

ORDINANCE NO. 2022-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS AMENDING CHAPTERS 30.04 (DEFINITIONS) AND 30.09 (ZONING USE MATRIX) AND ADDING A NEW CHAPTER 30.50 (SHORT-TERM RENTAL) TO TITLE 30 (ZONING) OF THE ENCINITAS MUNICIPAL CODE, AMENDING SECTION 6.05 OF THE ENCINITAS RANCH SPECIFIC PLAN AND SECTION 3.2.5.A ZONING USE TABLE OF THE CARDIFF-BY-THE-SEA SPECIFIC PLAN, AND AMENDING THE LOCAL COASTAL PROGRAM PERTAINING TO SHORT-TERM RENTAL USES

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;

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 (“City”), conducted a duly noticed public hearing and received the data driven analysis requested at their October 27, 2021 public hearing and adopted Resolution No. 2022-38, initiating amendments to the Encinitas Municipal Code and Local Coastal Program (“LCP”) pertaining to short-term rental regulations;

WHEREAS, the data driven analysis found that short-term rental permit holders who are defined as non-hosted units in Chapter 9.38 of the Encinitas Municipal Code do not rent their units at an affordable rate, thereby limiting affordable accommodations to the City’s coastline;

WHEREAS, the data driven analysis found that there are high concentrations of short-term rentals occurring west of Interstate 5 in the City’s community districts known as Cardiff-by-the-Sea, Leucadia, and Old Encinitas, and that the high concentration of units is contributing to adverse impacts due to the escalated demand upon City services from incidents that involve excess noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking and accumulation of refuse, which require response from police, fire, paramedic and other City services and can escalate the demand for such services;

WHEREAS, the impacts described above typically occur on non-hosted short-term rental unit properties as evidenced by the public testimony received in 2021, which further necessitates the City to take additional actions to establish land use regulations for short-term rental units to limit the number of non-hosted short-term rental units citywide, and within the aforementioned community districts in addition to establishing a distance requirement between these units;

WHEREAS, on October 6, 2022, the Planning Commission conducted a duly noticed public hearing to discuss and consider proposed amendments to Title 30 of the Encinitas Municipal Code (“EMC”) and LCP to limit and regulate the impacts relating to the short-term rentals and considered public testimony and adopted Resolution No. PC 2022-22 recommending the City Council to approve draft Ordinance No. 2022-16;

WHEREAS, the proposed amendments to EMC Title 30, the Encinitas Ranch Specific Plan, and the Cardiff-by-the-Sea Specific Plan are components of the City's LCP; therefore, the LCP is also proposed to be amended;

WHEREAS, a Public Notice of Availability of proposed Local Coastal Program Amendments (LCPA) was issued which opened a six-week public review period that ran from September 16, 2022 through October 28, 2022;

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, Encinitas Ranch and Cardiff-by-the-Sea Specific Plans, 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 and Planning Commission, presented at said hearings;

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

WHEREAS, the City Council finds that this Ordinance is intended to be carried out in a manner in full conformance with the California Coastal Act of 1976 and the Development Services Director is hereby authorized to submit this Ordinance as part of the Local Coastal Program Amendment to the California Coastal Commission for their review and adoption; 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, Specific Plans, and adopted Local Coastal Program.

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 30.04.010 of Chapter 30.04 (DEFINITIONS) of Title 30 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):

...

TRANSIENT HABITATION UNIT shall mean living ~~quarters~~ units intended exclusively for occupancy by transient persons for a period of 30 consecutive days or less. ~~See and subject to Chapter 3.12 of the Municipal Code, Transient Occupancy Tax for applicable Transient Occupancy Tax regulations.~~ A transient habitation unit may include a hotel or motel room or suite of rooms, a cabin or campground space, ~~but does not include single-family or duplex units.~~

...

SECTION 3: Subsection 30.09.010 of Chapter 30.09 (ZONING USE MATRIX) of Title 30 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):

...

USES	ZONES															
	RR; RR-1; RR-2	RS-11; R-3; R- 5; R-8	R- 11; R-15	R-20; R-25	R-30 OL	MHP	OP	LC	GC	VSC	LI	BP	P/SP	ER/ OS/ PK	L-LC	L- VSC
Transient Habitation	X	X	X	X	X	X	X	€	€	€	X	X	€	X	X	€

...

SECTION 4: Add a new chapter titled “Chapter 30.50 (SHORT-TERM RENTAL)” to Title 30 of the Encinitas Municipal Code in its entirety to read as follows:

Chapter 30.50 SHORT-TERM RENTAL

30.50.010 Intent, Purpose and Findings

30.50.020 Definitions

30.50.030 Special Regulations

30.50.040 Enforcement

30.50.010 Intent, Purpose and Findings.

It is the intent of this Chapter to promote and protect the public health, safety, and welfare of the citizens of Encinitas by allowing for and regulating the short-term transient occupancy of single-family or two-family dwelling units within the City’s residential zoning districts. The purpose of this Chapter is to limit the land use impacts that short-term rentals create within the City’s residential neighborhoods, and to preserve, to the greatest extent feasible, the City’s residential rental housing stock, while balancing the general public’s transient access to the City’s coastline.

The City Council of Encinitas finds and declares that short-term rentals are a commercial activity that have negatively impacted the City’s residential neighborhoods. The City Council further finds that a majority of short-term rentals are operated by agents and/or absentee owners, or non-hosted units, and the increase of short-term rentals over time have created adverse impacts due to the escalated demand upon City services from incidents that involve excess noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking and accumulation of refuse, which require response from police, fire, paramedic and other City services and can escalate the demand for such services. Finally, a high concentration of short-term rentals occur in the residential neighborhoods west of Interstate 5 and the restrictions within this Chapter are necessary to prevent a greater burden on City services and residential neighborhoods.

