



City Council Report

City Council Meeting: September 24, 2019
Agenda Item: 7.B

To: Mayor and City Council
From: Lane Dilg, City Attorney, City Attorney's Office
Subject: Second Reading and Adoption of Ordinance Amending and Revising Chapter 6.20 of the Santa Monica Municipal Code to Strengthen Regulation of Home-Sharing and Vacation Rentals

Recommended Action

Staff recommends that City Council adopt the attached Ordinance.

Executive Summary


At its meeting on September 10, 2019, the City Council introduced for first reading an ordinance amending and revising Chapter 6.20 of the Santa Monica Municipal Code to strengthen regulation of home-sharing and vacation rentals.

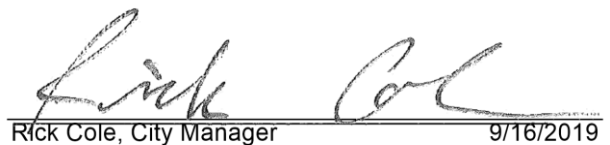
The ordinance is now presented to City Council for adoption.

Prepared By: Elsa Kapsinow, Executive Assistant to the City Attorney

Approved

Forwarded to Council


Lane Dilg, City Attorney 9/14/2019


Rick Cole, City Manager 9/16/2019

Attachments:

A. PCD - Ordinance - Home-Sharing - 09.24.2019 - 2nd Rdg

ORDINANCE NUMBER _____(CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA MONICA AMENDING AND REVISING CHAPTER 6.20 OF THE
SANTA MONICA MUNICIPAL CODE TO STRENGTHEN REGULATION OF
HOME-SHARING AND VACATION RENTALS

WHEREAS, a central and significant goal for the City is preservation of its housing stock and preserving the quality and character of residential neighborhoods; and

WHEREAS, Santa Monica places a high value on cohesive and active residential neighborhoods and the diverse population that resides therein; and

WHEREAS, the City must preserve its available housing stock and the character and charm that result, in part, from cultural, ethnic, and economic diversity of its resident population, as a key factor in economic growth; and

WHEREAS, Santa Monica's natural beauty, its charming residential communities, its vibrant commercial quarters and its world-class amenities have drawn visitors from around the United States and around the world; and

WHEREAS, there is within the City a diverse array of short-term rentals for visitors, including, hotels, motels, bed and breakfasts, vacation rentals and home sharing, not all of which are lawful; and

WHEREAS, operations of vacation rentals, where residents rent entire units to visitors and are not present during the visitors' stays, frequently disrupt the quietude and residential character of the neighborhoods and adversely impact the community; and

WHEREAS, home-sharing does not create the same adverse impacts as unsupervised vacation rentals when the home-shares are hosted by the owner or a long-term resident who lives on site and is present to introduce guests to the City's neighborhoods and regulate guests' behavior; and

WHEREAS, while the City recognizes that home-sharing activities can be conducted in harmony with surrounding uses, those activities must be regulated to ensure that the home-sharing activities do not threaten or harm the public health, safety, or general welfare; and

WHEREAS, on May 12, 2015, the City Council adopted Ordinance Number 2484, which added Chapter 6.20 to the Santa Monica Municipal Code and thereby preserved the City's prohibition on vacation rentals, but authorized "home-sharing," whereby residents host visitors in their homes for short periods of stay, for compensation, while the resident host remains present throughout the visitors' stay; and

WHEREAS, on January 24, 2017, the City Council adopted Ordinance Number 2535CCS, which amended Chapter 6.20 to clarify its application to hosting platforms; and

WHEREAS, on June 27, 2017, the City Council adopted Ordinance Number 2547CCS, which further amended Chapter 6.20 to address the use of accessory dwelling units that received their building permits after March 31, 2017 as home-shares; and

WHEREAS, in the time since Chapter 6.20 was first added, the City has issued over 450 business licenses authorizing home-sharing; and

WHEREAS, the City is investigating approximately 30% of the licensed home-share hosts as operating vacation rental businesses under the guise of home-sharing; and

WHEREAS, the City strives to strike a balance between preserving the City's available housing stock, protecting the residential character of neighborhoods, and preventing home-shares from turning into de facto hostels and hotels, while at the same time permitting owners and long-term residents to host guests as part of a home-share; and;

WHEREAS, the costs of regulating and enforcing the requirements of the home-sharing program are significant and should be borne, at least in part, by those benefitting from their participation in the home-sharing program; and

WHEREAS, the City Council now wishes to amend Chapter 6.20 to clarify existing regulations and to implement various public health, safety, and general welfare regulations governing home-sharing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Santa Monica Municipal Code Chapter 6.20 is hereby amended to read as follows:

6.20.010 Definitions.

For purposes of this Chapter, the following words or phrases shall have the following meanings:

(a) **Bedroom.** Any habitable space in a dwelling unit other than a kitchen or living room that is intended for or capable of being used for sleeping, is at least 70 square feet in area, is separated from other rooms by a door, and is accessible to a bathroom without crossing another bedroom.

