

## RESOLUTION 22-44

### RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTING POLICIES AND PROCEDURES FOR THE ADMINISTRATION OF THE "SHORT-TERM RENTAL PROGRAM" AS SET FORTH IN FAIRFAX TOWN CODE CHAPTER 5.57

**WHEREAS**, the Town wishes to establish a uniform regulatory structure for permitting short-term rentals in residential areas that ensures adequate off-street parking, limits eligibility to permanent resident-occupied properties, provides for local and emergency contacts, and creates fair reporting and monitoring procedures that authorizes the Town to ensure compliance; and

**WHEREAS**, the Town seeks a short-term rental program that will allow permanent residents to mitigate housing costs by supplementing their income from their primary residences, while minimizing potential adverse impacts on the housing supply and on persons and households of all income levels that could result from the loss of residential units through their conversion to tourist home use – the term tourist home shall also be synonymous with short-term rental herein; and

**WHEREAS**, a short-term rental program has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA) and the State CEQA Guidelines and it has been determined that approval of these program implementation procedures are exempt from further environmental review under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment; and

**WHEREAS**, on June 1, 2022, the Town Council held a duly noticed public hearing to introduce and consider the proposed amendments and public comments thereon; and

**WHEREAS**, this resolution shall become effective only if the Town Code amendments are adopted by the Town Council and upon the effective date of those amendments.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Council hereby adopts the following Policies and Procedures for the administration of the "Short Term Rental Program" ("Program"):

#### **Section 1. Purpose and Intent**

It is the purpose of this Program to benefit the general public by minimizing potential adverse impacts on the housing supply and on persons and households of all income levels resulting from the loss of residential units through their conversion to tourist home use. This is to be accomplished by regulating the conversion of residential units to tourist home use, and through appropriate administrative and judicial remedies. Regulating short-term rentals ensures that short-term rental activities do not become a nuisance or threaten the public health safety or welfare of neighboring properties, while also assuring

that their existence is regulated in a manner that allows the Town to maintain its long-term rental housing stock. Short-term rentals also provide an added financial benefit to owners of residential properties and can help individuals meet their financial responsibilities and thus remain in their homes.

## **Section 2. Applicability**

The provisions of this Program shall apply to all Residential Units within the Fairfax town limits, or a unit in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the Fairfax Town Code, which is hired, rented, or leased to a household within the meaning of California Civil Code Section 1940.

## **Section 3. Definitions**

The following words and phrases shall have the meanings set forth below when used to administer this Program:

**ACCESSORY STRUCTURE.** The same meaning as defined in Fairfax Town Code § 17.008.020.

**BOOKING SERVICE.** Any reservation and/or payment service provided by a person or entity that facilitates a short-term rental transaction between an Owner or Business Entity and a prospective tourist home user, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the short-term rental transaction.

**BUSINESS ENTITY.** A corporation, partnership, or other legal entity that is not a natural person that owns or leases one or more residential units.

**COMPLAINT.** A complaint submitted to the Department and/or the Town's third-party contractor alleging a violation of the Fairfax Town Code and/or this Program and that includes the Residential Unit's address, including unit number, date(s) and nature of alleged violation(s), and any available contact information for the Owner and/or resident of the Residential Unit at issue.

**CONVERSION or CONVERT.** A change of use from Residential Use to Tourist Home Use, including, but not limited to, renting a Residential Unit for a Tourist Home Use (a.k.a. short-term rental use).

**DEPARTMENT.** The Department of Planning and Building Services.

**DIRECTOR.** The Director of the Planning and Building Department, or his or her designee.

**GOOD STANDING.** To maintain good standing on the Town's/Third-Party Contractor's Registry of Short-Term Rentals, the Permanent Resident shall be in compliance with all program requirements set forth in the Town's Short-term Rental Program.

**HOST.** A person or Business Entity that participates in the short-term rental business by providing a short-term rental.

**HOSTING PLATFORM.** A person or Business entity that participates in the short-term rental business by providing and collecting or receiving a fee for Booking Services through which a Host may offer a Residential Unit for Tourist Home Use. Hosting Platforms usually, though not necessarily, provide Booking Services through an online platform that allows a Host to advertise the Residential Unit through a website provided by the Hosting Platform and the Hosting Platform conducts a transaction by which potential tourist home users arrange Tourist Home Use and payment, whether the tourist home user pays rent directly to the Host or to the Hosting Platform.

**TOURIST HOME (SHORT-TERM RENTAL) USER.** Any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a tourist home shall be deemed to be a tourist home user until the period of thirty days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a tourist home user, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in Chapter 5.57 ("Short-Term Rental Program") of the Town Code may be considered.

**INTERESTED PARTY.** A Resident of the building in which the Tourist Home Use is alleged to occur, any homeowner association associated with the Residential Unit in which the Tourist Home Use is alleged to occur, the Owner of the Residential Unit or Business Entity property in which the Tourist Home Use is alleged to occur, a Resident or Owner of a property within 100 feet of the property containing the Residential Unit in which the Tourist Home Use is alleged to occur, the Town of Fairfax, or any non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, which has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws.

**OWNER.** Any person who is the owner of record of the real property. As used in this Program, the term Owner includes a lessee where the lessee is offering a Residential Unit for Tourist Home Use, provided a lessee has written permission by the Owner of record of the real property.

**PERMANENT RESIDENT.** A person who occupies a Residential Unit for at least 60 consecutive days with intent to establish that unit as his or her primary residence. A Permanent Resident may be an Owner or a lessee.

**PRIMARY RESIDENCE.** The Permanent Resident's usual place of return for housing as documented by at least three of the following: motor vehicle registration; driver's license; voter registration; tax documents showing the Residential Unit as the Permanent Resident's residence for the purposes of a homeowner's tax exemption; or a utility bill. A person may have only one Primary Residence.

**RECREATIONAL VEHICLE.** A motorhome, house car, travel trailer, truck camper, or camp trailer; with or without motive power; designed for human habitation or other occupancy.

**RESIDENTIAL UNIT.** One or more rooms, including an existing single-family residence, portion of an existing single-family residence, or an Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling Unit (JADU) (ADUs/JADUs created after January 1<sup>st</sup>, 2020 are excluded) , designed, built, rented, leased, let or hired out to be occupied for Residential Use.

**RESIDENTIAL USE.** Any use for occupancy of a Residential Unit.

**SHORT-TERM RENTAL.** The same meaning as defined in Fairfax Town Code § 17.008.020. Also known as “tourist home” as included in the definition of “hotel” in Fairfax Town Code § 3.32.010.

**SHORT-TERM RENTAL REGISTRY or REGISTRY.** A database of information maintained by the Department and/or its third-party contractor that includes a unique registration number for each Short-Term Rental and information regarding Hosts who are permitted to offer Residential Units for Short-Term Rental. The Registry shall be available for public review to the extent required by law, except that, to the extent permitted by law, the Department and/or its third-party contractor shall redact any Host names and street and unit numbers from the records available for public review.

**TRAVEL TRAILER.** A vehicle designed for recreational purposes to carry persons or property on its own structure and constructed to be drawn by a motor vehicle, as defined in California Vehicle Code § 242 or California Vehicle Code § 324.

**TOURIST HOME USE.** Any use of a Residential Unit for occupancy for less than a 30-day term of tenancy, or occupancy for less than 30 days of a Residential Unit leased or owned by a Business Entity, whether on a short-term or long-term basis, including any occupancy by employees or guests of a Business Entity for less than 30 days where payment for the Residential Unit is contracted for or paid by the Business Entity.

#### **Section 4. Property Eligibility**

A. Eligible Properties. Only properties where all of the following conditions are met are eligible to register for the Short-Term Rental Program:

- 1) The Residential Unit is offered for Tourist Home Use by the Permanent Resident of the Residential Unit;
- 2) The Residential Unit is the Primary Residence of the Permanent Resident;
- 3) The Permanent Resident is a natural person;
- 4) The Permanent Resident has registered the Residential Unit and maintains good standing with the Town of Fairfax and/or its third-party contractor and has no outstanding code violations or violations of the Town's Short-term Rental Program, fees or taxes.

