

ORDINANCE 2279

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS ADDING ARTICLE XIV TO CHAPTER 14 OF THE TOWN CODE OF THE TOWN OF LOS GATOS RELATED TO SHORT-TERM RENTAL OF RESIDENTIAL PROPERTY

WHEREAS, pursuant to the authority granted to the Town of Los Gatos ("Town") by Article XI, Section 7 of the California Constitution, the Town has the police power to regulate the use of land and property within the Town in a manner designed to promote public convenience and general prosperity, as well as public health, welfare, and safety; and

WHEREAS, adoption and enforcement of regulations and other land use regulations lies within the Town's police powers; and

WHEREAS, the Town Council Policy Committee held Public Meetings on October 18, 2018, November 15, 2018, and December 20, 2018 and reviewed existing practices and ordinances in order to make recommendations how the Town should regulate short-term rentals; and

WHEREAS, the Town Council of the Town of Los Gatos, California, did on the 5th day of February 2019, hold a duly noticed public hearing to consider recommendations from the Town Policy Committee adding a Short-Term Rental Ordinance to the Town Code in regard to enforcement, operational requirements, communication, and density of short-term rentals throughout the Town; and

WHEREAS, the Town Council of the Town of Los Gatos, California, did on the 5th day of February 2019, approve first reading of an Ordinance adding Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to short-term rentals; and

WHEREAS, the Town Council of the Town of Los Gatos, California, did on the 19th day of February 2019, approve second reading of an Ordinance adding Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to short-term rentals; and

WHEREAS, the Town Council of the Town of Los Gatos, California has determined that the addition of Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to short-term rentals is consistent with the General Plan and applicable state law; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, said Town Council did find the following facts and reasons to exist to approve said ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Los Gatos, California as follows:

SECTION 1. INCORPORATION OF RECITALS. The Town Council of the Town of Los Gatos finds that all Recitals are true and correct and incorporate them herein by this reference.

SECTION 2. AMENDMENT OF MUNICIPAL CODE. Article XIV to Chapter 14 of the Town of Los Gatos Town Code related to short-term rentals is hereby added to read as follows:

ARTICLE XIV – SHORT-TERM RENTALS

Sec. 14.140.010 - Purpose and intent.

This article authorizes short-term rental use of a dwelling unit for remuneration for less than 30 consecutive days and establishes short-term rental license requirements and limitations. The intent of providing reasonable and necessary regulations for the licensing of short-term rental of residential dwelling units is to:

- (a) Ensure the safety, welfare, and convenience of renters, owners, and neighboring property owners throughout Los Gatos.
- (b) Allow property owners the right to use their property as they choose while protecting neighbors from nuisance situations.
- (c) Help maintain the Town’s residential housing stock.
- (d) Protect neighborhood character and ensure short-term rental use is compatible with surrounding residential uses.
- (e) Ensure the collection of Transient Occupancy Tax (TOT) under Chapter 25 of the Los Gatos Municipal Code.

A short-term rental license is a permission to operate a short-term rental in accordance with this chapter. A short-term rental license may be terminated or revoked if the standards of this chapter are not met or the dwelling is sold or otherwise transferred as defined in this chapter.

Sec. 14.140.015 - Definitions.

The words and terms in this chapter shall have the following meanings unless the context clearly indicates otherwise.

- (a) *Community Development Director* means the Town of Los Gatos Community Development Director or his/her designee.
- (b) *Host* means the person(s) who is the owner of record of residential property, and responsible for offering a dwelling unit, or portion thereof, for short-term rental either

through a hosting platform or individually, and holds the license to operate the short-term rental.

