

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: December 13, 2022

PUBLIC HEARING DATE: January 17, 2023

CONTACT PERSON(S) NAME AND PHONE NUMBER: Philip F. Etiwe, (915) 212-1553
Tony De La Cruz, (915) 212-1589

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: #3 Promote the Visual Image of El Paso

SUBGOAL: 3.1 Provide business friendly permitting and inspection process
3.2 Set one standard for infrastructure across the city

SUBJECT:

An Ordinance amending Title 5 (Business License and Permit Regulations), to create Chapter 5.19 (Short Term Rentals) and subsections thereafter in the El Paso City Code relating to the permitting and registration requirement for short term rentals within the City of El Paso; the penalty as provided in 5.19.110 of the El Paso City Code.

BACKGROUND / DISCUSSION:

This item is considering amendments to Title 5 (Business License and Permit Regulations) of the El Paso City Code, by creating Chapter 5.19 (Short Term Rentals) and its associated subsections to add; definitions, application requirements, duration of permit, general standards and enforcement standards for Short Term Rental uses. An item proposing amendments to El Paso City Code Title 20 (Zoning) is accompanying this item.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Planning & Inspections, Planning Division

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Philip Etiwe

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5 (BUSINESS LICENSE AND PERMIT REGULATIONS), TO CREATE CHAPTER 5.19 (SHORT TERM RENTALS) AND SUBSECTIONS THEREAFTER IN THE EL PASO CITY CODE RELATING TO THE PERMITTING AND REGISTRATION REQUIREMENTS FOR SHORT TERM RENTALS WITHIN THE CITY OF EL PASO; THE PENALTY AS PROVIDED IN 5.19.110 OF THE EL PASO CITY CODE

WHEREAS, Title 5 (Business License and Permit Regulations), of the El Paso City Code was adopted to promote the health, safety, morals and general welfare of the community; and,

WHEREAS, the purpose of this addition is to establish permitting and registration requirements to protect, the health, safety, and welfare of occupants of short-term rental properties, and protect the integrity of the neighborhoods in which short term rental properties operate; and,

WHEREAS, the City Council after a public hearing has determined this amendment is in the best interest of the public and will promote the public health, safety, and welfare of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. That Title 5 (Business License and Permit Regulations), Chapter 5.19 (Short Term Rentals) of the El Paso City Code be amended to add the following sections:

5.19.010 Purpose.

The purpose of this article is to establish regulations to protect, the health, safety and welfare of occupant(s) of short-term rental properties, and to protect the integrity of the neighborhoods in which short-term rental properties operate.

5.19.020 - Definitions.

As used in this chapter, the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning

Occupant(s) means the person(s) who have lawfully obtained the exclusive use and possession of the short-term rental property or portion thereof from its operator, and the guest(s) of such person(s).

Operator means any person who operates a short-term rental, as defined in this article. For purposes of this chapter, a lessee of a unit, when expressly permitted in writing by owner, may serve as operator of a short-term rental.

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Owner means the person or persons who hold title to or leases property for the purpose of operating a short-term rental, including any lien holder or any other person with a financial interest in the short-term rental.

Owner occupied means a property owner, as reflected in title records, who makes his or her legal residence at the site or in the unit, as evidenced by homestead exemption, voter registration, vehicle registration, or similar means.

Operator occupied means a property lessee, as reflected in a valid lease agreement, and with the express permission of the property owner, who makes his or her legal residence at the site or in the unit, as evidenced by voter registration, vehicle registration, or similar means.

"Registered agent" means the person identified by the owner of the short-term rental, as the 24-hour operator, in the registration filed pursuant to this chapter that is authorized to receive on behalf of the owner any legal process and/or notice required or provided for in this chapter.

Short-term rental shall be as defined in Title 20 of the El Paso City Code.

Short-term rental permit means the permit issued by the city that identifies; the subject property as a lawful short-term rental, the short-term rental permit number, the names and contact information of the owner, operator, and agent if applicable, and 24-hour emergency contact phone for at least one of the preceding.

Sleeping area means a room within a dwelling designed or used for sleeping, including a bedroom. Tents, hammocks, recreational vehicles and/or other vehicles and outdoor areas shall not be considered a sleeping area.

