

DIVISION 2. SHORT TERM RENTAL

Sec. 34.802. Purpose and applicability.

- (a) The purpose of this article is to establish regulations for the protection of the health and safety of occupant(s) of short term rental properties, and to protect the integrity of the neighborhoods in which short term rental properties operate.
- (b) The adoption of the short term rental provisions of this article shall not be construed to create any enforceable right to the continuation of short term rentals or any right to compensation for loss, damages, costs, or expenses alleged to have been incurred in reliance upon its adoption or suffered as a result its repeal.

Sec 34.803. Authority of the Director.

The Director shall implement and enforce this chapter and may by written order establish such procedures, not inconsistent with this chapter or other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations, as the director determines are necessary to discharge any duty under this chapter.

Sec. 34.804. Permit required.

- (a) No short term rental shall operate within the City of San Marcos without a current valid short term rental permit.
- (b) All individual units having cooking, sleeping, and bathing facilities, within common buildings, regardless of ownership, shall require a separate, individual permit for each unit intended to be used as a short term rental.

Sec. 34.805. Short term rental permits.

- (a) *Application.* An approved permit is required before operation of short term rental. Application for a short term rental permit shall be made either in writing or electronically upon a form prescribed by the City of San Marcos for such purpose. Application for a short term rental permit shall be accompanied by a one-time application fee as established in the consolidated fee schedule and shall include the following information, at a minimum:
 - (1) A list of all owners, operators, and agents (if applicable) of the short term rental including names, addresses, current email address(es) of owner/operator, and telephone numbers.
 - (2) Proof of possession of the premises being registered, either by warranty deed, or valid lease.
 - (3) If the applicant does not own the property where the rental unit is located, the applicant must provide written documentation, signed by the property owner before a notary public, authorizing the registrant to operate a short term rental on the premises.
 - (4) The zoning district classification of the property, to be verified by the planning and development services department.
 - (5) A sketch or narrative describing the location of the available parking spaces as required by Land, subsection 34.809, parking, Unified Development Code.
 - (6) A sketch of the floor plan, which identifies sleeping areas, proposed maximum number of guests, evacuation route(s), location of fire extinguisher(s).

- (7) The name, address and 24-hour telephone numbers of a contact person, who is the owner, operator, or designated agent and who shall be responsible and authorized to respond to complaints concerning the use of the short term rental.
 - (8) A list of all hosting sites used to advertise the short term rental.
 - (9) Written confirmation from the City of San Marcos Finance Department showing proof of registration with the City of San Marcos Finance Department for Hotel Occupancy Tax collection will need to be provided before permit is granted.
 - (10) A sworn, self-certification that the owner of the short term rental has met and will continue to comply with the standards and other requirements of this article including, but not limited to: maintenance of insurance coverage of the unit or portions thereof in accordance with this article and obtaining annual independent inspections of required fire extinguishers in compliance with the city's current fire code that is accurate and truthful under penalty of perjury under the laws of the State of Texas.
 - (11) Signature or electronic signature by the registrant requiring the applicant to self- certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Texas.
- (b) *Completeness of application.* Applications shall not be considered complete until all documentation required under this article has been submitted, and until the full application and permit fees have been paid. Incomplete applications will not be accepted.
- (c) *Acknowledgement by applicant.* In connection with submission of the application, each applicant shall acknowledge that any permit granted by director under this article does not supersede any property-specific restrictions against short term rentals that may exist under law, agreement, lease, covenant, or deed restriction.
- (d) The fee for a permit to operate a short term rental is set in the consolidated fee schedule.

Sec. 34.806. Expiration and renewal of permit.

- (a) Unless revoked by director earlier pursuant to this article, a permit to operate a short term rental expires on an annual basis from the date that it was approved.
- (b) A new permit shall be required if a change in ownership, trade name or transfer occurs prior to the expiration of the current permit. The new landlord, owner, or registrant of the premises or rental unit shall have 30 days from the date the change occurred to file a new permit with the city and pay the applicable fee.
- (c) The director shall follow the procedures set forth in this article when determining whether to renew a permit.
- (d) Upon receipt of an application for renewal of the permit, the director may deny the renewal if there is reasonable cause to believe that:
 - (1) The registrant has violated any ordinance of the city, or any state, or federal law on the premises or has permitted such a violation on the premises by any other person; or
 - (2) There are grounds for suspension, revocation, or other permit sanction as provided in this article.

Sec. 34.807. Issuance or denial of a permit.

A license shall be denied under this article if:

- (a) There is good cause to deny the application.
- (b) The applicant fails to provide a complete application and documentation required pursuant to section 34.805.

