

ORDINANCE NO. O2023.01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING TEMPE CITY CODE, BY ADDING A NEW ARTICLE TO CHAPTER 16A RELATING TO REGULATING SHORT TERM RENTALS AND VACATION RENTALS; INCORPORATING THE RECITALS BY REFERENCE; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; REQUIRING A LICENSE TO OPERATE A SHORT TERM RENTAL OR VACATION RENTAL WITHIN THE CITY OF TEMPE BOUNDARIES; ESTABLISHING REGULATIONS; ADOPTING NOTIFICATION AND DISCLOSURE REQUIREMENTS; ADOPTING INSURANCE REQUIREMENTS; ADOPTING APPLICATION FEES; ESTABLISHING FINES AND PENALTIES FOR VIOLATIONS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS local governments may regulate short-term rentals and vacation rentals (“short-term rentals”) except as limited by Arizona Revised Statutes (“A.R.S.”) § 9-500.39;

WHEREAS the City of Tempe deems it necessary to adopt certain regulations regarding the use of property as a short-term rental to protect the health, safety, and welfare of the City of Tempe residents;

WHEREAS a central and significant goal for the City of Tempe is to protect the health, safety, and welfare of the City of Tempe residents, preserve its housing stock, and maintain the quality and character of residential neighborhoods;

WHEREAS the City of Tempe will require all short-term rentals to obtain and maintain a valid City of Tempe license, pay license fees, provide an emergency point of contact to respond to complaints and emergencies in a timely manner, maintain insurance, provide neighbor notification, and disclose certain information about the short-term rental in each advertisement;

WHEREAS the City of Tempe will require all short-term rentals to obtain and maintain a valid transaction privilege tax (“TPT”) license number and provide proof of the TPT license to the City of Tempe;

WHEREAS the City of Tempe retains the right to change its fees after review and approval from Tempe City Council;

WHEREAS the City of Tempe deems it necessary to establish penalties and fines that apply to short-term rentals; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE ARIZONA, as follows:

Section 1. That Chapter 16A of the Tempe City Code is hereby amended to add a new Article to read as follows:

ARTICLE XI. SHORT-TERM RENTALS AND VACATION RENTALS

Sec. 16A-211 Purpose.

Sec. 16A-212 Definitions.

Sec. 16A-213 License Required; Penalties.

Sec. 16A-214 Emergency Point of Contact Requirements; Penalties.

Sec. 16A-215 Compliance with the Law; Prohibited Uses.

Sec. 16A-216 Neighbor Notification Required.

Sec. 16A-217 Advertisement Requirements.

Sec. 16A-218 Insurance Required.

Sec. 16A-219 Background Checks Required.

Sec. 16A-220 License Suspensions.

Sec. 16A-221 Enhanced Penalties.

Sec. 16A-222 Appeals.

Sec. 16A-223 Judicial Relief.

Sec. 16A-224 Severability.

Sec. 16A-211 Purpose.

This Article is adopted to protect the health, safety, and welfare of the community of the City of Tempe by enacting reasonable regulations for short-term rentals and vacation rentals. These regulations are in addition to other codes of the City.

The Licensing Officer is responsible for administering the provisions of this Article, including the issuance, denial, and suspension of licenses. Pursuant to these responsibilities, the Licensing Officer has the authority to create rules, regulations, and policies consistent with the purpose of this Chapter. The Tempe Police Department, Community Development, and any other City department, division, or official designated by the City Manager or designee is authorized to enforce the provisions of this Article.

Sec. 16A-212 Definitions.

In this Article, unless the context or definitions in A.R.S. § 9-500.39 indicate otherwise, the following terms or phrases are defined as follows:

“Advertisement” means any method of soliciting the use of property for short-term rental or vacation rental purposes.

“Applicant” means the owner or owner’s designee who applies with the City for a license or renewal of a license.

“Days” shall mean calendar days unless stated otherwise.

“Designee” and “Agent” are interchangeable for purposes of this Article and mean any person or persons with the charge, care, or control of any property, dwelling unit, or portion thereof. “Designee” includes the “emergency point of contact.”

