

ORDINANCE NO. 2022-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS ADOPTING AMENDMENTS TO TITLE 9 (CHAPTER 9.38) AND TO RENAME THE CHAPTER TO “REGULATING SHORT-TERM RENTAL PERMITS” OF THE ENCINITAS MUNICIPAL CODE PERTAINING TO SHORT-TERM RENTALS

WHEREAS, on October 27, 2021, the City Council of the City of Encinitas, conducted a duly noticed public hearing pertaining to amendments to Chapter 9.38 (REGULATING SHORT-TERM RENTALS) of the Encinitas Municipal Code and requested staff return at a future hearing date with a data driven analysis and identify a process to establish a maximum number of short-term rental permits within the City of Encinitas;

WHEREAS, on November 17, 2021, the City Council of the City of Encinitas, conducted a duly noticed public hearing to introduce Ordinance No. 2021-22 pertaining to amendments to Chapter 9.38 (REGULATING SHORT-TERM RENTALS) of the Encinitas Municipal Code and adopted the amendments on December 8, 2021;

WHEREAS, on April 20, 2022, the City Council of the City of Encinitas, conducted a duly noticed public hearing and received the data driven analysis requested at their October 27, 2021 public hearing, adopted Resolution No. 2022-38 initiating amendments to the Encinitas Municipal Code and Local Coastal Program (“LCP”) pertaining to short-term rental regulations, and staff recommended further amendments to Municipal Code Chapter 9.38 to extend the length of the time of the permits;

WHEREAS, the City Council conducted public hearings on November 9, 2022 and December 14, 2022 for the purpose of considering the proposed amendments to the Encinitas Municipal Code and Local Coastal Program amendments;

WHEREAS, the City Council has duly considered the totality of the record and all evidence submitted into the record, including public testimony and the evaluation and recommendations by staff, presented at said hearings;

WHEREAS, notices of said public hearings were made at the time and in the manner required by law; and

WHEREAS, based on the totality of the record and evidence described and referenced in this Ordinance, the City Council finds that the proposed text amendments are consistent with the purposes of the General Plan, Municipal Code, and Specific Plans.

NOW, THEREFORE, the City Council of the City of Encinitas, California, hereby ordains as follows:

SECTION 1: The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2: Subsection 9.38.010 of Chapter 9.38 (REGULATING SHORT-TERM RENTALS) of Title 9 of the Encinitas Municipal Code is hereby amended to read as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

...

This chapter is not intended to regulate non-vacation type rental arrangements not generally characterized by the adverse impacts referenced in this section, nor is it intended to unreasonably obstruct the lawful use of short-term rentals in the City. This chapter is not intended to provide any owner of a single-family or ~~duplex~~ two-family dwelling unit with the right or privilege to violate any Covenants, Conditions and Restrictions (CC&Rs) applicable to the owner's single-family or ~~duplex~~ two-family dwelling unit.

...

SECTION 3: Subsection 9.38.020 of Chapter 9.38 (REGULATING SHORT-TERM RENTALS) of Title 9 of the Encinitas Municipal Code is hereby amended to read as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

...

"Duplex Two-family Dwelling Unit" as defined within this chapter shall mean a building or buildings on a single lot containing not more than two dwelling units. An accessory unit constructed in accordance with Chapter 30.48 of this Code shall not be counted as a dwelling unit for purposes of this definition.

...

"Short-term rental" means the rental of any single-family or ~~duplex~~ two-family dwelling unit that is a privately-owned structure, or any portion of any structure (non-accessory dwelling unit as that term is defined in Government Code Section 65852.2, which may be amended from time to time), for occupancy for dwelling, lodging, or sleeping purposes of 30 consecutive days or less in the City. For purposes of this chapter, non-monetary forms of compensation shall also qualify a property as a short-term rental.

...

SECTION 4: Subsection 9.38.040 of Chapter 9.38 (REGULATING SHORT-TERM RENTALS) of Title 9 of the Encinitas Municipal Code is hereby amended to read as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

...

