

**PENAL ORDINANCE NO. 446**

**AN ORDINANCE OF THE CITY COUNCIL OF LUFKIN, TEXAS, AMENDING THE CODE OF ORDINANCES BY ADDING REQUIREMENTS FOR OWNERS OF PROPERTIES USED AS SHORT-TERM RENTALS; ESTABLISHING REQUIREMENTS AND REGULATIONS FOR USE OF THE RESIDENTIAL PROPERTY AS A SHORT-TERM RENTAL; DEFINING TERMS; PROVIDING FOR A PENALTY CLAUSE, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of Lufkin does not currently have an ordinance regulating Short-Term Rentals located within the City; and

**WHEREAS**, there has been an increase of fifty-five (55%) in the number of Short-Term Rentals in the City of Lufkin in one year; and

**WHEREAS**, the City Council finds that there are certain owners of residential Short-Term Rental properties within Lufkin who do not provide adequate contact information and some owners who may reside outside City limits; and

**WHEREAS**, currently, there are at least forty (40) owners of certain residential Short-Term Rental properties who do not pay the required hotel-motel occupancy tax, even if collected by on-line booking sites; and

**WHEREAS**, the City Council desires to preserve and enhance residential neighborhoods and property values; and

**WHEREAS**, the City Departments of Finance and Planning as well as the City Council of Lufkin, Texas have investigated and determined that it would be advantageous, beneficial and in the best interests of the citizens of Lufkin, Texas to amend the Lufkin Code of Ordinances by adding requirements for owners of residential properties used as Short-Term Rentals; and

**WHEREAS**, Section 92.208 of the Texas Property Code allows a municipality to adopt an ordinance that conforms with the provisions of the Texas Property Code, Ordinance 92, Sub Ordinance E, relating to the disclosure and ownership and management of a Short-Term Rental dwelling; and

**WHEREAS**, the City of Lufkin has additional powers to adopt ordinances within its home-rule authority.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUFKIN, TEXAS:**

Section I: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section II: Amendment to the City of Lufkin Code of Ordinances.

**REQUIREMENTS FOR OWNERS OF RESIDENTIAL PROPERTIES USED AS SHORT-TERM RENTALS**

**Purpose.**

The purpose of these regulations is to provide a set of standards governing the renting or leasing of residential property on a short-term basis ("Short-Term Rentals or STR") in the City of Lufkin. The regulations contained herein will help ensure that Short-Term Rental activities do not become a nuisance or threaten the public health, safety, or welfare of guests and neighboring property owners while helping to maintain long-term property values in the City. These regulations will aid in the enforcement of applicable laws and ordinances.

## **Definitions.**

As used in this Ordinance, the following definitions apply:

*City of Lufkin* or “City” or *designee* means the City of Lufkin or the department(s) or division(s) of the City designated by the City Manager to administer and/or enforce the provisions of this Ordinance and any person(s) designated by such department or division to represent the department or division for said purpose.

*Guest or Occupant* means a person contracting with an owner, either directly or through a Short-Term Rental listing service, for use of a residential dwelling or premises as a Short-Term Rental and such person's invitees occupying the short-term rental. “Guest” or “occupant” includes any individual person living, sleeping, or possessing a Short-Term Rental premise, or portion thereof for any portion of the time during which the rental agreement for the STR authorizes such possession. A person is not required to be paying rent, providing in-kind services, or named in any lease, contract, or other legal document to be considered a guest.

*Owner or Operator* means, in addition to such person or entity, any person having a legal or equitable interest in real property or identified in the official real property records of the county in which the real property is located as holding title to real property or otherwise having control of real property, including the guardian of the estate of such person and the executor or administrator of the estate of such person. The term “owner” does not include the holder of a non-possessory security interest in real property.

*Person* means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, fiduciaries and any other organization or entity of whatever character.

*Premises* means the property, a lot, plot, or parcel of land, including any structures or portions of structures thereon.

