the date the written notice of the Planning Director's decision is mailed (via first class delivery) to the owner. Such an appeal may be filed only if the owner timely submitted a complete application to the Planning Director for the hardship extension. The City Hearing Office shall conduct a *de novo* hearing for the appeal; however, the owner may not submit information to the City Hearing Officer other than that which was submitted to the Planning Director in connection with the owner's application for hardship extension, except to the extent the information could not have reasonably been provided to the Planning Director with the application or to the extent that the information is necessary to rebut or respond to information submitted by the City or any other person to the City Hearing Officer. The City Hearing Officer's decision shall be based on all relevant information, including the categories of information set forth in paragraph .0204 of subsection .020 of this section. The burden shall be on the owner to establish the need and grounds for the hardship extension and to establish the reasonableness of the requested duration of the extension. Any hardship that is based upon actions or expenditures not reasonably taken or incurred in light of the circumstances shall not be grounds for an extension. Any expenses for modifications or improvements to the short-term rental property incurred after **[insert effective date of the ordinance]** shall be presumed not to be reasonably incurred unless proven that they were reasonably necessary to operate the short-term rental in a way that would ultimately reduce the duration of the extension otherwise necessary, because the modifications or improvements will allow for quicker recoupment of the owner's qualifying costs. If there is a sale of the short-term rental property after **[insert effective date of the ordinance]**, the costs to be considered for purposes of a hardship extension shall be those of the owner prior to **[insert effective date of the ordinance]**, and the new owner's purchase price and costs shall not be a basis of qualifying for a hardship extension.

.0206. Upon the termination of the amortization period, including any hardship extension, the pre-moratorium short-term rental use shall cease immediately. Thereafter, the owner's property may be used as a long-term residence, a long-term residential rental, or for any other lawfully permitted or conditionally permitted use in the zone.

SECTION 2. SEVERABILITY.

The City Council of the City of Anaheim hereby declares that should any section, paragraph, sentence, phrase, term or word of this ordinance be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance independent of the elimination of any such portion as may be declared invalid. If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION 3. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be printed once within fifteen (15) days after its adoption in the *Anaheim Bulletin*, a newspaper of general circulation, published and circulated in the City of Anaheim.

SECTION 4. EFFECTIVE DATE

This ordinance shall take effect and be in full force thirty (30) days from and after its final passage.

///

///

///

///

///

///

///

///

///

///

///

///

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the ____ day of _____, 2016, and thereafter passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2016, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ANAHEIM

By: _____

MAYOR OF THE CITY OF ANAHEIM

ATTEST:

CITY CLERK OF THE CITY OF ANAHEIM

117729-V1