

ORDINANCE NO. 2023-09

AN ORDINANCE OF THE CITY OF BOERNE, TEXAS, REPEALING AND REPLACING CHAPTER 23 OF THE CODE OF ORDINANCES, CITY OF BOERNE, TEXAS, TO GOVERN SHORT-TERM RENTALS; PROVIDING REGULATIONS AND PERMITTING FOR THE OPERATION AND USE OF SHORT-TERM RENTALS; AMENDING THE UNIFIED DEVELOPMENT CODE REGULATIONS GOVERNING SHORT-TERM RENTALS; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; PROVIDING AN EFFECTIVE DATE; AND ACKNOWLEDGING COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT.

WHEREAS, the City Council of the City of Boerne, Texas ("City Council") has determined that the regulation of short-term rental properties is in the best interest of the public; and

WHEREAS, the City Council has previously adopted regulations governing short-term rentals and now seeks to repeal and replace those regulations; and

WHEREAS, the City Council has determined that such regulations should include registration and permitting of Short-term rental properties; and

WHEREAS, the purpose of the regulations set forth herein is to provide a procedure to allow the rental of private residences to visitors on a short term basis, while ensuring that such rental use does not cause adverse impacts to residential neighborhoods due to the intensive nature of the use creating excessive traffic, noise, density, and other adverse effects, and additionally to ensure that the number of occupants within such rental units do not exceed the design capacity of the structure causing health and safety concerns, and that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions; and

WHEREAS, the City Council has determined that the enforcement of such regulations will promote the public health, safety and welfare of its citizens, ensure consistency in land uses and development, and protect the rights of property owners, residents, and visitors in the City of Boerne.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS;

Section 1. Title.

These regulations shall be known as the "Short-Term Rental Ordinance" (the "ordinance") of the City of Boerne, Texas.

Section 2. Applicability.

The provisions of this ordinance shall apply to all existing and future rental properties as defined below.

Section 3. Definitions

Accessory dwelling short-term rentals or guest house short-term rentals means properties operated as a short-term rental where the legal owner (or the person who holds legal or equitable title to the property) resides on the property and provides guest lodging accommodation for compensation within a lawful accessory dwelling on the same lot or property as the owner's principal residence. Properties must comply with all applicable requirements for accessory dwellings. Only one dwelling on a property may be rented per the city's regulations regarding accessory dwellings.

Code or city code means the Code of Ordinances, City of Boerne, Texas.

Local authorized representative means an individual with a 24-hour contact number who shall serve as the designated local representative for the owner and/or operator, and who shall respond to complaints regarding violations of federal, state, or local laws, and to notification of emergency conditions including but not limited to fire, natural disaster, flood, burst pipes, collapse hazard, emergency repairs, and violent crime.

Occupant means the person(s) who have lawfully obtained the exclusive use and possession of the short-term rental premises from the owner and/or operator, and the guest(s) of such person(s).

Operator means the owner or local responsible party tasked with managing a property operating as a short-term rental on behalf of the owner.

Owner means the individual or entity that owns a property operating as a short-term rental.

Short-term rental means the rental for compensation, of any residence or residential structure, or a portion of a residence or residential structure, including any portion of a dwelling unit such as a home, room in a home, accessory dwelling, manufactured/mobile home, or duplex, located within a zoning district where the residential use is lawful, for the purpose of overnight lodging for a period of not more than thirty (30) days. A short-term rental shall not include a hotel or motel, but includes all accessory dwelling short-term rentals, owner-occupied short-term rentals, and unoccupied short-term rentals.

Owner-occupied short-term rentals means properties where the legal owner or tenant (or the person who holds legal or equitable title to the property) resides on the property and provides guest lodging for compensation, and the property is the legal owner's primary residence, as evidenced by a current residence homestead exemption filed with the Kendall County Appraisal District.

Unoccupied short-term rentals means properties where the legal owner (or the person who holds legal or equitable title to the property) provides guest lodging accommodation for compensation within a lawful structure that is not located on the same lot or property as the owner's principal residence (e.g., a stand-alone home that is unoccupied unless it's being rented).

Section 4. Purpose.