- (c) The application fails to comply with any state or local laws, or any rules and regulations adopted pursuant thereto.
- (d) A short-term rental license may be suspended or revoked for any of the grounds for denial set forth in section 34.816 and 34.817 of this article.
- (e) Procedures for investigation of license violations and for suspension, revocation, or other licensing sanctions as a result of any rules and regulations promulgated by the director.

Sec. 34.808. Type.

- (a) *Short term rental (Type 1)*. This subsection applies to a short term rental located in residential only zoning districts established under the city's Development Code of the city's Code of Ordinances is rented for periods of less than thirty (30) consecutive days.

A short term rental under this section:

- (1) May only have one operating short term rental operating on a block or 660 feet, or whichever is more limiting;
- (2) Must notify all residential parcels within 400 feet of their;
 - a. Address
 - b. Short Term Rental Permit Number
 - c. Contact information provided by the City of San Marcos where an individual may lodge a complaint.

- (b) *Short Term Rental (Type 2)*. This subsection applies to a short term rental that is located in non-residential zoning districts established under the city's Development Code, of the city's Code of Ordinances and rented for periods of less than thirty (30) consecutive days. Type 2 permits do not have notification and number per block limitations.

Sec. 34.809. General standards.

All short term rentals permitted pursuant to this chapter are subject to the following standard requirements:

- (a) *Occupancy*. The maximum number of persons allowed to reside in a short term rental shall be no more than two adult guests per bedroom to be rented in the permit (but excluding children under the age of twelve), plus no more than two additional adults for a total of six (6) guests used for lodging accommodations to guests. Occupancy does not apply to Type 2.
- (b) *Parking*. Shall comply with City Code Chapter 7, Unified Development Code with respect to required parking (Article 1: Parking). No required parking shall be permitted within public right-of-way or access easements as defined by city code and state regulations regarding parking, The yard(s) shall not be utilized to provide the necessary parking.
- (c) *Insurance*. The applicants shall keep, at a minimum, an insurance policy sufficient for personal injury liability of guests.
- (d) *Life safety*.
 - (1) Short term rentals and structures where they are located shall conform to all applicable city-adopted codes, regulations, and ordinances.
 - (2) A 2A:10B:C type fire extinguisher (a standard five-pound extinguisher) shall be properly mounted within seventy-five (75) feet of all portions of the short term rental on each floor.

- (3) Smoke and carbon monoxide detectors shall be installed and conform to all applicable city-adopted codes, regulations, and ordinances.
 - (4) Every sleeping area shall have at least one operable emergency escape and rescue opening per all applicable city-adopted codes, regulations, and ordinances.
 - (5) An evacuation plan shall be posted conspicuously in each unit or permitted sleeping area.
 - (6) Every bedroom/sleeping area in a short term rental that does not comply with 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 as defined by the San Marcos Property Maintenance Code 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.
- (d) *Conduct on premises.*
- (1) Short term rental operators shall be responsible for informing their occupants of all relevant city codes and occupants' liability for violations of same.
 - (2) Excessive noise or other disturbance outside the short term rental is prohibited per City of San Marcos, Land Development Code, chapter 37, Division 2, Section 7.4.2.1 – Noise. This includes, but is not limited to, decks, portals, porches, balconies, patios, hot tubs, pools, saunas, or spas.
 - (3) No overnight sleeping outdoors or outdoor sleeping spaces for rent.
 - (4) Any use of the short-term residential rental unit is limited to activities that are incidental to its use for dwelling, lodging, or sleeping purposes
- (e) *Signage.*
- (1) Signage shall be in compliance with the city's current sign code as well as any design, design review, and/or approval requirements for the zoning district in which the property is located.
 - (2) All advertisements, including online or proprietary (website, app, or other technology) will include the short term rental permit number within the description or body for public reference.
- (f) *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 as defined per City of San Marcos, Land Development Code, chapter 37, Division 2, Section 7.4.2.1 – Noise;
 - (4) Restrictions of outdoor facilities;
 - (5) The property owner's contact information if the registrant is not the property owner. A local responsible party's 24 hour contact information if neither the registrant nor the property owner are in the city limits when guests are renting the premises;
 - (6) Property cleanliness requirements;
 - (7) Trash pick-up requirements, including location of trash cans;
 - (8) Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates, and relevant water restrictions;

