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**SHARING ECONOMY:
SHORT TERM RENTALS**

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I. INTRODUCTION

How real property may be used can be regulated by cities in a variety of ways. The most typical regulation is through a city's zoning powers found in chapter 211 of the Texas Local Government Code. In Houston there is no zoning, but regulation of uses by restrictive covenants. Nuisance laws and licensing also can play a critical role in the regulation of uses, even though those rules may not designate the type of use permitted on the property.

Unless using a form based code, the typical Euclidian zoning classifications will divide the uses and a city into residential, commercial and industrial/manufacturing districts. When those uses in the same district blur, the distinctions can be increasingly difficult to determine what is commercial and what is residential. Some of the typical cross-overs include running a hair salon in your home, conducting your law practice in your living room, and renting out your house for just the night. This last scenario is the case of short-term rentals.

II. CONFLICTS

Depending on whom you ask the residential/commercial separation is destroyed by renting out your house or room for short periods of time. Neighbors that do not typically rent their homes or rooms for the night or the week will argue the short-term landlord is operating a commercial hotel in their residential district. The neighbor is upset by the strangers cycling in and out next door. The owner that rents out their property will argue it is within their

bundle of sticks as a property owner to rent their property for whatever period of time, short or long term.

Those of us dealing with land use matters are used to the balancing act of neighbors, uses and nuisances. In the past the issue was bed and breakfasts. Owner occupied residences renting out rooms to maybe supplement their retirement income or in resort areas of the state. With technology and the connection of people with a mobile app, it is easier than ever to rent out just about anything. Welcome to the sharing economy. The sharing economy allows for a lower overhead cost (i.e. advertising or management company costs), and instant connection of people, places and things without the need for the owner to remain on the premises.

Bringing people together brings conflicts. These annoyances have not changed since the B&B days of old but are usually the same complaints – noise, trash, traffic, parking and over-occupancy. Generally short-term rentals are defined as rental of part or all of a residential structure for periods less than thirty days. Short-term rentals are subject to chapters 351 (municipal) and 352 (county) of the Texas Tax Code imposing hotel occupancy taxes.

Cities have the option to: (1) not regulate short-term rentals and allow their unregulated use, (2) prohibit the use altogether, (3) adopt zoning regulations, (4) adopt licensing regulations, or (5) a combination of zoning and licensing. Ancillary to the short-term rental discussion is whether the city will want to regulate

long-term renters. The issues may not be as frequent, but can often be the same.

III. CASELAW

There are two fairly recent appellate court decisions involving restrictive covenants and short-term rentals. The Texas Supreme Court has denied the petitions for review in both cases. In the first case *Friedman v. Rozzlle*,¹ Rozelle had rented her cottage in Rockport for short terms as well as was a rental agent for short-term rentals of properties in the subdivision, in violation of the property's restrictive covenants. The language in the restrictive covenants reads, "The term of any lease of a single family dwelling may not be for a period of less than thirty (30) days, with no transient tenancy or occupancy and no hotel purposes allowed."

Rozzlle filed a declaratory judgment action against some of the homeowners and the homeowners' association, requesting the court declare this provision unenforceable, void and waived by the homeowners. Friedman filed a counter-claim against Rozzlle and a cross-claim against the homeowners association because they had taken no action to stop the ongoing violations.

Evidence was presented that almost every homeowner in the subdivision had at one time or other rented their property for time periods in violation of the covenant. Further Rozzlle, as a rental operator, had

¹ *Friedman v. Rozzelle*, No. 13-12-00779-CV, 2013 WL 6175318 (Tex. App.--Corpus Christi November 21, 2013, pet. denied).

rented homes in the subdivision for short terms for the past nineteen years. Based on the finding that the violations of the short-term rental provision were "extensive and material," the court found the actions of the homeowners amounted to an abandonment of the provision and waiver of the right to enforce the covenant. Therefore the trial court ruled and the appellate court affirmed that the short-term rental restriction was void and awarded attorney's fees to Rozzlle and the association.

The second appellate case involves property owners in Austin.² Here the restrictive covenant reflects the majority of restrictive covenants out there and provided that the properties in the subdivision could only be used for "single family residential purposes." There was no distinction or limitation on rentals or time.

The HOA objected and demanded that the Zgabays cease use of their property for short-term rentals, vacation rentals and online advertising based on the single family provision in the restrictive covenants. While the HOA prevailed at the trial court level, the appellate court reversed.

When interpreting restrictive covenants, the 3rd Court of Appeals in Austin held that a court would apply the general rules of contract construction, and if unambiguous they should be construed liberally to

² *Zgabay v. NBRC Property Owners Association*, No. 03-14-00660-CV, 2015 WL 5097116 (Tex. App.--Austin August 28, 2015, pet. denied) (mem. op.).

effectuate its intent. But if the covenant can be read in more than one way, the court will rule in favor of the free and unrestricted use of the property, construing the ambiguity against the party seeking to enforce the restriction.

The covenants allowed for rental of properties in the subdivision but did not place any time limit on the duration of the rental of the property. Since the covenants were ambiguous and the drafters could have included limitations on temporary uses as they did in other parts of the covenants, the burden is on the enforcer, not to be interpreted against the property owners.

Last, an example of prohibiting short-term rental use comes from the Village of Tiki Island.³ In 2014, the Village approved Ordinance No. 05-14-02, prohibiting short-term rentals but allowing registered rentals in existence prior to March 1, 2011 to continue operation. These grandfathered properties had been involved in an earlier litigation between the Tiki Island Civic Association and certain homeowners, and a court order expressly allowed their continued use as short-term rentals.

The trial court temporarily enjoined enforcement of Tiki Island's ordinance prohibiting short-term rentals of residences against plaintiff homeowners. Testimony from the Village's mayor revealed no public health safety or welfare concern on record other than a few noise complaints and did

not provide any reasoning for not grandfathering properties operating between 2011 and 2014, the date of the ordinance. The plaintiffs all claimed that the prohibition on short-term rentals was a regulatory taking and they bought their properties based on the fact they could rent it out for short periods of time.

The Village appealed arguing the trial court erred in enjoining enforcement because the plaintiffs failed to allege or demonstrate a viable takings claim and did not demonstrate an irreparable injury to a vested property right. The appellate court lacked jurisdiction to address the injunction for four of the plaintiffs but affirmed the injunction in favor of the one remaining plaintiff citing she identified a vested right and introduced evidence of concrete harm.

IV. CITY OF AUSTIN

The City of Austin has a short but rather tumultuous roller coaster ride with short-term rentals. A copy of the ordinances and resolutions described below are listed and attached in the appendix. In August 2012, the City passed an ordinance regulating short-term rental use by adopting zoning regulations and a licensing scheme. Initially the zoning code allowed for a Type 1 use, owner occupied rental, and a Type 2 use, non-owner occupied rental. Type 2 uses were allowed only as a pilot program.

It did not take long for resolutions and amendments to come regarding Type 2, non-owner occupied, issues. In October 2012, two months after passage of short-term regulations, a council resolution was passed

³ *Village of Tiki Island v. Ronquille*, 463 S.W.3d 562 (Tex. App.---Austin 2015, no pet.)

to direct the city manager to make recommendations on the regulations to “ensure better compliance and ease of enforcement for City staff.” The recommendations were to include issues related to fees, different methods of notification other than mail, registration online, requirements for suspension and revocation, eliminating requirement that the whole dwelling unit be rented, registration timing before or after advertising, ADA compliance, rentals in multi-family properties, and options for neighborhood planning areas input.

Another resolution in February 2013 directed the city manager to initiate a laundry list of changes to the ordinance to include the creation of Type 3 category for multi-family properties and online application process. These changes came to council in September 2013. Additional council resolutions came in 2015 wanting more reporting from the city manager, and enforcement and penalties of short-term rentals. Code changes followed in December 2015.

The biggest, but certainly not the last, code change came in February 2016. Increasing frustration from neighborhoods living with short-term rentals boiled over, and council listened. The fourteen page ordinance made significant changes. These changes deleted a provision that would allow property owners to advertise or “test the waters” prior to listing their property, changes to the application requirements, more authority to staff to deny licenses, suspend licenses for repeat offenders and

created a phase out for Type 2 non-owner occupied short term rentals by April 2022.

V. ENFORCEMENT

Generally complaints of short-term rentals will come from neighbors. When short-term regulations are zoning violations, a city can enforce through municipal court citations, administrative citations, and lawsuits under chapter 211 of the Texas Local Government Code. The neighbors can often provide helpful information on time, place and frequency of violations. They are all too happy to share their logs and photos of violations. A city may also wish to employ private investigators, and the world wide web can often provide evidence of violations. Last, the city can subpoena records of management companies. Airbnb and HomeAway require their users to comply with local laws. These companies maintain records of time, payment and frequency of rentals which can be used to prove violations or seek hotel occupancy taxes.

VI. CONCLUSION

As usual technology outpaces the law and can dramatically impact your zoning or other regulations of use of real property. Council direction on the policy and amount of regulation is critical. As always, stakeholder and neighbor input will influence the policy direction and is necessary for future buy in.

APPENDIX

Short-term Rentals:

Ordinance No. 20120802-122

Resolution No. 20121018-069

Resolution No. 20130228-040

Ordinance No. 20130926-144

Resolution No. 20150618-078

Resolution No. 20150820-052

Ordinance No. 20151217-098

Ordinance No. 20160223-A.1

Transportation Networking Companies referenced in the PowerPoint:

Ordinance No. 20151217-075

Ordinance No. 20160217-001

CITY OF AUSTIN

SHORT-TERM RENTALS

ORDINANCE NO. 20120802-122

AN ORDINANCE AMENDING CITY CODE CHAPTERS 25-2 (ZONING) AND 25-12 (TECHNICAL CODES) RELATING TO THE REGULATION OF SHORT-TERM RENTAL RESIDENTIAL USES; AND WAIVING THE TECHNICAL BOARD REVIEW REQUIREMENT OF SECTION 25-1-502.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Subsection (B) of City Code Section 25-2-3 (*Residential Uses Described*) is amended to add a new use classification, Short-Term Rental, to read as follows and to renumber the remaining classifications accordingly:

- (10) **SHORT-TERM RENTAL** use is the rental of a residential dwelling unit or accessory building, other than a unit or building associated with a group residential use, on a temporary or transient basis in accordance with Article 4, Division 1, Subpart C (*Requirements for Short-Term Rental Uses*) of this chapter. The use does not include an extension for less than 30 consecutive days of a previously existing rental agreement of 30 consecutive days or more. The use does not include a rental between parties to the sale of that residential dwelling unit.

PART 2. City Code Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*) is amended to add a new use, Short-Term Rental, and the chart in Subsection (C) is amended as follows:

Short-term rental use is a permitted use in the following base districts:

- Lake Austin residence (LA)
- rural residence (RR)
- single-family residence large lot (SF-1)
- single-family residence standard lot (SF-2)
- family residence (SF-3)
- single-family residence small lot (SF-4A)
- single-family residence condominium site (SF-4B)
- urban family residence (SF-5)
- townhouse and condominium residence (SF-6)
- multifamily residence limited density (MF-1)

- multifamily residence low density (MF-2)
- multifamily residence medium density (MF-3)
- multifamily residence moderate-high density (MF-4)
- multifamily residence high density (MF-5)
- multifamily residence highest density (MF-6)
- central business (CBD)
- downtown mixed use (DMU)

PART 3. City Code Chapter 25-2, Subchapter C, Article 4, Division 1 (*Residential Uses*) is amended to add a new Subpart C to read as follows:

Subpart C. Requirements for Short-Term Rental Uses.

§ 25-2-788 SHORT-TERM RENTAL (TYPE 1) REGULATIONS.

- (A) This section applies to a short-term rental use that:
 - (1) is rented for periods of less than 30 consecutive days;
 - (2) is not part of a multifamily use; and
 - (3) is owner-occupied or is associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
 - (1) include the rental of less than an entire dwelling unit;
 - (2) operate without a license as required by Section 25-2-790 (*License Requirements*); or
 - (3) operate without providing notification to renters as required by Section 25-2-791 (*Notification Requirements*).
- (C) For a short-term rental use under this section, a secondary residential unit on the same property may be rented for periods of less than 30 consecutive days for an annual total of more than 90 days.

§ 25-2-789 SHORT-TERM RENTAL (TYPE 2) REGULATIONS.

- (A) This section applies to a short-term rental use that:
 - (1) is rented for periods of less than 30 consecutive days;
 - (2) is not part of a multifamily use; and

- (3) is not owner-occupied and is not associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
- (1) include the rental of less than an entire dwelling unit;
 - (2) operate without a license as required by Section 25-2-790 (*License Requirements*); or
 - (3) operate without providing notification to renters as required by Section 25-2-791 (*Notification Requirements*).

§ 25-2-790 LICENSE REQUIREMENTS.

- (A) This section applies to a license required under Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*) and Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*).
- (B) To obtain a license, the owner of a short-term rental use must submit an application on a form provided for that purpose by the director. The application must include the following:
- (1) a fee established by separate ordinance;
 - (2) the name, street address, mailing address, facsimile number, and telephone number of the owner of the property;
 - (3) the name, street address, mailing address, facsimile number, and telephone number of a local responsible contact for the property;
 - (4) the street address of the short-term rental use;
 - (5) proof of property insurance;
 - (6) proof of payment of hotel occupancy taxes due as of the date of submission of the application; and
 - (7) any other information requested by the director.
- (C) The director shall issue a license under this section if:
- (1) the application includes all information required under Subsection (B) of this section;
 - (2) the proposed short-term rental use complies with the requirements of Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*) or Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*);

- (3) for a short-term rental use regulated under Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), no more than 3% of the single-family, detached residential units within the census tract of the property are short-term rental (Type 2) uses as determined by the Director under Section 25-2-792 (*Determination of Short-Term Rental Density*); and
 - (4) the structure has:
 - (a) a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or
 - (b) been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection.
- (D) A license issued under this section:
- (1) is valid for one year from the date of issuance, subject to a one-time extension of 30 days at the discretion of the director;
 - (2) may not be transferred by the property owner listed on the application and does not convey with a sale or transfer of the property; and
 - (3) satisfies the requirement for a change of use permit from residential to short-term rental use.
- (E) A license may be renewed annually if the owner:
- (1) pays a renewal fee established by separate ordinance;
 - (2) provides documentation showing that hotel occupancy taxes have been paid for the property as required by Section 11-2-4 (*Quarterly Reports; Payments*) for the previous year; and
 - (3) provides updates of any changes to the information required under Subsection (B) of this section.
- (F) An advertisement promoting the availability of short-term rental property in violation of city code is prima facie evidence of a violation and may be grounds for revocation of a license.

