

SUBJECT: ZONE TEXT AMENDMENT TO CLARIFY THE EXISTING PROHIBITION OF SHORT-TERM VACATION RENTALS IN THE CITY OF WEST HOLLYWOOD

INITIATED BY: CITY MANAGER'S DEPARTMENT – ARTS AND ECONOMIC DEVELOPMENT DIVISION  
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STATEMENT ON THE SUBJECT:

The City Council will hold a public hearing to consider adopting an ordinance to amend the West Hollywood Municipal Code to clarify the existing prohibition of short-term vacation rentals in the City of West Hollywood and add related definitions.

RECOMMENDATION:

City Council hold a public hearing, consider all pertinent testimony, and introduce on first reading:

Ordinance No. 15-\_\_\_\_: “AN ORDINANCE OF THE CITY OF WEST HOLLYWOOD AMENDING TITLE 19 OF THE WEST HOLLYWOOD MUNICIPAL CODE CLARIFYING THE PROHIBITION OF SHORT-TERM VACATION RENTALS.” (Attachment A)

BACKGROUND ANALYSIS:

At the February 18, 2014 City Council meeting, the Council directed staff to form a Shared Economy Task Force comprised of a representative from the Transportation Commission, Planning Commission and Business License Commission as well as the Chamber of Commerce and Visit West Hollywood to study shared economy business in the City of West Hollywood.

The Shared Economy is an emerging market in many cities across the United States and around the world. The question about how and if this new type of business model should be regulated is one currently being tackled in several communities with a large portion of the discussion centered around preserving housing affordability and public safety for residents and visitors alike. For the purposes of West Hollywood's Shared Economy Task Force, the Task Force focused their discussion on policy recommendations and impacts regarding two shared economy business models: shared ride service companies and short-term rental units.

West Hollywood’s Shared Economy Task Force Members included:

1. Roy Huebner - Planning Commission
2. Lindsey Horvath - Transportation Commission
3. Rob Lo - Business License Commission
4. Genevieve Morrill - Chamber of Commerce
5. Bill Hynes - Visit West Hollywood

### **Public Comment & Correspondence**

The Task Force met once a month over a 7-month period between July 2014 and January 2015. Each meeting included an opportunity for public comment, staff comments, guest subject matter experts. Subject matter experts included representatives from Airbnb and the Los Angeles Short-Term Rental Alliance.

Throughout the duration of the Task Force meetings, staff provided updates on the web page [www.weho.org/sharedeconomy](http://www.weho.org/sharedeconomy). Updates included agendas for each meeting, press releases, a mid-point Shared Economy summary as well as draft policy recommendations being discussed by the Task Force. Contact information for the staff liaison to the Task Force was also listed on the web page. Meeting dates and times were shared with the general public through the City’s community calendar and social media channels.

In addition, feedback was solicited through EngageWeho.com, one of the City’s community engagement platforms. A summary of the feedback received on this platform was shared with the Task Force at its December 17, 2014 meeting. There were 57 interactions with the discussion topic regarding the allowance of short-term rentals. A total of 21 participants provided comments or ideas regarding short-term vacation rentals in West Hollywood. Two-thirds of those respondents indicated a belief that short-term vacation rentals should not be allowed in West Hollywood while one-third of those respondents would like to see short-term vacation rentals allowed in some form.

Staff provided updates on the Task Force recommendations to the West Hollywood Chamber of Commerce Board, the West Hollywood Chamber Government Affairs Committee and the Visit West Hollywood Board. The members were generally supportive of the proposed changes to clarify the existing prohibition of short-term vacation rentals.

### **Task Force Deliberations & Recommendations**

The Task Force reviewed examples of short-term rental policies from several other jurisdictions both within and outside of California (Attachment B). The Task Force also discussed the possibility of allowing short-term rentals within select housing types (apartments, condominiums, single family homes, rent stabilized housing, inclusionary housing, and market rate housing).

