

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 TO MODIFY THE TERMINATION AND AMORTIZATION PROCESS AND PERIOD FOR CERTAIN DEFINED PRE-MORATORIUM SHORT-TERM RENTALS, AND FINDING AND DETERMINING THAT THIS ORDINANCE IS NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO SECTIONS 15004, 15060(C)(2), 15060(C)(3), 15061(B)(3), 15301 AND 15332 OF THE STATE CEQA GUIDELINES, BECAUSE IT WILL NOT RESULT IN A DIRECT OR REASONABLY FORESEEABLE INDIRECT PHYSICAL CHANGE IN THE ENVIRONMENT, BECAUSE IT INVOLVES OPERATION, PERMITTING, LICENSING, AND/OR LEASING OF EXISTING PRIVATE STRUCTURES OR FACILITIES INVOLVING NEGLIGIBLE OR NO EXPANSION OF EXISTING OR FORMER USE, BECAUSE THERE IS NO POSSIBILITY THAT IT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT, BECAUSE IT IS NOT A PROJECT, AS DEFINED IN SECTION 15378 OF THE CEQA GUIDELINES, AND BECAUSE IT IS ALSO THE SUBJECT OF CATEGORICAL EXEMPTIONS FROM CEQA.

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, including possible repeal of the Short-Term Rentals Ordinance and related provisions of the Code, were 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, on July 12, 2016, the City Council adopted Ordinance No. 6374 for the purpose of revising the permit and regulation program for Short-Term Rentals and for the purpose of establishing, with limited exceptions, that Short-Term Rentals will no longer be allowable uses in certain zoning districts; and

WHEREAS, on July 12, 2016, the City Council adopted Ordinance No. 6375 for the purposes of providing for the termination of Short-Term Rentals in certain zoning districts and providing for a period of time for the owners of such Short-Term Rentals to amortize their investments in Short-Term Rentals, including by applying for a "hardship extension" lengthening the period of time the Short Term Rental is permitted to operate in order for the owner to recoup his or her investment; and

WHEREAS, on August 12, 2016, nine (9) individual and corporate plaintiffs, including the California non-profit corporation the Anaheim Rental Alliance (the "Plaintiffs"), filed suit against the city in Orange County Superior Court, Case No. 30-2016-00869305-CU-WM-CXC, *Talmadge Price et al. v. City of Anaheim* (the "Action"), on behalf of Pre-Moratorium Short-Term Rental permit holders and tenants, challenging Ordinance Nos. 6374 and 6375 for alleged violations of municipal, constitutional, statutory and common law; and

WHEREAS, on April 4, 2017, with a subsequent effective date of May 11, 2017, the City settled the Action, which settlement was conditioned on the City Council's adoption of two ordinances revising Ordinance Nos. 6374 and 6375; and

WHEREAS, on April 4, 2017, the City Council adopted Ordinance No. 6404 for the purpose of revising the permit and regulation program set forth in Ordinance No. 6374, and adopted Ordinance No. 6405 for the purpose of revising the amortization process set forth in Ordinance No. 6375; and

WHEREAS, the City Council has determined that in the years since the initial permitting and regulation of Short-Term Rentals, the number of renewed permits and continuing operators has diminished, and the complaints about their operations have declined due to more stringent rules adopted via Ordinance Nos. 6374 and 6404; and

WHEREAS, the hardship extension applications of 244 Short-Term Rental operators are under review by the City to determine their demonstrated hardship and therefore their amortization period for operation after August 11, 2019; and

WHEREAS, notwithstanding the good faith efforts of the City and the hardship extension applicants, there are significant disputed assumptions, questions, and variables associated with the documentation and calculation of amortization periods. By way of examples, disputed issues include: (i) the nature and sufficiency of documentation to demonstrate any particular expense or hardship; (ii) the appropriate cost and valuation methodology, from among several options recognized in the amortization literature, to apply to calculate a reasonable amortization period; and (iii) the specific items of expense that are recoverable for purposes of calculating a reasonable amortization period; and