The purpose of this Ordinance is to preserve the life, health, safety, and property of the occupants of residential dwelling units, the neighbors of said properties, and the general public by establishing minimum standards and registration requirements for Short-Term Rentals as defined herein that can be regulated by the City. Additionally, this Ordinance is intended to preserve the neighborhood character of residential subdivisions within the City of Boerne and to minimize adverse impacts to the

housing supply caused by the conversion of residential units to tourist or transient use. This Ordinance will also clarify authorized enforcement action against repeated or multiple violations under this Ordinance.

Section 5. Generally.

Short-Term Rental registration/permitting shall be required before renting or advertising for rent any residential single-family homes, accessory dwellings, manufactured/mobile homes, or duplexes located inside the area regulated by the City of Boerne for a period of less than 30 consecutive days.

Section 6. Short-Term Rental Application Requirements

- A. Prior to using a dwelling unit as a Short-Term Rental or advertising in any manner the availability of the dwelling unit, the owner or operator must submit an application on a form and in the manner prescribed by the City of Boerne. The application shall be reviewed and must meet the criteria set forth by this Ordinance prior to being approved by the City of Boerne. It shall be unlawful for any person or entity to rent, or offer to rent, any Short-Term Rental without a valid Short-Term Rental Registration and Permit issued under this ordinance.
- B. The following information is required for all applications, and missing items or information shall constitute an invalid application. Additional information may be required based on individual circumstances.
 - 1. Applicant's information shall be provided as follows:
 - a. If an individual property owner: name of the property owner, business address, home address, telephone number, electronic mail address;
 - b. If a management company: name of the property manager; information concerning the property owner (as required herein) and the management company's business address, the management company's primary point of contact, phone number and electronic mail address;
 - c. If the owner is a partnership: each partner's business address, telephone number and electronic mail address;
 - d. If the property owner is a legal entity, whether corporation, limited partnership, limited liability partnership, limited liability company, series limited liability company or otherwise; the party registering must provide: i) documentation sufficient to show that the entity is organized under the laws of the State of Texas or is a foreign entity and ii) the entity's mailing address, telephone number, electronic mail address, primary point of contact, iii) and the names of all the owners or trustees of such entity;
 - e. If different from the applicant information: provide the name(s), address, electronic mail address, and phone number (24-hour contact number) of designated employee(s) or authorized representative(s) who shall be assigned to respond to emergency conditions; emergency conditions shall include but not be limited to: fire, natural disaster, flood, burst pipes, collapse hazard, emergency repairs, and violent crime; and
 - f. The applicant shall certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Texas and that they will comply with all applicable regulations, including the Short-Term Rental Ordinance.
 - 2. Street address of the rental unit;

3. Plot plan showing parking spaces;
4. A dimensioned floor plan of the proposed short-term rental identifying the proposed maximum number of occupants, bedrooms, other living spaces, location of safety features, and emergency evacuation routes;
5. Proof of liability insurance coverage (min. \$500,000 per occurrence);
6. A copy of the safety inspection in a form approved (and provided) by the City of Boerne to be performed by a licensed real estate inspector;
7. Provide confirmation that notice of the use of a Short-Term Rental has been provided to the HOA (if applicable); and
8. If the home is served by well and/or septic, these facilities must be maintained in such a manner that meets the regulatory requirements of Cow Creek and Kendall County specifications as applicable.

Section 7. Short-Term Rental Criteria.

A. Short-Term Rentals shall adhere to the following criteria:

1. Separation distance: All Short-Term Rentals shall provide a minimum separation distance to any other Short-Term Rental. The distance of separation shall be the greater of the following two measurements:
 - a) At least 350 feet from the perimeter of the property boundary; and
 - b) four (4) lots measured in a linear fashion along a street frontage;
2. Lot limitation: Only one dwelling unit is allowed on any lot, property, or parcel;
3. Occupancy: No more than two occupants per bedroom plus two with a maximum of 10 occupants.
4. Notification to occupant: provide a copy of the proposed host rules for the STR that contains a description and location of safety features.
5. Signage: No signs identifying the Short-Term Rental shall be permitted, except that a single nameplate, not exceeding one square foot in area, may be attached flat to the main building.
6. Building Code: All structures must be in compliance with City of Boerne building code applicable at time of construction.
7. Parking: A minimum of one parking space per bedroom rented shall be provided on site. On-street parking may be counted toward the required parking spaces as long as it abuts the property, is a minimum of 25 feet in length per space and provides adequate clear space for a mailbox and trash receptacle.
8. Noise: It shall be unlawful for an owner or occupant of a Short-Term Rental to allow, permit, or make any noise that would be in violation of the City's nuisance ordinance.
9. Minimum stay: It shall be unlawful for an owner to rent or lease a Short-Term Rental for a period of less than one night.
10. Events: It shall be unlawful for an owner or occupant to advertise or promote a special event, or allow the advertising and promotion of a special event (e.g. event center, banquet, wedding, reception, reunion, party, concern or similar activity that would assemble large numbers of invitees) to be held on the premises.
11. Safety: An applicant for a Short-Term Rental Permit shall provide a copy of the safety inspection in a form approved (and provided) by the City of Boerne. Such inspection needs to be performed by a licensed real estate inspector.