30.50.020 Definitions

HOSTED UNIT shall have the same meaning as defined in Section 9.38.020 of this code.

NON-HOSTED UNIT shall have the same meaning as defined in Section 9.38.020 of this code.

SHORT-TERM RENTAL shall mean the rental of any single-family or 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 the short-term transient occupancy for dwelling, lodging, or sleeping purposes in the City. For purposes of this chapter, non-monetary forms of compensation shall also qualify a property as a short-term rental.

SHORT-TERM TRANSIENT OCCUPANCY shall mean the occupancy of a single-family or two-family dwelling unit, or a portion thereof, for the exclusive use and habitation by transient persons for terms of 30 consecutive days or less and shall be subject to Transient Occupancy Tax (TOT) regulations of Chapter 3.12 of this code.

30.50.030 Special Regulations

All short-term rentals are subject to the permit regulations provided in Chapter 9.38 of this code. This chapter is not intended to provide any owner of a single-family or two-family dwelling unit with the right or privilege to violate any Covenants, Conditions and Restrictions (CC&Rs) applicable to the dwelling unit. The provisions of subsections A and B shall not apply to hosted units citywide or short-term rentals located within the residential neighborhood known as "Seabluffe" (Map No. 7274 of Official Records) in Leucadia. The 255 residential units within Seabluffe shall also be excluded from subsection A.

A. Maximum Number of Permits.

1. West of Interstate 5. The maximum number of permits shall not exceed four percent (4%) of the total residential housing units in existent at the time of application submittal, identified within the prior Housing Element Annual Progress Report or by the State of California Department of Finance annual housing estimates, as determined by the Director of Development Services, within the communities known as Cardiff-by-the-Sea, Leucadia, and Old Encinitas, west of Interstate 5.

2. Citywide. The total number of permits shall not exceed two and one-half percent (2.5 %) of the total residential housing units in existent at the time of application submittal, identified within the prior Housing Element Annual Progress Report or by the State of California Department of Finance annual housing estimates, as determined by the Director of Development Services, within the City, inclusive of the maximum number of permits west of Interstate 5.

B. Location.

1. Non-hosted short-term rental units shall maintain a 200-foot radius between units, as measured property line to property line, from the nearest non-hosted short-term rental.

a. Existing legal non-hosted short-term rental units that do not meet this distance requirement shall become legal nonconforming as of the date of Ordinance No. 2022-16 adoption and shall be eligible for renewal provided the following:

i. The unit has not been subject to revocation and/or any issues in gaining compliance with pending code enforcement actions; and

ii. The unit is current and up-to-date on its Transient Occupancy Tax (TOT) remittance to the City pursuant to Chapter 3.12 of this code.

C. Parking. The property owner shall limit the number of vehicles of overnight occupants to the number designated in the permit which shall not exceed the number of designated on-site parking spaces. All designated on-site parking spaces shall be made available for the vehicles of occupants.

30.50.040 Enforcement

A. It is unlawful for any person to fail to comply with any of the requirements of this chapter or with any standards/conditions of a short-term rental permit, or to operate a short-term rental within the jurisdiction of the City contrary to or in violation of any of the provisions of this chapter, any applicable provisions of this Code, or any other applicable laws, rules, and regulations.

B. Any person who violates any provision of this chapter shall be subject to the fine amounts set forth in [Government Code](#) Section 36900(d), as that section may be amended from time to time.

C. Violations of this chapter may be enforced by any method allowed in Chapter [1.08](#) of this Code, or any other applicable enforcement mechanism available to the City.

SECTION 5: Section 6.05 Overview of the Encinitas Ranch Specific Plan is hereby amended by adding reference to Municipal Code Chapter 30.50 (Short-term Rental) to the list to be integrated into this Section in sequential order, and shall include modifications to the endnote, to read as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

6.05 OVERVIEW

...

To prevent unnecessary redundancy between the Encinitas Ranch and the City of Encinitas Municipal Code, the following chapters and sections in Title 30, as adopted and subsequently amended by the City of Encinitas, are incorporated in their entirety by reference into the Encinitas Ranch Specific Plan, unless otherwise amended or qualified within Section 6.0 of this document:

...

- Chapter 30.50 – Short-term Rental

...

List amended 8/23/95 (Reso. 95-91), 3/18/98 (Reso. 98-17), 2/13/02 (Ord. 2002-02), 11/20/19 (Ord. 2019-15), 11/27/19 (Ord. 2019-16), ~~and~~ 8/11/21 (Ord. 2021-04), and XX/XX/2022 (Ord. 2022-16)

SECTION 6: Section 3.2.5.A Permitted, Conditionally-Permitted and Prohibited Uses – General TABLE 3-1 Zoning Matrix – Use Comparison is hereby amended to read as follows (~~strikeout~~ is used to denote existing text being deleted):

...

Use	ZONE				Notes
	C-R-11	C-OP	C-GC-1	C-GC-2	
Transient Habitation (Ord. 91.03)	✗	✗	€	€	24-hour on-site management required.

...

SECTION 7: 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 Guidelines 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 and local coastal program 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 8: 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 9: 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 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:

Tony Kranz, Mayor

ATTEST:

Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

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.

Kathy Hollywood, City Clerk