WHEREAS, the Short-Term Rental hardship extension applicants have submitted documentation which they assert supports an average of over 20 years of amortization, and further contend that they were required to submit that documentation before the full magnitude of the issues and costs attributable to the City's hardship process could be known; and

WHEREAS, the City's evaluators question the conclusions of the Short-Term Rental hardship extension applicants regarding the recoverable amortization periods, and, while the process is not complete, are likely to determine those periods to be shorter than those requested by the Short-Term Rental operators; and

WHEREAS, the disputes over the proper amortization periods for Short-Term Rentals may take years of review, oversight and administrative and judicial action to resolve, and engender significant expenses, fees and costs; and

WHEREAS, the City Council, in recognition of the reduced number of permitted Short-Term Rentals, the decline in Short-Term Rental operating complaints and violations, and the additional visitor housing and revenue afforded to the City by Short-Term Rentals, desires to resolve the uncertainty, disruption, risk and expense that the administrative and judicial adjudication of over 200 hardship extension applications will entail, and to instead modify the termination and amortization period and process for the continued operation of certain defined Pre-Moratorium Short-Term Rentals; and

WHEREAS, the City Council has determined that different and unique factors and circumstances exist with respect to Short-Term Rentals that are in communities governed by homeowner's associations that have issued rules prohibiting Short-Term Rentals, and that there is

a public benefit in terminating Short-Term Rentals in those communities that are operating contrary to such rules. In addition, such properties are generally attached units and therefore engendered generally lower start up, operational and maintenance costs. Both of these factors provide a fair and reasonable basis for affording such properties a termination and amortization period and process that is different from those applicable to other Pre-Moratorium Short-Term Rentals; 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 15004, 15060(c)(2), 15060(c)(3), and 15061(b)(3), 15301, and 15332 of the State CEQA Guidelines, because: (a) it will not result in a direct or reasonably foreseeable indirect physical change in the environment, there is no possibility that it may have a significant effect on the environment, because it involves operation, permitting, leasing and/or licensing of existing private structures or facilities involving negligible or no expansion of existing or former use, and it is not a "project," as that term is defined in Section 15378 of the State CEQA Guidelines; (b) any City actions taken pursuant to this ordinance have already been the subject of past CEQA compliance by the City or, pursuant to existing City law and process, require future CEQA compliance by the City before they can be taken; and (c) the categorical exemptions from CEQA for existing facilities and infill development are applicable to this ordinance; 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 citywide 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. Sections 4.05.020, 4.05.030, 4.05.070, and 4.05.180 of Chapter 4.05 (Short-Term Rentals) of Title 4 (Business Regulation) of the Anaheim Municipal Code) shall be, and the same hereby are amended and restated to read in their entirety as follows:

#### 4.05.020 PURPOSE AND INTENT.

The purposes of this chapter are as follows:

A. With the exceptions noted in paragraph “B” below, it is the purpose of this chapter to establish that short-term rentals will no longer be allowable uses 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.

B. It is the purpose of this chapter to provide a permit system for the renewal of short-term rental permits for Pre-Moratorium Short-Term Rentals. It is the further purpose of this chapter to provide a permit system for 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.

C. For those owners who are eligible and apply for renewal of a short-term rental permit, as described in paragraph "B" of this Section 4.05.020, whose applications for renewal are approved by the city, it is the purpose of this chapter to establish and impose operational requirements and regulations for the use of the aforementioned privately-owned residential dwellings as short-term rentals in order to reduce the burden on city services, minimize the negative secondary effects of such use on residential neighborhoods, and ensure the health, safety and welfare of persons residing in residential neighborhoods and patronizing short-term rentals.

#### 4.05.030 DEFINITIONS.

The definitions contained in this section shall govern the construction, meaning and application of words and phrases used in this chapter.

