

CITY OF SMYRNA

COMMUNITY DEVELOPMENT DEPARTMENT

MEMORANDUM

To: Mayor and Council

From: Russell Martin, AICP, Community Development Director
Joey Staubes, AICP, Planner II

Date: March 1, 2022

CC: Joe Bennett, City Administrator

RE: Code Amendment – Chapter 22 – Businesses – Short-Term Rentals

BACKGROUND

The City of Smyrna has received numerous calls and complaints regarding short-term rentals in residential neighborhoods in the city. Complaints centered on house parties, parking, trash and general property maintenance issues surrounding the operation of short-term rental units. Mayor Norton created the Committee on Short-Term Rentals in Spring of 2021. The Committee was created to study and address issues related to the impacts of short-term rental units on surrounding residential neighborhoods and the city. Mayor Norton appointed Councilman Glenn Pickens as the chair of the Committee, as well as Councilmen Lewis Wheaton and Tim Gould. The Committee met several times over the last year (3/16/21, 6/9/21 & 6/23/21, 9/30/21, 12/9/21, 1/6/22, 2/7/22) to discuss short-term rentals and develop a proposed ordinance to address issues and concerns.

ANALYSIS

The City of Smyrna currently does not regulate the operation of short-term rental units. A short-term rental unit is defined as an accommodation for transient guests where, in exchange for compensation, a residential dwelling unit or a portion thereof is provided for lodging for a period of time not to exceed thirty (30) consecutive days. There are approximately 225 to 300 rental units in operation the City of Smyrna at any given time. These units include whole unit rentals (whole house or dwelling unit) or partial unit rentals (one or two rooms of an occupied dwelling are rented). Short-term rental units are located in both multi-family and single-family developments.

The Committee studied short-term rental ordinances from other municipalities in the State of Georgia. The other municipalities included Sandy Springs, Brookhaven, Hall County, South Fulton, Macon, Savannah, Columbus and Atlanta. The Committee studied the operational requirements, application procedures, penalties, fees, etc. for short-term rentals in these communities.

After the review of the other municipalities in the state, the Committee wanted to require a license for the operation of a short-term rentals and set limitations on location, occupancy, parking, use of accessory structures and other limitation for short-term rental in residential single-family

neighborhoods. Below are proposed ordinance highlights as it pertains to the issues described above:

- ***Where are short-term rental units allowed?*** Short-term rental units are allowed in every residential zoning district, including the Mixed Use and Central Business District zoning districts.
- ***What is required for operation?*** The property owner must obtain a short-term rental license and an occupational tax certificate to operate a short-term rental unit. Licenses and occupational tax certificates may be renewed on a yearly basis.
- ***What are the application requirements?*** The applicant will have to designate a short-term rental agent and provide proof of ownership, the owner's sworn compliance affidavit, liability coverage, notification to adjoining property owners and HOA (if applicable).
- ***Who is the short-term rental agent?*** The agent can be the property owner or a person designated by the property owner, who is 21 years old or older, to handle all issues with the rental unit and be the main point of contact with the City.
- ***Are there limitations on short-term rentals?*** There are numerous limitations on the operation of short-term rentals in the City. These include, but are limited to the following:
 - Occupancy – Units are limited to two people per room plus three additional people.
 - Parking – Vehicles must be parked on the property on hard surfaces. Vehicles associated with short-term rentals are not allowed to park in the right-of-way.
 - Days of Use – Short-term rental units within a single-family zoning district shall be limited to 180 days of rental per calendar year unless the property is owner occupied. A rental that exceeds thirty (30) consecutive days shall not be considered a short term rental.
 - Single-Family Zoning – Properties with a single-family zoning designation shall be limited to one short-term rental license per property.
 - Long-term Rentals – Single-family zoned properties with an active long-term lease shall not be issued a short-term rental license.
 - Accessory Buildings – Accessory buildings on properties with a single-family zoning classification may only be used for short-term rentals if the subject property is owner occupied.
- ***What are the enforcement and penalties for violating the ordinance?*** Violations of this chapter are grounds for suspension or revocation of the license and subject the owner to the penalties described in Section 1-8 of Chapter 1 of the City's Code of Ordinances and upon a conviction, the court has the authority to suspend or revoke the license in addition to other punishment authorized by Sec 1-8. If the property receives three (3) convictions of code violations within a 24-month period, the short-term rental license shall be revoked for a 12-month period.
- ***What are the requirements for taxation?*** Short-term rental unit owners are subject to all applicable state and city taxes, including but not limited to all excise taxes, taxes on rooms, lodgings and accommodations and hotel/motel tax requirements and are liable for payment thereof as established by state law and the city code. The city may seek to enforce payment of all applicable taxes to the extent provided by law, including injunctive relief.

STAFF COMMENTS

Community Development recommends **approval** of the following code amendments to Chapter 22 – Businesses of the City's Code of Ordinances:

The following is a proposed ordinance addition to Chapter 22 of the City Code of Ordinances and is presented in legislative draft format:

Add Article XI to Chapter 22 – Businesses to address the regulation of short-term rentals in the City of Smyrna.

Sec. 22-340. – Intent and purpose.

It is the purpose of this chapter to protect the public health, safety and general welfare of individuals and the city at-large; to monitor and provide reasonable means for citizens to mitigate impacts created by occupancy of short-term rental units; and to implement regulations to protect the integrity of the city's neighborhoods.

Sec. 22-341. Zoning districts.

Short-term rentals are permitted in all residential zoning districts.

Sec. 22-342. Applicability.

- (a) It shall be unlawful for any owner of any property within the city limits to rent or operate a short-term rental of residential property contrary to the procedures and regulations established in this chapter, other provisions of this Code, or any applicable state law.
- (b) The restrictions and obligations contained in this chapter shall apply to short-term rentals at all times during which such homes or dwelling units are marketed or used as short-term rentals.
- (c) The allowance of short-term rentals pursuant to this chapter shall not prevent enforcement of additional restrictions that may be contained in restrictive covenants or other private contractual agreements or arrangements.

Sec. 22-343. - Definitions.

Accessory building means a structure that is a dwelling unit and is subordinate to the principal use or building on a lot and serving a purpose customarily incidental to the use of the principal building, provided any such structure is built with or after the construction of the principal building. Where a building is attached to the main building in a substantial manner, as by a wall or roof, such building shall be considered part of the main building and not an accessory building.

Code compliance verification form means a document executed by a short-term rental owner certifying that the short-term rental unit complies with applicable zoning, building, health and life safety code provisions. No person shall allow occupancy or possession of any short-term rental unit if the premises are in violation of any applicable zoning, building, health or life safety code provisions.

Dwelling unit means a building, or portion thereof, designed, arranged and used for living quarters. for one family only. An individual bathroom and complete kitchen facilities, permanently installed, shall be contained within each dwelling unit.

Maximum Occupancy means the maximum allowable occupancy of the short-term rental unit based on site capacity.

Owner occupied property means real property which contains one or more dwelling unit(s) where one of the dwelling units is occupied by the property owner and constitutes his/her primary place of residence. The dwelling units must share the Property Identification Number assigned by the Cobb County Board of Tax Assessors. Proof of owner-occupancy requires proof of a valid homestead exemption submitted with the application for a short-term rental license. In lieu of homestead exemption, a sworn affidavit and supporting documentation establishing proof of residency must be submitted by the applicant stating that the primary dwelling unit is the legal residence and domicile of the resident. Absent proof of homestead exemption as provided herein, proof of residency is required in the form of two of the following: 1) a valid Georgia Driver's License or Georgia Identification Card; 2) registration for vehicles owned by and registered in the name of the applicant; 3) Cobb County Voter's Registration Card; or 4) previous year's W-2 Form or Internal Revenue Service Tax Return.

Principal building means a building in which is conducted the principal use of the lot on which said building is situated.

Residential District means the following zoning districts: R-30, R-20, R-15, R-12, R-10, R-8, RDA, RD, RD-4, RMC-8, RM-10, RTD (or TD), RM-12, RM-15, RHR, CBD and MU.

Short-term rental occupant means guests, tourists, lessees, vacationers or any other person who, in exchange for compensation, occupy a dwelling unit or a portion thereof for lodging for a period of time not to exceed thirty (30) consecutive days.

Short-term rental unit means an accommodation for transient guests where, in exchange for compensation, a residential dwelling unit or a portion thereof is provided for lodging for a period of time not to exceed thirty (30) consecutive days. A rental that exceeds thirty (30) consecutive days shall not be considered a short term rental. Such use may or may not include an on-site manager. For the purposes of this definition, a residential dwelling shall include all housing types and shall exclude hotels/motels, or other commercial uses. If the primary building is Owner Occupied, a detached accessory building may be used for short term rentals. A short-term rental unit may not include a motor vehicle as defined in Title 40 of the Official Code of Georgia Annotated.

Short-term rental agent means a natural person designated by the owner of a short-term rental on the short-term rental license application. Such person shall be available for and responsive to contact and someone who is customarily present at a location within the city for purposes of transacting business. An owner who is a natural person may also be the short-term rental agent.

Short-term rental owner means the owner of record of the property. If the owner is not a natural person, the duties of the owner shall be carried out by the officer of the corporation or entity whose responsibility is to control the use of the premises.

Short-term rental license means the license issued by the Community Development Department to owners or designated agents of short-term rental units who have submitted the required documentation and met the requirements set for in this Chapter for operation of a short-term rental unit.

Single-family dwelling means a building designed for and containing one (1) dwelling unit.

Sec. 22-344. - Short-term rental license.

No person shall rent, lease or otherwise exchange for compensation all or any portion of a dwelling unit as short-term rental, as defined in section 22-343, without first obtaining a short-term rental license and occupation tax certificate from the Community Development Department in accordance with the City Code. No license issued under this chapter may be transferred or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.

Sec. 22-345. - Application for short-term rental license.

(a) Applicants for a short-term rental license shall submit, on an annual basis, an application for a short-term rental license to the city. The application shall be furnished under oath on a form specified by the city, accompanied by a non-refundable application fee as defined in the City's Fee Schedule, as may be amended by the mayor and city council from time to time. Such application must include:

- (1) The name, address, telephone and email address of the owner(s) of record of the dwelling unit for which a license is sought. If such owner is not a natural person, the application shall identify all partners, officers and/or directors of any such entity, including personal contact information;
- (2) The address of the dwelling unit to be used as a short-term rental unit;
- (3) The name, address, telephone number and email address of the short-term rental agent, which shall constitute their 24-hour contact information;
- (4) The owner's sworn acknowledgement that he or she has received a copy of this chapter, has reviewed it and understands its requirements;
- (5) The number and location of parking spaces allotted to the premises; and
- (6) Any other information that this chapter requires the owner to provide to the city as part of an application for a short-term rental license. The city administrator or designee shall have the authority to obtain additional information from the applicant as necessary to achieve the objectives of this chapter.

(b) Attached to and concurrent with submission of the application described in this section, the owner shall provide:

- (1) The owner's sworn code compliance verification form;
- (2) Proof of the owner's current ownership of the short-term rental unit;
- (3) Proof of liability insurance in the amount of at least \$500,000.00; and
- (4) A written certification from the short-term rental agent that he or she agrees to perform the duties specified in this chapter.
- (5) Evidence that the short-term rental license applicant has provided notification via certified United States mail to each contiguous property to of their intent to secure a short-term rental license.
 - (i) This notification must include the address of the unit to be used as a short-term rental and the name, address, telephone number and email address of the short-term rental agent.

- (ii) This notification must be given to each property adjacent to the property at which the applicant is applying to operate a short-term rent
 - (iii) This notification shall be sent certified mail to the address of the adjacent property. For purposes of this section, it shall not be necessary for the applicant to identify and include the name of specific owner of record of the adjacent property in this notification.
 - (iv) If the subject property is part of a homeowner's or condominium association, this notification must be given to the homeowner's association or condominium association.
 - (a) The homeowner's or condominium association must provide a letter in support of the short-term rental application if required by the association's covenants.
- (c) Licensees shall publish a short-term rental license number in every print, digital, or internet advertisement and any property listing in which the short-term rental is advertised.
- (d) *Expiration and renewal.* Original and renewed licenses shall expire on December 31st of the year approved, with the exception that original applications filed in 2022, upon approval, shall be valid through December 31, 2022. A request to renew a short-term rental license shall be filed on renewal forms to be supplied by the city and accompanied by a non-refundable renewal fee. An applicant with a current license who files a renewal application by December 15th of the year which the license is set to expire may continue operations until the renewal licensed is approved or denied.
- (e) If the rental agent changes, the short-term rental agent shall notify the Community Development within ten (10) business days of the change of agent.

Sec. 22-346. - Short-term rental agent.

- (a) The owner of a short-term rental shall designate a short-term rental agent on its application for a short-term rental license. A property owner may serve as the short-term rental agent. Alternatively, the owner may designate a natural person as his or her agent who is over the age of 21.
- (b) The duties of the short-term rental agent are to:
 - (1) Be available to handle any problems arising from use of the short-term rental unit;
 - (2) Keep their name and emergency contact phone number posted in a readily visible place in the short-term rental unit;
 - (3) Appear on the premises of any short-term rental unit, upon the city's request, following notification from the city of issues related to the use or occupancy of the premises. This includes, but is not limited to, notification that occupants of the short-term rental unit have created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of the City of Smyrna Code of Ordinances or other applicable law pertaining to noise, disorderly conduct, overcrowding, consumption of alcohol or use of illegal drugs. Failure of the agent to timely appear to two or more complaints regarding violations may be grounds for penalties as set forth in this chapter. This is not intended to impose a duty to act as a peace officer or otherwise require the agent to place himself or herself in a perilous situation;

- (4) Receive and accept service of any notice of violation related to the use or occupancy of the premises;
 - (5) Monitor the short-term rental unit for compliance with this chapter; and
 - (6) List the short-term rental license number on each rental listing.
- (c) An owner may change his or her designation of a short-term rental agent temporarily or permanently; however, there shall only be one such agent for a property at any given time. To change the designated agent, the owner shall notify the city in writing of the new agent's identity, together with all information regarding such person as required by the applicable provisions of this chapter.

Sec. 22-347. - Grant or denial of application.

All complete applications shall be reviewed within thirty (30) days of filing. Applications shall be approved or denied by the city administrator and/or his designee and shall be granted unless the applicant fails to meet any of the conditions and requirements of this chapter. Any violation of this ordinance or false statements or information provided in the application are grounds for denial, revocation, suspension and/or imposition of penalties, including denial of future applications.

Sec. 22-348. - Short-term rental units.

- (a) A legible copy of the short-term rental unit license shall be posted within the unit and include all of the following information:
 - (1) The name, address, telephone number and email address of the short-term rental agent;
 - (2) The short-term rental license number;
 - (3) The maximum occupancy of the unit; and
 - (4) The maximum number of vehicles that may be parked at the unit.
- (b) Maximum occupancy based on site capacity.
 - (1) The maximum overnight occupancy of a short-term rental shall be limited to two (2) persons for each bedroom, plus three (3) additional persons. The number of bedrooms shall be based upon the Cobb County Tax Assessor's residential profile of the property, and other documents of record, as needed. In no case shall the maximum total occupancy for any dwelling unit exceed the occupancy limits permitted by the state and local fire and building codes.
 - (2) Between the hours of 10 PM and 7 AM, the occupancy load of the unit may not exceed the maximum allowed number of overnight tenants.
 - (3) All marketing and/or advertising for short-term rental units must contain information concerning the occupancy limit of the short-term rental unit, and the maximum parking available on the property. Advertising for more than the allowable occupancy or allowable parking is prima facie evidence of a violation of the city code. Further, failure to include such occupancy limits and maximum parking availability is prima facie evidence of a violation of the city code.
- (c) Short-term rental units must be properly maintained and regularly inspected by the owner or agent to ensure continued compliance with applicable property maintenance, zoning, building, health and life safety code provisions. If, at the time of application, a short-term

rental unit is in violation of any zoning, building, health or life safety code provision, the owner must demonstrate compliance with the applicable code prior to being eligible to receive a short-term rental license.

- (d) No external signage shall be permitted on the property.
- (e) All owners or hosts shall give notice of the operation of a short-term rental unit to all residential parcels and/or homeowner's association(s) immediately adjacent to the short-term rental unit.
- (f) Parked vehicles:
 - (1) Shall not be parked on the city right-of-way or along any roadways at any time; and
 - (2) Shall be parked outdoors on the property only on designated hard surfaced areas with concrete or asphalt surfacing; and shall not be permitted outside such hard-surfaced areas (i.e., no parking in yards or neighbor's properties).
- (g) Property maintenance:
 - (1) The subject property must be kept in a clean and sanitary manner in accordance with the property maintenance provisions of Chapter 80 of the City's Code of Ordinances.
- (h) Limitations:
 - (1) Properties with a single-family zoning designation shall be limited to one short-term rental license per property. Each single-family property shall be limited to one short-term rental unit per property. Advertising multiple rental units for rent at the same time within a single-family property is prohibited.
 - (2) Properties with a single-family zoning designation and active long-term leases shall not be issued a short-term rental license.
 - (3) Accessory buildings on properties with a single-family zoning designation may only be used as short-term rental units if the subject property is an owner-occupied property.
 - (4) No short-term rental unit within a single-family zoning district shall be rented for such use for more than 180 days in any calendar year, unless the property is owner occupied. A rental to the same occupant for more than 30 consecutive days shall not be counted in the 180 day restriction.

Sec. 22-349. - Short-term rental regulation procedure.

- (a) To ensure the continued application of the intent and purpose of this chapter, city administrator or designee shall notify the owner or agent of a short-term rental unit of all instances in which nuisance behavior of the rental guest or the conduct of his or her short-term rental unit agent results in a citation for a code violation or other legal infraction.
- (b) The city administrator or designee shall maintain in each short-term rental location file a record of all code violation charges, accusations and convictions occurring at or relating to a short-term rental unit. When a property owner has accumulated three (3) convictions for code violations for a particular property within a period of twenty-four (24) consecutive months, in addition to any penalty imposed by Sec 1-8, the city court shall revoke the existing license and the property shall be ineligible to be used as a short-term rental unit for a period of twelve (12) consecutive months from the date of the last conviction.

- (c) Violations of this chapter are grounds for suspension or revocation of the license and subject the owner to the penalties described in Section 1-8 of Chapter 1 of the City's Code of Ordinances and upon a conviction, the court has the authority to suspend or revoke the license in addition to other punishment authorized by Sec 1-8. Any suspension or revocation other than a suspension or revocation imposed by the court, shall only be imposed after a hearing before the license and variance board held pursuant to the procedures applicable thereto. The licensee shall be given written notice of the grounds for the proposed suspension or revocation and notice of a hearing no less than ten (10) days before the hearing.
- (d) A person aggrieved by the city's decision to deny a short-term rental license may appeal the decision to the license and variance board. The appeal must be filed with the city clerk's office in writing, within thirty (30) calendar days after the adverse action and it shall contain a concise statement of the reasons for the appeal. Timely filing of an appeal shall stay the revocation or suspension pending a decision by the license and variance board.
- (e) The license and variance board shall consider the appeal within thirty (30) calendar days after receipt by the city clerk of a request unless otherwise agreed in writing by the city and aggrieved party. All interested parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The license and variance board shall render a determination in writing within five (5) days of the hearing, which will constitute a final ruling on the application. A party aggrieved by the city council's decision may appeal same by petition for writ of certiorari with the Cobb County Superior Court in accordance with state law.
- (f) Nothing in this section shall limit the city from enforcement of its code, state or federal law by any other legal remedy available to the city. Nothing in this section shall be construed to limit or supplant the power of any city inspector or other duly empowered officer under the city's ordinances, rules and regulations and the authority granted under state law, as amended, to take necessary action, consistent with the law, to protect the public from property which constitutes a public nuisance or to abate a nuisance by any other lawful means of proceedings.

Sec. 22-350. - Taxes and reporting.

Short-term rental unit owners are subject to all applicable state and city taxes, including but not limited to all excise taxes, taxes on rooms, lodgings and accommodations and hotel/motel tax requirements and are liable for payment thereof as established by state law and the city code. The city may seek to enforce payment of all applicable taxes to the extent provided by law, including injunctive relief.