§ 25-2-791 NOTIFICATION REQUIREMENTS.

- (A) The director shall provide a packet of information with each license summarizing the restrictions applicable to the short-term rental use, including:
- (1) the name and contact information of the local responsible contact designated in the application;

- (2) occupancy limits applicable under Section 25-2-511 (*Dwelling Unit Occupancy Limit*);
 - (3) restrictions on noise applicable under Chapter 9-2 (*Noise and Amplified Sound*), including limitations on the use of amplified sound;
 - (4) parking restrictions;
 - (5) trash collection schedule;
 - (6) information on relevant burn bans;
 - (7) information on relevant water restrictions;
 - (8) information on applicable requirements of the Americans with Disabilities Act; and
 - (9) other guidelines and requirements applicable to short-term rental uses.
- (B) The owner or operator of a short-term rental use must:
- (1) provide renters a copy of the information packet under Subsection (A) of this section; and
 - (2) post the packet conspicuously in the common area of each dwelling rental unit included in the registration.
- (C) The director shall mail notice of the contact information for the local responsible contact to all properties within 100 feet of the short-term rental use, at the owner or operator's expense.

§ 25-2-792 DETERMINATION OF SHORT-TERM RENTAL DENSITY.

- (A) The director shall determine on an annual basis the total number of single-family, detached residential structures within each census tract and use that number to calculate the maximum number of licenses for Type 2 short-term rentals that may be issued under Section 25-2-790 (*Registration Requirements*).
- (B) The determination required under Subsection (A) of this section shall be based on the most current county tax records for each census tract within the zoning jurisdiction and may not be revised until the next annual determination is made.

PART 4. City Code Chapter 25-2, Subchapter E, Article 4, Subsection 4.2.1.C (*Mixed Use Combining District*) is amended to read as follows:

C. Uses Allowed.

In the MU combining district, the following uses are permitted:

- ~~i.[1.]~~ Vertical mixed use buildings, subject to compliance with Section 4.3. of this Subchapter;
- ~~ii.[2.]~~ Commercial uses that are permitted in the base district;
- ~~iii.[3.]~~ Civic uses that are permitted in the base district;
- ~~iv.[4.]~~ Townhouse residential;
- ~~v.[5.]~~ Multifamily residential;
- ~~vi.[6.]~~ Single-family residential;
- ~~vii.[7.]~~ Single-family attached residential;
- ~~viii.[8.]~~ Small lot single-family residential;
- ~~ix.[9.]~~ Two-family residential;
- ~~x.[10.]~~ Condominium residential;
- ~~xi.[11.]~~ Duplex residential;
- ~~xii.[12.]~~ Group residential;
- ~~xiii.[13.]~~ Group home, class I (limited);
- ~~xiv.[14.]~~ Group home, class I (general); [~~and~~]
- ~~xv.[15.]~~ Group home, class II; and
- xvi. Short-term rental.

PART 5. Sections 1308 (*License Suspension*) and 1309 (*Appeal from License Suspension or Denial*) of City Code Section 25-12-213 (*Local Amendments to International Property Maintenance Code*) is amended to read:

1308 LICENSE SUSPENSION

PART 6. The title of Chapter 13 of City Code Section 25-12-213 (*Local Amendments to International Property Maintenance Code*) is amended to read:

CHAPTER 13 HOTEL, BOARDING HOUSE, ROOMING HOUSE, SHORT-TERM RENTAL, AND BED AND BREAKFAST ESTABLISHMENT REGULATIONS

PART 7. Sections 1308 (*License Suspension*) and 1309 (*Appeal from License Suspension or Denial*) of City Code Section 25-12-213 (*Local Amendments to International Property Maintenance Code*) is amended to read:

1308 LICENSE SUSPENSION

Whenever the code official finds on inspection of the physical premises or review of applicable records of any boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment that conditions or practices exist that violate any provision of the International Property Maintenance Code, City Code, or any rule or regulation adopted under this code, the code official shall give written notice to the owner of the property and the operator of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment that unless the violations are corrected by an identified deadline, the [~~boarding house, hotel, rooming house, or bed and breakfast establishment~~] license shall be suspended. At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment and, if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended. On receipt of notice of suspension, the licensee shall immediately stop operation of the boarding house, hotel [ø], rooming house, short-term rental, or bed and breakfast establishment, and no person may occupy for sleeping or living purposes any rooming unit therein, except that the code official may allow continued occupancy by the primary resident(s) of a short-term rental. The notice required by this subsection shall be served in accordance with the notice provisions of applicable law.

1309 APPEAL FROM LICENSE SUSPENSION OR DENIAL

The following actions of the code official may be appealed to the Building and Standards Commission as provided in this Code:

1. the denial of an application for a license to operate a boarding house, hotel, rooming house, or bed and breakfast establishment;
2. the suspension of a license to operate a boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment; and
3. the issuance of a notice that a license to operate a boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment will be suspended unless existing conditions or practices are corrected.

An appeal filed under this section must be filed with the code official no later than the 20th day following the date on which the license was denied or suspended, or notice of violation was received. The appeal must be set for hearing before the Commission on the next available agenda date following receipt of the appeal and must be heard following *setting on the scheduled agenda if a quorum is present at the hearing*, unless the appellant requests a later date and waives the scheduled hearing.

PART 8. From the effective date of this ordinance through December 31, 2012, applications for a short-term rental (Type 2) use under Section 25-2-790 (*Registration*

RESOLUTION NO. 20121018-069

WHEREAS, new regulations for short term rentals went into effect on October 1, 2012; and

WHEREAS, in the course of finalizing the regulations several issues have been identified that warrant clarification to ensure greater compliance; and

WHEREAS, enforcement has been difficult due to these issues, and has led to considerable concern among people in the community who are trying to comply with the new regulations; and

WHEREAS, it is in the City's best interest to ensure compliance so that neighbors are aware of the location of short term rental properties and have a contact in the event of emergency or nuisance, and so that the City has an opportunity to enforce appropriate regulations and collect hotel occupancy taxes; **NOW, THEREFORE**,

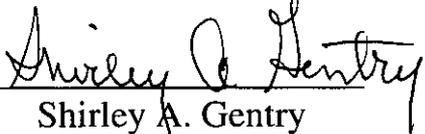
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Manager is directed to bring back recommendations for changing the City Code related to short-term rentals to ensure better compliance and ease of enforcement for City staff, such as:

1. Review the fee schedule for short-term rentals;
2. Consider a different method of notification that provides the necessary information to those who need it, is easily administered, and does not cost as much as mail;

3. Consider allowing the public to register online instead of requiring a visit to a city facility;
4. Consider clarifying or eliminating the short-term rental affidavit entirely in favor of a list of expectations and safety requirements;
5. Review the requirements for suspension and revocation of licenses and propose appropriate improvements to the enforcement process;
6. Consider eliminating the requirement that Type 1 short-term rentals must include the whole dwelling unit;
7. Provide clarity on whether a short-term rental owner must register before one can advertise their property, or whether registration can happen after a reservation has been made;
8. Identify mechanisms for monitoring ADA compliance among short-term rentals;
9. Consider changing language in the ordinance from “properties” to “interested parties”;
10. Consider adding a provision that disallows or limits short-term rentals in multifamily properties;
11. Review and report on staff’s process for promoting compliance and their proactive enforcement of violations; and
12. Consider options for enabling neighborhood planning areas to modify facets of the existing ordinance.

These recommendations should be provided to Council no later than 120 days from the passage of this resolution.

ADOPTED: October 18, 2012 **ATTEST:** 
Shirley A. Gentry
City Clerk

RESOLUTION NO. 20130228-040

WHEREAS, on August 2, 2012, the City Council adopted Ordinance No. 20120802-122 to regulate the use of single-family homes for short-term rentals (“STRs”); and

WHEREAS, in response to concerns raised during early implementation of the regulations, the City Council passed Resolution No. 20121018-069 directing the City Manager to recommend amendments to, among other things, ensure greater compliance with the STR regulations, to improve notification and enforcement, and to ensure more efficient and cost-effective permit review; and

WHEREAS, on February 15, 2013, the Planning & Development Review Department provided a report to Council outlining several recommendations to improve the STR regulations; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

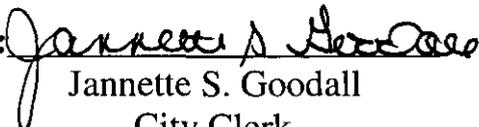
1. The City Council initiates code amendments to Title 25 (*Land Development*) and directs the City Manager to process an ordinance that achieves the following objectives:
 - (A) Amend the requirements for Type 1 STRs to allow an owner who is present on the property to rent one room on a short-term basis, without renting the entire structure.
 - (B) Create a Type 3 STR for multi-family properties, with the same application requirements as Type 1 and Type 2 STRs, and any additional restrictions deemed appropriate.

- (C) Repeal Subsection (C) of Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*).
- (D) Amend Section 25-2-790(B)(2) to eliminate the requirement for applicants to provide a fax number.
- (E) Add notification to neighborhood association contacts using electronic notification.
- (F) Adjust the notification fee to reflect the direction in Subsection (E) and provide for a refund to applicants who previously paid the original fee.
- (G) Provide that operation of an STR without a proper license is an offense under Section 1-1-99 (*Offenses; General Penalty*) punishable by a fine of up to \$2,000 per day.
- (H) Include any other code amendments that are necessary to implement the additional direction in Part 2 of this resolution.

2. The City Manager is further directed to:

- (A) Create a publicly available map and online database of short-term rentals.
- (B) Develop online payment options and transition to an entirely online payment and registration process as soon as is reasonably feasible.
- (C) Establish a waiting list for homeowners seeking a license for a Type 2 STR in a census tract that has reached the 3% cap allowed under the regulations.

3. The ordinance required by this resolution should be presented to Council for consideration within 70 days. Changes that do not require code amendments should be fully implemented within 6 months, with monthly updates to be provided until all of the changes have been implemented.

ADOPTED: February 28, 2013 ATTEST: 
Jannette S. Goodall
City Clerk

ORDINANCE NO. 20130926-144

AN ORDINANCE AMENDING CITY CODE CHAPTERS 25-2 AND 25-12 RELATING TO THE REGULATION OF SHORT-TERM RENTAL RESIDENTIAL USES AND OTHER REGULATED LODGING ESTABLISHMENTS; AUTHORIZING THE LIMITED REFUND OR CREDIT FOR CERTAIN FEES PAID; AND WAIVING THE REVIEW REQUIREMENT OF SECTION 25-1-502.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*) is amended to amend the chart in Subsection (C) as follows:

Short-term rental use is a permitted use in the following base districts:

- Lake Austin residence (LA)
- rural residence (RR)
- single-family residence large lot (SF-1)
- single-family residence standard lot (SF-2)
- family residence (SF-3)
- single-family residence small lot (SF-4A)
- single-family residence condominium site (SF-4B)
- urban family residence (SF-5)
- townhouse and condominium residence (SF-6)
- multifamily residence limited density (MF-1)
- multifamily residence low density (MF-2)
- multifamily residence medium density (MF-3)
- multifamily residence moderate-high density (MF-4)
- multifamily residence high density (MF-5)
- multifamily residence highest density (MF-6)
- central business (CBD)
- downtown mixed use (DMU)

planned unit development (PUD)

general retail – mixed use (GR-MU)

commercial services – mixed use (CS-MU)

commercial services –vertical mixed use (CS-V)

general retail - vertical mixed use (GR-V)

PART 2. City Code Chapter 25-2, Subchapter C, Article 4, Division 1 (*Residential Uses*) is amended to amend Subpart C (*Requirements for Short-Term Rental Uses*) to read as follows:

Subpart C. Requirements for Short-Term Rental Uses.

§ 25-2-788 SHORT-TERM RENTAL (TYPE 1) REGULATIONS.

- (A) This section applies to a short-term rental use that:
- (1) is rented for periods of less than 30 consecutive days;
 - ~~[(2) is not part of a multifamily use;]~~ and
 - (2) is owner-occupied or is associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
- (1) include the rental of less than an entire dwelling unit, unless all of the following conditions are met:
 - (a) a partial unit must at a minimum include the exclusive use of a sleeping room and shared use of a full bathroom;
 - (b) the owner is generally present at the licensed short-term rental property for the duration of any short-term rental of a partial unit;
 - (c) not more than one partial unit at the property is simultaneously rented for any period less than 30 consecutive days; and
 - (d) rental of the partial unit is limited to a single party of individuals;
 - (2) operate without a license as required by Section 25-2-791[0] (*License Requirements*); or
 - (3) operate without providing notification to renters as required by Section 25-2-792[4] (*Notification Requirements*).

~~[(C) For a short-term rental use under this section, a secondary residential unit on the same property may be rented for periods of less than 30 consecutive days for an annual total of more than 90 days.]~~

§ 25-2-789 SHORT-TERM RENTAL (TYPE 2) REGULATIONS.

- (A) This section applies to a short-term rental use that:
- (1) is rented for periods of less than 30 consecutive days;
 - (2) is not part of a multifamily use; and
 - (3) is not owner-occupied and is not associated with an owner-occupied principal residential unit.
- (B) A short-term rental use under this section may not:
- (1) include the rental of less than an entire dwelling unit;
 - (2) operate without a license as required by Section 25-2-791[0] (*License Requirements*); or
 - (3) operate without providing notification to renters as required by Section 25-2-792[4] (*Notification Requirements*).

§ 25-2-790 SHORT-TERM RENTAL (TYPE 3) REGULATIONS.

- (A) This section applies to a short-term rental use that:
- (1) is rented for periods of less than 30 consecutive days; and
 - (2) is part of a multifamily use.
- (B) A short-term rental use under this section may not:
- (1) include the rental of less than an entire dwelling unit;
 - (2) operate without a license as required by Section 25-2-791 (*License Requirements*); or
 - (3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*).

§ 25-2-791[0] LICENSE REQUIREMENTS.

- (A) This section applies to a license required under Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), ~~and~~ Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), and Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*).

- (B) To obtain a license, the owner of a short-term rental use must submit an application on a form provided for that purpose by the director. The application must include the following:
- (1) a fee established by separate ordinance;
 - (2) the name, street address, mailing address, [~~facsimile number,~~] and telephone number of the owner of the property;
 - (3) the name, street address, mailing address, [~~facsimile number,~~] and telephone number of a local responsible contact for the property;
 - (4) the street address of the short-term rental use;
 - (5) proof of property insurance;
 - (6) proof of payment of hotel occupancy taxes due as of the date of submission of the application; and
 - (7) any other information requested by the director.
- (C) The director shall issue a license under this section if:
- (1) the application includes all information required under Subsection (B) of this section;
 - (2) the proposed short-term rental use complies with the requirements of Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), [~~or~~] Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), or Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*);
 - (3) for a short-term rental use regulated under Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), no more than 3% of the single-family, detached residential units within the census tract of the property are short-term rental (Type 2) uses as determined by the Director under Section 25-2-793[2] (*Determination of Short-Term Rental Density*); and
 - (a) [~~(4)~~] the structure has[:] [~~(a)~~] a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or
 - (b) the structure has been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection;[-]
 - (4) for a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), located in a non-commercial zoning district, no more than 3% of the total number of dwelling units at the

property and no more than 3% of the total number of dwelling units located within any building or detached structure at the property are short-term rental (Type 3) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and

(a) the structure and the dwelling unit at issue have a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or

(b) the structure and the dwelling unit at issue have been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection.

(5) For a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), located in a commercial zoning district, no more than 25% of the total number of dwelling units at the property and no more than 25% of the total number of dwelling units located within any building or detached structure at the property are short-term rental (Type 3) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and

(a) the structure and the dwelling unit at issue have a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or

(b) the structure and the dwelling unit at issue have been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection.

(D) A license issued under this section:

- (1) is valid for a maximum of one year from the date of issuance, subject to a one-time extension of 30 days at the discretion of the director;
- (2) may not be transferred by the property owner listed on the application and does not convey with a sale or transfer of the property; and
- (3) satisfies the requirement for a change of use permit from residential to short-term rental use.

(E) A license may be renewed annually if the owner:

- (1) pays a renewal fee established by separate ordinance;
- (2) provides documentation showing that hotel occupancy taxes have been paid for the licensed unit [property] as required by Section 11-2-4 (*Quarterly Reports; Payments*) for the previous year; and

- (3) provides updates of any changes to the information required under Subsection (B) of this section.
- (F) An advertisement promoting the availability of short-term rental property in violation of city code is prima facie evidence of a violation and may be grounds for denial, suspension, or revocation of a license.
- (G) Notwithstanding any provision of Section 25-2-791(F) to the contrary, a person may advertise the availability of an unlicensed short term rental and the advertisement is not grounds for license denial if the director determines all of the following:
 - (a) The person owns the property advertised or has obtained the owner's authorization to advertise the property for short term rental solely to gauge public interest in the property for short term rental use;
 - (b) The advertisement does not depict or describe availability of the property for uses or occupancy that would violate code, except for the lack of a short term rental license; and
 - (c) The property advertised is not in operation as short term rental.

§ 25-2-792[1] NOTIFICATION REQUIREMENTS.

- (A) The director shall provide a packet of information with each license summarizing the restrictions applicable to the short-term rental use, including:
 - (1) the name and contact information of the local responsible contact designated in the application;
 - (2) occupancy limits applicable under Section 25-2-511 (*Dwelling Unit Occupancy Limit*);
 - (3) restrictions on noise applicable under Chapter 9-2 (*Noise and Amplified Sound*), including limitations on the use of amplified sound;
 - (4) parking restrictions;
 - (5) trash collection schedule;
 - (6) information on relevant burn bans;
 - (7) information on relevant water restrictions;
 - (8) information on applicable requirements of the Americans with Disabilities Act; and
 - (9) other guidelines and requirements applicable to short-term rental uses.
- (B) The owner or operator of a short-term rental use must:

- (1) provide renters a copy of the information packet under Subsection (A) of this section; and
 - (2) post the packet conspicuously in the common area of each dwelling rental unit included in the registration.
- (C) The director shall mail notice of the contact information for the local responsible contact to all properties within 100 feet of the short-term rental use, at the owner or operator's expense.

§ 25-2-793[2] DETERMINATION OF SHORT-TERM RENTAL DENSITY.

- (A) The director shall determine on an annual basis the total number of single-family, detached residential structures within each census tract and use that number to calculate the maximum number of licenses for Type 2 short-term rentals that may be issued under Section 25-2-790 (*Registration Requirements*).
- (B) The determination required under Subsection (A) of this section shall be based on the most current utility [~~county tax~~] records for each census tract within the zoning jurisdiction and may not be revised until the next annual determination is made.
- (C) For a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), the Director shall determine based on active license records following receipt of an application that complies with the requirements of Section 25-2-791(B) (*License Requirements*) whether issuance of the license would result in the short-term rental use of more than 3% of the total number of dwelling units at the property or more than 3% of the total number of dwelling units within any building or detached structure at the property.
- (D) For a short-term rental use regulated under Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), one short-term rental (Type 2) license per census tract may be permitted if no other property within the census tract is currently licensed as a short-term rental (Type 2) use and the use complies with all other license requirements, even if approval of a single Type 2 license in the census tract would otherwise exceed the density cap under Subsection (A) or (B) of this section or fail to meet the standard of Section 25-2-791(C)(3).
- (E) For a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), one short-term rental (Type 3) license per property may be permitted if no other dwelling unit or structure in the building or at the property is currently licensed as a short-term rental (Type 3) use and the use complies with all other license requirements, even if approval of a single Type 3 for the building or property would otherwise exceed the density

cap under Subsection (C) of this section or fail to meet the standard of Section 25-2-791(C)(4).

PART 3. City Code Section 25-12-213 (*Local Amendments to International Property Maintenance Code*), as adopted by Ordinance No. 20130926-145, is amended to add a new Chapter 13 as a local amendment to the Property Maintenance Code, to read as follows:

CHAPTER 13

REGULATED LODGING ESTABLISHMENTS

1301 INSPECTIONS

The code official shall make inspections to determine the condition of boarding houses, hotels, rooming houses and bed and breakfast establishments located within the City, to ensure compliance with this chapter and other applicable laws. For the purpose of making inspections, the code official or the code official's representative may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and premises on presentation of the proper credentials. The owner or operator of a boarding house, hotel, rooming house, or bed and breakfast establishment, or the person in charge, shall give the code official free access to the building, dwelling unit, partial unit, guest room and its premises, at all reasonable times, for the purpose of inspection, examination, and survey.

1302 LICENSES AND PERMITS REQUIRED

No person may operate a boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment unless a license for the operation, in the name of the owner or operator and for the specific dwelling unit, partial unit, accessory unit, building, structure, or property used, has been issued by the code official and is currently valid and in good standing. Unless specifically exempted by the provisions of Chapter 10-3 (*Food and Food Handlers*) of the City Code, each regulated lodging establishment that provides meals or food service is required to have a permit as a food service establishment issued by the Health Authority.

1303 LEASING, RENTING, OR ADVERTISING UNITS OR ROOMS IN AN UNLICENSED HOTEL, BOARDING HOUSE, ROOMING HOUSE, SHORT-TERM RENTAL, OR BED AND BREAKFAST ESTABLISHMENT IS AN OFFENSE

(A) An owner, manager, operator, or person in control of a hotel, boarding house, rooming house, short-term rental, or bed and breakfast establishment commits an offense if the owner or other person leases, rents, advertises, promotes, or otherwise solicits or induces occupancy of a room, structure, dwelling unit, or partial unit in a hotel, boarding house, rooming house, short-term rental, or bed and breakfast establishment which does

not have a valid license issued and displayed as required by this chapter or as required by Title 25 of City Code (*Land Development*).

(B) A person may not advertise or promote a licensed establishment without including the license number assigned to the establishment by the city in the advertisement or promotion.

(C) Each day that an owner, manager, operator, or other person in control of the property leases, rents, advertises, promotes, or otherwise solicits or induces occupancy of a room in a hotel, boarding house, rooming house, short-term rental, or bed and breakfast establishment which does not have a valid license issued, disclosed, and displayed as required by this chapter is a separate occurrence. An offense under this section is a class C misdemeanor, punishable by a fine not to exceed \$500 per offense, per occurrence, unless proof of a culpable mental state is proven. If proof of a culpable mental state is demonstrated, an offense under this section is punishable by a fine not to exceed \$2,000 per occurrence.

(D) It is an affirmative defense to a violation of Section 1304 charging a person with advertisement or promotion of an unlicensed establishment that the advertisement or promotion of the unlicensed establishment identified the establishment address and conspicuously disclosed that reservation, occupancy, or rental of the facility is contingent on a pending city licensure application.

1304 APPLICATION

An application for a license required by this chapter at minimum must be in writing and submitted to the code official. To be considered complete, the application must include all information and documentation required by the Land Development Code regulations specific to the use type or indicated as required by the code official and this code.

1305 FEE

Each application for a rooming house, hotel, motel, boarding house, short-term rental, or bed and breakfast establishment license must be accompanied by the payment of a fee in an amount established by separate ordinance. Except for payment of the fee due for a short-term rental, a regulated lodging establishment fee shall be pro-rated on a quarterly basis.

1306 ISSUANCE

A boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment license shall be issued by the code official after the code official determines that the owner or operator has complied with all applicable ordinances and rules. A license shall not be issued or renewed by the code official for any applicant or

location in the absence of proof of the applicant or location's substantial compliance with all applicable local hotel occupancy tax rules and regulations.

1307 LICENSE SUSPENSION

(A) Whenever the code official finds on inspection of the physical premises or review of applicable records of any boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment that conditions or practices exist that violate any provision of the International Property Maintenance Code, City Code, or any rule or regulation adopted under this code, or that the establishment has failed to comply with any provision, prohibition, or requirement related to the registration, reporting, collection, segregation, accounting, disclosure, or payment of local hotel occupancy taxes, the code official shall give written notice to the owner of the property and the operator of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment that unless the violations are corrected by an identified deadline, the license shall be suspended.

(B) At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment and, if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended.

(C) On receipt of notice of suspension, the licensee shall immediately stop operation of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment, and no person may occupy for sleeping or living purposes any rooming unit therein, except that the code official may allow continued occupancy by the property owner of a short-term rental use subject to Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*). The notice required by this subsection shall be served in accordance with the notice provisions of applicable law.

1308 APPEAL FROM LICENSE SUSPENSION OR DENIAL

The following actions of the code official may be appealed to the Building and Standards Commission as provided in this Code:

1. the denial of an application for a license to operate a boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment;
2. the suspension of a license to operate a boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment; and
3. the issuance of a notice that a license to operate a boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment will be suspended unless existing conditions or practices are corrected.

An appeal filed under this section must be filed with the code official no later than the 20th day following the date on which the license was denied or suspended, or notice of violation was received. The appeal must identify each alleged point of error, facts and evidence supporting the appeal, reasons why the action of the code official should be set aside, modified, or reversed, and must be sworn. The appeal must be set for hearing before the Commission on the next available agenda date following receipt of the appeal and must be heard following setting on the scheduled agenda if a quorum is present at the hearing, unless the appellant requests a later date and waives the scheduled hearing.

1309 EXPIRATION

(A) Each rooming house, boarding house, hotel, motel, or bed and breakfast establishment license expires at the end of the calendar year for which the license is issued, unless prior to the end of the calendar year, the license is voided, suspended, or revoked as provided in this chapter, as provided in another section of City Code, or by court order, or other operation of law.

(B) Each short-term rental establishment license expires one year from the date the license is issued, unless prior to the end of one year from the date the license is issued, the license is voided, suspended, or revoked as provided in this chapter, as provided in another section of City Code, or by court order, or other operation of law.

1310 TRANSFER AND NOTICE ON SALE OF PREMISES

A license issued under this chapter is not transferable. Every person holding a license shall give written notice to the code official no later than 10 days before the conveyance, transfer, or any other disposition of the ownership of, interest in, or control of any boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment. The notice must include the name and address of the person succeeding to the ownership or control of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment.

1311 DISPLAY

The license required by this chapter must be displayed at all times in a conspicuous place designated by the code official within each boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment.

PART 4. For 90 days following the effective date of this ordinance, a short-term rental (Type 3) application submitted under Section 25-2-791 (*License Requirements*) is exempt from short-term rental density caps if the director determines that use of the dwelling unit or partial unit as a short term rental existed before September 26, 2013.

PART 5. Council approves and directs the City Manager to process a one-time refund, or to provide a one-time credit against a license renewal fee, in the total amount of

RESOLUTION NO. 20150618-078

WHEREAS, on August 2, 2012, the City Council adopted Ordinance No. 20120802-122 to regulate the use of single-family homes for short-term rentals (“STRs”); and

WHEREAS, in response to concerns raised during early implementation of the regulations, the City Council passed Resolution No. 20121018-069 directing the City Manager to recommend amendments to, among other things, ensure greater compliance with the short-term rentals regulations, to improve notification and enforcement, and to ensure more efficient and cost-effective permit review; and

WHEREAS, on September 26, 2013, the City Council adopted Ordinance No. 20130926-144 relating to the regulation of short-term rental residential uses and other regulated lodging establishments; and

WHEREAS, when operated correctly, short-term rentals provide a financial benefit to the City and offer housing options for travelers and residents in housing transition; and

WHEREAS, the majority of the 1,125 currently registered short-term rentals operate in compliance with City Code, better enforcement is needed to provide remedies for residents living near noncompliant short-term rentals and properties that are operating without short-term rental licenses; and

WHEREAS, the difficulty in enforcing code to address the misuse of short-term rentals has led to considerable concern among residents who are trying to live peacefully in their neighborhoods; and

WHEREAS, it is in the City's best interest to ensure compliance with short-term rental regulations and other City codes including occupancy limits, noise and amplified sound restrictions, and zoning and land use regulations, so that short-term rentals are good neighbors in our community; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council directs the City Manager to develop a plan for better enforcement regarding short-term rental properties, particularly those that have repeated complaints. A report shall:

1. Examine issues and citizen complaints related to the City's ability to effectively enforce City Code requirements for short-term rentals. This shall include both complaints regarding unregistered properties and complaints related to other issues such as noise, occupancy, and others.
2. Determine if these issues are related to department resources/policies and/or deficiencies within City Code or the existing short-term rental regulations, that require Council action. Barriers to enforcement shall be identified, including both barriers in the legal framework and those in the operating procedure in the Austin Code Department.
3. Identify additional performance measures to capture data related to complaints associated with short-term rentals, hotel occupancy taxes received from short-term rentals, and other data that would be useful to an ongoing assessment of short-term rental activity.
4. Make recommendations on how the City can provide better enforcement for non-compliant short-term rentals.

BE IT FURTHER RESOLVED:

The City Council directs the City Manager to present his findings, report, and recommendations to the Council no later than August 13, 2015.

BE IT FURTHER RESOLVED:

The City Council directs the City Manager to bring forth a resolution at the August 20, 2015 Council Meeting to initiate code amendments to incorporate the proposed City Code amendments submitted by the Code Department. Those proposed code amendments are:

1. Add a penalty for operating without a license
 - Noncompliance Penalty
 - Equal to the cost of an Operating License;
 - Collected in addition to the Operating License Fee; and
 - Would encourage compliance with the ordinance
2. Occupancy Limit Statement
 - Effective April 1, 2016, all short-term rental advertisements or promotions must include the following statement:
 - It is a violation of city code to allow more than six (6) unrelated adults to occupy the dwelling at one time.
 - In the interim, no more than six (6) unrelated adults may reside in a dwelling unit, except in the area defined in Subchapter F: Residential Design and Compatibility Standards Section 1.2.1
3. Add a penalty for operating with an expired license
 - Noncompliance Penalty
 - Equal to the cost of an Operating License;
 - Collected in addition to the Operating License Fee;
 - To encourage the timely renewal of licenses; and

o Decrease wait list time in capped areas (Type 2 and Type 3)

4. Add an inspection requirement for short-term rentals

- To investigate complaints regarding over occupancy and compliance with other applicable laws”

5. Strike section 25-2-791(G) of the City’s Land Development Code.

ADOPTED: June 18, 2015

ATTEST:



Jannette S. Goodall
City Clerk

RESOLUTION NO. 20150820-052

WHEREAS, on June 18, 2015, the City Council passed Resolution No. 20150618-078, directing the City Manager to assess and develop immediate long-term solutions, among other things, for better enforcement of short-term rentals operating in violation of the City Code, or operating without a license; and

WHEREAS, the Council further directed the City Manager to present his findings, report and recommendations to the Council no later than August 13, 2015; and

WHEREAS, the Council further directed the City Manager to bring forth a resolution at the August 20, 2015 Council Meeting to initiate proposed code amendments, including: (1) add a penalty for operating without a license; (2) add a requirement to include an occupancy limit statement in advertisements; (3) add a noncompliance penalty for operating with an expired license; (4) add an inspection requirement; (5) strike Section 25-2-791(G), the "Test the Waters" provision, of the City's Land Development Code; and

WHEREAS, in response to Resolution No. 20150618-078 the Austin Code Department launched a pilot Public Assembly Code Enforcement (PACE) Team specifically to address complaints related to short-term rentals including over-occupancy of homes, noise disturbances, illegal parking, operating without a license, etc; and

WHEREAS, this pilot PACE team involved staff members from various City departments, including the Austin Code Department, Austin Police Department and Austin Fire Department, and operated during non-office hours,

including weekends and late evening and early morning hours, for the month of July to provide enhanced enforcement of City Code requirements for short-term rentals; and

WHEREAS, during the month of July some Council Offices held meetings with various stakeholders, including representatives from neighborhoods, associations, industry, and City staff, to determine whether the problem is the Austin Code Department not making full use of existing resources or if the enforcement component in City Code needs to be strengthened; and

WHEREAS, from these stakeholder meetings, hosted by Council Offices, it appears the difficulty in enforcing noncompliant and non-licensed short-term rentals is a combination of the City not taking full advantage of its existing authority and enforcement components that need to be strengthened in the current City Code; and

WHEREAS, it is in the City's best interest to ensure compliance with short-term rental regulations and other City codes including occupancy limits, noise and amplified sound restrictions, improper disposal of trash, and zoning and land use regulations, to protect the quality of life in our neighborhoods; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Manager is directed to immediately utilize all existing enforcement tools under current City Code, including, but not limited to,:

1. the authority to suspend a short term rental license for violations of the City Code, such as:

- a. advertising the availability of a short-term rental property for uses not allowed by the property's zoning; and
 - b. advertising or promoting a licensed establishment without including the license number as required in Section 1303 (B) in City Code Section 25-12-213 (*Local Amendments to the International Property Maintenance Code*); and
2. the administrative hearing process, defined in City Code Chapter 2-13 (*Administrative Adjudication of Violations*); and

BE IT FURTHER RESOLVED:

To protect the welfare of the citizens of Austin, the Council directs the City Manager to provide more information to residents on how to make a complaint about a short-term rental property in their area.

- This information should be posted on the City's short-term rental website or a similar City website that can be easily found by a resident.
- This information should also be included in any short-term rental notification sent to surrounding properties as outlined in City Code Section 25-2-792 (*Notification Requirements*).

BE IT FURTHER RESOLVED:

The City Manager is directed to re-evaluate existing processes to better track complaints related to short-term rentals.

BE IT FURTHER RESOLVED:

The City Manager is directed to take immediate necessary steps to achieve the following objectives:

1. Include statements in short term rental applications that are similar to the following:
 - a. "I understand that I am responsible for complying with any deed restrictions and restrictive covenants prohibiting certain uses on this property. If a conflict should result with any of these restrictions, it will be my responsibility to resolve it;"
 - b. "I hereby certify that to the best of my knowledge and ability, the information provided in this application is complete and accurate;"
and
 - c. "I attest that the property will not be rented above the occupancy limit defined in City Code or in violation of the current short-term rental ordinance."
2. Provide a funding proposal, which can be discussed by Council during the Fiscal Year 2015-16 budget process that will ensure that the Austin Code Department recovers its costs for the short-term rental program.
3. Improve communication with the Travis County Sheriff's Office as it relates to short-term rentals located within the City's limited purpose district and, if necessary, explore negotiating an interlocal agreement.

BE IT FURTHER RESOLVED:

The City Council initiates and directs the City Manager to process amendments to the City Code that are necessary to achieve the following objectives:

1. Add the existing requirement to include license numbers in advertisements as required by Section 1303 in City Code Section 25-12-213 (*Local Amendments to the International Property Maintenance Code*) to Subpart C under Division 1 of Article 4 - Additional Requirements for Certain Uses of City Code;
2. Add a Bad Actor Clause similar to City Code Section 25-2-818(N);
3. Require operators to maintain a guest registry;
4. Require short term rental license holders to comply with noise requirements;
5. Prohibit occupancy of a short term rental when the building permit prohibits occupancy of the structure;
6. Authorize the Code Official to suspend or revoke a license when false information is included in a license application and when the license is issued in error, similar to City Code Section 25-1-411 (*Suspension of a Permit or License*):

§ 25-1-411- SUSPENSION OF A PERMIT OR LICENSE.

(A) The accountable official may suspend a permit or license if the official determines that:

- (1) the permit or license was issued in error; or
- (2) the permit or license holder has not complied with the requirements of this title.

(B) A suspension is effective until the official determines that the permit holder has complied with the requirements of this title.

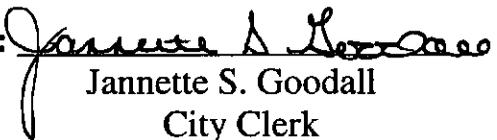
7. Add a non-compliance penalty for operating without a license and with an expired license
 - a. Type 1 the penalty should equal at least the cost of a license; and

- b. Type 2 and Type 3 the penalty should equal to at least twice the cost of a license;
8. Require an occupancy limit statement in advertisements or promotions;
 9. Delete Section 25-2-791(G) (commonly referred to as “testing the waters”);
 10. Require the local contact to reside within the Austin Metro Area (five-county metropolitan area that surrounds the City of Austin) and be available to respond within two hours after being notified by the City (or occupant) of an emergency; and
 11. Consider amending the penalty range for administrative citations similar to the penalty range in Section 25-1-462 (*Appeal; Criminal Enforcement*), which sets a specific penalty range for a specific category of violation.

BE IT FURTHER RESOLVED:

The City Manager is directed to bring the proposed code amendments to Council for consideration within 150 days. Changes that do not require code amendments should be fully implemented within six months, with monthly updates to be provided until all of the changes have been implemented.

ADOPTED: August 20, 2015

ATTEST: 
Jannette S. Goodall
City Clerk

ORDINANCE NO. 20151217-098

AN ORDINANCE AMENDING CITY CODE CHAPTER 25-2 RELATING TO SHORT-TERM RENTALS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-2-791 (*License Requirements*) is amended to repeal Subsection (G) and to re-letter the remaining subsections to read as follows:

§ 25-2-791 LICENSE REQUIREMENTS.

- (A) This section applies to a license required under Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), and Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*).
- (B) To obtain a license, the owner of a short-term rental use must submit an application on a form provided for that purpose by the director. The application must include the following:
 - (1) a fee established by separate ordinance;
 - (2) the name, street address, mailing address, and telephone number of the owner of the property;
 - (3) the name, street address, mailing address, and telephone number of a local responsible contact for the property;
 - (4) the street address of the short-term rental use;
 - (5) proof of property insurance;
 - (6) proof of payment of hotel occupancy taxes due as of the date of submission of the application; and
 - (7) any other information requested by the director.
- (C) Except as provided in subsection (G[H]), the director shall issue a license under this section if:
 - (1) the application includes all information required under Subsection (B) of this section;
 - (2) the proposed short-term rental use complies with the requirements of Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), or Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*);

- (3) for a short-term rental use regulated under Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), no more than 3% of the single-family, detached residential units within the census tract of the property are short-term rental (including Type 2 and Type 1 second dwelling unit or secondary apartment) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and
 - (a) the structure has a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or
 - (b) the structure has been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection;
- (4) for a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), located in a non-commercial zoning district, no more than 3% of the total number of dwelling units at the property and no more than 3% of the total number of dwelling units located within any building or detached structure at the property are short-term rental (Type 3) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and
 - (a) the structure and the dwelling unit at issue have a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or
 - (b) the structure and the dwelling unit at issue have been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection;
- (5) for a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), located in a commercial zoning district, no more than 25% of the total number of dwelling units at the property and no more than 25% of the total number of dwelling units located within any building or detached structure at the property are short-term rental (Type 3) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and
 - (a) the structure and the dwelling unit at issue have a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*); or

(b) the structure and the dwelling unit at issue have been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection.

(D) A license issued under this section:

- (1) is valid for a maximum of one year from the date of issuance, subject to a one-time extension of 30 days at the discretion of the director;
- (2) may not be transferred by the property owner listed on the application and does not convey with a sale or transfer of the property; and
- (3) satisfies the requirement for a change of use permit from residential to short-term rental use.

(E) A license may be renewed annually if the owner:

- (1) pays a renewal fee established by separate ordinance;
- (2) provides documentation showing that hotel occupancy taxes have been paid for the licensed unit as required by Section 11-2-4 (*Quarterly Reports; Payments*) for the previous year; and
- (3) provides updates of any changes to the information required under Subsection (B) of this section.

(F) An advertisement promoting the availability of short-term rental property in violation of city code is prima facie evidence of a violation and may be grounds for denial, suspension, or revocation of a license.

~~[(G) Notwithstanding any provision of Section 25-2-791(F) to the contrary, a person may advertise the availability of an unlicensed short term rental and the advertisement is not grounds for license denial if the director determines all of the following:~~

~~(a) The person owns the property advertised or has obtained the owner's authorization to advertise the property for short term rental solely to gauge public interest in the property for short term rental use;~~

~~(b) The advertisement does not depict or describe availability of the property for uses or occupancy that would violate code, except for the lack of a short term rental license; and~~

~~(c) The property advertised is not in operation as short term rental.]~~

(G[H]) After November 23, 2015, the director may not issue a license to operate a short-term rental use described in Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*) except for an application received prior to September 17, 2015. In any event, the director may not issue a license pursuant to an application received after November 12, 2015.

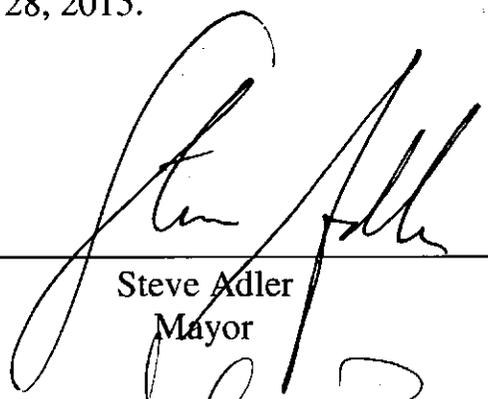
(H[F]) The limitation in subsection (G[H]) does not apply to an annual renewal authorized in subsection (E).

PART 2. This ordinance takes effect on December 28, 2015.

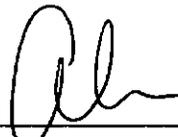
PASSED AND APPROVED

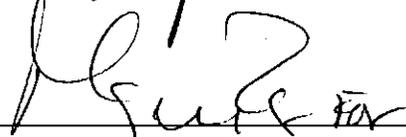
December 17, 2015

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§



Steve Adler
Mayor

APPROVED: 
Anne L. Morgan
City Attorney

ATTEST: 
Jannette S. Goodall
City Clerk

ORDINANCE NO. 20160223-A.1

AN ORDINANCE AMENDING CITY CODE CHAPTERS 25-2 AND 25-12 RELATING TO SHORT-TERM RENTALS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), 25-2-791 (*License Requirements*), and 25-2-792 (*Notification Requirements*) are amended to read as follows:

§ 25-2-789 SHORT-TERM RENTAL (TYPE 2) REGULATIONS.

- (A) This section applies to a short-term rental use that:
 - (1) is rented for periods of less than 30 consecutive days;
 - (2) is not part of a multifamily residential use; and
 - (3) is not owner-occupied and is not associated with an owner-occupied principal residential unit.

- (B) A short-term rental use under this section may not:
 - (1) include the rental of less than an entire dwelling unit;
 - (2) operate without a license as required by Section 25-2-791 (*License Requirements*);
 - (3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*); or
 - (4) include a secondary dwelling unit or secondary apartment except as provided by Sections 25-2-774(C)(6) (*Two Family Residential Use*) and 25-2-1463(C)(6) (*Secondary Apartment Regulations*).

- (C) If a license for a short-term rental (Type 2) use meets the requirements for annual renewal under Section 25-2-791(E) (*License Requirements*) and the property received a notice of violation related to the life, health, or public safety of the structure, the property is subject to an inspection every three years by the building official to determine if the structure poses a hazard to life, health, or public safety.

- (D) A short-term rental (Type 2) use may not be located on a lot that is within 1000 feet of a lot on which another short-term rental (Type 2) use is located unless the license:

- (1) was issued on or before November 23, 2015;
- (2) is not suspended after November 23, 2015; and
- (3) is renewed timely.

§ 25-2-790 SHORT-TERM RENTAL (TYPE 3) REGULATIONS.

- (A) This section applies to a short-term rental use that:
- (1) is rented for periods of less than 30 consecutive days; and
 - (2) is part of a multifamily residential use.
- (B) A short-term rental use under this section may not:
- (1) include the rental of less than an entire dwelling unit;
 - (2) operate without a license as required by Section 25-2-791 (*License Requirements*); or
 - (3) operate without providing notification to renters as required by Section 25-2-792 (*Notification Requirements*).

§ 25-2-791 LICENSE REQUIREMENTS.

- (A) This section applies to a license required under Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), and Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*).
- (B) To obtain a license, the owner of a short-term rental use must submit an application on a form approved [~~provided for that purpose~~] by the director. The application must include the following:
- (1) a certification by the property owner and, if applicable, property manager that the property is not subject to outstanding City Code or state law violations [~~a fee established by separate ordinance~~];
 - (2) the name, street address, mailing address, and telephone number of the owner of the property;
 - (3) the name, street address, mailing address, and telephone number of the [a] local [responsible] contact required by Section 25-2-796 (Local Contacts) [~~for the property~~];
 - (4) the street address of the short-term rental use;
 - (5) proof of property insurance;

- (6) proof of payment of hotel occupancy taxes due as of the date of submission of the application; and
 - (7) any other information requested by the director.
- (C) Except as provided in subsection (G), the director shall issue a license under this section if:
- (1) the application includes all information required under Subsection (B) of this section;
 - (2) the proposed short-term rental use complies with the requirements of Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), or Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*);
 - (3) for a short-term rental use regulated under Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), no more than 3% of the single-family, detached residential units within the census tract of the property are short-term rental (including Type 2 and Type 1 second dwelling unit or secondary apartment) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and
 - (a) the structure has a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*), issued no more than ten years before the date the application is submitted to the director; or
 - (b) the structure has been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection;
 - (4) for a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), located in a non-commercial zoning district, no more than 3% of the total number of dwelling units at the property and no more than 3% of the total number of dwelling units located within any building or detached structure at the property are short-term rental (Type 3) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and
 - (a) the structure and the dwelling unit at issue have a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*),

issued no more than ten years before the date the application is submitted to the director; or

(b) the structure and the dwelling unit at issue have been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection;

(5) for a short-term rental use regulated under Section 25-2-790 (*Short-Term Rental (Type 3) Regulations*), located in a commercial zoning district, no more than 25% of the total number of dwelling units at the property and no more than 25% of the total number of dwelling units located within any building or detached structure at the property are short-term rental (Type 3) uses as determined by the Director under Section 25-2-793 (*Determination of Short-Term Rental Density*); and

(a) the structure and the dwelling unit at issue have a valid certificate of occupancy or compliance, as required by Chapter 25-1, Article 9 (*Certificates of Compliance and Occupancy*), issued no more than ten years before the date the application is submitted to the director; or

(b) the structure and the dwelling unit at issue have been determined by the building official not to pose a hazard to life, health, or public safety, based on a minimum life-safety inspection;[-]

(6) if applicable, the Austin Water Utility determines the septic system complies with Chapter 15-5 (*Private Sewage Facilities*);

(7) the property is not subject to outstanding City Code or state law violations;

(8) the owner pays the fee established by separate ordinance;

(9) the owner does not meet the standards described in Section 25-2-797 (*Repeat Offenses*); and

(10) if applicable, the owner pays the fee required by Section 25-2-798 (*Non-Compliance Fees*).

(D) A license issued under this section:

(1) is valid for a maximum of one year from the date of issuance, subject to a one-time extension of 30 days at the discretion of the director;

(2) may not be transferred by the property owner listed on the application and does not convey with a sale or transfer of the property; and

- (3) satisfies the requirement for a change of use permit from residential to short-term rental use.
- (E) Except as otherwise provided in Subsection (F), a [A] license may be renewed annually if [the owner]:
- (1) the licensee pays a renewal fee established by separate ordinance;
 - (2) the licensee provides documentation showing that hotel occupancy taxes have been paid for the licensed unit as required by Section 11-2-4 (*Quarterly Reports; Payments*) for the previous year; ~~[and]~~
 - (3) the licensee provides updates of any changes to the information required under Subsection (B) of this section;[-]
 - (4) the property is not subject to outstanding City Code or state law violations;
 - (5) the licensee or operator does not meet the standards described in Section 25-2-797 (*Repeat Offenses*);
 - (6) if applicable, the structure is determined by the building official not to pose a hazard to life, health, or public safety; and
 - (7) if applicable, the owner pays the fee required by Section 25-2-798 (*Non-Compliance Fees*).
- (F) The director may deny an application to renew a license if, on to the date the renewal application was submitted, the license for a short-term rental was suspended as authorized under Section 1307 (*License Suspension*) of Section 25-12-213 (*Local Amendments to the International Property Maintenance Code*) ~~[An advertisement promoting the availability of short term rental property in violation of city code is prima facie evidence of a violation and may be grounds for denial, suspension, or revocation of a license].~~
- (G) After November 23, 2015, the director may not issue a license to operate a short-term rental use described in Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*) except for an application received prior to September 17, 2015. In any event, the director may not issue a license pursuant to an application received after November 12, 2015.
- (H) The limitation in subsection (G) does not apply to an annual renewal authorized in subsection (E).
- (I) A violation of any provision of the City Code or other applicable law is grounds to deny, suspend, or revoke a license.

§ 25-2-792 NOTIFICATION REQUIREMENTS.

- (A) The director shall provide a packet of information with each license summarizing the restrictions applicable to short-term rental use, including:
- (1) the name and contact information of the local [~~responsible~~] contact designated in the application;
 - (2) occupancy limits applicable under Section 25-2-795 (Occupancy Limits for Short-Term Rentals) [~~25-2-511 (Dwelling Unit Occupancy Limit)~~];
 - (3) restrictions on noise applicable under Section 25-2-794 (General Requirements for Short-Term Rentals) [~~Chapter 9-2 (Noise and Amplified Sound)~~], including limitations on the use of amplified sound;
 - (4) parking restrictions;
 - (5) trash collection schedule;
 - (6) information on relevant burn bans;
 - (7) information on relevant water restrictions;
 - (8) information on applicable requirements of the Americans with Disabilities Act; and
 - (9) other guidelines and requirements applicable to short-term rental uses.
- (B) The licensee [~~owner~~] or operator of a short-term rental use must:
- (1) provide renters a copy of the information packet under Subsection (A) of this section; and
 - (2) post the packet conspicuously in the common area of each short-term [~~dwelling rental~~] unit included in the registration.
- (C) The director shall mail notice of the contact information for the local [~~responsible~~] contact to all properties within 100 feet of the short-term rental use, at the licensee's [~~owner~~] or operator's expense.

PART 2. City Code Chapter 25-2, Subchapter C, Article 4, Division 1, Subpart C (*Requirements for Short-Term Rental Uses*) is amended to add new Sections 25-2-794, 25-2-795, 25-2-796, 25-2-797, 25-2-798, and 25-2-799 to read as follows:

§ 25-2-794 GENERAL REQUIREMENTS FOR SHORT-TERM RENTALS.

- (A) A licensee or guest of a short-term rental may not use or allow the use of sound equipment that produces sound in excess of 75 decibels at the property line between 10:00 a.m. and 10:00 p.m.
- (B) A licensee or guest of a short-term rental may not use or allow use of sound equipment that produces sound audible beyond the property line between 10:00 p.m. and 10:00 a.m..
- (C) A licensee or guest of a short-term rental shall not make or allow another to make noise or play a musical instrument audible to an adjacent business or residence between 10:30 p.m. and 7:00 a.m..
- (D) If a building permit prohibiting occupancy of the structure is active, no person may occupy, for sleeping or living purposes, the structure until final inspections have been passed and the building permit is closed.
- (E) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental without including:
 - (1) the license number assigned by the City to the short-term rental; and
 - (2) the applicable occupancy limit for the short-term rental.
- (F) An owner, or a person in control of a dwelling, may not advertise or promote, or allow another to advertise or promote, the dwelling as a short-term rental if the dwelling is not licensed by the director as a short-term rental.
- (G) A licensee or operator may not advertise or promote or allow another to advertise or promote a short-term rental in violation of the City Code or state law.
- (H) A person must obtain a license to operate a short-term rental before a property may be used as a short-term rental.
- (I) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this subsection, dwelling unit means the area being used as a short-term rental, including a partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

§ 25-2-795 OCCUPANCY LIMITS FOR SHORT-TERM RENTALS.

- (A) In this section:
 - (1) **ADULT** means a person 18 years of age or older.
 - (2) **DOMESTIC PARTNERSHIP** means adults living in the same household and sharing common resources of life in a close, personal, and intimate relationship.
 - (3) **UNRELATED** means not connected by consanguinity, marriage, domestic partnership, or adoption.
- (B) Unless a stricter limit applies, not more than two adults per bedroom plus two additional adults may be present in a short-term rental between 10:00 p.m. and 7:00 a.m.
- (C) A short-term rental is presumed to have two bedrooms, except as otherwise determined through an inspection approved by the director.
- (D) A licensee or guest may not use or allow another to use a short-term rental for an assembly between 10:00 p.m. and 7:00 a.m.
- (E) A licensee or guest may not use or allow another to use a short-term rental for an outside assembly of more than six adults between 7:00 a.m. and 10:00 p.m.
- (F) For purposes of this section, an assembly includes a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping.
- (G) A short-term rental use may not be used by more than:
 - (1) ten adults at one time, unless a stricter limit applies; or
 - (2) six unrelated adults.
- (H) Requirements in this section apply only when the dwelling unit is being used as a short-term rental, and apply only to that dwelling unit. For purposes of this subsection, dwelling unit means the area being used as a short-term rental, including the partial unit described in Section 25-2-788(B)(1) (*Short-Term Rental (Type 1) Regulations*).

§ 25-2-796 LOCAL CONTACTS.

- (A) A licensee of a short-term rental use who does not reside within the Austin Metro Area must identify an individual or individuals to serve as local contacts and respond to emergency conditions.
- (B) A local contact designated under subsection (A) must be present within the Austin Metro Area and be available to respond within two hours after being notified of an emergency by a guest of the short-term rental, by a City employee, or by an individual entitled to notice of the contact information under Section 25-2-792(C) (*Notification Requirements*), during any 24-hour period.
- (C) If there is a change related to a local contact, the licensee must provide updated or new information to the director in writing within three business days.

§ 25-2-797 REPEAT OFFENSES.