A. “Agent” shall mean a person engaged or appointed by an owner to represent and act on behalf of an owner (as defined in these definitions) and to act as an operator, manager and/or local contact person of a dwelling used or to be used as a short-term rental unit or short-term rental property and designated as such by the owner in accordance with Section 4.05.050.

B. “City Manager” shall have the same meaning as Section 600 (City Manager) of the Charter of the City of Anaheim, and shall include his or her authorized representative.

C. “CC&R Restricted Short-Term Rental” shall mean Pre-Moratorium Short-Term Rental that, as of June 1, 2019, has a valid permit to operate and is operating as a Short-

Term Rental, and that is the subject of a timely-filed application for hardship extension submitted pursuant to subsection 4.05.180.020, but which is part of a homeowner's association that has covenants, conditions and restrictions ("CC&R's") that prohibit the operation of short-term rentals.

D. "Dwelling" is defined in Section 18.92.070 ("D" Words, Terms and Phrases) of Chapter 18.92 (Definitions) of this code. "Dwelling" shall also mean a dwelling unit on the same parcel as a legally established single-family dwelling that is allowed in the zone in which located, having its own complete independent living accommodations and facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, in which case only one of said dwelling units may be used as a short-term rental.

E. "Enforcement officer" shall mean the Planning Director, the Community Preservation Manager, any Community Preservation Officer, the city's Fire Chief, his or her authorized representatives, the city's Building Official, his or her authorized representatives, or any other city department head (to the extent responsible for enforcing provisions of this code), or any other city employee designated by the Planning Director or City Manager to enforce this chapter.

F. "Hosting platform" shall mean a person or entity that facilitates a short-term rental for an owner, and derives revenues therefrom, including without limitation booking fees, subscription charges or advertising revenues, from such facilitation. "Facilitate" shall mean without limitation the act of allowing the owner to offer to list or advertise the short-term rental on the Internet web site provided or maintained by the hosting platform. A hosting platform does not include any person licensed to practice real estate as defined in Section 10130 of the California Business and Professions Code.

G. "License Collector" shall have the same meaning as in Section 1.01.305 (Construction—"License Collector") of the code, and shall include his or her authorized representative.

H. "Local contact person" shall mean a person designated by an owner or the owner's agent, who, if designated to act as such, shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of: (i) being able to physically respond within forty-five (45) minutes of notification of a complaint regarding the condition, operation or conduct of occupants of the dwelling, and (ii) taking remedial action necessary to resolve any such complaints. A local contact person may be the owner or the owner's agent.

I. "Occupant" shall mean any person who is on or in a short-term rental property other than service providers or the owner, whether or not the person stays overnight.

J. "Operator" shall mean the owner or the designated agent of the owner who is responsible for compliance with this chapter.

K. “Owner” shall mean the person(s) or entity(ies) that holds legal or equitable title to a dwelling and may sometimes be referred to interchangeably in this chapter as an “applicant”. “Owner” includes a lessee.

L. “Pending application” shall mean an application for a short-term rental permit filed with the Planning Director prior to September 16, 2015 that has not been approved or denied by the Planning Director prior to August 11, 2016.

M. “Person” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

N. “Planning Director” shall mean the Director of the Planning and Building Department of the City of Anaheim or his or her authorized representative, including the License Collector, the Community Preservation Manager and any Community Preservation Officer or staff so designated by either the Director of the Planning and Building Department or the Community Preservation Manager to carry out responsibilities under this chapter.

O. “Pre-Moratorium Home Share Short-Term Rental” shall mean a Pre-Moratorium Short-Term Rental that, as of June 1, 2019, has a valid permit to operate and is operating as a Short-Term Rental, and that is the subject of a timely-filed application for affidavit or hardship extension submitted pursuant to subsection 4.05.180.015 or subsection 4.05.180.020, and is the owner’s primary residence as of June 1, 2019, where the owner of the Short-Term Rental demonstrates, on an annual basis at the time the Short-Term Rental permit is renewed, that the Short-Term Rental property is the owner’s primary residence. The owner of a Pre-Moratorium Home Share Short-Term Rental must be a natural person, and cannot be a corporation, limited liability company, limited liability partnership, or any other business entity.