*Short-Term Rental* or *STR* means a dwelling that is (a) used or designed to be used as place where a person may reside, including a single-family dwelling, garage apartment, guest house or condominium or cooperative; and (b) rented wholly or partly for a fee and for a period of less than thirty (30) consecutive days. The term “short-term rental” does not include a premises that is used for a nonresidential purpose, including an educational, health care, retail, restaurant, banquet space or event center purpose or another similar use, or a bed-and-breakfast or hotel as defined in the comprehensive Zoning Ordinance of the City of Lufkin, as amended.

*Short-Term Rental or STR (Hosted)* means a dwelling unit where the owner with the majority of interest in the residential property, or an owner holding an equal share interest if no other owner owns a greater interest, occupies a dwelling unit as his or her principal residence and offers the dwelling or habitable portion thereof for transient occupancy by others, and is present during the occupancy of the “Hosted short-term rental.”

*Short-Term Rental or STR (Non-hosted)* means a dwelling unit where the owner with the majority of interest in the residential property, or an owner holding an equal share interest if no other owner owns a greater interest, does not occupy the dwelling unit as his or her principal residence and offers the entire dwelling for transient occupancy by others and is not present during the occupancy of the “Non-Hosted short-term rental.”

*Short-Term Rental listing service* means a person that participates in the Short-Term Rental business by facilitating and/or collecting a fee for booking services through which an owner may offer Short-Term Rentals to potential guests. Short-Term Rental listing services usually, though not necessarily, provide booking services through an online platform that allows an owner to advertise the premises through a website or mobile application provided by the Short-Term Rental listing service and the Short-Term Rental listing service conducts a transaction by which potential guests arrange their use and their payment, whether the potential guest pays rent directly to the owner or to the Short-Term Rental listing service.

*Accessory Dwelling Unit (“ADU’s”)* means a small dwelling on the same grounds as, or attached to, a single-family house. It can be an apartment or stand-alone house in the backyard. ADU’s may not have separate addressing or utilities than the primary home.

*Home Exchanges* means “house swapping” which is a form of lodging in which two parties agree to offer each other homestays for a set period of time.

*Hotel Occupancy Tax* means the tax provided in Chapter 351 of the Texas Tax Code, as they exist or may be amended and any successor ordinance or laws of the State of Texas.

### **Applicability.**

This Ordinance shall apply to Short-Term Rental properties as defined herein. The regulations set forth in this Ordinance are independent from and do not apply to other special uses that may be regulated by other zoning standards, such as hotels, motels, bed and breakfast inns, lodging houses, and boarding houses. In addition, these regulations do not apply to “home exchanges” as defined herein. Legally restricted affordable housing units shall not be used as Short-Term Rentals.

No person shall offer any dwelling on residential property for transient occupancy of less than thirty (30) days as a Short-Term Rental property unless a permit to operate a Short-Term Rental (“Short-Term Rental permit”) is obtained pursuant to this Ordinance. Minimum stay is one (1) night.

### **Registration requirements.**

1. No Short-Term Rental shall operate within the City without a current, valid Short-Term Rental registration permit. All individual units having cooking, sleeping, and bathing facilities within common buildings, regardless of ownership, shall require a separate, individual registration permit for each unit intended to be used as a short-term rental. A person commits an offense if that person operates a Short-Term Rental in the City without a valid registration permit for such short-term rental. A Short-Term Rental registration permit is nontransferable and may not be assigned to another person or premises. If there is a change in ownership, the previous owner must notify the City of Lufkin within thirty (30) days.
2. A person who desires to operate a Short-Term Rental shall submit a written application for a Short-Term Rental registration to the City of Lufkin on a form available from the City directly or through the City's on-line registration portal. Each application for Short-Term Rental registration shall be accompanied by a non-refundable registration fee established by resolution of the City Council.
3. An application shall be considered complete when all documentation required by this Ordinance has been provided and the registration fee has been paid. Incomplete applications will not be accepted. Not later than thirty (30) days after receipt of the registration application, the City of Lufkin shall either issue a permit of registration or notify the applicant that the application does not comply with the requirements of this Ordinance.
4. Unless earlier suspended or revoked by the City of Lufkin pursuant to this Ordinance, a Short-Term Rental registration permit expires on the last day of the calendar year after the expiration of two (2) years. A registration permit holder shall apply for renewal prior to the expiration of the registration permit on a form provided by the City of Lufkin.
5. Upon receipt of a complete application for renewal of a Short-Term Rental registration, the City of Lufkin may deny the renewal of a Short-Term Rental registration if it is determined that the registration permit was issued in error or based on incorrect or false information supplied by the applicant, or if there are grounds for suspension or revocation as provided for in this Ordinance. It shall be unlawful for any person to file a false registration application with the City of Lufkin.
6. The owner and/or operator of a Short-Term Rental that has had a registration permit revoked for a premise are ineligible to apply for a Short-Term Rental registration for such premises for a period of one (1) year from the date of such revocation. A premise for which a registration permit has been revoked is ineligible for registration regardless of the owner or operator of the Short-Term Rental at such premises for a period of one (1) year from the date of such revocation.

