



FAIRFAX TOWN COUNCIL MEETING STAFF REPORT

MEETING DATE November 6, 2024

PREPARED FOR Mayor and Town Council

PREPARED BY Jeffrey Beiswenger, AICP, Planning & Building Services Director

SUBJECT PUBLIC HEARING: Introduce and read by title only an ordinance to amend zoning regulations related to short-term rentals updating the following chapters within Title 17 (Zoning) of the Fairfax Municipal Code: 17.008 ('Definitions'), 17.052 ('Off-Street Parking and Loading Requirements'), 17.084 ('RD-5.5-7 Residential Zone, High Density'), 17.088 ('RM Multiple-Family Residential'), 17.092 ('CL Limited Commercial Zone'), 17.096 ('CH Highway Commercial Zone'), and 17.100 ('CC Central Commercial Zone') and consider corresponding updates to the Short Term Rental Program.

CEQA Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to categorical exemption number 15301, Existing Facilities.

RECOMMENDATION

Conduct a public hearing, waive first reading, and read by title only an ordinance to amend zoning regulations related to short-term rentals updating the following chapters within Title 17 (Zoning) of the Fairfax Municipal Code: Chapters 17.008 ('Definitions'), 17.052 ('Off-Street Parking and Loading Requirements'), 17.084 ('RD-5.5-7 Residential Zone, High Density'), 17.088 ('RM Multiple-Family Residential'), 17.092 ('CL Limited Commercial Zone'), 17.096 ('CH Highway Commercial Zone'), and 17.100 ('CC Central Commercial Zone'); and

Adopt resolution to update the Short Term Rental Program, replacing Resolution 22-44 (Short Term Rental Program) in its entirety.

BACKGROUND

Short-Term Rentals (STRs) or vacation rentals have become commonplace and platforms such as Airbnb and VRBO make it easy for both hosts and guests to rent and find rentals. Like other cities and towns, Fairfax has adopted regulations for STRs, often using a service to assist with key aspects of a program, such as registration of units and program compliance. The Town of Fairfax currently uses the company Deckard and the company's Rentalscape software to help identify short-term rentals in Fairfax and assist with the registration process. An [on-line registration portal](#) has been established.

Letters have been sent to property owners who have been identified by Deckard as having active STRs and encouraged to register. The on-line portal is easy to use and allows owners to self-register, but staff has been actively helping those who need assistance or have questions. While twelve STRs have been able to register thus far, another nine property owners have pursued registration but do not qualify since the properties do not meet the criteria established in the Fairfax municipal code. As many as forty

or more STRs currently active on various platforms have ignored letters from the Town. Some STRs may have discontinued operating since receiving letters. No additional enforcement has taken place.





POLICY CONSIDERATIONS

Policy Consideration 1: Encourage STR Registrations and Compliance with Ordinance

In residential zoning districts, hotels or tourist lodgings are not commonly listed as permitted uses. Prior to 2022, the Fairfax municipal code was silent on STRs and the Town did not have a mechanism for identifying active STRs. Prior to the introduction of the short-term rental program in 2022, STRs were not permitted in any zone in Fairfax. Since listing platforms such as Airbnb and VRBO intentionally withhold exact locations of STRs from public view, it is difficult to find addresses and property owners without the help of a specialist service provider such as Deckard (Rentalscape).


Since Deckard has been actively finding STRs this year, Staff focused on informing STR operators on the regulations and either encouraging operators to register or desist in operating the STR altogether. Some STRs simply cannot qualify under the existing criteria and therefore cannot register.

A policy consideration moving forward, is how aggressively to enforce the municipal code as it relates to STRs. Due to limited staff resources, Fairfax operates on a complaint-based system for most code enforcement. STRs could be treated differently, since they are often hidden from view and can create negative impacts on the community that are different than typical nuisance impacts noticed by neighbors. These community-wide impacts include:

-  1. Competing with legally established commercial lodging establishments.
-  2. Dodging the local Hotel User Tax (HUT). This tax can be used by Fairfax to fund the STR program and offset some of the impacts from lodging use.
-  3. Removing long-term rental units from the market. Some property owners in Fairfax are choosing to list residential units as STRs instead of renting them out on a full-time basis as standard rental units. This exacerbates the existing deficit of available rental units for persons and families wishing to move to Fairfax.
-  Disruptive visitors. Since STRs are typically occupied by persons on vacation they may be more disruptive to the neighborhood and result in excessive noise, litter, parked cars, traffic, etc.

If considered a priority of the Town, staff could increase code enforcement activities related to unregistered and / or illegally operating STRs. This could include reaching out to the listing platforms for assistance in identifying non-compliant STRs. While considered to be the last resort by staff, the Town could pursue fines against illegally operating STRs. Based on the number of non-responses to letters sent thus far, it is likely that we will continue to have significant levels of non-compliance, even with active code compliance efforts.

Policy Consideration 2: Cost Recovery

 Due to the cost of monitoring and enforcing STRs it is unlikely that registration fees and Hotel User Tax (HUT) collected will generate significant revenue. It is expected that Fairfax could break even, over time,

in terms of revenues versus expenditures, assuming staff actively pursues unregistered and non-compliant STRs and collects registration fees and HUT.