- (A) If the director finds that the licensee or operator failed to comply with Section 25-2-794 (*General Requirements for Short-Term Rentals*) or Section 25-2-795 (*Occupancy Limits for Short-Term Rentals*) at least twice in a 12-month period, the director may deny an application to renew a short-term rental license for a period of 12 months.
- (B) If the director finds that an owner or person in control of a property violated Section 25-2-794 (*General Requirements for Short-Term Rentals*) at least twice in a 12-month period, the director may deny an application for a short-term rental license for a period of 12 months.
- (C) If a property is the subject of repeated substantiated violations of City Code or state law during a 24-month period prior to applying for a license or renewing a license to operate a short-term rental, the director may deny the short-term rental license based on:
 - (1) the frequency of any repeated violations;
 - (2) whether a violation was committed intentionally or knowingly; and
 - (3) any other information that demonstrates the degree to which the owner or occupant has endangered public health, safety, or welfare.
- (D) A licensee may appeal the director's decision to deny an application in compliance with the process in Section 1308 (*Appeal From License Suspension or Denial*) of Section 25-12-213 (*Local Amendments to the International Property Maintenance Code*).

§ 25-2-798 NON-COMPLIANCE FEES.

- (A) A person that submits an application for a short-term rental license shall pay an additional fee if the application is submitted after the director sends a notice of violation or cites the person for operating a short-term rental without a license.
- (B) A person that submits a request to renew a short-term rental license shall pay an additional fee if the request is submitted after the director sends a notice of violation or cites the person for operating with an expired short-term rental license.
- (C) The fee described in this section shall be set by separate ordinance and be based on the City's cost to enforce the licensing requirements.

§ 25-2-799 PRIMA FACIE EVIDENCE OF A VIOLATION.

- (A) An advertisement promoting the availability of a short-term rental in violation of any City Code or state law requirement is prima facie evidence of a violation and is cause to issue an administrative citation for a violation of Sections 25-2-794(E),(F), or (G) (*General Requirements for Short-Term Rentals*).
- (B) Except for a short-term rental use described in Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), a visual inspection of more than six adults by a city employee at a short-term rental is prima facie evidence of and is cause to issue an administrative citation for a violation of Sections 25-2-795(B), (E), and (G)(2) (*Occupancy Limit for Short-Term Rentals*).
- (C) Except for a short-term rental use described in Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*), a visual inspection of more than ten adults by a city employee at a short-term rental is prima facie evidence of and is cause to issue an administrative citation for a violation of Section 25-2-795(G)(1) (*Occupancy Limits for Short-Term Rentals*).

PART 3. Subsection (D) of City Code Section 25-2-511(*Dwelling Unit Occupancy Limit*) is amended to read:

- (D) Except as provided in Subsection (E), for a conservation single family residential, single family attached residential, single family residential, small lot single family, duplex residential use, or two-family residential use[~~, or short-term rental use~~] not more than four unrelated adults may reside on a site, in the following zoning districts:
 - (1) Lake Austin Residence District (LA) Zoning District;
 - (2) Rural Residence District (RR) Zoning District;

- (3) Single Family Residence Large Lot (SF-1) Zoning District;
- (4) Single Family Residence Standard Lot (SF-2) Zoning District;
- (5) Family Residence (SF-3) Zoning District;
- (6) Single Family Residence Small Lot (SF-4A) Zoning District;
- (7) Single Family Residence Condominium (SF-4B) Zoning District;
- (8) Urban Family Residence (SF-5) Zoning District; and
- (9) Townhouse and Condominium Residence (SF-6) Zoning District.

PART 4. The table in City Code Section 25-2-491(C) (*Permitted, Conditional, and Prohibited Uses*) is amended to replace the existing reference to “Short-Term Rental” with “Short-Term Rental (Types 1 and 3)” and to reflect the following:

Short-Term Rental (Type 2) is a permitted use in the following base districts:

- central business (CBD)
- downtown mixed use (DMU)
- planned unit development (PUD)
- general-retail – mixed use (GR-MU)
- commercial services – mixed use (CS-MU)
- commercial services – vertical mixed use (CS-V)
- general retail – vertical mixed use (GR-V).

PART 5. City Code Chapter 25-2, Article 7 (*Nonconforming Uses*) is amended to add a new Section 25-2-950 (*Short-Term Rental Type 2*) to read as follows:

§ 25-2-950 DISCONTINUANCE OF NONCONFORMING SHORT-TERM RENTAL (TYPE 2) USES.

A person shall discontinue a nonconforming short-term rental use that is regulated under Section 25-2-789 (*Short-Term Rental (Type 2) Regulations*), not later than the earlier of:

- (1) April 1, 2022; or
- (2) if the license for a short-term rental use is not renewed, the date on which the existing license expires.

PART 6. Section 202.1 (*Supplemental and Replacement Definitions*) of City Code Section 25-12-213 (*Local Amendments to the International Property Maintenance Code*) is amended to add a new definition “short-term rental” to read as follows:

202.1 Supplemental and Replacement Definitions.

SHORT-TERM RENTAL. The use of a residential dwelling unit or accessory building, other than a unit or building associated with a group residential use, on a temporary or transient basis in accordance with Chapter 25-2, Subchapter C, Article 4, Division 1, Subpart C (*Requirements for Short-Term Rental Uses*). The use does not include an extension for less than 30 consecutive days of a previously existing rental agreement of 30 consecutive days or more. The use does not include a rental between parties to the sale of that residential dwelling unit.

PART 7. Section 1301 (*Inspections*), and Section 1307 (*License Suspension*) of City Code Section 25-12-213 (*Local Amendments to the International Property Maintenance Code*) are amended to read as follows

1301 Inspections.

The code official shall make inspections to determine the condition of short-term rentals, boarding houses, hotels, rooming houses and bed and breakfast establishments located within the City, to ensure compliance with this chapter and other applicable laws. For the purpose of making inspections, the code official or the code official's representative may enter, examine, and survey, at all reasonable times, all buildings, dwelling units, guest rooms, and premises on presentation of the proper credentials. The owner or operator of a short-term rental, boarding house, hotel, rooming house, or bed and breakfast establishment, or the person in charge, shall give the code official free access to the building, dwelling unit, partial unit, guest room and its premises, at all reasonable times, for the purpose of inspection, examination, and survey.

1307 License Suspension.

- (A) Except as provided in subsections (D) and (E), w[~~W~~] whenever the code official finds on inspection of the physical premises or review of applicable records of any boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment that conditions or practices exist that violate any provision of the International Property Maintenance Code, City Code, or any rule or regulation adopted under this Code, or that the establishment has failed to comply with any provision, prohibition, or requirement related to the registration, reporting, collection, segregation, accounting, disclosure, or payment of local hotel occupancy taxes, the code official shall give written notice to the owner of the property and the operator of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment

that unless the violations are corrected by an identified deadline, the license shall be suspended.

- (B) At the end of the time provided for correction of the violation(s), the code official shall re-inspect the location or records of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment and, if the conditions or practices have not been corrected, shall suspend the license and give written notice to the licensee that the license has been suspended.
- (C) On receipt of notice of suspension, the licensee shall immediately stop operation of the boarding house, hotel, rooming house, short-term rental, or bed and breakfast establishment, and no person may occupy for sleeping or living purposes any rooming unit therein, except that the code official may allow continued occupancy by the property owner of a short-term rental use subject to Section 25-2-788 (*Short-Term Rental (Type 1) Regulations*). The notice required by this subsection shall be served in accordance with the notice provisions of applicable law.
- (D) The code official may immediately suspend a license if the code official determines that the license was issued in error. A suspension is effective until the code official determines that the licensee has complied with the requirements of the City Code or any rule or regulation adopted under this Code. The code official shall give written notice to the owner of the property and the operator of the establishment that the license is suspended.
- (E) If a short-term rental is the subject of two or more substantiated violations of applicable law during the license period, the code official may suspend the short-term rental license. The code official must give notice to the licensee of a notice of intent to suspend a license issued under this subsection.
- (F) In determining whether to suspend a license as described in subsection (E), the code official shall consider the frequency of the substantiated violations, whether a violation was committed intentionally or knowingly, and any other information that demonstrates the degree to which a licensee has endangered public health, safety, or welfare.

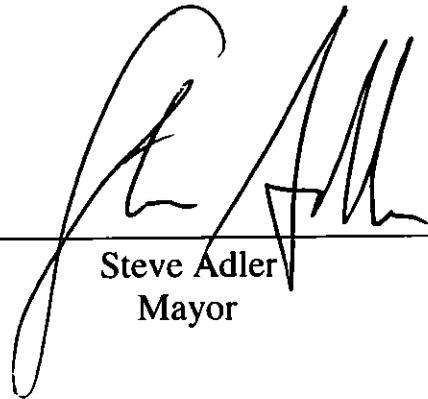
PART 8. Because of the amendments set forth in Parts 4 and 5 of this Ordinance, Council finds it is not necessary to set or hold the public hearing described in Ordinance No. 20151112-078 and waives the requirement.

PART 9. Parts 4 and 5 of this ordinance take effect on April 1, 2017, and the remaining parts of this ordinance take effect on March 5, 2016.

PASSED AND APPROVED

February 23, 2016

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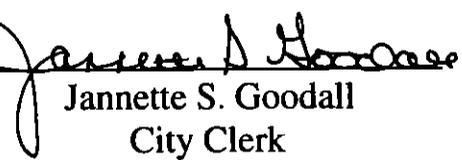
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk

CITY OF AUSTIN

TRANSPORTATION NETWORK COMPANIES

ORDINANCE NO. 20151217-075

AN ORDINANCE AMENDING CITY CODE CHAPTER 13-2 RELATING TO TRANSPORTATION NETWORK COMPANIES (TNCs) AND TERMINATING TNC OPERATING AGREEMENTS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 13-2 (*Ground Transportation Services*) of the City Code is amended to add a new Article 4 to read:

ARTICLE 4. – TRANSPORTATION NETWORK COMPANY SERVICE.

§ 13-2-509 DEFINITIONS.

In this Article:

- (1) **COMPLIANT DRIVER** means a Transportation Network Company driver who has passed a driver history check and a fingerprint-based criminal background check.
- (2) **DYNAMIC PRICING** means a software application or other method used to maximize the supply of available vehicles on the network to match the demand for rides, including for the purpose of increasing reliability or incentivizing drivers.
- (3) **TRANSPORTATION NETWORK COMPANY (TNC)** means an organization, whether a corporation, partnership, sole proprietor, or other form, which provides on-demand transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers.

§ 13-2-510 PENALTY.

Any person, corporation, partnership, sole proprietor, or other entity that meets the definition of TNC and operates in violation of this Article commits a Class “C” Misdemeanor punishable by a fine of not less than \$500 per offense.

Division 1 – Operations.

§ 13-2-511 TNC OPERATING AUTHORITY REQUIRED.

- (A) A TNC may not legally operate within the City without a TNC operating authority.
- (B) A TNC must apply for a TNC operating authority under the requirements of Section 13-2-161 (*Operating Authority Application Required*).
- (C) A TNC applicant must have a representative located in the City and named on the application for a TNC operating authority, and as an agent for process.
- (D) With its application for a TNC operating authority, a TNC applicant must provide a certificate of insurance as proof that it has commercial automobile insurance issued in compliance with Article 4, Division 3 of this Chapter, by a company licensed to operate in the State of Texas and by an agent licensed by the State of Texas. The policy must include coverage for:
 - (1) bodily injury;
 - (2) property damage; and
 - (3) owned, non-owned, and hired vehicle coverage.
- (E) A TNC operating authority will be for a term of one year.
- (F) A TNC operating authority may not be transferred or assigned.

§ 13-2-512 TNC LOCAL PRESENCE REQUIRED.

A TNC must maintain a local presence to include an active website and a 24-hour customer service number and email address.

§13-2-513 DISCLOSURE OF FARE.

Before a TNC trip is accepted, a rider must be able to view the estimated compensation, suggested compensation, or indication that no-charge is required for the trip. A TNC must transmit an electronic receipt documenting the origin and destination of each TNC trip, and the total amount paid upon completion of each trip.

§ 13-2-514 DYNAMIC PRICING.

- (A) If a TNC utilizes dynamic pricing, the software application must:
- (1) provide clear and visible indication that dynamic pricing is in effect prior to requesting a ride;
 - (2) include a feature that requires riders to confirm that they understand that dynamic pricing will be applied in order for the ride request to be completed;
 - (3) provide a fare estimator that enables the user to estimate the cost under dynamic pricing prior to requesting the ride; and
 - (4) during periods of abnormal market disruptions, dynamic pricing shall be prohibited.
- (B) As used in this section, “abnormal market disruptions” includes any change in the ground transportation market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor.

§ 13-2-515 IDENTIFICATION.

A TNC application used to connect drivers to riders must display an accurate picture of drivers, and a picture or description of the type of vehicle, as well as the license plate number of the vehicle.

§ 13-2-516 DATA REPORTING REQUIREMENTS.

- (A) A TNC must comply with the reporting requirements of this section as a condition of its TNC operating authority for the purpose of supporting public safety and transportation planning including prevention of driving while intoxicated.
- (B) A TNC shall provide the following data, recorded in four-hour blocks, to the director on the last day of each month:
- (1) number of trips requested for service;
 - (2) number of trips requested, but not serviced, according to zip code;

- (3) number of vehicles logged into the TNC platform;
 - (4) number of pick-ups and drop-offs according to zip code;
 - (5) accessible vehicle trips requested and serviced;
 - (6) accessible vehicle trips requested and not serviced; and
 - (7) amount of time that surge pricing is in effect.
- (C) Driver hours logged onto the TNC platform shall be recorded daily and reported to the director on the last day of each month.
- (D) A TNC shall record the following data monthly and report it to the director on the last day of each month:
- (1) number of trips completed and passengers transported;
 - (2) gross receipts generated;
 - (3) progress on meeting the accessibility needs of the public; and
 - (4) total hours and miles driven by compliant drivers and for all drivers.
- (E) A TNC shall, on a daily basis, record all accident reports involving a vehicle in service and operating through the TNC platform, and report all such accidents to the director every Monday.
- (F) A TNC operating authority is automatically suspended if the TNC fails to submit the data required under this section within fifteen days of the required reporting deadline.

§ 13-2-517 ACCESSIBLE VEHICLE SERVICE.

- (A) Within six months of obtaining a TNC operating authority, a TNC shall implement an accessibility plan approved by the director. If a TNC has an existing accessibility plan on file in another jurisdiction, the TNC must adapt that plan for use in the City.
- (B) Within three months of obtaining a TNC operating authority, an accessible service request indicator must be available on the app. If a driver cannot provide a passenger a requested accessible ride, the TNC must identify an alternative transportation arrangement for the passenger.

- (C) Service animals must be reasonably accommodated by TNC drivers. If a service animal cannot be reasonably accommodated by a driver, the TNC must identify an alternative transportation arrangement for the passenger and service animal.
- (D) A TNC may not allow its drivers to refuse to accept a passenger who is disabled, or to charge a higher fare or additional fee to a person who is disabled, based on the person's disability, use of a support animal, wheelchair, crutches, or other mobility assistance device. Should exposure to a support animal cause a TNC driver an undue health burden, the TNC shall provide an alternate driver for the passenger with the support animal.
- (E) A TNC shall conduct outreach events to community organizations with ADA-compliant vehicles to publicize the TNC's need for ADA vehicles and drivers with the goal of providing services to all passengers. A TNC shall report back to the City on the results of this outreach quarterly.
- (F) A TNC shall conduct outreach events to communities that are of lower social economic strata without adequate transit options with the goal of increased access to transportation options. The TNC shall report to the City the effectiveness of this outreach quarterly.

§ 13-2-518 GEOFENCING.

During large special events TNCs shall cooperate with event sponsors and the City to identify and use geo-fence pick-up and drop-off locations, as determined by the director to promote a safe and transportation efficient event.

§ 13-2-519 TRAVEL LANES.

A driver operating as a TNC driver may not stop, stand, park, load or unload passengers in a travel lane or in an officially designated bus stop.

§ 13-2-520 DRIVER ENFORCEMENT.

A TNC shall establish and enforce policies requiring compliance with the applicable provisions of City Code in all agreements by drivers who contract with the TNC.

Division 2. – TNC Vehicle Requirements.

§ 13-2-521 INSPECTIONS.

- (A) Before operating a vehicle under a TNC platform, a vehicle must successfully pass an inspection by a mechanic certified by the State of Texas, and approved by the director, to perform state inspections. Inspection stickers must be displayed on the vehicle.
- (B) The safety inspections will certify a list of items established by separate ordinance and shall be equitable as between TNCs and other vehicles for hire.

§ 13-2-522 TRADE DRESS.

All vehicles operating under a TNC platform shall display a consistent and distinctive director approved emblem indicating which TNC is being used at all times that the vehicle is being used to provide TNC services.

§ 13-2-523 TAXES.

Appropriate taxes must be paid on each vehicle operated for a TNC. A vehicle used as a TNC vehicle that has unpaid taxes assessed may not operate on City streets.

Division 3. – Insurance Requirements.

§ 13-2-524 INSURANCE.

TNCs must comply with State of Texas insurance requirements for TNCs as described in Texas Insurance Code Chapter 1954.

§ 13-2-525 DRIVER NOTIFICATION.

- (A) Pursuant to Texas Insurance Code Chapter 1954, a TNC shall disclose in writing to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the TNC provides while the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform.
- (B) A TNC shall also disclose in writing to participating drivers, as part of its agreement with those drivers, that the driver's personal automobile insurance policy may not provide collision or comprehensive coverage

for damage to the vehicle used by the driver from the moment the driver logs on to the TNC's online-enabled application or platform to the moment the driver logs off the TNC's online-enabled application or platform.

Division 4. – Drivers.

§ 13-2-526 DRIVER REQUIREMENTS.

TNC drivers must possess a valid driver's license, proof of registration, and current automobile liability insurance, must be at least 21 years old, and must use a vehicle that is in compliance with Texas' inspection requirements and possess proof of a successful inspection in compliance with this Chapter.

§ 13-2-527 DRIVER ELIGIBILITY—CRIMINAL BACKGROUND AND DRIVER HISTORY CHECKS.

- (A) In accordance with the schedule set forth in (B) below, a person must pass a driver history check and a fingerprint-based criminal background check under the provisions of this section to be eligible to drive for a TNC.
- (B) The department will implement procedures for drivers to obtain driver history and finger-print based background checks in order to assist TNCs to meet the following benchmarks. The department is authorized to calculate benchmarks using data reported by TNCs under Section 13-2-516, and other data available to the department. Benchmarks are calculated as the percentage of hours or miles driven by compliant drivers of the total hours or miles driven by other drivers for the TNC during the benchmark time period. TNCs that fail to meet the following benchmarks shall be subject to penalties established by separate ordinance.
 - (1) 25% compliance by May 1, 2016
 - (2) 50% compliance by August 1, 2016
 - (3) 85% compliance by December 1, 2016
 - (4) 99% compliance by February 1, 2017

- (C) If the driving history check required by this section indicates that, within the three-year period prior to the history check, a person has had more than three moving violations or has been charged with driving without insurance or a suspended license, that person is prohibited from driving for a TNC.
- (D) To meet the requirements of this section, a criminal background check must be national in scope and comply with the requirements in Subsection (E) of this section. If the criminal background check indicates that a person has been convicted of certain offenses, to be specified by separate ordinance, that person is prohibited from driving for a TNC.
- (E) Consistent with the requirements of Texas Government Code Sections 411.122 and 411.087, which authorizes the City to obtain criminal history record information maintained or indexed by the Federal Bureau of Investigation (FBI) through the Texas Department of Public Safety (DPS).
- (1) Each individual whose application for a license, permit or authorization or any renewal thereof is subject to subsection (a) shall be required to provide a complete set of fingerprints and other identifying information to the official designated by the permitting, licensing or authorizing department, along with any applicable fee and any release or waiver forms required in order for the official to conduct a national background check through the FBI.
 - (2) Upon receipt of the fingerprints and any applicable fee, the City, or City approved third-party, is authorized to submit the fingerprints to the DPS for a search of the State's criminal history record, and the DPS is authorized to forward a set of the fingerprints to the FBI for a national criminal history check. The results of the FBI check will be returned to the DPS, which will disseminate the results of state and national criminal history checks to the City.
 - (3) The criminal history record information obtained through the FBI will be used by the Austin Transportation Department to determine whether an individual is prohibited from driving for a TNC under Subsection (C).
 - (4) An individual may request and obtain a copy of his or her criminal history and related information from Austin Transportation Department. Any requests to amend or correct an individual's

criminal history must be submitted to and approved by the Texas Department of Public Safety, for a Texas state record, or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

- (F) After obtaining a TNC operating authority, a TNC that meets the requirements in Subsection (G) of this section may elect to participate in a Safety Assurance Program. The program shall be administered by the Austin Transportation Department consistent with the requirements of this subsection.
- (1) If a TNC opts to participate in the program, the Austin Transportation Department shall assist the TNC in obtaining fingerprint-based criminal background checks for all drivers, as required by this section.
 - (2) In providing assistance to TNCs participating in this Program, the Austin Transportation Department shall:
 - (a) develop processes that mitigate perceived or actual barriers for drivers obtaining fingerprints, including use of best practices for app and other technology functionality;
 - (b) facilitate driver completion of fingerprint checks through driver fairs and other activities;
 - (c) contract with a third party, if necessary at the department's determination, to manage the fingerprint collection and background check process so that the process is completed quickly, does not create barriers for onboarding drivers, and supports the processes developed under Subsection (E) of this section; and
 - (d) implement incentives designed to assist the TNCs to achieve the city's goal of 100% hours or miles driven by compliant drivers.
 - (3) The Austin Transportation Department may provide assistance to drivers with the cost of fingerprint collection
 - (4) The Austin Transportation Department may develop innovative processes and initiatives, in conjunction with community organizations and the TNCs participating in this Program to

enhance the availability of services to prevent driving while intoxicated. The Austin Transportation Department may assess the processes developed with the TNCs for effectiveness in mitigating perceived or actual barriers for drivers obtaining fingerprints, and their impact on public safety including driving while intoxicated.

- (G) To be eligible to participate in the Safety Assurance Program authorized under Subsection (E), a TNC must commit to a driver onboarding process that:
 - (a) reflects best practices for public safety;
 - (b) includes face-to-face interviews with all drivers to be onboarded;
 - (c) requires potential drivers to demonstrate the ability to drive safely; and
 - (d) demonstrates good-faith efforts to onboard drivers who have completed the fingerprint-based background check process as measured by the Austin Transportation Department and measured by percentages of drivers.
- (H) Council will establish by separate ordinance programs, processes and procedures to incentivize drivers to become compliant drivers under subsection (A), incentivize consumers to use compliant drivers, and incentivize TNCs to utilize compliant drivers.

§ 13-2-528 DRIVER HOURS.

- (A) A TNC driver may not drive-for-hire, as defined in Subsection (B) of this section, for more than twelve hours within any 24-hour period.
- (B) For purposes of this section, “drive-for-hire” includes offering, making available, or using:
 - (1) a vehicle to provide any TNC or TNC-related service, including any time when a driver is in the vehicle and logged onto the transportation network company’s internet-enabled application or digital platform showing that the driver is available to pick up passengers; when a passenger is in the vehicle; when the TNC’s dispatch records show that the vehicle is dispatched; or when the driver has accepted a dispatch and is enroute to provide transportation network service to a passenger; and

- (2) a ground transportation service vehicle or operating a ground transportation service as defined in City Code Chapter 13-2 (*Ground Transportation Passenger Services*).

§ 13-2-529 DRIVER TRAINING.

A TNC shall establish a driver-training program designed to ensure that each driver safely operates his or her vehicle prior to the driver being able to offer service.

§ 13-2-530 ZERO TOLERANCE POLICY.

A TNC shall implement a zero tolerance policy on the use of drugs or alcohol by drivers who are driving passengers obtained through the use of a TNC app and advertise this policy on its website. Procedures for filing a complaint about a TNC driver suspected of using drugs or alcohol while driving and an explanation warning of deactivation for drivers found in violation of the policy must also be advertised on a TNC's website.

§ 13-2-531 OFF-APPLICATION AND STREET-HAILS PROHIBITED.

- (A) TNC drivers shall only accept rides booked through the digital platform and shall not solicit or accept street-hails.
- (B) In addition to criminal penalties, any TNC driver who provides rides without using the TNC digital application shall face suspension of their chauffeur permit.

PART 2. Chapter 13-2- *Ground Transportation Services* of the City Code is amended to add:

Division 5 – Fees.

§ 13-2-532 TNC FEES.

- (A) Each TNC operating in the City of Austin shall pay an annual fee calculated by the department based on one of the following methods of that TNC's choosing:
 - (1) The total of the permit fee paid by taxicab companies times the number of persons driving for the TNC;
 - (2) One (1) percent of the TNC's annual local gross revenues, or a comparable percentage of a TNC's portion of driver fares; or

- (3) Based on total miles driven.
- (B) Except for any TNC participating in the Safety Assurance Program, each TNC shall pay an additional fee of one (1) percent of the TNC's annual local gross revenue for the Compliant Driver Education Fund to be used to assist and incent drivers to become compliant.
- (C) Subsection (B) shall not take effect until the incentives referenced in Section 13-2-527 (H) (*Driver Eligibility – Criminal Background and Driver History Checks*) have been established by Council.

§ 13-2-533 GRADUATED FEES.

TNCs with a total number of drivers that is less than the number of taxicab permits for the smallest taxicab company may elect to pay a fee according to a graduated per driver fee schedule determined by the Transportation Department that is less than the permit fee paid by taxicab companies.

§ 13-2-534 MAXIMUM FEE.

No TNC shall pay more than 2% of its annual gross revenue.

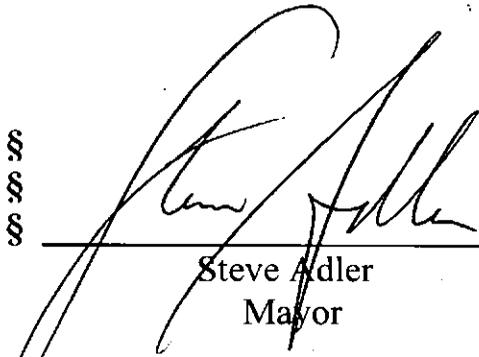
PART 3. All TNC operating agreements executed under the authority of Ordinance No. 20141016-038 by the City are hereby terminated as of the effective date of this ordinance.

PART 4. This ordinance takes effect on February 1, 2016.

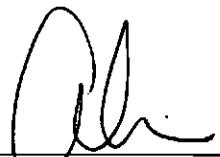
PASSED AND APPROVED

December 17, 2015

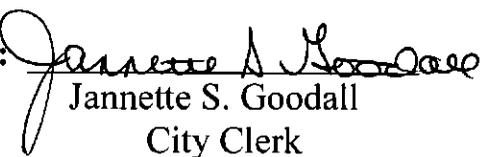
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Steve Adler
Mayor

APPROVED: 

Anne L. Morgan
City Attorney

ATTEST: 

Jannette S. Goodall
City Clerk

ORDINANCE NO. 20160217-001

AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD IN THE CITY OF AUSTIN ON MAY 7, 2016 TO SUBMIT TO THE VOTERS AN ORDINANCE INITIATED BY PETITION RELATING TO TRANSPORTATION NETWORK COMPANIES; PROVIDING FOR THE CONDUCT OF THE ELECTION; AUTHORIZING THE CITY CLERK TO ENTER INTO JOINT ELECTION AGREEMENTS; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. A special municipal election shall be held in the City on May 7, 2016, to submit to the voters of the city an ordinance initiated by petition relating to the regulation of transportation network companies. The ballot shall be prepared to permit voting “for” or “against” the following proposition:

Shall the City Code be amended to repeal City Ordinance No. 20151217-075 relating to Transportation Network Companies; and replace with an ordinance that would repeal and prohibit required fingerprinting, repeal the requirement to identify the vehicle with a distinctive emblem, repeal the prohibition against loading and unloading passengers in a travel lane, and require other regulations for Transportation Network Companies?

PART 2. If the proposition provided in Part 1 is approved by the majority of voters voting at the election, Article 4 of Chapter 13-2 of the City Code is repealed and replaced as provided in the ordinance initiated by petition, with a new Article 4 of Chapter 13-2 to read:

ARTICLE 4. TRANSPORTATION NETWORK COMPANY SERVICE.

§ 13-2-501 DEFINITION.

TRANSPORTATION NETWORK COMPANY (TNC) is defined as an organization whether a corporation, partnership, sole proprietor, or other form, that provides on-demand transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers.

§ 13-2-502 TNC OPERATING AUTHORITY APPLICATION REQUIRED.

- (A) A TNC may operate in accordance with the process set forth in this Article.
- (B) To obtain operating authority for a transportation network service, a person must make written application to the Austin Transportation Department (ATD). The application must be sworn or affirmed.
- (C) The application shall only require:
 - (1) The name, address, telephone number, and Texas driver's license number, if any, of the applicant and each officer, director, partner, and any other person who will participate in the business decisions of or who has the authority to enter contracts on behalf of the transportation network company.
 - (2) Certified copies of any documents required by state law to be filed for the business entity to legally exist, and a statement from the Texas Secretary of State certifying that the business is in good standing if state law requires the entity to file documents with the Texas Secretary of State.
 - (3) A description of the applicant's transportation network service experience.
 - (4) A detailed description of the proposed service.
 - (5) Proof of insurance coverage under this Article.
- (D) The ATD Director shall notify a TNC operating under this Article if the ATD Director determines that there is a reasonable basis to believe that the TNC is in violation of a provision of this Article. The ATD Director shall give the TNC a reasonable opportunity to cure a continuing violation of a provision of this Article.

§ 13-2-503 TNC LOCAL PRESENCE REQUIRED.

- (A) A TNC must maintain a website and provide a 24-hour customer service phone number and email address.

- (B) A TNC must maintain an agent for service of process in Austin, Texas.

§ 13-2-504 DISCLOSURE OF FARE.

Before a TNC trip is accepted, a rider must be able to view the estimated compensation, suggested compensation, or indication that no-charge is required for the trip. A TNC must transmit an electronic receipt documenting the origin and destination of each TNC trip, and the total amount paid upon completion of each trip.

§ 13-2-505 DYNAMIC PRICING.

- (A) If a TNC utilizes dynamic pricing through its software application to incentivize drivers in an effort to maximize the supply of available vehicles on the network to match the demand for rides and increase reliability, the software application must:
- (1) provide clear and visible indication that dynamic pricing is in effect prior to requesting a ride;
 - (2) include a feature that requires riders to confirm that they understand that dynamic pricing will be applied in order for the ride request to be completed;
 - (3) provide a fare estimator that enables the user to estimate the cost under dynamic pricing prior to requesting the ride; and
 - (4) during periods of abnormal market disruptions, dynamic pricing shall be prohibited.
- (B) As used in this section, “abnormal market disruptions” are defined as any change in the ground transportation market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor.

§ 13-2-506 IDENTIFICATION.

A TNC app used to connect drivers to riders must display an accurate picture of drivers, and a picture or description of the type of vehicle, as well as the license plate number of the vehicle.

§ 13-2-507 DATA REPORTING REQUIREMENTS.

(A) A TNC must maintain accurate records of all drivers providing service, and discontinued from providing service, through the platform. All information must be available for audit by a private, agreed-upon third party at any time, no more than four times per year. These audits shall be paid for by the TNC. Additionally, a TNC must comply with the following reporting requirements:

- (1) A TNC shall provide quarterly reports to the City providing information on the effectiveness of the platform to address gaps in Austin's transportation network.
- (2) The TNC reports required under this section must document and evaluate information, such as rider pickup and drop-off patterns (i.e. peak ridership times and popular pickup and drop-off locations), cost of trip (including a measure of the amount of time in dynamic pricing), length of trip, and ADA service comparison, in order to help the City evaluate the role of TNCs to address transportation issues, such as drunk driving and underserved community needs.
- (3) The TNC reports required under this section must be provided to the City no later than 15 days after the end of the quarter.

§ 13-2-508 ACCESSIBLE VEHICLE SERVICE.

- (A) The TNC shall be required to set aside a sum equivalent to 10 cents for every ride originating in the City of Austin and use those funds to support the TNC's riders who require ADA accommodations, with the goal of accessible rides being met with wait times that are equivalent to those of other TNC rides.
- (B) Service animals must be reasonably accommodated by TNC drivers. If a service animal cannot be reasonably accommodated by a driver, the TNC

must identify an alternative transportation arrangement for the passenger and service animal.

- (C) A TNC shall conduct outreach events to community organizations with ADA-compliant vehicles to publicize the TNC's need for ADA vehicles and drivers with the goal of providing services to all passengers. A TNC shall report back to the City on results quarterly.
- (D) Three months after initiating operations in the City, the TNC must have an accessible service request indicator available on the app. Once the accessible service request indicator is available, if a driver cannot provide a passenger a requested accessible ride, the TNC must identify an alternative transportation arrangement for the passenger.
- (E) A TNC may not allow its drivers to refuse to accept a passenger who is disabled, or to charge a higher fare or additional fee to a person who is disabled, based on the person's disability, use of a support animal, wheelchair, crutches, or other mobility assistance device. Should exposure to a support animal cause a TNC driver an undue health burden, the TNC shall provide an alternate driver for the passenger with the support animal.

§ 13-2-509 DRIVER ENFORCEMENT.

A TNC shall establish and enforce policies requiring compliance with the applicable provisions of City Code in all agreements by drivers who contract with the TNC.

§ 13-2-510 TAXES.

Appropriate taxes must be paid or the vehicle is not allowed to operate on the streets of Austin.

§ 13-2-511 INSURANCE.

TNCs must comply with State of Texas insurance requirements for TNCs as described in Texas Insurance Code Chapter 1954.

§ 13-2-512 DRIVER NOTIFICATION.

TNCs must comply with State of Texas insurance requirements for TNCs as described in Texas Insurance Code section 1954.101 (relating to required disclosures).

§ 13-2-513 DRIVER ELIGIBILITY.

- (A) TNC drivers must possess a valid driver's license, proof of registration, and current automobile liability insurance, must be at least 21 years old, and must use a vehicle that is in compliance with Texas' inspection requirements and possess proof of a successful inspection.
- (B) Criminal background and driver history checks for all TNC drivers, as set forth below, are required upon application to drive for a TNC and annually thereafter.
- (C) A criminal background check is required and must be national in scope and prevent any person who has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, or who has been convicted at any time for fraud, sexual offenses, use of a motor vehicle to commit a felony, gun related violations, resisting/evading arrest, reckless driving, a crime involving property damage, and/or theft, acts of violence, or acts of terror from driving for a TNC.
- (D) A TNC driver history check is required and must prevent anyone with more than three moving violations within the three-year period before the driving history check, or anyone charged with driving without insurance or a suspended license within the three-year period prior to the history check, from driving for a TNC.
- (E) A TNC driver may be authorized to drive for a TNC under this Article if the TNC has caused the criminal history of the driver to be researched by a company approved by the Austin Transportation Department Director (Director), and the results of that search demonstrate that the driver has no convictions of any offense listed in this section. These results must be available for audit by a private, agreed-upon third party, for further criminal history checks, if deemed necessary by the Austin Transportation Department Director.

- (F) Nothing in this section shall require or be construed to require fingerprinting as part of any criminal history search or audit required under this section.
- (G) The permit requirement described in City Code §13-2-101 (*Chauffeur's Permit Required*) is waived for TNC drivers working under TNCs as provided by this Article.

§ 13-2-514 DRIVER HOURS.

- (A) A TNC driver may not drive-for-hire for more than twelve hours within any 24-hour period. For purposes of this section, "drive-for-hire," is defined as offering, making available, or using:
 - (1) a vehicle to provide a transportation network service, including any time when a driver is logged onto the transportation network company's internet-enabled application or digital platform showing that the driver is available to pick up passengers; when a passenger is in the vehicle; when the TNC's dispatch records show that the vehicle is dispatched; or when the driver has accepted a dispatch and is enroute to provide transportation network service to a passenger; and,
 - (2) a ground transportation service vehicle or operating a ground transportation service as defined in City Code Chapter 13-2 (*Ground Transportation Passenger Services*).

§ 13-2-515 DRIVER TRAINING.

A TNC shall establish a driver-training program designed to ensure that each driver safely operates his or her vehicle prior to the driver being able to offer service.

§ 13-2-516 ZERO TOLERANCE POLICY.

A TNC shall implement a zero-tolerance policy on the use of drugs or alcohol by drivers who are driving passengers obtained through the use of a TNC app and advertise this policy on its website. Procedures for filing a complaint about a TNC driver suspected of using drugs or alcohol while driving and an explanation warning of deactivation for drivers found in violation of the policy must also be advertised on a TNC's website.

§ 13-2-517 STREET-HAILS PROHIBITED.

TNC drivers shall only accept rides booked through the digital platform and shall not solicit or accept street-hails.

§ 13-2-518 FEES.

- (A) Each TNC operating in the City of Austin shall pay an annual fee of one (1) percent of the TNC's annual local gross revenues.
- (B) The annual fee required to be paid by a TNC under this section shall be paid to the City at the end of each year of operation.

§ 13-2-519 OUTREACH.

A TNC shall conduct outreach events to communities that are of lower socioeconomic strata without adequate transit options with the goal of increased access to transportation options. The TNC shall report to the City the effectiveness of this outreach quarterly.

§ 13-2-520 AIRPORT.

This Article does not regulate or authorize the operation of TNCs, including vehicles or operators, at the Austin Bergstrom International Airport (ABIA). Such operation shall be with the approval of the ABIA Director and under such terms and conditions as the ABIA Director shall prescribe, including assessment of a fee. The regulation and operation of TNCs at ABIA may not contradict or amend the requirements set forth in Section 13-2-513 (*Driver Eligibility*) of this Article.

§ 13-2-521 PENALTY.

Any person, corporation, partnership, sole proprietor, or other entity that meets the definition of TNC established under § 13-2-501 (*Definition*) of this Article and operates without a TNC operating authority with the City, as required by this ordinance, commits a Class "C" Misdemeanor punishable by a fine of not less than \$500 per offense.

PART 3. The election shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. The precincts and locations of the election day polling places; the dates, hours, and locations of the early voting places; and the names of the officers appointed to

conduct the election are provided in Exhibits A-G attached and incorporated as a part of this ordinance.

PART 4. A direct electronic recording voting system, as the term is defined in Title 8 of the Texas Election Code, shall be used for early voting and for voting conducted on election day. The central counting station is established at the Travis County Elections Division, 5501 Airport Boulevard, Austin, Texas.

PART 5. (a) Notice of this election shall be given by posting and publishing a copy of this ordinance in both English and Spanish. The notice and a copy of this ordinance shall be posted, in both English and Spanish, in three public places and at the City Hall notice kiosk not later than the 21st day before election day. The copy of the notice posted at City Hall shall be accompanied by a cover page, at the top of which shall appear the words "A MUNICIPAL SPECIAL ELECTION, MAY 7, 2016." Notice of this election shall be published, not earlier than the 30th day before the date of the election, in a newspaper of general circulation on the same day in each of two successive weeks, with the first publication occurring before the 14th day before the date of the election.

(b) A copy of this ordinance shall be posted, in both English and Spanish, on election day and during early voting by personal appearance, in a prominent location at each polling place.

(c) This ordinance, together with the notice of election and the contents of the Proposition, shall be posted on the City's website, in both English and Spanish, during the twenty-one (21) days before the election.

PART 6. In accordance with Chapter 271 of the Texas Election Code, the May 7, 2016 municipal special election may be held jointly with the various political subdivisions that share territory with the City of Austin and that are holding elections on that day. The City Clerk may enter and sign joint election agreements with other political subdivisions for this purpose, and their terms as stated in the agreements are hereby adopted.

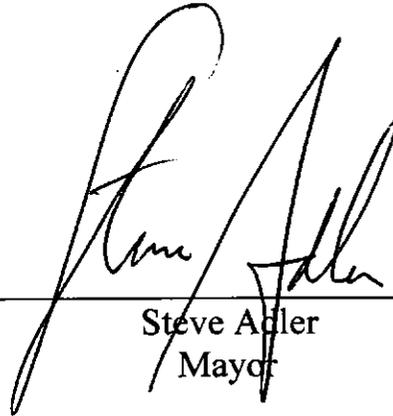
PART 7. The Council finds that the need to immediately begin required preparations for this election constitutes an emergency. Because of this emergency, this ordinance

takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

PASSED AND APPROVED

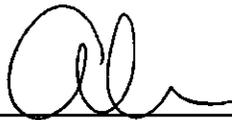
February 17, 2016

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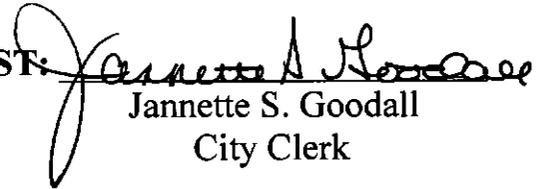
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk

Exhibits A – G to be updated

- Exhibit A: Ordinance No. _____*
- Exhibit B: Election Day Polling Places*
- Exhibit C: Election Day Presiding Judges and Alternate Judges*
- Exhibit D: Early Voting Polling Places*
- Exhibit E: Central Counting Station Staff*
- Exhibit F: Early Voting Ballot Board*
- Exhibit G: Joint Election Agreements*