### **Designation of Responsible Party.**

1. An owner or occupant must designate the name and contact information of a local responsible party who can be contacted regarding immediate concerns and complaints from the public about a short-term rental. Said individual must be available to be reached in person, or by phone at all times while guests are on the premises of a Short-Term Rental.

2. If called, a local responsible party must be able to and shall be present at the premises within one hour of a phone call or other notification from the City of Lufkin, the Lufkin Police Department, any City employee or the host compliance representative designated by the City. The local responsible party must be authorized to respond to complaints concerning the Short-Term Rental and make decisions regarding the premises and its Guests within one (1) hour or less.
3. The owner shall provide timely updates to the City of any changes to the name, address and twenty-four (24) hour telephone number of the contact person who is the owner, operator, or designated agent responsible and authorized to respond to complaints concerning the Short-Term Rental within one hour or less. Should a law enforcement officer or code enforcement official respond to the premises of a Short-Term Rental and issue a citation or notice of violation for any violation of City Ordinances or other law, such responsible person may be contacted by the officer or designee.
4. The responsible person shall attempt to contact the Guests within one hour of any contact from the City or the host compliance representative designated by the City to address the Guests about the complaints. It shall be unlawful for the owner of a Short-Term Rental to fail to provide updated information to the City regarding a twenty-four (24) hour contact person.

#### **Guest Safety Notification & Minimum Requirements.**

1. Each owner of a Short-Term Rental shall provide to guests a brochure or letter and post or leave it in a conspicuous location in the Short-Term Rental the following minimum information:
  - a. The unique Short-Term Rental Permit number assigned to the Short-Term Rental unit;
  - b. The owner or operators name and phone number;
  - c. Local contact person's twenty-four (24) telephone number of the designated local responsible party under this Ordinance;
  - d. Pertinent neighborhood information including, but not limited to, noise restrictions, trash collection schedules and location of required off-street parking, other available parking, and prohibition of parking in the yard and on unapproved surfaces;
  - e. Instructions to guests regarding disposal of garbage and handling/location of garbage containers;
  - f. Notification that the guests are responsible for compliance with all applicable laws, rules and regulations pertaining to the use and occupancy of the Short-Term Rental and that guests may be fined by the City for violations of this Ordinance;
  - g. Information to assist guests in the case of an emergency posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services and instructions for obtaining severe weather, natural or manmade disaster alerts and updates and location of exits.

#### **Conditions of Approval.**

Short-Term Rental permits are issued at the sole discretion of the City of Lufkin and are subject to the following conditions:

1. Prior to the issuance of a Short-Term Rental permit, the owner or operator shall allow an on-site inspection of the Short-Term Rental unit by City staff to ensure compliance with the City's Ordinances and State law.
2. The Short-Term Rental permit is issued to one owner or occupant of the residential property even if the property has multiple owners.
3. The owner must demonstrate full conformance with the Federal, State, Local laws and the Lufkin Code of Ordinances including, but not limited to:
  - a. Including filing timely and accurate hotel and motel occupancy tax returns and remitting any tax and any penalties and interest due as required; and

b. This Ordinance.

1. When requested by the City, the Short-Term Rental must demonstrate annual Short-Term Rental activity, as evidenced by accurate reporting and full remittance of transient occupancy taxes owed to the City.
2. The owner shall ensure that all advertising, including, but not limited to, in any written publication or on any online website, or any other medium that lists or offers the availability or existence of the Short-Term Rental property, shall include the City-issued Short-Term Rental permit number, if permitted by the hosting site.
3. All Short-Term Rental properties shall be registered and comply with the City's residential rental inspection program. Short-Term Rental properties shall complete any corrections found during any inspections within a reasonable time period, as determined by the City of Lufkin.
4. Any eligible Short-Term Rental property must not be subject to any outstanding building, electrical, plumbing, fire, health, housing, police, or planning code violations or enforcement actions, including any notices of violation, notices to cure, orders of abatement, cease and desist orders, or correction notices. If such a violation occurs while a dwelling unit is subject to a Short-Term Rental permit, the City shall suspend and/or revoke the Short-Term Rental property's registration and registration number if any and all violations have not been cured.
5. A prior revocation of a Short-Term Rental permit will disqualify the applicant in being able to apply for a subsequent Short-Term Rental permit for any residential property for two (2) years from the date of the prior revocation.
6. Most general homeowners' policies exclude uses for Short-Term Rentals. Therefore, if requested by the City, the owner or occupier of a Short-Term Rental shall provide proof of insurance coverage.

#### **Other Restrictions on Use of the Premises**

This Ordinance does not create any right to operate a Short-Term Rental in violation of a lease, license, deed restriction, covenant, easement or other legal encumbrance.

#### **Permit and Re-inspection Fees.**

The City of Lufkin shall assess fees for a Short-Term Rental registration permit, as set by the City Council as follows:

- \$100.00 per property address to be renewed every two (2) years.
- Re-Inspection Fee (if necessary) \$35.00

Fees set forth in this section may be adjusted each year by the City Council, reflecting the costs of administering the Short-Term Rental permit, and enforcing the requirements of this Ordinance.

#### **No Property Right.**

The issuance of a Short-Term Rental permit or any renewal thereof does not give the permittee any vested property rights and is not a covenant that runs with the land.

The permittee shall notify the City of Lufkin in writing no later than thirty (30) days prior to any changes in ownership that may affect the validity of the permit. Failure to provide notice to the City has no effect on the City's right to enforce this provision or this Ordinance.

## **Existing & New Short-Term Rental Permits, Eligibility.**

1. **Existing Short-Term Rentals.** Hosted and Non-Hosted.
  - a. Commencing from the effective date of this Ordinance, an owner of a Hosted or Non-Hosted Short-Term Rental, which meets the definition of an existing short-term rental, as defined in this Section, will be eligible to apply for a Short-Term Rental permit.
  - b. An existing Short-Term Rental is subject to all applicable conditions specified in this Ordinance and all Federal, State and Local laws.
2. **New Non-Hosted Short-Term Rentals.** New Non-Hosted Short-Term Rentals will be allowed if properly inspected and permitted. Non-Hosted Short-Term Rentals are subject to the conditions described in this Ordinance, including, designating a local representative and contact person for the unit who can respond within one hour, if needed.
3. **Application and Priority.** Owners of existing Short-Term Rentals, hosted and non-hosted, shall submit all application requirements within one-hundred twenty (120) days following the effective date of this Ordinance.
4. **Retroactive Payment of Hotel/Motel Occupancy Tax-Not Required.** The City shall not require existing hosted and non-hosted Short-Term Rental owners to pay retroactive hotel/motel occupancy taxes. However, payment shall be required for all Short-Term Rentals operating after the effective date of this Ordinance.

## **Properties with Accessory Dwelling Units.**

Short-Term Rentals are generally permitted in an accessory dwelling unit or in the main house of an accessory dwelling unit property subject to the provisions of this Ordinance and Federal, State and Local laws. Accessory Dwelling Units (ADU's) may not have separate addressing or utilities than the primary home.