When the STR ordinance was adopted in 2022, it was assumed that the Host Compliance (which became Granicus) contract would cost \$14,000 per year and approximately \$33,750 in HUT would be collected. Fairfax now uses Deckard (Rentalscape) monitoring software, which is more effective, but costs \$19,000 per year. Also in 2022, it was estimated that revenue generated would exceed the implementation costs of the program. The 2022 assumptions to determine the \$33,740 revenue value were as follows:

- \$150 average estimated nightly rate
- Annually estimated occupancy rate (low end): 30 days
- Number of estimated active STRs: 75

This estimate assumed that 100% of the STRs in the community will be eligible to register and that 100% of STR operators will comply with regulations. Current data suggest that less than 50% of STRs that attempt to register do not qualify to register as STRs and over 70% of those operating an STR are choosing not to register with the Town at all. According to Deckard (Rentalscape), the current values appear to be:

- \$255 average nightly rate (higher than predicted in 2022)
- Annual occupancy rate: 60 days (higher than predicted in 2022)
- Number of registered STRs: 12 (lower than predicted in 2022)
- Number of total STRs: 40-60 (highly variable)

Based on twelve registered STRs achieved so far, the Town could expect to collect HUT of \$18,360 and registration fees of \$1,800. Not sufficient to cover costs. However, if 20 to 30 annual registrations were achieved, then the Town would likely cover the cost of the monitoring software and staff implementation activities. To achieve this level of compliance, active enforcement would be required.

Policy Consideration 3: Protecting Rental Housing Supply

STRs are a way for property owners to realize additional income from property and are one way to potentially offset high Marin housing costs for those that own property. This should be balanced against impacts to neighbors and the community by allowing tourist accommodation within residential neighborhoods and the impact on the rental housing supply. Some STRs could instead be rented to full-time residents, so allowing STRs without any limitations may remove units from the housing supply.

The regulations as written are designed to allow STRs, only if they can meet the code requirements. The limits are put in place to protect the housing supply. The following is a summary of the current requirements to legally operate and register a STR in Fairfax:

- Unit can't be a duplex, triplex or any other dwelling unit that is not a single family home. In some cases, the owner of a duplex will live on the premises (lives in one unit and rents the other). Testimony at the Planning Commission indicates that STRs have been a source of income for some duplex owners that doesn't require a long-term tenant.

- Unit can't be an accessory dwelling unit (built after 2020). This is a limit imposed by State law. Other types of ADUs / JADUs can be used as short-term rentals.
- Primary residence. The intent of this requirement is to prevent a property owner who does not live in Fairfax as a permanent resident from renting out an STR. It is common practice for investors to buy property for use as permanent STRs. It should also be noted that the owner of a duplex unit who lives on the property, and lives in one of the duplex units and rents the second duplex unit would be ineligible as a STR, since the current requirement is that the STR is the primary residence of the person offering the STR and not just living next door on the same property.
- RS 7.5 Single-family Residential, Medium Density, RS-6 Single-family Residential Zone, High Density, and UR Upland Residential Zone. These are the only districts where STRs are currently permitted. Many STRs currently operating are in the RD 5.5-7 Residential zone and a few are located in commercial zones.
- Additional parking required. An STR requires that an extra parking space be available. The property must also comply with the current parking requirement, which is typically two spaces per unit. Some existing homes do not meet this requirement since the unit was built prior to the adoption of the current zoning ordinance parking requirements.

Table 1: Summary of Registration Denials

Location	Not allowed in duplex unit	Not primary residence	Does not Live on property	Not allowed in zone	Insufficient parking
1	X	X		X	
2	X	X		X	X
3	X	X		X	X
4			X		
5				X	
6				X	
7				X	
8					X
9					X

Table 1 provides a summary of reasons why certain properties were unable to register STRs. Three were duplexes which were ineligible for multiple reasons: (1) duplex units not eligible; (2) the unit is not the primary residence of the person offering the STR; (3) the unit is located in the RD-5.5-7 zoning where STRs are not permitted; and (4) parking is inadequate for two of the duplexes. One denied registrant was an owner/investor that did not live on-site in Fairfax. Three denied registrants were located in a zoning district where STRs are not permitted; two were owner-occupied, single family homes and the other was an eligible ADU that was constructed prior to 1/1/2020. Two properties qualified under the criteria except did not have sufficient parking.

Fairfax has many additional listed STRs that have not pursued registration at all, despite receiving letters from the Town. The number of STRs in the category varies, but approximately 20 to 30 are listed each month. Staff completed a cursory investigation of these STRs and it appears that many would be eligible to register, assuming owner occupancy and the availability of parking. It also appears that some STRs are within unpermitted construction (sheds, illegal additions, etc.) and these would not be eligible to register since occupancy is not allowed in unpermitted construction (and potentially dangerous).

The Town may wish to consider amendments to regulations that allow for more STRs to register with the Town and operate in accordance with the municipal code, see the options outlined in the next section of this staff report.

OPTIONS FOR CODE AMENDMENTS

Based on the identified limitations above with current regulations, the code could be amended to allow for the registration of additional STRs, while still achieving important policy objectives. In 2022, the Town Council adopted policies and regulations related to STRs. The Town Council set out to achieve the following: (1) allow for occupants of dwellings to rent an STR to help provide extra income; (2) regulate STRs to ensure that activities do not create a nuisance; (3) protect the rental housing supply; and (4) create a registration system to ensure compliance with regulations and allow for the collection of the Hotel User Tax (HUT).

