

ORDINANCE NO. 2024-663

AN ORDINANCE OF THE CITY OF SMITHVILLE, TEXAS AMENDING THE ZONING ORDINANCE, CHAPTER 14A, SECTIONS 6.1 AND 6.2, AND ADDING SECTION 4.7, CITY OF SMITHVILLE CODE OF ORDINANCES, TO ADD REGULATIONS PERTAINING TO SHORT-TERM RENTALS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Smithville, Texas, and the City Council of the City of Smithville, Texas, in compliance with State law with reference to the zoning ordinance and zoning map of the City of Smithville, Texas, have given requisite notices by publication and otherwise;

WHEREAS, after holding a due hearing, and having received the final report of the Planning and Zoning Commission, the City Council of the City of Smithville has determined that amending the Zoning Ordinance of the City of Smithville, Texas as set forth herein will further the health, welfare, and safety of the public; and

WHEREAS, the City Council finds and determines that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SMITHVILLE, TEXAS, THAT:

1. **Findings of Fact.** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.
2. **Enactment.** Exhibit A, Chapter 14, Sections 6.1 and 6.2, Code of Ordinances, City of Smithville, Texas is amended as set fourth below, with insertions indicated by underlines (e.g. underlines) and deletions indicated by strikethroughs (e.g. ~~strikethroughs~~):

§ 6.1 DEFINITIONS.

6.1.102 *Self-Service Laundry or Dry-Cleaning Establishment*: Any attended or unattended place, building or portion thereof, available to the general public for the purpose of washing, drying, extracting moisture from or dry-cleaning wearing apparel, cloth, fabrics, and textiles of any kind by means of a mechanical appliance which is operated primarily by the customer.

6.1.103 *Service Maintenance Facility*: Facilities and structures relating to the provision and maintenance of various services to local residents by a public, semi-public, or private entity. Services may include, but shall not be limited to, animal control, solid waste disposal, and utilities such as water, wastewater, natural gas, electricity, telephone, and cable communications.

6.1.1035 *Short-term rental (STR)*: The rental for compensation of dwellings or accessory dwelling units, or any part thereof, for the purpose of overnight lodging for a period of not less than one night and not more than twenty-nine (29) consecutive days other than ongoing month-to-month tenancy granted to the same renter for the same unit as their primary residence; provided that the term does not include hotel, motel, boarding house, bed and breakfast, or country inn uses.

6.1.104 *Stable, Private*: A stable with a capacity for not more than two (2) horses or mules.

6.1.105 *Stable, Public*: A stable, other than a private stable, with a capacity for more than two (2) horses or mules

§ 6.2 MASTER TABLE OF USES.

Particular Use by Category	SF ₁	SF ₂	TH	MR	MF	MH	MH S	C ₁	C ₂	C ₃	CB D	RV P	I	P	CF	PD D	PD- Z
Residential																	
Duplex/2-family dwelling		X	X	X	X	X		X	X	X	X		X				
Manufactured home			X			X	X										
<u>Short-term rental</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>										
Professional Services																	

Chapter 14A, Section 4.7 is added, reading as follows:

§ 4.7 Short-Term Rentals.

4.7.1 General Provisions.

- A. Title. This section of the Code of Ordinances, City of Smithville, Texas is designated and may be referred to as the “Short-Term Rental Ordinance.”

- B. Purpose. The purpose of this section is to safeguard the life, health, safety and welfare of the general public and to ensure all short-term rental properties are properly permitted and pay the required hotel occupancy tax.
- C. Applicability. The provisions of this section apply to all existing and future properties zoned for residential use, both primary and accessory structures, and any portions thereof where allowed.

4.7.2 Definitions. In this section, the following terms have that meaning ascribed to them below:

Advertise - The act of drawing the public's attention to a short-term rental in order to promote the availability of the residence for use as a short-term rental using any medium including but not limited to, newspaper, magazine, brochure, website, mobile application, or social media applications or websites.

Bedroom - The living area(s) of the dwelling unit that is designed and furnished for sleeping and which has proper egress as required by the International Residential Code.

Hosting Platform - A person or entity that participates in the short-term rental business by providing services through which an owner may offer a short-term rental to an occupant, including but not limited to providing an online platform that allows an owner to advertise the premises through a website and by which the hosting platform conducts a transaction by which potential occupants arrange their use and their payment, whether the would-be occupant pays rent directly to the owner or to the hosting platform.

Occupant - Any individual person, other than an owner, occupying a short-term rental, or any portion thereof. A person is not required to be paying rent, providing in-kind services, or named in any lease, contract, or other legal document to be considered an occupant.

Owner - Any person, agent, operator, firm, trust, corporation, partnership, or any other legal entity who has a legal or equitable interest in the property; or who is recorded in the official records of the county as holding title to the property; or who otherwise has control of the property, including the guardian of the estate of any such person, and the executor of the estate of such person if ordered to take possession of real property by a court.

Premises - means property, a lot, plot or parcel of land, including any structures or portions of structures thereon.

Short-term rental (STR) – means the rental for compensation of a dwelling or portion thereof for the purpose of overnight lodging for a period of not less than one night and not more than twenty-nine (29) consecutive days other than ongoing month-to-month tenancy granted to the same renter for the same unit as their primary residence; provided that the term does not include hotel, motel, boarding house, bed and breakfast, or country inn uses.

4.7.3 General Regulations.

A. Unpermitted Short-term Rentals Prohibited.

It shall be unlawful for any owner to rent, lease, advertise, or otherwise permit or allow any residential premises to be operated or used as a short-term rental unless such owner has a valid, active short-term rental permit issued under this section.

It shall be an affirmative defense to a violation of this section that the occupant is a party to the sale of the premises and was occupying the premises pursuant to a written post-closing occupancy agreement.

B. Requirements for Hosting Platforms.

1. All hosting platforms shall provide the following information to any owner listing a short-term rental located within the City of Smithville through the hosting platform's service prior to the owner listing the premises:

THE CITY OF SMITHVILLE, TEXAS SHORT-TERM RENTAL ORDINANCE PROHIBITS THE SHORT-TERM RENTAL OF RESIDENTIAL PREMISES WITHIN THE CITY OF SMITHVILLE WITHOUT AN ACTIVE SHORT-TERM RENTAL PERMIT.

2. Notwithstanding any other provision of this section, nothing shall relieve any owner, person, occupant, or hosting platform of the obligations imposed by the applicable provisions of state law and the Code of Ordinances of the City of Smithville, Texas, including but not limited to, those obligations related to hotel occupancy taxes imposed by Article 11.04. For the purposes of hotel occupancy taxes under Article 11.04, and for no other purpose, a short-term rental is a hotel. Further, nothing in this section shall be construed to limit any remedies available under the applicable provisions of state law and the Code of Ordinances of the City of Smithville, Texas.

- #### C. Short-term Rental Permit Required. An owner who desires to use its premises as a short-term rental must have a valid, active short-term rental permit from the city prior to using, allowing the use of, or advertising the use of said premises as a short-term rental. The city manager may place reasonable conditions on a short-term rental permit to ensure compliance with the provisions of this Section.

- #### D. Expiration of Permit; Renewals. A short-term rental permit shall expire on the last day of the month one year after the date of issuance. No short-term rental permit may be renewed without a completed renewal application submitted by the owner and payment

of the renewal fee. The city manager may place reasonable conditions on a short-term rental renewal permit to ensure compliance with the provisions of this section.

E. Permit Application Requirements.

1. Except as provided in this section, every application for a short-term rental permit must include the following information with such detail and in a form approved by the city manager:
 - a. The name, address, contact information and authenticated signature for the owner of the premises;
 - b. The name, address and contact information of the operator, agent if any, and designated local responsible party as required by this section;
 - c. The city registration number for payment of hotel occupancy taxes;
 - d. Proof of payment of all current and any past-due hotel occupancy taxes.
2. An application for a short-term renewal permit may be filed beginning thirty (30) days prior to expiration of a current permit. Every complete application for a short-term rental renewal permit shall include updates, if any, to the information contained in the original permit application or any subsequent renewals. The permit holder shall sign a statement affirming that there is either no change to such information, or that any updated information is accurate and complete. The city manager may require such certifications deemed necessary and proper to ensure continuing compliance with this Section.
3. An application for a short-term rental renewal permit submitted after the expiration of the most immediate permit for the premises shall be treated as an application for a new permit as described in subsection E of this Section.
4. If a complete application for a short-term renewal permit is submitted less than thirty (30) days prior to expiration of the current permit, the city manager in his or her sole discretion may grant a one-time extension of the current permit not to exceed ten (10) days.
5. Applications are not complete until all documentation required under this section is submitted, and until the full application and permit fees have been paid. Incomplete applications will not be accepted.

- F. Designation of Local Responsible Party Required. An owner must designate the name and contact information of a local responsible party who can be contacted regarding immediate concerns and complaints from the public. The owner or local responsible party must be available to be reached in person or by phone at all times. If called, the owner or local responsible party must respond within a reasonable time. A local responsible party is deemed to be authorized to make decisions regarding the premises and its occupants. The City of Smithville may rely on the authority and actions of the local responsible party as being the authority and actions of the owner and the owner releases the City of Smithville from any and all liability arising from the actions of the local responsible party.
- G. Permit Fees. A fee established by resolution of the city council will be charged to reimburse the city for all costs associated with the administration of this section.
- H. Hotel Occupancy Taxes; Occupancy History Requests. It shall be unlawful for an owner of a premises used for a short-term rental to fail to pay hotel occupancy taxes or comply with any other related requirement under State law and Article 11.04 of the Code of Ordinances, City of Smithville, Texas. The city may make such rules and regulations as are reasonable and necessary to effectively collect hotel occupancy taxes. Upon request and reasonable notice from the city, the owner of a premises used as a short-term rental shall grant the city access to books and records necessary for the city to determine the correctness of any report and the amount of taxes due. It shall be unlawful for a person to fail to provide the requested access within 30 days.
- I. Short-term Rental Permit Nontransferable. A short-term rental permit is non-transferable and shall not be assigned nor transferred to another person or entity. Any attempt to transfer a permit or attempt to use another person's permit may be grounds for revocation of said permit. If any premises that is the subject of a short-term rental permit is conveyed from one owner to another, the premises may not be used for a short-term rental until a new permit is obtained.
- J. Minimum Stay Requirement. It shall be unlawful for an owner to rent or lease a short-term rental for a period of less than 24 hours.
- K. Permit Display Required. A copy of the approved short-term rental permit shall be posted at a conspicuous location inside the front entrance(s) to the short-term rental and shall contain the following:
1. The name, address, and contact information for the owner of the premises;

2. The name, address and contact information for the operator, agent if any, and designated local responsible party as required by this section;
3. The city registration number for payment of hotel occupancy taxes; and
4. The contact information for the City.

L. Use of Unauthorized Permit Number Prohibited. It shall be unlawful for an owner or person to use, advertise or promote, or allow the use, advertisement or promotion of a short-term rental using a permit number not assigned to the owner or person, or to a different address, or to a different dwelling unit.

M. Guest Houses Prohibited. Use of a guest house for a short-term rental is prohibited.

4.7.4 Administrative Procedures.

A. Permit Revocation.

1. *Grounds.* Any permit issued hereunder may be revoked if the permit holder has:
 - a. received more than two citations for violations of this section or any other provision of this Code of Ordinances within the preceding 12-month time period; or
 - b. failed or refused to comply with an express condition of the permit and remains in non-compliance ten (10) days after being notified in writing of such non-compliance; or
 - c. knowingly made a false statement in the application; or
 - d. otherwise become disqualified for the issuance of a permit under the terms of this section.
2. *Notice.* Notice of the revocation shall be given to the permit holder in writing, with the reasons for the revocation specified in the notice, served either by personal service or by certified United States mail to their last known address. If the registration holder is not an individual, then service can be made to either the agent of the owner or the local responsible party. Such service on either individual shall constitute as proper notice as required under this Section. The revocation shall become effective the day following personal service or if mailed, three (3) days from the date of mailing.

3. *Appeal hearing.* The permit holder shall have ten (10) days from the date of such revocation in which to file notice with the city secretary of their appeal from the order revoking said permit. The City Council shall schedule the appeal hearing as soon as practicable after receipt of the appeal. The City Council shall determine whether the revocation or denial of the permit was in error. The City Council shall issue a written order affirming or reversing the revocation or denial of the permit. Such determination by the City Council shall be final on the date the order is signed.
4. *One-Year Waiting Period.* If an owner's short-term rental permit is revoked, no second or additional permit shall be issued for a short-term rental on the premises for one year of the date such permit was revoked.

4.7.5 Enforcement.

A. Discontinuance.

1. The owner of a short-term rental use that was not registered with the City of Smithville for hotel occupancy tax prior to the effective date of this section, and who is unable to obtain a permit for said use or fails or refuses to obtain a permit for the use following the effective date of this section, shall discontinue the short-term rental use within 30 days of receipt of a notice from the City.
2. The owner of a short-term rental use that was registered with the City of Smithville for hotel occupancy tax prior to the effective date of this section, and who is unable to obtain a permit for said use or fails or refuses to obtain a permit for the use following the effective date of this Section, shall discontinue the short-term rental use no later than 30 days from receipt of a notice from the City.
3. If the permit for a short-term rental use is not renewed, the owner shall discontinue the use no later than the date on which the existing permit or any extension thereof expires.

B. Penalties.

1. A person who violates any provision of this section by performing an act prohibited or by failing to perform an act required, or causes another to do so, is guilty of a misdemeanor. Each day on which a violation exists or continues to exist shall be a separate offense.

2. The City may collect a civil penalty for each violation of the terms of this section as authorized by Chapter 54, Texas Local Government Code. In a suit against the owner or the owner's representative with control over the premises, the municipality may recover a civil penalty of \$1,000 a day if it proves that:
 - a. the defendant was actually notified of the provisions of the ordinance; and
 - b. after the defendant received notice of the ordinance provisions, the defendant committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.
3. The provisions of this subsection are in addition to and not in lieu of any criminal prosecution or penalties as provided by other city ordinances, county, or state law.

3. **Repealer.** The provisions of this Ordinance are cumulative of all provisions of the City of Smithville Code of Ordinances; provided, however, all ordinances, resolutions, or parts thereof, that are in conflict or are inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict or inconsistency leaving the remainder of such other ordinance, resolution, or parts thereof intact, and the provisions of this Ordinance shall be and remain controlling as to the matter regulated herein.

4. **Severability.** It is the intention of the City Council of the City of Smithville that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared unconstitutional or invalid by final judgement or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional or invalid phrases, sentences, paragraphs, or sections..

5. **Effective Date.** This Ordinance shall be effective as of the date of adoption.

DULY PASSED AND APPROVED, on the 9th day of September, 2024, at a regular meeting of the City Council of the City of Smithville, Texas, which was held in compliance with the Texas Open Meetings Act, Chapter 551, Texas Government Code, at which meeting a quorum was present and voting.

APPROVED:

Sharon Foerster

Sharon Foerster, Mayor

ATTEST:

Jennifer Lynch

Jennifer Lynch, City Secretary