(b) **Booking Transaction.** Any reservation or payment service provided by a person who facilitates a home-sharing or vacation rental transaction between a prospective visitor and a host.

(c) **Dwelling Unit.** One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household. A dwelling unit includes a single-family residence, and each unit of an apartment, duplex, or multiple dwelling structure designed as a separate habitation for one or more persons, but does not include units located within City-approved hotels, motels, and bed and breakfasts, as defined in section 9.51.030(B)(15). An accessory dwelling unit, as defined by section 9.31.300, that received its building permit on or after March 31, 2017, constitutes a separate dwelling unit for the purpose of this Chapter.

(d) **Eligible Resident.** Any natural person who (1) is either (i) a long-term resident of a dwelling unit or (ii) an owner of a dwelling unit and (2) uses that dwelling unit as his or her primary residence.

(e) **Home-Sharing.** Renting for a period of 30 consecutive days or less, one or more bedrooms in a dwelling unit that is the primary residence of the host, while the host lives on-site, in the dwelling unit, throughout the visitors' stay. A dwelling unit rented out for home-sharing is referred to as a "home-share."

(f) **Host.** Any natural person who is an eligible resident of a dwelling unit offered for use as a home-share.

(g) **Hosting Platform.** A person who participates in the home-sharing or vacation rental business by collecting or receiving a fee, directly or indirectly through an agent or intermediary, for conducting a booking transaction using any medium of facilitation.

(h) **Lives On Site.** Maintains a physical presence in the dwelling unit, including, but not limited to, sleeping overnight, preparing and eating meals, and engaging in other activities in the dwelling unit, of the type typically maintained by a natural person in the dwelling unit in which he or she is an eligible resident.

(i) **Long-Term Resident.** Any natural person who, as of the date a home-share application is submitted pursuant to Section 6.20.021: (1) has occupied the dwelling unit that is the subject of the home-share application as his or her primary residence for at least the prior 12 months; and (2) has either (i) if the natural person is a tenant, subtenant, lessee, or sublessee, a written rental housing agreement for the dwelling unit for a period of 12 months or more after the date the home-share application is submitted

or (ii) if the natural person is not a tenant, subtenant, lessee, or sublessee, written documentation establishing that the natural person will reside at the dwelling unit for a period of 12 months or more after the date the home-share application is submitted.

(j) **Owner.** Any person who, alone or with others, has legal or equitable title to a dwelling unit. A person whose interest in a dwelling unit is solely that of a tenant, subtenant, lessee, or sublessee under an oral or written rental housing agreement shall not be considered an owner.

(k) **Person.** Any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, or organization of any kind.

(l) **Primary Residence.** The usual place of return for housing of an owner or long-term resident as documented by at least two of the following: motor vehicle registration, driver's license, California state identification card, voter registration, income tax return, property tax bill, or a utility bill. A person can only have one primary residence.

(m) **Vacation Rental.** Renting for a period of 30 consecutive days or less any dwelling unit, in whole or in part, for exclusive transient use. Exclusive transient use shall mean that no eligible resident of the dwelling unit lives on-site, in the dwelling unit, throughout any visitor's stay. Rentals of units located within City-approved hotels, motels, and bed and breakfasts shall not be considered vacation rentals.

(n) **Visitor.** A natural person who rents a home-share or vacation rental.

6.20.020 Home-sharing authorization.

(a) Notwithstanding any provision of this Code to the contrary, home-sharing shall be authorized in the City, provided that the host complies with each of the following requirements:

(1) Obtains and maintains at all times a City home-sharing permit issued pursuant to this Chapter and a business license issued pursuant to Chapter 6.04.

(2) Operates the home-sharing activity in compliance with all permit conditions for home-sharing as set forth in Section 6.20.021 and any regulations promulgated pursuant to this Chapter.

(3) Collects and remits Transient Occupancy Tax ("TOT"), in coordination with any hosting platform if utilized, to the City and complies with all City TOT requirements as set forth in Chapter 6.68 of this Code.

(4) Takes responsibility for and actively prevents any nuisance activities that may take place as a result of home-sharing activities.

