

BEFORE THE CITY COUNCIL OF THE CITY OF ORINDA

In the Matter of:

Extension of Uncodified Urgency Interim Ordinance Prohibiting Short-term Rentals in the City of Orinda, Except Where the Host Lives on the Property and is Present to Monitor and Regulate Activity at the Rental.

Ordinance 19-10

The City Council of the City of Orinda DOES ORDAIN as follows:

SECTION 1. FINDINGS AND DECLARATIONS.

In support of the enactment of this urgency ordinance, the City Council of the City of Orinda finds and declares that:

1. On September 5, 2017, the City Council adopted Ordinance 17-04, which amended the Orinda Municipal Code to add registration and requirements for the operation of short-term rentals within the City's residential zoning districts (see, e.g., Orinda Municipal Code section 17.3.12).
2. As of October 2019, approximately 51 short-term rentals were registered with the City. Of those, 33 were described by the registrant as "hosted", 16 were described as not "hosted", and 2 did not specify. The City's registration form noted that "hosted" meant the property owner or operator/agent will be occupying the property when guests are present.
3. On October 31, 2019, a mass shooting occurred at a large party during a short-term rental at 114 Lucille Way in Orinda. Five people were killed, and several others were injured. The mass shooting has been devastating for the victims, their families, and loved ones. The senseless violence has resulted in grief, fear, and outrage for the neighbors of 114 Lucille Way, the larger Orinda community, and our nation as a whole.
4. Criminal investigations remain ongoing at this time.
5. The party at which the mass shooting occurred involved more than 100 people, far more than the maximum of 13 occupants allowed under the City's short-term rental regulations.
6. The owners of the property at 114 Lucille Way, the registered operators of the short-term rental, did not live on the property and did not prevent the large party.
7. Disorderly conduct, crime, and other activities that have adverse impacts on public health, safety and welfare are more likely to occur and be severe at short-term rentals if the host does not own and live on the property, rents for less than two nights, and/or is not present to monitor and regulate the rental.

8. Considering the above, the City Council finds that short-term rentals pose a current and immediate threat to the public health, safety, and welfare if the host does not own and live on the property, rents for less than two nights, and/or is not present to monitor and regulate activity at the rental. This urgency ordinance, by prohibiting such short-term rentals, is necessary to protect against this threat while the City evaluates potential modifications to its existing short-term rental regulations.
9. The City Council has received public testimony that there are numerous economic and non-economic benefits associated with short-term rentals where the host lives on the property and is present to monitor and regulate the rental.
10. Government Code section 65858(a) provides that, without following the procedures otherwise required prior to adoption of a zoning ordinance, to protect the public health, safety, and welfare, the legislative body of a city may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the city intends to study within a reasonable time.
11. Considering the public health, safety, and welfare threat posed by some short-term rentals, the City is contemplating amendments to its zoning code. The City intends to study those potential amendments within a reasonable time.
12. In recognition of the foregoing, on November 19, 2019, the City Council adopted Ordinance 19-08, an uncodified urgency interim ordinance prohibiting short-term rentals in the City of Orinda, except where the host lives on the property and is present to monitor and regulate activity at the rental. Pursuant to Government Code section 65858(a), Ordinance 19-08 will expire on January 3, 2020 unless it is extended.
13. Government Code section 65858(a) provides that the City Council may, after notice pursuant to Government Code section 65090 and a public hearing, extend an urgency interim ordinance for an additional ten (10) months and fifteen (15) days beyond its expiration date.
14. Because it has not yet been possible for City staff to complete the studies and reports necessary for consideration of potential amendments to the City's zoning code with respect to short-term rentals, the purpose of this Ordinance 19-10 is to extend Ordinance 19-08 until November 18, 2020.

SECTION 2. DEFINITIONS

For the purposes of this ordinance, the following terms have the definitions set forth below:

"Short-term rental" means the rental of property in full or in part for a term of less than thirty (30) consecutive days.

"Host" means the person or people identified as the owner on a short-term rental registration form submitted to the City.

