

ORDINANCE NO. 2018-363**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALABASAS, CALIFORNIA ADDING A NEW CHAPTER 20 TO TITLE 5 OF THE CALABASAS MUNICIPAL CODE PROHIBITING ADVERTISEMENTS FOR UNLAWFUL SHORT-TERM RENTALS.**

WHEREAS, under the principle of permissive zoning, any land use not expressly allowed by the Calabasas Municipal Code or permitted via a determination of substantially similar use under Calabasas Municipal Code Section 17.11.020 is prohibited. Calabasas Municipal Code Section 17.11.020 provides for the City to approve a land use that is substantially similar to a listed land use, but only after finding that the proposed land use is consistent with the General Plan, meets the stated purpose and general intent of the zoning district in which the use is proposed to be located, would not adversely affect the City's public health, safety, and general welfare, and that the proposed use shares characteristics common with, and is not of a greater intensity, density or generate more environmental impact than, those listed in the zoning district in which it is to be located.

WHEREAS, the Calabasas Municipal Code provides that any short-term, transient, or vacation rentals of property or a portion thereof for less than 30 days in exchange for any form of compensation is prohibited in all residential zones as this land use is not provided for in Calabasas Municipal Code Section 17.11.010, Table 2-2 which lists all allowable land uses in residential zones, with the following exception:

- (1) Lawfully approved bed and breakfast inns operated in full compliance with applicable federal, state, and local rules and regulations including all required permits from the City, which are conditionally permitted uses in the Residential, Rural and Rural Community zones as stated in Calabasas Municipal Code Section 17.11.010, Table 2-2. A bed and breakfast inn is not permitted in any single-family or multi-family residential zone under Calabasas Municipal Code Section 17.11.010, Table 2-2. A lawfully operated bed and breakfast inn must conform to the definition of bed and breakfast inn in Calabasas Municipal Code Section 17.90.020, the parking requirements of Calabasas Municipal Code Section 17.28.040, Table 3-11, which requires 1 parking space for each guest room or suite or 1 parking space for every two beds, whichever is greater, and all other applicable rules and regulations.

WHEREAS, the Calabasas Municipal Code provides that any short-term, transient, or vacation rentals of property or a portion thereof for less than 30 days

in exchange for any form of compensation is prohibited in all commercial zones as this land use is not provided for in Calabasas Municipal Code Section 17.11.01, Table 2-2, with the following exception:

(1) Lawfully approved hotels and motels operated in full compliance with all applicable federal, state, and local rules and regulations including all required permits from the City, which are a conditionally permitted use in the Commercial Retail, Commercial Office, Commercial Mixed Use, and Commercial Business Park zones, as stated in Calabasas Municipal Code Section 17.11.010, Table 2-2.

WHEREAS, the Calabasas Municipal Code provides that any short-term, transient, or vacation rentals of property or a portion thereof for less than 30 days in exchange for any form of compensation is prohibited in all special purpose zoning districts as this land use is not provided for in Calabasas Municipal Code Section 17.11.010, Table 2-2, with the following exception:

(1) Lawfully approved bed and breakfast inns operated in full compliance with applicable federal, state, and local rules and regulations including all required permits from the City, which are a conditionally permitted use in the Hillside/Mountainous zones as stated in Calabasas Municipal Code Section 17.11.010, Table 2-2. A lawfully operated bed and breakfast inn must conform to the definition of bed and breakfast inn in Calabasas Municipal Code Section 17.90.020, the parking requirements of Calabasas Municipal Code Section 17.28.040, Table 3-11, which require 1 parking space for each guest room or suite or 1 parking space for every two beds, whichever is greater, and all other applicable rules and regulations.

WHEREAS, many owners, operators, and facilitators of unlawful short-term rentals, including internet hosting platforms that engage in the short-term rental business, use advertisements to make unlawful short-term rentals available to the general public and rely on those advertisements to secure customers, such that prohibiting advertisements for unlawful short-term rentals would reduce the supply of unlawful rentals and reduce the occurrence of this unlawful activity by making it significantly more difficult for prospective renters and owners and operators to connect with each other and to enter into rental agreements.

WHEREAS, the City's Municipal Code does not currently prohibit advertisements for unlawful short-term rentals.

