

LEGAL MEMORANDUM

TO: Sylvia Carrillo, City Administrator

FROM: Barbara Boulware-Wells, City Attorney
Jeff Ulmann, Assistant City Attorney

DATE: November 15, 2021

RE: Short Term/Vacation Rentals – Last few items

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The following three items are addressed from the last meeting in which the issue of Short Term Rentals has been the topic: Reasonable period of time for local contact, process chart and guest house issue.

Reasonable Period of Time:

What is a reasonable period of time for a local contact person to be available?

Reasonable period of time for a “local contact person” to be available is anywhere from 30 min to 1 hour. Other locations in Texas have such period defined within that range. The City’s own personnel policy allows employees to take 30 minutes to respond to work when on standby.

The following is a sample of such provision:

The local contact person is the Operator or person designated by the Operator who shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of: i. responding in person within thirty (30) minutes/one (1) hour to complaints regarding the condition, operation, or conduct of occupants of the Short Term Rental unit; and ii. taking immediate remedial action to resolve any such complaints;

Process Chart:

The Process Chart has been updated to ensure that the “process” does not seem too much like a permit process and truly just a registration process.

Guest House issue:

Question has been raised about the ability to rent out a guest house. Question appears to be based on an exception that has been granted to at least one landowner to have a guest house (still an accessory structure) that is then “habitable.” Review of the pertinent provisions of the City’s Code are as follows:

Sec. 2.506 Accessory Uses and Structures(Amended July 7, 1998)

- (a) The uses of land, buildings, and other structures permitted in each of the districts established in this Code are designated by listing the principal

uses. In addition to such principal uses, accessory uses may be permitted in certain districts. Accessory buildings or structures shall:

....

(4) Not be designed for human habitation (except in the case of a permitted guest house); Amended May 6, 2014

Sec. 2.601 SF, Single Family Residential District - Permitted Uses(Amended Nov. 4, 1998)

....

(g) A single guest house, as that term is defined in Section 1.201, which is used for human habitation by a reasonable number of persons, provided that the habitants of guest houses in SF, Single Family Residential Districts shall not pay rent or other compensation for use of the guest house or any portion thereof.. (Amended Nov. 16, 2016)

Section 2.604, SF, Single Family Residential District (chart)

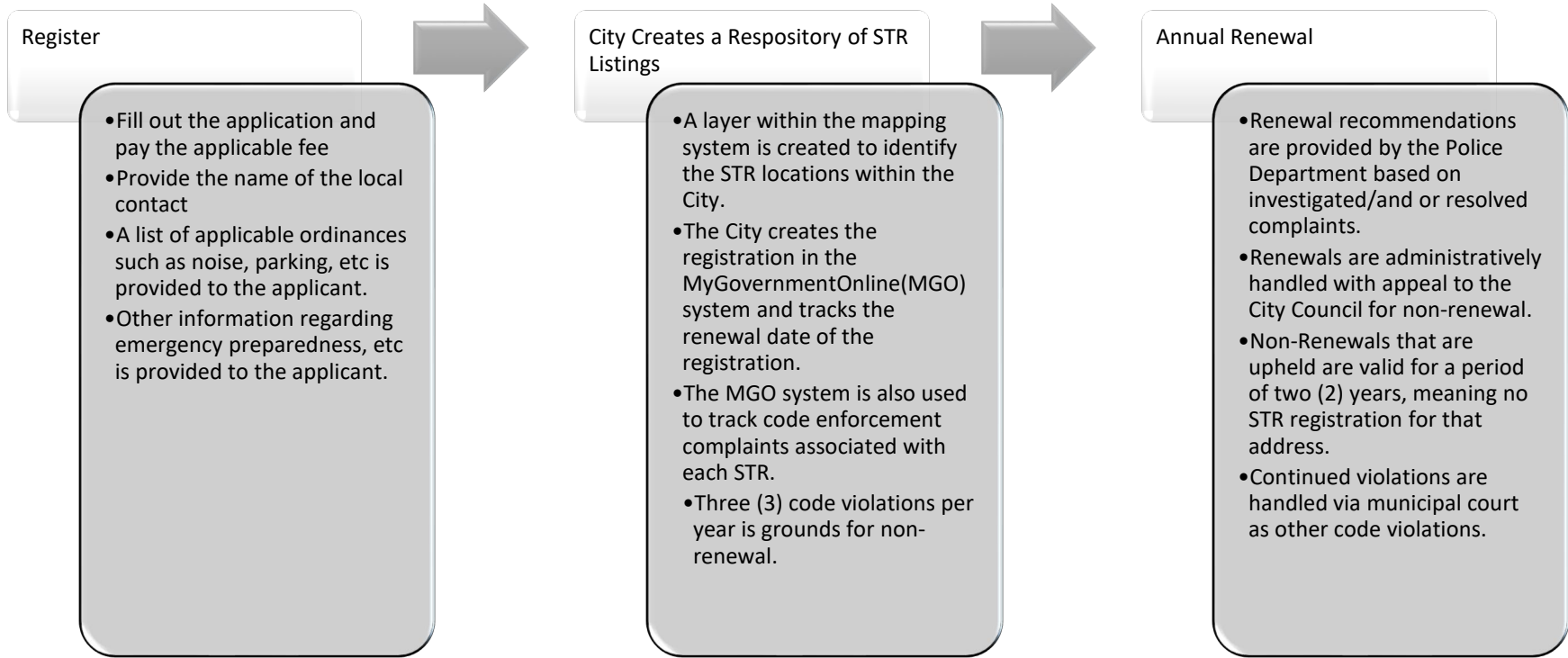
3. A recreational vehicle may be used for guests of the family residing in the principal dwelling to a period not to exceed 30 days within a 3 month period.

7. A single guest house, as that term is defined in Section 1.201, which is used for human habitation by a reasonable number of persons, provided that the habitants of guest houses in SF, Single Family Residential Districts **shall not pay rent or other compensation** for use of the guest house or any portion thereof. Guest houses may also be used for any use that would constitute an "**incidental use**", as that term is defined in this Code, that is permitted in SF, Single Family Residential Districts.

First, as noted within the above current code provisions, the guest house is and has always been described first and foremost as an *accessory structure or building*. It is not the dominant structure or use that controls the overall zoning. Similarly, the recreational vehicle can be put to an accessory use but always remains subordinate to such dominant use/structure of the SF, Single Family Residential District, i.e. merely a vehicle that can, from time to time, house friends/guest.

Second, the additional clarifying language used for the guest house clearly does not allow the habitants of such guest house to pay rent or other form of compensation. Similarly, the additional language of the recreational vehicle notes that such recreational vehicle may be used for "guests of the family." Such language clarifies that if one has a recreational vehicle on the property, it can't be inhabited continuously and whomever is inhabiting it must be a guest of the principal dwelling which also implies that it is not for rent or other form of compensation. Neither of these provisions allow such structures/vehicles to be used independently as the dominant use in the SF, Single Family Residential zoning category and thus, not as short term rentals.

Hopefully this clarifies these last few issues.



Short Term Rental ~~Permits~~Registration

- 1) The applicant shall provide a copy of the filed Comptroller of Public Accounts' Form AP-102 (hotel occupancy tax questionnaire);
- 2) Initial ~~registration shall be for a permit~~ shall be issued for a ~~one~~ (1) year period and shall be renewable for a one-year period provided a complete application for renewal is filed with the city no more than ninety (90) days and no less than sixty (60) days prior to the expiration date of the initial ~~permit~~;registration;
- 3) No ~~permit~~ application ~~for registration~~ shall be accepted for filing, processed, or approved during a period of two (2) year following the denial of an application or revocation ~~of a permit~~ for any residential property;
- 4) No additional ~~permit~~ application for short-term rental ~~use~~ registration shall be accepted for filing from, processed, or approved for an owner of real property with an existing ~~permit for~~ short-term rental ~~use~~ registration;

~~5) A permit is NOT transferable.~~

~~6)5) All structures housing short-term rental use shall comply with this article and all other applicable regulations of this code, and compliance shall be verified by means of an on-site inspection by city staff;~~

~~7)6) Accessory structures, including guest houses, cannot be used as a Short-Term Rental;~~

~~8)7) A placard that is clearly visible on the structure is required displaying the permit number and name of designated local contact with their 24/7 contact information;~~

~~9)8) Parking by renters or their guests shall not encroach upon or obstruct ingress, egress, or access to the neighboring properties;~~

~~10)9) Advertisement of the short-term rental use shall not be displayed on the premises of the property in any manner that is visible from the exterior of the house;~~

~~11)10) Short-term rental ~~use permit holders- operators~~ shall comply with and ensure their tenants have provided written notice and comply with all applicable city ordinances and state laws regulating litter, waste disposal, noise, nuisance, and other regulations for the protection of the health, safety, and welfare of the public;~~

~~12)11) The short-term rental use shall not produce nuisances as defined in Title IX, General Regulations, of the Sunset Valley Code of Ordinances or elsewhere in this code including but not limited to noise, damage, odors, inconsiderate or offensive behavior, late night parties, illegal drug or alcohol use, pets, public urination, public indecent exposure, disturbance of the peace, disorderly conduct, or any other conduct that may constitute a public or private nuisance;~~

~~13)12) Maximum rental period shall be thirty (30) consecutive nights;~~

~~14)13) Short-term rental ~~operators use permit holders~~ shall file state hotel occupancy tax reports in a timely manner, shall maintain accurate logs including dates and times of rentals, number of guests, number of automobiles present, and complaints received, and shall forward logs to the city-designated official on a Quarterly basis or upon request of the City;~~

~~15)14) The city administrator or designee may suspend any short-term rental ~~use permit~~ upon the finding of one or more of the following:~~

- (A) A violation of any of the applicable terms, conditions, or limitations;
- (B) A violation of any applicable ordinance or regulation;
- (C) Operation or maintenance of the short-term rental property in a manner that is detrimental to the public's health, safety, or to constitute a nuisance.

~~16)15) The City may initiate such suspension on its own or upon application by any city resident. The City Administrator or their designee shall provide written notice to the ~~Permit Holder of operator~~ suspension proceeding. Provide the ~~operator Permit Holder~~ opportunity to respond to such suspension proceeding. The City Administrator shall make such determination and provide a written report on why the ~~Permit Holder's operator permit~~ has been suspended or not suspended, which such suspension shall be effective immediately upon such determination. Determinations made by the City Administrator may be appealed to the City Council.~~

Specific criteria for applications for short-term rental ~~permits~~registration. The following shall be included in the initial ~~permit~~ application to ~~operate~~register a short-term rental

- 1) The complete legal description, street address, and location of the short-term rental unit;
- 2) Proof of ownership and the name, street address, telephone number, driver's license, and email of each person or entity with an ownership interest in the short-term rental as well as the local responsible contact for the short-term rental; local responsible contact must be available within thirty (30) minutes notice to be on site;
- 3) Proof of a valid and current registration, license, or approval under the hotel occupancy tax program administered by the state and the city and proof of payment of hotel occupancy taxes due as of the date of the submission of the application.

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