- (9) 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;
- (10) Short term rental permit, health department permit, and/or any other required permits, if applicable; and
- (11) Hotel occupancy tax registration #.
- (g) *Hotel occupancy tax.* Owner or operator must remit all applicable state, county, and city hotel occupancy taxes in a timely manner, pursuant to applicable laws and this article.
- (h) Short term rental is not permitted for any property that has not been registered under this article or where the registrant's permission to operate a short term rental has been suspended or revoked under this article.
- (i) An approved short term rental permit shall not be assigned or transferred to any person or entity. Any attempt to transfer a permit shall render the permit subject to suspension or revocation as provided in this article.
- (j) It shall be the sole responsibility of the registrant, owner, and/or landlord to review the permit for each short term rental unit in accordance with the terms outlined within this article.
- (k) Recreational vehicles and trailers may not be utilized for short term rental.
- (l) During any period when a Short Term Rental is occupied or intended to be occupied by Guests, the Local Contact Person shall be available 24 hours per day for the purpose of responding to concerns or requests for assistance related to the condition, operation, or conduct of Guests of the Short Term Rental. The Local Contact Person shall respond within 60 minutes of being notified of concerns or requests for assistance regarding the condition, operation, or conduct of Guests of the Short Term Rental, and shall take immediate remedial action as needed to resolve such concerns or requests for assistance.
- (m) No registrant shall be allowed to operate or register more than one short term rental in the city, and no registration for a new short term rental shall be authorized, while another registration in the registrant's name is still active or under suspension. When an owner of property registered or operated as a short term rental is a business organization, trust or other entity, no person or entity affiliated with such business organization, trust or other entity as an organizer, officer, member, manager, shareholder, trustee, beneficiary, partner, equity owner or investor shall be allowed to register or operate an additional short term rental at a different property address in the city.

Sec. 34.810. Inspections.

To ensure continued compliance with the requirements of this section a short term rental may be inspected in the following methods:

- (a) Inspection upon application for initial and renewal permit.
- (b) Inspections upon complaint or suspicion of a violation. The city may perform inspections when a violation is reported or suspected in accordance with established code enforcement procedures.

Sec. 34.811. Enforcement, violations, penalty.

- (a) A violation of this division is a class C misdemeanor offense. Any persons, firm, corporation or any others acting on behalf of said person, persons, firm or corporation violating or failing to comply with any of the provisions of this division is subject to payment of a fine not to exceed \$2,000.00 plus court costs. Each act of violation and each day upon which such violation occurs constitutes a separate offense. Additionally, this division authorizes cumulative enforcement action against repeated or multiple violations under this division.
- (b) Violations of this division shall additionally be enforced in accordance with and subject to the remedies in division 4 of this article.
- (c) It is unlawful, and shall be considered a violation of this article, to:

- (1) Rent, lease, or otherwise permit or allow any rental unit or premises to operate, or be operated as a short term rental without first registering the property in which the rental is to occur and unless all requirements of this code and State laws and codes are met;
 - (2) Operate a short term rental without paying the required hotel occupancy taxes;
 - (3) Operate or allow to be operated a short term rental without first registering the property in which the rental is to occur with the city in accordance with this article;
 - (4) Operate a short term rental that does not comply with all applicable city and state laws and codes;
 - (5) Operate or allow the operation of more than one short term rental within the city limits;
 - (6) It shall be unlawful to advertise a short term rental without the license number clearly displayed on the face of the advertisement. For the purpose of this section, the terms "advertise," "advertising" or "advertisement" mean the act of drawing the public's attention to a short term rental.
 - (7) Any use of the short-term residential rental unit is limited to activities that are incidental to its use for dwelling, lodging or sleeping purposes;
 - (8) Notwithstanding the provisions of Chapter 34, Division 3 of San Marcos Code of Ordinances or , the use of any radio receiver, stereo, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound shall take place only within an enclosed short-term residential rental unit. The property owner or operator of a short-term residential rental unit shall use reasonably prudent business practices to ensure that the occupants or guests of the rental unit do not create unreasonable noise or disturbances.
 - (9) Fail to renew required permit (may result in double fees);
 - (10) It shall be unlawful for any person or entity to fail to comply with section 34.809.
 - (11) Failure of a local contact to respond to an issue occurring at the property within sixty (60) minutes.
- (b) *Emergency contact.* During any period when a Short Term Rental is occupied or intended to be occupied by Guests, the Local Contact Person shall be available 24 hours per day for the purpose of responding to concerns or requests for assistance related to the condition, operation, or conduct of Guests of the Short Term Rental. The Local Contact Person shall respond within 60 minutes of being notified of concerns or requests for assistance regarding the condition, operation, or conduct of Guests of the Short Term Rental, and shall take immediate remedial action as needed to resolve such concerns or requests for assistance.
 - (c) Violation of any section of this article shall constitute an offense resulting in permit revocation in accordance with subsection 34.812, revocation procedures.
 - (d) Failure to timely pay any applicable hotel occupancy tax is a violation of this section and shall result in permit revocation if arrearage is not paid within ninety (90) days of the issuance of a delinquency notice, in accordance with subsection 34.812, revocation procedures.
 - (e) Failure to successfully complete the renewal process of a short term rental permit is considered a violation of this section.
 - (f) The provisions of this subsection are in addition to and not in lieu of any criminal prosecution or penalties as provided by city ordinances, county, or state law. For each day any violation of this section occurs it shall constitute a separate offense and is separately punishable but may be joined in a single prosecution.

Sec. 34.812. Records/Reports.

- (a) Each operator must submit to the Department a report as requested from the director that includes the information set forth in Subsection (b) of this Section.
- (b) Each report required by Subsections (a) of this Section must state, for the quarter being reported and with respect to short-term residential rentals within the City:

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- (1) The number of bookings, listings;
 - (2) The average number of bookings per listing;
 - (3) Current year-to-date booking value;
 - (4) Current year-to-date revenue collected from all short-term residential rentals; and
 - (5) The average length of a short-term residential rental.
- (c) The department shall maintain and make publicly available a list of all licensed short-term rentals within the city.

Sec. 34.813. Nonconforming rights.

Short term rentals (Type 1) in existence as of date of ordinance shall maintain rights limited by 34.808 (a)(1). A Short term rental where operations have ceased operations for a period of six (6) months, to include the renewal of a valid permit, shall be deemed to be permanently abandoned.

Secs. 34.814—34.819. Reserved.

DIVISION 4. ENFORCEMENT

Sec. 34.830. Authorization to enforce.

director and other city personnel authorized may enforce the provisions of this article.

Sec. 34.831. Notice of violation.

- (a) For purposes of this division the code official must serve notice of suspension of a registration by mail, electronic notification, or posting on the subject property. The suspension is effective immediately until the requirements of this chapter are met or for the duration of the suspension set forth in the notice, or if no duration is listed in the notice, until such time as the code official lifts the suspension.
- (b) Electronically transmitting a copy of the notice, acknowledgment of receipt requested, to the last known electronic address of the registrant or landlord shall serve as an accepted legal standard of contact and notice under this provision.

Sec. 34-816. Suspension of permit

- (a) **Suspension of permit.** The Director may, without warning, advance notice or hearing, suspend any permit to operate a residential rental dwelling if the operation of the residential rental dwelling constitutes an imminent hazard to public health or safety. Pursuant to this article and with prior warning, the director may suspend a permit for violation(s) of this ordinance. Upon suspension of a permit, the owner may not continue to allow new tenants to occupy any unit until the permit is reinstated. Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing with the Director within ten (10) days of receipt of a request for a hearing. The request for a hearing must be submitted to the Director within five (5) days from the date the notice was received.

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- (1) Notice of suspension. Whenever a permit is suspended, the holder of the permit, or the responsible person shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the Director by the holder of the permit within ten days after the service of the notice in accordance with the provisions of this Ordinance. If no written request for hearing is filed within said ten-day period, the suspension is sustained.
 - (2) Other remedies reserved. Suspension of a residential rental dwelling permit shall not preclude the Director from taking any other enforcement action authorized by law.
- (b) A suspension may occur from violations of Sec. 34.809.
 - (c) Length of suspension
 - (1) First Offense – Suspension of three months.
 - (2) Second Offense – Suspension of six months.
 - (3) Third Offense – Suspension of one year.

Sec. 34.817. Revocation procedures.

The director is authorized to suspend or revoke a short term rental permit issued under the provisions of this chapter wherever the permit is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building, structure, unit, or portion thereof is in violation of any ordinance or regulation or any of the provisions of this article. In addition, if any violations have been committed and not corrected within the time specified, the director shall begin the procedures to revoke the short term rental permit in accordance with the following:

- (a) The director shall give written notice to the owner/operator regarding the revocation.
- (b) If a short term rental permit is revoked, the owner/operator may not reapply for the same property for a period of twelve (12) months.

Sec. 34.818. Appeals.

Upon denial of a permit by the director, the conditions to be imposed with the permit or the revocation of a permit by the approval authority, the applicant may appeal the decision to the neighborhood commission within five days thereafter by filing a written notice of appeal requesting a hearing by the neighborhood commission. Upon appeal, the neighborhood commission may reverse, affirm, or modify in any regard the determination of the director. The neighborhood commission's decision shall be made within five days from the date of the next regularly scheduled neighborhood commission meeting.

Sec. 34.833. Other remedies.

Nothing in this article prevents the city from seeking injunctive relief or other civil action required to enforce this chapter including suspension of utility services, placement of liens, and posting of notices prohibiting occupancy or use.

Secs. 34.834—34.840. Reserved.