5.19.030. Authority of the director.

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

5.19.040. Permit required.

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

5.19.050. Short-term rental permit.

- (a) *Application.* Application for a short-term rental permit shall be made either in writing or electronically. Upon submission of a complete application, the Director of the Planning and Inspections Department, or his designee, shall determine whether a unit is to be considered a (Type 1) or (Type 2). Application for a short-term rental permit shall be accompanied by a one-time application fee as prescribed by the FY Schedule C in effect on the permit submittal and shall, at a minimum, include the following information:

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- (1) A list of all owners, operators, and agents (if applicable) of the short-term rental including names, addresses, current email address(es) of owner/operator, and telephone numbers.
 - (2) A site plan identifying the location of the available parking spaces as required by Title 20, Appendix C -Table of parking requirements.
 - (3) A floor plan, which identifies sleeping areas with size and location of emergency escape and rescue opening, proposed maximum number of guests, evacuation route(s), and location of fire extinguisher(s).
 - (4) The name, address and 24-hour telephone numbers of a contact person, who is the owner, operator, or designated agent and who shall be responsible and authorized to respond to complaints concerning the use of the short-term rental.
 - (5) Written confirmation from the City of El Paso Office of the Comptroller showing proof of registration for Hotel Occupancy Tax collection will be need to be provided before permit is granted.
 - (6) A sworn, self-certification that the owner of the short-term rental has met and will continue to comply with the standards and other requirements of this article including, but not limited to: maintenance of insurance coverage of the unit or portions thereof in accordance with this article and obtaining annual independent inspections of required fire extinguishers in compliance with the city's current fire code.
- (b) *Completeness of application.* Applications shall not be considered complete until all documentation required under this chapter has been submitted, and until the full application and permit fees have been paid. Incomplete applications will not be accepted.
- (c) *Acknowledgement by applicant.* In connection with submission of the application, each applicant shall acknowledge that any permit granted by director under this article does not supersede any property-specific restrictions against short-term rentals that may exist under law, agreement, lease, covenant or deed restriction.

5.19.060. Expiration and renewal of permit.

- (a) Unless revoked by director earlier pursuant to this article, a permit to operate a short-term rental expires, as follows:
- (1) (Type 1) permits expire one (1) year after the date of issuance
 - (2) (Type 2) permits expire one (1) year after the date of issuance
- (b) A permit holder shall apply for renewal prior to the expiration of the permit on a form provided by the department. The permit holder shall update the information contained in the original permit application required under section 5.19.050 of this chapter or any subsequent renewals under this section, if any of the information has changed. The permit holder shall sign a statement affirming that there is either no change in the information contained on the original permit application and any subsequent renewal applications, or that any information that has been updated is accurate and complete. Complete applications for renewal received

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after the expiration of a current permit shall be treated as applications for a new permit, as described in section 5.19.050.

- (c) The director shall follow the procedures set forth in this chapter when determining whether to renew a permit.
- (d) The fee for the renewal of a permit to operate a short-term rental shall be as prescribed by the FY Schedule C in effect on the permit submittal

5.19.070. Non-transferability.

A permit to operate a short-term rental is not transferable to another owner, operator, unit or location.

5.19.080 Types.

- (1) Short Term Rental, Type 1. “Type 1 Short Term Rental” means a single-family detached dwelling, single-family attached dwelling, accessory dwelling unit, or two-family dwelling unit where sleeping areas are rented to overnight guests for a period of less than 30 days, but not less than 12 hours and there are no employees on-site. The Type 1 Short Term Rental shall be located on a parcel with a unique property identification number.
- (2) Short Term Rental, Type 2. “Type 2 Short Term Rental” means a multifamily dwelling where sleeping areas are rented to overnight guests for a period of less than 30 days, but not less than 12 hours and there are no employees on-site.

If a permit for a short-term rental meets the requirements for renewal under section 5.19.060 (Expiration and renewal of permit) and the property received a city-issued notice of violation related to the life, health, or public safety of the structure, the property is subject to an inspection by the building official to determine if the structure poses a hazard to life, health, or public safety.

