AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SHORT-TERM RENTALS.

WHEREAS, public comment has brought forward concerns about the impacts of unregulated short-term detached dwelling unit rentals in the city of Kirkland; and

WHEREAS, such concerns have included absentee owners, excessive numbers of residents and vehicles, blocked neighboring driveways, noise, litter, trespasses and the use of detached dwelling units as event venues; and

WHEREAS, public comment has also demonstrated that appropriately regulated short-term rentals of residential units, including both detached dwelling units and attached or stacked dwelling units, help make it possible for owners of such residential units to be able to afford to live in Kirkland thereby helping preserve affordable housing stock, while also bringing visitors, students, tourism and economic development benefits to the city; and

WHEREAS, Chapter 7.02 of the Kirkland Municipal Code, Business Licenses and Regulations, requires business licenses in connection with all activities and pursuits located and/or engaged within Kirkland with the object of gain, benefit or advantage to the person engaging in the same; and

WHEREAS, Chapter 7.02 KMC therefore applies to both short-term rentals and long-term rentals as provided for herein; and

WHEREAS, rental agreements in excess of one month, which are considered long-term rentals for purposes of this ordinance, remain freely permitted subject to the business license requirements of Chapter 7.02; and

WHEREAS, the City Council wishes to add additional provisions to Chapter 7.02 specifically applicable to short-term rentals of detached dwelling units to address the regulatory concerns described above; and

WHEREAS, the Council further wishes to provide for the enforcement of the requirements of Chapter 7.02 through amendments to Chapter 1.12 KMC, Code Enforcement; and

WHEREAS, the Kirkland Zoning Code regulates similar types of activities, including bed and breakfast houses and home occupations, neither of which are considered short-term rentals for purposes of this ordinance.

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:
Section 1. Kirkland Municipal Code Section 1.12.020 is amended to read as follows:

1.12.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

(a) "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.

(b) "Act" means doing or performing something.

(c) "Applicable department director" means the director of the department or his or her designee.

(d) "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions issued pursuant to Title 12 are specifically excluded from the application of this chapter.

(e) "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts governed by a city regulation.

(f) "Emergency" means a situation which in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

(g) "Hearing examiner" means the Kirkland hearing examiner and the office thereof established pursuant to Chapter 3.34.

(h) "Omission" means a failure to act.

(i) "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

(j) "Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the city, and includes but is not limited to owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs. For violations of the city sign regulations, this definition includes, but is not limited to, sign installers/posters, sign owners, and any other persons who cause or participate in the placement of a sign in a manner that constitutes a civil violation. For violations of city tree regulations, this definition includes any person who caused or participated in the removal of a tree in a manner that constitutes a civil violation.

(k) "Regulation" means and includes the following, as they now exist or are hereafter amended:

(1) Title 23 (Kirkland Zoning Code);
(2) Title 21, Buildings and Construction (including codes adopted by reference);
(3) Chapter 15.52 (Surface Water Management);
(4) Title 29 (Land Surface Modification);
(5) Chapter 19.04 (Obstructing Streets or Sidewalks);
(6) Chapter 11.76 (Junk Vehicles);
(7) Chapter 11.24 (Nuisances);
(8) The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city;
(9) Chapter 7.74 (Fair Housing Regulations);
(10) Chapter 16.05 (Retail Carryout Bags, including definitions set forth in Chapter 16.04);
(11) Chapter 16.08 (Garbage Disposal); and
(12) Chapter 7.02 (Business Licenses and Regulations).

(1) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

(2) "Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

Section 2. Kirkland Municipal Code Section 7.02.030 is amended to read as follows:

7.02.030 Definitions.
Where used in this chapter, the following words and terms shall have the meanings as defined in this section, unless, from the context, a more limited or different meaning is clearly defined or apparent:

(a) “Business” includes all activities, occupations, pursuits, or professions located and/or engaged within the city, with the object of gain, benefit or advantage to the person engaging in the same, or to any other person or class, directly or indirectly, and includes nonprofit enterprises.

(b) “Business license” means that document issued by the city licensing the transaction of the indicated business by the person whose name appears thereon for the stated period.

(c) “Engaging in business” means commencing, conducting or continuing in any business within the city, whether or not an office or physical location for the business lies within the city. “Engaging in business” includes the performance of work or services by contractors, consultants, representatives, agents or other persons within the city, even though the office location of the contractor, consultant, representative, agent or other person is not within the city limits; the exercise of corporate or franchise powers, as well as the liquidation of a business when the liquidators hold themselves out to the public as conducting such business; acting as a solicitor or canvasser; short-term and long-term rentals; and furnishing temporary employees and/or workers to other businesses. By way of illustration only and without being all-inclusive, a business with an office or physical location outside the city limits which sells or leases personal property to buyers or lessees in the city; accepts or executes a contract to perform construction or installation services contracts in the city; solicits sales in the city; or renders services to others in the city; is engaged in business in this city, irrespective of whether or not such business maintains a permanent place of business in the city.
(d) "Finance and administration director" or "director" means the city of Kirkland director of finance and administration or his/her designee.