(5) Ensures that basic health and safety features are provided, including fire extinguishers, smoke detectors, and carbon monoxide detectors.

(6) Does not book or rent to more than two groups of visitors for any given date, whether the visitors within the groups are related to one another or not.

(7) Limits the occupancy of the home-share (including the host, all other eligible residents, and all visitors) to the lesser of (i) 10 persons; (ii) one person per 200 square feet of the dwelling unit; or (iii) two persons (excluding minor children) per bedroom.

(8) Limits visitors to (i) no more than one vehicle per bedroom rented as part of the home-share or (ii) if the home-share is located in a preferential parking zone, no more than two vehicles that shall be required to use the visitor permits available under Chapter 3.08 of this Code. A visitor's vehicle may be parked on site, to the extent available, or in legal street parking.

(9) Maintains liability insurance to cover home-sharing with minimum limits of not less than \$500,000 or conducts each home-sharing transaction through a hosting platform that provides equal or greater coverage.

(10) Complies with Section 6.21.022 governing advertisements of home-shares.

(11) Complies with all applicable laws, including the noise limitations set forth in Chapter 4.12 of this Code, and all health, safety, building, fire protection, and rent control laws.

(12) Complies with all regulations promulgated pursuant to this Chapter.

(b) All hosts and their respective properties, authorized by the City for home-sharing purposes pursuant to this Section, shall be listed on a registry created by the City and updated periodically by the City. The City shall publish the registry, and a copy shall be sent electronically to any person upon request.

(c) If any provision of this Chapter conflicts with any provision of the Zoning Ordinance codified in Article IX of this Code, the terms of this Chapter shall prevail with respect to interpretation and enforcement of this Chapter.

6.20.021 Home-sharing permit conditions.

(a) **Application required.** To obtain a home-sharing permit for a dwelling unit, a host shall submit an application on a form to be provided by the City and signed by the host under penalty of perjury. The application for the home-sharing permit shall include the following information:

- (1) Address of the proposed home-share;
- (2) Type of dwelling unit;
- (3) Whether the applicant is an owner or long-term resident;
- (4) If applicable, proof that the applicant is a long-term resident;
- (5) Proof that the proposed home-share is the primary residence of the applicant;
- (6) The name and contact information for any other eligible residents of the proposed home-share who will be serving as hosts, together with proof that each identified host is an eligible resident of the proposed home-share;
- (7) The square footage of the proposed home-share;
- (8) The number of bedrooms in the proposed home-share;
- (9) The maximum number of visitors per night, which shall not exceed the maximum permitted in accordance with Section 6.20.020(a)(6);
- (10) Proof of insurance;
- (11) Certification that the host will comply with all provisions of this Chapter and all regulations promulgated pursuant to this Chapter or be subject to the revocation of his or her home-sharing permit and business license; and

(12) Any other information required by regulations promulgated pursuant to this Chapter.

(b) **Application Fee.** The initial application and each renewal application for a home-sharing permit shall be accompanied by an application fee to be established by resolution by the City Council.

(c) **Duty to Amend Application.** If there are any material changes to the information submitted on a home-sharing permit application, the host shall submit an amended application on a form to be provided by the City and signed by the host under penalty of perjury within 30 days of any such changes. For the purposes of this Section, any change to the information required to be included in a home-sharing permit application by subsection (a) of this Section shall constitute a material change. Failure to submit an amended home-sharing permit application may result in revocation of the home-sharing permit and business license.

(e) **Term of Permit.** Notwithstanding any provision of this Code to the contrary, any home-sharing permit shall be effective for same period as the term of the host's business license.

(f) **Renewal of Permit.** A host may renew his or her home-sharing permit by submitting a completed permit renewal application on a form to be provided by the City and signed by the host under penalty of perjury. The permit renewal application shall include all of the information required by subsection (a) of this Section.

(g) **No Transfer or Assignment.** A home-sharing permit may not be assigned or transferred to any other person.

6.21.022 Advertisements for home-sharing.

(a) The host shall include the following information in any advertisement for home-sharing:

- (1) The business license number issued by the City;
- (2) That the host lives on site and will be present in the home-share throughout the visitor's stay;
- (3) The permitted occupancy of the home-share as specified in the home-sharing permit application;
- (4) The permitted number of visitor vehicles, in accordance with Section 6.20.020(a)(8);
- (5) That the home-share cannot be booked or rented to more than two groups of visitors for any given date, whether the visitors within the groups are related to one another or not; and
- (6) Any other information required by regulations promulgated pursuant to this Chapter.