While some cities have approved short-term rentals with specialized permits, the impacts to quality of life and concerns regarding the inability to adequately preserve quality of life for neighboring tenants in such a densely urban environment as West Hollywood weighed heavily on the Task Force. Concerns were raised about the risks related to entire buildings being turned into short-term rental housing and the lack of existing workforce and affordable housing within West Hollywood.

After careful evaluation of each housing type individually, along with the public comment received and presentations from subject matter experts, the recommended direction from the Task Force was to affirm and further clarify existing regulations regarding short-term rentals within West Hollywood. It also noted a desire that the City continue to monitor development of short-term rental policies and revisit regulations as appropriate.

At the February 2, 2015 City Council meeting, staff provided the below recommendations from the Task Force to the City Council and began implementing the adopted recommendations starting with *Enforcement (a)*.

Recommendation Category)	Description
Enforcement	<ul style="list-style-type: none"> <li>a. Recommend a new city ordinance be drafted specifically speaking to the definition of short-term rentals to assist with enforcement and update the municipal code and the zoning ordinance to reflect similar language clarifying that short-term rentals are not allowed in West Hollywood</li> <li>b. Direct Code Enforcement staff to begin tracking noise complaints that are attributable directly to short-term rental listings when applicable</li> </ul>
Education	<ul style="list-style-type: none"> <li>a. Recommend staff provide sample language to landlords on the City’s website that may be used in lease agreements clarifying that short-term rentals are not allowed in West Hollywood</li> <li>b. Add an educational piece to the West Hollywood RSO Building Blocks free educational workshops outlining that short-term rentals are not allowed in West Hollywood</li> <li>c. Direct city staff to work with short-term rental vendors informing them that short-term rentals are not allowed within West Hollywood and requesting they add a disclaimer to their website for those searching for units and interested in listing units within West Hollywood</li> <li>d. Direct city staff to create an educational campaign to residents and landlords informing them that short-term rentals are not allowed in West Hollywood</li> </ul>

The proposed text changes to the Zoning Ordinance help clarify that short-term rentals are (and will continue to be) prohibited in the City of West Hollywood. These changes consist of a variety of clarifications to existing language and minor additions to assist with code enforcement. The proposed changes:

1. Make it easier to find the prohibition of short-term rental(s) in the Zoning Ordinance by adding short-term rental to the City’s list of land uses;
2. Clarify that the prohibition of short-term rental(s) includes the rental of any portion of a dwelling unit; and

3. Provide new definitions for “advertisement,” “rent,” and “transient” to the Zoning Ordinance glossary to aid with enforcement.

### **Short-term Rental in the Zoning Ordinance**

Short-term rental regulation is within the City’s authority to regulate land use. The term “short-term rental” is not currently defined in the City of West Hollywood’s Municipal Code. The Zoning Ordinance, however, defines “hotel” as a “facility with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging, typically less than 30 days.” A hotel is generally not permitted within the City’s residential zoning districts, thus units within residential facilities (i.e. residential rental building, condominium, or single family home) rented for short-term stays constitutes an unlawful use in the City of West Hollywood.

### **Existing Short-term Vacation Rentals**

The changes in the zone text amendment further clarify the existing prohibition of short-term vacation rentals in the City of West Hollywood. Individuals and landlords currently operating short-term vacation rentals in West Hollywood are in violation of the existing municipal code and should cease operation immediately. The zone text amendment language included applies to existing residential units in the City of West Hollywood as well as any proposed new units.

### **Other Jurisdictions**

During the course of the Task Force meetings, staff shared examples of short-term rental policies from several other jurisdictions both within and outside of California (Attachment B). Since the conclusion of the Task Force in January 2015, the cities of Santa Monica, San Diego, Malibu, and Santa Barbara adopted or revised existing policies allowing short-term rentals within their jurisdictions and the collection of Transient Occupancy Tax (TOT) by third party platforms such as Airbnb.