B. Occupant Online Notification: Each applicant operating a Short-Term Rental shall provide guests with online information that shall also be posted in a visible location within the Short-Term Rental. The information shall include the following:

1. The applicant's or property manager's contact information; specifically, a direct phone number.
2. A responsible party's contact information that will provide a response within 30 minutes.
3. Pertinent neighborhood information including, but not limited to, parking restrictions, dedicated on-site parking information, restrictions on noise and amplified sound, trash collection schedule, and relevant water restrictions.
4. Information advising guests if the property is located in a flood plain.
5. Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire, and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts, and updates.
6. A sketch of the floor plan, which identifies sleeping areas, the proposed maximum number of guests, evacuation route(s), location of fire extinguisher(s) and location of parking spaces (not to include the garage).

Section 8. Short-Term Rental Property Permit

- A. **Applicant responsibility:** It is the applicant's and/or owner's responsibility to renew the registration for each rental unit within the City as prescribed by this Ordinance.
- B. **Incomplete application:** Incomplete applications will not be processed, and a permit will not be issued.
- C. **Fee Required:** An applicant for a Short-Term Rental Permit shall pay to the City a permit fee as established in the current City of Boerne Fee Ordinance.
- D. **Permit Number:** Once properly registered, each Short-Term Rental shall be issued a unique permit number. The permit number must be included in all advertisements for the Short-Term Rental including internet booking sites. Permit information will be provided to the City of Boerne Police Department.
- E. **Permit expiration and renewal.**
 1. A Short-Term Rental Permit issued under this Ordinance shall expire January 1st of every even-number year and shall be renewed within 30 days after expiration.
 2. To renew a Short-Term Rental Permit, the applicant and/or owner must submit an application during the renewal period as stated above with the required permit fee and accessory documentation.
 3. A Short-Term Rental permit issued within six months of the designated renewal period (January 1st to January 31st of the even-number year), a new permit is not required until the following date of renewal.
 4. Any legal owner delinquent and/or owing the City of Boerne fees and/or taxes, to include but not limited to hotel occupancy tax and utility service fees, will be prohibited from registering a Short-Term Rental until such time as payment in full is made or other required acceptable resolution is approved by the City of Boerne finance department.

- F. Changes to the permit: The owner has a duty to notify the city within 20 calendar days, in writing, of any changes to information submitted as part of a Short-Term Rental Permit application under this Chapter.
- G. Transferability: A Short-Term Rental Permit is not transferable to a new property owner with the exception of an inheritance to next of kin. If the new owner wishes to continue such use, the new owner must apply for a new Short-Term Rental Permit and comply with the regulations in place for such use at the time of the new application.
 - 1. If the Short-Term Rental is transferred by inheritance, any outstanding Hotel taxes shall be paid in full prior to continued operation of a Short-Term Rental.
 - 2. Hotel taxes shall be paid in full prior to closing on the sale of any property used for Short-Term Rental.

