

## Draft Short Term Occupancy and Home Sharing Use

### **§141.0315**      **Short Term Occupancy as an Accessory Use**

*Short term occupancy* shall not be permitted in the RE, RS, RX, RT or RM zones unless explicitly codified in the San Diego Municipal Code (SDMC) Chapter 14: General Regulations Division Article 1, Division 3: Residential Use Category-- Separately Regulated Use. The *short term occupancy* of the *dwelling unit* in the manner described in Section 141.0316 is allowed only as an *accessory use*.

### **§141.0316**      **Short Term Occupancy of Primary Residence**

*Short term occupancy* of a primary residence when the *primary resident* is absent may be permitted as a limited use by obtaining a Short Term Occupancy Permit (STOP) in accordance with a Process One in the RE, RS, RX, RT or RM zones, subject to the following regulations.

**(a) General regulations.**

(1) Application.

(A) Only the *primary resident* may submit an application for a STOP. An application shall include identification establishing that the *dwelling unit* is the *primary resident's* primary residence, which shall include valid Government-Issued Photo Identification and two proofs of residency. Proof of residency may include a current bill or recent bank statement; a property deed or tax bill; or a rental/lease agreement signed by both the landlord and tenant that verifies permission of *short term occupancy*. An application shall also include proof of insurance pursuant to Section 141.0316 (a)(12) and verification, in writing, on a form prescribed by the City, that the notice has been provided in accordance with section 141.0316(a)(1)(B).

(B) At least 10 calendar days before submitting the application, the *primary resident* shall provide notice as set forth in Section 112.0304 of the intended application.

(C) A primary resident may apply for a Short Term Occupancy Permit (STOP) annually.

(2) The *primary resident* is not required to reside in the *dwelling unit* during the *short term occupancy*. *Short term occupancy* of a *primary residence* when the *primary resident* is absent shall not exceed a total of 90 days per calendar year.

(3) The *dwelling unit* shall be maintained and used at all times for residential occupancy only.

- (4) Occupancy shall be limited to two *transients* per *guest room* with up to one additional *transient* per *dwelling unit*.
- (5) The *primary resident* shall deliver a *dwelling unit* to the *transient* that is sanitary, clear of any health hazards, safety hazards, and vermin. The *primary resident* shall keep every bed, including the mattress, sheets, blankets, and bedding, in a clean, dry and sanitary condition, free from filth, urine, or other foul matter, and from the infection of lice, bedbugs, or other insects. The bed linen must be changed before each new occupancy of the *dwelling unit*.
- (6) The *primary resident* shall provide a written notice to all *transients* that advises the following:
  - (A) The *dwelling unit* is located in a residential neighborhood and the occupants are expected to abide by all laws, be respectful and maintain the residential character of the neighborhood.
  - (B) The number of *bedrooms* and the maximum number of occupants.
  - (C) The parking limitations and rules.
  - (D) The rules for trash and recycling.
  - (E) The City noise limits pursuant to SDMC Section 59.5.0401 Sound Level Limits and remedies available to the City to address and enforce violations, including the issuance of individual administrative citations in an amount of up to \$1000 to each *transient* and to the *primary resident*.
  - (F) Notice to the *transient* that upon a failure vacate by the expiration of the occupancy term, the *transient* will be deemed a trespasser and may be subjected to removal by relevant authorities.
  - (G) Notice to *transient* that, pursuant to the SDMC Chapter 5, Article 1, Division 10, that in the event the police are called to address public peace, health, safety or general welfare issues, the *transient* may be responsible for the cost of police services.
- (7) A copy of the notice required by SDMC Section 141.0316(a)(5) shall be provided to the prospective *transients* prior to their occupancy of the *dwelling unit*, shall be acknowledged in writing by the prospective *transients*, and a copy shall be provided to the City upon request by a City official.
- (8) The *primary resident* shall ensure that the *dwelling unit* complies with current California Fire Code Regulations.