P. “Pre-Moratorium Short-Term Rental” shall mean a Short-Term Rental that was authorized by City permit to operate as a Short-Term Rental prior to August 11, 2016, or whose pending application for a Short-Term Rental permit was filed prior to September 16, 2015 and approved after August 11, 2016.

Q. “Qualifying Pre-Moratorium Short-Term Rental” shall mean a Pre-Moratorium Short-Term Rental that, as of June 1, 2019, has a valid permit to operate and is operating as a Short-Term Rental and is the subject of a timely-filed application for hardship extension submitted pursuant to subsection 4.05.180.020.

R. “Rent” shall have the meaning provided in Section 2.12.005.080 of Chapter 2.12 (Transient Occupancy Tax) of this code and, for the purpose of this definition, the term “operator” shall mean an “owner,” as defined in this chapter, who undertakes, maintains, authorizes, aids, facilitates, advertises, lists or rents a dwelling unit as a short-term rental within the City of Anaheim.

S. “Responsible person” means the signatory of an agreement for the rental, use and occupancy of a short-term rental unit, who: (i) shall be at least twenty-one (21) years of age, (ii) shall be an occupant of the subject short-term rental unit during the term of said agreement, (iii) shall be legally responsible for ensuring that all occupants of the short-term rental unit comply with all applicable laws, rules and regulations pertaining to the use and occupancy of the subject short-term rental unit, and (iv) may be held liable for any violation of all applicable laws, rules and regulations set forth in this chapter.

T. “Short-Term Rental” shall mean the rental of a dwelling or a portion thereof, by the owner to another person or group of persons for occupancy, dwelling, lodging or sleeping purposes for a period of less than thirty (30) consecutive calendar days. The rental of units within city-approved hotels, motels, bed and breakfasts, and time-share projects shall not be considered to be a short-term rental.

U. “Short-Term Rental permit” shall mean a permit issued pursuant to the provisions of this chapter that allows the use of a dwelling as a short-term rental.

V. “Short-Term Rental property” means a parcel of real property, as shown on the latest equalized tax assessment roll as maintained by the assessor of the County of Orange, upon which a short-term rental unit (or units) is (are) maintained. “Short-term rental property” includes the premises upon which a short-term rental unit is located, including parking areas, driveways, landscaping, accessory structures, fences, walls, swimming pools, hot tubs, spas, tennis and paddleboard courts, and other similar and related improvements.

W. “Short-Term Rental unit” shall mean a dwelling, or any portion thereof, which is being rented, or is intended to be rented, as a short-term rental to a person or group of persons.

#### 4.05.070 TERM OF PERMIT AND RENEWAL.

.010 A short-term rental permit or renewal thereof issued under the authority of this chapter shall be valid from the date of its issuance until the first to occur of July 31 in the year issued (i.e., the "expiration date") set forth on the permit or the revocation date. A short-term rental permit shall be of no further force, validity or effect, and use of a dwelling for short-term rental purposes shall cease, upon the first to occur of the expiration date or revocation date of the short-term rental permit, unless renewed pursuant to Section 4.05.040 of this chapter. Upon the lapse of a short-term rental permit because of expiration, a failure to renew, or because revocation has occurred, the owner of the property which was the subject of the permit or his/her heirs, successors or assigns shall have no further right to apply for or obtain a short-term rental permit or to undertake, maintain, facilitate, advertise for rent, list, rent or use said dwelling and/or the property as a short-term rental.

.020 A short-term rental permit shall not run with the land. The permission to operate a short-term rental under this chapter shall be personal and limited to the owner to whom the city issued the permit, including a person who acquires a short-

term rental permit by application for a change of ownership in accordance with subsection .110 of Section 4.05.060 of this chapter.