The Planning Commission recommended the following code amendments:

1. Allow an STR to operate in any dwelling unit type. Under current regulations, only a single family home may be used as an STR. The recommended change would allow for an STR in any type of dwelling unit, but only if the unit is occupied by a permanent resident of the unit the majority of the time. This would require a change to the definition of a Short-Term Rental in Chapter 17.008 ('Definitions'), as follows:



Short-Term Rental. An existing ~~single-family~~ residence or portion of an existing ~~single-family~~ residence, or an Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling unit (JADU) established prior to January 1st, 2020, in which overnight accommodations are provided to guests for compensation that is rented for thirty (30) consecutive days or less. All short-term rentals must comply with the Short-Term Rental requirement contained in Town Code, Title 5, Division II ('Specific Business Regulations'), Chapter 5.57 ('Short-Term Rental Regulations').

2. Allow for an STR in any zoning district. Currently STRs are only allowed in three zoning districts:
 - o RS 7.5 Single-family Residential, Medium Density;
 - o RS-6 Single-family Residential Zone, High Density; or
 - o UR Upland Residential Zone.

Single family homes and other dwelling units are located throughout Fairfax and do not correspond to zoning designations. Staff recommends amending the zoning ordinance to expand where Short-Term Rentals are allowed. The amendments would add STRs as accessory uses in the following districts:

- o RD-5.5-7 Residential Zone, High Density
- o RM Multiple-Family Residential Zone
- o CL Limited Commercial Zone

- CH Highway Commercial Zone
- CC Central Commercial Zone

Each of these zoning districts contain a list of “Accessory Uses and Structures” and “Short-Term Rental” could be added to each list as follows:



Short-Term Rental uses contained within an existing structure permitted for residential use, as long as that structure is not an ADU/JADU established after January 1st, 2020.

3. Simplify the parking requirement and allow for a waiver if STR operators can demonstrate that additional parking is not needed or would have minimal impact on the neighborhood. Chapter 17.052.030 (‘Off-Street Parking and Loading Requirements’) would be amended as follows: Section 17.052.030 (‘Required Parking Spaces’)

<i>STR type</i>	<i>Required parking</i>
<i>House/portion of house</i>	<i>One 9 ft. x 19 ft. space for every four guests in addition to two spaces required for the long-term residents (if only a portion of the house is used as a STR)</i>
<i>JADU/ADU</i>	<i>One 9 ft. x 19 ft. space for units with up to two bedrooms & for studio units; one space for every four guests in units with three or more bedrooms</i>

[subsection (A) to (O), no changes]

(P) Short-term rentals (STR's).


- (1) Short-term rentals must provide one parking space for every four guests. In addition to the required parking for the existing residential use. comply with the following:*
- (2) If a short-term rental use meets all other requirements of the zoning ordinance, the applicant may apply for a waiver from the parking requirement, according to the procedures in Section 17.044.090 (Authority to Grant Waivers) and Section 17.044.100 (Application Requirements and Review Procedures for Waivers). The waiver may be approved, if one or more of the following conditions exist and the findings in Section 17.044.100 can be met:*
 - (a) Parking is available on the site, but it does not meet the standard size or configuration requirements specified in the code.*
 - (b) On-street or off-site parking is readily available within 300 feet of the site.*
 - (c) The applicant demonstrates that the unique characteristics of the Short-term Rental use does not necessitate additional parking.*

(d) *Providing additional parking has a negative environmental impact on the site (e.g. requiring removal a significant tree, requiring significant excavation, etc.).*


(3) *Upon approval of a waiver, notification to the applicant and property owners within 300 feet shall be provided with a notification of appeal rights under Chapter 17.036 (Appeals and Directed Referrals).*

Recommended Changes to the Short-term Rental Program

In 2022, the Town Council adopted Resolution 22-44 Short Term Rental Program. For consistency with the zoning ordinance, changes to this document should be considered by the Town Council. The following changes are recommended.

 Amend definition of Residential Unit. Under Section 3 (Definitions of the Short-term Rental Program), the definition of Residential Unit would need to change to allow for STRs in dwelling units that are not single-family, as follows:

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

 2. Consider amendments to property eligibility. The limitations under Section 4 (Property Eligibility) A (Eligible Property) limit STRs to only units that are occupied by the Host. This could be amended as follows to allow for STRs to be located on properties where the Host lives but where a separate unit exists (aka Duplex). It would require the following changes. Note that the Planning Commission **did not** recommend this change, since it would potentially take duplexes and other dwelling unit types off the long-term rental market:

“1) The Residential Unit is offered for Tourist Home Use by the Permanent Resident of the ~~residential use property upon which the residential unit is located.~~”

2) The ~~Residential Unit property~~ is the location of the Primary Residence of the Permanent Resident.”

3. Consider amendments to Section 4.B (Ineligible Properties). The limitations under this section restrict STRs in residential dwellings that happen to be located in a commercial zone. This would need to be changed to be consistent with the zoning amendment. The following strike-out would be required: ~~3) Commercial or industrial lots.~~

4. Eliminate Section 4.C (Properties with Multiple Residential Units). This section conflicts with changes to the zoning ordinance and should be deleted.