Section 9. Offenses and Enforcement

- A. Offenses: An applicant commits an offense if such applicant:
 - 1. Allows operation of a Short-Term Rental that is not registered with the City;
 - 2. Fails to renew registration but continues to operate a Short-Term Rental unit in the City of Boerne; or
 - 3. Omits or provides false or incorrect information on an application for a Short-Term Rental permit.
- B. An offense as stated above will constitute a violation of the Ordinance. Such violation is a Class C misdemeanor offense. Any persons, firm, entity, or any others acting on behalf of said persons, firm, or entity violating or failing to comply with these provisions is subject to payment of a fine not to exceed \$500.00 plus court costs. Each act of violation and each day upon which such violation occurs constitutes a separate offense. Additionally, this Ordinance authorizes cumulative enforcement action against repeated or multiple violations under this Ordinance.
- C. Electronic communication notice: Electronically transmitting a copy of the notice, acknowledgment of receipt requested, to the last known electronic address of the applicant or owner shall serve as an accepted legal standard of contact and notice under this Ordinance.
- D. Existing Short-Term Rentals.
 - 1. All Short-Term Rentals existing as of the adoption of this ordinance shall have six (6) months from the date of adoption to come into compliance with the requirements of this Ordinance to be eligible for the permit renewal. Only an exception to the separation distance requirements is permitted.
 - 2. An additional Five Hundred Dollar (\$500.00) penalty fee shall be assessed to any Short-Term Rental permit application that is eligible for renewal in accordance with this Ordinance but did not meet the deadline for permit renewal. As stated under the revocation language, payment must be made within 30 days of the due date or the permit shall be revoked and a new application will be required.
 - 3. Temporary Short-Term Rentals: Any Short-Term Rental issued a temporary permit prior to the date of adoption of this ordinance shall be required to come into conformance with the requirements as stated for Short-Term Rentals within 6 months

of the date of adoption. If a Short-Term Rental cannot comply herein, the temporary permit will no longer be valid and the Short-Term Rental shall cease operating.

E. Revocation.

1. The City of Boerne shall revoke a Short-Term Rental permit for a property if it is determined that any of the following apply:
 - a. All applicable taxes are not paid within sixty (60) days of the date due;
 - b. The permit is not renewed within thirty (30) days of the required renewal date;
 - c. If three or more accounts of criminal conduct or violations to the City of Boerne regulations (noise, lighting, nuisances, etc.) have occurred with respect to such Short-Term Rental in the previous 365 calendar days;
 - d. The property does not comply with all Building Code requirements applicable at time of construction;
 - e. The property is declared a hazard or a substandard structure by the Building Official of the City of Boerne;
 - f. The applicant fails to comply with all applicable requirements of this Ordinance.
2. For purposes of this section, the City of Boerne must serve notice of intent to revoke the permit by mail, electronic notification, or posting on the subject property. The revocation is effective immediately. If a permit is revoked, no new permit with respect to such Short-Term Rental shall be issued for a period of at least one year.
3. An owner, operator, or applicant may appeal the revocation of an existing permit or denial of an application, in accordance with the process set forth in this ordinance.

F. Appeals.

1. The revocation of a permit or the director's denial of an application for a permit to operate a short-term rental may be appealed to the city manager in accordance with the provisions of this section.
2. An appeal filed under this section must be filed with the director no later than the 20th day following the date on which the permit was revoked or denied. The appeal must be sworn and must identify each alleged point of error, facts and evidence supporting the appeal, and reasons why the action of the director should be modified or reversed.
3. The city manager or a designee shall, not later than the 10th day after the date the notice of appeal is filed, hear the appeal, and may affirm, modify or reverse a permit revocation or application denial.
4. The city manager or designee shall give written notice of a decision on an appeal to the appellant.
5. An appellant who seeks judicial review of the city manager's review on appeal must file a petition with a court of competent jurisdiction not later than the 30th day after receipt of the notice of the decision."

SECTION 10. If any word, phrase, clause, sentence, paragraph, section or other part of this ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this ordinance and the application of such word, phrase, clause, sentence, paragraph, section or other part of the is ordinance to any other persons or circumstances shall not be affected thereby.

SECTION 11. The City Council officially finds, determines and declares that a sufficient written notice of the date, hour, place and subject of each meeting at which this ordinance was discussed,

considered or acted upon was given in the manner required by the Texas Open Meetings Act, as amended, and that each such meeting has been open to the public as required by law at all times during such discussion, consideration and action. The City Council ratifies, approves and confirms such notices and the contents and posting thereof.

PASSED and APPROVED on first reading this _____ day of _____, 2023.

PASSED and APPROVED and ADOPTED on seconded reading this ____ day of _____, 2023.

APPROVED

Mayor

ATTEST:

City Secretary

Approve as to Form: City Attorney