“Emergency point of contact” means the owner or individual designated by the owner to: (i) serve as the local twenty-four (24) hour emergency point of contact for the short-term rental; and (ii) respond to complaints and emergencies relating to the short-term rental in a timely manner as required by this Article.

“License” and “Permit” are interchangeable for purposes of this Article and mean authorization by the City to operate a short-term rental in accordance with this Article.

“Licensing Officer” means the Financial Services Director, or the individual designated by the Financial Services Director to administer this Article.

“Nonresidential use” means any use that is not permitted in a residential zoning district pursuant to Tempe City Code Section 3-102 Permitted Uses in Residential Districts.

“Online Lodging Marketplace” has the same meaning prescribed in A.R.S. § 42-5076.

“Owner” means any person who, alone or with others, has title or interest in a property, dwelling unit, or portion thereof, with or without accompanying actual possession thereof, and includes any person who as agent, executor, administrator, trustee, or guardian has charge, care, or control of any property, dwelling unit, or portion thereof.

“Person” means an individual, public entity, firm, corporation, partnership, limited liability company, trust, association, or any other business entity or juridical person, whether operating on a for-profit or nonprofit basis.

“Short-term rental” and “vacation rental” are interchangeable for purposes of this Article and mean any individually or collectively owned single-family or one-to-four-family house or dwelling unit, or any unit or group of units in a condominium or cooperative, that is also a transient public lodging establishment or owner-occupied residential home offered for transient use. “Short-term” or “vacation rental” does not include:

(i) accommodations or property that is classified for property taxation under A.R.S. § 42-12001; or

(ii) any unit that is used for any nonresidential use, including a special event that would otherwise require a permit, retail, restaurant, banquet space, or other similar use.

“Special Event” has the same meaning prescribed in Tempe City Code Section 5-2 Temporary special events or activities

“Timely Manner” means within thirty (30) minutes of the initiation of contact with the emergency point of contact regarding a complaint, incident, or emergency associated with a short-term rental for which public safety personnel are dispatched; and within twenty-four (24) hours of the initiation of contact with the emergency point of contact regarding all other complaints, incidences, and emergencies associated with a short-term rental. “Initiation of Contact” means the first actual contact or documented attempt to contact, such as leaving a voicemail at the designated number for the emergency point of contact or sending an email to the designated email address for the emergency point of contact.

“Transaction privilege tax license” is the license issued by the State of Arizona pursuant to A.R.S., Title 42.

"Transient" has the same meaning prescribed in A.R.S. § 42-5070.

Sec. 16A-213 License Required; Penalties.

(A) *License required.* Prior to use of a property as a short-term rental, the owner of shall obtain an annual short-term rental license from the City. Renting, or offering for rent, a short-term rental without complying with the license requirement in this Section 16A-216 is prohibited.

(B) *License applications.* The owner of a proposed short-term rental shall submit to the City a license application on a form furnished by the City. The license application shall be signed by the applicant and shall contain the following minimum information, which shall be made publicly available:

(1) The physical address of the residential property proposed to be used as a short-term rental.

(2) The name, address, and telephone number of the owner for which the short-term rental registration certificate is to be issued. If the property owner is an entity, the legal name of the entity and its statutory agent.

(3) The name, address, and telephone number of each designee of the owner, if any.

(4) The full name, address, and twenty-four (24) hour telephone number of the individual who will serve as the emergency point of contact.

(5) Proof of a valid transaction privilege tax license.

(6) Acknowledgment by the owner of an agreement to comply with all applicable laws, regulations, and ordinances, including the requirement that the owner and each designee shall not be a registered sex offender, been convicted of any felony act that resulted in death or serious physical injury, or been convicted of any felony use of a deadly weapon within the past five years.

(7) Attestation of compliance with the notification required in this Article.

(8) Evidence of liability insurance appropriate to cover the short-term rental in the aggregate of at least \$500,000 or evidence that each short-term rental transaction will be provided through a platform that provides equal or greater primary liability insurance coverage for the short-term rental.