5. Most of the provisions related to parking should be eliminated from this document since parking requirements are typically found in the zoning ordinance and are not necessary here. This would require changes to Section 5. Program Requirements, as follows:

- Delete all subsection B. (Off-Street Parking Requirements)
 - Under C 1 (Property Registration, Property Information, strike out “(j) Parking Plan, where necessary per Section 5.B.1” since the zoning ordinance implements parking requirements.
 - Under C 3 (Interior Signage) strike out (d) Off-street Parking Requirements
6. Delete unnecessary reference to Hotel User’s Tax percentage. Under Program Requirements, subsection G (Hotel User’s Tax Collection and Remittance). The last sentence of the paragraph should be deleted since it is not necessary to provide this information here, as follows. “The Town’s current Hotel Users Tax is 10%”

Additional Planning Commission Recommendation

The Commission had the following additional recommendations for the Town Council to consider:

1. Consider a cap on number of days. The maximum number of days per year in which an STR could operate at one address could be established by the short-term rental program. The twelve STRs currently registered have had bookings ranging between 30 days a year to 180 days a year. The Planning Commission recommended a cap of 180 days. This could be added under Section 5 as a new subsection B, replacing the deleted parking section.



“A Short-term Rental shall only be permitted to operate on the subject property for a maximum of 180 days per calendar year, starting January 1 and terminating on December 31.”

2. The Planning Commission recommends that the Town Council consider raising the Hotel User’s Tax (HUT) to be consistent with other jurisdictions in the area. Fairfax currently has a rate of 10% which is less than other jurisdictions in the area. This is a separate action, since it would require other changes to the municipal code and additional research to determine a reasonable tax rate. It would also require a vote of Fairfax residents, so it would need to be placed on the ballot for an upcoming election.

Appeal Process

The current process for approving STRs is ministerial. Any decision made by staff can be appealed to the Town Council if the applicant feels that the decision was made in error. With the exception of the waiver process mentioned earlier in this staff report, notification to neighbors is not required for either the ministerial decision or the appeal hearing.

Enforcement of STR Regulations

Since March of this year, Town staff have mailed letters to all STRs identified by Rentalscape to encourage registration. Rentalscape identifies properties that are listed on websites such as AirBnb and VRBO. For enforcement purposes, the STRs can be divided into the following categories:

1. STRs that are registered with the Town.

Enforcement focus will be on HUT collection and monitoring.

2. STRs that attempted to register but could not register due to zoning or operational restrictions. These STRs have either ceased to operate or are continuing to operate in violation of Town code.

Enforcement focus will be to remind property owners that STRs cannot be operated in violation of the zoning ordinance and to notify AirBnb and VRBO that the addresses are ineligible.

3. STRs that have been identified by Rentalscape, have been notified by the Town, but have not yet registered. Many of these STRs may not qualify, but this is unknown at this time.

Enforcement focus will be to encourage registration and to contact AirBnb and VRBO that the addresses are ineligible unless registered.

4. STRs that have not been identified by Rentalscape since they are not advertised on AirBnb or VRBO, or the address has not been identified.

The AirBnb and VRBO websites intentionally do not provide addresses, so Rentalscape/Deckard identifies property addresses through other means. Many of the STRs listed on the site have not been identified by location, and therefore cannot be contacted unless a complaint from a neighbor is filed.

The focus of enforcement activities thus far has been to encourage STRs to seek registration, or to compel the host cease operating if the STR cannot meet the zoning criteria. Once the final zoning and short-term rental policy changes have been finalized in early 2025, staff can commence with enforcement activities with a firm set of regulations in place.

FISCAL IMPACT

Current data suggest that less than 50% of STRs that attempt to register do not qualify to register as STRs and over 70% of those operating an STR are choosing not to pursue registration with the Town at all, according to Deckard (Rentalscape). Based on **twelve registered** STRs achieved so far, the Town could expect to collect HUT of \$18,360 and registration fees of \$1,800. Not sufficient to cover costs. However, if 20 to 30 annual registrations were achieved, then the Town would likely **cover the cost** of the monitoring software and staff implementation activities. To achieve this level of compliance, active enforcement would be required which would require additional staff time or staff augment services from a qualified consultant.

ATTACHMENT

- A. Ordinance
- B. Resolution (redline version)
- C. Resolution (clean version)

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX REVISING REGULATIONS RELATED TO SHORT-TERM RENTALS BY AMENDING TOWN CODE TITLE 17 (ZONING), CHAPTERS 17.008 ('DEFINITIONS'), 17.052 ('OFF-STREET PARKING AND LOADING REQUIREMENTS'), 17.084 ('RD-5.5-7 RESIDENTIAL ZONE, HIGH DENSITY'), 17.088 ('RM MULTIPLE-FAMILY RESIDENTIAL'), 17.092 ('CL LIMITED COMMERCIAL ZONE'), 17.096 ('CH HIGHWAY COMMERCIAL ZONE'), AND 17.100 ('CC CENTRAL COMMERCIAL ZONE').

