

VILLAGE OF VOLENTE

ORDINANCE NO. O-2018-08-01

AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS, AMENDING CHAPTER 9, ARTICLE 9.06, OF THE VILLAGE OF VOLENTE CODE OF ORDINANCES; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000 FOR EACH OFFENSE; PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; AMENDMENT; REPEALER; SEVERABILITY; CODIFICATION; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the Village of Volente (“City Council”) seeks to provide for the public health, safety, and welfare of its citizens; and

WHEREAS, the City Council seeks to promote orderly and safe use of property within the Village of Volente, Texas (“Village”); and

WHEREAS, the City Council finds that vacation rental dwellings pose certain adverse externalities on neighbors not generally created by long-term rentals due to the nature of temporary, transient guests; and

WHEREAS, the City Council finds that it is necessary to replace the existing short-term rental regulations with updated regulations specific to vacation rental dwellings within the Village to ensure peace and orderly conduct, and protect the use and enjoyment of neighboring residential properties; and

WHEREAS, the City Council desires to give city staff tools to respond promptly to residents’ concerns related to vacation rental dwellings; and

WHEREAS, the Planning and Zoning Commission recommended adoption of the proposed ordinance amendments after a public hearing on July 10, 2018; and

WHEREAS, the City Council held discussion and invited public comment on the proposed ordinance amendments after a public hearing held on July 17, 2018; and

WHEREAS, pursuant to Texas Local Government Code Section 211.003 the Village has general authority to regulate the location and use of buildings, other structures and land for business, industrial, residential, or other purposes; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the Village has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the Village and is necessary or proper for carrying out a power granted by law to the Village; and

WHEREAS, pursuant to Texas Local Government Code Section 217.002, the Village has general authority define and declare what constitutes a nuisance and authorize the summary abatement of the nuisance in any manner considered expedient; and

WHEREAS, the City Council finds that the amendment proposed is reasonable, necessary, and proper for the good government of the Village of Volente.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS:

SECTION 1. FINDINGS

The facts and recitations found in the preamble of the Ordinance are true and correct and incorporated herein for all purposes.

SECTION 2. AMENDMENT

Chapter 9, Article 9.06 of the Code of Ordinances, Village of Volente, Texas, is hereby amended to read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

SECTION 3. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SECTION 4. SEVERABILITY

In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconditional; and the City Council of the Village of Volente, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

SECTION 6. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the Village's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

SECTION 7. EFFECTIVE DATE

This Ordinance is in full force and effect immediately upon its adoption.

SECTION 8. PROPER NOTICE AND MEETING

That it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and the public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chap. 551, Tex. Loc. Govt. Code.

PASSED, APPROVED, AND ADOPTED on this the 21st day of August, 2018 by a 5 (ayes) to 0 (nays) to 0 (abstentions) vote of the City Council of the Village of Volente, Texas.

VILLAGE OF VOLENTE:

Ken Beck, Mayor

ATTEST:

Christina Schildgen, City Secretary

ARTICLE 9.06 VACATION RENTAL DWELLING STANDARDS AND PROCEDURES

Sec. 9.06.001 Purpose

The Village of Volente desires a friendly, mutually cooperative and successful relationship between its residents and its vacation rental owners, many of whom are one and the same. It is the purpose of this chapter to protect the public health, safety and general welfare of individuals and the community at large; to monitor and provide reasonable means for citizens to mitigate impacts created by occupancy of short-term vacation units; and to implement rationally based, reasonably tailored regulations to protect the integrity of the city's neighborhoods.

Sec. 9.06.002 Definitions

Bedroom means an area of a dwelling intended primarily as sleeping quarters. The term does not include a kitchen, dining room, bathroom, living room, utility room, or closet or storage area of a dwelling.

Vacation Rental Dwelling (VRD) means any structure, or any portion of any structure, which is occupied or offered or designed for transient and/or temporary human occupancy for less than 30 days for dwelling, lodging or sleeping purposes for compensation. This includes, but is not limited to, houses, cabins, bed and breakfasts, or other dwelling units, or portions of any of these dwelling units.

Sec. 9.06.003 Conditional Use Permit Required

No owner, real estate or property manager for an owner of property within the residential zoned areas of the Village shall conduct, operate, or maintain VRDs in the Village without the owner first having obtained and paid for a valid conditional use permit from the Village, and complying with the requirements of this Article, as may be amended, and all applicable provisions of local, state, or federal laws, statutes, rules, or regulations.

