

ORDINANCE NO. XX-2023

**AN ORDINANCE OF THE CITY OF FREMONT ADDING CHAPTER 5.100
SHORT-TERM RENTALS TO THE FREMONT MUNICIPAL CODE**

WHEREAS, the California Legislature has found that “California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives” (Government Code section 65589.5); and

WHEREAS, the Legislature has further found that “Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration” (Government Code section 65589.5); and

WHEREAS, the Legislature adopted the Housing Crisis Act of 2019 (SB 330) which states that “In 2018, California ranked 49th out of the 50 states in housing units per capita... California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built over 7 years;” and

WHEREAS, State Housing Element Law (Government Code section 65580 et seq.) requires the city to adopt a Housing Element for the eight-year period 2023-2031 to accommodate the City’s regional housing need allocation (RHNA) of 12,897 housing units, comprised of 3,640 very-low income units, 2,096 low-income units, 1,996 moderate-income units, and 5,165 above moderate-income units; and

WHEREAS, State law requires that the City take meaningful steps to promote and affirmatively further fair housing (Government Code section 65583(c)(5)); and

WHEREAS, the Housing Element must be adopted to comply with State law, accommodate the RHNA, affirmatively further fair housing, and facilitate and encourage a variety of housing types for all income levels, including multifamily housing (Government Code sections 65583.2 and 65583(c)); and

WHEREAS, on January 10, 2023, the City Council adopted the Housing Element after determining it to be consistent with State law and the City’s General Plan; and

WHEREAS, on March 22, 2023, the California Department of Housing and Community Development (HCD) certified the City’s 2023–2031 Housing Element, making Fremont the sixth city in Alameda County to receive State certification; and

WHEREAS, State law requires that the City review its Housing Element as frequently as appropriate to evaluate the progress of the City in implementation of its Housing Element (Government Code section 65588); and

WHEREAS, Program No. 9 in the Housing Element calls for the City to adopt and implement a Short-Term Rental Ordinance designed to prevent the conversion of units into short-term rentals; and

WHEREAS, Short-Term Rentals can also have negative impacts on a neighborhood such as trash, noise, and parking; and

WHEREAS, the proposed FMC Chapter 5.100 (Short-Term Rentals) is intended to implement a Program in the city's Housing Element and address the negative impacts associated with Short-Term Rentals; and

WHEREAS, on December 12, 2023, the City Council held a hearing, at which time all interested parties had the opportunity to be heard.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FREMONT DOES ORDAIN AS FOLLOWS:

SECTION 1. FMC TITLE V, CHAPTER 5.100 SHORT-TERM RENTAL ORDINANCE ADDED

Fremont Municipal Code Title 5, Chapter 5.100 is added to read as follows:

Chapter 5.100
Short-Term Rentals

- 5.100.010 Purpose and intent.
- 5.100.020 Definitions.
- 5.100.030 Short-term rental permit.
- 5.100.040 Regulations applicable to short-term rentals.
- 5.100.050 Requirements for all short-term rentals and operations.
- 5.100.060 Administrative Regulations.
- 5.100.070 Grant or denial of short-term rental permit.
- 5.100.080 Grounds for revocation or suspension of short-term rental permit.
- 5.100.090 Appeal of denial, revocation or suspension.
- 5.100.100 Violations a public nuisance; penalties.
- 5.100.110 Amnesty period for short-term rentals.

Section 5.100.010 Purpose and Intent.

The purpose of this chapter is to establish short-term rental standards that:

- (a) Allow limited short-term rental uses while preventing the loss of housing stock and protect affordable housing units from conversion;

(b) Preserve and protect neighborhood character and livability from adverse impacts that are often associated with short-term rentals; and

(c) Provide a registration process for the city to track and enforce these requirements.

Sec. 5.100.020 Definitions.

Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

(a) "Local contact person" means a natural person, whether the owner, host, or agent of the host, who is available 24 hours per day, seven days per week to respond to complaints regarding the condition, operation, or conduct of occupants of a short-term rental unit.