WHEREAS, on July 6, 2022 the Fairfax Town Council adopted an Ordinance to regulate the operation of short-term rentals in Fairfax as Town Code Chapter 5.57, Short-Term Rental Regulations; and

WHEREAS, on July 6, 2022, the Fairfax Town Council (Council) adopted an Ordinance amending Title 17 (Zoning) to allow short-term rentals within certain single-family zones and apply certain development standards by amending Chapters: 17.008 ('Definitions'), 17.052 ('Off-Street Parking and Loading Requirements'), 17.076 ('RS-7.5 Single-Family Residential Zone, Medium Density'), 17.080 ('RS-6 Single-Family Residential Zone, High Density'), and 17.124 ('UR Upland Residential Zone'); and

WHEREAS, the Council determined that it is necessary to regulate the short-term rentals to ensure that the short-term rental activities do not become a nuisance or threaten the public health safety or welfare of neighboring properties, while also assuring that their existence is regulated in a manner that allows the Town to maintain its long-term rental housing stock in Fairfax; and

WHEREAS, the Town Council has found that short-term rentals provide an added financial benefit to owners of residential properties and can help individuals meet their financial responsibilities and has documented with this resolution the intention of the Town to issue short-term rental business permits to the widest population base of permanent residents that are natural persons and not a business, corporation, et cetera; and

WHEREAS, after implementing the short-term rental program, Town staff identified that certain amendments to the Municipal Code could be warranted; and

WHEREAS, the Planning Commission conducted a public hearing on September 19, 2024 to consider zoning ordinance amendments, and continued the public hearing to October 17, 2024 for additional discussion and deliberation; and

WHEREAS, on October 17, 2024, the Planning Commission of the Town of Fairfax voted to recommend Town Council adoption of ordinance amendments; and

WHEREAS, a duly and properly noticed public hearing regarding the Ordinance was conducted by the Town Council on November 6, 2024, and the Town Council carefully considered all pertinent testimony and the staff report offered at the public hearing.

The Town Council of the Town of Fairfax does ordain as follows:

Section 1: Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.008 ('Definitions'), Section 17.008.020 ('Definitions') is amended as follows, with additions identified with an underline and deletions identified with a ~~strike-out~~:

Short-Term Rental An existing ~~single-family~~ residence, or an Accessory Dwelling Unit (ADU) or Junior Accessory Dwelling unit (JADU) established prior to January 1st, 2020, in which overnight accommodations are provided to guests for compensation that is rented for thirty (30) consecutive days or less. All short-term rentals must comply with the Short-Term Rental requirement contained in Town Code, Title 5, Division II ('Specific Business Regulations'), Chapter 5.57 ('Short-Term Rental Regulations').

Section 2: Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.052 ('Off-Street Parking and Loading Requirements'), Section 17.052.030 ('Required Parking Spaces') is amended as follows with additions identified with an underline and deletions identified with a ~~strike-out~~:

[subsection (A) to (O), no changes]

STR type	Required parking
<i>House/portion of house</i>	<i>One 9 ft. x 19 ft. space for every four guests in addition to two spaces required for the long-term residents (if only a portion of the house is used as a STR)</i>
<i>JADU/ADU</i>	<i>One 9 ft. x 19 ft. space for units with up to two bedrooms & for studio units; one space for every four guests in units with three or more bedrooms</i>

(P) Short-term rentals (STR's).

- (1) Short-term rentals must provide one additional parking space for every one to four guests, on-site, in addition to the required parking for the existing residential use. comply with the following:
 - (2) If a short-term rental use meets all other requirements of the zoning ordinance, the applicant may apply for a waiver from the parking requirement, according to the following:
 - (a) Apply under the procedures in Section 17.044.090 (Authority to Grant Waivers) and Section 17.044.100 (Application Requirements and Review Procedures for Waivers).
 - (b) The waiver may be approved if it can be demonstrated that the lack of parking will not result in undue hardship on adjacent properties and if one or more of the following conditions exist and the findings in Section 17.044.100 can be met:
 - (i) Parking is available on the site, but it does not meet the standard size or configuration requirements specified in the code.
 - (ii) On-street or off-site parking is readily available within 300 feet of the site.
 - (iii) The applicant demonstrates that the unique characteristics of the Short-term Rental use does not necessitate additional parking.
 - (iv) Providing additional parking has a negative environmental impact on the site (e.g. requiring removal a significant tree, requiring significant excavation, etc.).
 - (c) Upon approval of a waiver, notification to the applicant and property owners within 300 feet shall be provided with a notification of appeal rights under Chapter 17.036 (Appeals and Directed Referrals).
- ~~Preferential parking spaces and parking spaces located within the public right-of-way may not be used to meet the short-term rental parking requirements~~

~~unless the preferential parking was created for the main house and the entire main house is being used as a short-term rental unit.~~

Section 3: The following Zone Districts lists of permitted uses are amended as follows, with additions identified with an underline and deletions identified with a ~~strike-out~~:

Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.084 (RD-5.5-7 Residential Zone, High Density'), Section 17.084.040 ('Accessory Use and Structures') is amended to include subsection (E) Short-Term Rental uses contained within an existing structure permitted for residential use as long as the residential unit is not an ADU/JADU constructed prior to 1/1/2020.

Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.088 (RM Multiple-Family Residential Zone), Section 17.088.040 ('Accessory Use and Structures') is amended to include subsection (D) Short-Term Rental uses contained within an existing structure permitted for residential use as long as the residential unit is not an ADU/JADU constructed prior to 1/1/2020.

Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.092 (CL Limited Commercial Zone), Section 17.092.060 ('Accessory Use and Structures') is amended to include subsection (C) Short-Term Rental uses contained within an existing structure permitted for residential use as long as the residential unit is not an ADU/JADU constructed prior to 1/1/2020.

Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.096 (CH Highway Commercial Zone), Section 17.096.040 ('Accessory Use and Structures') is amended to include subsection (C) Short-Term Rental uses contained within an existing structure permitted for residential use as long as the residential unit is not an ADU/JADU constructed prior to 1/1/2020.

Fairfax Town Code, Title 17 ('Zoning'), Chapter 17.100 (CC Central Commercial Zone), Section 17.100.060 ('Accessory Use and Structures') is amended to include subsection (C) Short-Term Rental uses contained within an existing structure permitted for residential use as long as the residential unit is not an ADU/JADU constructed prior to 1/1/2020.

Section 4: The Town Council finds that this ordinance is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to categorical exemption number 15301, Existing Facilities.

Section 5: This Ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

Section 6: Copies of the forgoing ordinance shall, within fifteen days after its final passage and adoption, be posted in three public places in the Town of Fairfax which places are designated for that purpose:

1. Bulletin Board, Town Hall offices, located at 142 Bolinas Road, Fairfax;
2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard, Fairfax; and
3. Bulletin Board, Fairfax Women's Club building, located at 46 Park Road, Fairfax.

The foregoing ordinance was duly and regularly introduced at a special meeting of the Fairfax Town Council held in said Town on the 6th day of November, 2024, and thereafter adopted at a regular meeting of the Town Council, held in said Town on the 4th day of December, 2024

by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Attest:

_____, Mayor

Deputy Town Clerk

RESOLUTION 24-xx

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

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

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

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

WHEREAS, on November 6, 2022, the Town Council conducted a public hearing and introduced an ordinance to amend zoning regulations related to short-term rentals; and

WHEREAS, this resolution shall become effective only if the Town Code amendments introduced on November 6, 2024 are adopted by the Town Council and upon the effective date of those amendments.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council hereby adopts the following Policies and Procedures for the administration of the "Short Term Rental Program" ("Program") replacing all provisions contain within Resolution 22-24 in its entirety.

Section 1. Purpose and Intent

It is the purpose of this Program to benefit the general public by minimizing potential adverse impacts on the housing supply and on persons and households of all income levels resulting from the loss of residential units through their conversion to tourist home use. This is to be accomplished by regulating the conversion of residential units to tourist

home use, and through appropriate administrative and judicial remedies. Regulating short-term rentals ensures that short-term rental activities do not become a nuisance or threaten the public health safety or welfare of neighboring properties, while also assuring that their existence is regulated in a manner that allows the Town to maintain its long-term rental housing stock. Short-term rentals also provide an added financial benefit to owners of residential properties and can help individuals meet their financial responsibilities and thus remain in their homes.

Section 2. Applicability

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

Section 3. Definitions

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

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

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

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

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

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

DEPARTMENT. The Department of Planning and Building Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Property Eligibility

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

- 1) The Residential Unit is offered for Tourist Home Use by the Permanent Resident of the property upon which the residential unit is located~~Residential Unit~~;
- 2) The ~~r~~Residential property~~Unit~~ is the location of the Primary Residence of the Permanent Resident;

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

B. Ineligible Properties. The following property types are never eligible to be considered a Short-Term Rental and cannot register for the Short-Term Rental Program:

- 1) Income-restricted or deed-restricted affordable housing, including Below-Market-Rate (BMR) units and public housing;
- 2) Student housing, dormitories and Single-Room-Occupancy (SRO) buildings;
- ~~3) Commercial or industrial zoned lots;~~
- 4) ~~3~~ Non-residential areas within buildings, such as garages, storage areas or accessory structures
- 5) ~~4~~ Motorized Recreational Vehicles (RVs), including non-motorized travel trailers;
- 6) ~~5~~ Boats or House Boats;
- 7) ~~6~~ Teepees, yurts, tents, and treehouses;
- 8) ~~7~~ Sleeping Quarters in Vans or Cars;
- 9) ~~8~~ Properties with outstanding code violations.
- 10) ~~9~~ Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) created after January 1, 2020.

~~C. Properties with Multiple Residential Units. Properties with multiple residential units on a parcel can be offered as Short Term Rentals under the following condition:~~

- ~~1) Where a lot contains a single family dwelling and any combination of the following habitable spaces: an additional dwelling unit, an Accessory Dwelling Unit or Junior Accessory Dwelling Unit constructed and/or permitted prior to January 1, 2020, this lot may not offer as a Short Term Rental an entire single family dwelling and the additional habitable space concurrently. Rooms in a single family dwelling may be offered as a Short-Term Rental concurrently with habitable space only if the Permanent Resident is present throughout the duration of the rental.~~

Section 5. Program Requirements

A. Occupancy Limitations. Occupancy for any Short-Term Rental is limited to two (2) occupants per bedroom, as defined in the California Building Code. An additional two (2) occupants are allowed in Short-Term Rentals that provide a separate living space. In no instance can a Short-Term Rental provide a total occupancy that is greater than the capacity of the number of vehicles which can

be accommodated by the off-street parking requirements contained within Section 17.052.030 (Required Parking Spaces) of the zoning ordinance.