A conditional use permit is required for residential zoned properties per Special Provisions Sec. 9.02.141. Commercial zoned properties shall comply with the applicable section(s) of Article 9.02 Zoning Regulations.

1. An application for a conditional use permit under this article may be submitted to the Village by the property owner or by the property owner's designated representative.

2. The application shall include and be accompanied by:

a. VRD initial application, which includes:

i. The owner's sworn acknowledgement that he or she has received a copy of this article, has reviewed it and understands its requirements;

ii. The owner's agreement to use his or her best efforts to assure that use of the premises by vacation rental occupants will not disrupt the neighborhood, and will not interfere with the rights of neighboring property owners to the quiet enjoyment of their properties.

iii. 24-hour Representative(s): The vacation rental property owner and designated representative's name, physical address, email address, and phone numbers must

be provided to the village upon permit application and renewal. The information shall be kept current at all times. The owner or representative(s) shall be available by phone (24 hours a day, seven days a week) to ensure a response to complaints, regarding emergencies, and the condition, operation, or conduct of the occupants. A 24-hour representative must be able to physically respond to the vacation rental site within two hours.

b. Neighbor Notice: A sworn affidavit by the owner of the property to be used for vacation rentals that the Applicant has sent written notification by regular first class mail via the United States Postal Service or email to all owners of real property within two hundred (200) feet of the VRD property line, that the owner has applied for a permit for vacation rental use. A new notification shall be filed with the City and sent to property owners described above whenever there is a change in contact information. The affidavit shall be accompanied by proof of receipt or rejection of said mailing by adjacent property owners. Written notification shall include:

i. The name of the owner and owner's representative(s) of the unit, physical addresses, email addresses, text and phone numbers at which those parties may be reached on a twenty-four (24) hour, 7 days a week, basis.

- ii. The telephone number of the City office at which members of the public may report violations of the VRD Ordinance or conditions of approval;
 - iii. The maximum number of occupants proposed to stay in the rental unit.
- c. Representative Certification: written certification from the vacation rental representative(s) that he or she agrees to perform the duties specified on the form;
- d. Signed neighbor notice affidavit: see Sec. 9.06.003(2)(b);
- e. Homeowners Association Affidavit (if applicable); If the subject dwelling is on a property that has a Homeowners Association (HOA) at the time of permitting, the owner of the dwelling shall provide the village with an affidavit of proof that the HOA allows for vacation rental of their dwelling;
- f. Proof of ownership of the property to be used as a VRD (i.e., deed);
- g. Copy of garbage service bill showing weekly pickup;
- h. Proof of LCRA/OSSF approval (Septic systems must be inspected and documentation of the inspection approval must be provided with the application. The septic system inspection does not have to be at time of VRD permit if no changes to the septic system have occurred since time of last inspection.);
- i. Fire/Safety/Health Inspection. All dwelling units used for vacation rentals shall comply with all applicable regulations and ordinances of the Village. At the time of initial application, the VRD shall be inspected by a village official or designee. The purpose of this inspection is to assure conformance of the dwelling unit with the State of Texas' adopted International Residential Building Code, the Uniform Housing Code, and the Uniform Fire Code regulations related to potential safety issues and to establish maximum occupancy, including but not limited to an approved means of egress from every bedroom;
- j. Permit fee in the amount established in the fee schedule provided in appendix A of this code for the original application with a fee for each renewal permit application, if renewed prior to expiration; and
- k. A concept plan, if applicable (ex: new build or remodel), prepared in accordance with the requirements of the Village's site development ordinance.

Sec. 9.06.004 Exemptions

A property may be exempt from the conditional use permit requirement if it is determined by tax records that the vacation rental use existed on or before February 1, 2003 and the property has been continuously owned by the same person or persons.

Sec. 9.06.005 Transfer of a Permit Prohibited

A conditional use permit issued pursuant to this article is not transferable upon change in ownership of the vacation rental property. VRD conditional use permits are not transferable between properties. Each new owner of property must apply for a VRD conditional use permit to rent property under the VRD Ordinance. A permit holder shall inform the Village within seven (7) days if the property is sold or transferred. The permit shall become invalid immediately upon sale or transfer of the property.

Sec. 9.06.006 Application Review Process

1. Administrative Review

a. Once the Village Official determines that the application is administratively complete, he/she is authorized to issue the owner of a VRD a conditional use permit for an initial period of one calendar year, or prorated amount.

b. If the Village Official determines that the application is not administratively complete, the Applicant may request that the Planning and Zoning Commission review the application to determine whether it is administratively complete.

c. If the Village Official and Planning and Zoning commission find the application not administratively complete, the Applicant can appeal the Village Official's decision to the Village Council.