WHEREAS, the City Council intends to use its general police power to regulate businesses and commercial activity within the City and to ensure compliance with the City's zoning code governing permitted and prohibited land

uses, to adopt this Ordinance prohibiting advertising for unlawful short-term, transient, and vacation rentals.

WHEREAS, this Ordinance is intended to reduce the amount of illegal activity presently occurring and to prevent new illegal activity from occurring, by prohibiting advertisements by which owners, operators, and facilitators of unlawful short-term rentals seek customers and offer to make such unlawful short-term rentals available to the public.

WHEREAS, this Ordinance is a permissible regulation of commercial speech because it is limited to a prohibition on advertisements for unlawful short-term, transient, and vacation rental properties with addresses located within the City's incorporated jurisdiction and does not affect advertisements for any lawful short-term, transient, or vacation rentals.

WHEREAS, it is well-established under the law that commercial speech that proposes an unlawful transaction, or is misleading or related to unlawful activity is excluded from First Amendment protection and may be freely regulated by the government.

WHEREAS, the United States Supreme Court has held that the government may prohibit advertising for commercial activity that is itself illegal without offending the First Amendment to the United States Constitution, as such speech is not entitled to protection. (See *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York* (1980) 447 U.S. 557, 566.)

WHEREAS, any person or entity wishing to avoid the impact of this Ordinance's prohibition need only delete or remove any advertisements for unlawful short-term, transient, or vacation rentals in the City of Calabasas's limits.

WHEREAS, on February 28, 2018, the City Council conducted a public hearing received public testimony regarding the proposed ban on advertisements for unlawful short-term, transient, or vacation rentals in the City of Calabasas's limits.

WHEREAS, the City Council desires to add a new Chapter 20 to Title 5 of the Calabasas Municipal Code, prohibiting advertisements for unlawful short-term, transient, or vacation rentals.

WHEREAS, the City Council finds that this amendment to the Municipal Code is consistent with the goals, policies, and actions of the General Plan, particularly the General Plan's provisions stating that the City shall preserve the community's predominantly residential character and dictating land use

designations that do not permit short-term rentals other than lawful hotels, motels, and bed and breakfast inns.

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

SECTION 1. The above set forth recitals and findings are true and correct and incorporated herein by reference, as if set forth herein in full.

SECTION 2. Code Amendment. A new Chapter 20 is hereby added to Title 5 of the Calabasas Municipal Code, to read as follows:

CHAPTER 20: PROHIBITION ON ADVERTISING FOR UNLAWFUL SHORT-TERM, TRANSIENT, AND VACATION RENTALS

Section 5.20.010. Purpose.

The purpose of this chapter is to reduce the proliferation of the illegal land use of unlawful short-term, transient, and vacation rentals and the associated negative effects caused by this illegal land use on the City's residents, businesses, and visitors, including excessive traffic, reductions in available parking, unlawful conversions of residential property, unlawful conversions of existing affordable housing units into illegal short term vacation rentals, and inundation of the City's low-density, quiet residential neighborhoods with commercial visitors and activity that adds traffic, noise, and destroys their quiet, low-density residential character. The City intends this prohibition on advertisements for unlawful short-term, transient, and vacation rentals will apply to the extent of, but not beyond, the limit of the City's power, consistent with the First Amendment to the United States Constitution and Article I, Section 2 of the California Constitution, and any preemptive state or federal laws.

This advertising ban applies to advertisements for short-term, transient, and vacation rentals, which are prohibited under the following sections of the Calabasas Municipal Code:

- (A) The Calabasas Municipal Code provides that any short-term, transient, or vacation rentals of property or a portion thereof for less than 30 days in exchange for any form of compensation is prohibited in all residential zones as this land use is not provided for in Calabasas Municipal Code Section 17.11.010, Table 2-2, which lists all allowable land uses in residential zones. Under the principle of permissive zoning, any land use not expressly allowed or permitted via a determination of substantially similar use under Calabasas Municipal Code Section 17.11.020 is prohibited. Calabasas Municipal Code Section 17.11.020 provides for the City to approve a land use that is