- (c) *Hosted Rental* means the host is a permanent resident of and resides at the property while it is being used as a short-term rental.
- (d) *Hosting Platform* means a marketplace, in whatever form or format, which facilitates short-term rentals through advertising, matchmaking, or any other means, using any medium of facilitation, and from which the operator of the hosting platform derives revenue, including booking fees or advertising revenue, from providing or maintaining the marketplace.
- (e) *Primary Residence* means a host's permanent residence or usual place of return for housing as documented by at least two of the following and in the host's name: motor vehicle registration, driver's license, voter registration, tax document showing the residential unit as the host's residence, or a utility or cellular phone bill from within the past 60 days. A person may only have one primary residence and must reside there for a minimum of nine (9) months per year.
- (f) *Short-Term Rental (STR)* means the practice of renting a portion of or an entire home to a person or group of people for periods of less than 30 nights.
- (g) *Un-Hosted Rental* means the short-term rental of a house or property without the host/owner/permanent resident residing at the property while it is being used as a short-term rental.

Sec 14.140.020 - Annual Short-Term Rental License Required

No owner of property within the jurisdiction of the Town of Los Gatos may advertise, offer, operate, rent or otherwise make available, or allow any other person to make available for occupancy or use a short-term rental without a short-term rental license. Advertise or offer includes through any media, whether written, electronic, web-based digital, mobile, or otherwise.

Sec 14.140.025 - Short-Term Rental License Application Process

A short-term rental license application provided by the Town is required to be completed and submitted in order to obtain a short-term rental license. A host may apply for both a hosted and un-hosted license at the subject property. The application shall comply with all terms, conditions, and requirements of this chapter including the following:

- (a) *Host/Address Information*: The application shall include the name, address, email address, and telephone number of the host as well as two pieces of attached documentation showing that the property is the host's primary residence. The address

and phone number (if applicable) of the property to be used as the short-term rental must also be included on the application. The short-term rental property must either have the same address or be located on the same parcel as that of the host's primary residence.

- (b) Representative information: The host shall provide the name, permanent address, email address, and telephone number (if different from his/her own), of a local representative (which can be a person or company) who can be contacted 24 hours a day regarding the use of the property or complaints related to the short-term rental. For the purposes of this requirement, local means the representative's address is within a 30-minute travel time of the subject property and the representative is able to manage the short-term rental, respond to reported issues, contact the tenant regarding complaints received, and/or be physically present at the short-term rental to address complaints within 60 minutes from the time of notification.
- (c) Acknowledgement of Local Rules: Acknowledgment that upon both booking and arrival, the host must provide the short-term rental guest either a physical or electronic copy of the Town's Noise Ordinance, Smoking Ordinance, Short-Term Rental Ordinance, including highlighted parking and occupancy requirements, and local trash collection schedule.
- (d) Acknowledgment of Occupancy and Parking Limits: The number of rooms that will be rented and occupancy limits for the short-term rental must be acknowledged by the host. The number of either on-site parking spots or parking permits to be used for the short-term rental must also be provided as well as acknowledgment of the parking regulations in this article.
- (e) Advertisement: If the host is planning to advertise, the listing numbers or URL/website addresses of where the short-term rental is advertised must be provided.
- (f) Certificate of Occupancy: The host must attach a copy of the Certificate of Occupancy for the property to be used as a short-term rental to the application in order to ensure the space is habitable and in compliance with all permit conditions, laws and codes. If no Certificate of Occupancy can be produced, the host must pay for, obtain, and pass a Health and Safety Inspection from the Community Development Department prior to issuance of a short-term rental license.
- (g) Any property that is part of a homeowner's association (HOA) requires an attached letter of approval from the HOA authorizing use of the premises as a short-term rental.
- (h) All required fees must be paid. Registration of a short-term rental shall be on a calendar year basis. Fees shall be pro-rated for any approved license on a quarterly basis.