(b) "Bedroom" means 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 seventy square feet in area, is separated from other rooms by a door, and is accessible to a bathroom without crossing another bedroom. Notwithstanding the foregoing, a studio unit shall be considered a bedroom.

(c) "Dwelling unit" means "Dwelling unit" as defined in Chapter 18.25, Definitions.

(d) "Good neighbor guidelines" means guidelines prepared by the city, as may be revised from time to time regarding the general rules of conduct to be followed when operating a short-term rental.

(e) "Host" means a natural person or people who offer a short-term rental in their primary residence.

(f) "Hosting platform" means business or person that provides a means through which a host may offer a dwelling unit, or portion thereof, for short-term rentals. A hosting platform is usually, though not necessarily, provided through an internet-based platform. It generally allows a host to advertise the dwelling unit through a website provided by the hosting platform and provides a means for potential transients to arrange short-term rentals, whether the transient pays rent directly to the host or to the hosting platform.

(g) "Owner" means any person owning property, as shown on the last equalized assessment roll for city taxes, or the lessee tenant, or other person having control or possession of the property.

(h) "Primary residence" means the usual place of return for housing of an owner 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 host can only have one primary residence.

(i) "Short-term rental" or "short-term rental unit" means the use of any dwelling unit, or portions thereof for dwelling, sleeping or lodging purposes for less than 30 consecutive days. This definition excludes tourist hotels and residential hotels.

(j) "Short-term rental permit" means a permit to establish a short-term rental.

(k) "Transient" means any person who rents and or stays in a short-term rental.

Sec. 5.100.030 Short-term rental permit

(a) It shall be unlawful for any person or persons to establish, operate, or maintain a short-term rental without first obtaining a short-term rental permit pursuant to this chapter.

(b) Application for a short-term rental permit shall be submitted to the community development department, on a form provided by the community development director, which shall include, but not limited to, the following:

- (1) Contact information. The name, address, and telephone number of the owner (and host if different) of the subject short-term rental;
- (2) Owner consent. If the host is not the owner, the host must demonstrate written consent of the owner to operate a short-term rental on the property;
- (3) Proof of residence. Proof that the location of the proposed short-term rental is the primary residence of the host;
- (4) Address. The address of the proposed short-term rental;
- (5) Bedrooms. Number of bedrooms in the short-term rental;
- (6) Local contact person. The name, address, and 24-hour telephone number of the local contact person. Verification that the local contact person can respond in person to the site of the short-term rental unit within 60 minutes of notification of a complaint;
- (7) Parking. The location and dimensions of the off-street parking space(s) designated for the short-term rental;
- (8) Homeowners associations. For short-term rentals located in any area governed by a homeowners association or community association (association) and subject to CC&Rs, the owner must additionally submit a copy of a letter to the association's governing board stating the applicant's intent to operate a short-term rental unit and inviting the association to submit a letter to the city stating one of the following: (1) that short-term rentals are not prohibited at the proposed unit by the CC&Rs; or (2) that a short-term rental is allowed at the proposed unit under the CC&Rs, but only under certain conditions, and a statement of whether or not the conditions here are met; or (3) that the CC&Rs do not allow short-term rentals as defined herein;
- (9) Insurance. Proof of insurance as required in this chapter;
- (10) Good neighbor policy. A copy of the good neighbor policy, signed by the host, certifying that the host has read and understands the guidelines for responsible operation;

- (11) Life safety equipment certification. The host must attach a copy of the "Smoke Alarm & Carbon Monoxide Alarm Self Certification" for the property to be used as a short-term rental to the application in order to ensure the space has a fire extinguisher, smoke alarms and carbon monoxide alarms;
- (12) Other. Such other information as the community development director deems reasonably necessary to administer this section;
- (13) Acknowledgement. Certification that the host will comply with all provisions of this section and all regulations promulgated pursuant to this section or be subject to the revocation of his or her short-term rental permit;
- (14) Application fee. The initial application and each renewal application for a short-term rental 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 short-term rental permit application, the host shall submit an amended application on a form to be provided by the city and signed by the host within 30 days of any such changes. For the purposes of this subdivision, any change to the information required to be included in a short-term rental permit application by this subdivision shall constitute a material change. Failure to submit an amended short-term rental permit application may result in revocation of the short-term rental permit.