.030 No person shall convey or attempt to convey a short-term rental permit from one property to another property except as authorized by subsections 4.05.180.010.0102 or 4.05.180.010.0103. Any other attempt to convey a short-term rental permit from one property to another property shall be void and shall constitute a violation of this chapter.

.040 No person shall transfer or attempt to transfer a short-term rental permit to any other person, except as authorized by this subsection or subsection 4.05.180.010.0102. A person may acquire a short-term rental permit from an owner if that person acquires the property, which, in the case where an "owner" is a lessee, would include a leasehold interest, that is subject to a short-term rental permit and the owner or the owner's agent submits a transfer application and requisite application fee in accordance with subsection .110 of Section 4.05.060 of this chapter. Any attempt to transfer a short-term rental permit in violation of this subsection or subsection 4.05.180.010.0102 shall be void and shall constitute a violation of this chapter. Likewise, any attempt to operate a short-term rental use under a short-term rental permit transferred in violation of this subsection or subsection 4.05.180.010.0102 shall constitute a violation of this chapter.

.050 If an owner desires to renew a short-term rental permit, an owner must apply for and renew a short-term rental permit annually, indicating at renewal any changes to the information or requirements set forth in Section 4.05.060, above. The application for renewal must be filed not later than the expiration date set forth on the permit. The application for renewal shall be upon a form provided by the Planning Director and accompanied by payment of a permit renewal fee set by resolution of the City Council.

.060 The application for renewal shall be processed and acted upon in the same manner and be subject to the requirements of this chapter.

.070 Prior to expiration of a short-term rental permit, the owner may voluntarily cancel the permit by notifying the Planning Director in writing of the intent to cancel the permit. The permit shall become void upon the earlier to occur of the date specified by the owner or the expiration of the permit. Thereafter, the subject property shall no longer be used or capable of being used as a short-term rental.

.080 The Planning Director shall approve the renewal of a short-term rental permit if the Planning Director finds that no circumstances existed during the term of the permit which would cause a violation to continue to exist, and that at the time of submission of the application for renewal, or at any time during the processing of the application for renewal, the application meets the conditions of permit issuance pursuant to Sections 4.05.040 and 4.05.060 and the operational requirements of Section 4.05.100. Such approval shall be conditioned upon and subject to compliance with the conditions identified by the Planning Director in the

renewal, the operational requirements of Section 4.05.100, and with all other terms, conditions, and requirements of this chapter and the code.

#### 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 subsection 4.05.180.020, all such Pre-Moratorium Short-Term Rentals are prohibited in zones where residential uses are a permitted or conditionally permitted use after February 11, 2018 except as authorized by this subsection 4.05.180.010. The purpose of so deferring the termination of Pre-Moratorium Short-Term Rentals is to provide a continuation of certain Pre-Moratorium Short-Term Rentals and/or 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.

.0101 With the exception of this subsection 4.05.180.0101 and subsections 4.05.180.0102 and 4.05.180.0103, the provisions of this Section 4.05.180, including without limitation the foregoing amortization period, shall not be applicable to Qualifying Pre-Moratorium Short-Term Rentals, CC&R Restricted Short-Term Rentals or Pre-Moratorium Home Share Short-Term Rentals, even if they are the subject of an application for hardship extension timely-filed with the City under subsection 4.05.180.020; nor shall these provisions 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.