5.19.090. General standards.

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

- (a) *Occupancy.* To avoid overcrowding in short term rentals, the maximum number of persons allowed to reside in a short-term rental shall be calculated in accordance with Section 404.4.1 (Room area) of the City of El Paso Property Maintenance Code.
 - a. Every space that will be utilized as a bedroom shall contain no less than 70 square feet and;
 - b. Every bedroom to be occupied by more than one person shall contain not less than 50 square feet of floor area for each occupant.
- (b) *Parking.* Shall comply with City Code Title 20, Chapter 20.14 and Appendix C – Table of Parking Requirements and Standards. Parking spaces on public right-of way shall not be

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permitted to be utilized to meet the minimum parking requirements. The yard(s) shall not be utilized to provide the necessary parking.

(c) *Insurance.* The applicants shall keep, at a minimum, an insurance policy sufficient for personal injury liability of guests.

(d) *Life safety.*

(1) Short-term rentals and structures where they are located shall conform to all applicable city-adopted codes, regulations, and ordinances.

(2) A 2A:10B:C type fire extinguisher (a standard five-pound extinguisher) shall be properly mounted within seventy-five (75) feet of all portions of the short-term rental on each floor.

(3) Smoke and carbon monoxide detectors shall be installed and conform to all applicable city-adopted codes, regulations, and ordinances.

(4) Every sleeping area shall have at least one operable emergency escape and rescue opening per all applicable city-adopted codes, regulations, and ordinances.

(5) An evacuation plan shall be posted conspicuously in each unit or permitted sleeping area.

(6) Every bedroom/sleeping area in a short-term rental that does not comply with this section shall not be used as a sleeping area and where equipped with a door, shall remain locked at all times when the dwelling is being used as a short-term rental. Such a non-compliant sleeping area shall not be included in the maximum occupancy calculation as defined by the City Of El Paso Property Maintenance Code for the short-term rental. The owner/operator shall notify every occupant, in writing, that the non-compliant sleeping area may not be used for sleeping.

(d) *Conduct on premises.*

(1) Short-term rental operators shall be responsible for informing their occupants of all relevant city codes and occupants' liability for violations of same.

(2) Excessive noise or other disturbance outside the short-term rental is prohibited per Title 9, Chapter 9.16 and Chapter 9.40 of the City Code. This includes, but is not limited to, decks, portals, porches, balconies, patios, hot tubs, pools, saunas or spas.

(3) No overnight sleeping outdoors or outdoor sleeping spaces for rent.

(e) *Signage.*

(1) Signage shall be in compliance with Title 20, Chapter 20.18, of the City Code as well as any design, design review, and/or approval requirements for the zoning district in which the property is located.

(2) All advertisements, including online or proprietary (website, app, or other technology) will include the short-term rental permit number within the description or body for public reference.

(f) *Tenant indoor notification.* The operator shall post in a conspicuous location of the dwelling the following minimum information:

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- (1) Maximum number of occupants.
 - (2) Location of required off-street parking, other available parking and prohibition of parking on landscaped areas.
 - (3) Quiet hours and noise restrictions as applicable per Title 9, Chapter 9.16 and Chapter 9.40 of the El Paso City Code.
 - (4) Restrictions of outdoor facilities.
 - (5) Twenty-four-hour contact person and phone number.
 - (6) Property cleanliness requirements.
 - (7) Trash pick-up requirements, including location of trash cans.
 - (8) Flooding hazards and evacuation routes.
 - (9) Emergency numbers.
 - (10) Notice that failure to conform to the occupancy and parking requirements is a violation of the City Code and occupant or visitor can be cited.
 - (11) Short-term rental permit, health department permit, and/or any other required permits, if applicable.
 - (12) Hotel occupancy tax registration.
- (g) *Hotel occupancy tax.* Owner or operator must remit all applicable state, county, and city hotel occupancy taxes in a timely manner, pursuant to applicable laws and this article.

5.19.100. Inspections.

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

- (a) Inspections upon complaint or suspicion of a violation. The city may perform inspections when a violation is reported or suspected in accordance with established code enforcement procedures.

