

ORDINANCE NO. 2020-20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING THE NEW BRAUNFELS CODE OF ORDINANCES, CHAPTER 144 ZONING, SECTION 1.4 DEFINITIONS, AND SECTION 5.17 SHORT TERM RENTAL OR OCCUPANCY; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; CONTAINING A SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Chapter 211 of the Texas Local Government Code empowers a city to enact zoning regulations and provide for their administration, enforcement and amendment; and

WHEREAS, the City Council of the City of New Braunfels, Texas, deems it necessary and desirable to establish zoning regulations to provide for the orderly development of property within the City by governing the use of land in order to promote the public health, safety, morals and general welfare of the residents of the City; and

WHEREAS, the Comprehensive Plan, Envision New Braunfels, has multiple action items supporting the regulation of short-term rentals, including Action Item 1.3: Encourage balanced and fiscally responsible land use patterns, Action 1.11: Update policies and codes to achieve development patterns that implement the goals of Envision New Braunfels, Action 1.14: Ensure regulations do not unintentionally inhibit the provision of a variety of flexible and innovative lodging options and attractions, Action 3.3: Balance commercial centers with stable neighborhoods, and Action 3.6: Pro-actively provide a regulatory environment that remains business and resident friendly; and

WHEREAS, the City Council finds it necessary to amend the regulatory standards of short-term rentals and occupancy to protect residential neighborhoods in New Braunfels; and

WHEREAS, the City Council and the Planning Commission reviewed these issues at a joint workshop on January 15, 2019; and

WHEREAS, an ad hoc group of 3 City Council Members and 3 Planning Commissioners was formed and convened 4 times to study the ordinance and recommend amendments; and

WHEREAS, the City Council has directed that regulations dealing with the use and

development of land be reviewed by the Planning Commission to make recommendations concerning improving those regulations; and

WHEREAS, the Planning Commission held a public hearing on February 4, 2020 and recommended approval of the proposed amendments; and

WHEREAS, the City Council held a public hearing on said amendments on February 24, 2020; and

WHEREAS, the City Council hereby finds and determines that adopting updates and enhanced standards for short-term rentals is in the best interest of the citizens of New Braunfels.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

SECTION 1

THAT Chapter 144, Zoning, Section 1.4 Definitions, is hereby amended with additions as underlined and deletions as strikeouts as follows:

Article I. - General Provisions.

Section 144-1.4. – Definitions

Special use permit means a specific authorization of a use that is not allowed by right in a specific zoning district, but through certain conditions may be found by city council to be compatible at a specific location in that zoning district. Special use permits are not permits, but rather are treated as a zoning overlay and, as such, follow the procedures outlined in section 3.6 of this chapter which include a public hearing and recommendation by the planning commission, and final public hearing and decision by the city council.

SECTION 2

THAT Chapter 144, Zoning, Section 5.17 Short term rental or occupancy, is hereby amended with additions as underlined and deletions as strikeouts as follows:

Sec. 144-5.17. - Short term rental or occupancy.

5.17-1. *Purpose.* This section is intended to provide a procedure to allow the rental of private ~~residences~~ dwellings to visitors on a short term basis, while ensuring that such rental use does not create adverse impacts to ~~residential~~ surrounding neighborhoods due to excessive traffic, noise, and density. Additionally, this section is intended to ensure that the number of occupants within such rental units does not exceed the ~~design~~ reasonable capacity of the structure to cause health and safety concerns, and that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions.

5.17-2. *Definitions.*

~~Adult means an individual 17 years of age or older.~~

~~Bedroom means a room designated and used primarily for sleeping and rest on a bed.~~

Floodway means the channel for a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Habitable space means a space in a dwelling for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

Non-residential district means the following zoning districts: R-3, R-3L, R-3H, MU-A, MU-B, C-1, C-1A, C-1B, C-2, C-2A, C-3, C-4, C-4A, C-4B, C-O, M-1, M-1A, and M-2A. This includes all subsequently approved special districts identified as non-residential unless otherwise specified within the special district.

Occupant means the person or ~~persons~~ people over the age of 3 who ~~have rented~~ are sleeping in the short term rental ~~and their guest(s).~~

Operator means every natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government or any other group or combination acting as a unit who is the proprietor of a short term rental, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, license or any capacity. Where the operator performs his or her functions through a managing agent of any type of character, other than an employee, or where the operator performs his or her functions through a rental agent, the managing agent or the rental agent shall have the same duties as his or her principal.

Owner means the person or entity that holds legal and/or equitable title to the private property.

Resort condominiums means a form of housing tenure and other real property where a specified part of a piece of real estate (usually of an apartment house) is individually owned and rented out for use of persons for less than 30 days while use of and access to common facilities in the piece such as hallways, heating system, elevators, exterior areas is executed under legal rights associated with the individual ownership and controlled by the association of owners that jointly represent ownership of the whole piece.

Resort property means a compound of buildings and facilities located together that provides lodging, entertainment and a relaxing environment to people on vacation. This includes 24-hour security and 24-hour front desk personnel. These units comply with all commercial building code standards.

Short term rental means the rental for compensation of ~~one or two family dwellings, as defined in the IRC (International Residential Code), for the purpose of overnight lodging~~ a privately owned dwelling, including but not limited to, a single-family dwelling, two-family dwelling (duplex), tri-plex, quadraplex, multifamily dwelling, apartment house, tiny home, townhome, manufactured home, industrialized home, or garage apartment, rented by the public for consideration and used for dwelling, lodging or sleeping purposes for a period of not less than one night and not more than 30 days other than ongoing month-to-month tenancy granted to the same renter for the same unit. This term is not applicable to hotels, motels, bed and breakfasts, dormitories, recreational vehicle parks, hospitals, medical clinics, nursing homes, convalescent homes, foster homes, halfway houses, transitional housing facilities, resort properties as defined in this chapter, or resort condominiums.

Short term rental decal means the decal issued by the city as part of a short term rental permit that identifies the subject property as a short term rental, the short term rental permit number, the owner or rental agent's name and 24-hour emergency contact phone number of either the owner or the rental agent, or via an electronic database available to emergency responders and code enforcement officers as provided by the city.

Sleeping ~~area~~room means a habitable room or other space within a dwelling designed or used for sleeping, as referred to in the adopted International Residential Code (as amended) in the following sections: Light, ventilation and heating (R305), Minimum room areas (R304), Ceiling height R(305) and Emergency escape and rescue openings (R310), including a bedroom. Tents, hammocks, yurts, and recreational vehicles, and non-habitable spaces shall not be considered a sleeping ~~area~~room. Every sleeping room must have at least one operable emergency escape and rescue opening as per all applicable city-adopted codes, regulations and ordinances.

5.17-3. *Applicability.*

- (a) Short term rental within residential districts is prohibited.
- (b) Short term rental is prohibited in any floodway located within the city limits, regardless of zoning district.
- (c) Short term rental permit. A short term rental permit is required in all zoning districts, prior to the use of a one-family or two-family dwelling as a short term rental located within a non-residential district. Subject to subsection (d), ~~Standards, of this section 5.17-5,~~ an owner shall obtain and maintain a current permit ~~whenever a dwelling is used as a~~ for all short term rentals as defined in this chapter. ~~Annual inspections are~~ inspections are required as specified in subsection (f), ~~Inspections, of this section 5.17-6. A special use permit is required in all zoning districts except C-4, C-4A and C-4B.~~
- (d) Special use permit. In addition to the short term rental permit, a special use permit, as defined in section 1.4 of this chapter, is required in all zoning districts except C-4, C-4A and C-4B where a short term rental is proposed in a single-family dwelling

~~or a duplex only, constructed pursuant to the International Residential Code, where not otherwise prohibited in this chapter. The process for requesting consideration of a special use permit is outlined in section 3.6 of this chapter. Within 180 days of the effective date of this section, the owner or operator of each existing legally established short term rental shall apply for and pay the permit fee for a short term rental permit. Within 45 days of receipt of a completed application, the permit fee and compliance with subsection (e), short term rental permit, of this section, a permit shall be issued to the owner or operator that will be good for one year from the date issued and subject to the annual renewal inspection by the fire marshal. Ability to approve said permit is predicated on verification that the short term rental is in compliance with subsections 144-2.3(b), (c), (d), Nonconforming use.~~

5.17-4. *Standards.* All short term rentals permitted pursuant to this chapter are subject to the following standard requirements:

- (a) *Occupancy.* The maximum number of ~~persons occupants~~ allowed to ~~reside sleep~~ in a short term rental is two (2) adults occupants per sleeping ~~area room~~ plus an additional ~~four two (2) adults occupants per residence~~.
- (b) *Bathrooms.* Not less than one (1) full bathroom shall be provided for each five occupants of the short term rental, according to the chart provided below. This full bathroom must meet the minimum International Residential Code standards (R306, Sanitation) and include a wash basin, toilet and tub or shower. Half bathrooms must contain, at a minimum, a washbasin and toilet for the purposes of this section; a full bathroom may be used in lieu of a half bath.

5 occupants 1 full bath (hereafter referred to as 1)

6-9 occupants 1 full bath and 1 half bath (half baths hereafter referred to as .5)

10 occupants 2 baths

11-14 occupants 2.5 baths

15 occupants 3 baths

And so on...

- (c) *Short term rental decal display.* As part of a short term rental permit, the city issued short term rental decal shall be posted on the front of each short term rental in a location that is accessible and legible to an individual at the entry of the short term rental, or via an electronic database available to emergency responders and code enforcement officers as provided by the city.
- (ed) *Advertising.* The short term rental permit number, maximum occupancy as permitted, and life-safety inspection expiration date must be listed in all advertising for the short term rental.
- (e) *Parking.* A minimum of one (1) off-street parking space, not including the garage, per sleeping ~~area room~~ shall be provided ~~with a minimum of two and a maximum not to exceed the number of sleeping areas plus one~~. No required parking shall be permitted within public right-of-way or access easements as defined by city and state regulations regarding parking.
- (df) *Life safety.*

- (1) All building and fire related construction shall conform to the city's adopted ~~IRC (International Residential Code)~~ building codes.
- (2) A 2A:10B:C type fire extinguisher (a standard five-pound extinguisher) shall be properly mounted within 75 feet of all portions of the structure on each floor and will be maintained in accordance with the manufacturer's specifications.
- (3) Every sleeping room shall have at least one operable emergency escape and rescue opening.
- (4) An evacuation plan shall be posted conspicuously in each sleeping ~~area~~ room.
- ~~(5) Every bedroom/sleeping area in a short term rental that does not comply with subsection (d)(4), Life safety, of this section shall not be used as a sleeping area and where equipped with a door, shall remain locked at all times when the dwelling is being used as a short term rental. Such a non-compliant sleeping area shall not be included in the maximum occupancy calculation for the short term rental. The owner/operator shall notify every occupant, in writing, that the non-compliant sleeping area may not be used for sleeping.~~

(eg) Conduct on premises.

- (1) Each occupant and visitor to a short term rental shall comply with all applicable provisions of the City Code, including, without limitation: noise and disorderly conduct restrictions from chapter 82, Offenses and miscellaneous provisions; litter prohibition from chapter 50, Environment; and others such as parking, and trespassing provisions. No occupant of or visitor to a short term rental shall cause or permit a public nuisance to be maintained on such property. This information shall be included in the rental agreement and inside the short term rental as specified in subsection (7), Tenant indoor notification, below.
- (2) All occupants shall be informed in writing of relevant city ordinances s including, but not limited to, the city's nuisance ~~and~~, water conservation, noise and disorderly conduct ordinances by the owner/operator of the short term rental.
- (3) Excessive noise or other disturbance outside the short term rental is prohibited between the hours of 10:00 p.m. and 8:00 a.m. This includes, but is not limited to, decks, portals, porches, balconies, patios, hot tubs, pools, saunas or spas.
- (4) No sleeping is allowed outdoors.

(fh) Signage. Signage shall be in compliance with the city's current sign code.

(gi) Tenant indoor notification. The operator shall post in a conspicuous location of the dwelling the following minimum information:

- (1) Maximum number of occupants.
- (2) Location of required off-street parking, other available parking and prohibition of parking on landscaped areas.
- (3) Quiet hours and noise restrictions.
- (4) Restrictions of outdoor facilities.
- (5) 24-hour contact person and phone number.

- (6) Property cleanliness requirements.
 - (7) Trash pick-up requirements, including location of trash cans.
 - (8) Flooding hazards and evacuation routes. Including information on the emergency siren system.
 - (9) Emergency numbers.
 - (10) Notice that failure to conform to the occupancy and parking requirements is a violation of the City Code and occupant or visitor can be cited.
 - (11) Other useful information about the community.
- (h) *Rental agreement notification.* The rental agreement between the owner/operator of the short term rental and the occupant shall include by attachment, all of the information provided on the tenant indoor notification signage.

5.17-5. *Short term rental permit.*

- (a) *Application.* Application for a short term rental permit shall be in writing on an application form available in the planning and ~~community~~ development [services](#) department, shall be accompanied by a one-time payment of the fee per appendix D of this Code and shall include the following information, at a minimum:
- (1) A list of all owners of the short term rental including names, address and telephone numbers.
 - (2) A sketch or narrative describing the location of the available parking spaces as required by ~~subsection d(3), Parking, of~~ this section.
 - (3) A sketch of the floor plan.
 - (4) The name, address and 24-hour telephone numbers of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short term rental.
 - (5) Proof of hotel occupancy tax compliance with V.T.C.A., Tax Code ch. 351, before permit is granted.
 - (6) A statement that the owner of the short term rental has met and will continue to comply with the standards and other requirements of this section.
 - (7) Provide current email address of owner/operator, if applicable.
 - (8) If owner/operator has a property management or agent, owner/operator shall provide property management or agent phone number, mailing address and email address.
- (b) *Completeness of application.* If the application is incomplete or the full fee has not been paid, the planning director shall notify the applicant in writing, within ten business days of the date of the application, that the application is incomplete and will not be considered by the city until the application is complete and/or the full fee is paid. If the full fee is not paid or the application is not complete within 45 days of the date of the application, the application shall expire.

(c) *Insurance.* General commercial liability insurance (or its equivalent) coverage of a minimum of \$500,000 per occurrence of coverage is required for all short term

rentals. The owner must provide a copy of the certificate of insurance which shows the name insured, any additional insureds, the location address, the effective date, the coverage limit and type. The owner must notify the City within 30 days if the insurance status changes and provide the City with updated insurance information. The short-term rental permit shall be suspended until proof of updated insurance is provided.

~~(ed)~~ *Annual renewal.* ~~A short term rental permit will be renewed annually through an inspection conducted by the fire marshal to verify continued compliance with subsection 144-5.17-4, Standards, of this section~~ A short-term rental permit may be renewed annually if:

- (1) The permittee pays inspection fee and passes inspection to be conducted by the Fire Marshal in accordance with section 5.17-6.
- (2) The permittee provides documentation showing that local hotel occupancy taxes have been paid for the permitted unit as required for the previous year.
- (3) The permittee provides documentation of insurance requirements of subsection (c) above.
- (4) The property is not subject to outstanding city code or state law violations.
- (5) The permittee or operator has no outstanding city fees or fines.
- (6) The permittee or operator does not meet the standards described in Section 5.17-7 regarding repeat offenses.
- (7) The city shall deny an application to renew a permit if, on the date the renewal application was submitted, 12 months has not expired since a revocation pursuant to section 5.17-8.

~~(de)~~ *Transferability.* A short term rental permit is transferable to a new property owner, if the new property owner submits a short term rental permit application and agrees in writing to comply with the requirements of this section. A new owner must apply for a short term rental permit within 90 days from the closing date of the purchase. The new owner must provide a copy of the closing statement with the short term rental permit application form. Failure of the new property owner to apply for permit within 90 days from the closing date will revoke the short term rental permit. ~~Short term rentals existing prior to the effective date of this section that are non-conforming to the zoning for which property is located, but obtained a permit in compliance with subsection 144-5.17-3(d), Applicability, shall become null and void if the new owner fails to apply for the short term rental permit within 90 days from the date of the deed of the new owner's purchase.~~

~~(ef)~~ *Appeal.* If an application for a short term rental permit or renewal is denied, the owner or operator may appeal to the planning ~~and zoning~~ commission by written notice delivered within thirty (30) days of denial or revocation.

5.17-6. *Inspections.* To ensure continued compliance with the requirements of this section a short term rental shall be inspected in the following methods:

- (a) *Transfer inspection.* As part of the transfer of a short term rental permit to a new owner, in accordance with ~~subsection 144-5.17-5(d)~~ 5.17-5(e), Transferability, and the issuance of a new short term rental permit the city's fire marshal shall conduct an inspection to verify compliance with this section.

- (b) *Fire extinguishers.* The owner/operator is responsible for obtaining annual independent inspections of the fire extinguishers in compliance with the city's current fire code and is responsible for its maintenance in accordance with the manufacturer's specifications.
- (c) *Immediate inspection.* The city's code enforcement division and fire marshal's office will perform inspections immediately when a violation is suspected.
- (d) ~~Annual~~ *Fire inspection.* The city's fire marshal's office will perform ~~annual~~ inspections annually for non-sprinklered structures and perform inspections every other year for sprinklered structures for compliance with this section. The fee for ~~an annual~~ fire inspections is per appendix D of this Code.

5.17-7. *Enforcement/penalty.*

- (a) Emergency contact. The owner/operator of the short term rental shall provide the city with a 24-hour contact number. The 24-hour contact is required to be able to travel to the short-term rental within sixty (60) minutes under reasonable circumstances. Should a law enforcement officer or code enforcement officer respond to the short term rental and issue a citation/notice of violation for any violation of city ordinances, the owner/operator shall be called by the officer. The owner/operator shall attempt to contact the occupants within one hour of the call to address the occupants about the complaints. Should a second complaint be filed and citation/notice of violation issued to any part of the occupants or guests, the owner/operator must take appropriate steps, in accordance with the individual rental agreement, to assure future complaints do not occur. Should three separate citations/notices of violation be issued to an occupant or their guest(s), involving separate occupants under separate rental agreements within a six-month period, the short term rental permit and/or special use permit may be revoked in accordance with the revocation process specified in subsection 144-5.17-8, Revocation.
- (b) Violations of any subsection of this section may result in revocation of ~~revoke~~ the short term rental permit and/or special use permit in accordance with subsection 144-5.17-8, Revocation.
- (c) Failure to pay hotel occupancy tax timely is considered a violation of this section and may result in revocation of the short term rental permit and/or special use permit in accordance with subsection 144-5.17-8, Revocation. Owner shall have thirty (30) days from the date the city or state issue a notice of delinquency to submit delinquent hotel occupancy tax to city and state before revocation of the short term rental permit/special use permit begins.
- (d) Failure to successfully complete the renewal process of a short term rental permit is considered a violation of this section. Owner shall have 45 days from the date city issues notice of denial to gain compliance of noncompliant items before the revocation of the short term rental permit begins.
- (e) The provisions of this subsection are in addition to and not in lieu of any criminal prosecution or penalties as provided by city ordinances or county or state law.
- (f) ~~Proof.~~ Prima facie proof of ~~occupancy of a dwelling~~ violation of this section is established ~~in any prosecution for violation of this section~~ if it is shown that ~~vehicles with registrations to persons having different surnames and addresses were parked~~

~~overnight at the dwelling~~ visual inspection of more than the posted occupancy load (5.17-4(i)(1)) was made by a code enforcement officer, building inspector, fire inspector or police officer at a unit.

Establishment of a prima facie level of proof in this subsection does not preclude a showing of illegal "occupancy" of a dwelling by a person in any other manner.

- (g) Offense. It is an offense for the property owner, any agent of the property owner, or the occupant(s) to directly occupy or indirectly allow, permit, cause, or fail to prohibit an occupancy in violation of this section 144-5.17. Each day that a unit is occupied in violation of this ordinance shall be considered a separate offense, and, upon conviction, shall be subject to a minimum fine of \$500.00 to a maximum fine of \$2,000.00 per violation. Should a property owner operate a short-term rental without a permit, a non-compliance fee of \$2,000 will be assessed.
- (h) Each day of violation of said standards and provisions of this section constitutes a separate offense and is separately punishable, but may be joined in a single prosecution.

(i) Repeat Offenses. It shall be deemed a repeat offense:

(1) if the permittee, operator, owner or person in control of the property fails to comply with any of the provisions of this section (5.17) more than twice in a 12-month period, and/or

(2) if the property is the subject of repeated health or safety violations of city code or state law during a 24-month period prior to applying for a permit or renewing a permit to operate a short term rental.

5.17-8. *Revocation.* If any violations stated in subsection 144-5.17-7, Enforcement/penalty, of this section have been committed and not corrected within the time specified, the ~~planning director~~ city shall begin the procedures to revoke the special use permit in accordance with Section 3.6-5(f), and revoke the short term rental permit in accordance with the following:

- (a) The city shall give thirty (30)-day written notice to the owner/operator regarding the public hearing dates which include a ~~and~~ recommendation by the planning commission, and public hearing and decision by the city council.
- (b) The city shall provide written notice to property owners within 200 feet of the subject property at least 15 days prior to the public hearings.
- (c) If a short term rental permit and/or special use permit is revoked, the owner/operator may not reapply for the same property for a period of 12 months.

~~5.17-9.~~ *Abrogation and greater restrictions.* This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION 3

THAT, 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 phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4

THAT all provisions of the Code of Ordinances of the City of New Braunfels not herein amended or repealed shall remain in full force and effect.

SECTION 5

THAT all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

SECTION 6

THAT in accordance with the provisions of the City Charter, this Ordinance may be read and published by descriptive caption only. This Ordinance has been publicly available in the office of the City Secretary prior to its adoption.

SECTION 7

THAT this Ordinance shall become adopted and effective upon its second reading, signature required by City Charter, and filing with the City Secretary's Office. This Ordinance must also be published in a newspaper of general circulation at least one time within ten (10) days after its final passage, as required by the City Charter of the City of New Braunfels, Texas.

PASSED AND APPROVED: First reading this the 24th day of February, 2020.

PASSED AND APPROVED: Second reading this the 9th day of March, 2020.

CITY OF NEW BRAUNFELS

BARRON CASTEEL, Mayor

ATTEST:

PATRICK D. ATEN, City Secretary

APPROVED AS TO FORM:

VALERIA M. ACEVEDO, City Attorney