Sec. 5.100.040 Regulations applicable to short-term rentals.

- (a) Permitted in primary dwelling units only. Short-term rentals are permitted in primary dwelling units only. Short-term rentals are not permitted within accessory structures and buildings, accessory dwelling units (ADUs), junior accessory dwelling units (JADUs), guest house accessory buildings, recreational vehicles, or dwelling units constructed under the provisions of California Government Code sections 65852.21 and 66411.7 as may be amended.
- (b) Rentals per dwelling unit. A maximum of one short-term rental is permitted per dwelling unit at any given time.
- (c) Number of short-term rentals. A host may not have more than one short-term rental in the City of Fremont.
- (d) No annual limit. A short-term rental is allowed for an unlimited number of days during the calendar year.
- (e) Affordable units. Short-term rentals are not permitted in affordable units as defined in Chapter 18.155 (Affordable Housing).
- (f) Homeowners association. Short-term rentals may be prohibited by a homeowners association's Covenants Conditions and Restrictions (CC&Rs). All new short-term rental permit applications require a written approval letter from an HOA having authority over the property.

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

(h) Responsibility. Notwithstanding anything in this section , the owner shall not be relieved from any personal responsibility or personal liability for noncompliance with any applicable law, rule or regulation pertaining to the use and occupancy of the subject short-term rental, regardless of whether such noncompliance was committed by the owner or host or transients.

Sec. 5.100.050 Requirements for all short-term rentals and operations.

A short-term rental must conform to all of the following operating standards and requirements:

(a) Compliance. Owner, hosts, and transients of the short-term rental must comply with all applicable Federal, State, and local laws. The host must ensure compliance with this provision.

(b) Maximum occupancy. The maximum number of transients for a short-term rental shall not exceed two persons per bedroom.

(c) Off-street parking requirement. All parking associated with the short-term rental shall be entirely onsite, in the garage, carport and driveway or otherwise off the public street. Parking shall be only in designated or available parking spaces upon the property. This requirement does not apply in established transit-oriented development (TOD) overlay districts.

(d) Exterior alterations. The exterior of the dwelling unit must not be altered such that the structure appears to serve a nonresidential use.

(e) Signage. Signs that advertise the availability of the short-term rental are prohibited on or at the location of the short-term rental.

(f) Trash and refuse. Trash and refuse must be stored outside of public view, except in proper containers for the purpose of collection by the city's authorized waste hauler on scheduled trash collection days.

(g) Local contact person. The host must identify and designate a local contact person who must be available 24 hours per day, seven days per week, to respond to all complaints regarding the condition, operation or conduct of transients. The local contact person must respond in-person to complaints within 60 minutes.

(h) Liability insurance. Liability insurance for renting a dwelling unit or portion of a dwelling is required of the host, or hosting platform on behalf of the host, in the amount of no less than \$1,000,000. Proof of liability insurance is not required if hosting activity is only handled by a hosting platform that already extends similar liability coverage.

(i) Commercial and assembly uses prohibited. Short-term rentals are limited to dwelling, lodging, and sleeping purposes only. Use of the short-term rental for any other commercial uses, facility rentals, or assembly uses such as weddings, pool or sport court rentals, corporate events, or parties, is prohibited.

(j) Good neighbor guidelines required. The host must sign a Good Neighbor Guidelines provided by the city that summarizes general rules of conduct and all rules and regulations applicable to the use of the STR in this subsection and the Fremont Municipal Code. The host must post the guidelines on the inside of the front door and door to the backyard or in a conspicuous location near each door.

(k) Health and safety. It is the host's responsibility to assure that the short-term rental is and remains in compliance with all applicable codes regarding fire, building and safety, health and safety, and other relevant laws.

