

ORDINANCE NO.

An Ordinance of the City of Commerce Amending Chapter 3.10 and Adding Chapter 5.63 to the City of Commerce Municipal Code Relating to Licensing and Operating Regulations for Home-Sharing Regulations

WHEREAS, in recent years, technology and innovation have expanded the use of short-term rentals and home-sharing operations (stays of thirty (30) consecutive days or less) as a form of temporary lodging to allow visitors to stay in and experience a local community; and

WHEREAS, short-term rentals in a property other than a primary residence creates unfavorable consequences, including negative impacts on the residential character of surrounding neighborhoods and increased nuisance activity, for which individuals may evade culpability; and

WHEREAS, the conversion of long-term housing units to short-term rentals reduces housing stock and contributes to increased rents and decreased availability of affordable housing; and

WHEREAS, home-sharing does not create the same adverse impacts as unsupervised vacation rentals because, among other things, the resident hosts are present to introduce their guests to the City's neighborhoods and regulate their guests' behavior; and

WHEREAS, while the City recognizes that home-sharing activities can be conducted in harmony with surrounding uses, those activities must be regulated to ensure that the small number of home-sharers stay in safe structures and do not threaten or harm the public health or welfare; and

WHEREAS, this ordinance will protect the City's affordable housing stock by allowing only an authorized host to share his or her registered primary residence with transient users; and

WHEREAS, this ordinance will protect the City's affordable housing stock by continuing to prohibit a property owner from converting a housing unit into a short-term rental that is not zoned or authorized for transient use.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY RESOLVE, DECLARE AND DETERMINE AS FOLLOWS:

Section 1. The City Council of the City of Commerce hereby finds and declares the recitals set forth hereinabove are incorporated herein and by this reference are made part of the findings.

Section 2. The City Council hereby amends Section 3.10.020 "Definitions" of the Commerce Municipal Code to read as follows:

"3.10.020 – Definitions.

Except where the context requires, the definitions given in this section govern the construction of this chapter, as follows:

(1) "Guest," "transient," and/or "visitor" means 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 consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a guest, transient, and/or visitor 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 guest, transient, and/or visitor, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.

(2) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by guests, transients, and/or visitors for dwelling, lodging, or sleeping purposes and includes any hotel, inn, tourist home or house, bed and breakfast, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, short-term home-sharing, boarding house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof. Short-term home-sharing consist of home-sharing, where a residential or dwelling unit is shared for thirty consecutive calendar days or less, in whole or in part, where the residential or dwelling unit is used for occupancy as defined in this Chapter.

(3) "Occupancy" means the use or possession, or the right to use or possession, of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

(4) "Operator" means the person who is a proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

(5) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or other group or combination acting as a unit.

(6) "Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

(7) "Tax administrator" means the finance director of the City or his or her designee."

Section 3. The City Council hereby adds a new Chapter 5.63 "Home-Sharing Regulations" to the Commerce Municipal Code to read as follows:

"Chapter 5.63. Home-Sharing Regulations.

5.63.010 – Definitions.

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

(a) "Booking service" means any reservation and/or payment service provided by a person who facilitates a home-sharing or vacation rental transaction between a host and a prospective guest, and for which the person collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment of services provided for the transaction.

(b) "Home-sharing" means an activity whereby the residents host visitors in their homes, for compensation, for periods of thirty consecutive days or less, while at least one of the dwelling unit's primary residents lives on-site, in the dwelling unit, throughout the visitors' stay.

(c) "Host" means any person who is an owner, lessee, or sub-lessee of a residential property or unit offered for use as a vacation rental or home-share. Host also includes any person who offers, facilitates, or provides services to facilitate, a vacation rental, or home-share, including but not limited to insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit regardless of whether the person is an owner, lessee, or sub-lessee of a residential property or unit offered for use as a vacation rental or home-share. Any person, other than an owner, lessee, or sub-lessee, who operates home-sharing or vacation rental activities exclusively on the Internet shall not be considered a host.