## **Property Development Standards**

1. **Parking.** On-site parking must comply with the minimum residential standards for the site. Where a parking reduction has been granted for a shared-use or mixed-use property, these properties will be reviewed by the City of Lufkin for evaluation of impacts to neighborhood. The City of Lufkin shall determine, pursuant to the Zoning Ordinance of the City of Lufkin whether any noncompliance with residential parking standards is of such significance to the neighborhood to deny a Short-Term Rental permit.
2. **Number of Allowed Short-Term Rentals.** Only one (1) Short-Term Rental is allowed per assessor's parcel number.
3. **Dwelling Expansion.** Additions to or expansion of Short-Term Rental properties shall be subject to development standards pursuant to the zoning district and all applicable building codes within which the subject property is located. Additions or expansions that increase the unit's parking requirements shall require Planning Department permit review to ensure compliance with applicable zoning code parking standards.

## **Operational Standards.**

The following standards shall apply to all existing and new Short-Term Rentals:

1. **Maximum Overnight Occupancy.** Overnight occupancy for Short-Term Rentals shall be a maximum of two (2) persons per bedroom, plus two (2) additional persons in the unit regardless of the age of the Guest. However, in no case shall maximum occupancy exceed a combined total of twelve (12) Guests. Maximum occupancy under this section is only applicable to the number of persons eighteen (18) years of age and older that are renting

the temporary transient lodging for a specified period of occupancy, and excludes any other persons visiting the Guests at the location for temporary transient lodging.

2. **Rental Agreements.** Only one (1) rental agreement may be in effect in a Short-Term Rental at any one time.
3. **Maximum Number of Vehicles.** The maximum number of vehicles allowed at the Short-Term Rental shall be limited to: a total of one (1) vehicle per one (1) bedroom unit, a total of two (2) vehicles per two (2) or three (3) bedroom unit, and one (1) additional vehicle per additional bedroom for units in excess of three (3) bedrooms.
4. **Quiet Hours.** All Short-Term Rental Guests shall be required to follow all standards set forth in the Lufkin Code of Ordinances. Quiet hours shall be between the hours of 10:00 p.m. and 8:00 a.m.; this shall include all amplified noise.
5. **Trash and Solid Waste.** Each Short-Term Rental shall provide the minimum of one (1) ninety-six (96) gallon bulk garbage container capacity or equivalent, for every six (6) occupants, based on the maximum permitted occupancy for the Short-Term Rental. This requirement does not apply to those properties that utilize commercial trash pickup or dumpsters.
6. **Special Events.** Short-Term Rentals are intended to be overnight accommodations in residential neighborhoods. They are not meant to host weddings, parties, or other large engagements. Special events are not allowed in Short-Term Rentals.
7. **Signs.** Signs are not permitted for Short-Term Rentals within residentially zoned districts.
8. **Federal, State and Local Laws.** The owner and occupants shall abide by all Federal, State and Local laws and the Lufkin Code of Ordinances.

### **Owner and Parcel Limitations**

The following limitations apply:

1. A limit of one (1) Short-Term Rental is allowed per each unique assessor parcel number assigned to a residential property; and
2. Only one (1) owner associated with a Short-Term Rental property is eligible for a Short-Term Rental permit. It shall be unlawful for any other person, even if that person meets the qualifications of an owner, to offer the residential property as a Short-Term Rental property; and
3. All new hosted Short-Term Rentals shall be located in the unit that is the principal residence of the owner.

### **Insurance Requirements**

The owner or operator of a Short-Term Rental shall maintain primary commercial liability insurance coverage in the aggregate amount of one million dollars (\$1,000,000.00) or more, or alternatively, conduct each Short-Term Rental transaction through an on-line hosting platform that provides equal or greater primary liability insurance coverage for the premises. The owner or operator shall provide proof of same, if requested by the City of Lufkin, Texas.