(e) "Gross receipts" shall have its ordinary meaning and also means the value accruing from the business activity within the city or conducted from the city including compensation for the rendition of services (without any deduction for labor costs or the cost of materials used), sale of personal property (without any deduction for the cost of property sold), gains or dividends realized, rents, royalties, contributions, fees and commissions, all without any deduction for any expense, taxes, or losses.

(f) "Person" includes individual natural persons, any firm, corporation, association, sole proprietor, club, partnership, trust, receiver, administrator, executor, estate, company, independent contractor, society, any officer, agent, personal representative, any group of individuals acting as a unit, the United States or the state of Washington or any instrumentality thereof, and includes the singular and the plural.

(g) "City" means the city of Kirkland, Washington.

(h) "Year" means a calendar year, except where otherwise specified or when permission is obtained from the director to use a different fiscal year.

(i) "L&I" means the Washington State Department of Labor and Industries.

(j) "Place of business" or "office" includes, but is not limited to, the following: maintaining, occupying, or using a permanent building or facility, premises or other fixed location as an office or location for conducting business; residential units used for short-term or long-term rentals or leases, or a location where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control; or a location which includes a business sign, mailing address, and permanent phone. A vehicle such as a pickup, van, truck, boat or other motor vehicle will not be considered a place of business for purposes of this chapter.

(k) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved. Persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in business, and sales made by them of the type of property which they hold themselves out as selling are not casual or isolated sales even though such sales are not made frequently.

(l) "Employee" means and includes each of the following persons who are not required by the city to have his/her/its own separate city of Kirkland business license:

(1) Any person who is on the business's payroll, and includes all full-time, part-time, and temporary employees or workers; and

(2) Self-employed persons, sole proprietors, owners, managers, and partners; and

(3) Any other person who performs work, services or labor at the business, including an independent contractor who is not required to have a separate city of Kirkland business license.

(m) "Contractor" means any person who, in the capacity of an independent contractor, contracts with any business, property owner or person to perform a particular job or jobs, whether the remuneration
received for performing the job or jobs is on a cost-plus basis, a flat sum
basis or a salary computed at so much per hour.

(n) "Subcontractor" means any person who in the capacity of an
independent contractor contracts with any contractor to perform a
particular trade or job, whether the remuneration received for
performing the job or jobs is on a cost-plus basis, a flat sum basis, or a
salary basis computed at so much per hour.

(o) "Residential unit" means either a detached dwelling unit or an
attached or stacked dwelling unit, as those terms are defined in the
city's zoning code.

(p) "Short-term rental" means the rental of a residential unit for
less than thirty days. A short-term rental is not a bed and breakfast
house or home occupation as defined in the zoning code for purposes
of this ordinance.

(g) "Long-term rental" means the rental or lease of a residential
unit for a period of thirty days or more. A long-term rental is not a bed
and breakfast house or home occupation as defined in the zoning code.

Section 3. Kirkland Municipal Code Section 7.02.050 is amended
to read as follows:

7.02.050 Operating without a license.

(a) Any person who engages in or carries on a business without
having obtained a business license when required to do so shall be guilty
of a violation of this chapter for each day during which the business is
so engaged in or carried on. Any person who fails or refuses to pay a
fee required under this chapter, or any part thereof, on or before the
due date, shall be deemed to be operating a business without having
obtained a license to do so. Except as otherwise specified, any person
violating this chapter shall be guilty of a misdemeanor crime and a civil
violation under Chapter 1.12.

(b) A business failing to obtain or maintain a currently valid license
and yet conducting business within the city is hereby declared to be a
public nuisance. Any remedy provided by this code with respect to a
public nuisance is in addition to other remedies provided under this
chapter.

Section 4. Kirkland Municipal Code Section 7.02.070 is amended
to read as follows:

7.02.070 Presumptions.

The following presumptions shall be made in interpreting and
applying this chapter, unless rebutted as provided in this chapter:

(a) It shall be presumed that an entity that has been issued a
Unified Business Identifier Number ("UBI") by the state of Washington
is a separate business that is required to have its own city of Kirkland
business license.

(b) It shall be presumed that an entity that has been issued a
state industrial insurance account number, a state self-insurer number,
or a state revenue tax reporting account number is a separate business
that is required to have its own city of Kirkland business license.