- (i) Any other information which the Community Development Director may require to properly administer the short-term rental license.
- (j) Upon application for a short-term rental license, all short-term rental units shall be subject to inspection by the Town for compliance with this Ordinance. The Community Development Department may conduct a site visit upon application for a short-term rental to confirm the number of bedrooms (as defined by the International Building Code) stated on the application and the number, location, and availability of on-site parking spaces. The site visit will be coordinated with the host and be conducted during the Town's normal business hours, and with reasonable notice.
- (k) The Community Development Director may delay or deny issuance of a short-term rental license or renewal at his/her discretion, including, but not limited to, the following grounds:
 - (1) The short-term rental unit does not meet the definition of a dwelling unit or is deemed to be uninhabitable.
 - (2) The short-term rental license application is incomplete or does not comply with the Town's Short-Term Rental Ordinance regulations.
 - (3) The host refuses or fails to comply with the regulations set forth in this Short-Term Rental Ordinance.
 - (4) The host made a false statement or misrepresentation on the short-term rental license application.
 - (5) The building inspection report identifies an unsafe condition and the identified deficiencies have not been corrected prior to issuance of a short-term rental license.
 - (6) The short-term rental property has outstanding administrative penalties or the host or owner owes past-due transient occupancy taxes for prior short-term rental use, or the property under present ownership has previously been used for short-term rental use without a short-term rental license.

Sec 14.140.030 - Transferability and Cap

- (a) Each short-term rental license shall be non-transferable to any other person or location. No short-term rental license shall be assignable and shall not be transferred upon sale or other transfer of ownership of the property.
- (b) Short-term rental licenses shall be capped at five percent (5%) of the housing stock of the Town of Los Gatos. If at any time, the number of valid short-term rental licenses

issued exceeds five percent of the Town's housing stock, the issuance of licenses will cease and additional applicants will be placed on a first-come, first-served waiting list.

Sec 14.140.035 - Short-Term Rental License Renewal

Each short-term rental license will be good through the end of the calendar year. No short-term rental license shall be renewed automatically. It shall be the responsibility of the host to renew the license at the end of each calendar year and submit an updated application/renewal form and any applicable fees.

Sec 14.140.040 - Business License Requirements

Each host operating a short-term rental in the Town of Los Gatos must obtain a Town business license and pay all applicable fees. The hotel business license application must be completed and submitted to the Finance Department. It is the responsibility of the host to make sure the business license is renewed before the end of each calendar year.

Sec 14.140.045 - Transient Occupancy Tax Registration Form

Transient occupancy taxes (TOT) shall be collected for short-term rentals and paid to the Town of Los Gatos, pursuant to Chapter 25, Article III of the Los Gatos Municipal Code. Collection and remittance of TOT is the responsibility of the host. If a hosting platform is used, and the Town has a voluntary collection agreement, or equivalent, with that hosting platform, TOT may be collected and remitted directly to the Town by the hosting platform. The host must maintain records of TOT paid, even if paid by a hosting platform, for three years.

Sec 14.140.050 - Health and Safety

- (a) It is the host's responsibility to assure that the short-term rental is and remains in substantial compliance with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws. The host must provide all renters with facilities for sleeping, bathing, and toileting within a permanent dwelling that is suitable for human occupancy. Rental of sleeping space in or on balconies, porches, tents, sheds, vehicles, garages, outdoor areas, or other uninhabitable spaces is prohibited.
- (b) During all months that the property is available for short-term rental use, the property shall have weekly solid waste collection service with assisted pick-up provided by the solid waste provider, if available.

Sec 14.140.055 - Duration

- (a) In a hosted rental, the number of nights that the property can be used for short-term rental purposes shall be limited to 180 nights per calendar year. If there are multiple rooms or units on the parcel that are intermittently used for short-term rental purposes,

the 180 nights shall be calculated as the cumulative total for any and all units on the parcel.

- (b) In an un-hosted rental, the number of nights that the property can be used for short-term rental purposes shall be limited to 30 nights per calendar year.

Sec 14.140.060 - Parking

In areas where the Town does not provide permitted on-street parking for residents, all short-term rental parking must remain on-site. Parking areas shall not be located in the front yard or other non-approved areas. In areas where the Town provides permitted on-street parking for residents, short-term rental parking is limited to the use of the standard two guest parking passes purchased per house/property through the Police Department. No additional parking passes will be provided for short-term rental use.