2. Notice and Hearing, Approval, Additional Conditions

a. Before authorization of any dwelling as a VRD, public notice shall be given and public hearings shall be held as provided in chapter 211, Texas Local Government Code; provided that a conditional use permit for a period not to exceed seven (7) calendar days may be given for a use set forth in paragraph 9.06.007(1) after a public hearing is held by the council after having received a report and recommendation from the Planning and Zoning Commission concerning the effect of the proposed use on the adjacent and neighboring properties and neighborhoods.

b. Upon receipt of the recommendation of the Village Official, the Planning and Zoning Commission shall conduct a public hearing in order to formulate its recommendations to the Village Council on the permit application. Following the public hearing, the Planning and Zoning Commission shall recommend approval, approval subject to modification, or denial of the proposed permit to the council. If the appropriateness of the use cannot be assured at the location, the Planning and Zoning Commission shall recommend denial of the application as being incompatible with existing uses or with other uses permitted by right in the zoning district.

c. When considering applications for a conditional use permit under this article, the Planning and Zoning Commission in making its recommendation and the council in rendering its decision on the application shall, on the basis of the concept plan and other information submitted, evaluate the impact of the VRD's use on and the compatibility of the use with, surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location.

d. In approving the conditional use permit application, the Planning and Zoning Commission, and/or the Village representative may recommend and the Council shall impose such conditions as are reasonably necessary to assure compliance with these standards and the purpose and intent of this article. Any conditions imposed shall be set forth in the ordinance approving the conditional use of the VRD and shall be incorporated into or noted on the concept plan for final approval. The Village shall verify that the concept plan incorporates all conditions set forth in the ordinance authorizing the conditional use. The village shall maintain a record of such approved uses and the concept plans and conditions attached thereto. (Ordinance 2016-O-174 adopted 11/21/16)

3. Permit Renewal

Conditional Use Permits for VRDs shall be renewed on or before January 30th of every odd year.

Sec. 9.06.007 Permit Standards and Procedures

Where permitted in a district, a property owner who operates a VRD shall comply with the following standards and procedures, and shall provide proof of compliance and inspection approval documentation to the village, where applicable.

1. Maximum Occupancy

The maximum occupancy for a VRD shall be two persons per Bedroom, with a maximum of three additional overnight guests. Occupancy includes occupants sleeping on the property. At no point will the maximum number of persons permitted at the vacation rental exceed the provisions of the Uniform Fire Code.

2. Notice to Occupants

The following shall be displayed on the inside of the front door or a prominent location of the VRD:

- a. Maximum number of occupants;
- b. Address of the VRD;
- c. Phone numbers of the owner;
- d. Designated 24 hour, 7 days a week, contact representative(s) information;
- e. Fire department, Emergency 911, and Village office;
- f. Notice that no occupant of or visitor to a VRD shall cause or permit a public nuisance to be maintained on such property.
- g. Failure to conform to the occupancy and parking requirements is a violation of the Village's Municipal Code; and
- h. Emergency Evacuation flier.

3. Signage

All VRDs must comply with Article 4.04 Signs.

4. Off-Premise Parking Requirements

Off-premise parking by renters or their guests shall be limited to one side of the right-of-way directly contiguous to the vacation rental, provided the pavement is a minimum of twenty (20) feet from the side of the vehicle to the other side of the

roadway. Parked vehicles shall not prevent or obstruct ingress and egress to the neighboring properties or to emergency and/or fire vehicles.

5. Garbage Service

The property owner is responsible for removal of garbage via the Village's contracted Disposal Company immediately after occupancy. Weekly solid waste collection shall be provided by the property owner during all months that the VRD is available for vacation rental occupancy.

6. Emergency Preparedness

In addition to the Notice to Occupants required under paragraph (2) above, property owners and representatives of VRDs are expected to review and inform occupants of the Village's Emergency Preparedness Plan provided by the Volente Volunteer Fire Department, (Ordinance 2016-O-174 adopted 11/21/16)

Sec. 9.06.008 Complaints

1. Should the owner/operator become aware a law enforcement officer responded to the VRD and a citation was issued, the owner or owner's representative shall attempt to contact the occupants within one hour of being alerted of the call to address the occupants about the complaint.

2. Any resident or employee of the Village may submit a written complaint to the village official regarding a VRD. Each written complaint shall be forwarded by the village official to the Board of Adjustment as part of their regular review process to determine whether the submitted complaint is substantiated. The village official or their designee shall inform the VRD conditional use permit holder of any written complaint and inform the permit holder of when said complaint shall be reviewed by the Board of Adjustment.

3. The Board of Adjustment, after a public hearing, shall make a final written finding determining whether a submitted complaint is substantiated. If the Board of Adjustment finds that a VRD conditional use permit holder has received three (3) substantiated complaints in one twelve (12) month period, the VRD permit shall be revoked. A VRD conditional use permit holder whose permit is revoked for three (3) substantiated complaints must wait twelve (12) months to reapply for a new permit. If a permit is revoked, the village official or their designee shall notify a VRD

conditional use permit holder that the permit has been revoked and the process for appealing the revocation.

4. Substantiated complaints shall be defined as any written complaint submitted to the village official and determined by the Board of Adjustment to be an ordinance violation, including a violation of state law that is supported or verified by corroborating information, for example the report of an investigating police officer, photographic documentation or an audio or video recording. The allegations in the complaint do not have to be the subject of a criminal complaint or result in a criminal conviction for the complaint to be substantiated.

5. The village official or their designee shall notify the permit owner in writing of any substantiated complaint. The Board of Adjustment shall direct village staff to take appropriate action related to any findings related to a substantiated complaint.

Sec. 9.06.009 Violations

1. The provisions of this Subsection are in addition to, and not in lieu of, any criminal prosecution or penalties as provided by Village Ordinances or County or State law.

2. Each day of violation of said standards and provisions of this Article constitutes a separate offense and is separately punishable, but may be joined in a single prosecution.

3. Holders of a conditional use permit issued under this article shall comply with and ensure that their renters comply with all applicable Village 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.

4. It is a violation of this chapter for an owner to:

a. submit false documents, or otherwise make a false statement of a material fact on the application for a conditional use permit submitted under this Article;

b. advertise or rent a property that does not have a valid VRD conditional use permit;

c. knowingly allow a property to be advertised or rented, that does not have a valid VRD conditional use permit;

d. fail to notify the Village of a change in the 24 hour contact information; or

e. fail to respond to a call regarding the VRD with two hours of being alerted.

5. It is a violation of this chapter for a VRD owner, renter or guest to fail to comply any requirement of this section, applicable Village Ordinance, or state law.

Prima facie evidence of the use of a property as a VRD shall include:

a. advertisement or holding out the availability of property for vacation rental uses;

b. reservations, booking arrangements or signed lease, sublease, assignment, or any other occupancy or agreement for compensation, trade, or other legal consideration subject to this Article; or

c. use of an agent or third person to make reservations or booking arrangements.

Sec. 9.06.010 Permit Suspension, Revocation, and Lapse

1. Suspension of Permit

a. The village official has the authority to recommend to the Board of Adjustment, suspension of any VRD conditional use permit for outstanding code violations.

b. The Board of Adjustment shall determine the necessary action and time to bring the property into compliance and have the permit reinstated and/or issued. Documentation demonstrating compliance shall be submitted to the village official. The property owner may appeal any denial of reinstatement by the village official to the Board of Adjustment.

c. If the permit holder does not bring the property into compliance before the time specified by the Board of Adjustment, then the permit is revoked. A permit holder may not rent

their property during the period of noncompliance, but may advertise the rental for dates after the property is expected to be in compliance.

2. Revocation of Permit

The Board of Adjustment, after notice and a public hearing, may revoke any conditional use permit for one or more of the following reasons:

- a. A substantiated violation of any of the plans, terms, conditions and limitations applicable to the conditional use permit;
- b. A substantiated violation of any applicable ordinance or regulation;
- c. A substantiated violation of Operation or maintenance of the conditional use in a manner that is detrimental to the public's health or safety, or so as to constitute a nuisance; or
- d. Discontinuance of the use.

3. Lapse of Permit.

A VRD conditional use permit shall lapse if the use has not been commenced, or, in the case of construction, if construction has not been commenced, within one year of the date the permit was issued.

Sec. 9.06.011 Penalty

Any individual, business, entity, or person who violates this article or fails to comply with the conditions of a permit required by this article commits a class C misdemeanor. A violation of this article is punishable by a fine in accordance with the general penalty provided in section 1.01.009 of this code per violation. Each day of violation is a separate violation. (Ordinance 2016-O-174 adopted 11/21/16; Ordinance adopting Code)