(l) Life-safety. The dwelling unit must have a functional smoke detector, a fire extinguisher, a carbon monoxide detector, and adequate egress, all as required by current codes and regulations.

(m) The host shall include the following information in any advertisement for a short-term rental:

- (1) The short-term rental permit number issued by the city;
- (2) The permitted occupancy of the short-term rental as specified in the short-term rental permit;
- (3) The permitted number of transient vehicles.

(n) Neighbor notification. After the city approves a short-term rental permit, the host shall notify properties within a 100-foot radius that a short-term rental has been established. Notification shall include the short-term rental permit number, and the contact information of the host and local contract persons. The host shall renotify all adjacent properties within one week of changes to such information.

(o) No Transfer or Assignment. A short-term rental permit may not be assigned or transferred to any other person or business.

(p) Indemnification. To the fullest extent permitted by law, the owner of a short-term rental must defend, indemnify, and hold the City of Fremont, its officials, officers, and employees free and harmless from any and all claims, demands, causes of action, damage or injury to persons or property arising out of any alleged acts, omissions, or willful conduct of the owner, host, its employees, or its agents.

Sec. 5.100.060 Administrative Regulations.

The city manager or designee is authorized to adopt administrative 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 section .

Sec. 5.100.070 Grant or denial of short-term rental permit

The director of community development may deny a short-term rental permit application for one or more of the following reasons:

- (a) The application is incomplete and the required supplementary documents were not submitted within 30 days of a request for these documents by the director of community development.
- (b) The applicant made a material misstatement or omission in the application or in a previous application. If the director of community development finds substantial evidence that an application contains a knowing or intentional material misstatement or omission, the director of community development must deny the application and the applicant is not eligible to reapply for one year.
- (c) The short-term rental, as proposed by the applicant, would not comply with all applicable laws including, but not limited to, the provisions of this code.
- (d) The applicant, if an individual, has not attained the age of 18 years.

Sec. 5.100.080 Grounds for revocation or suspension of a short-term rental permit

(a) In addition to any other remedy available to the city under this code or State law, a short-term rental permit may be suspended or revoked by the director of community development where it is found by substantial evidence that any of the following have occurred:

- (1) The permittee, or any person employed or retained by the permittee, has been found to have violated any provision of this chapter; or
- (2) Any of the conditions for denial of the short-term rental permit as listed in Section 5.100.070 of this chapter would apply; or
- (3) The permittee has been subject to a permanent injunction against the conducting or maintaining of a nuisance pursuant to this code, or section 11225 through 11235 of the California Penal Code, as may be amended, or any similar provision of law in any jurisdiction outside the State of California; or
- (4) The host or any employee or agent of the short-term rental has engaged in fraud or misrepresentation or has knowingly made a misstatement of material fact while working in or for the short-term rental; or
- (5) The permittee has continued to operate the short-term rental after the permittee's permit has been suspended; or

(b) Upon revocation of a short-term rental permit, the short-term rental shall immediately cease operation, and, if so ordered by the director of community development, no other short-term rental permit application shall be submitted for a 24-month period from the date of denial or revocation.

(c) Notice of denial - appeal. If an application for a short-term rental permit is denied pursuant to this section, the director of community development shall serve on the applicant by first class

mail, postage prepaid, a written notice of denial which shall specify the grounds for the denial and shall indicate the appeal procedures as set forth in subsection 5.100.90 of this code.

Sec. 5.100.090 Appeal of denial, revocation or suspension

(a) Written notice required. The director of community development, before revoking or suspending any short-term rental permit shall give the permittee at least 10 days' written notice of the revocation or suspension. The notice must state the effective date of the suspension or revocation, the length of any suspension imposed, and the alleged grounds for the revocation or suspension. The notice must be served on the permittee in person or by U.S. mail at the most recent home or business address on file with a proof of service.

(b) Written appeal. If a permittee wishes to contest a permit denial, proposed suspension or revocation, he or she must request a hearing within 14 days after notice of the intended denial, revocation or suspension is served as stated in subsection (a) of this section. The request must be served on the city clerk by mail or in person. If a permittee fails to timely or properly serve a hearing request, he or she waives the right to a hearing before denial, suspension or revocation.