### **Revocation of Registration Permit; Appeal; Administrative Process**

1. **Revocation of registration permit.** The City of Lufkin is entitled to suspend or revoke a registration permit required by this Ordinance or for repeated violations of any of the requirements of this Ordinance or other applicable laws relating to public health, safety, or welfare and/or for interference with law enforcement officers in the performance of their duties. Prior to suspension or revocation, the City of Lufkin shall notify the registration permit holder in writing of the reason for which the registration permit is subject to

suspension or revocation and that the registration permit shall be suspended or revoked at the end of the tenth (10<sup>th</sup>) calendar day following service of such notice unless a written request for an appeal to the City Manager is submitted to the City of Lufkin by the registration permit holder within such ten (10) calendar day period referred to in the notice. If no request for an appeal is filed within the ten (10) calendar day period referred to in the notice, the suspension or revocation of the registration permit becomes final.

2. **Appeals.** If appealed, at least five (5) business days before the appeal hearing occurs, the City shall provide the registration permit holder with notice of the time and place of the hearing. The registration permit holder shall be entitled to attend and be heard at the hearing. The City Manager, or designee shall hear and rule on the appeal within thirty (30) calendar days after notice of the appeal. The City Manager shall have the power to reverse a decision of the City of Lufkin on the basis that such decision was not meritorious and that such a reversal will not adversely affect the public health, safety, or welfare. The decision of the City Manager is final. The City Manager's failure to act on any such appeal shall constitute approval of the decision by the City of Lufkin.
3. **Administrative process.** A notice required by this section is properly served when it is delivered to the registration permit holder via hand-delivery, or when it is sent by registered or certified mail, return receipt requested, or when it is sent via courier service that provides a return receipt showing the date of actual delivery to the last known address of the registration permit holder.
4. **Remedies.** The remedies provided herein shall be cumulative and not exclusive. No remedy provided in this Ordinance shall be deemed to be a prerequisite to the taking of any other action provided for herein.

### **Compliance & Penalties**

1. It shall be unlawful for any person or entity to violate any provisions of this Ordinance. Proof that a violation has occurred shall create a rebuttable presumption that the Owner has committed the violation. Violations of this Ordinance may result in a Class C misdemeanor offense with fines assessed as follows:
2. For advertising a property for Short-Term Rental (online or off-line) without first having obtained an inspection and permit complying with the local listing requirements, failure to have a local representative or for violating any other provision of this Ordinance: 1<sup>st</sup> violation: \$200; 2<sup>nd</sup> violation; \$400 and third and subsequent violations \$500. Upon the 3<sup>rd</sup> violation in a twenty-four (24) month period, the City may suspend or revoke the permit.

### **SECTION III. Conflicting Ordinances**

All ordinances or amendments or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

### **SECTION IV. Effective Date**

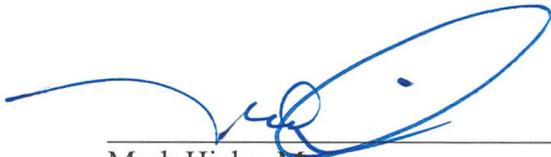
This Ordinance shall take effect immediately from and the after the passage and publication in accordance with the provisions of the City Charter.

### **SECTION V. Savings Clause**

That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance

APPROVED on First Reading this the 15<sup>th</sup> day of August, 2023.

CITY OF LUFKIN, TEXAS



Mark Hicks, Mayor

ATTEST:

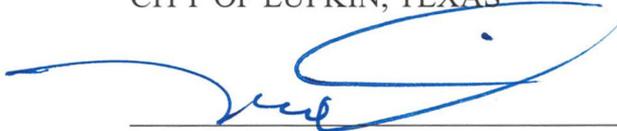


Kara Andrepont, City Secretary

APPROVED on the Second and Final Reading this the 5<sup>th</sup> day of September, 2023.



CITY OF LUFKIN, TEXAS



Mark Hicks, Mayor

ATTEST:



Kara Andrepont, City Secretary

APPROVED AS TO FORM:



Kristi C. Skillern, City Attorney