In the City of Santa Monica’s “Home Sharing Ordinance” adopted in May 2015, short-term home sharing (non-exclusive use of the home with the host present) is allowed and differentiated from short-term vacation rentals (exclusive use of the home without the host present) which is prohibited. The Task Force discussed a similar approach West Hollywood as part of its deliberations on the topic. The Task Force, however, recommended upholding the existing prohibition of short-term rentals regardless if it is a partial or exclusive use of the home while the host is present or not.

In the City of San Diego and the City of Malibu, agreements have been reached between the cities and the hosting platform of Airbnb to collect TOT on behalf of hosts and remit to the City directly. The Task Force discussed this approach which is similar to the agreement between Airbnb and the City of Portland.

The City of Santa Barbara has created specific zones within their downtown corridor in which vacation rentals are permitted with a vacation rental business license. In areas outside of the designated zones, vacation rentals are not permitted. The Task Force discussed this approach which is similar to the Sonoma County approach.

### **Planning Commission**

The Planning Commission held a public hearing on June 18, 2015 regarding the proposed zone text amendments.

At the conclusion of the public hearing, the Planning Commission adopted two recommendations. First, the Planning Commission recommended City Council approval of the language in the proposed ordinance included. The Commission also directed staff to share with City Council the Planning Commission's recommendation that Council consider a dual approach to short-term rentals utilizing the City of Santa Monica as a model and determine the appropriate enforcement model.

Prior to and following the Planning Commission hearing, staff met with representatives from Unite Here 11, who requested the following items be considered by City Council for the discussion regarding short-term vacation rentals:

1. Add the ability for interested parties (for example, neighbors) to enforce the ordinance and to seek an injunction or other relief to prevent or remedy the violations of this ordinance. The prevailing party in such an action would be entitled to recover reasonable costs and attorney's fees.
2. Require the operator/owner of any hosting platform to 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 listing, and the address of each such listing.
3. State that no person, including any Hosting Platform operator, shall undertake, maintain, authorize, facilitate, or advertise any activity that does not comply with this code.

As for No. 1, the request contains some legal uncertainty. From a policy perspective, providing neighbors with a private right to enforce the ordinance could create a very tense and confrontational environment between neighbors and enforcement may be better and more efficiently handled by the City's Code Compliance Division. As for No. 2, there is a state bill pending (SB 593) that, in its current form, would require this information be made available to cities (further discussion below). If this bill passes, this language would not be necessary. Additionally, and aside from state legislation, staff anticipates that the hosting platforms will be resistant to providing this information and will argue that the provision is unconstitutional and/or violates individuals' rights to privacy. That is not to say that the platforms are correct—this provision *may* be legal. Staff anticipates a lengthy legal battle with the hosting platforms in order to enforce this provision absent the state legislation. As for No. 3, this request appears to be covered by the proposed ordinance. While staff does not include any of these provisions in its recommendation, the Council can direct staff to research any of these issues further and bring back additional information.

### **Enforcement**

As part of Title 19 of the West Hollywood Municipal Code, the zone text amendment language regarding the prohibition of short-term vacation rentals will be enforced by the City's Code Compliance Division. As with other Title 19 violations, the default fee schedule is Schedule C which includes a written warning followed by an administrative

penalty and fine. A violator is subject to misdemeanor prosecution if a fourth citable offense occurs within a twelve month period. City Council may select to place short-term vacation rental violations in another Schedule if desired.