(c) It shall be presumed that average annual gross receipts of an
entity are at least twenty thousand dollars per each employee who
works for the entity in Kirkland except in the instances of short-term
rentals and long-term rentals and leases of residential units.
(d) It shall be presumed that an owner, manager, and/or
managing partner of a business that is more than sixty days late in
paying any amount due under this chapter is willfully, knowingly and
intentionally evading his or her legal duties under this chapter.

Section 5. Kirkland Municipal Code Section 7.02.200 is amended
to read as follows:

7.02.200 Debt owed to city.
(a) Any amount due and unpaid under this chapter and any
penalty thereon shall constitute a debt to the city and may be collected
in the same manner as any other debt, including through code
enforcement and court proceedings, and these remedies shall be in
addition to all other existing remedies. Interest shall accrue on amounts
owed to the city under this chapter at the same rate as provided for
superior court judgments.
(b) Issuance of a business license does not forgive amounts owed
to the city or penalties thereon.

Section 6. Kirkland Municipal Code Section 7.02.260 is amended
to read as follows:

7.02.260 Suspension or revocation of license—Criteria.
The director may suspend or revoke a business license or permit
when the licensee, officer or partner thereof, or another person with a
legal interest in the license:
(1) Knowingly causes, aids, abets, or conspires with another to
cause any person to violate any of the laws of this state or the city which
may affect or relate to the licensed business;
(2) Has obtained a license or permit by fraud, misrepresentation,
concealment, or through inadvertence or mistake;
(3) Is convicted of, forfeits bond upon, or pleads guilty to any
offenses related to the operation of the licensed business;
(4) Makes a misrepresentation or fails to disclose a material fact
to the city related to any of the obligations set forth in this chapter;
(5) Violates any building, life or public safety, fire or health
regulation on the premises in which the business is located after
receiving warning from the city to refrain from such violations;
(6) Is in violation of a zoning or building code or other material
regulation of the city, including the responsibility to exercise best efforts
to help ensure conflicts between short-term renters and neighbors are
avoided as set forth in Section 7.02.300(3); or
(7) Is indebted or obligated to the city for past due fees or taxes,
excluding special assessments such as LID assessments.

Section 7. A new Kirkland Municipal Code Section 7.02.300 is
amended to read as follows:

7.02.300 Short-term Rentals—Special Provisions.
The following special provisions are applicable to short-term rentals
of detached dwelling units:
(1) Short-term rentals are freely permitted as they relate to frequency and total number of days per year when an owner or authorized agent of an owner continuously occupies a portion of a short-term rental as his or her primary residence.

(2) Short-term rentals not exceeding a total of 120 days per year are permitted when (a) an owner or an authorized agent of the owner occupies all or a portion of the short-term rental as his or her primary residence for a total of at least 245 days per year and (b) a property manager identified to both the city and all short-term renters is continuously available and located within 15 miles of the short-term rental whenever the owner or an authorized agent of the owner is not occupying all or a portion of the short-term rental as his or her primary residence.

(3) Short-term rental agreements shall include provisions encouraging renters to exercise best efforts to avoid conflicts with neighbors related to issues such as noise, littering, parking and trespass, and the owner and authorized agent of the owner of a short-term residential unit shall be jointly responsible to the city for exercising best efforts to help ensure such conflicts are avoided as a condition of maintaining a business license under this chapter.

(4) There may be no more than two short-term rental agreements in effect at a single detached dwelling unit at any one time.

(5) The owners and authorized agents of owners of detached dwelling units that are the subject of short-term rental agreements are jointly responsible for ensuring compliance with all applicable city zoning code requirements, including those related to the number of unrelated people occupying the unit.

(6) The owners and authorized agents of owners of detached dwelling units that are the subject of short-term rental agreements are jointly responsible for ensuring compliance with the parking provisions applicable to bed and breakfast houses set forth in the zoning code.

(7) The director of finance and administration may impose such additional requirements as may be necessary, consistent with the police power authority of the city, to protect the public health, safety and welfare in the issuance of business licenses related to short-term rentals.

Section 8. A new Kirkland Municipal Code Section 7.02.310 is amended to read as follows:

7.02.310 Payment of Lodging Excise Tax on Short-term Rentals.
It shall be the responsibility of the person owning a residential unit used for a short-term rental to ensure the lodging excise tax provided for by Chapter 5.19 is timely paid.

Section 9. The provisions of this ordinance shall apply to all short-term rentals existing on or after the effective date hereof except to the extent necessary to avoid the impairment of existing short-term rental agreements as they may relate to rental dates and durations existing as of the effective date hereof.
Section 10. City staff shall provide an update to the City Council on the performance of the short-term rental regulations, along with any recommendations for improvements, no later than July 15, 2018.

Section 11. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 12. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 17th day of October, 2017.

Signed in authentication thereof this 17th day of October, 2017.

Amy Wålen, Mayor

Attest:

Kathi Anderson, City Clerk

Approved as to Form:

Kevin Raymond, City Attorney