- (9) No *signs* promoting a business are permitted on the *premises*.
- (10) The *primary resident* shall designate a contact that shall be responsible for actively discouraging and preventing any nuisance activity at the *dwelling unit*, as per SDMC Chapter 5: Public Safety, Morals, and Welfare. The designated contact shall respond within one hour to all complaints reported to the contact and take action to resolve the matter either immediately or as soon as reasonably possible to resolve the complaint. The *primary resident* shall post the contact information for the designated contact and the City of San Diego code enforcement on the exterior of the *premises* in a place visible from the sidewalk or the *public right of way*, whichever is closer.
- (11) The *primary resident* shall list the STOP number and the Transient Occupancy Tax number on all online and print rental advertisements, including listings on any *hosting platform*.
- (12) The *primary resident* shall maintain general liability insurance.

**(b) Collection and Remittance of Taxes and Assessments.**

- (1) It is the responsibility of the *primary resident* to ensure compliance with the Transient Occupancy Tax requirements set forth in SDMC Chapter 3, Article 5, Division 1, and any other applicable tourism assessments.

**(c) Penalties and Private Right of Action.**

- (1) The primary resident shall be subject to a fine of up to \$2,000 per day for each violation of any regulations set forth in Section 141.0316(a).
- (2) Violation of any provision of the SDMC related to a *short term occupancy* is a *public nuisance*. In addition to any other remedy set forth in SDMC, any person who has suffered, or alleges to have suffered damage to person or property because of a violation of the SDMC related to *short term occupancy*, may bring any action for money damages or any other appropriate relief in a court of competent jurisdiction against the party alleged to have violated the SDMC. A prevailing plaintiff may recover reasonable attorney's fees in any such action. Nothing in this section shall be construed to create any right of action against the City.

**§141.0317 Short Term Occupancy and Home Sharing Accommodations**

*Short term occupancy* of a *primary residence dwelling unit* when the *primary resident* is present may be permitted as a limited use by obtaining a STOP in accordance with a Process One in all residential zones, subject to the following regulations.

**(a) General Regulations**

- (1) A STOP may be approved in accordance with a Process 1 application where:
  - (A) Any application for a STOP submitted by the *primary resident* shall include identification establishing that the *dwelling unit* is the *primary resident's* primary residence, which shall include a valid Government-Issued Photo Identification Card and two proofs of residency. Proof of residency may include a current bill or recent bank statement; a property deed or tax bill; or a rental/lease agreement signed by both the landlord and tenant that verifies permission of *short term occupancy*. An application shall also include proof of insurance pursuant to Section 141.0317 (a)(13); and verification, in writing, on a form prescribed by the City, that the notice has been provided in accordance with section 141.0317(a)(1)(B).
  - (B) At least 10 calendar days before submitting the application, the *primary resident* shall provide notice as set forth in Section 112.0304 of the intended application.
  - (C) A *primary resident* may apply for a Short Term Occupancy Permit (STOP) annually.
- (2) The *primary resident* is required to reside in the *dwelling unit* during the *short term occupancy*.
- (3) Only the *primary resident* may apply for a STOP.
- (4) The *dwelling unit* shall be maintained and used at all times for residential occupancy only. The *short term occupancy* of the *dwelling unit* in the manner described in Section 141.0317 shall function as an *accessory use*.
- (5) Occupancy shall be limited to two *transients* per *guest room* per *dwelling unit*.
- (6) The *primary resident* shall deliver a *dwelling unit* to the *transient* that is sanitary, clear of any health hazards, safety hazards, and vermin.
  - (A) The primary resident shall keep every bed, including the mattress, sheets, blankets, and bedding, in a clean, dry and sanitary condition, free from filth, urine, or other foul matter, and from the infection of lice, bedbugs, or other insects. The bed linen must be changed before a new guest occupies the dwelling unit.
- (7) The *primary resident* shall provide a written notice to all *transients* that advises the following:

- (A) The *short term occupancy* is located in a residential neighborhood and occupants are expected to abide by all laws, be respectful and maintain the residential character of the neighborhood.
  - (B) The number of *guest rooms* and maximum number of occupants.
  - (C) Parking limitations and rules.
  - (D) Rules for trash and recycling.
  - (E) City noise limits pursuant to SDMC Section 59.5.0401 and remedies available to the City to address and enforce violations, including the issuance of individual administrative citations in an amount of up to \$1000 to each *transient* and to the *primary resident*.
  - (F) Notice to the *transient* that upon a holdover, the *transient* will be deemed a trespasser and subjected to removal by relevant authorities.
  - (G) The *primary resident* must comply with all disclosures required of a landlord under California law, including, but not limited to, lead based paint, asbestos and mold. Compliance with such disclosure laws shall not be construed as a basis to create a landlord-tenant relationship.
  - (H) Notice to *transient* that, pursuant to the San Diego Second Response Ordinance, SDMC Article 1, Division 10, that in the event the police are called to address public peace, health, safety or general welfare issues, the *transient* may be responsible for the cost of police services.
- (8) The *primary resident* shall comply with current California Fire Code Regulation
  - (9) No sign promoting a business are permitted on the *premises*.
  - (10) The *primary resident* shall designate a contact that shall be responsible for actively discouraging and preventing any nuisance activity at the *dwelling unit*, as per SDMC Chapter 5: Public Safety, Morals, and Welfare. The contact shall respond within one hour to all complaints reported to the contact and take action to resolve the matter either immediately or as soon as reasonably possible to resolve the complaint. The *primary resident* shall post the contact information for the designated contact and the City of San Diego code enforcement on the exterior of the *premises* in a place visible from the sidewalk or the *public right of way*, whichever is closer.
  - (11) The *primary resident* must maintain a log of all *transients*, including the name and address of each *transient*, the year, month, day and hour of the arrival of such persons, the time of departure or, if the exact time of departure is not known, the date and time of the fact of the departure of each guest is ascertained, the total

number of occupants, and the date, time and nature of any complaints to the designated local contact by neighbors, police or other City officials. *Primary resident* shall make the total number of occupants, the arrival and departure times and dates, and the date, time and nature of any complaints to the designated local contact available to City personnel upon request.

(12) The *primary resident* shall list the STOP Number and the Transient Occupancy Tax number on all online and print rental advertisements, including, but not limited to, listings on any *hosting platform*.

(13) The *primary resident* shall maintain general liability insurance.

**(b) Collection and Remittance of Taxes and Assessments.**

(1) It is the responsibility of the *primary resident* to ensure compliance with the Transient Occupancy Tax requirements set forth in SDMC Chapter 3, Article 5, Division 1, and any other applicable tourism assessments.

**(c) Private Right of Action.**

(1) Violation of any provision of the SDMC related to a *short term occupancy* is a *public nuisance*. In addition to any other remedy set forth in SDMC, any person who has suffered, or alleges to have suffered damage to person or property because of a violation of the SDMC related to *short term occupancy*, may bring any action for money damages or any other appropriate relief in a court of competent jurisdiction against the party alleged to have violated the SDMC. A prevailing plaintiff may recover reasonable attorney's fees in any such action. Nothing in this section shall be construed to create any right of action against the City.

***Additional Changes:***

- Add definitions to Development Code – Chapter 11

*Primary residence*: the place which is an individual's primary home. An individual's temporary absence from his/her primary home shall not effect a change with respect thereto. On the other hand, if an individual moves to another jurisdiction, other than as a mere transient or sojourner, he/she shall be treated as having changed the location of the primary home. [Refers to IRS Tax Code 26 CFR 301.6362-6 - Requirements relating to residence] The *primary residence* shall be verified by valid Government-Issued Photo Identification Card and two proofs of residency. Proof of residency may include a current bill or recent bank statement; a property deed or tax bill; or a rental/lease agreement signed by both the landlord and tenant.

*Primary resident:* an individual who resides in the *primary residence*. The dwelling unit is the primary home or place of abode of the *primary resident*. Whenever absent, the *primary resident* has the present intention of returning after a departure or absence.

*Short term occupancy:* Any rented or leased residence for less than 30 days.

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