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

(e) "Person" means any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, or organization of any kind.

(f) "Platform agreement" means a signed agreement between a home-sharing hosting platform and the City, which, among other things, provides that the Hosting platform will collect and submit the Hotel Visitor Tax in accordance with Chapter 3.10 of this Code to the City on behalf of home-sharing hosts and persons listed for home-sharing.

(g) "Vacation Rental" means rental of any dwelling unit, in whole or in part, within the City of Commerce, to any person(s) for exclusive transient use of thirty consecutive days or less. Exclusive transient use shall mean that none of the dwelling unit's primary residents lives on-site, in the dwelling unit, throughout any visitor's stay. Rental of units located within City-approved hotels, motels, and bed and breakfasts shall not be considered vacation rentals.

5.63.020 – Home-Sharing Authorization.

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

(1) Obtains and maintains at all times a City business license authorizing home-sharing activity.

(2) Operates the home-sharing activity in compliance with all business license permit conditions, which may be imposed by the City to effectuate the purpose of this Chapter.

(3) Obtains and maintains a visitor occupancy registration certificate pursuant to Chapter 3.10 of this Code.

(4) Collects and remits Hotel Visitor Tax ("HVT"), in coordination with any hosting platform if utilized, to the City and complies with all City HVT requirements as set forth in Chapter 3.10 of this Code.

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

(6) Complies with all applicable laws, including all health, safety, building, fire protection, and rent control laws.

(7) Complies with the regulations promulgated pursuant to this Chapter.

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

(c) If any provision of this Chapter conflicts with any provision of the Zoning Ordinance codified in Title 19 of this Code, the terms of this Chapter shall prevail.

5.63.030 – Prohibitions.

No host shall undertake, maintain, authorize, aid, facilitate, or advertise any vacation rental activity, or any home-sharing activity that does not comply with Section 5.63.020 of this Code. Vacation rentals shall be prohibited in the City.

5.63.040 – Hosting Platform Responsibilities.

(a) Hosting platforms shall be responsible for collecting all applicable HVTs and remitting the same to the City. The hosting platform shall be considered an agent of the host for purposes of HVT collections and remittance responsibilities as set forth in Chapter 3.10 of this Code. To that end, hosting platforms shall execute a Platform agreement with the City.

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

(c) Hosting platforms shall not complete any booking transaction for any residential property or unit unless it is listed on the City's registry created under Section 5.63.020 subsection (b), at the time the hosting platform receives a fee for the booking transaction.

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

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

5.63.050 – Regulations.

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

regulation.

5.63.060 – Fees.

The City Council may establish and set by resolution all fees and charges as may be necessary to effectuate the purpose of this Chapter.

5.63.070 – Enforcement.

(a) Any host violating any provision of this Chapter, or hosting platform that violates its obligations under Section 5.63.040, shall be guilty of an infraction, which shall be punishable by a fine not exceeding two hundred fifty dollars (\$250.00), or a misdemeanor, which shall be punishable by a fine not exceeding five hundred dollars (\$500.00), or by imprisonment in the County Jail for a period not exceeding six (6) months or by both such fine and imprisonment.

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

(c) Any host who violates any provision of this Chapter, or hosting platform that violates its obligations under Section 5.63.040, shall be subject to administrative fines and administrative penalties provided for in Chapter 1.12 of this Code.

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

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

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

or procedures established by law.”

Section 4. Severability. If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this title; it being hereby expressly declared that this title, and each section, subsection, sentence, clause, and phrase hereof, would have been prepared, proposed, adopted, approved, and ratified irrespective of the fact that any single section subsection, sentence, clause, or phrases be declared invalid or unconstitutional.

Section 5. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

Section 6. Effective Date. This ordinance shall take effect thirty (30) days after its passage and adoption pursuant to California Government Code 36937.

PASSED, APPROVED and ADOPTED this ____ day of _____ 2019.

Hugo A. Argumedo, Mayor

ATTEST:

Lena Shumway, City Clerk