

5856

**ORDINANCE AMENDING ARTICLE VII, CHAPTER 36, SECTION 36-130 OF THE CITY OF MEMPHIS, CODE
OF ORDINANCE TO ESTABLISH RULES AND REGULATIONS RELATING TO THE OPERATION AND
REGULATION OF SHORT TERM RENTALS IN MEMPHIS**

WHEREAS, pursuant to Article 40 Section 353 of the Memphis City Charter the City Council shall have the power to pass, for the government of the City, any ordinance not in conflict with the Constitution or laws of the United States or of the State of Tennessee; and

WHEREAS, the City Council has the power to pass any ordinance regulating the assessment, levy and collection of all City taxes not inconsistent with the provisions of the Constitution and laws of the United States and of the State of Tennessee; and

WHEREAS, on November 1, 2016, the City Council adopted the Short Term Rental Ordinance as Ordinance 5631 placing it into effect on March 1, 2017; and

WHEREAS, the City Council finds occasion to amend Ordinance 5631 to add new rules and regulations governing short term rentals in Memphis; and

WHEREAS, the City Council finds that this ordinance is not inconsistent with the provisions of the Constitution and laws of the United States and of the State of Tennessee; and

WHEREAS, the City Council finds that it is in the public's interest to establish rules and regulations relating to the operation of short-term rentals in the City of Memphis to protect the public health, safety, and general welfare of individuals and the community at large; and to implement rationally based, reasonably tailored regulations to protect the integrity of the City's neighborhoods.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that 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 a part hereof for all purposes.

BE IT FURTHER ORDAINED that the various sections of this ordinance are severable, and that any portion declared unlawful shall not affect the remaining portions.

BE IT FURTHER ORDAINED that this amended ordinance shall become effective July 1, 2023.

Section 1. SHORT TITLE

This Ordinance shall be known as "Short Term Rental Ordinance".

Section 2. DEFINITIONS AND GENERAL PROVISIONS

The following words and phrases when used in this ordinance shall have the meanings as set out herein:

1) "Short Term Rental Property" means a residential dwelling unit containing not more than three sleeping rooms that is used and/or advertised for rent, in whole or in part, for transient occupancy by guests and complies with Ordinance No. 4232 governing the minimum conditions of property. Any structure or detached accessory unit rented to the same occupant for more than thirty continuous days, bed and breakfast establishments, boarding houses, hotels, and motels shall not be considered short term rental property.

2) "Short Term Rental Property Owner" means the holder of the title in fee simple. Any person, group of persons, company, association or corporation in whose name tax bills on the property are submitted. It shall also mean any person who, alone or jointly or severally with others:

a) Shall have legal title to any dwelling unit with or without accompanying actual possession thereof; or

b) Shall have charge, care or control of any dwelling unit as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, assignee of rents, lessee or other person, firm or corporation in control of a building or their duly authorized agents.

3) "Hosting platform" means a person or entity that participates in short term rental business by providing a means through which a Short Term Rental Property Owner may offer a short term rental property for transient use. This business service is usually, though not necessarily, provided through an online platform that allows a Short Term Rental Property Owner to advertise through a website or mobile application and provides a means for potential tourist or transient users to arrange transient use and payment, whether the transient pays directly to the Short Term Rental Property Owner or to the hosting platform.

4) "Transient" means any natural person, who exercises occupancy or is entitled to occupancy of any short term rental property, lodging or accommodation.

5) "Occupancy" means the use or possession, or the right to the use or possession, of any short term rental property, lodging or accommodation.

6) "Dwelling" means any building or structure or part thereof, including single, two-family, and multi-family dwellings, used and occupied for human habitation or intended to be so used including any accessory building and appurtenances (right-of-way, i.e. driveway) belonging there or usually enjoyed therewith.

Section 3. ZONING SHORT TERM RENTAL PROPERTY

It is the intent of the Council of the City of Memphis that Short Term Rental Property be regulated by this Short Term Rental Ordinance. As of the effective date of this ordinance, all Short Term Rental Properties shall be subject to the regulations of this ordinance and not those outlined for rooming houses in Section 2.5.2 of the Memphis and Shelby County Unified Development Code.

Section 4. APPLICABILITY

As required by Tennessee Code Annotated (T.C.A.) § 13-7-603, this article, including but not limited to the requirement for a permit, or other standards herein established, shall not apply to any short term rental property if the property was used as a short term rental property by the owner prior to the effective date of this article until the property is sold, transferred, ceases to be used as a short term rental property for a period of 30 continuous months or has been in violation of generally applicable local law three or more separate times as provided in T.C.A § 13-7-604.

Section 5. ASSESSMENTS AND PRIVILEGE TAX ON SHORT TERM RENTAL PROPERTIES

1) A Hosting Platform, under a voluntary collection agreement with the city, which facilitates a transaction between a Short Term Rental Property Owner and a transient for lodging accommodations,

shall be solely responsible and liable for collecting and remitting all occupancy and sale taxes to the city; and a Short Term Rental Property Owner who is not the hosting platform shall not be responsible for collecting and remitting occupancy and sales tax to the city on any transaction for which it has received confirmation that the Hosting Platform has collected the aforementioned taxes and remitted them to the city, pursuant to a voluntary collection agreement; otherwise, Short Term Rental Property Owners shall be liable for the collection and remittance of occupancy and sales taxes, if no such voluntary collection agreement between a hosting platform and the city has been executed.

2) The city shall impose an assessment of two dollars (\$2.00) per paid occupied room night on short term rental properties in the city. This assessment shall be dedicated to destination marketing and to provide supplemental funding for marketing programs above and beyond that currently provided, pursuant to Ordinance 5595.

3) The city levies a privilege tax upon the privilege of occupancy in a short term rental property of each transient. Such tax shall be in the amount of three and one-half percent (3.5%) of the consideration charged by the Short Term Rental Property Owners. Such tax is a privilege tax upon the transient occupying such short term rental property and is to be collected and enforced by the city as provided, pursuant to Ordinance 5619.

Section 6. PERMIT REQUIRED

1) No person or entity shall operate a short term rental property or advertise residential property for use as a short term rental property without the owner of the property first having obtained a short term rental property permit issued by the City of Memphis Division of Public Works. Any owner of more than one short term rental property shall be required to obtain a permit for each short term rental property. If more than one short term rental property exists within a dwelling, each short term rental property, as defined herein, shall be treated as one unit, and permit shall be required for each unit.

2) Any advertising or description of a short term rental property on an internet website, mobile application, or other hosting platform must display a permit number for the short term rental property.

3) Short term rental property permits required by this article shall be applied for and renewed electronically or in writing, on such forms as the Division of Public Works may prescribe which forms shall include:

a) The maximum number of transient capacity per night for each short term rental unit including a site plan, drawn to scale, showing each unit and other structures and site features as determined by the Division of Public Works;

b) The owner's agreement to use best efforts to assure that use of the short term rental property will not interfere with the rights or rules of neighboring property owners to the quiet enjoyment of their properties;

c) Proof of owner's current ownership of the short term rental property;

d) Verification of insurance evidencing fire, hazard and liability coverages of not less than \$1,000,000.00 per occurrence;

e) A "compliance verification form" certifying that every short term rental unit currently complies with applicable building, health, and life safety code provisions of applicable ordinances of the City of Memphis;

f) The applicant's acknowledgement of receipt of the short term rental ordinance stating the applicant has reviewed and understands its requirements;

g) Particular instances in which conditions or conduct on the applicant's property resulted in issuance of any citation by a local state or local law enforcement or regulatory agency within the last 12 months;

h) The identification of one or more adult persons, entities or businesses ("responsible party") residing or located within 50 miles of the subject short term rental property who shall be engaged to appear on the premises of the short term rental property to respond to alleged violations of the City of Memphis Code of Ordinances or other applicable state law, including those pertaining to alleged noise, disorderly conduct, overcrowding, traffic or nuisances existing on the property.

4) Prior to the issuance of any permit, the representatives from the Division of Public Works shall be permitted, but not required, to conduct an on-site inspection of the property for which a permit or permits are sought to confirm the units comply with the requirements of this article. An inspection is also authorized, but not required, before any renewal of a permit is given.

5) Each applicant for a short term rental permit under the provisions of this article shall pay to the Division of Public Works, a non-refundable application fee of \$300.00 at the time of the filing of the application to cover new applicant screening and on-site property inspection; and

6) Failure of the responsible party to make a timely appearance on the premises of short term rental property to respond to alleged violations of the City of Memphis Code of Ordinances or other applicable state law including those pertaining to alleged noise, disorderly conduct, overcrowding, traffic, or nuisance existing on the property shall be grounds for permit suspension against the owner. The owner of the short term rental property shall be sent a notice of proposed suspension and given an opportunity to show cause as to why a short term rental permit should not be suspended. Failure to appear as requested or to satisfy the requirements of the notice to show cause shall result in suspension of the short term rental permit for a period of not to exceed 30 days.

7) An owner may replace the responsible party, temporarily or permanently, at any given time with written or electronic notice to the Division of Public Works. To replace a responsible party, the owner shall notify the Division of Public Works of the new responsible party's identity, together with all information required by this chapter prior to making short term rental units available for transients.

8) The Division of Public Works shall issue a permit under this article under the following conditions:

a) That the applicant's application for a permit has been fully completed, signed and the application fee included in the application; and

b) That the operation as proposed by the applicant, if permitted, will contemporaneously comply with the ordinance, as well as the city's current property maintenance code and required insurance coverages; and

c) That the applicant has not knowingly made any false, misleading, or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith; and

d) That the applicant has not had a similar permit denied, suspended or revoked for any cause by any city or state agency within 365 days preceding the filing of this application, and

e) That the applicant has no unpaid assessed court fines or court costs related to violations of the short term rental property ordinance.

f) That the applicant is current on any local property taxes owed on the short term rental property and all other property in the city owned by the applicant.

9) A short term rental permit shall expire 365 days after it is issued. Short term rental permits may be renewed upon the payment of a \$150.00 fee to cover the applicant renewal screening and on-site inspection by the Division of Public Works. All renewal requests shall be received at least 30 days prior to the expiration date for their existing permit.

10) Any short term rental property found to be operating without the required permit being obtained shall be subject to double fees when the necessary permits are obtained.

11) A short term rental property permit shall not be transferred or assigned to another individual, person, entity, or address, nor shall the permit authorize any person, other than the person named therein, to operate a short term rental property on that property.

12) Any false, misleading, or fraudulent statement of fact submitted to the city in furtherance of obtaining a short term rental permit shall be taken as grounds for permit denial or revocation by the Division of Public Works. Upon a finding that such statement of fact has been submitted, the Division of Public Works shall deliver notice giving an owner an opportunity to show cause as to why a short term rental permit should not be revoked. Failure to appear as requested or to satisfy the requirement of the notice of show cause shall result in revocation of the short term rental permit for a period of 12 months.

13) The Division of Public Works shall have the authority to enforce this article, including the authority to grant, deny, suspend, or revoke short term rental permits.

Section 7. REGULATION OF SHORT TERM RENTAL PROPERTY

1) All Short Term Rental Property Owners and their Transient guests shall abide by all applicable noise control restrictions of Memphis City Code §22-1 and garbage collection and disposal provisions of Ordinance No. 4840 of the City of Memphis Ordinances.

2) The Short Term Rental Property Owner shall meet all applicable requirements of the state and local building and fire safety codes, including, but not limited to, having approved smoke alarms meeting Underwriters Laboratory (UL) 217 standards meeting applicable state law standards installed as follows:

a) In all sleeping areas.

b) In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.

- 3) The Short Term Rental Property Owner shall meet all applicable requirements of the state and local building and fire safety codes, including, but not limited to, having approved carbon monoxide detectors meeting applicable state law standards installed on every habitable floor.
- 4) The principal renter of a short term rental property unit shall be at least eighteen (18) years of age.
- 5) The Short Term Rental Property Owner shall not receive any compensation or remuneration to permit occupancy of a short term rental property for a period of less than twenty-four (24) hours.
- 6) The name and telephone number of each Short Term Rental Property Owner or their designee shall be conspicuously posted within the short term rental property unit. A Short Term Rental Property Owner or their designee shall answer calls twenty-four (24) hours a day, seven (7) days a week for the duration of each short term rental period to address problems or complaints associated with the short term rental property.
- 7) It is the intent of the Council of the City of Memphis that all Short Term Rental Property Owners, Hosting Platforms and their designees refrain from discrimination against any person in the terms, conditions, or privileges of the rental of short term rental property because some or all of the Transients are members of classes protected by the Tennessee Human Rights Act.
- 8) The Short Term Rental Property Owner shall ensure the property is in compliance with all local housing code ordinances.

Section 8. COMPLIANCE

It is the intent of the Council of the City of Memphis that complaints regarding short term rental property be resolved according to existing state law and City of Memphis Ordinances pertaining to public nuisances, vehicles and traffic, health and safety, and public peace, morals, and welfare. The continued use of property as a Short Term rental unit will be prohibited, and the permit revoked, if, as a direct result of the operation of the Short Term rental unit, the unit has been found to be in violation of a generally applicable local law three (3) or more separate times by a court of competent jurisdiction, and the provider has no appeal rights remaining for any of the three (3) violations. The burden of proof that a violation of a generally applicable local law was a direct result of the operation of the Short Term rental unit is on the City.

THE FOREGOING ORDINANCE

5856 PASSED

1st Reading 02/21/2023

2nd Reading 03/07/2023

3rd Reading 03/21/2023

Approved: Marvinis D. Jr.
Chairman of Council

Date Signed: 11-Apr-23

APPROVED:
[Signature]
Mayor, City of Memphis
Date Signed: 4/28/23

I hereby certify that the foregoing is a true
copy, and said document was adopted by the
Council of the City of Memphis as above indi-
cated and approved by the Mayor.

Valerie C. Sripes
Comptroller