(b) A host is limited to posting no more than two listings for the home-share on each hosting platform or other media outlet. If a host posts a listing for the home-share on multiple hosting platforms or other media outlets, only two listings may be booked for any given date.

(c) No advertisements regarding the availability of a dwelling unit for home-sharing shall be posted in or on any exterior area of the dwelling unit, any exterior area of any other dwelling unit on the same lot, or the lot on which the dwelling unit is located.

6.20.030 Prohibitions.

(a) No person shall undertake, maintain, authorize, aid, facilitate or advertise any vacation rental or any home-sharing that does not comply with this Chapter. For the purposes of this section only, person does not include a hosting platform.

(b) No host may be the host for more than one home-share.

6.20.050 Hosting platform responsibilities.

(a) Hosting platforms shall be responsible for collecting all applicable TOTs and remitting the same to the City. The hosting platform shall be considered an agent of the host for purposes of TOT collections and remittance responsibilities as set forth in Chapter 6.68 of this Code.

(b) Subject to applicable laws, hosting platforms shall disclose to the City on a regular basis each home-sharing and vacation rental listing located in the City, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay.

(c) Hosting platforms shall not complete any booking transaction for any residential property or unit unless it is listed on the City's registry created under Section 6.20.020 subsection (b), at the time the hosting platform receives a fee for the booking transaction.

(d) Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to a vacation rental or unregistered home-share, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.

(e) **Safe Harbor.** A hosting platform operating exclusively on the Internet, which operates in compliance with subsections (a), (b), (c), and (d) above, shall be presumed to be in compliance with this Chapter, except that the hosting platform remains responsible for compliance with the administrative subpoena provisions of this Chapter.

(f) The provisions of this Section shall be interpreted in accordance with otherwise applicable State and Federal law(s) and will not apply if determined by the City to be in violation of, or preempted by, any such law(s).

6.20.080 Regulations.

The City Manager or designee may promulgate regulations, which may include, but are not limited to, permit conditions, reporting requirements, inspection frequencies, enforcement procedures, additional advertising restrictions, disclosure requirements, administrative subpoena procedures or additional insurance requirements, to implement the provisions of this Chapter. No person shall fail to comply with any such regulation.

6.20.090 Fees.

The City Council may establish and amend by resolution all fees and charges as may be necessary to effectuate the purpose of this Chapter, including, but not limited to, the application fee required by Section 6.20.021.

6.20.100 Enforcement.

(a) Any host violating any provision of this Chapter, any person other than a hosting platform who facilitates or attempts to facilitate a violation of this Chapter, or a hosting platform that violates its obligations under Section 6.20.050, shall be guilty of an infraction, which shall be punishable by a fine not exceeding \$750, or a misdemeanor,

which shall be punishable by a fine not exceeding \$1,000, or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment.

(b) Any person convicted of violating any provision of this Chapter in a criminal case or found to be in violation of this Chapter in a civil or administrative case brought by a law enforcement agency shall be ordered to reimburse the City and other participating law enforcement agencies their full investigative costs, pay all back TOTs, and remit all illegally obtained rental revenue to the City so that it may be returned to the home-sharing visitors or used to compensate victims of illegal short-term rental activities.

(c) Any host who violates any provision of this Chapter, any person other than a hosting platform who facilitates or attempts to facilitate a violation of this Chapter, or a hosting platform that violates its obligations under Section 6.20.050, shall be subject to administrative fines and administrative penalties pursuant to Chapters 1.09 and 1.10 of this Code.

(d) Any interested person may seek an injunction or other relief to prevent or remedy violations of this Chapter. The prevailing party in such an action shall be entitled to recover reasonable costs and attorney's fees.

(e) The City may issue and serve administrative subpoenas as necessary to obtain specific information regarding home-sharing and vacation rental listings located in the City, including, but not limited to, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price paid for each stay, to determine whether the home-sharing and vacation rental listings comply with this Chapter. Any subpoena issued pursuant to this section shall not require the production of information sooner than 30 days from the date of service. A

person that has been served with an administrative subpoena may seek judicial review during that 30 day period.

(f) The remedies provided in this Section are not exclusive, and nothing in this Section shall preclude the use or application of any other remedies, penalties or procedures established by law.

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance

shall become effective 30 days from its adoption, and shall apply to all home-shares, including those operating under business licenses obtained prior to the effective date of this Ordinance.

APPROVED AS TO FORM:

LANE DILG
City Attorney

REFERENCE:

Ordinance No. 2616
(CCS)