Sec 14.140.065 - Accessory Dwelling Units

Per Town Code Sec 29.10.320 (b) (14), short-term rentals are prohibited in new accessory dwelling units, approved after February 6, 2018. Short-term rentals are only allowed in accessory dwelling units approved before February 6, 2018.

Sec 14.140.070 - Occupancy Regulations

The maximum number of overnight occupants (aged 18 or older) allowed within a short-term rental unit shall be two persons per bedroom, plus one additional person per unit. The maximum number of daytime (non-overnight) occupants shall be one and a half times the maximum number of occupants allowed to stay overnight at the unit. The Town has sole discretion to determine the final occupancy limit to be permitted at the short-term rental site.

Sec 14.140.075 - Specific Prohibitions

The host is responsible for ensuring the property does not become a nuisance due to any short-term rental occupant activities. The following activities are examples that include, but are not limited to, those prohibited for short-term rentals:

- (a) Senior housing units and Below Market Price units may not be used for short-term rental purposes.
- (b) A host may not have licenses on more than one parcel for short-term rental use in the Town's jurisdiction. In addition, the parcel listed on the license must be the host's primary residence.
- (c) More than one short-term rental may not occur concurrently per parcel.

- (d) Short-term rentals are prohibited in all apartment complexes.
- (e) Commercial or assembly uses, such as weddings, corporate events, and parties, are prohibited in short-term rentals.
- (f) Short-term rental to unaccompanied minors is prohibited.
- (g) Activities that exceed the noise limitations in the Town of Los Gatos Noise Ordinance in Chapter 16 of the Municipal Code or constitute a nuisance as defined in Chapter 17 of the Municipal Code are prohibited.

Sec 14.140.080 - Violations

In addition to complaints related to nuisance and noise and other violations of the Los Gatos Town Code, the following conduct are examples of, but not limited to, conduct which constitutes a violation of this chapter:

- (a) The discovery of material misstatements or providing of false information in the application or renewal process.
- (b) A change that occurs in any material fact upon which the short-term rental license was issued where the change was not reported to the Town within 14 days.
- (c) Representing a dwelling as available for use, occupancy, or rent as a short-term rental without a valid license issued under this chapter, or making a short-term rental available for use, occupancy, or rent without first obtaining a short-term rental license.
- (d) Advertising or renting a short-term rental that does not comply with the standards of this chapter.
- (e) Failure to self-report or remit transient occupancy tax (TOT) on a quarterly basis to the Town.
- (f) Complaints which have been independently verified by Town of Los Gatos staff regarding limits on short-term rental use, such as, but not limited to:
 - (1) Exceeding allowable occupancy.
 - (2) Failure to dispose of solid waste.
 - (3) Failure to properly store waste and refuse bins.
 - (4) Failure to follow parking regulations.

- (5) Any other incident which, at the discretion of the Community Development Director, provides grounds for a verified complaint.

Sec 14.140.085 - Penalties

- (a) Each 24-hour period in which a dwelling is used, or advertised, in violation of this chapter shall be considered an occurrence for calculation of the following fines:
 - (1) The first occurrence of a violation will incur a warning.
 - (2) A second occurrence of a violation within a 12-month period is subject to a \$250 fine.
 - (3) A third occurrence of a violation within a 12-month period is subject to a \$500 fine and immediate revocation of the short-term rental license.
- (b) Revocation. The following actions are grounds for immediate revocation of a short-term rental license:
 - (1) Failure to renew a short-term rental license while continuing to operate a short-term rental.
 - (2) The occurrence of three or more violations within a 12-month period resulting in fines pursuant to Sec 14.140.085 (a).
 - (3) The discovery of material misstatements or providing of false information in the application or renewal process.
 - (4) Failure to self-report or remit quarterly transient occupancy tax to the Town.
 - (5) Such other violations of this chapter of sufficient severity in the reasonable judgement of the Community Development Director, so as to provide reasonable grounds for immediate revocation of the operating license.
- (c) Notice of Decision/Appeal/Stay. If the short-term rental license is revoked as provided in this section, the Community Development Director shall send written notice of revocation to the host stating the basis for the decision. The notice shall include information about the right to appeal the decision and the procedure for filing an appeal.