.0102 CC&R Restricted Short-Term Rentals are prohibited in zones where residential uses are a permitted or conditionally permitted use after December 31, 2022, and shall not continue to operate in such zones after this termination date. Provided that the Short-Term Rental use is timely terminated by December 31, 2022 at the CC&R restricted location and that the Short-Term Rental permit is current and in full force and effect (including payment of all applicable fees), and notwithstanding any other provision of this Chapter, the holder of a permit for a CC&R Restricted Short-Term Rental may, one time only, at any time before or after the termination date, do one of the following:

(a) Subject to filing an application on a form approved by the Planning Director and payment of all applicable fees, convey the existing Short-Term Rental

permit to a property that is not located in a community that has CC&Rs prohibiting Short-Term Rentals, provided: (i) the new location for the Short-Term Rental use is approved pursuant to the Minor Conditional Use Permit process set forth in Chapter 18.66 of this Code, and, if the new property is a single family detached residence, it is not within 250 feet (measured from the perimeter of the property) of any existing Short-Term Rental property; or (ii) the permit holder obtains verified written consent to the new Short-Term Rental location from all neighboring property owners as provided in this paragraph, the new location for the Short-Term Rental use is approved by the Planning Director in his discretion pursuant to the Administrative Review process set forth in Chapter 18.62 of this Code, and the Planning Director finds that the approval will not result in a direct or reasonably foreseeable indirect physical change in the environment because there is no possibility that it may have a significant effect on the environment. For purposes of this paragraph, verified written consent means such proof as the Planning Director determines confirms the authenticity of the signatures and ownership interests of 1) all property owners within 75 feet of the proposed new location of the Short-Term Rental property (measured from the perimeter of the property) if that property is a detached single family residence, or 2) any and all property owners who share a common wall, ceiling and/or floor with, as well as any and all property owners who are located within 25 feet (measured from the perimeter of the property) of, the proposed new location of the Short-Term Rental property, if that property is other than a detached single family residence, along with proof that any existing homeowner's association has been notified of the proposed new location of the Short-Term Rental property.

(b) Transfer the existing Short-Term Rental permit to another person who may exercise the original permit holder's one-time opportunity to convey the existing Short-Term Rental permit to a new location subject to the requirements of subpart (a) of this subsection.

Following any transfer or conveyance authorized by this subsection .0102, a Short-Term Rental permit shall only be transferable as provided in Section 4.05.070. The transferee of an existing Short-Term Rental permit transferred to another person pursuant to this subsection shall file a change of ownership application with the Planning Director, accompanied by the payment of such fee or fees as may be established by resolution of the City Council. Such change of ownership application shall contain information reasonably required by the Planning Director, including, at a minimum, identification of the original property to which the existing Short-Term Rental permit had attached, the number assigned to the permit being transferred, the date of the transfer, and the printed names and notarized signatures of the transferor and transferee as well as their contact information. Once an existing Short-Term Rental permit is conveyed to another property pursuant to this subsection, that new property shall be deemed to be a Pre-Moratorium Short-Term Rental and a Qualifying Pre-Moratorium Short-Term Rental.

.0103 Notwithstanding any other provision of this Chapter, and subject to payment of all applicable fees, the holder of a permit for a Qualifying Pre-Moratorium Short-Term Rental property may, on or before December 31, 2019, file an application for conveyance based on compatibility issues with the Planning Director, on a form approved by the Planning Director. The Planning Director shall have discretion under this subsection to approve the conveyance of up to five (5) permits issued to Qualifying Pre-Moratorium Short-Term Rentals that have proven to create compatibility issues with the immediate neighbors or neighborhood in which they exist, due to their size, location, design, layout of amenities, or proximity to neighboring properties and/or the specific characteristics of the neighborhood in which they are located. If the Planning Director approves a conveyance request pursuant to this subsection, the permit holder may exercise a one-time opportunity to convey the existing Short-Term Rental permit to another property, provided i) the new property is not located in a community that has CC&Rs prohibiting Short-Term Rentals, ii) the new property is not within 250 feet (measured from the perimeter of the property) of any existing Short-Term Rental property, iii) the new Short-Term Rental unit does not exceed the square footage of the previous Short-Term Rental unit by more than 15%, and iv) the new location for the Short-Term Rental use is approved pursuant to the Minor Conditional Use Permit process set forth in Chapter 18.66 of this Code. Any conveyance undertaken pursuant to this subsection must be completed, and the new Short-Term Rental use established, on or before December 31, 2022. The Short-Term Rental use must be terminated at the original location prior to establishment of the Short-Term Rental use at the new location. In addition, a person or entity that holds permits for multiple Qualifying Pre-Moratorium Short-Term Rentals may only file one (1) conveyance application under this subsection. Once an existing Short-Term Rental permit is conveyed to another property pursuant to this subsection, that new property shall be deemed to be a Pre-Moratorium Short-Term Rental and a Qualifying Pre-Moratorium Short-Term Rental.