(c) Hearing. If a hearing request is timely and properly served, a hearing must be held before a hearing officer designated by the city manager. The hearing officer's jurisdiction is limited to determining whether substantial evidence exists to provide grounds as specified in this chapter for denial, suspension or revocation of the permit. If the hearing officer finds that grounds do not exist for revocation but do exist for suspension, the hearing officer must order the permit suspended. The hearing officer's duties are to:

- (1) Receive evidence regarding the proposed denial, suspension or revocation;
- (2) Preserve the evidence whether or not it is admitted;
- (3) Record the hearing on audio tape and preserve the tape for the record; and
- (4) Decide whether grounds exist for the denial, suspension or revocation.

Both the permittee and the city have the right to appear and be represented by counsel, cross-examine witnesses, and present evidence and arguments whether good cause exists for suspension or revocation.

(d) Notice of decision. Within 14 days following the hearing, the hearing officer must issue a written decision that states whether the permit is denied, suspended, revoked, or that no grounds exist to deny, suspend or revoke the permit, the factual and legal basis for the decision, and a notice that the appellant may appeal any suspension or revocation as described in subsection (e) of this section . The decision of the hearing officer must be served on the appellant by U.S. mail with a proof of service. The hearing officer's decision is effective on the date the decision is personally served on or mailed to the parties.

(e) Appeal. The hearing officer's decision is subject to review under Code of Civil Procedure section 1094.6. Any request for review must be filed within 90 days of service of the hearing officer's decision. The City Council hereby expressly makes Code of Civil Procedure section 1094.6 applicable to all proceedings for review of decisions under this chapter.

Sec. 5.100.100 Violations a public nuisance; penalties.

(a) Any short-term rental unit operated, conducted, or maintained contrary to the provisions of this chapter shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the city attorney may commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law. Such remedies shall be in addition to any other judicial and administrative penalties and remedies available to the city.

(b) Pursuant to California Government Code section 36900(d), as may be amended and notwithstanding Chapter 1.20 and the provisions above, a violation of this section relating to a short-term rental that is an infraction and poses a threat to health or safety is punishable by the following:

- (1) A fine not exceeding \$1,500.00.
- (2) A fine not exceeding \$3,000.00 for the second violation.
- (3) A fine not exceeding \$5,000 for each additional violation of the same ordinance within one year of the first violation.
- (4) The fines in this subdivision shall not apply to a first-time offense of failure to register or pay a business license fee.

(c) A fine levied pursuant to paragraph (b) of this subdivision may be appealed to the community development director or designee in writing within ten calendar days of the date the citation is issued based on a showing that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount would impose an undue hardship on the responsible party.

Sec. 5.100.110 Amnesty Period for Short-Term Rentals.

Short-term rentals with a business tax ID operating on or before the enactment of this chapter shall apply for a short-term rental permit by December 31, 2024. Existing short-term rental hosts that have not applied for a short-term rental permit pursuant to this section on or before December 31, 2024, shall cease operation and be prohibited from resuming unless and until the short-term rental host has obtained a short-term rental permit.

SECTION 2. CEQA

The City Council finds, under Title 14 of the California Code of Regulations, section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing

a significant effect on the environment and under section 15378 in that the proposed ordinance is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. The Council therefore directs that a Notice of Exemption be filed with the Alameda County Clerk in accordance with the CEQA guidelines.

SECTION 3. 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 City Council of the City of Fremont 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.

SECTION 4. EFFECTIVE DATE

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 5. PUBLICATION AND POSTING

The City Clerk has prepared and published at least five days before the date of adoption, this ordinance once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within fifteen (15) days after adoption of this ordinance, the City Clerk shall cause this ordinance to be published again with the names of those City Council members voting for and against the ordinance. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the ___ day of _____, 2023, and finally adopted at a regular meeting of the city council held on the ___ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney