

ORDINANCE NO. 2019-41

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF BOERNE, TEXAS, BY ADDING CHAPTER 23. SHORT TERM RENTALS, PROVIDING FOR REGULATIONS FOR THE OPERATION AND USE OF SHORT TERM RENTALS; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 FOR THE VIOLATION THEREOF; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the 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 determined that such regulation include registration and permitting of short term rental properties; and

WHEREAS, the City Council has determined that the ability to enforce the provisions of such regulations will promote the public health, safety and welfare of its citizens;

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

The Code of Ordinances, City of Boerne, Texas is hereby amended by adding Chapter 23. Short Term Rentals:

SECTION 1. Purpose.

The purpose of this Ordinance is to establish regulations for the use of privately owned dwellings as Short Term Rentals, to minimize the ancillary impact on surrounding properties, and to ensure the collection and payment of Hotel Occupancy Tax.

SECTION 2. Definitions.

The following words, terms and phrases when used in this Article, shall have the following meanings except where the context clearly indicates a different meaning:

- A. City - The City of Boerne, Texas.
- B. ETJ – Extra Territorial Jurisdiction of the City of Boerne.
- C. Administrator – The City Manager or his/her designee.
- D. Guest - The overnight occupants renting a Short Term Rental Unit for a specified period and the daytime visitors of the overnight occupants.
- E. Local Contact Person - The Owner, Operator, or person designated by the Owner or the Operator, who shall be available twenty-four (24) hours per day for the purpose of responding to concerns or requests for assistance related to the Owner's Short Term Rental.
- F. Operator - The Owner or the Owner's authorized representative who is responsible for compliance with this Article while advertising and/or operating a Short Term Rental.
- G. Owner - The person or entity that holds legal or equitable title to the Short Term Rental property.

- H. Short Term Rental - A privately owned dwelling in the City of Boerne or the City of Boerne ETJ, including but not limited to, a single-family dwelling, multiple family attached dwelling, apartment house, condominium, duplex, accessory dwelling, mobile home, or any portion of such dwellings, rented by the public for consideration, and used for dwelling, lodging or sleeping purposes for a period less than thirty (30) consecutive days.
The following are exempt from the regulations under this Article: hotel, motel, dormitory, public or private club, recreational vehicle park, hospital and medical clinic, nursing home or convalescent home, foster home, halfway house, transitional housing facility, any housing operated or used exclusively for religious, charitable or educational purposes, and any housing owned by a governmental agency and used to house its employees or for governmental purposes.
- I. Short Term Rental Permit - A permit issued by the City authorizing the use of a privately-owned dwelling as a Short Term Rental.
- J. Short Term Rental Unit. One or more habitable rooms forming a single habitable division within a Short Term Rental, or an entire undivided Short Term Rental, which is advertised to be occupied, is occupied, or is intended to be occupied by a single party of Guests under a single reservation and/or single rental payment.

SECTION 3. Short Term Rental permit required.

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 Permit issued under this Article.

SECTION 4. Short Term Rental permit registration fee and application.

- A. Prior to using a dwelling unit as a Short Term Rental or advertising in any manner the availability of the dwelling unit for Short Term Rental, the Owner or Operator must submit the following information on a form and in the manner prescribed by the Administrator:
 - a. The name, address, email and telephone number of the Owner of the Short Term Rental;
 - b. The name, address, email and telephone number of the Operator of the Short Term Rental;
 - c. The name, address, email and twenty-four (24) hour telephone number of the Local Contact Person;
 - d. The number of bedrooms and the proposed overnight and daytime occupancy limit of the Short Term Rental;
 - e. The name, mailing and physical address of the Short Term Rental;
- B. A separate Short Term Rental application and permit fee must be submitted for each property address.
- C. Any Short Term Rental existing as of the adoption of this ordinance shall have until January 31, 2020 to complete the required application and obtain their Short Term Rental permit.
- D. Transferability.
 - a. A Short Term Rental Permit is not transferable to a new property owner. A new owner must apply for a Short Term Rental Permit within sixty (60) days from the closing date of the purchase or any other conveyance of ownership. Failure of a new property owner to apply for permit within sixty (60) days from the closing

date may result in the revocation or non- renewal of an existing Short Term Rental Permit or the denial of a new Short Term Rental registration.

