

ORDINANCE NO. 2021-2640

AN ORDINANCE ADOPTING A NEW CHAPTER 124, " SHORT-TERM RENTAL FACILITIES" CONTAINED IN TITLE 11 "BUSINESS REGULATIONS" OF THE CODE OF ORDINANCES OF THE CITY OF FREEPORT, TEXAS, TO PROVIDE FOR THE LICENSING AND REGULATION OF SHORT-TERM RENTAL FACILITIES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PENALTIES; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THE ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AND PROPERLY PUBLISHED FOR HEARING AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Freeport, Texas, has determined that the adoption of this ordinance is necessary to the health, safety, and general welfare of the inhabitants of said City and the members of the general public; and

WHEREAS, the City Council finds that this Ordinance was adopted at a meeting which was open to the public and preceded by proper notice, as required by Chapter 551 of the Texas Local Government Code (the Open Meetings Act).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF FREEPORT, TEXAS:

Section 1, the findings and recitations set out in the preamble to this ordinance are found to be true and correct and they are hereby adopted by the City Council and made part hereof for all purposes.

Section 2, That Chapter 124 "Short-term Rental Facilities" in Title 11 " Business Regulations" of the Code of Ordinances of the City of Freeport, Texas, is hereby adopted to read as follows:

CHAPTER 124 – SHORT-TERM RENTAL FACILITIES

Sec 124.01 Title

This Chapter of the Code of the City of Freeport, Texas is hereby designated and shall be known and referred to as the "Short-term Rental Facilities" Chapter of the City Code of Ordinances.

Section 124.02 Purpose

The purpose of the regulations set forth in this article 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 create adverse impacts to residential 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 capacity of the structure to cause health and safety concerns; to prevent excessive burden on wastewater treatment infrastructure and other public infrastructure due to added density, and that minimum health and safety standards are maintained in such units to protect visitors and residents from unsafe or unsanitary conditions.

Section 124.03 Applicability

The provisions of this Chapter shall apply to all existing and future residential properties, both primary and accessory structures, and any portions thereof.

Sec. 124.04 Definitions

Administrator means the City Manager or the person or department designated by the City Manager to enforce and administer this Chapter.

Advertise means the act of drawing the public's attention to a short-tenant rental in order to promote the availability of the residence for use as a short-term rental. Said advertising may be found in any medium, including but not limited to, newspaper, magazine, brochure, website, or mobile application.

Bedroom means 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.

Booking Service means any reservation and/or payment service provided by a person or entity that facilitates a short-term rental transaction between an Owner and a prospective Occupant, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the short-term rental transaction.

Hosting Platform means a person or entity that participates in the short-term rental business by providing, and collecting or receiving a fee for, Booking Services through which an Owner may offer premises for an occupant on a short-term basis. Hosting Platforms usually, though not necessarily, provide Booking Services through an online platform that allows an Owner to advertise the premises through a website provided by the Hosting Platform and 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 means any individual person living, sleeping or possessing a building, or 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 means 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 a residential premise, or portion thereof, used for lodging accommodations to occupants for a period of less than thirty (30) consecutive days.

Section 124.05 Unpermitted short-term rentals prohibited

A. It shall be unlawful for any owner or person to rent, lease, advertise, or otherwise permit or allow any residential premises to be operated or used as an unpermitted Short-term Rental.

Section 124.06 Requirements for hosting platforms

A. All Hosting Platforms shall provide the following information in a notice to any owner listing a Short-term Rental located within the City of Freeport through the Hosting Platform's service. The notice shall be provided prior to the owner listing the premises and shall include the following information: THE "SHORT-TERM RENTAL" CHAPTER OF THE CITY OF FREEPORT CODE OF ORDINANCES PROHIBITS THE SHORT-TERM RENTAL OF RESIDENTIAL PREMISES WITHIN THE CITY OF FREEPORT WITHOUT AN ACTIVE SHORT-TERM RENTAL PERMIT.

B. Notwithstanding any other provision of this Chapter, nothing shall relieve any owner person, occupant or Hosting Platform of the obligations imposed by the applicable provisions of state law and the City of Freeport Code of Ordinances, including but not limited to, those obligations imposed by the Tax Code. Further, nothing in this Chapter shall be construed to limit any remedies available under the applicable provisions of state law and the City of Freeport Code of Ordinances

Section 124.07 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. Upon application to the City, a short-term rental permit shall be approved by the Administrator, if the application satisfies all the conditions of this Chapter. The Administrator may place reasonable conditions on a short-term rental permit to ensure compliance with the provisions of this Chapter.

Section 124.08 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. If the renewal application satisfies all the conditions of this Chapter and all other applicable City Code provisions, including any adopted building and maintenance codes, an application for the renewal of a short-term rental permit shall be approved by the Administrator. The Administrator may place reasonable conditions on a short-term rental renewal permit to ensure compliance with the provisions of this Chapter.

Section 124.09 Requirements of application.

Except as provided in this Section, every complete application for a short-term rental permit shall include the following information with such detail and in a form approved by the Administrator.

1. The name, address, contact information and authenticated signature for the owner of the premises;
2. The name, address and contact information of the operator, agent if any, and designated local responsible party as required in Section 124.10;
3. A plot plan of the premises identifying the location of parking spaces to be used in conjunction with the short-term rental;
4. A dimensioned floor plan of the proposed short-term rental identifying bedrooms, other living spaces and emergency evacuation routes;
5. Proof of insurance as required in Section 124.11;
6. The name and contact information for the property owner's association, if any, of which the premises is covered by the dedicatory instruments;
7. A copy of the proposed host rules for the short-term rental; and
8. Such certifications deemed necessary and proper to ensure compliance with this Chapter.
9. A permit application fee.

B. 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 Administrator may require such certifications deemed necessary and proper to ensure continuing compliance with this Chapter.

C. 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 A of this Section.

D. 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 Administrator in his or her sole discretion may grant a one-time extension of the current permit not to exceed ten (10) days.

Section 124.10 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. Said individual must reside in Brazoria County, Texas and be available to be reached in person or by phone on a 24-hour basis, 365 days of the year. If called, a local responsible party must be able to and shall be present at the premises within one (1) hour of call from Administrator, or his designee. A local responsible party must be authorized to make decisions regarding the premises and its occupants. A local responsible party may be required to, and shall not refuse to, accept service of citation for any violations on the premises. Acceptance of service shall not act to release owner of any liability under this chapter.

Section 124.11 Proof of insurance required

It shall be unlawful for the owner of premises operating as a short-term rental to operate without host protection or other liability insurance commensurate with the operations of the short-term

rental that provides coverage of up to \$1 million per occurrence. A certificate of insurance must be on file with the Administrator. Proof of insurance shall be required at the time of application and notice of cancelation of insurance must be made to the Administrator within 30 days.

Section 124.12 Inspection required

No permit or renewal permit shall be approved for a short-term rental until the City has inspected the premises and found the premises to be in compliance with minimum health and safety requirements for use and occupancy. If a premises fails to pass an inspection, a reinspection fee may be charged for each subsequent inspection in accordance with the fee established by resolution.

Section 124.13 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 chapter.

Section 124.14 Hotel occupancy taxes; Request for occupancy history

It shall be unlawful for an owner of premises used for a short-term rental to fail to pay hotel occupancy taxes required under State law and the City of Freeport Code of Ordinances. Upon request of the Administrator, the owner of a premises used as a short-term rental shall remit, within 30 days, an accounting of all occupants who rented the premises and the hotel occupancy taxes paid therefor. It shall be unlawful for a person to fail to provide said information requested in a timely manner.

Section 124.15 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.

Section 124.16 Restrictions on number of occupants

A. It shall be unlawful for an owner or person to rent, allow, provide, or advertise for more than two (2) persons per bedroom, plus two (2) additional persons, when using the premises as a short-term rental.

B. Regardless of the number of bedrooms at the premises, it shall be unlawful:

I. For more than twelve (12) persons (including children), to occupy a short-term rental at any one time; or

2. For the owner or operator to allow, suffer or permit the number of occupants living, sleeping within or possessing a short-term rental to exceed the maximum occupancy shown on the short-term rental permit or renewal permit.

C. A visual inspection of more than twelve (12) persons by a city employee at the premises is prima facie evidence of and shall be probable cause to issue a citation for a violation of this section.

Section 124.17 Minimum stay required.

It shall be unlawful for an owner to rent or lease a short-term rental for a period of less than 24 hours.

Section 124.18 Physical conversion of premises prohibited

A. It shall be unlawful for an owner or person to convert a garage to living space, remodel, renovate, enlarge or otherwise modify premises to add additional bedrooms for use as a Short-term Rental.

B. It shall be unlawful for an owner or person to pave or otherwise cover pervious soil to create additional on-premise parking without prior approval from the City of Freeport.

Section 124.19 Sound equipment restrictions

It shall be unlawful for an owner or occupant of a short-term rental to use or allow the use of amplified sound equipment that produces sound audible beyond the property line of the premises between the hours of 10:00 p.m. and 9:00 a.m.

Section 124.20 Trash pickup requirements

It shall be unlawful for an owner or occupant to place, or allow to be placed, trash on the premises before 7:00 PM the evening prior to scheduled pickup or on a day not scheduled for pickup by the City or its authorized solid waste transportation vendor.

Section 124.21 Advertising, promoting or allowing of special events prohibited

A. It shall be unlawful for an owner or occupant to advertise or promote a special event, or allow the advertising and promotion of a special event (e.g. banquet, wedding, reception, reunion, bachelor or bachelorette party, concert, or any similar activity that would assemble large numbers of invitees) to be held on the premises.

B. It shall be unlawful for an owner or occupant to allow, suffer or permit a banquet hall or special event as described to be held on the premises.

Section 124.22 Notice to occupants of short-term rentals

An owner or person operating a short-term rental shall provide a notice of instructions (also known as "host rules") to occupants staying at the premises in a form developed by the Administrator. The notice shall instruct the occupants as to all applicable city regulations pertaining to short-term rentals. These include, but are not limited to, occupancy restrictions, limits on parking, trash pickup, prohibitions on special events, limits on amplified sound, and curfew times.

Section 124.23 Permit to be displayed.

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.

Section 124.24 Use of assigned permit number required

It shall be unlawful for an owner or person to advertise a short-term rental in any medium, including but not limited to newspaper, magazine, brochure, website, or mobile application without including the current permit number assigned by the Administrator.

Section 124.25 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.

ADMINISTRATIVE PROCEDURES**Section 124.26 Revocation of permit**

A. Grounds. Any permit issued hereunder may be revoked by the Administrator if the permit holder has:

- (1) received more than two citations for violations of this chapter or any other provision of this Code of Ordinances within the preceding 12-month time period; or
- (2) 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
- (3) knowingly made a false statement in the application; or
- (4) otherwise become disqualified for the issuance of a permit under the terms of this Article.

B. 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. The revocation shall become effective the day following personal service or if mailed, three (3) days from the date of mailing.

C. Appeal; hearing. The permit holder shall have ten (10) days from the date of such revocation in which to file notice with the Administrator of their appeal from the order revoking said permit. The Administrator shall provide for a hearing on the appeal in accordance with the provisions of this Article.

D. One-Year Waiting Period. In the event an owner's short-term rental permit is revoked by the Administrator, 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.

Section 124.27 Administrative appeals of denial or revocation of permit.

A. Upon denial or revocation of a permit, the Administrator, shall notify the applicant or permit holder, in writing, of the reason for which the permit is subject to denial or revocation. To contest the denial or revocation of a permit, the applicant or permit holder shall file a written request for a hearing with the Administrator within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial or revocation is sustained.

B. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.

C. The hearings provided for in this Section shall be conducted by the Administrator or a designated hearing officer at a time and place designated by the Administrator or the hearing officer. Based upon the evidence of such hearing, the Administrator or the designated hearing officer shall sustain, modify or rescind any notice or order considered at the hearing. A written

report of the hearing decision shall be furnished to the applicant or permit holder requesting the hearing.

D. After such hearing, an applicant or permit holder whose permit was denied or revoked by the Administrator may appeal to the City Council or board designated by the City Council to hear such appeals.

E. An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

Section 124.28 Appeals of Administrator decision

A. All appeals must be made in writing and received no less than ten (10) days after any final decision made by the Administrator or the designated hearing officer in accordance with above.

B. The City shall schedule the appeal hearing within twenty (20) days from receipt of the appellant or permit holder's appeal request

C. If the City Council or designated board finds by a preponderance of the evidence that the denial or revocation of the permit was necessary to protect the health, safety, or welfare of the general public, the City Appeal Officer shall affirm the denial or revocation of appellant's application or permit.

D. The City Appeal Officer may consider any or all of the following factors when reaching a decision on the merits of the appeal:

1. The number of violations, convictions, or liability findings;
2. The number of previous permit revocations;
3. The number of repeat violations at the same location;
4. The degree to which previous violations endangered the public health, safety or welfare; and
5. Any pending action or investigation by another agency.

E. After the hearing, the City Council or designated board shall issue a written order. The order shall be provided to the appellant by personal service or by certified mail, return receipt requested.

F. The City Council or designated board may affirm or reverse the denial or revocation of the permit. If affirmed, the order issued must state that the appellant is not eligible to receive a new permit for a short-term rental on the premises sooner than one year after the date of the order. If reversed, the permit shall be reinstated immediately, in the case of a revocation, or the pennit shall be issued within three (3) business days, in the case of a denial.

G. The determination of the City Council or designated board shall be final on the date the order is signed.

H. An appeal to the City Council or designated board does not stay the effect of a denial or revocation or the use of any enforcement measure unless specifically ordered by the Administrator or the City Council or designated board.

ENFORCEMENT

Section 124.29 Discontinuance

A. The owner of a short-term rental use that 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 Chapter, shall discontinue the short-term rental use no later than 6 months.

B. 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.

Section 124.30 Penalties

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

B. If the definition of an offense under this Chapter does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense shall be punishable by a fine not to exceed Five Hundred Dollars and No Cents (\$500.00). Although not required, if a culpable mental state is in fact alleged in the charge of the offense and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, such offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents (\$2,000.00).

C. If the definition of an offense under this Chapter prescribes a culpable mental state and the offense governs fire safety, zoning, or public health and sanitation, including dumping of refuse, then a culpable mental state is required and the offense shall be punishable by a fine not to exceed Two Thousand Dollars and No Cents (\$2,000.00).

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 3, This ordinance shall be and is hereby declared to be cumulative of all other

ordinances of the City of Freeport and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

Section 4, If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

Section 5, All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for City of Freeport in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

Section 6, Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Freeport in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Freeport.

Section 7, This ordinance shall take effect and be in force immediately upon its passage and publication of its descriptive caption twice in the Brazosport Facts.

READ, PASSED AND ADOPTED this 15 day of November, 2021




Brooks Bass, Mayor

ATTEST:


Betty Wells, City Secretary

APPROVED AS TO FORM ONLY:


Christopher Duncan, City Attorney