.015 In the event an owner believes that termination of the short-term rental use within the period provided in subsection .010 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 an eighteen (18) month affidavit extension. The Planning Director shall approve the affidavit extension for the additional eighteen (18) months (until August 11, 2019) if the owner (i) has paid any applicable filing fee for the affidavit extension, (ii) has a short-term rental permit or valid pending application and/or has applied for and/or received any applicable renewal permit, (iii) is not the subject of a revocation proceeding in connection with the short-term rental property, (iv) has passed or is awaiting final inspection for the first renewal inspection following the adoption of Ordinance No. 6374 addressing compliance with building standards and health and safety codes concerning the short-term rental, (v) has paid all known applicable transient occupancy taxes for the short-term rental, (vi) has paid any fines relating to notices of violations or citations that

are final for the short-term rental, and (vii) signs a declaration under penalty of perjury that the owner cannot recoup the costs reasonably invested for short-term rental use of the property if the short-term rental use is not allowed after February 11, 2018, and (viii) completes, submits and signs under penalty of perjury the form provided by the city for the affidavit extension which makes a prima facie showing of the facts set forth in subparagraph (vii). Unless extended by the Planning Director, the application for an affidavit extension shall be filed by May 22, 2017. The duties and responsibilities of the Planning Director under this section may be performed by the Planning Director's designee.

.020 In the event an owner believes that termination of the short-term rental use within the periods provided in subsections .010 and .015 of this section will not provide an owner a reasonable period of time within which to recoup the costs an owner reasonably invested for short-term rental use, and that such costs cannot be recouped once the short-term rental use is terminated, an 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. The application for a hardship extension shall be made, processed, and acted on in accordance with the following provisions:

.0201 Not later than April 10, 2017, unless the Planning Director, in his or her sole discretion, extends the deadline for filing such an application, an owner with a short-term rental permit or valid pending application 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, which the owner may continue to supplement with additional information and documents until the effective date of Ordinance 6405, shall set forth the amount of additional time that the owner contends is necessary, beyond the period provided in subsection .010 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 and 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.

(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.

(f) 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.

(g) 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.

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

(i) 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.

(j) 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.

(k) The fair market value of the short-term rental property as of August 11, 2016, had there been no prohibition on short-term-rentals in zones permitting or conditionally permitting residential uses compared to the fair market value of the short-term rental property as of August 11, 2016, if sold for non-short-term rental use. The owner shall provide the factual basis and analysis substantiating these values, including comparable sales information, income approach elements and/or cost approach elements.

(l) Whether there has been or will be an increment in value accruing to the property as a result of the ban on new short-term rental properties that became effective on August 11, 2016, which ban limits the number of short-term rentals available in the city, and the factual basis and analysis substantiating that increment in value.

(m) 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.