substantially similar to a listed land use, but only after finding that the land use is consistent with the General Plan, meets the stated purpose and general intent of the zoning district in which the use is proposed to be located, would not adversely affect the City's public health, safety, and general welfare, and that the proposed use shares characteristics common with, and is not of a greater intensity, density or generate more environmental impact than, those listed in the zoning district in which it is to be located. Short-term, transient, or vacation rentals are not consistent with the General Plan's designated land uses for residential zones. The sole exception is a lawfully approved bed and breakfast inn operated in full compliance with applicable federal, state, and local rules and regulations including all required permits from the City, which is a conditionally permitted use in the Residential, Rural and Rural Community zones as stated in Calabasas Municipal Code Section 17.11.010, Table 2-2. A bed and breakfast inn is not permitted in any single-family or multi-family residential zone under Calabasas Municipal Code Section 17.11.010, Table 2-2. A lawfully operated bed and breakfast inn must conform to the definition of bed and breakfast inn in Calabasas Municipal Code Section 17.90.020, the parking requirements of Calabasas Municipal Code Section 17.28.040, Table 3-11, which requires 1 parking space for each guest room or suite or 1 parking space for every two beds, whichever is greater, and all other applicable rules and regulations.

- (B) The Calabasas Municipal Code provides that any short-term, transient, or vacation rentals of property or a portion thereof for less than 30 days in exchange for any form of compensation is prohibited in all commercial zones as this land use is not provided for in Calabasas Municipal Code Section 17.11.010, Table 2-2, with the following exception:
 - (1) Lawfully approved hotels and motels operated in full compliance with all applicable federal, state, and local rules and regulations including all required permits from the City, which are a conditionally permitted use in the Commercial Retail, Commercial Office, Commercial Mixed Use, and Commercial Business Park zones, as stated in Calabasas Municipal Code Section 17.11.010, Table 2-2, and
- (C) The Calabasas Municipal Code provides that any short-term, transient, or vacation rentals of property or a portion thereof for less than 30 days in exchange for any form of compensation is prohibited in all special purpose zoning districts as this land use is not provided for in Calabasas Municipal Code Section 17.11.010, Table 2-2, with the following exception:

- (1) Lawfully approved bed and breakfast inns operated in full compliance with applicable federal, state, and local rules and regulations including all required permits from the City, which are a conditionally permitted use in the Hillside/Mountainous zones as stated in Calabasas Municipal Code Section 17.11.010, Table 2-2. A lawfully operated bed and breakfast inn must conform to the definition of bed and breakfast inn in Calabasas Municipal Code Section 17.90.020, the parking requirements of Calabasas Municipal Code Section 17.28.040, Table 3-11, which require 1 parking space for each guest room or suite or 1 parking space for every two beds, whichever is greater, and all other applicable rules and regulations.

Section 5.20.020. Definitions.

For purposes of this chapter the following definitions apply:

“Advertisement” means any writing, picture, video, or other communication in fixed form shown, made available, published, or presented to the public in any medium or manner, whether in writing, in person, online, or otherwise via the internet, for the purpose of soliciting an unlawful short-term rental in the City of Calabasas, to help facilitate an unlawful short-term rental in the City of Calabasas, or to announce the availability of any property or portion thereof in the City of Calabasas for rental or occupancy for an unlawful short-term rental.

“Broker or property manager” means person, firm, partnership, association, corporation, company, syndicate, estate, trust, business trust, or organization of any kind who offers to rent or arranges for persons to rent an unlawful short-term rental or otherwise oversees and facilitates the operation of an unlawful short-term rental.

“Person” shall mean any person, individual, firm, partnership, association, corporation, company, syndicate, estate, trust, business trust, or organization of any kind.

“Property owner” means any person, firm, partnership, association, corporation, company, syndicate, estate, trust, business trust, or organization of any kind with a beneficial ownership interest in a property.

“Tenant” means any person, firm, partnership, association, corporation, company, syndicate, estate, trust, business trust, or organization of any kind with a leasehold interest in a property.

“Unlawful short-term rental” means any rental or occupancy of any property or a portion thereof located in the City of Calabasas for any purpose, including but not limited to a vacation, for less than 30 days if that rental or occupancy occurs in exchange for any form of compensation or consideration. Short-term rentals or occupancies that occur at lawfully approved hotels, motels, and bed and breakfast inns operated in full compliance with all applicable federal, state, and local rules and regulations including any and all required permits from the City are lawful.