<b>MUNICIPAL CODE VIOLATIONS - Schedule C</b>	
<i>Fee based on payment within 21 Days - For Late Penalties see below Schedule G Violations</i>	
<i>Fees and Late Penalties are adopted annually by the City Council at a Public hearing and are charged uniformly to ensure fairness.</i>	
Administrative Fees	50.00
First Offense	200.00
Second Offense	400.00
Third Offense	800.00
Fourth Offense	Misdemeanor

**Proposed Statewide Action - SB 593**

In the current legislative session, Senator McGuire introduced SB 593, the “Thriving Communities and Sharing Economy Act”. Although recently ordered inactive, the Bill proposes the following:

- Allowing a local jurisdiction to adopt an ordinance requiring that hosting platforms provide quarterly reports to the jurisdiction with the address of each residential unit occupied for tourist or transient use during that quarterly period, the total number of nights that the residential unit was occupied for tourist or transient use, and the amounts paid for the occupancy of that residential unit for tourist or transient use. (The quarterly reports would be confidential and not subject to disclosure pursuant to the Public Records Act.)
- Allowing a local jurisdiction to establish a fine or penalty on a hosting platform that fails to provide the required quarterly report.
- Reiterating a local jurisdiction’s right to impose TOT and specifically authorizes the local jurisdiction to require that the hosting platform collect and remit TOT.
- Prohibiting a hosting platform from facilitating the offering for occupancy of a residential unit for tourist or transient use if such occupancy violates a local law, and providing for the ability to impose a civil fine or penalty for such violations.
- Requiring that a hosting platform make certain disclosures regarding home or renter’s insurance in its agreements with those offering their residences on the platform.

Notably, the Bill as currently drafted does not preempt local regulation of transient residential hosting platforms. At the May 18, 2015 City Council meeting, Council adopted a resolution of support for SB 593. The Bill will continue to move forward in the next legislative session.

**ALTERNATE RECOMMENDATION:**

The City Council hold the public hearing, consider all pertinent testimony, and direct staff to present the Council with an alternate regulatory approach as recommended by the

Planning Commission that for example allows for limited home sharing rentals in the City of West Hollywood with a regulation component.

CONFORMANCE WITH VISION 2020 AND THE GOALS OF THE WEST HOLLYWOOD GENERAL PLAN:

This item is consistent with the *Primary Strategic Goal* to **Maintain the City’s unique urban balance with emphasis on residential neighborhood livability** and is consistent with the *On-going Strategic Programs* of:

**Promote Economic Development while Maintaining Business Vitality & Diversity and Adaptability to Future Change**

General Plan Goals:

**Goal ED 1.2:** Seek a balance between visitor-serving and local-serving commercial activity.

EVALUATION:

Legal Services Division staff along with the Arts and Economic Development Division staff will continue to monitor legislation at the State level regarding short-term rental operators.

Upon adoption of the ordinance, Code Compliance Division staff will monitor and track the number of complaints and violations when applicable related to short-term rental properties and provide regular updates to the City Manager. A decrease in the number of violations over time may indicate a successful outreach campaign.

ENVIRONMENTAL SUSTAINABILITY:

The City will encourage environmentally-friendly communications and civic engagement practices regarding Shared Economy businesses, as appropriate in outreach materials.

OFFICE OF PRIMARY RESPONSIBILITY:

City Manager’s Department – Arts & Economic Development Division

FISCAL IMPACT:

There is no fiscal impact of the staff recommendations listed. Any additional labor required of City staff for the implementation or compliance with an ordinance regarding short-term rentals would be absorbed into existing work programs.

ATTACHMENTS:

ATTACHMENT A – Ordinance No. 15- \_\_\_\_\_

ATTACHMENT B – Examples of Approaches by Other Jurisdictions

ORDINANCE NO. 15-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF WEST HOLLYWOOD AMENDING TITLE 19 OF THE WEST HOLLYWOOD MUNICIPAL CODE CLARIFYING THE PROHIBITION OF SHORT-TERM VACATION RENTALS

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS

(a) The renting to transient occupants of homes, apartments, condominiums and mobile homes, and portions thereof, is prohibited under existing City law by virtue of not being listed as a permitted use in the Zoning Ordinance and represent an incursion of commercial activities in residential zones of the City.

(b) Short-term vacation rentals for a period of thirty consecutive calendar days or less in the City are a source of increased noise and demand for City services.