E. Granting of Application. The application shall be granted unless the applicant does not meet the conditions and requirements of the permit or fails to demonstrate the ability to comply with this Code or other applicable laws, rules or regulations. All permits issued under this ordinance must be renewed ~~12 months~~ every three years from the ~~initial~~ renewal date of issuance or renewal date. If the term of liability insurance expires within the permit term, the permit approval is automatically revoked unless evidence of insurance renewal is provided to the City in advance of expiration. The permit may also be revoked for inactivity during a 12 month period, which will be monitored through the collection of Transient Occupancy Tax pursuant to 9.38.050.N.

...

SECTION 5: Subsection 9.38.050 of Chapter 9.38 (REGULATING SHORT-TERM RENTALS) of Title 9 of the Encinitas Municipal Code is hereby amended to read as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

Short-term rentals shall be permissible and regulated in all single-family or two-family dwelling units, residential zones including residential developments in PRDs (planned residential districts), pursuant to the short-term rental land use regulations identified in Chapter 30.50 of this code, and as follows:

...

K. Exterior Display of Short-Term Rental Unit. Owner/agent shall display, at a minimum size of eight and one-half inches by 11 inches on the exterior of a short-term rental unit ~~during the period of short-term rental operation~~, a notice provided by the City containing a 24-hour, seven-day per week local phone number of the owner/agent responsible for the short-term rental unit. The exterior display must also contain the number of bedrooms, maximum number of occupants permitted to stay in the unit, and the maximum number of vehicles. The notice shall be posted at all times in an area which is in plain view of the general public and legible from the public right-of-way and/or common areas and shall be maintained in good condition.

...

N. Payment of Transient Occupancy Tax. Owner/agent shall comply with all provisions of Chapter 3.12 of this Code concerning the payment of Transient Occupancy Tax (TOT). The TOT calculation shall include cleaning fees, resort fees, and other fees as part of the total rent charged for the short-term rental unit. If the owner/agent uses a hosting platform, the hosting platform shall may be considered an agent of the host for purposes of collecting and remitting the TOT to the City.

...

SECTION 6: Subsection 9.38.100 of Chapter 9.38 (REGULATING SHORT-TERM RENTALS) of Title 9 of the Encinitas Municipal Code is hereby removed in its entirety:

SECTION 7: Chapter 9.38 (REGULATING SHORT-TERM RENTALS) of Title 9 of the Encinitas Municipal Code is hereby renamed to read as follows "REGULATING SHORT-TERM RENTAL PERMITS."

SECTION 8: This project is not subject to review under the California Environmental Quality Act (CEQA) pursuant to General Rule, Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since there would be no possibility of a significant effect on the environment and pursuant to CEQA Section 15378(b)(5), which exempts organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment in that the amendments to the Municipal Code regard local administrative procedure updates. Further, this project is categorically exempt pursuant to State CEQA Guidelines Section 15301 Class 1 (Existing Facilities), in that the short-term rental Municipal Code amendments relate to the licensing, permitting, and operation of a short-term rental within an existing private structure that involves negligible or no expansion of use.

SECTION 9: If any section, sentence, clause, or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted this Ordinance, and each section, sentence, clause, or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 10: The City Clerk is directed to prepare and have published a summary of the ordinance no less than five days prior to consideration of its adoption, and again within 15 days following adoption, indicating the votes cast. This Ordinance will become effective following certification of Ordinance No. 2022-16 by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas and California Coastal Act.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas, California, held on this 9th day of November, 2022; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, held on the 14th day of December 2022, by the following roll call vote:

AYES: **Ehlers, Kranz, Lyndes**
NOES: **None**
ABSENT: **Hinze**
ABSTAIN: **None**

APPROVED:

DocuSigned by:

A.J. Kranz

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Tony Kranz, Mayor

ATTEST:

DocuSigned by:

Kathy Hollywood

43EC63D94D9448C
Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

Tarquin Preziosi

160D9969359741D
Tarquin Preziosi, City Attorney

CERTIFICATION

I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly adopted at a meeting of the City Council on this 14th day of December 2022, by the following vote, to wit:

AYES: **Ehlers, Kranz, Lyndes**
NOES: **None**
ABSENT: **Hinze**
ABSTAIN: **None**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 14th day of December, 2022.

DocuSigned by:
Kathy Hollywood

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Kathy Hollywood, City Clerk