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

(o) 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 a timely filed 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, unless the Planning Director provides for a longer period. The Planning Director may deem an application to be incomplete, and return it to the owner for additional

information, if the information set forth in the application is not provided in a manner that is comprehensive and understandable and that demonstrates how the factual information provided leads to the conclusion that the requested hardship extension is necessary. If an application is returned as incomplete, the owner shall correct the deficiencies and provide the requested information within thirty (30) calendar days of the Planning Director's request, unless the Planning Director provides for a longer period. 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 August 11, 2016 shall be presumed not to be reasonably incurred unless (i) the owner proves 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, or (ii) the expenditures were incurred in order to satisfy fire-safety requirements that were not in place before August 11, 2016, or (iii) the expenditures were incurred in order to satisfy a requirement of the city on the continued use and operation of the property. If there is a sale of the short-term rental property after August 11, 2016, the costs to be considered for purposes of a hardship extension shall be those of the owner prior to August 11, 2016, 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 .010 above, plus any affidavit extensions provided under Section .015 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 not approve an extension of time longer than is necessary to allow the owner a reasonable time for recoupment of such costs. The determination of the extension of time permitted includes a process of weighing the public gain to be derived from a speedy removal of the nonconforming use against the private loss which removal of the use would entail.

.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 as well as the time available for continued short-term

rental use under Section .010 above along with the available affidavit extension. 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 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.
- (c) The amount of investment or original cost incurred by the owner.
- (d) The fair market value of the short-term rental property as of August 11, 2016, had there been no prohibition on short-term-rentals in zones permitting or conditionally permitting residential uses compared to the fair market value of the short-term rental property as of August 11, 2016, if sold for non-short-term rental use.
- (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, subject to the following additional provisions. At the city's option and expense, the hearing may be conducted by (i) the Employee Hearing Officer, or (ii) the City Hearing Officer, as defined in paragraph .0101 of subsection .010 of Section 1.12.110 of the code, or (iii) an economist or accounting professional who is experienced in accounting methodology and practice, or, if the parties stipulate, to such other person as may be mutually agreeable (each of these is hereinafter referred to as the "Hearing Officer"). The Hearing Officer 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 a hardship extension. The Hearing Officer shall conduct a *de novo* appeal hearing; however, the owner may not submit information to the 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 Hearing Officer. The 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 Section 4.05.180. 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 August 11, 2016, shall be presumed not to be reasonably incurred unless (i) the owner proves 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, or (ii) the expenditures were incurred in order to satisfy fire-safety requirements that were not in place before August 11, 2016, or (iii) the expenditures were incurred in order to satisfy a requirement of the city on the continued use and operation of the property. If there is a sale of the short-term rental property after August 11, 2016, the costs to be considered for purposes of a hardship extension shall be those of the owner prior to August 11, 2016, plus those subsequently incurred costs, if any, authorized by this paragraph, and the new owner's purchase price and costs shall not be a basis of qualifying for a hardship extension.

.0206 An owner may designate in a hardship extension application filed in accordance with subsection 4.05.180.020.0201, or by other written notice to the Planning Director, filed prior to the deadline for filing a hardship extension application that the owner is applying for a hardship extension pursuant to a "capped extension" process. If an owner timely does so, and the owner is granted a hardship extension for an additional two (2) years beyond August 11, 2019 (i.e., until August 11, 2021) pursuant to the capped extension process, the owner waives the right to claim a hardship extension beyond that period. The Planning Director shall not be obligated to grant any extension pursuant to a capped extension process. If the Planning Director (or his/her designee) does not grant an extension for an additional two (2) years beyond August 11, 2019, the decision shall not be appealable, and the owner's application shall be processed pursuant to the otherwise applicable hardship extension application process. In such case, the owner shall have a right to supplement the owner's hardship extension application within 30 days of being provided notice that the requested two (2) year extension has not been granted pursuant to the capped extension process. The Planning Director or his/her designee may grant an extension for an additional two (2) years beyond August 11, 2019 pursuant to the capped extension process if the Planning Director or his/her designee determines that the hardship extension application contains substantial evidence to establish that the owner has not had and will not have, prior to August 11, 2021, sufficient 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.

.0207 Upon the conclusion of the amortization period, including any hardship extension or affidavit extension, the Pre-Moratorium Short-Term Rental use shall cease. 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 \_\_\_\_\_, 2019, and thereafter passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2019, 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

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