



**City of New Braunfels, Texas Testimony to the
Texas Legislature – 85th Regular Session, 2017
House of Representatives
Committee on Urban Affairs
Regarding HB 2551 – Relating to regulation of
short-term rentals by municipalities and counties**

Madam Chair, Committee members, thank you for the opportunity to testify on HB 2551. My name is Christopher Looney and I am the Planning and Community Development Director for the City of New Braunfels.

New Braunfels is a significant tourist destination and has been for decades. Our rivers, local water-recreation amenities, community events, and significant water park attract visitors from across the state and nation. It is not surprising that New Braunfels may have been one of the first Texas cities to begin experiencing the impact of short term rentals, both on our economy and on our neighborhoods. Short-term rentals in New Braunfels tend to be homes that owners rent out to visitors for less than 30 days, with no on-site management.

To address concern from our citizenry, in 2011 New Braunfels adopted zoning rules related to short-term rentals. The concern was born out of experiences with rowdy renters who have little interest in neighbor safety or tranquility, nor any inherent respect for the property they rent. Behavior exhibited by short-term renters was having the immediate effect of disturbing neighbors, and the damaging long term effect of changing the character of

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their own local issues. We view this as a success and would not want to see this undone by pre-emption of our local zoning ordinances.

Finally, there is some confusion with the wording of the bill as currently drafted; specifically subsection (e) which states cities can “apply local law regulating land use to a short-term rental in the same manner as another similar property”. Does this mean cities can continue to require short-term rentals only be allowed in certain commercial zoning districts or with our SUP process? Or, does it require us to allow them by right in residential zoning districts?

The foundation of a neighborhood is built upon its residents. Neighborhood Watch, Crime Stoppers, and all other community support networks are products of long term residential users and not those staying for the weekend. We have seen our historic neighborhoods, some platted 170 years ago, grow in value and maintained through long term residential use. Very few of these older neighborhoods have deed restrictions; they rely on our city zoning. We respectfully request the committee consider allowing cities to continue to specify in which zoning districts short-term rentals are or are not permitted pursuant to our own unique local situations, economies, preferences, and precedents.

Thank you very much for your time and consideration.

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City of New Braunfels, City Code
Chapter 144 - Zoning

Sec. 144-5.17. - Short term rental or occupancy.

5.17-1. *Purpose.* This section is intended to provide a procedure to allow the rental of private residences to visitors on a short term basis, while ensuring that such rental use does not create adverse impacts to residential neighborhoods due to excessive traffic, noise, and density. Additionally, this section is intended to ensure that the number of occupants within such rental units does not exceed the design capacity of the structure to cause health and safety concerns, and that minimum health and safety standards are maintained in such units to protect visitors from unsafe or unsanitary conditions.

5.17-2. *Definitions.*

Adult means an individual 17 years of age or older.

Bedroom means a room designated and used primarily for sleeping and rest on a bed.

Floodway means the channel for a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Non-residential district means the following zoning districts: R-3, R-3L, R-3H, MU-A, MU-B, C-1, C-1A, C-1B, C-2, C-2A, C-3, C-4, C-4A, C-4B, C-O, M-1, M-1A, and M-2A. This includes all subsequently approved special districts identified as non-residential unless otherwise specified within the special district.

Occupant means the person or persons who have rented the short term rental and their guest(s).

Operator means every natural person, firm, partnership, association, social or fraternal organization, corporation, estate, trust, receiver, syndicate, branch of government or any other group or combination acting as a unit who is the proprietor of a short term rental, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, license or any capacity. Where the operator performs his or her functions through a managing agent of any type of character, other than an employee, or where the operator performs his or her functions through a rental agent, the managing agent or the rental agent shall have the same duties as his or her principal.

Owner means the person or entity that holds legal and/or equitable title to the private property.

Residential district means the following zoning districts: R-1, R-1A-43.5, R-1A-12, R-1A-8, R-1A-6.6, R-2, R-2A, B-1, B-1A, B-1B, TH, TH-A, ZH, ZH-A and SND-1. This includes all special and planned development districts identified as residential unless otherwise specified within the special district.

Resort condominiums means a form of housing tenure and other real property where a specified part of a piece of real estate (usually of an apartment house) is individually owned and rented out for use of persons for less than 30 days while use of and access to common facilities in the piece such as hallways, heating system, elevators, exterior areas is executed under legal rights associated with the individual ownership and controlled by the association of owners that jointly represent ownership of the whole piece.

Resort property means a compound of buildings and facilities located together that provides lodging, entertainment and a relaxing environment to people on vacation. This includes 24-hour security and 24-hour front desk personnel. These units comply with all commercial building code standards.

Short term rental means the rental for compensation of one- or two-family dwellings, as defined in the IRC (International Residential Code), for the purpose of overnight lodging for a period of not less than one night and not more than 30 days other than ongoing month-to-month tenancy granted to the same renter for the same unit. This is not applicable to hotels, motels, bed and breakfasts, resort properties as defined in this chapter or resort condominiums.

Short term rental decal means the decal issued by the city as part of a short term rental permit that identifies the subject property as a short term rental, the short term rental permit number, the owner or

- (1) Each occupant and visitor to a short term rental shall comply with all applicable provisions of the City Code, including, without limitation: noise and disorderly conduct restrictions from chapter 82, Offenses and miscellaneous provisions; litter prohibition from chapter 50, Environment; and others such as parking, and trespassing provisions. No occupant of or visitor to a short term rental shall cause or permit a public nuisance to be maintained on such property. This information shall be included in the rental agreement and inside the short term rental as specified in subsection (7), Tenant indoor notification, below.
 - (2) All occupants shall be informed in writing of relevant city ordinance including, but not limited to, the city's nuisance and water conservation ordinances by the owner/operator of the short term rental.
 - (3) Excessive noise or other disturbance outside the short term rental is prohibited between the hours of 10:00 p.m. and 8:00 a.m. This includes, but is not limited to, decks, portals, porches, balconies, patios, hot tubs, pools, saunas or spas.
 - (4) No sleeping outdoors.
- (f) *Signage.* Signage shall be in compliance with the city's current sign code.
- (g) *Tenant indoor notification.* The operator shall post in a conspicuous location of the dwelling the following minimum information:
- (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.
 - (4) Restrictions of outdoor facilities.
 - (5) 24-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. Including information on the emergency siren system.
 - (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) Other useful information about the community.
- (h) *Rental agreement notification.* The rental agreement between the owner/operator of the short term rental and the occupant shall include by attachment, all of the information provided on the tenant indoor notification signage.

5.17-5. *Short term rental permit.*

- (a) *Application.* Application for a short term rental permit shall be in writing on an application form available in the planning director's office, shall be accompanied by a one-time payment of the fee of \$50.00 and shall include the following information, at a minimum:
- (1) A list of all owners of the short term rental including names, address and telephone numbers.
 - (2) A sketch or narrative describing the location of the available parking spaces as required by subsection d(3), Parking, of this section.
 - (3) A sketch of the floor plan.

officer. The owner/operator 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 step, in accordance with the individual rental agreement, to assure future complaints do not occur. Should three separate citations be issued to an occupant or their guest(s), involving separate occupants under separate rental agreements within a six-month period, the short term rental permit may be revoked in accordance with the revocation process specified in subsection 144-5.17-8, Revocation.

- (b) Violations of any subsection of this section may revoke the short term rental permit in accordance with subsection 144-5.17-8, Revocation.
- (c) Failure to pay hotel occupancy tax timely is considered a violation of this section and may result in revocation of the short term rental permit in accordance with subsection 144-5.17-8, Revocation. Owner shall have 30 days from the date the city or state issue a notice of delinquency to submit delinquent hotel occupancy tax to city and state before revocation of the short term rental permit begins.
- (d) Failure to successfully complete the renewal process of a short term rental permit is considered a violation of this section. Owner shall have 45 days from the date city issues notice of denial to gain compliance of noncompliant items before the revocation of the short term rental permit begins.
- (e) The provisions of this subsection are in addition to and not in lieu of any criminal prosecution or penalties as provided by city ordinances or county or state law.
- (f) Proof. Prima facie proof of occupancy of a dwelling is established in any prosecution for violation of this section if it is shown that vehicles with registrations to persons having different surnames and addresses were parked overnight at the dwelling. Establishment of a prima facie level of proof in this subsection does not preclude a showing of illegal "occupancy" of a dwelling by a person in any other manner.
- (g) Offense. It is an offense for the property owner, any agent of the property owner, or the occupant(s) to directly occupy or indirectly allow, permit, cause, or fail to prohibit an occupancy in violation of this section 144-5.17. Each day that a unit is occupied in violation of this ordinance shall be considered a separate offense, and, upon conviction, shall be subject to a minimum fine of \$500.00 to a maximum fine of \$2,000.00 per violation.
- (h) Each day of violation of said standards and provisions of this section constitutes a separate offense and is separately punishable, but may be joined in a single prosecution.

5.17-8. *Revocation.* If any violations stated in subsection 144-5.17-7, Enforcement/penalty, of this section have been committed and not corrected within the time specified the planning director shall begin the procedures to revoke the short term rental permit in accordance with the following:

- (a) The city shall give 30-day written notice to the owner/operator regarding the public hearing date and recommendation by the planning commission, and public hearing and decision by the city council.
- (b) The city shall provide written notice to property owners within 200 feet of the subject property at least 15 days prior to the hearing.
- (c) If a short term rental permit is revoked, the owner/operator may not reapply for the same property for a period of 12 months.

[5.17-9.] *Abrogation and greater restrictions.* This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 2012-49, § 1(Exh. A), 9-10-12)