5.19.110. Enforcement/penalty.

- (a) A person commits an offense under this chapter if that person owns or operates a short-term rental in the city without a valid permit.
- (b) *Emergency contact.* The owner/operator of the short-term rental shall provide the city with a 24-hour contact number for the operator or a designated agent per section 5.19.050, and shall provide timely updates to city of any changes thereto. Should a law enforcement officer respond to the short-term rental and issue a citation for any violation of city ordinances, the operator or their agent shall be called by the officer. The operator or their agent shall attempt to contact the occupants within one hour of the call to address the occupants about the complaints. Should a second complaint be filed and citation issued to any part of the occupants or guests, the owner/operator must take appropriate steps, in accordance with the

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individual rental agreement, to assure future complaints do not occur. Failure to provide updated information to the city regarding designated agent or responsible party shall be a violation of this section.

- (c) Short-term rental permits shall be revoked if three (3) or more confirmed citations are issued at a permitted property within any six (6) month period, whether issued to the operator or any occupants.
- (d) Violation of any section of this article shall constitute an offense resulting in permit revocation in accordance with subsection 5.19.120, revocation procedures.
- (e) Failure to timely pay any applicable hotel occupancy tax is a violation of this section, and shall result in permit revocation if arrearage is not paid within ninety (90) days of the issuance of a delinquency notice, in accordance with subsection 5.19.120, suspension and revocation procedures.
- (f) Failure to successfully complete the renewal process of a short-term rental permit is considered a violation of this section.
- (g) The provisions of this subsection are in addition to and not in lieu of any criminal prosecution or penalties as provided by city ordinances, county, or state law.
- (h) Violation of the terms and conditions of a short-term rental permit under this chapter shall be punishable by a fine of not less than two hundred dollars (\$200.00) but not more than five hundred dollars (\$500.00) per occurrence. Penalties for other violations of the city code shall be as applicable. Each day a violation of this chapter continues shall be considered a separate offense. Each day that a unit is occupied in violation of this chapter shall be considered a separate offense, and, upon conviction, shall be subject to a minimum fine of two hundred dollars (\$200.00) to a maximum fine of five hundred dollars (\$500.00) per violation, per day.
- (i) For each day any violation of this chapter occurs it shall constitute a separate offense and is separately punishable, but may be joined in a single prosecution.

5.19.120. Suspension and Revocation procedures.

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

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

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5.19.130. Appeals of denial, suspension and revocation.

A. If the director denies issuance or renewal of a permit or suspends or revokes a permit issued under this chapter, the action is final unless the permit holder files a written appeal within ten (10) business days as provided in Section 5.01.090 of the El Paso City Code.

b. Notwithstanding Section 5.01.090 of the El Paso City Code, the city manager or designee's decision is subject to review by the city council. The applicant may appeal the decision of the city manager or designee to the city council by submitting a written appeal to the city clerk within ten days of the city manager or designee's decision. Within ten days after receiving the appeal, the city clerk shall notify the appellant of the time and place of the hearing before city council, which shall be as soon as practicable, but no longer than thirty days after receipt by the city clerk of the written appeal. The city council shall affirm, reverse, or modify the decision of the city manager or designee. The decision of the city council shall be final.

5.19.140. Other restrictions on use of premises.

This chapter does not create any right to operate a short-term rental in violation of any lease, license, deed restriction, covenant, easement, or other legal encumbrance. Unless expressly authorized by the city, any property which has received a city housing incentive is ineligible to receive a permit to operate a short-term rental during the period of time that the property owner (or third-party beneficiary, as the case may be) is eligible to receive a city housing incentive.

SECTION 2. Except as herein amended Title 5 (Business License and Permit Regulations), Chapter 5.19 (Short Term Rentals) of the El Paso City Code shall remain in full force and effect.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

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ADOPTED this _____ day of _____, 2023

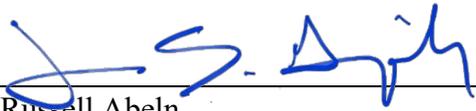
THE CITY OF EL PASO

Oscar Leeser, Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

For 

Russell Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:



Philip F. Etiwe, Director
Planning & Inspections Department

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