SECTION 3. PROHIBITION

Notwithstanding anything to the contrary contained in Ordinance 17-04 and/or the Orinda Municipal Code (including section 17.3.12 and chapter 3.12), and except as described in section 4, below, short-term rentals are prohibited in all residential zoning districts in the City of Orinda. This prohibition applies regardless of whether a property is currently registered with the City for short-term rental pursuant to Municipal Code section 17.3.12.

SECTION 4. HOSTED SHORT-TERM RENTAL EXCEPTION

By way of limited exception, a short-term rental is not prohibited by this ordinance if:

1. the host has complied fully with the short-term rental registration requirements described in Orinda Municipal Code section 17.3.12;
2. the short-term rental takes place on property owned by the host and containing the host's primary residence;
3. the host personally lives on the property when it is used for short-term rentals;
4. the host is physically present to monitor and regulate activity during the short-term rental, including by meeting guests upon arrival;
5. the duration of the short-term rental is at least two nights;
6. any on-line listings and/or other advertisements authorized by the host for the short-term rental specify that the host will be present and/or share the dwelling unit used for the short-term rental; and
7. any on-line listings and/or other advertisements authorized by the host clearly identify the property used for the short-term rental in a manner that allows the City to readily confirm that the host has registered with the City as required by Orinda Municipal Code section 17.3.12.

For purposes of this exception, a host will only be considered to live at the property used for a short-term rental if they are physically and personally present at the time of the short-term rental. Such physical presence must include sleeping overnight. For purposes of this exception, a host will not be considered to live at the property used for a short-term rental if they are away from the property overnight, including on vacation.

SECTION 5.

Pursuant to Government Code section 65858(d), the City Council hereby issues the following report describing the measures that have been taken to alleviate the condition which led to the adoption of Ordinance 19-08:

The circumstances and conditions that led to the adoption of urgency Ordinance 19-08 are proposed for alleviation through the measures described in this Ordinance 19-10. Specifically, the prohibitions contained in this Ordinance 19-10 will alleviate threats to the public health, safety, and welfare associated with short-term rentals where the host does not own and live on the property and/or is not present to monitor and regulate activity at the rental.

SECTION 6.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 7.

This ordinance is consistent with the Orinda General Plan.

SECTION 8.

The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines (Title 14 of the California Code of Regulations) Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change in the environment, directly or indirectly; it prevents changes in the environment. Further, this action is exempt from CEQA under CEQA Guidelines section 15061(b)(3) (the amendments are exempt because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment).

SECTION 9.

The City Clerk shall either (a) have this ordinance published once within fifteen (15) days after adoption in a newspaper of general circulation, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

SECTION 10.


This Ordinance is an extension of Ordinance 19-08, which was adopted by a unanimous vote (5-0) of the City Council. This ordinance shall continue in effect until November 18, 2020, which is ten (10) months and fifteen (15) days after the expiration date of Ordinance 19-08 (January 3, 2020), and shall thereafter be of no further force and effect unless the City Council extends it for an additional period of time pursuant to California Government Code section 65858.

Following a duly-noticed public hearing schedule for the City Council Meeting of December 17, 2019, the foregoing ordinance was adopted at a Special Continued meeting of the City Council of the City of Orinda held on December 19, 2019 by at least four-fifths (4/5) vote of the City Council as follows:

AYES: COUNCILMEMBERS: Gee, Kosla, Miller, Worth

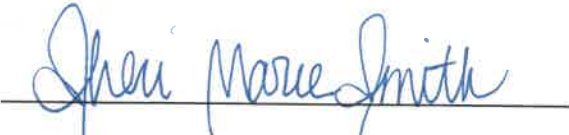
NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Fay
ABSTAIN: COUNCILMEMBERS: None

A handwritten signature in blue ink, appearing to read "Darlene K. Gee", written over a horizontal line.

Darlene Gee, Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "Sheri Marie Smith", written over a horizontal line.

Sheri Marie Smith, City Clerk