- B. Ineligible Properties. The following property types are never eligible to be considered a Short-Term Rental and cannot register for the Short-Term Rental Program:
- 1) Income-restricted or deed-restricted affordable housing, including Below-Market-Rate (BMR) units and public housing;
  - 2) Student housing, dormitories and Single-Room-Occupancy (SRO) buildings;
  - 3) Commercial or industrial zoned lots;
  - 4) Non-residential areas within buildings, such as garages, storage areas or accessory structures
  - 5) Motorized Recreational Vehicles (RVs), including non-motorized travel trailers;
  - 6) Boats or House Boats;
  - 7) Teepees, yurts, tents, and treehouses;
  - 8) Sleeping Quarters in Vans or Cars;
  - 9) Properties with outstanding code violations.
  - 10) Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) created after January 1, 2020.
- C. Properties with Multiple Residential Units. Properties with multiple residential units on a parcel can be offered as Short-Term Rentals under the following condition:
- 1) Where a lot contains a single-family dwelling and any combination of the following habitable spaces: an additional dwelling unit, an Accessory Dwelling Unit or Junior Accessory Dwelling Unit constructed and/or permitted prior to January 1, 2020, this lot may not offer as a Short-Term Rental an entire single-family dwelling and the additional habitable space concurrently. Rooms in a single-family dwelling may be offered as a Short-Term Rental concurrently with habitable space only if the Permanent Resident is present throughout the duration of the rental.

## **Section 5. Program Requirements**

- A. Occupancy Limitations. Occupancy for any Short-Term Rental is limited to two (2) occupants per bedroom, as defined in the California Building Code. An additional two (2) occupants are allowed in Short-Term Rentals that provide a separate living space. In no instance can a Short-Term Rental provide a total occupancy that is greater than the capacity of the number of vehicles which can be accommodated by the off-street parking requirements of Section 5.B. For the purposes of the Program, vehicle capacity is considered as four (4) individuals per vehicle.
- B. Off-Street Parking Requirements. Properties offered as Short-Term Rentals must provide sufficient designated and easily identified off-street parking spaces to meet the occupancy level offered by the Short-Term Rental. If multiple Short-Term Rentals are offered concurrently on the same property, separate

designated off-street parking spaces must be provided for each Short-Term Rental offered. In no instance can the total occupancy of a Short-Term Rental exceed the vehicle capacity of the designated off-street parking available. For the purposes of the Program, vehicle capacity is considered as four (4) individuals per vehicle.

1) Properties with Privately Maintained Shared Vehicle Access. For Short-Term Rentals where vehicle access to the property is shared with multiple owners and is privately maintained, a "Parking Plan" shall be submitted. The "Parking Plan" documents the methods in which the presence of a Short-Term Rental will avoid encumbering parking. These methods may include:

- (a) Existing variances;
- (b) Shared maneuvering diagrams or conditions;
- (c) Signage identifying designated off-street parking spaces;
- (d) Agreements indicating designated off-street parking spaces.

Additionally, the "Parking Plan" shall include instructions to be provided to guests of the Short-Term Rental outlining the location of designated off-street parking spaces and instructions for maintaining clear access to shared maneuvering areas. The Town will consider blocked access to shared maneuvering areas or guest parking outside of designated off-street parking spaces to be Program violations.

C. Property Registration. The following information shall be documented as part of the Program registration for any Short-Term Rental. The Department shall determine, in its sole discretion, the completeness of this information and request additional documentation as necessary:

1) Property Information.

- (a) Primary Resident Name and Contact Information
- (b) Documentation of Primary Residency
- (c) 24-Hour Local Emergency Contact
- (d) Property Address
- (e) Type of Short-Term Rental, i.e., entire or portion of structure, Accessory Dwelling Unit, etc.
- (f) Occupancy
- (g) Number of Bedrooms
- (h) Number of Bathrooms
- (i) Number of Designated Off-Street Parking Spaces
- (j) Parking Plan, where necessary per Section 5.B.1

2) Property Inspection. As part of the registration process, an inspection must be conducted of the Short-Term Rental, in a form prescribed by the Program. This inspection may be conducted and certified by the Primary Resident, and shall include (but is not limited to):

- (a) Egress
- (b) CO2 and Smoke Detectors
- (c) Interior Signage
- (d) Designated Off-Street Parking

For Short-Term Rentals located within a Wildland-Urban Interface as defined in Fairfax Town Code § 8.06.017, the registrant must pass a vegetation inspection, in a form prescribed by the Program, proof of which must be completed and submitted as part of the Program Registration.

