

## **Chapter 9.38 REGULATING SHORT-TERM RENTALS**

### **9.38.010 Purpose—Findings and Determinations.**

The City Council finds and determines that the City has received numerous complaints related to short-term rentals, including, but not limited to, excessive noise, disorderly conduct, illegal parking, vandalism, overcrowding, traffic congestion and excessive accumulation of refuse. The City Council further finds and determines that these adverse impacts are related to the transitory nature of the occupants of short-term rentals. The purpose of this chapter is to establish regulations to address and mitigate these adverse impacts. This chapter is not intended to regulate non-vacation type rental arrangements not generally characterized by the adverse impacts referenced in this section. (Ord. 2006-05)

### **9.38.020 Definition.**

“Short-term rental” means the rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes of 30 consecutive days or less in the City, including single-family or duplex units. (Ord. 2006-05)

### **9.38.030 Permit Required/Penalty.**

Any short-term rental shall obtain a short-term rental permit pursuant this chapter. Any person operating a short-term rental without a permit shall be guilty of a misdemeanor. (Ord. 2006-05)

### **9.38.040 Permit Requirements.**

Short-term rentals shall be regulated in all residential zones including residential developments in PRDs (planned residential districts), as follows:

#### **A. Application Requirements.**

1. Applicants shall submit an application for a short-term rental permit to the City of Encinitas each year for each unit. The application for a permit shall be accompanied by a nonrefundable application fee as established by the City Manager; however, the fee shall be no greater than necessary to defer the cost incurred by the City in administering the provisions of this chapter. Although the applicant may be the property

owner or the property owner's agent, the property owner shall be the party responsible for compliance with all provisions of this chapter and all of the laws regulating short-term rentals.

2. Upon change of property ownership or material fact, a new application for a short-term rental permit shall be required to continue operation of the short-term rental and within 14 days of said change the property owner or his/her agent shall submit the required application and fee.

3. Granting or Denial 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 the Encinitas Municipal Code and other applicable law.

4. Any false statements or information provided in the application are grounds for revocation and/or imposition of penalties, as outlined within this chapter.

#### B. Operational Requirements.

1. Applicants shall use "best efforts" to insure that the occupants and/or guests of the short-term rental unit do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of the Encinitas Municipal Code or any applicable law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol, or the use of illegal drugs.

2. Applicants shall, upon receiving notification that occupants or tenants of his or her short-term rental unit have created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of the Encinitas Municipal Code or applicable law pertaining to noise, disorderly conduct, overcrowding, the consumption of alcohol or the use of illegal drugs, respond in a timely manner within two hours of the time the initial call (complaint) was made, and within 24 hours of the initial call use best efforts to prevent the recurrence of such conduct by the occupants and to take corrective action to address any violation. Failure to respond timely to two or more complaints regarding tenant violations is grounds for penalties as set forth in this chapter. It is not intended that the property owner, local agent or contact person act as a peace officer or place himself or herself in an at-risk situation.

3. The property owner or agent shall limit overnight occupancy of the short-term rental unit to a specific number of occupants not to exceed two persons per bedroom plus one additional person per dwelling. All other applicable occupancy laws shall apply.
4. 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.
5. The property owner or agent of a short-term rental unit shall comply with all the provisions of the Encinitas Municipal Code.
6. Trash and refuse shall not be left or stored within public view except from sunset of the day prior to trash pick-up until up to midnight on the day designated for trash pick-up. All trash will be in approved receptacles pursuant to Section [11.20.090](#) of the Encinitas Municipal Code.
7. The City Manager or his/her designee shall have the authority to impose additional standards and/or conditions to short-term rental permits as necessary to achieve the objectives of this chapter.
8. Interior Display of Short-Term Rental Permit. Applicants shall affix the short-term rental permit on the inside of the main entry door of each short-term rental unit to which it applies. The interior display will also contain the maximum number of overnight occupants permitted to stay in the unit, the maximum number of vehicles for overnight occupants, and a 24-hour, seven-day phone number of the private party responsible for the facility.
9. Exterior Display of Short-Term Rental Unit. Applicants shall display on the exterior of a short-term rental unit, a notice provided by the City containing a 24-hour, seven-day phone number for a private party responsible for the facility to take complaints regarding its operation. The exterior display will also contain the number of bedrooms, maximum number of overnight occupants permitted to stay in the unit, and the maximum number of vehicles for overnight occupants. The notice shall be in plain view of the general public and/or common areas and shall be maintained in good condition at all times.

10. Adjacent Property Owners Notified. Applicants are also required to provide adjacent property owners with the 24-hour, seven-day phone number for a private party responsible for the facility.

11. Rental Agreements. Information on the permitted occupancy of the dwelling, parking capacity for each unit, and trash disposal requirements shall be stated in the rental information and agreement provided to prospective renters, prior to their occupancy of the unit.

12. The operational requirements may be modified by the City Manager based on site-specific circumstances for the purpose of allowing reasonable accommodation of a short-term rental. All requests must be in writing and shall identify how the strict application of the operational requirements creates an unreasonable hardship to a property, and if the requirement is not modified, reasonable use of the property for a short-term rental would not be allowed. Any hardships identified must relate to physical constraints to the subject site. Such hardships cannot be self-induced or economic. In addition, any modification to the operational requirements cannot further exacerbate an already existing problem.

### **9.38.050 Violations and Penalties.**

A. Violations. The following conduct shall constitute a violation for which the penalties specified in subsection B of this section may be imposed, or the penalties imposed and permit suspended:

1. The property owner has failed to comply with the standard conditions pursuant to this chapter; or
2. The property owner has failed to comply with additional conditions imposed by the City Manager pursuant to the provisions of Section 9.38.040B7; or
3. The property owner has violated any provision of this chapter; or
4. The property owner has failed to pay applicable taxes or fees.

B. Penalties. The penalties specified in subsection A of this section shall be as follows:

1. For the first violation within any 24-month period, the penalty shall be a fine of \$250.00;
2. For a second violation within any 24-month period, the penalty shall be a fine of \$500.00;

3. For a third violation within any 24-month period, the penalty shall be a fine of \$750.00;
4. For a fourth violation within any 24-month period, the penalty shall be a fine of \$1,000.00 and suspension of the permit.

#### **9.38.060 Imposition of Penalties/Suspension—Procedure.**

Penalties, including a notice of violation, shall be imposed, and permits shall be suspended, only in the manner provided in this section.

A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the City Clerk the fine amount and a request for a hearing before the City Manager.

B. If the owner requests a hearing within the time specified in subsection A of this section, the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more than 45 days of receipt of request for a hearing. The City Manager or his/her designee shall preside over the hearing. The City Manager or his/her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the penalty, or penalty and suspension are consistent with this chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.

### **9.38.070 Permits and Fees Not Exclusive.**

Permits and fees required by this chapter shall be in addition to any license, permit or fee required under any other chapter of this Code. The issuance of any permit pursuant to this chapter shall not relieve the property owner of the obligation to comply with all other provisions of this Code pertaining to the use and occupancy of their property.

### **9.38.100 Private Actions to Enforce.**

Any person who has suffered, or alleges to have suffered, damage to person or property because of a violation of this chapter may bring an action for money damages and any other appropriate relief in a court of competent jurisdiction against the party alleged to have violated this chapter.

Nothing herein shall be deemed or construed to create any right of action against the City or any of its officers, employees, or agents. The sole purpose and intent of this section is to create a right of action between private parties, entities and interests, which are or may be impacted or affected by various aspects of short-term rentals within the City.