(9) Evidence the short-term rental property is registered with Maricopa County Assessor's Office in accordance with A.R.S. § 33-1902 and Tempe City Code Section 21-25. A short-term rental of a room or rooms within a property is exempt from this requirement.

(10) If the applicant is an individual, proof of lawful presence in the United States in accordance with A.R.S. §§ 1-502 and 41-1080.

(C) *License fee.* Every application, including any renewal application, for each short-term rental license under this Article shall be accompanied by a non-refundable fee of \$250. For any new short-term rental license issued by the City on or after July 1 of any calendar year, the short-term rental license for the remaining portion of the calendar year shall be imposed at a twenty-five percent (25%) discount of the annual short-term rental license fee.

(D) *Issuance; reasons for denial.* The City shall issue or deny the license within seven (7) business days after receipt of a complete application, except that the City may deny issuance of a license for any of the following reasons:

(1) The applicant failed to provide the information required under subsection B;

(2) The applicant failed to pay the license fee required under subsection C;

(3) The applicant provided false information;

(4) The owner or designee of the owner: (i) is a registered sex offender; (ii) has been convicted of any felony act that resulted in death or serious physical injury; or (iii) has been convicted of any felony use of a deadly weapon within five (5) years of submitting the application; or

(5) At the time of application, the owner has a suspended license for the same short-term rental or any of the following applies: (a) one violation at the short-term rental that resulted in or constituted any of the offenses described in Sec. 16A-221; or (b) three violations of this Article at the vacation rental within a twelve (12) month period, not including an aesthetic, solid waste disposal or vehicle parking violation that is not also a serious threat to public health and safety.

(E) *Notice of denial; appeal.* The City shall give notice of the denial of an application to the applicant by mailing or emailing the notice to applicant at the address listed on the application. The notice of the denial shall inform the applicant of the right to appeal the denial as provided for in Sec. 16A-222.

(F) *Maintaining Accurate Information; Violations.* All applicants and persons holding licenses issued pursuant to this Article shall give written notice to the City of any change in information submitted in connection with an application for a license or renewal of a license. The notice shall be provided to the City not less than ten (10) days prior to the effective date of the change. Any information required for an application under Sec. 16A-213 is deemed to be material for purposes of this Section 16A-213. A violation of this subsection is a civil offense.

(G) *Term of License; Renewal application.* A license issued pursuant to this article may be renewed by the Financial Services Director or designee for successive annual periods following the initial license if the license holder is in compliance with this Article. Licenses shall expire annually on December 31. If a license is not timely renewed, a short-term rental is considered to be operating without a license and is subject to penalties imposed by the city. Licenses which are not renewed within thirty (30) days after expiration shall be deemed cancelled and subject to the original application process. Except where the City has received a new application along with the requisite fees, it shall be unlawful for any person to operate a short-term rental after the expiration date recorded upon the face of the short-term rental license.

(H) *Operating Without a License; Penalties.* A short-term rental that fails to apply for a license within thirty (30) days of the license application being made available by the City shall immediately cease operations. In addition to any other penalty pursuant to the City Code, the City may impose a civil penalty of up to \$1,000 per month against the owner if the owner or owner's designee fails to apply for license within 30 days of receiving the written notice of violation from the City. Representations or advertisements including online listings that reference the property, house or dwelling unit location within the City is prima facie evidence that a short-term rental is operating in the City.

(I) *Non-transferable.* No license shall be transferable either as to location or as to person.

(J) *Implementation.* The Licensing Officer or designee shall develop the necessary forms and/or database necessary to implement this Section 16A-213.

Sec. 16A-214 Emergency Point of Contact Requirements; Penalties.

(A) *Emergency Responses; Violations.* The owner or emergency point of contact whose name appears on the license application must be available over the phone or text, within 30 minutes of

the initiation of contact with the emergency point of contact regarding a complaint, incident, or emergency associated with a short-term rental for which public safety personnel are dispatched.

(B) *Non-emergency Responses; Violations.* The owner or emergency point of contact shall respond to all other complaints relating to the short-term rental in person, over the phone, by e-mail, or by text within twenty-four (24) hours of the initiation of contact with the emergency point of contact regarding a non-emergency complaint or incident associated with a short-term rental.