3) Interior Signage. Properties offered as Short-Term Rentals shall have a clearly visible and legible notice posted on or directly adjacent to the inside of the front door, containing the following information:

- (a) 24-Hour Local Emergency Contact Person
- (b) Maximum number of occupants
- (c) Maximum number of vehicles
- (d) Off-street Parking Requirements
- (e) Garbage/Recycling/Compost/Disposal Instructions
- (f) Information regarding Fire Safety and Fire Access Roads
- (g) Emergency and Wildfire Evacuation Procedures
- (h) Information on signing up for emergency alerts
- (i) Information on Fairfax Noise Ordinance

D. Registration. Registration shall be for a one-year term, which may be renewed by the Host by filing a completed renewal registration. Initial and renewal registrations shall be in a form prescribed by the Department. The Department shall determine, in its sole discretion, the completeness of an registration. Upon receipt of a complete initial registration, the Department shall send mailed notice to the owner of record of the Residential Unit, informing the owner that a Registration for the unit has been received.

In addition to the information set forth here, the Department may require any other additional information necessary to show compliance with this Program. Upon the Department's determination that an application for registration is complete, the unit shall be entered into the Short-Term Rental Registry and assigned an individual registration number.

E. Fee. The fee for the initial registration and for each renewal shall be set by the Town Council by resolution. The applicant also shall be required to obtain and maintain a Town of Fairfax business license.

F. Waiver of Initial Registration Fee. For the first six months after the effective date of the ordinance codified in Chapter 5.57 ("Short-Term Rental Program") of the

Town Code, the Department shall waive the initial registration fee to incentivize registration of Short-Term Rentals.

- G. Hotel User's Tax Collection and Remittance, The Hosts shall collect and remit Hotel User's Taxes to the Town on a monthly basis for each Short-Term Rental . The Town's current Hotel Users Tax is 10%.
- H. Reporting Requirement. To maintain good standing on the Registry, the Host shall submit an annual report to the Department by January 15 of each year, regarding the number of days the Short-Term Rental has been rented since either initial registration or the last report, whichever is more recent, and any additional information the Department may require to demonstrate compliance with this Program.
- I. Annual Audit. Each calendar year, the Program may select five percent (5%) of registrations to be audited for Program compliance. This audit may be performed by the Program staff and may include:
  - 1) Registration review;
  - 2) Property Inspection;
  - 3) Hotel User Tax payment review.

If a Short-Term Rental is deemed non-compliant, the Department shall follow the Administrative Enforcement Procedures outlined in Section 7.

### **Section 6. Requirements for Hosting Platforms**

- A. All Hosting Platforms shall provide the following information in a notice to any user listing a Residential Unit located within the Town of Fairfax through the Hosting Platform's service. The notice shall be provided prior to the user listing the Residential Unit and shall include the following information: that Fairfax Town Code Chapter 5.57 and this Program regulate Short-Term Rental of Residential Units; the requirements for registration of the unit with the Department; and the hotel user tax obligations to the Town.
- B. A Hosting Platform shall comply with the requirements of Title 5 (Business Taxes, Licenses and Regulations) and Chapter 3.32 (Hotel Users Tax) of the Fairfax Town Code, among any other applicable requirements, collecting and remitting all required taxes, and this provision shall not relieve a Hosting Platform of liability related to an occupant's, resident's, Business Entity's, or Owner's failure to comply with the requirements of Title 5 and Chapter 3.32. A Hosting Platform shall maintain a record demonstrating that the taxes have been remitted to the Town.
- C. A Hosting Platform may provide, and collect a fee for, Booking Services in connection with Short-Term Rentals for Residential Units located in the Town only when the Hosting Platform exercises reasonable care to confirm that those Residential Units are lawfully registered on the Short-Term Rental Registry at the time the Residential Unit is rented for short-term rental. Whenever a Hosting Platform complies with administrative guidelines issued by the Town to confirm that the Residential Unit is lawfully registered on the Short-Term Rental Registry, the

Hosting Platform shall be deemed to have exercised reasonable care for the purpose of this subsection.