(c) Short-term vacation rentals compromise the safety of residents by providing access to buildings, including keys and security codes, to transient occupants.

(d) Short-term vacation rentals deplete the already limited housing stock in the City, including housing subject to the rent control provisions of Title 17 of the municipal code.

(e) The advent of Internet-based platforms has resulted in a proliferation of residential properties being offered to transient lodgers in violation of existing law. This proliferation requires an expansion of enforcement mechanisms to deter parties who facilitate and solicit this illegal activity.

(f) Therefore, in an attempt to promote the aims and goals of the prohibition of short-term vacation rentals and enhance the City's ability to enforce the City's prohibition, the City intends to clarify its existing prohibition on transient rental of residential dwelling units.

SECTION 2. A new land use is added to the alphabetical list of land uses in Table 2-2 in Section 19.06.030 of Chapter 19.06 of Title 19 of the West Hollywood Municipal Code to read as follows:



LAND USE <sup>2</sup>	PERMIT REQUIRED BY ZONE				Specific Use Regulations
	R1	R2	R3	R4	
Short-term rental of a dwelling unit, or any portion thereof, for a period of thirty consecutive calendar days or less	—	—	—	—	19.36.331

SECTION 3. A new land use is added to the alphabetical list of land uses in Table 2-5 in Section 19.10.030 of Chapter 19.10 of Title 19 of the West Hollywood Municipal Code to read as follows:

LAND USE <sup>2</sup>	PERMIT REQUIRED BY ZONE						Specific Use Regulations
	CN	CC/SSP	CA	CR	PDCSP	PF <sup>3</sup>	
Short-term rental of a dwelling unit, or any portion thereof, for a period of thirty consecutive calendar days or less	—	—	—	—	—	—	19.36.331

SECTION 4. A new section 19.36.331, Short-Term Vacation Rentals, is added to Chapter 19.36 of Title 19 of the West Hollywood Municipal Code to read as follows:

A. Rental Prohibited. No person or entity shall offer or provide a dwelling unit, or any portion thereof, for rent for thirty (30) consecutive calendar days or less to any transient.

B. Advertisement. No person or entity shall maintain any advertisement of a rental prohibited by this section.

SECTION 5. The following definitions are added to the alphabetical list of definitions in Section 19.90.020 of Chapter 19.90 of Title 19 of the West Hollywood Municipal Code to read as follows:

Advertisement. Any printed or lettered announcement, whether in a magazine, newspaper, handbill, notice, display, billboard, poster, Internet website or application, or any other form.

Rent. Consideration charged, whether or not received, for the occupancy of space in a dwelling unit valued in money, whether to be received in money, goods, labor or otherwise.

Transient. Any person who exercises occupancy or is entitled to occupancy of a dwelling unit for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PASSED, APPROVED AND ADOPTED THIS \_\_\_\_ day of \_\_\_\_\_, 2015.

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MAYOR

ATTEST:

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City Clerk

Recent approaches taken by other jurisdictions since conclusion of the Task Force:

- In April of 2015, the **City of Malibu, CA** announced that Airbnb has agreed to collect and remit the TOT on behalf of property owners who use its service. Beginning April 20, 2015, Airbnb users will no longer have to register with the City, nor will they have to collect and submit quarterly tax returns to the City for vacation rentals within the City.
- In May of 2015, the **City of Santa Monica, CA** adopted the “Home-Sharing Ordinance,” adding to the City’s Municipal Code clarifying prohibitions of short-term vacation rentals and imposing regulations on home-sharing. The law becomes effective June 15, 2015 allowing eligible residents to apply for a business license to operate a home share and collect Transient Occupancy Tax (TOT) to remit to the City. Home-sharing is defined by the City of Santa Monica as an activity whereby the resident hosts visitors in their home, while at least one of the primary residents lives on-site throughout the visitor’s stay. The guest enjoys non-exclusive use of the unit with at least one of the persons who is domiciled at the location.
- In June of 2015, the **City of Santa Barbara, CA** began discussions regarding updating their existing policy which allows Vacation Rentals in specific zones within the City that obtain a Vacation Rental Business License registration and pay TOT to the City.
- In July of 2015, the **City of San Diego, CA** announced that Airbnb will begin collecting TOT and Tourism Marketing District taxes on behalf of hosts and remit the taxes to the City of San Diego. This process would begin on July 15, 2015 after the Comic-Con International Convention.