Sec 14.140.090 - Appeal of Short-Term Rental License Determinations

- (a) The host may file an appeal of a decision to revoke a short-term rental license by filing a written notice of appeal to the Community Development Department within ten (10) days of the mailing date of the decision and paying the applicable fees.
- (b) A Hearings Officer shall be responsible for determining an appeal of a decision denying an application or renewal application for a short-term rental license, or revoking a short-term rental license.
- (c) Within forty-five (45) days of receiving the notice of appeal, the Community Development Director shall schedule a hearing on the appeal before the Hearings Officer and shall give notice to the appellant of the time and place of the hearing as prescribed by law. The Community Development Director may establish administrative procedures to implement the appeal procedures provided in this section, including any required forms.
- (d) The Hearings Officer shall determine whether the Town's decision was based on a preponderance of the evidence. A decision of the Hearings Officer shall be based on the evidence received, in writing, no later than 30 days after the close of the hearing. The Hearing Officer's decision shall be final on the date of mailing the decision to the appellant. The Hearing Officer's decision is the final decision of the Town.

Sec. 14.140.095 - Discontinuance of a Short-Term Rental License

- (a) Revocation. After a short-term rental license has been revoked, the dwelling unit may not be used or occupied as a short-term rental unless a subsequent license is granted, and the host whose license has been revoked shall not be eligible to reapply for a short-term rental license for the same property, or other property, for a period of five (5) years.
- (b) Expiration. If a short-term rental license expires, the dwelling unit may not be used or occupied as a short-term rental until such time as a subsequent license has been granted for that property.

Sec 14.140.100 – Records of Compliance

The host shall retain records documenting compliance with this chapter for a period of three years after each period of short-term rental, including, but not limited to, records showing payment of transient occupancy tax by the host or a hosting platform on behalf of a host. Upon reasonable notice, the host shall provide any such documentation to the Town of Los Gatos upon request for the purpose of inspection or audit.

Sec. 14.140.105 – Amnesty Period

Notwithstanding any other provision of law, short-term rentals operating on or before the enactment of this ordinance shall be considered existing, unpermitted uses. An amnesty period of six (6) months after the effective date of this ordinance is being offered to allow these existing, unpermitted uses to be legalized by conforming to the requirements of this Chapter, including compliance with operating standards, registration, and record-keeping obligations. Transient occupancy tax (TOT) payment continues to be required at all times for short-term rentals and must be collected and paid during the amnesty period. Applications to bring an existing, unpermitted short-term rental use into compliance shall be made on or before six (6) months from the effective date of this ordinance. Existing short-term rental uses that do not conform to the requirements of this section shall cease operation within six (6) months of the effective date of this ordinance and shall be prohibited from resuming unless and until the use conforms to the requirements of this Chapter.

Sec. 14.140.110 – Remedies Not Exclusive

The remedies provided in this chapter are in addition to, and not in lieu of, all other legal remedies, criminal and civil, which may be pursued by the Town, to address any violation of this code or other public nuisance.

SECTION 3. CONSTRUCTION. The Town Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Los Gatos Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 4. CEQA. The Town Council finds and determines that the adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines under the General Rule (Section 15061(b)(3)), which sets forth that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that the proposed Town Code text amendments will have no significant negative effect on the environment.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Los Gatos hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid. Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

SECTION 6. EFFECTIVE DATE. This ordinance shall take effect immediately and will be enforced thirty (30) days after its adoption.

SECTION 7. PUBLICATION AND POSTING. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

SECTION 8. INTRODUCTION AND ADOPTION. This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 5th day of February 2019 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 19th day of February 2019.

COUNCIL MEMBERS:

AYES: Marcia Jensen, Rob Rennie, Marico Sayoc, Mayor Steven Leonardis

NAYS: Barbara Spector

ABSENT: None.

ABSTAIN: None.

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____