

CITY OF SAN JOSE

Part 2.5 - TRANSIENT OCCUPANCY AS AN INCIDENTAL USE TO A RESIDENCE

20.80.150 - Definitions.

The definitions set forth in the section shall govern the interpretation of this part:

- A. "Adjacent properties" means the dwelling units located to the sides, rear, front, including across the street, above and below, the dwelling unit in which the incidental transient occupancy is located.
- B. "Host" means any person, as defined in Title 1 of this Code, who is the owner of record of residential real property, or any person who is a lessee of residential real property pursuant to a written agreement for the lease of such real property, who offers a dwelling unit, or portion thereof, for incidental transient occupancy.
- C. "Host present" means the host is present on the premises of the dwelling unit that is being used for incidental transient occupancy during the term of the transient occupancy at all times between the hours of 10:00 p.m. and 6:00 a.m.
- D. "Hosting platform" means a person that provides a means through which a host may offer a dwelling unit, or portion thereof, for incidental transient occupancy. This service is usually, though not necessarily, provided through an internet based platform and generally allows an owner or tenant to advertise the dwelling unit through a website provided by the hosting platform and provides a means for potential incidental transient users to arrange incidental transient occupancy and payment therefor, whether the transient user pays rent directly to the host or to the hosting platform.
- E. "Incidental transient occupancy" means the use or possession or the right to the use or possession of any room or rooms, or portions thereof for dwelling, sleeping or lodging purposes in any one-family dwelling, two-family dwelling, multiple dwelling, mobilehome, live/work unit, or secondary dwelling, by a transient user.
- F. "Local contact person" means a person designated by the host who shall be available at all twenty-four hours per day, seven days per week during the term of any transient occupancy for the purpose of (i) responding within sixty minutes to complaints regarding condition or operation of the dwelling unit or portion thereof used for incidental transient occupancy, or the conduct of transient users; and (ii) taking remedial action to resolve such complaints.
- G. "Primary residence" means a permanent resident's usual place of return for housing as documented by motor vehicle registration, driver's license, voter registration or other such evidence.
- H. "Transient user" means a 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 calendar days.

(Ord. 29523.)

20.80.160 - General.

Incidental transient occupancy meeting the criteria of this part is an allowed use in any one-family dwelling, two-family dwelling, multiple family dwelling, mobilehome, live/work unit, secondary dwelling or guest house.

(Ord. 29523.)

20.80.170 - Performance criteria.

Incidental transient occupancy of a residential dwelling is only allowed as an incidental use of such dwelling if the incidental transient occupancy conforms to each of the performance criteria set forth in Table 20-165 below.

Table 20-165 Performance Criteria	
Number of occupants one-family dwelling or mobilehome - host present	Incidental transient occupancy by up to 3 transient users in a one-family dwelling or mobilehome with the host present.
Number of occupants in each dwelling unit in two-family or multiple family dwelling - host present	Incidental transient occupancy by up to 2 transient users in each dwelling unit in a two-family dwelling or multiple family dwelling with the host present.
Number of occupants - host not present	Incidental transient occupancy where the host is not present shall be limited to 2 people in a studio unit, 3 people in a one bedroom unit and 2 people per bedroom for each bedroom in excess of one bedroom, but not to exceed 10 persons total.
Contact information - host not present	For incidental transient occupancy where the host is not present on the premises during the term of the transient occupancy, the host shall provide written notice of the name and telephone number of the local contact person to all transient users and to all occupants of all adjacent properties.
Annual limit on number of days for incidental transient occupancy	180 days per calendar year, no host present. 365 days per calendar year with host present.
Parking requirements for incidental transient occupancy	For incidental transient occupancies with the host present, the dwelling unit has the required number of parking spaces for the dwelling type as set forth in Section 20.90.060
Limitation in dwellings subject to Parts 1—6 of Chapter 17.23 of this Code	Incidental transient occupancy is only a permitted use in a dwelling that is subject to Parts 1—6 of Chapter 17.23 of this Code, if the host is a person who occupies the unit that is being used for incidental transient occupancy for at least 60 consecutive days, with the intent to establish

	that dwelling as the host's primary residence.
Payment of transient occupancy tax	Transient occupancy taxes are collected and paid to the city pursuant to Chapters 4.72 and 4.74 of this Code. Transient occupancy taxes are the responsibility of the host, but may be paid by a hosting platform on behalf of a host if the incidental transient occupancy is created through a hosting platform that has an agreement with the city for collection and payment of such transient occupancy taxes.
Compliance with all requirements of the housing code for dwellings	Any building or portion thereof used for incidental transient occupancy shall comply with the requirements of the housing code (Chapter 17.20).
Recordkeeping requirements	The host shall retain records documenting the compliance with these performance criteria for a period of 3 years after each period of incidental transient occupancy. The host shall provide copies of records documenting the compliance with these performance criteria, including but not limited to records showing payment of transient occupancy taxes by a hosting platform on behalf of a host, upon request to city manager, city attorney, city auditor or any designee of city manager, city attorney or city auditor.
Review of incidental transient occupancy use and criteria	City council may terminate incidental transient occupancy as a permitted use or modify the criteria for such use at any time. City council specifically directs that a review of Sections 20.30.110.B, 20.40.115, 20.60.030.C, 20.70.130, 20.75.230 and Part 2.5 of Chapter 20.80 be placed on a city council agenda no later than 18 months after the effective date of Ordinance 29523.

(Ord. 29523.)