~~A. of Section 5.B. For the purposes of the Program, vehicle capacity is considered as four (4) individuals per vehicle.~~

~~B. Off Street Parking Requirements. Properties offered as Short Term Rentals must provide sufficient designated and easily identified off street parking spaces to meet the occupancy level offered by the Short Term Rental. If multiple Short Term Rentals are offered concurrently on the same property, separate designated off street parking spaces must be provided for each Short Term Rental offered. In no instance can the total occupancy of a Short Term Rental exceed the vehicle capacity of the designated off street parking available. For the purposes of the Program, vehicle capacity is considered as four (4) individuals per vehicle.~~

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

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

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

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

1) Property Information.

- (a) Primary Resident Name and Contact Information
- (b) Documentation of Primary Residency
- (c) 24-Hour Local Emergency Contact
- (d) Property Address
- (e) Type of Short-Term Rental, i.e., entire or portion of structure, Accessory Dwelling Unit, etc.
- (f) Occupancy
- (g) Number of Bedrooms

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- (h) Number of Bathrooms
- (i) Number of Designated Off-Street Parking Spaces
- ~~(j) Parking Plan, where necessary per Section 5.B.1~~

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

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

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

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

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

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

In addition to the information set forth here, the Department may require any other additional information necessary to show compliance with this Program. Upon the

Department's determination that an application for registration is complete, the unit shall be entered into the Short-Term Rental Registry and assigned an individual registration number.

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

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~~F.~~ ~~Waiver of Initial Registration Fee.~~ ~~For the first six months after the effective date of the ordinance codified in Chapter 5.57 ("Short-Term Rental Program") of the Town Code, the Department shall waive the initial registration fee to incentivize registration of Short-Term Rentals.~~

~~G.E.~~ Hotel User's Tax Collection and Remittance, The Hosts shall collect and remit Hotel User's Taxes to the Town on a ~~quarterly~~ ~~monthly~~ basis for each Short-Term Rental. ~~The Town's current Hotel Users Tax is 10%.~~

~~H.F.~~ Reporting Requirement. To maintain good standing on the Registry, the Host shall submit an annual report to the Department by January 15 of each year, regarding the number of days the Short-Term Rental ~~has been rented~~ ~~since~~ either initial registration or the last report, whichever is more recent, and any additional information the Department may require to demonstrate compliance with this Program.

~~I.G.~~ Annual Audit. Each calendar year, the Program may select five percent (5%) of registrations to be audited for Program compliance. This audit may be performed by the Program staff and may include:

- 1) Registration review;
- 2) Property Inspection;
- 3) Hotel User Tax payment review.

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

Section 6. Requirements for Hosting Platforms

- A. All Hosting Platforms shall provide the following information in a notice to any user listing a Residential Unit located within the Town of Fairfax through the Hosting Platform's service. The notice shall be provided prior to the user listing the Residential Unit and shall include the following information: that Fairfax Town Code Chapter 5.57 and this Program regulate Short-Term Rental of Residential Units; the requirements for registration of the unit with the Department; and the hotel user tax obligations to the Town.
- B. A Hosting Platform shall comply with the requirements of Title 5 (Business Taxes, Licenses and Regulations) and Chapter 3.32 (Hotel Users Tax) of the Fairfax Town Code, among any other applicable requirements, collecting and remitting all required taxes, and this provision shall not relieve a Hosting Platform of liability

related to an occupant's, resident's, Business Entity's, or Owner's failure to comply with the requirements of Title 5 and Chapter 3.32. A Hosting Platform shall maintain a record demonstrating that the taxes have been remitted to the Town.

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

Section 7. Administrative Enforcement Procedures

- A. Determination of Violation. Upon the filing of a written Complaint, the Director and/or third-party contractor shall take reasonable steps necessary to determine

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

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

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

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 6th day of November 2024, by the following vote:

AYES:
NOES:

ABSENT:

Barbara Coler, Mayor

Attest: _____
Christine Foster, Deputy Town Clerk

RESOLUTION 24-xx

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX UPDATING POLICIES AND PROCEDURES FOR THE ADMINISTRATION OF THE “SHORT-TERM RENTAL PROGRAM” AS SET FORTH IN FAIRFAX TOWN CODE CHAPTER 5.57

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

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

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

WHEREAS, on November 6, 2022, the Town Council conducted a public hearing and introduced an ordinance to amend zoning regulations related to short-term rentals; and

WHEREAS, this resolution shall become effective only if the Town Code amendments introduced on November 6, 2024 are adopted by the Town Council and upon the effective date of those amendments.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council hereby adopts the following Policies and Procedures for the administration of the "Short Term Rental Program" ("Program") replacing all provisions contain within Resolution 22-24 in its entirety.

