

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; 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 of Boerne, Texas (the "City"), is a home rule city acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution, and Chapter 9 of the Local Government Code; and

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 City Council has considered extensive data and recommendations analyzed and developed by the City's Planning Department in enacting the regulations set forth herein; 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

Chapter 23 "Short Term Rentals" of the Code of Ordinances, City of Boerne, Texas is hereby repealed and replaced to read as follows:

Sec. 23-1. - Title.

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

Sec. 23-2. - Applicability.

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

Sec. 23-3. - 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.

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

Director means the planning director for the city.

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).

Sec. 23-4. - Purpose.

The purpose of the regulations set forth herein 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 health and safety standards and registration requirements for short-term rentals as defined herein. Additionally, this ordinance is intended to preserve the neighborhood character of residential subdivisions within the city 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 for repeated or multiple violations under this ordinance.

Sec. 23-5. - Compliance required.

Compliance with the regulations herein shall be required before advertising, offering to rent, or renting to an occupant any residential single-family homes, residential structures, accessory dwellings, manufactured/mobile homes, or duplexes located inside the area regulated by the city for a period of less than thirty (30) consecutive days.

Sec. 23-6. - Short-term rental application requirements.

- (a) Prior to operating or advertising in any manner a dwelling unit as a short-term rental, the owner or operator must submit an application on a form and in the manner prescribed by the city. The application shall be reviewed and must meet the criteria set forth by this ordinance prior to being approved. It shall be unlawful for any person or entity to rent to an occupant, or offer to rent to an occupant, 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. Applications shall be accompanied by the applicable fee identified in the city fee schedule.
 - (1) Applicant's information as follows:
 - a. *If an individual property owner.* Provide the name of the property owner, business address, home address, telephone number, and electronic mail address;
 - b. *If a management company.* Provide the 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.* Provide each partner's business address, telephone number, and electronic mail address;
 - d. *If the owner is a legal entity, whether corporation, limited partnership, limited*

liability partnership, limited liability company, series limited liability company or other. Provide i) documentation sufficient to show that the entity is organized under the laws of the State of Texas or is a foreign entity; ii) the entity's mailing address, telephone number, electronic mail address, and primary point of contact; and iii) 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. A certification that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Texas and that the owner and/or operator of the short-term rental will comply with the standards and other requirements of this ordinance, as well as all applicable standards and other requirements of federal, state, and local law.

- (2) Street address of the rental unit;
- (3) Designation of whether the rental unit is an accessory dwelling short-term rental, owner-occupied short-term rental, or unoccupied short-term rental;
- (4) Plot plan showing the location and quantity of parking spaces to be used in conjunction with the short-term rental;
- (5) 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;
- (6) Proof of liability insurance coverage providing a minimum liability coverage of \$500,000 per occurrence and \$1,000,000 in the aggregate, and containing an endorsement to provide the city with a minimum of a 30-day notice of cancellation, non-renewal, and/or material change in policy terms or coverage, provided that a minimum of 10 days' notice shall be required in the event of non-payment of premium;
- (7) A contact phone number and electronic mail address to be used to schedule the safety inspection to be performed by a City of Boerne inspector; and
- (8) Confirmation that notice of the use of a short-term rental has been provided to the HOA (if applicable).

Sec. 23-7. - Short-term rental criteria.

- (a) Short-term rentals shall comply with the following criteria:
 - (1) *Location criteria and lot limitation.*

- a. *Residential zoning districts.* In areas zoned for residential use, no short-term rental shall operate within 200 feet of another short-term rental on the same block face, measured property line to property line. Only one short-term rental may operate on any lot, property or parcel in an area zoned for residential use.
- b. *Overlay districts.* Short-term rentals may operate on properties zoned for commercial use within the Historic Overlay District, Downtown Overlay District, and River Road Overlay District with no separation requirements. Short-term rentals may operate on properties zoned for residential use within the Historic Overlay District, Downtown Overlay District, and River Road Overlay District, subject to the separation requirement identified in subsection 23-7(a)(1)(a) herein.
- c. *All other commercial zoning districts.* Short-term rentals shall not operate in areas zoned for commercial use except to the extent permitted by subsection 23-7(a)(1)(b) herein.
- d. *Special exception available.* In order to obtain a permit for a short-term rental that would otherwise violate the minimum separation distance and lot limitation described herein, a property owner may apply to the zoning board of adjustment for a special exception in accordance with section 1.12(C) of the city's unified development code. The board may consider factors such as the following:
 - 1. Whether operation as a short-term rental in excess of the density limitation will not adversely impact the residential quality of the neighborhood in which the property is located;
 - 2. Whether such operation is likely to disrupt adjacent owners' right to the quiet enjoyment of their property (for example, by considering whether lot sizes are small enough that noise is likely to affect neighboring property owners);
 - 3. Whether such operation will substantially impact nearby streets, including whether the property provides only limited off-street parking;
 - 4. Whether the applicant seeks to operate an entire residence as a short-term rental or whether the short-term rental use is limited to a portion of the residence;
 - 5. Whether the applicant occupies the premises as their primary residence or uses it as an investment property; and
 - 6. Whether other short-term rentals in excess of the minimum separation distance are already operating on that block.