(C) *Maintaining Accurate Emergency Information.* All applicants and persons holding licenses issued pursuant to this Article shall give prior written notice to the City of any change to the contact information provided to the City for the emergency point of contact. The notice shall be provided to the City not less than ten (10) days prior to the effective date of the change.

(D) *Violations.* In addition to any other penalty pursuant to the City Code a violation of this Sec. 16A-214 shall be a civil offense.

(E) *Penalties.* In addition to any other penalty pursuant to the City Code, an owner shall be subject to civil penalties of up to \$1,000 for every thirty (30) days the owner fails to provide notice to the City as required under this subsection. Before imposing the initial civil penalty, the City shall provide thirty (30) days' notice to the owner by emailing or mailing a notice of violation to the owner's email address or mailing address that was provided to the City. The notice of the violation shall inform the applicant of the right to appeal the denial as provided for in Sec. 16A-222. Notwithstanding the date of the notice of violation, the date for calculating the penalties shall be the first day the short-term rental is occupied following the owner's failure to provide the notice to the City regarding the change.

Sec. 16A-215 Compliance with the Law; Prohibited Uses.

(A) A short-term rental shall comply with the federal, state, and local laws, including laws relating to public health and safety, sanitation, solid waste, hazardous waste, tax privilege licensing, property tax registration, traffic control, pollution control, noise, property maintenance, and nuisance abatement.

(B) No person or entity shall operate a short-term rental in violation of this Article or other law. In addition, the use of a short-term rental property for any of the following uses or purposes is strictly prohibited:

- (1) Any nonresidential use;
- (2) Holding a special event that requires a permit or license pursuant to a city or town ordinance or state law or rule;
- (3) Operating a retail business, restaurant, event center, banquet hall or similar use;
- (4) Housing sex offenders;

- (5) Operating or maintaining a sober living home;
- (6) Selling liquor, illegal drugs, or pornography;
- (7) Operating a nude or topless dancing;
- (8) Obscenity;
- (9) Adult-oriented business; or
- (10) Any other use prohibited by A.R.S. § 9-500.39 or the City Code.

(C) A short-term rental lacking a valid transaction privilege tax license issued by the State of Arizona shall not be rented or offered for rent.

(D) No person or entity may receive payment or accept a fee, directly or indirectly, for facilitating the rental of a short-term rental operating in violation of this Code or other law.

(E) In addition to any other penalty pursuant to the City Code, any person who causes, allows, facilitates, aides, or abets any violation of this Article shall be subject to a civil offense.

(F) The failure of any designee to comply with this Article shall not relieve the owner of liability under this Article.

Sec. 16A-216 Neighbor Notification Required.

(A) *Neighbor notification.* Prior to offering a short-term rental for rent for the first time, the owner or designee shall provide neighbor notification to each single-family residential property adjacent to the short-term rental property, directly across from the short-term rental property, and diagonally across the street of the short-term rental property. If the short-term rental is a multiple-residence unit, notice shall be provided to the owners or residents of all residential units located on the same floor of the same building as the short-term rental. The neighbor notification shall be provided in writing in the form required by the City and shall include the following minimum information:

- (1) The license number issued by the City;
- (2) The physical address of the vacation rental; and
- (3) The name, physical address, email address, and twenty-four (24) hour telephone number of the emergency point of contact.

(B) *Additional neighbor notification required.* Any change to the information provided under Subsection A of this Sec.16A-216 shall require additional neighbor notification by the owner or designee not later than five (5) days prior to each change. The additional notification shall be provided in the manner required by subsection A of this Section 16A-216.

(C) *Attestation.* At the time of the application and prior to offering a short-term rental for rent for the first time, the owner or designee shall provide to the City an attestation of compliance with the neighbor notification required by this Section 16A-216.

(D) *Violations.* In addition to any other penalty pursuant to the City Code, a violation of this Section 16A-216 shall be a civil offense.

Sec. 16A-217 Advertisement Requirements.