Section 1. Purpose and Intent

It is the purpose of this Program to benefit the general public by minimizing potential adverse impacts on the housing supply and on persons and households of all income levels resulting from the loss of residential units through their conversion to tourist home use. This is to be accomplished by regulating the conversion of residential units to tourist

home use, and through appropriate administrative and judicial remedies. Regulating short-term rentals ensures that short-term rental activities do not become a nuisance or threaten the public health safety or welfare of neighboring properties, while also assuring that their existence is regulated in a manner that allows the Town to maintain its long-term rental housing stock. Short-term rentals also provide an added financial benefit to owners of residential properties and can help individuals meet their financial responsibilities and thus remain in their homes.

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

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

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

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

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

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

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

- 1) The Residential Unit is offered for Tourist Home Use by the Permanent Resident of the property upon which the residential unit is located;
- 2) The residential property is the location of the Primary Residence of the Permanent Resident;
- 3) The Permanent Resident is a natural person;

4) The Permanent Resident has registered the Residential Unit and maintains good standing with the Town of Fairfax and/or its third-party contractor and has no outstanding code violations or violations of the Town's Short-term Rental Program, fees or taxes.

B. Ineligible Properties. The following property types are never eligible to be considered a Short-Term Rental and cannot register for the Short-Term Rental Program:

- 1) Income-restricted or deed-restricted affordable housing, including Below-Market-Rate (BMR) units and public housing;
- 2) Student housing, dormitories and Single-Room-Occupancy (SRO) buildings;
- 3) Non-residential areas within buildings, such as garages, storage areas or accessory structures
- 4) Motorized Recreational Vehicles (RVs), including non-motorized travel trailers;
- 5) Boats or House Boats;
- 6) Teepees, yurts, tents, and treehouses;
- 7) Sleeping Quarters in Vans or Cars;
- 8) Properties with outstanding code violations.
- 9) Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) created after January 1, 2020.

Section 5. Program Requirements

A. Occupancy Limitations. Occupancy for any Short-Term Rental is limited to two (2) occupants per bedroom, as defined in the California Building Code. An additional two (2) occupants are allowed in Short-Term Rentals that provide a separate living space. In no instance can a Short-Term Rental provide a total occupancy that is greater than the capacity of the number of vehicles which can be accommodated by the off-street parking requirements contained within Section 17.052.030 (Required Parking Spaces) of the zoning ordinance.

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

1) Property Information.

- (a) Primary Resident Name and Contact Information
- (b) Documentation of Primary Residency
- (c) 24-Hour Local Emergency Contact
- (d) Property Address

- (e) Type of Short-Term Rental, i.e., entire or portion of structure, Accessory Dwelling Unit, etc.
 - (f) Occupancy
 - (g) Number of Bedrooms
 - (h) Number of Bathrooms
 - (i) Number of Designated Off-Street Parking Spaces
- 2) Property Inspection. As part of the registration process, an inspection must be conducted of the Short-Term Rental, in a form prescribed by the Program. This inspection may be conducted and certified by the Primary Resident, and shall include (but is not limited to):
- (a) Egress
 - (b) CO2 and Smoke Detectors
 - (c) Interior Signage
 - (d) Designated Off-Street Parking

For Short-Term Rentals located within a Wildland-Urban Interface as defined in Fairfax Town Code § 8.06.017, the registrant must provide a copy the defensible space report as part of the Program Registration.

- 3) Interior Signage. Properties offered as Short-Term Rentals shall have a clearly visible and legible notice posted on or directly adjacent to the inside of the front door, containing the following information:
- (a) 24-Hour Local Emergency Contact Person
 - (b) Maximum number of occupants
 - (c) Maximum number of vehicles
 - (d) Garbage/Recycling/Compost/Disposal Instructions
 - (e) Information regarding Fire Safety and Fire Access Roads
 - (f) Emergency and Wildfire Evacuation Procedures
 - (g) Information on signing up for emergency alerts
 - (h) Information on Fairfax Noise Ordinance

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

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

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

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

Section 6. Requirements for Hosting Platforms

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

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

Section 7. Administrative Enforcement Procedures

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

violations of this Program and/or Fairfax Town Code Chapter 5.57 shall be conducted in accordance with Fairfax Town Code Chapter 1.08 and/or Fairfax Town Code Chapter 1.10.

C. Administrative Penalties for Violations and Enforcement Costs. Administrative Penalties and Enforcement Costs for violations of this Program and/or Fairfax Town Code Chapter 5.57 shall be imposed in accordance with Fairfax Town Code Chapter 1.08 and/or Fairfax Town Code Chapter 1.10.

D. Revocation of Registration. A Short-Term Rental registration issued under the terms of the Program shall be revoked by the Director at any time if they conclude any of the following:

- 1) The Short-Term Rental is not current on hotel user taxes and has not paid all such taxes to the Town in full by the date upon which such taxes became due.
- 2) There have been three or more upheld citations for violations of the Fairfax Town Code at the Short-Term Rental property within a twenty-four (24) month period. For the purposes of this subsection, upheld citations means citations which were neither overturned after contest or appeal nor dismissed.
- 3) The Short-Term Rental applicant has submitted a Short-Term Rental application containing a material misrepresentation or omission of material facts.
- 4) There has been a transfer or an attempt to transfer a Short-Term Rental registration to another person, entity, or property.

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

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 6th day of November 2024, by the following vote:

AYES:

NOES:

ABSENT:

Barbara Coler, Mayor

Attest: _____
Christine Foster, Deputy Town Clerk