Examples of approaches taken by other jurisdictions shared with the Task Force:

- The **City of Sedona, Arizona** enacted a total ban on short-term rentals, consistent with its existing provisions prohibiting transient use in its residential zoning districts. The City cited its concern over the potential for increased traffic, noise, high occupant turnover, and density in single-family residential neighborhoods. Under its enforcement ordinance, it is a misdemeanor to rent or advertise any rental within the City’s residential zoning districts for less than 30 consecutive days.
- The **City of St. Helena, CA** enacted an ordinance creating a permitting system for a limited number (25 permits) of short-term vacation rentals for single family dwellings only. Permits are renewable after two years, limited to one per owner and two on-site parking spaces must be provided. The owner or his or her representative must be available by phone 24 hours a day and must be able to respond within 30 minutes of a call.

Inspection and house rules are required, and the owner must collect and remit the applicable TOT.

- **Sonoma County, CA** amended its zoning ordinance to permit short-term vacation rentals in rural, agricultural and low-density residential zoning districts pursuant to a zoning permit. Permits run with the owner, not the land, and ownership cannot be held by a corporation or LLC. Vacation rentals exceeding a 12 person overnight occupancy may apply for a use permit that will run with the land. The regulations also require on-site parking, noise limitations, TOT collection and remittance, posting of standards, and 24 hour contact information for neighbors within a 100 foot radius of the property boundaries.
- **Palm Springs, CA** allows owners of both single and multi-family residential dwellings to obtain an annual vacation rental registration certificate for rentals of 28 days or less. Registrants must abide by set safety, occupancy, contact information, noise, and TOT remittance standards. The City also established a “Hotline” for the purpose of receiving complaints regarding the operation of any vacation rental.
- In July of 2014, the **Portland, OR** City Council voted in favor of providing a simplified permitting process for short-term rentals of up to two bedrooms within a host’s primary residence. While the resident need not be present during the short-term rental period, he or she must reside in the dwelling at least 270 days of per year. The permit number must be displayed in all advertisements for the lodging. Portland and Airbnb have entered into an agreement in which Airbnb will collect and remit required TOT on bookings made through Airbnb’s website.
- **San Francisco, CA** approved a measure permitting short-term rental by permanent residents in multi-family dwellings who reside in their dwelling at least 275 days of per year.
- **San Luis Obispo, CA** has created two separate ordinances with one applying to vacation rentals and the other to what they classify as homestay properties.
- In **South Lake Tahoe, CA** all vacation rental owners must apply for a vacation home rental permit (\$210 as the 1<sup>st</sup> time fee and renewal of \$144 annually). They must pay and collect TOT similar to the hotels as well as the South Lake Tahoe Tourism Improvement District Tax (SLTTID). The SLTTID only applies to those homes that are agent managed and is assessed at \$4.50 per night. If the property is owner-managed, the SLTTID is not assessed. When a vacation home is sold, the permit and TOT certificate are not transferable.

- The **City of Rancho Mirage, CA** allows short-term rentals of 27 days or less with a business license (\$31) and a homeowners application form (\$100). The homeowner must remit the 10% TOT to the City. They also provide a Good Neighbor brochure with recommendations for homeowners. Requires a special event permit for gatherings in vacation rental properties that exceed the number of allowable overnight occupants on the premises. The ordinance also stipulates that no sound amplification device or musical instruments shall be audible outside the property at anytime.