(A) *Required Disclosure.* To protect the peace, health, safety, and general welfare of the City's residents and visitors, the owner or owner's designee shall be responsible for displaying the short-term rental license number issued by the City on each advertisement for such short-term rental.

(B) *Violations.* In addition to any other penalty pursuant to the City Code, a violation of this Section shall be a civil offense. Each advertisement in violation of this Section 16A-217 shall constitute a separate violation.

Sec. 16A-218 Insurance Required.

(A) *Required insurance.* Prior to offering or renting a short-term rental for rent for the first time, liability insurance appropriate to cover the short-term rental in the aggregate of at least \$500,000 shall be provided by the owner or the online marketplace platform.

(B) *Proof of insurance.* Within thirty (30) days of obtaining a short-term license issued pursuant to this article, the owner or owner's designee shall provide evidence to the city of liability insurance to cover the short-term rental in the aggregate of at least five hundred thousand dollars (\$500,000) or evidence that each vacation rental or short-term rental transaction will be provided through an online lodging marketplace that provides equal or greater primary liability insurance coverage for the short-term rental.

(C) *Violation.* In addition to any other penalty pursuant to the City Code, a violation of this Section 16A-218 shall be a civil offense. Each day a short-term rental lacks the insurance required by this Section 16A-218 shall constitute a separate violation.

Sec. 16A-219 Background Checks Required.

(A) No later than twenty-four (24) hours before every stay the Owner or Owner's Designee shall perform a background check on the person booking a vacation rental or short-term rental through the online national sex offender public website operated by the United States Department of Justice to ensure that there are no sex offenders at the vacation rental or short-term rental.

(B) The Owner or Owner's Designee shall retain a record (either in hard copy or electronic form) of the background check on the person booking the property for twelve (12) months after the

booking date. Records of each background check shall be made available for inspection by the City upon demand during normal business hours.

(C) The requirements of subsections A and B above are satisfied and/or waived if the online lodging marketplace on which the vacation rental or short-term rental is advertised performs the background check.

(D) In addition to any other penalty pursuant to the City Code, any person who violates this Section 16A-219 shall be subject to a civil offense.

(E) The failure of an online lodging marketplace to conduct a background check shall not relieve the owner of liability under this Section 16A-219.

Sec. 16A-220 License Suspensions.

(A) *License suspensions.* The Licensing Officer may initiate an administrative process to suspend a short-term rental license for a period of up to twelve (12) months for any of the following:

(1) Three verified violations of this Article within a twelve (12) month period, not including any such violation based on an aesthetic, solid waste disposal or vehicle parking violation that is not also a serious threat to public health and safety.

(2) One verified violation that results in or constitutes any of the following:

(a) A felony offense committed at or in the vicinity of a short-term rental by the owner of the short-term rental or by the owner's designee;

(b) A serious physical injury or wrongful death at or related to a short-term rental resulting from the knowing, intentional or reckless conduct of the owner of the short-term rental or the owner's designee;

(c) The owner of the short-term rental or the owner's designee knowingly or intentionally housing a sex offender, allowing offenses related to adult-oriented businesses, sexual offenses, or prostitution, or operating or maintaining a sober living home; or

(d) The owner of the short-term rental or the owner's designee knowingly or intentionally allowing the use of a vacation rental for a special event that would otherwise require a permit or license pursuant to the City Code or a state law or rule or for a retail, restaurant, banquet space or other similar use.

(B) *Appeals.* A decision to suspend a license may be appealed by the owner as set forth in Sec. 16A-222.

Sec. 16A-221 Enhanced Penalties.

(A) The remedies in this Article are cumulative and the city may proceed under one or more such remedies.

(B) In addition to any other penalty pursuant to the City Code, and notwithstanding any other law, the City may impose a civil penalty of the following amounts against an owner if the owner causes, allows, facilitates, aides, or abets a verified violation of any provision of this Article or fails to perform any act or duty required by this Article, related to the same short-term rental property within the same twelve-month period:

(1) Up to \$500 or up to an amount equal to one night's rent for the short-term rental as advertised, whichever is greater, for the first violation.