Section 5.20.030. Prohibition on Advertising for Unlawful Short-Term Rentals.

- (A) All persons, including property owners, tenants, and broker or property managers, are prohibited from publishing, displaying, transmitting, sending, or posting anywhere, whether online or via the internet, in a newspaper, or in any other writing, any advertisement for an unlawful short-term rental of any property or a portion thereof located in the City. This prohibition includes causing or maintaining in any manner or medium the display, publication, transmittal or posting of an advertisement for an unlawful short-term rental by any person.
- (B) This prohibition does not apply to any advertisement for lawfully approved hotels, motels and bed and breakfast inns located in the City and operated in full compliance with all applicable federal, state, and local rules and regulations including any and all required permits from the City.

Section 5.20.040. Penalties and Enforcement.

- (A) Any person, including property owners, tenants, and broker or property managers, whether as principal, agent, employee, officer, partner, manager, member, trustee, or otherwise, violating any provision of this chapter shall be guilty of a misdemeanor as provided in Title 1, Chapter 16, Section 1.16.010 of this Code and, upon conviction thereof, shall be subject to the penalties provided therein. Such person shall be deemed guilty of a separate offense for each and every day during any portion of which any violation of this chapter is committed, continued, maintained, or permitted by such person and shall be punishable as provided in this section.
- (B) In addition to the remedies provided in subsection (A) of this section, the City shall have the power to enforce violations of any provision of this chapter by any lawful means permitted by this Code or by applicable law, including, but not limited to, by imposing administrative remedies under Chapter 17 of Title 1 of this Code and by seeking a civil injunction from a court of competent jurisdiction

against any persons who maintain an advertisement in violation of any provision of this chapter.

SECTION 3. California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during public comment on the matter, and hereby determines that that this ordinance is exempt from the California Environmental Quality Act review under Title 14, section 15061(b)(3) as there is no potential for causing a significant effect on the environment. Furthermore, this ordinance will not cause a direct or indirect physical change to the environment and is therefore exempt pursuant to Title 14, Section 15378(b)(2) and (3) of the California Code of Regulations.


The adoption of this ordinance is therefore exempt from CEQA review pursuant to Sections 15301 and 15061(b)(3) of the CEQA Guidelines.

SECTION 4. Severability. Should any section, clause, or provision of this Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

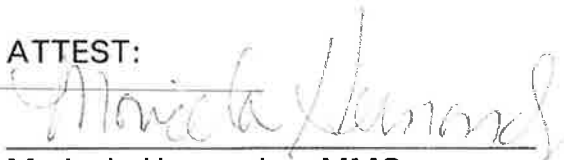
SECTION 5. Effective Date. This Ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code Section 36937 and shall supersede any conflicting provision of any City of Calabasas ordinance.

SECTION 6. Certification. The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published or posted according to law.


PASSED, APPROVED AND ADOPTED this 14th day of March, 2018.



Fred Gaines, Mayor

ATTEST:


Maricela Hernandez, MMC
City Clerk

APPROVED AS TO FORM:


Scott H. Howard
Colantuono, Highsmith & Whatley, PC
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) §
CITY OF CALABASAS)

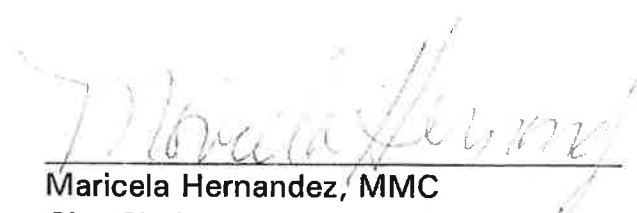
I, **MARICELA HERNANDEZ, MMC**, City Clerk of the City of Calabasas, California, **DO HEREBY CERTIFY** that the foregoing ordinance, being **Ordinance No. 2018-363** was duly introduced and approved by the City Council of the City of Calabasas at a regular meeting held on the 28th day of February, 2018, and adopted and passed by said Council at a regular meeting held on the 14th day of March, 2018, by the following vote:

AYES: Mayor Gaines and Councilmembers Bozajian, Maurer and Weintraub.

NOES: None.

ABSTAIN: None.

ABSENT: Mayor pro Tem Shapiro.



Maricela Hernandez, MMC
City Clerk
City of Calabasas, California