(2) *Occupancy.* The maximum number of persons permitted to stay in a short-term rental is limited to two (2) persons per bedroom, plus two (2) additional persons.

- a. *Special exception available.* In order to obtain a permit for a short-term

rental that would otherwise violate the occupancy limit described herein, a property owner may apply to the zoning board of adjustment for a special exception in accordance with section 1.12(C) of the city's unified development code. The board may consider the factors identified in subsection 23-7(a)(1)(d) described herein with respect to occupancy, as well as the size of the property and fire safety concerns.

- (3) *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.
 - (4) *Taxation.* The owner and/or operator of the short-term rental property shall register with the city finance department to pay hotel occupancy taxes prior to the date that the short-term rental permit application is approved, and the owner and/or operator must remit all applicable hotel occupancy taxes in a timely manner pursuant to applicable laws.
 - (5) *Temporary structures prohibited.* No recreational vehicle, tent, or temporary structure of any kind shall be used as a short-term rental.
 - (6) *Building code.* All structures must comply with the 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. It shall be unlawful for an owner, operator, or occupant of a short-term rental to otherwise violate the city's ordinance governing stopping, standing and parking.
 - (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 Chapter 14, Article V of the city code.
 - (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, promote, or operate a special event, or allow the advertising, promotion, or operation of a special event (including, but not limited to, operations as an event center or operations for a banquet, wedding, reception, reunion, party, concert or similar activity that would assemble large numbers of invitees) to be held on the premises.
 - (11) *Advertising.* The owner or operator shall not advertise or promote, or allow another to advertise or promote, the short-term rental without including the occupancy limits, parking standards, and city permit number for the listing.
 - (12) *Utilities.* 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.
- (b) *Occupant online notification.*

Each owner or operator of 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 owner's or operator's contact information, including a direct phone number;
- (2) The local authorized representative's contact information, including the direct 24-hour phone number;
- (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 and natural or manmade disaster alerts and updates; and
- (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 authorized parking spaces (not to include the garage).

Sec. 23-8. - Short-term rental property permit.

- (a) *Applicant responsibility.* It is the owner's and/or operator'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 permit and/or inspection fees as follows on the effective date of this ordinance, or as subsequently amended by the city fee ordinance.
 - (1) Short-term rental permit application: \$200
 - (2) Short-term rental inspection by city inspector: \$100
- (d) *Inspection.* An applicant for a short-term rental permit shall complete a safety inspection of the property to be operated as a short-term rental. Such inspection shall be performed by either (i) a city inspector, subject to the inspection fee required by subsection 23-8(c) herein, or (ii) by a licensed real inspector reporting the results of such inspection on the city's short-term rental inspection checklist. An applicant for a short-term rental permit located in the city's extra-territorial jurisdiction shall not be required to obtain an inspection.
- (e) *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, whether online, in print, or in some other medium, for the short-term rental. Permit information will be provided to the city police department.

- (f) *Permit expiration and renewal.*
- (1) A short-term rental permit issued under this ordinance shall expire two years from the permit effective date and shall be renewed within thirty (30) days after expiration.
 - (2) To renew a short-term rental permit, the owner or operator may submit an application for review 30 days prior but no later than the expiration of the renewal period as stated above with the required permit fee and accessory documentation.
 - (3) Any property owner delinquent and/or owing the fees and/or taxes to the city, including 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 finance department.
- (g) *Changes to the permit.* The owner has a duty to notify the city within twenty (20) calendar days, in writing, of any changes to information submitted as part of a short-term rental permit application under this ordinance.
- (h) *Transferability.* A short-term rental permit may be transferred to another owner or operator within one (1) year of the date of change in ownership. A transferee must complete a short-term rental permit application and inspection and submit all applicable fees as required by this ordinance. A short-term rental permit shall not be transferred to another location. Prior to transferring the property ownership, the current owner shall provide to the new owner a Certificate of Paid Hotel Taxes obtained from the city finance department.
- (i) *Annual update.* On an annual basis, city staff shall provide a short-term rental program update to the city council to review permitting and enforcement information.

Sec. 23-9. - Offenses and enforcement.