- D. On the fifth day of every month, a Hosting Platform shall provide a signed affidavit to the Town/third-party contractor verifying that the Hosting Platform has complied with subsection 6.C in the immediately preceding month.
- E. For not less than three years following the end of the calendar year in which the Short-Term Rental transaction occurred, the Hosting Platform shall maintain and be able, in response to a lawful request, to provide to the Town for each Short-Term Rental transaction for which a Hosting Platform has provided a Booking Service:
  - 1) The name of the Owner or Business Entity who offered a Residential Unit for Tourist Home Use,
  - 2) The address of the Residential Unit,
  - 3) The dates for which the tourist home user procured use of the Residential Unit using the Booking Service provided by the Hosting Platform, and
  - 4) The registration number for the Residential Unit.
- F. The Town may hire a third-party contractor to identify and register Short-Term Rentals. Among other things, the third-party contractor shall ensure compliance and monitoring of Short-Term Rentals and shall post information on its website for members of the public who wish to file Complaints under this Program or who otherwise seek information regarding this Program or Short-Term Rentals.
- G. Notwithstanding any other provision of this Program, nothing in this Program shall relieve an individual, Business Entity, or Hosting Platform of the obligations imposed by any and all applicable provisions of state law and the Fairfax Town Code including but not limited to those obligations imposed by Title 5 (Business Taxes, Licenses and Regulations) and Chapter 3.32 (Hotel Users Tax). Further, nothing in this Program shall be construed to limit any remedies available under any and all applicable provisions of state law and the Fairfax Town Code including but not limited to Title 5 (Business Taxes, Licenses and Regulations) and Chapter 3.32 (Hotel Users Tax).

## **Section 7. Administrative Enforcement Procedures**

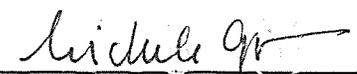
- A. Determination of Violation. Upon the filing of a written Complaint, the Director and/or third-party contractor shall take reasonable steps necessary to determine the validity of the Complaint. To determine if there is a violation of this Program and/or Fairfax Town Code Chapter 5.57, the Director and/or third-party contractor may initiate an investigation. This investigation may include, but is not limited to, an inspection of the subject property and/or a request for any pertinent information from the Owner, Business Entity, or Hosting Platform, such as leases, business records, or other documents. The Director shall have discretion to determine whether there is a violation of this Program and/or Fairfax Town Code Chapter 5.57. Notwithstanding any other provision of this Program, any alleged violation related to failure to comply with the requirements of Title 5 (Business Taxes, Licenses and Regulations) and Chapter 3.32 (Hotel Users Tax) of the Fairfax Town Code shall be enforced under the provisions of Title 5 and Chapter 3.32.

- B. Administrative Citations and Noticing and Administrative Hearing Procedures. Administrative citations and Noticing and Administrative Hearing Procedures for violations of this Program and/or Fairfax Town Code Chapter 5.57 shall be conducted in accordance with Fairfax Town Code Chapter 1.08 and/or Fairfax Town Code Chapter 1.10.
- C. Administrative Penalties for Violations and Enforcement Costs. Administrative Penalties and Enforcement Costs for violations of this Program and/or Fairfax Town Code Chapter 5.57 shall be imposed in accordance with Fairfax Town Code Chapter 1.08 and/or Fairfax Town Code Chapter 1.10.
- D. Revocation of Registration. A Short-Term Rental registration issued under the terms of the Program shall be revoked by the Director at any time if they conclude any of the following:
  - 1) The Short-Term Rental is not current on hotel user taxes and has not paid all such taxes to the Town in full by the date upon which such taxes became due.
  - 2) There have been three or more upheld citations for violations of the Fairfax Town Code at the Short-Term Rental property within a twenty-four (24) month period. For the purposes of this subsection, upheld citations means citations which were neither overturned after contest or appeal nor dismissed.
  - 3) The Short-Term Rental applicant has submitted a Short-Term Rental application containing a material misrepresentation or omission of material facts.
  - 4) There has been a transfer or an attempt to transfer a Short-Term Rental registration to another person, entity, or property.

**BE IT FURTHER RESOLVED** that any and all amendments to the Policies and Procedures for the administration of the "Short Term Rental Program" herein, as deemed necessary from time-to-time, shall be adopted by resolution of the Town Council.

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 1st day of June 2022, by the following vote:

AYES: ACKERMAN, COLER, CUTRANO, GODDARD, HELLMAN  
 NOES: None  
 ABSENT: None

Attest:   
 Michele Gardner, Town Clerk

  
 Chance Cutrano, Vice Mayor