(2) Up to \$1,000 or up to an amount equal to two nights' rent for the short-term rental as advertised, whichever is greater, for the second violation.

(3) Up to \$3,500 or up to an amount equal to three nights' rent for the short-term rental as advertised, whichever is greater, for a third and any subsequent violation.

If multiple violations arise out of the same response to an incident at a short-term rental, those violations are considered one violation for the purpose of assessing civil penalties.

(C) In addition to any other penalty pursuant to the City Code, any property that operates as a short-term rental and fails to apply for short-term rental license in accordance with this Article within thirty (30) days of the application process being made available by the City, must cease operations immediately. In addition to any fines imposed pursuant to this Section, the City may impose a civil penalty of up to one thousand dollars (\$1,000) per month against the owner if the owner or owner's designee fails to apply within thirty (30) days of receiving written notice of the failure to comply with this Article.

Sec. 16A-222 Appeals.

(A) Any person aggrieved by any decision with respect to the denial of or a refusal to issue a short-term rental license, the suspension of a short-term rental license, or a penalty imposed pursuant to this Article may appeal the decision by filing a written notice of appeal to the Licensing Officer no later than ten (10) business days from the date of the decision letter. The notice of appeal shall be on a form approved by the City. Applicants or licensees that wish to appeal the denial, revocation or suspension of a license are required to file such appeal to the Licensing Officer as follows:

(1) If the Licensing Officer determines that grounds exist to deny or suspend an application or license, the Licensing Officer shall notify the applicant or licensee in writing of the denial or suspension. The notice must include a description of the violation, the statutory or code reference. The notice shall be sent by certified mail to the address of the owner or owner's designee listed in the current year's license application or renewal application, and the effective date of notice shall be the date the notice is actually received or five (5) business days after the date the notice is mailed, whichever occurs first.

(2) Within ten (10) business days after the effective date of notice, the respondent may provide to the Licensing Officer in writing a response which shall include a statement of reasons why the license or any renewal thereof, should not be denied or suspended, which may include a request for a hearing. If a response is not received by the Licensing Officer in the time stated, the denial, suspension or revocation shall be final and notice thereof shall be sent to the applicant or licensee by certified mail; and

(3) Within seven (7) business days after receipt of a response, the Licensing Officer shall schedule a hearing before the Hearing Officer as designated by the Financial Services Director. The respondent shall be notified in writing by certified mail of the date, time and place of the hearing. The hearing shall be scheduled not less than fifteen (15) days but no more than thirty (30) days after receipt by the Licensing Officer of the request for a hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence will not apply. The Hearing Officer shall render a written decision within five (5) business days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent listed in the current year's application. In the case of a decision to deny a license renewal or suspend a license, the licensee may continue to function under the license pending receipt of the final decision of the Hearing Officer. The decision shall be deemed final five (5) business days after it is mailed and shall constitute final administrative action.

(B) An appeal under this Section 16A-222 does not operate as a stay of the license suspension.

(C) This Section is not applicable to judicial actions brought pursuant to Sec. 16A-223 or to penalties including fines imposed by a court.

Sec. 16A-223 Judicial relief.

(A) Notwithstanding Sec. 16A-220 any attempted or completed felony act, arising from the occupancy or use of a short-term rental that results in a death, or actual or attempted serious physical injury, shall be grounds for judicial relief in the form of a suspension of the property's use as a short-term rental for a period that shall not exceed twelve (12) months from the date of the violation.

(B) The City Attorney may initiate proceedings in the City Court or other court of competent jurisdiction to enforce this Section 16A-223.

Sec. 16A-224 Severability.

In the event any section or provision of this Article shall be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of this Article as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

Section 2. This Ordinance shall become effective March 6, 2023.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE,
ARIZONA, this 5th day of January, 2023.



Corey D. Woods, Mayor

ATTEST:

Kara A. Dellmasta for
Carla R. Reece, City Clerk

APPROVED AS TO FORM:

Sonia M. Blain for
Sonia M. Blain, City Attorney