- (a) *Offenses.* An owner, operator, or occupant commits an offense if such individual or entity:
- (1) Violates any of the regulations herein;
 - (2) Allows operation of a short-term rental that is not registered with the city;
 - (3) Fails to renew registration but continues to operate a short-term rental; or
 - (4) Omits or provides false or incorrect information on an application for a short-term rental permit.
- (b) *Evidence.* Any advertisement, whether it be online, in print, or in some other medium, promoting the availability of a property within the city for rent for a period of less than thirty (30) days, shall constitute prima facie evidence of the property's use as a short-term rental.
- (c) *Offenses.* An offense as stated above shall constitute a class C misdemeanor. Any person, firm, entity, or any others acting on behalf of said person, firm, or entity violating or failing to comply with these provisions is subject to payment of a fine not to exceed \$2,000.00 plus court costs for all violations of regulations governing fire safety, zoning, or public health and sanitation, other than dumping of refuse; \$4,000.00 plus court costs for

all violations of regulations governing dumping of refuse; and \$500.00 plus court costs for all other violations. Each act of violation and each day upon which such violation occurs constitutes a separate offense.

(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. Notwithstanding the foregoing, a short-term rental that was lawfully in existence based on preexisting permits and current hotel occupancy tax remittance on the effective date of this ordinance shall be considered a legal nonconforming use, and the renewal or transfer of such existing permit shall not be subject to the minimum separation distance set forth in this ordinance.
- (2) *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 herein for short-term rentals within six (6) months of the date of adoption. Notwithstanding the foregoing, a temporary short-term rental that was lawfully in existence on the effective date of this ordinance shall be considered a legal nonconforming use and shall not be subject to the minimum separation distance set forth in this ordinance.

(e) *Revocation; repeat offenses.*

- (1) The city may revoke or deny an application to renew a short-term rental permit if it is determined that:
 - a. The owner and/or operator has failed to timely remit applicable hotel occupancy tax and all applicable tax is not paid within sixty (60) days of the issuance of a delinquency notice;
 - b. The permit is not renewed within thirty (30) days of the required renewal date; or
 - c. The property is declared a hazard or the dwelling is declared a substandard structure by the building official of the city; or
 - d. The owner and/or operator has not collected hotel occupancy taxes during the previous 24-month period, such that the non-collection demonstrates that the short-term rental has not been operated within that period. Notwithstanding the foregoing, a permit shall not be revoked for non-operation and non-collection of hotel occupancy taxes if the property owner notifies the city that it is temporarily suspending operation as a short-term rental in order to renovate the short-term rental, utilize the short-term rental as a primary residence, or for other such reasonable justification as determined by the director.
- (1) The city may revoke a short-term rental permit for the following repeat offenses:
 - a. If the owner, operator, or any occupant of a short-term rental has failed to comply with any requirement of this ordinance three (3) or more times

within a 12-month period, the city may revoke an existing permit or may deny an application to renew a permit. No new permit may be sought for the subject property for a period of twelve (12) months following a denial or revocation pursuant to this section.

- b. If a property is the subject of five (5) or more violations of federal law, state law, or the other provisions of the city code outside of this ordinance within the previous 24-month period, the city may revoke an existing permit; may deny an application for an original permit; or may deny an application to renew a permit, based on: (1) the frequency of any repeated violations; (2) whether a violation was committed intentionally or knowingly; and (3) any other information that demonstrates the degree to which the owner or occupant has endangered public health, safety, or welfare. No new permit may be sought for the subject property for a period of twelve (12) months following the denial or revocation pursuant to this section.
 - c. A permit applicant may appeal the director's decision to revoke an existing permit or deny an application, in accordance with the process set forth in section 23-9 of this ordinance.
- (2) For purposes of this section, the city must serve notice of intent to revoke the permit by certified mail, return receipt requested, or posting on the subject property. The revocation is effective immediately and an owner and/or operator must discontinue operation as a short-term rental within ten (10) days of receipt of such notice. 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 (1) year.
 - (3) An owner, operator, or applicant may appeal the revocation of an existing permit or denial of a permit application in accordance with the process set forth in this ordinance.

Sec. 23-9. - Appeals.

- (a) 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.
- (b) 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.
- (c) 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.
- (d) The city manager or designee shall give written notice of a decision on an appeal to the appellant.
- (e) 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 3.

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances, City of Boerne, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, paragraph, sentence, clause, or phrase of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

SECTION 5.

Any person, firm, or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in Section 1-14 of the Code of Ordinances, City of Boerne, Texas. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 6.

All rights and remedies of the City are expressly saved as to any and all violations of the provisions of the Code of Ordinances, City of Boerne, Texas, as amended or revised herein, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 7.

The City Secretary is hereby directed to publish the caption and penalty clause of this Ordinance in the official newspaper of the City as required by Section 3.11 of Article III of the Charter of the City of Boerne.

SECTION 8.

This Ordinance shall be in full force and effect from and after its date of passage and publication as required by law, and it is so ordained.

SECTION 9.

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 the ____ day of July 2023.

PASSED, APPROVED, and ADOPTED on second reading this the ____ day of August 2023.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

DRAFT