- b. Prior to transfer to a new owner, the current owner shall provide to the new owner a copy of this Ordinance, as now or hereafter amended. Prior to transfer, a Certificate of Paid Hotel Taxes shall be obtained from the City of Boerne Finance Department. If the new owner has not obtained the Certificate, the new owner becomes responsible for any and all unfilled reports due, and unpaid taxes, penalties, interest and fines.
- E. Any property owner delinquent and/or owing 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 or acceptable resolution is approved by the City of Boerne finance department.
- F. 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.
- G. A Short Term Rental Permit issued under this Article shall expire at the end of every odd number calendar year. To renew a Short Term Rental Permit, the Owner or Operator must submit an application and the required permit fee between January 1st and January 31st of every even number calendar year.
- H. Once properly registered, each Short Term Rental shall be issued a unique permit number. The permit number must be included in any and all advertisement for the Short Term Rental including internet booking sites.
- I. 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 Article.
- J. An application for Short Term Rental Permit may be denied if the Owner has had a Short Term Rental Permit suspended or revoked during the previous 365 calendar days.
- K. An additional Two Hundred dollar (\$200.00) civil penalty fee will be applied to any Short Term Rental permit application that is not completed by the appropriate date.

SECTION 5. Rental properties are further regulated by the City of Boerne Zoning Ordinance.

SECTION 6. Notification of complaints.

Complaints related to the operation of a Short Term Rental, including but not limited to complaints concerning noise, garbage, parking, pets and disorderly conduct by Guests, shall be reported to the City Code Enforcement Office or Police Department.

SECTION 7. Compliance with other law.

- A. The Owner, Operator, Local Contact Person, and Guests shall comply with all applicable laws, rules and regulations pertaining to the operation, use, and occupancy of a Short Term Rental. The Owner shall not be relieved from any civil or criminal liability for a violation of this Article, regardless of whether such violation is committed by the Owner, Operator, Local Contact Person, or Guest of the Owner's Short Term Rental.
- B. Nothing in this Article shall be construed to relieve any person or Owner of any other applicable requirements of federal, state, or local law, rules, or regulations. Nothing in

this Article shall be construed to provide any property owner with the right or privilege to violate any private conditions, covenants, and restrictions applicable to the Owner's property that may prohibit the use of such Owner's property as a Short Term Rental as defined in this Article.

SECTION 8. Compliance and enforcement - penalty provisions.

- A. The Owner/Operator shall comply with all applicable laws, rules and regulations pertaining to the use and occupancy of the subject Short Term Rental unit including the City of Boerne Zoning Ordinance as it pertains to Rental properties.
- B. The Owner/Operator shall fully comply with City of Boerne Code of Ordinances, Article V., Hotel and Motel Occupancy Tax.
- C. A permit may be denied, suspended or revoked for any of the following reasons:
 - a. Providing false or misleading information on a Permit application;
 - b. Representing a property available or otherwise making a residence available for occupancy or rent as a Short Term Rental where the property does not hold a valid Short Term Rental permit;
 - c. The Permit holder is overdue in payment to the City of taxes, fees, fines, or penalties or fails to provide documentation when requested showing all occupancy taxes have been paid for the property.
 - d. The Short Term Rental is sold or otherwise transferred.
 - e. Information provided with the permit application has changed or is no longer accurate and the permit holder has failed to notify the City.
- D. It shall be unlawful for any person or entity to violate any provision of this Article. Proof that a violation of this Article occurred at a Short Term Rental shall create a rebuttable presumption that the Owner of said Short Term Rental committed the violation.
- E. Any violation of this Article is a Class C misdemeanor offense, and upon conviction, shall be punished by a fine in the maximum amount of \$500.00.
- F. Prosecution under this Article shall not require the pleading or proving of any culpable mental state.
- G. Penalties provided for in this Article are in addition to any other criminal or civil remedies that the City may pursue under federal, state, or local law.

SECTION 9. Permit suspension or revocation: appeal.

- A. If an application for a Short Term Rental Permit or renewal is denied or the permit is revoked upon conviction for a violation of this Article. The Administrator shall notify an Owner of a suspension or revocation under this Section in writing, delivered by Certified Mail, Return Receipt Requested, and mailed to the address of the Owner as set forth on the most recent Short Term Rental Permit application submitted to the City.
- B. An Owner may appeal a notice of suspension or revocation under this Section by filing a written appeal with the Administrator within ten (10) business days following the date said notice was deposited in the U.S. Mail. Following a timely filing of an appeal hereunder, the Owner may present evidence to the Administrator related to the suspension or revocation under this Section.
- C. The Administrator shall have twenty (20) business days from the date on which the appeal was received in which to give a written decision affirming, modifying, or reversing the denial, suspension, or revocation as applicable, the Administrator's decision is final.

SECTION 10. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 11. The City Secretary is directed to publish notice of this ordinance creating a new Chapter to the Code of Ordinances. Publication shall be in a newspaper in the City in accordance the City Charter.

SECTION 12. This ordinance shall become effective upon publication.

PASSED and APPROVED on first reading this the 8th day of October, 2019.

PASSED, APPROVED and ADOPTED on second reading this the ____ day of October, 2019.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney