



NOTICE OF A REGULAR MEETING
OF THE ZONING COMMISSION
OF THE CITY OF SUNSET VALLEY, TEXAS
WEDNESDAY, AUGUST 25, 2021
7:00 P.M.

Notice is hereby given that the Zoning Commission of the City of Sunset Valley, Texas will hold a Regular Meeting on Wednesday the 25th day of August 2021 at 7:00 P.M. virtually via GoToTraining.

To actively participate in the meeting, please register using the following information:

Registration URL: <https://attendee.gototraining.com/r/6298490104701516034>

Training ID: 535-906-700

To participate using audio only, please call the following:

Long Distance: +1 (510) 365-3231

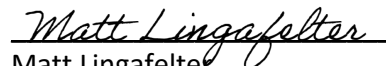
Access Code: 139-902-194

On this date, the following items will be discussed, to-wit:

1. Call to order of the Zoning Commission.
2. Citizen/Public Comments
3. Consider approval of the minutes from the June 16, 2021 called meeting and July 28, 2021 regular meeting.
4. Discussion and possible action on the regulation of short-term rentals within the City of Sunset Valley under Chapter 2 of the Land Development Code.
5. Discussion and possible action regarding accessory structure standards found in Chapter 2 of the Land Development Code.
6. Adjourn

A quorum of the City Council may attend the meeting, however, no official action by the City Council shall be taken.

I certify that the above notice of meeting was posted at City Hall, 3205 Jones Road, Sunset Valley, Texas, on Thursday the 20th day of August 2021 at 6:00 P.M.


Matt Lingafelter
City Secretary

The City of Sunset Valley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.



MINUTES OF A CALLED MEETING
OF THE ZONING COMMISSION
OF THE CITY OF SUNSET VALLEY, TEXAS
WEDNESDAY, JUNE 16, 2021
6:00 P.M.

This meeting was held virtually at: <https://attendee.gototraining.com/r/2852179757515660546>
Training ID: 563-596-156

Members Present:

Robert Skewis, Chair
Brant Boozer
John Frick
Robert Reetz

Staff Present:

Sylvia Carrillo, City Administrator
Matt Lingafelter, Asst. to the City Administrator

Members Absent:

Miguel Huerta, Vice Chair

1. Call to order of the Zoning Commission.

Chairman Skewis called the meeting to order at 6:03 P.M.

2. Consider approval of the minutes from the April 21, 2021 called meeting.

Robert Reetz made a motion to approve the minutes, seconded by Brant Boozer. All voted in favor and the motion carried.

3. Discussion of proposed changes to Chapter 2 of the Land Development Code and a new chapter within the Code of Ordinances regarding Credit Access Business.

Matt Lingafelter briefly introduced this item to the Commission.

Zoe Trieff, Chair of the Planning & Environmental (P&E) Committee, spoke regarding the Committee's recommendations. There were two approaches the P&E Committee discussed regarding regulating Credit Access Businesses: placing them under the list of prohibited businesses, or regulating them via a Special Use Permit. The Committee recommended to add Credit Access Businesses to the list of prohibited businesses.

However, City Staff and Legal received guidance from the Texas Municipal League (TML), strongly urging the City not to pursue regulation of Credit Access Businesses at this time. There is currently a law suit against certain cities who have attempted regulation, and also there were three failed bills at the current Texas Legislative Session that would have aided

cities with Credit Access Business regulation.

Robert Reetz made a motion to table the item until the City receives direction from TML or the City Attorney, seconded by John Frick. All voted in favor and the motion carried.

4. Discussion and possible recommendation to the City Council of proposed changes to Chapter 10 of the Land Development Code – Parking and Fire Lanes regarding the difference between Gross Floor Area and Net Floor Area.

Chairman Skewis informed the Commission that Vice Chair Huerta requested that this item be tabled until he could be in attendance for the discussion.

Chairman Skewis made a motion to table this item, seconded by Brant Boozer. All voted in favor and the motion carried.

5. Adjourn

Brant Boozer made a motion to adjourn, seconded by Robert Reetz. All voted in favor and the meeting adjourned at 6:16 P.M.

MEETING DATE: AUGUST 25, 2021



ZONING COMMISSION AGENDA ITEM #4

STAFF PREPARER/CONTACT INFORMATION: Sylvia Carrillo, City Administrator
scarrillo@sunsetvalley.org

SUBJECT: ADDITIONAL USES IN THE RESIDENTIAL ZONING DISTRICT CATEGORY - SHORT TERM RENTALS

DESCRIPTION: Discussion and possible action on the regulation of short-term rentals within the City of Sunset Valley under Chapter 2 of the Land Development Code.

BACKGROUND: At the July Zoning Commission meeting, the Commissioners directed staff to bring back regulations from other cities with a variety of stringency to their regulations.

Staff researched three cities:

- 1) Port Aransas – A gulf coast city with a population of 4,123 who economy is based on tourism.
- 2) Wimberly – a village in Hays County. Mixed economy, reliant on sales tax driven by tourism in the area.
- 3) Lakeway – a city located on Lake Travis, a suburb in Travis County. Mixed economy, not heavily reliant on tourism.

Listed first is the least restrictive is Port Aransas, requiring registration and permit, along with some building code components for health and safety and a cap on the number of overnight guests per visit.

Following the continuum, Wimberly is the second requiring a Conditional Use Permit following Planning and Zoning requirement. It requires notice to all residents in the area, and because it is a conditional use, too many complaints may result in the permit being revoked and the use no longer allowed.

The most restrictive is Lakeway. The city requires a Special Use Permit that must also come before Planning and Zoning Commission. Lakeway requires similar conditions as Wimberly, however, places a cap on the total number of permits that can be issued annually by the City, and places a 1000ft limit on spacing between any STR in the City.

STAFF RECOMMENDATION:

Create a conditional use category in the Residential Zoning District requiring permit application, as well as notice to residents, with a vote by Zoning Commission and City Council.

Additionally, Create conditions limiting the number of occupancy based on number of bedrooms and square footage and require proof of onsite parking availability.

SUPPORTING MATERIALS PROVIDED: YES/NO

Port Aransas Information

Lakeway Information

Wimberley Information

Least Restrictive

Port Aransas Regulations

Short Term Rental Permit, registered with the City and with terms:

- Contact Information including a 24-hour phone number of a designated local contact required
- Number of sleeping rooms and applicable occupancy limit complied with the International Residential Code
- Maximum occupancy is 2 persons per sleeping room, plus an additional 4 per dwelling. For properties with more than 3250 sf of conditioned living space, the max. occupancy shall be 2 persons per sleeping room plus as additional 6.
- Tenant Information sheet must be in a visible, prominent interior location or near the primary entrance and include the required information
- All floors with an enclosed space of any kind must have a minimum of one standard fire extinguisher
- A placard outside STR is required displaying registration number, allowed occupancy, name of designated contact with their 24/7 phone number
- Registration with the Finance Department for Hotel Tax is required

The Short Term Rental Permit and Regulations are under Chapter 12 “License & Business Regulations” of the Port Aransas Code of Ordinances.

Short Term Rental permits are handled administratively by staff. No other approvals are required.

Restrictive

Wimberley Regulations

Conditional Use Permit process CUP, similar to Sunset Valley's Special Use Permit process, thus us it is regulated via the Planning and Zoning Commission with notice and the 20% rule.

(if 20% of property owner's within 200' oppose the application a super majority vote is required by the Planning & Zoning Commission (6 out of 7) and City Council (4 out of 5) for approval)

- 1) Completed Application and Fee
- 2) City notification to property owners within 200, notice in newspaper and physical posting
- 3) Planning & Zoning Hearing for recommendation to City Council for ultimate approval
 - STR1 (bed & Breakfast)
 - STR2 (vacation rental)

Permit Conditions:

Applicant submits application meeting six points:

- The use is harmonious and compatible with surrounding existing uses or proposed uses, and does not adversely affect an adjoining site than would a permitted use;
- The use requested by the applicant is set forth as a conditional use in the base district;
- The nature of the use is reasonable;
- The conditional use does not adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;
- The conditional use does not adversely affect an adjacent property by its resulting traffic through the location, or its lighting, or its type of sign; and
- That any additional conditions specified, if any, ensure that the intent and purposes of the base district are being upheld.

Additional Requirements

- "Unruly Gatherings" are prohibited
- Contact Information – local contact that shall be able to respond to any incident within 30 minutes
- Address sign requirements
- Permits valid for two years
- Complaint Process discussed in Section 5.04.006

- Council may revoke a permit, and if a permit is revoked, a new permit may not be considered for 6 months
- Recordkeeping – staff directed to create a database of short-term rental properties including a GIS layer

Most Restrictive

Lakeway Regulations

Special Use Permit process SUP, thus us it is regulated via the Planning and Zoning Commission with notice and the 20% rule.

(if 20% of property owner's within 200' oppose the application a super majority vote is required by the Planning & Zoning Commission (6 out of 7) and City Council (4 out of 5) for approval)

- 1) Completed Application and Fee
- 2) City notification to property owners within 200, notice in newspaper and physical posting
- 3) Planning & Zoning Hearing for recommendation to City Council for ultimate approval

The following 18 rules apply to STR in Lakeway

- (1) The applicant shall provide a copy of the filed Comptroller of Public Accounts' Form AP-102 (hotel occupancy tax questionnaire);
- (2) The applicant shall provide proof of insurance with the use "short-term rental" clearly identified;
- (3) The total number of short-term rental use permits issued by the city shall not exceed twenty-five (25);
 - (A) The limit of twenty-five (25) short-term rental use permits shall not include a short-term rental use permit for residential property governed by a condominium association in accordance with title 7 "condominiums" of the Texas Property Code.
- (4) No new initial permit shall be issued for residential property located within one thousand (1,000) feet of another residential property that has a current short-term rental use permit;
 - (A) A permit for residential property governed by a condominium association in accordance with title 7 "condominiums" of the Texas Property Code shall be exempted from the 1,000 foot distance requirement.
- (5) Provide acknowledgement of review of the application by HOA/POA (if applicable);
- (6) Initial permits shall be issued for a one (1) year period and shall be renewable for a two (2) year period, provided a complete application for renewal is filed with the city no more than ninety (90) days and no less than sixty (60) days prior to the expiration date of the initial permit;
- (7) No permit application shall be accepted for filing, processed, or approved during a period of one (1) year following the denial of an application or revocation of a permit for any residential property;

(8) No additional permit application for short-term rental use shall be accepted for filing from, processed, or approved for an owner of real property with an existing permit for short-term rental use;

(9) A permit is not transferable and shall be void upon transfer or conveyance of the property;

(10) All structures housing short-term rental use shall comply with this article and all other applicable regulations of this code, and compliance shall be verified by means of an on-site inspection by city staff;

(11) Parking by renters or their guests shall be limited to the right-of-way bordering the rental property and to the garage and driveway on the rental property, and shall not encroach upon or obstruct ingress and egress to the neighboring properties;

(12) Advertisement of the short-term rental use shall adhere to "truth in advertising" principles and shall clearly state maximum occupancies;

(13) Advertisement of the short-term rental use shall not be displayed on the premises of the property in any manner that is visible from the exterior of the house;

(14) Short-term rental use permit holders shall comply with and ensure their tenants comply with all applicable city ordinances and state laws regulating litter, waste disposal, noise, nuisance, and other regulations for the protection of the health, safety, and welfare of the public;

(15) The short-term rental use shall not produce nuisances as defined in section 22.02.001 or elsewhere in this code including but not limited to noise, damage, odors, inconsiderate or offensive behavior, late night parties, illegal drug or alcohol use, pets, public urination, public exposure, disturbance of the peace, disorderly conduct, or any other conduct that may constitute a public or private nuisance;

(16) Minimum rental period shall be two (2) consecutive nights;

(17) Short-term rental use permit holders shall file state hotel occupancy tax reports in a timely manner, shall maintain accurate logs including dates and times of rentals, number of guests, number of automobiles present, and complaints received, and shall forward logs to the city-designated official on a monthly basis;

(18) The city manager or assistant city manager may suspend any short-term rental permit upon the finding of one or more of the following:

(A) A violation of any of the applicable terms, conditions, or limitations;

(B) A violation of any applicable ordinance or regulation;

(C) Operation or maintenance of the short-term rental property in a manner that is detrimental to the public's health, safety, or so as to constitute a nuisance.

Determinations made by the city manager or assistant city manager may be appealed to the board of adjustment.

(Ordinance 2020-03-16-04 adopted 3/16/20)

Port Aransas

Short Term Rental Information



A short term rental permit is required of all rentals of 30 days or less. You must register your short term rental with the City of Port Aransas and provide the following information:

- (1) The name, address, email and telephone number of the Operator of the subject short term rental unit;
- (2) The name, address, email and twenty-four-hour contact telephone number of a designated local contact person;
- (3) The local contact person is the Operator or person designated by the operator who shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of:
 - i. Responding in person within one (1) hour to complaints regarding the condition, operation, or conduct of occupants of the short term rental unit; and
 - ii. Taking immediate remedial action to resolve any such complaints;
- (4) The name, mailing and physical address of the proposed short term rental unit;
- (5) The number of sleeping rooms and applicable occupancy limit of the proposed short term rental unit. For purposes of this section a sleeping room is any enclosed habitable space within a dwelling unit which complies with the minimum room dimension requirements of the adopted International Residential Code. This shall not be interpreted to include living rooms, family rooms and other similar rooms in which furniture such as fold-down beds or convertible couches are provided on a permanent basis for regular accommodation of residents, temporary or otherwise;
- (6) Maximum occupancy is two (2) persons per sleeping room, plus an additional four (4) per dwelling. For residential properties with more than 3250 square feet of conditioned living space, the maximum occupancy shall be two (2) persons per sleeping room plus an additional six (6).
- (7) Signature of property owner must be on application acknowledging they have read the Short Term Rental Ordinance.

(8) A tenant information sheet must be in a visible, prominent interior location at or near the primary entrance and contain the following information:

- (1) The name of property's designated contact person including a 24/7 phone number;
- (2) Occupancy limit as established at the time of registration and permitting;
- (3) Location of off-street parking, other available parking and location of any adjacent no-parking fire lanes;
- (4) Notice that failure to conform to the occupancy and parking requirements is a violation of City Code and may subject occupants to citation;
- (5) Noise and lighting restrictions (see Chapter 10 Article IV; Noise and Chapter 25 Division III; Lighting);
- (6) Trash collection information to include proper timing and placement of receptacles; and
- (7) Location of all required Fire Extinguishers.
- (8) Other information as required by administrator.

All floors with an enclosed space of any kind must have a minimum of one (1) Class 2A:10B:C type fire extinguisher (standard 5lb. fire extinguisher) mounted so as to be conspicuous and convenient for the occupants.

A placard outside the dwelling, at or near the primary entrance is required displaying the registration number, allowed occupancy, name of designated contact along with their 24/7 contact phone number in legible type no less than 2” in height.

Mandatory evacuation: All vacation rental units will be immediately evacuated upon notice of a non-resident evacuation order issued by the city, county or state.

Any other standards deemed necessary by the administrator to achieve the objectives of this section.

All registrations expire on December 31st of each year registration is not pro-rated.

You must also register with the finance department for your Hotel Motel Tax. They will mail you a form to fill out each month to report and pay your taxes.

Property I.D. Number(**office use only**): _____

Port Aransas Short Term Rental (STR) Registration

Please complete one form for each rental dwelling.

Make checks payable to: City of Port Aransas (COPA)

Mail or drop off: 710 W Ave A, Port Aransas, Texas 78373 – Mon.-Fri. 8:00 a.m. – 4:00 p.m.

All open permits must be closed before we allow a short-term rental to be registered.

Property Address: _____ Unit # _____ Property Name _____
Number and Street If applicable

Number of Sleeping Rooms: _____ Maximum Occupancy: _____ (=Number of sleeping rooms x 2 +4)

Pool: Yes or No **Is a golf cart available with the rental? Yes or No**

Property Owner: Name: _____
Last First Middle Initial

If LLC Registered Agent

Taxpayer I.D. # _____ (9 digits) or _____ No Taxpayer I.D.

Mailing Address: _____

City, State, Zip _____

Work Phone _____ Mobile: _____

Owner's Physical Address: _____
Address City, State & Zip

Owner's email address: _____

Property Management: None – Self-managed

Company Name: _____ Taxpayer I.D.# _____
Company Name

Mailing Address: _____

City, State, Zip Code: _____ Work: _____ Phone Mobile: _____

Management's Physical Address: _____
Address City, State & Zip

Manager's email address: _____

Local Contact: You must provide a local contact; they must be able to respond within one hour in person 24 (twenty-four) hours a day 7(seven) days a week.

Local Contact for Problems: Contact Owner Contact Mgt. Company

Name: _____
Last First Title

Mailing Address: _____
Address, City, State & Zip

Work Phone: _____ Mobile: _____

Contact's Physical Address: _____
Address, City, State & Zip

Local contact's email address: _____

You must contact City of Port Aransas any time there are changes in ownership, local contact, or property management. You also need to fill out a Hotel/Motel Tax form with the finance department. You can find the ordinance at https://library.municode.com/tx/port_aransas/codes/code_of_ordinances

I have read and understand the Short-Term Rental Ordinance.

Property Owner Print & Sign Date



CITY OF PORT ARANSAS

SHORT TERM RENTAL POLICY

CODE OF ORDINANCES

Chapter 12 “Licenses & Business Regulations”

ARTICLE VIII. SHORT TERM RENTALS

Section 12-250. Definitions

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory Short Term Rental shall mean a property containing a Primary dwelling being used for long term or permanent occupancy and a legal Accessory Dwelling Unit that is being used for Short Term Rental.

Administrator shall mean the City Manager or his designee.

City – For the purpose of this article, the City of Port Aransas.

Occupant(s) shall mean the person or persons who have rented the Short Term Rental and their guest(s).

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

Operator shall mean 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.

Permit shall mean a Short Term Rental permit.

Short Term Rental (Transient) - (STR), is the use for compensation of all or part of a dwelling unit or accessory dwelling unit which includes but is not limited to a hotel, motel, single family residence, apartment, residential condominium units, townhouses and any and all other residential real estate improvements, in which the public may obtain sleeping accommodations for a period less than 30 consecutive days. The term applies regardless of whether the dwelling was originally constructed or zoned as a residential dwelling. The term Short Term Rental does not include:

1. A dormitory or other housing facility owned or leased and operated by a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution; or
2. Rental of a property pending closing of a bonafide real estate purchase contract.

Section 12-251. Short Term Rentals

- (a) The purpose of this Article is to establish regulations for the registration and use of Short Term Rentals and to ensure among other things that habitation of such units is safe, occupancy taxes are paid in timely fashion and to provide for the general welfare of residents and visitors.

- (b) The property Owner shall designate themselves or an agent to comply with the requirements of this Article on behalf of the Owner. The Owner or designated agent is sometimes referred to as “Operator” herein.
- (c) The Owner shall not be relieved from any personal responsibility or personal liability for noncompliance with any applicable law, rule or regulation pertaining to the use and occupancy of the residential dwelling unit as a Short Term Rental unit, regardless of whether such noncompliance was committed by the Owner, Operator, authorized agent or representative or the occupants or guests of the occupants.
- (d) This Article is not intended to provide any Owner/Operator of residential property with the right or privilege to violate any City zoning (Chapter 25; Port Aransas City Code), private conditions, covenants or restrictions applicable to the owner's property that may prohibit the use of such owner’s residential property for Short Term Rental purposes as defined in this section- or to repeal, arrogate, or impair any existing easements, covenants, or deed restrictions.
- (e) Abrogation and Greater Restrictions. Where this ordinance and another ordinance conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (f) An advertisement promoting the availability of short-term rental property in violation of any provision of this ordinance is prima facie evidence of a violation.

Section 12-252. Registration and Permit

- (a) Prior to using a dwelling unit as a Short Term Rental or advertising in any manner the availability of the dwelling unit for Short Term Rental, the Operator must submit the following information on a form and in the manner prescribed by the Administrator:
 - 1. The name, address, email and telephone number of the Operator of the subject Short Term Rental unit;
 - 2. The name, address, email and twenty-four hour contact telephone number of a designated local contact person;
 - 3. The local contact person is the Operator or person designated by the Operator who shall be available twenty-four (24) hours per day, seven (7) days per week for the purpose of:
 - i. responding in person within one (1) hour to complaints regarding the condition, operation, or conduct of occupants of the Short Term Rental unit; and
 - ii. taking immediate remedial action to resolve any such complaints;
 - 4. The name, mailing and physical address of the proposed Short Term Rental unit;
 - 5. The number of sleeping rooms and applicable occupancy limit of the proposed Short Term Rental unit. For purposes of this Section a sleeping room is any enclosed habitable space within a dwelling unit which complies with the minimum room dimension requirements of the adopted International Residential Code. This shall not be interpreted to include living rooms, family rooms and other similar rooms in which furniture such as fold-down beds or convertible couches are provided on a permanent basis for regular accommodation of residents, temporary or otherwise;
 - 6. Maximum occupancy is two (2) adults per sleeping room plus four (4) unless otherwise allowed by Building official. Children shall not be counted in the occupancy calculation. For purposes of this section an adult is an individual twelve (12) years or older at the time of rental. The maximum occupancy of a Short Term Rental shall be determined at the time a Short Term Rental permit is issued or renewed. That capacity shall not be increased by subsequent construction of any addition to the structure covered by the permit or by construction of any other structure located on the property

- without an inspection and approval by Building Official and submission of an amended registration form;
7. Where one owner or operator manages or owns multiple Residential Short Term Rental units within a condominium or townhome complex, a single consolidated permit application may be submitted. Each Residential Short Term Rental unit will still be assigned a unique permit number and be subject to the registration fee. If units are managed by different owner representatives, despite being in the same complex, separate applications are required. For the purpose of this Article, hotels and motels will register as a single unit and pay a single fee regardless of the number of rooms; and
 8. Any additional information the Administrator determines necessary for the administration of this Section.
- (b) Any existing Short Term Rental shall have ninety (90) days from adoption of this ordinance to complete the required registration and obtain their Short Term Rental permit.
- (c) Transferability. A Short Term Rental Permit is not transferable to a new property owner. A new owner must apply for a Short Term Rental Permit within sixty (60) days from the closing date of the purchase or any other conveyance of ownership. Failure of a new property owner to apply for permit within sixty (60) days from the closing date may result in the revocation or non-renewal of an existing Short Term Rental Permit or the denial of a new Short Term Rental registration.
- (d) Any property owner delinquent and/or owing City of Port Aransas fees to include but not limited to occupancy tax, sanitation or gas service fees will be prohibited from registering a Short Term Rental until such time as payment or acceptable resolution is approved by the City of Port Aransas finance department.
- (e) Registration Fee – Renewal Fee:
1. The Short Term Rental registration form shall be accompanied by an initial non-refundable per unit registration fee as established by City Council.
 2. The initial registration of the Short Term Rental is valid for twenty-four (24) months from the date the completed registration is filed with the City and payment of the registration fee has been made, unless ownership of the Short Term Rental changes at which time a new registration will be required and new permit issued. Subsequent renewal of a Short Term Rental will be on an annual calendar year basis.
- (f) Each Short Term Rental, once properly registered shall be issued a permit with a unique registration number. The registration number must be included in any and all advertisement for the Short Term Rental including internet booking sites.

Section 12-213. Minimum Standards of Conduct

- (a) The Owner, operator or their agent shall provide a tenant information sheet to renters of short term vacation rentals, with information providing basic, minimum standards of conduct during their stay in the City of Port Aransas. At a minimum the following items must be included on the information sheet:
1. The name of property's designated contact person including a 24/7 phone number;
 2. Occupancy limit as established at the time of registration and permitting;
 3. Location of off-street parking, other available parking and location of any adjacent no-parking fire lanes;
 4. Notice that failure to conform to the occupancy and parking requirements is a violation of City code and may subject occupants to citation;
 5. Noise and lighting restrictions;
 6. Trash collection information to include proper timing and placement of receptacles; and
 7. Other information as required by Administrator.

- (b) Health and Life Safety: Owner or Operator shall ensure all building and fire related construction conforms to the City's adopted building code.
- (c) All floors with an enclosed space of any kind must have a minimum of one (1) Class 2A:10B:C type fire extinguisher (standard 5lb. fire extinguisher) mounted so as to be conspicuous and convenient for the occupants.
- (d) A golf cart made available anytime as part of a Short-Term Rental shall be subject to all requirements of the City of Port Aransas Code of Ordinances, Chapter 23 "Traffic & Motor Vehicles".
- (e) Non-compliant sleeping rooms shall not be included in the maximum occupancy calculation and notification shall be provided in the tenant information sheet that the non-compliant Sleeping Room may not be used for sleeping.
- (f) Inspection: To ensure continued compliance with the requirements of this Section, Short Term Rental properties will be subject to an inspection every 24 months unless an immediate inspection is required to address a specific concern or suspected violation.
- (g) Mandatory evacuation: All vacation rental units will be immediately evacuated upon notice of a non-resident evacuation order issued by the City, County or State.
- (h) Any other standards deemed necessary by the Administrator to achieve the objectives of this Section.

Section 12-214. Enforcement - Penalty Provisions

- (a) The Owner/Operator shall comply with all applicable laws, rules and regulations pertaining to the use and occupancy of the subject Short Term Rental unit, including, but not limited to, Chapter 10 "Health and Sanitation" and Chapter 22, "Taxation" of the City Code of Port Aransas.
- (b) A permit may be denied, suspended or revoked for any of the following reasons:
 1. 3 or more notices of violation issued within a twelve month period for any conduct or condition at the Short Term Rental that constitutes a violation of this section or federal, State or local law;
 2. Providing false or misleading information on a Permit application;
 3. Representing a property available or otherwise making a residence available for occupancy or rent as a Short Term Rental where the property does not hold a valid Short Term Rental permit;
 4. The Permit holder is overdue in payment to the City of taxes, fees, fines, or penalties or fails to provide documentation when requested showing all occupancy taxes have been paid for the property.
 5. The Short Term Rental is sold or otherwise transferred.
 6. Information provided with the permit application has changed or is no longer accurate and the permit holder has failed to notify the City.
- (c) Appeal: If an application for a Short Term Rental Permit or renewal is denied or the permit subsequently revoked, the Owner or Operator may appeal ("appellant") to the Administrator by written notice delivered within ten (10) business days of denial or revocation.
 1. The Administrator shall have twenty (20) business days from the date on which the appeal was received in which to give a written decision affirming, modifying, or reversing the denial, suspension, or revocation as applicable.
 2. If the Permit is denied, suspended, or revoked pursuant to this Section, appellant may within ten (10) business days of the service of notice of such determination submit to the Administrator a written request for a hearing to show cause as to why the Permit should not be denied, suspended, or revoked, as applicable. A hearing shall be scheduled within thirty (30) business days of receipt of applicant's request and notice

- of the hearing shall be given to applicant ten (10) business days before the hearing. At the hearing, the appellant and City may present such evidence as may be relevant.
3. Any notice or decision served to appellant shall be deemed served upon the appellant when it is personally delivered or on the date it is mailed by United States mail, with proper postage prepaid, to the name and address set forth on the application for Permit, whichever occurs first.
 4. Any appeal filed pursuant to this Chapter shall state succinctly the grounds upon which it is asserted that the determination should be modified or reversed and shall be accompanied by copies of the application for Permit, the written notice of the determination of the City, and any other information material to the determination.
 5. Judicial review of any such final decision of the City may be obtained through the filing of an appropriate action in the appropriate district court within thirty (30) calendar days after service on appellant of the decision. The applicant shall bear the burden of proof in court. The substantial evidence standard of review shall apply to such appeal.

Ordinance No. 2016-01: Adopted 1/21/2016; Ordinance No. 2016-12: Amendment Adopted on 8/2/2016

NOTE: Please contact the Building & Development Department for any questions, concerns and/or Code Enforcement issues related to this ordinance. Contact Information:

City of Port Aransas
710 W. Avenue A
Port Aransas, TX 78373
Telephone #: 361-749-4111

TENANT INFORMATION SHEET

CONTACT PERSON 24/7 PHONE NUMBER

OCCUPANCY LIMIT _____

LOCATION OF OFF STREET PARKING

FAILURE TO CONFORM TO THE OCCUPANCY AND PARKING
REQUIREMENTS IS A VIOLATION OF CITY CODE AND MAY
SUBJECT OCCUPANTS TO CITATION

NO LOUD MUSIC OR NOISE

ALL LIGHTS SHOULD BE FACED TOWARDS THE GROUND
SHOULD NOT PASS PROPERTY BOUNDARIES

TRASH DAYS ARE _____ & _____ CANS SHOULD BE
PLACED CURBSIDE BY 7:00 A.M. ON THE DESIGNATED
COLLECTION DAY. CONTAINERS MUST BE KEPT AT A LOCATION
EVEN WITH OR BEHIND THE FRONT WALL OF THE BUILDING.
(FOR TRASH CAN PLACEMENT TURN OVER)



City of Port Aransas
Hotel / Motel Occupancy Tax Report
Filing Type: Monthly

For the Reporting Period Ending: _____ Due Date: _____

Business Name: _____ Contact Name: _____

Mailing Address: _____ Business Address: _____

STR# _____

1. A. Gross Revenue for the Reporting Period: \$ _____

B. Less Exempt Room Receipts: \$ _____

C. Taxable Gross Revenue for the Reporting Period (A - B=C): \$ _____

2. Tax Rate _____ 7%

3. TOTAL TAX COLLECTED (Line 1C multiplied by Line 2): \$ _____

4. Interest (10% per annum of Item 3 if tax not paid within 60 days of due date) \$ _____

5. Penalty (15% of Item 3. Penalty due if tax not paid within 90 days of due date) \$ _____

6. **TOTAL AMOUNT DUE AND PAYABLE TO CITY**
 (item 3 plus item 4 and item 5): \$ _____

7. Number of room nights available during Reporting Period: _____
 (# of rooms _____ x # of days in month)

8. Number of room nights rented during Reporting Period: _____

I declare that the information contained in the Hotel/Motel Occupancy Tax Report is accurate to the best of my knowledge and belief.

 Prepared By (Please Print)

 Title

 Telephone Number

 Authorized Signature

 Date

MAIL REMITTANCE WITH REPORT TO:
City of Port Aransas
Finance Department
710 W. Avenue A
Port Aransas, TX 78373-4128



The Dos and Don'ts of Automated Trash Pick-Up:

DO

- Set the can as close to the street or curb as safely possible
- Set totes a minimum of 18 inches apart from other totes
- Ensure that no vehicles are parked in a way that would block access to the totes
- Ensure that all trash is INSIDE of the toter with the lid closed (Toters with bags piled on top or around cannot be serviced)
- Have totes set out by 7am on service day

DON'T

- **Don't** set totes more than 3 feet back from the street or curb
- **Don't** set totes close together, side by side (the automated arm needs to be able to reach in between)
- **Don't** stack trash bags on top of or outside of totes in any way (these totes cannot be serviced at all)
- **Don't** overfill totes (lid must be closed in order to be safely serviced) There is a pick-up day once a week for oversized items and brush. Call City Hall for details 361-749-4111.

*****Any toter in violation (like the totes pictured above) will result in your trash NOT being serviced*****

Short Term Rentals - City of Wimberley

Short Term Rentals

To obtain a permit to operate a bed & breakfast or vacation rental, an applicant must go through the Conditional Use Permit (CUP) process and receive an approved permit.

The CUP process includes:

- Complete Application
- Application Fee (non-refundable)
- The City notifies those within 200' of your application, publishes in the local newspaper and posts a sign on the subject tract
- Planning & Zoning hearing for recommendation and City Council hearing for ultimate decision

Per State & Local statute, if 20% of property owner's within 200' oppose the application a super majority vote is required by the Planning & Zoning Commission (6 out of 7) and City Council (4 out of 5) for approval.



City of Wimberley

221 Stillwater Drive, Wimberley, TX 78676

Phone (512) 847-0025 Fax (512) 847-0422

www.cityofwimberley.com

CONDITIONAL USE PERMIT APPLICATION

OFFICE USE	CUP - ____ - ____	Date: _____	Staff Review _____
P&Z Hearing: _____		Council Hearing: _____	Fees Paid(\$650): <input type="checkbox"/>

Applicant: _____			
Mailing address: _____	City: _____	State: _____	Zip: _____
Phone: _____	Email: _____		
Property Owner: _____			
Mailing address: _____	City: _____	State: _____	Zip: _____
Phone: _____	Email: _____		

Project Site Address: _____	
Legal description: _____	
Total Acreage or Square Footage: _____	Deed recorded in: _____
Hays CAD Parcel ID R _____	Planning Area: _____ Zoning: _____
Is property located in an overlay district? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, type: _____	
Specific Conditional Use Requested: _____	
Applicant understands that the purpose of the Conditional Use Permit (CUP) process is to allow certain uses which are not specific; permitted uses within a zoning district. To be considered for a CUP, the requested use must be listed under "Conditional Uses" within the applicable zoning district.	

Utilities
Electric Provider: _____
Water provider or Private Well: _____
Wastewater Service or Septic Permit No. _____
*If you have an On-Site Sewage Facility (OSSF) you can submit an open records request for your permit information if you do not have it.

SUBMITTAL CHECKLIST

- Complete "Conditional Use Permit Application"
- Metes and bounds description and/or survey exhibit
- Site Plan drawn to scale and showing the general arrangement of the project, together with essential requirements such as off-street parking facilities; size height, construction materials, and locations of buildings and the uses to be permitted; location and construction of signs; means of ingress and egress to public streets; the type of visual screening such as walls, plantings and fences
- Deed(s)
- Payment of application fee
- Agent authorization to represent property owner if applicable

MY REQUEST IS BASED ON THE FOLLOWING:

- The use is harmonious and compatible with surrounding existing uses or proposed uses, and does not adversely affect an adjoining site than would a permitted use;
- The use requested by the applicant is set forth as a conditional use in the base district;
- The nature of the use is reasonable;
- The conditional use does not adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;
- The conditional use does not adversely affect an adjacent property by its resulting traffic through the location, or its lighting, or its type of sign; and
- That any additional conditions specified, if any, ensure that the intent and purposes of the base district are being upheld.

SUBMITTAL VERIFICATION

My signature attests to the fact that the attached application package is complete and accurate to the best of my knowledge. I understand that City review of this Application is dependent upon the accuracy of the information provided and that any inaccurate or inadequate information provided by me, my firm, or agent, may delay the review of the Application. I authorize City of Wimberley Staff to visit and inspect the property for which this application is being submitted. I agree to attend or have a representative attend the Planning & Zoning Commission and City Council meetings. I have checked the subdivision plat notes, deed restrictions, restrictive covenants and/or zoning action to ensure that there are no restrictions on the subject property and understand that the City zoning action does not relieve any obligation of these restrictions.

Date: _____ **Applicant's Signature:** _____

**ADDITIONAL QUESTIONS AND LIST OF CONDITIONS THAT
MAY BE INCLUDED IN A
BED AND BREAKFAST/VACATION RENTAL CUP**

Owner: _____

LOCATION OF PROPERTY: _____

LEGAL DESCRIPTION: _____

PLANNING AREA: _____

PRESENT ZONING: _____

EXISTING USE: _____

HOME OWNERS ASSOCIATION CONTACT INFO: _____

SHARED FACILITIES (RIVER PARK, POOL, ETC.): _____

PROPERTY IN FLOODPLAIN? YES NO

GATED COMMUNITY OR PRIVATE STREET? YES NO

USE TO BE GRANTED: _____ *Bed & Breakfast* OR _____ *Vacation Rental*

NEW CONSTRUCTION: (Describe existing construction) If new construction is contemplated: Describe new construction. The architecture and façade of all new construction will be traditional “Hill Country” design and harmonious with those of adjacent uses. No construction shall commence prior to compliance with all applicable ordinances, laws, rules and regulations.

COMPATIBILITY TO NEARBY AREAS: The facilities on the property will at all times be harmonious and compatible with surrounding uses

OFF-STREET PARKING: All parking will be off-street. _____ Off-street parking spaces will be provided for off-street guest parking, which will be adequate for a maximum occupancy of _____ guests. Parking will be in these spaces only.

SIGNAGE: All signage will be of traditional “Hill Country” design and will comply with the City Sign Ordinance.

NOISE AND LIGHTING: Exterior lighting to be only landscape lighting. All noise audible from outside, and all light visible from outside the property shall be maintained at low levels appropriate to a single family neighborhood. No large parties are permitted.

NUMBER OF BEDROOMS: _____

PROPOSED MAXIMUM OCCUPANCY: _____ guests.

OCCUPANT REGULATIONS AND GUIDELINES: Guest Guidelines are attached hereto and made a part of this Conditional Use Permit. The bed and breakfast lodging facility shall be operated in accordance with the guidelines. These guidelines shall be furnished to all guests.

WASTEWATER SYSTEM: The wastewater treatment system (to be designed and constructed) will at all times be adequate for the maximum occupancy.

WATERFRONT USAGE: (Applicable if guests have water access) Guests may only use the _____ River/Creek in the area directly adjacent to the bed and breakfast lodging facility. Guests may not use the River/Creek in front of other properties or enter upon any property which is not part of the bed and breakfast facility for the purpose of entering or exiting the water or for any other reason.

PROPERTY MANAGEMENT: Owner will provide guests and close-by neighbors with owner's telephone number to assure Owner's immediate knowledge of any concerns that may arise. (If not owner occupied) Owner agrees to retain under contract a responsible local management company at all times the property is used as a non-owner occupied bed and breakfast lodging. The management company shall advise guests of the applicable conditions contained herein, receive and pass on to owner any complaints received and at owner's direction act upon such complaints. (If Owner occupied) The property shall be the owner's principal place of residence and the owner shall actively supervise and manage the property at all times that it is used as a bed and breakfast facility.

MISCELLANEOUS: Owner agrees to maintain the property in a manner conducive to the health and safety of the guests and the neighborhood. All trash and garbage will be placed in provided receptacles which shall not be visible from the street except on pick-up day. No trash bags shall be left out in the open. The exterior of the facility and the landscaping, including lawns, will be maintained in good condition at all times.

REVOCAION: The cup may be revoked by the City Council upon recommendation of the Planning and Zoning Commission in the event of the violation of any of the conditions contained therein.

OWNER COMPLIANCE: Owners agree to comply with all City of Wimberley Ordinances, and all state, county and City laws, rules, and regulations.

ACCEPTED AND AGREED TO:

DATE

OWNER

DATE

OWNER

ARTICLE 5.04 SHORT-TERM RENTALS (STR1) AND (STR2)

Sec. 5.04.001 Definitions

For the purpose of this article, the following definitions shall apply, unless the context clearly indicates or requires a different meaning:

STR1. A “STR1” as defined by [section 9.03.005](#) of the Code of Ordinances.

STR1 booking agency. A person or entity that provides reservation services, billing services, or other related services on behalf of the owner of a STR1.

STR2. A “STR2” as defined by [section 9.03.005](#) of the Code of Ordinances.

STR2 agency. A person or entity that provides reservation services, billing services, or other related services on behalf of the owner of a STR2.

(Ordinance 2014-006, sec. 112.01, adopted 2/20/14; Ordinance 2017-018, sec. 2(A), adopted 10/5/17; Ordinance 2019-08 adopted 5/2/19)

Sec. 5.04.002 Permit required; conditions

(a) **Permit required**. A person commits an offense if the person owns or operates a STR2 without a valid permit issued by the city.

(b) **Conditions**. A permit holder must satisfy the following requirements:

(1) The property must have a valid conditional use permit (CUP) for the operation of a STR2, or the property must be eligible to operate as a STR2 as a nonconforming use;

(2) Unruly gatherings are prohibited. An “unruly gathering” means a gathering of more than one person that is conducted on a premises within the city and by which, by reason of the conduct of those persons in attendance, results in the occurrence of one or more of the following conditions or events on public or private property: rioting; trespassing; the unlawful sale, furnishing, possession, or consumption of alcoholic beverages; the destruction of property; obstruction of roadways, driveways, or public ways by crowds or vehicles; excessive noise; disturbances, brawls, fights, or quarrels; public urination or defecation; indecent or obscene conduct or exposure; or any other occurrence that results in a call for service by a law enforcement agency.

(3) The property owner shall comply with all requirements of any applicable CUP.

(c) **Additional permit requirements for STR2**. In addition to the foregoing, a STR2 permit holder must satisfy the following requirements:

(1) **Staff review**. Prior to permit renewal, city staff will review the history of the permitted site, including but not limited to the number of complaints received by the city during the most recent permit period. In the event that a permitted property has received two (2) or more registered valid unresolved complaints relating to a violation of city ordinances, CUP requirements, and/or state law during the most recent permit period, the owner of the property must appear before the city council as a condition to permit renewal.

(2) **Contact information**. The subject property owner shall provide the city and property owners, within 200 feet of the subject property, with the current name and contact information (including telephone numbers and e-mail address) for the local responsible party for the subject property. The local contact shall be able to respond to any incident within thirty (30) minutes of a call and shall be authorized to make decisions regarding tenants at the property. If the name or contact information for the local contact changes, then the property owner shall notify the city and property owners within 200 feet of the subject property, with the current name and contact information.

(3) **Address sign**. All STR2 must display an address sign no more than ten (10) feet from the edge of pavement with address numbers at least four (4) inches high and two (2) inches wide.

(Ordinance 2014-006, sec. 112.02, adopted 2/20/14; Ordinance 2016-016 adopted 5/5/16; Ordinance 2017-018, sec. 2(A), adopted 10/5/17; Ordinance 2019-08 adopted 5/2/19)

Sec. 5.04.003 Application for permit

A person required by [section 5.04.002](#) to have a permit shall do the following:

- (1) Complete and file a permit application on a form prescribed by the city administrator;
- (2) Submit with the application proof of ownership of the property;
- (3) Submit with the application the name and primary contact information of the owner of the STR2 and of the reservation agent, if applicable. For purposes of this subsection, the contact information must identify a person or person(s) who can respond to communications from the city regarding the property in the event of an emergency.

(Ordinance 2014-006, sec. 112.03, adopted 2/20/14; Ordinance 2017-018, sec. 2(A), adopted 10/5/17; Ordinance 2019-08 adopted 5/2/19)

Sec. 5.04.004 Issuance of permit; display

- (a) The city administrator may issue a permit after the applicant pays all applicable fees and satisfies all of the requirements of this code, including, if applicable, obtaining a conditional use permit (CUP).
- (b) A permit shall be valid for two (2) years from the date of its issuance, unless suspended or revoked.
- (c) A permit shall not be transferable.
- (d) The city council shall set a permit fee for each registered STR1 or STR2.
- (e) The permit holder shall cause a copy of the permit to be posted in a conspicuous location on the premises of the STR1 or STR2.

(Ordinance 2014-006, sec. 112.04, adopted 2/20/14; Ordinance 2017-018, sec. 2(A), adopted 10/5/17; Ordinance 2019-08 adopted 5/2/19)

Sec. 5.04.005 Property for use as a STR2 or STR1

- (a) It shall be unlawful for any person, including, but not limited to, a STR1 booking agency, to facilitate a reservation between the owner of a STR1 and a third party when the STR1 booking agency has actual or constructive knowledge that the STR1 does not comply with the requirements of [section 9.03.141](#) of this code (STR1 requirements), including, but [not] limited to, the requirement that a STR1 obtain an approved CUP.
- (b) It shall be unlawful for any person, including, but not limited to, a STR2 agency, to advertise an occupancy limit for a STR2 that exceeds the septic capacity for the STR2 property as established by the city or to otherwise facilitate a reservation between the owner of a STR2 and a third party when the STR2 agency has actual or constructive knowledge that the STR2 does not comply with the requirements of [section 9.03.141](#) of this code (STR2 requirements), including, but [not] limited to, the requirement that a STR2 obtain an approved CUP. The owner of the property or the owner's agent, which may be a STR2 agency, shall provide each renter a property map for the STR2 property that shows the boundaries of the property and advises that trespassing on adjacent property is prohibited.
- (c) It shall be unlawful for any person to list or otherwise market a property for sale as a new STR2 or new STR1 without disclosing to the buyer that such property may not be used for the purpose of a STR2 or STR1 without an approved CUP. It shall constitute a defense to prosecution under this subsection (c) that the defendant provided the buyer with a written notice that reads, in bold-faced type: "THIS PROPERTY HAS NOT BEEN APPROVED BY THE CITY OF WIMBERLEY FOR USE AS A STR1 OR STR2."

(Ordinance 2014-006, sec. 112.05, adopted 2/20/14; Ordinance 2017-018, sec. 2(A), adopted 10/5/17; Ordinance 2019-08 adopted 5/2/19)

Sec. 5.04.006 Enforcement procedure; revocation of permit

- (a) The city shall record a valid unresolved complaint from any person regarding a STR1 or STR2.
- (b) Upon receipt of such a complaint, the city shall promptly notify the owner of the property and listing agent (if applicable) and take other appropriate action as necessary.
- (c) If the city administrator receives two or more valid unresolved complaints relating to unruly gatherings on a single property within a one-year period, the city administrator shall place the matter on the next available city council agenda so that the council may consider whether the property owner has violated the terms of the permit.
- (d) In the event that the council determines that the terms of the permit have been violated, the council may revoke the permit.

(e) In the event that the council revokes a permit under this section, the city shall not accept a new permit application for that property until the expiration of six (6) months from the date of revocation.

(Ordinance 2014-006, sec. 112.06, adopted 2/20/14; Ordinance 2016-016 adopted 5/5/16; Ordinance 2017-018, sec. 2(A), adopted 10/5/17; Ordinance 2019-08 adopted 5/2/19)

Sec. 5.04.007 Recordkeeping

The council recognizes that orderly and accurate recordkeeping of STR2 activity will be essential to the successful enforcement of this article.

(1) City staff is directed to add a GIS layer through the city's electronic mapping software that identifies the locations of all permitted and unpermitted STR2 for which the city has information.

(2) City staff is directed to create a database for recording all complaints received by the city that allege a violation of state or local law or violation of a permit by the owner, operator, or renter of a STR2 located within the city limits. Each entry in the complaint database should include, at a minimum, the following information:

(A) The location of the STR2;

(B) The nature of the alleged violation;

(C) The date of the alleged violation; and

(D) A notation indicating how the complaint was resolved.

(3) The GIS layer and the complaint database described by this section should be updated as necessary and shall be made available to members of the public as required by the Texas Public Information Act.

(4) Members of the public, including individuals who reside adjacent to or in the vicinity of a STR2, are encouraged to promptly report complaints to the city.

(Ordinance 2017-018, sec. 3, adopted 10/5/17; Ordinance 2019-08 adopted 5/2/19)



APPLICATION FOR SPECIAL USE PERMIT SHORT TERM RENTAL

(INCLUDE NECESSARY SUPPORTING MATERIAL)

ADDRESS OF PROPERTY:				ACREAGE OF SITE:	
LEGAL DESCRIPTION (SUBDIVISION, SECTION, LOT NUMBER):				CURRENT ZONING:	
PROPERTY OWNER FIRM:	CONTACT NAME:	TELEPHONE:	E-MAIL		
MAILING ADDRESS:		CITY:	STATE	ZIP CODE	
APPLICANT FIRM:	CONTACT NAME:	TELEPHONE:	E-MAIL		
MAILING ADDRESS:		CITY:	STATE	ZIP CODE	

SUBMITTAL VERIFICATION/INSPECTION AUTHORIZATION:
 I, as owner of the property hereinafter referenced, do hereby execute this document, and acknowledge the above statements to be true and accurate to the best of knowledge. I have received, read and understand the terms and conditions of this request, and agree to compliance with all applicable codes and ordinances of the City.
 I understand that my contractor or subcontractor(s) identified below will schedule inspections on my behalf permitting city inspectors to enter my property to conduct the necessary inspections as scheduled.
 I authorize my duly authorized agent to coordinate with the City and its representatives to enter the property at reasonable times for the purposes of inspecting and monitoring the project according to the adopted codes of the City. This authorized agent is hereby given authority from me to consent to City inspections on my behalf.

APPLICANT SIGNATURE

PRINTED NAME **DATE**

(FOR CITY USE ONLY)

PERMIT NUMBER:

AMOUNT RECEIVED:

NOTES:

Special Use Permit-Short Term Rental Checklist

- \$250 APPLICATION FEE + ADVERTISING/NEIGHBOR NOTIFICATION COSTS**
- LOCATION MAP**
- COPY OF RECORDED SUBDIVISION PLAT (11"x17")**
- COPY OF TRAVIS CENTRAL APPRAISAL DISTRICT PROPERTY RECORD**
- ADDITIONAL INFORMATION NEEDED:**
 - Aerial of the lot that clearly shows the home.
 - Number of parking spaces.
 - Number of bedrooms.
 - Describe amenities.
 - Provide details on how the rental is advertised, including website and property ID #'s.
 - Provide details on how the rental is managed, including contact information.
- PHOTOGRAPHS:**
 - Clearly showing the front of the home.
 - Clearly showing the parking area.



Building & Development Services
1102 Lohmans Crossing, Lakeway, TX 78734
Phone: (512) 314-7540 Fax: (512) 314-7541
www.lakeway-tx.gov

(ADDITIONAL SPACE AS NEEDED FOR AUTHORIZED AGENTS OF THE OWNER)

ADDRESS OF PROPERTY:

PRINTED NAME OF GENERAL CONTRACTOR, SUBCONTRACTOR, OR OTHER AUTHORIZED AGENTS OF OWNER

PRINTED NAME OF GENERAL CONTRACTOR, SUBCONTRACTOR, OR OTHER AUTHORIZED AGENTS OF OWNER

PRINTED NAME OF GENERAL CONTRACTOR, SUBCONTRACTOR, OR OTHER AUTHORIZED AGENTS OF OWNER

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PRINTED NAME OF GENERAL CONTRACTOR, SUBCONTRACTOR, OR OTHER AUTHORIZED AGENTS OF OWNER

Sec. 30.05.002 Special use permits

(a) Permit required.

(1) No special use shall be established, operated, or maintained except as authorized by a special use permit issued in accordance with the requirements of this section.

(2) A special use permit may be issued only for the special uses specified in this chapter, and only for the district where it is authorized. A special use permit may be issued by:

(A) The city council, after a recommendation on the proposed permit from the zoning and planning commission, and following a public hearing, for all special use permits except those listed in subsection (B) or (C) below;

(B) The zoning and planning commission, after a public hearing, for those permits for home occupation permits in residential zoning districts, when requested by the code official; or

(C) The code official, for home occupation permits which comply with all provisions of [sections 30.05.003](#), [30.05.004](#), and [30.05.005](#) in addition to renewals subject to the provisions of subsection (f)(2)(A) of this section. The code official may refer any such application to the zoning and planning commission for determination.

(b) Application. An application for a special use permit shall be made in writing in a form prescribed by the city and shall be accompanied by such information as may be requested (including a site plan, if required) in order to properly review the proposed permit. Such information may include, but is not limited to, site and building plans, drawings and elevations, and operational data. The applicant, or its representative, for a special use permit shall attend all public hearings during which his application will be discussed.

(c) Report by city staff. Whenever a special use permit application is to be considered by the zoning and planning commission or the city council, a designated member of the building & development services department shall visit the sites of proposed special permits and the surrounding area and shall prepare a report of findings to be given to the zoning and planning commission and the city council, as the case may be.

(d) Notice - Public hearings required.

(1) Public hearings shall be held by each body considering and/or approving each original application for a special use permit, except home occupation applications processed for approval by the code official. However, a public hearing may be held before the zoning and planning commission for permit applications or renewals approvable by the code official when requested by the code official or a neighbor of the applicant. The public hearings for permits may be a joint public hearing of the zoning and planning commission and the city council. The applicant must be present during all public hearings regarding his application. If the applicant is not present at each public hearing, the applicant's application is subject to denial.

(2) When required by applicable law, rule or regulation, written notice of each hearing shall be given to the owners of all real property located within two hundred feet (200') in all directions of the property that is the subject of the hearing. Notice shall be given not less than ten (10) days prior to the date of the hearing either by personal service or by depositing a copy of the notice in the mail addressed to owners at their address as shown on the last approved city tax roll, with postage prepaid.

(3) For short-term rental use applications, written notice of such hearing shall also be given to the relevant home owners/property owners association in the same manner as the required written notice to owners of all real property located within two hundred feet (200') in all directions of the subject property.

(4) Such notice shall state the purpose, date, time, and place of the hearing and shall contain a brief description of the proposed permit, including its nature, scope, and location. The notice shall also describe any variances the applicant has requested and shall state the location and times at which the applications and supporting documents are available for public inspection. A telephone number shall be provided where information on the hearing(s) is or will be available at a later date.

(e) Review and recommendation by the zoning and planning commission.

(1) The commission shall review all nonresidential applications for special use permits to determine whether the proposed permit complies with each of the general criteria in [section 30.05.003](#) and with the general requirements in [section 30.05.005](#) applicable to the proposed use.

(2) The commission shall not recommend approval of an application unless it finds that the proposed permit as presented or as modified by the commission, complies with each of the general and applicable specific criteria.

(3) A recommendation of an approval may be conditioned on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to assure compliance with the criteria.

(4) The commission shall forward its findings and recommendations to the city council, for those permits not approvable by the commission.

(5) After receiving findings and a recommendation from the zoning and planning commission, and following a public hearing, the city council shall review applications for nonresidential applications for special use permits.

(f) Review and action.

(1) For new applications in residentially zoned districts for home occupation permits only:

(A) The code official shall determine whether the proposed permit complies with each of the general criteria in [section 30.05.003](#), with each of the special criteria in [section 30.05.004](#), and with each of the general requirements in [section 30.05.005](#) applicable to the proposed permit. The code official may condition its approval of an application on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to assure compliance with the criteria.

(B) A special use permit for a home occupation shall not be approved unless it complies with each of the applicable general and specific criteria; otherwise the application shall be denied.

(C) Pursuant to subsection (a)(2)(B) and (C), the code official, at the official's discretion, may forward the application to the zoning and planning commission for consideration and determination.

(2) For renewal applications for home occupation permits only:

(A) If no substantiated complaint(s) have been lodged against the applicant or the applicant's home business after the last permit was issued, the code official may approve home occupation renewal permits for an additional 12-month period.

(B) If any substantiated complaints have been lodged against the renewal applicant or the applicant's home business after the last permit was issued, the application for renewal will be directed to the zoning and planning commission pursuant to subsection (a)(2)(B) and (C) and will be processed as a new application.

(C) Substantiated complaints shall be defined as any written complaint submitted to the building and development services department or code enforcement and determined by city staff to be an ordinance violation, including a violation of this article, or state law violation that is supported or verified by corroborating information, for example the report of an investigating police or code enforcement officer or an audio or video recording. The allegations in the complaint do not have to be the subject of a criminal complaint or result in a criminal conviction for the complaint to be substantiated. The building and development services director or their designee shall notify the permit owner in writing of any substantiated complaint.

(3) For all other applications, except those approvable without city council intervention:

(A) Upon receipt of the commission's recommendation, the city council shall determine whether the proposed permit complies with each of the general criteria in [section 30.05.003](#) and with each of the general requirements in [section 30.05.005](#) applicable to the proposed permit and, for short-term rentals, with the specific criteria and conditions in [section 30.05.004.5](#), and shall make separate findings thereon or adopt the findings made by the commission. The city council may condition its approval of an application on the applicant's adoption of specified changes, additions, limitations, safeguards, or effective time periods designed to assure compliance with the criteria.

(B) The city council shall not grant a special use permit unless it finds that the proposed special use, as presented or as modified by the council, complies with each of the applicable general and specific criteria; otherwise it shall deny the application.

(g) For renewal application for short-term rental permits only.

(1) If no more than two (2) substantiated complaints have been filed with the city police department

and/or the code enforcement section of the building and development services department against the applicant or the short-term rental property after the last permit was issued, upon a determination of compliance with all applicable criteria, requirements and conditions, the code official may approve short term rental renewal permits for an additional 24-month period.

(2) If more than two (2) substantiated complaints have been filed with the city police department or the code enforcement section of the building and development services department against the applicant or the short-term rental property after the last permit was issued, the application for renewal will be directed to the zoning and planning commission for review, public hearing, determination of compliance with all applicable criteria, requirements and conditions, and recommendation to city council.

Sec. 30.05.003 General criteria applicable to all special uses

(a) A proposed special use permit must comply with all the following criteria:

- (1) The appearance, size, density and operating characteristics for the proposed permit are compatible with the surrounding neighborhood and uses;
- (2) The issuance of the proposed permit will not have an adverse effect on the value of surrounding properties nor impede their proper development;
- (3) The issuance of the proposed permit will not create a nuisance nor otherwise interfere with a neighbor's enjoyment of his property or operation of his business;
- (4) The traffic that the issuance of the proposed permit can reasonably be expected to generate on existing streets will not create nor add significantly to congestion, a safety hazard, or a parking problem in the area, nor will it disturb the peace and quiet of the neighborhood. A traffic impact analysis may be required by the city engineer or code official; and
- (5) The proposed permit complies with all other applicable ordinances and regulations.

(b) Specific criteria applicable to applications for short-term rental permits. The following shall be included in the initial special use permit application to operate a short term rental, in addition to the general special use permit application:

- (1) The complete legal description, street address, and location of the short-term rental unit;
- (2) Proof of ownership and the name, street address, telephone number, driver's license, and email of each person or entity with an ownership interest in the short-term rental as well as the local responsible contact for the short-term rental;
- (3) A site plan showing the size and dimensions of the short-term rental, the gross square footage, location and number of rooms, bedrooms, bathrooms, kitchens, and vehicle parking spaces;
- (4) Proof of a valid and current registration, license, or approval under the hotel occupancy tax program administered by the state and the city and proof of payment of hotel occupancy taxes due as of the date of the submission of the application;
- (5) Proof of property insurance for the short-term rental;
- (6) Any additional information the city manager determines necessary for the administration of this chapter.

Sec. 30.05.004.5 Criteria applicable to short-term rental use permits

Short-term rental use must comply with all of the following specific criteria and conditions as well as the general criteria in [section 30.05.003](#).

- (1) The applicant shall provide a copy of the filed Comptroller of Public Accounts' Form AP-102 (hotel occupancy tax questionnaire);
- (2) The applicant shall provide proof of insurance with the use "short-term rental" clearly identified;
- (3) The total number of short-term rental use permits issued by the city shall not exceed twenty-five (25);
 - (A) The limit of twenty-five (25) short-term rental use permits shall not include a short-term rental use permit for residential property governed by a condominium association in accordance with title 7 "condominiums" of the Texas Property Code.
- (4) No new initial permit shall be issued for residential property located within one thousand (1,000) feet of another residential property that has a current short-term rental use permit;
 - (A) A permit for residential property governed by a condominium association in accordance with title 7 "condominiums" of the Texas Property Code shall be exempted from the 1,000 foot distance requirement.
- (5) Provide acknowledgement of review of the application by HOA/POA (if applicable);
- (6) Initial permits shall be issued for a one (1) year period and shall be renewable for a two (2) year period, provided a complete application for renewal is filed with the city no more than ninety (90) days and no less than sixty (60) days prior to the expiration date of the initial permit;
- (7) No permit application shall be accepted for filing, processed, or approved during a period of one (1) year following the denial of an application or revocation of a permit for any residential property;
- (8) No additional permit application for short-term rental use shall be accepted for filing from, processed, or approved for an owner of real property with an existing permit for short-term rental use;
- (9) A permit is not transferable and shall be void upon transfer or conveyance of the property;
- (10) All structures housing short-term rental use shall comply with this article and all other applicable regulations of this code, and compliance shall be verified by means of an on-site inspection by city staff;
- (11) Parking by renters or their guests shall be limited to the right-of-way bordering the rental property and to the garage and driveway on the rental property, and shall not encroach upon or obstruct ingress and egress to the neighboring properties;
- (12) Advertisement of the short-term rental use shall adhere to "truth in advertising" principles and shall clearly state maximum occupancies;
- (13) Advertisement of the short-term rental use shall not be displayed on the premises of the property in any manner that is visible from the exterior of the house;
- (14) Short-term rental use permit holders shall comply with and ensure their tenants comply with all applicable city ordinances and state laws regulating litter, waste disposal, noise, nuisance, and other regulations for the protection of the health, safety, and welfare of the public;
- (15) The short-term rental use shall not produce nuisances as defined in [section 22.02.001](#) or elsewhere in this code including but not limited to noise, damage, odors, inconsiderate or offensive behavior, late night parties, illegal drug or alcohol use, pets, public urination, public exposure, disturbance of the peace, disorderly conduct, or any other conduct that may constitute a public or private nuisance;
- (16) Minimum rental period shall be two (2) consecutive nights;
- (17) Short-term rental use permit holders shall file state hotel occupancy tax reports in a timely manner, shall maintain accurate logs including dates and times of rentals, number of guests, number of automobiles present, and complaints received, and shall forward logs to the city-designated official on a monthly basis;
- (18) The city manager or assistant city manager may suspend any short-term rental permit upon the finding of one or more of the following:

- (A) A violation of any of the applicable terms, conditions, or limitations;
- (B) A violation of any applicable ordinance or regulation;
- (C) Operation or maintenance of the short-term rental property in a manner that is detrimental to the public's health, safety, or so as to constitute a nuisance.

Determinations made by the city manager or assistant city manager may be appealed to the board of adjustment.

(Ordinance 2020-03-16-04 adopted 3/16/20)

COMMITTEE MEETING DATE: AUGUST 25, 2021



ZONING COMMISSION AGENDA ITEM #5

STAFF PREPARER/CONTACT INFORMATION: Carolyn Meredith
cmeredith@sunsetvalley.org

SUBJECT: PUBLIC WORKS AND ENVIRONMENTAL SERVICES

DESCRIPTION: Discussion and possible action regarding accessory structure standards and exemptions found in Chapter 2 of the Land Development Code.

BACKGROUND: An issue has been raised regarding "tiny libraries" and their location on a lot in Sunset Valley. At the request of a resident citing safety concerns for traffic and pedestrians in a no parking section of Pillow Road, the City Attorney issued an opinion regarding the "tiny library" located on Pillow Road, stating they are considered a building as per the City of Sunset Valley Land Development Code and the International Residential Code and therefore must comply with all applicable sections of the code. (See attached Attorney Opinion)

Building – Chapter 1

In Section 1.201, Definition, of the Land Development Code, Sunset Valley includes structure as "*Building*": Any structure, either temporary or permanent having a roof or other covering, and designed or used for the shelter or enclosure of any person, animal or property of any kind, including tents, awnings or vehicles situated on private property and used for purposes of a building. The word "building" includes the word structure."

The tiny library stores and protects books, and is hence classified as a structure.

Accessory Structures – Chapter 2 Zoning

Accessory structures are those customary and incidental to the use of the principal structure, in this case a residential home. There is a question as to whether a tiny library is customarily associated with a residential use, and if so, is it subject to the same accessory structure standards in the code in location, size, and construction.

Assuming the tiny library is incidental and accessory, this tiny library is located in the front yard setback of the property in violation of Section 2.506 (a)(10)

Section 2:506 (a) (10):

All accessory buildings and structures, other than detached garages, must be located in the rear yard behind the principal building or structure, except where the principal building or structure is more than 75 feet from the front lot line. If the principal building or structure is more than 75 feet 2-38 from the front lot line, an accessory building or structure may be located in front or to the side of principal building or structure provided that the accessory building or structure is more than 75 feet from the front lot line. Unless the accessory building or structure is architecturally compatible in construction materials, color, and design to the principal building or structure, it must be screened by landscaping from being seen from the front or side lot lines. The landscaping providing the screening must be located within 25 feet from the front and side(s) of the accessory building or structure.

The complaining neighbor argued that it is violation of the accessory building standard and the City Attorney agreed and issued an opinion that is attached here.

The Planning and Environmental Committee met to discuss a possible exemption to tiny libraries from being considered an accessory structure and exempt from any accessory location requirement. They recommended tiny libraries be exempt from regulation. However, the determination of accessory must be made by the Zoning Commission and Council. A complete list of their motion is presented below.

Definitions from Chapter 1:

"Accessory Structure": means a structure that is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure.

"Structure": "Structure": Anything, constructed or erected, which requires location on the ground, or attached to something having a location on the ground, but not including, advertising signs, billboards, and poster boards. The word "building" includes the word "structure." For purposes of the flood loss control provisions of this Code, "structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

If the Commission determines it is an accessory structure, then the Planning and Environmental Committee would like to recommend an exemption to the code regarding location and placement.

Further, they would also like to see the exemption applied to construction via the exemption of a building permit or other regulation. The exemption to size is an existing regulation in Chapter 6.

Exemptions – Chapter 6 Building Permits

Sec. 6.105 Exemptions The following are exempt from the requirement of a building permit pursuant to this Chapter 6 (but must comply with all other applicable requirements of this Code):

(1) One-story detached accessory structures not greater than 120 square feet measured along exterior walls that are intended and used for storage and similar uses;

As per Chapter 6, Section 105 (1), a tiny library is generally less than 120 sq. ft and is therefore exempt from a building permit, however it is not exempt from the location called in the Zoning Chapter.

The Planning and Environmental Committee reviewed this issue and made the following recommendations:

The committee motioned to request that the Zoning Commission consider:

1. Privately constructed tiny libraries cannot be located within the ROW
2. Not subject to Setback requirements
3. Not considered an accessory structure
4. Less than 10 square feet, exempt from impervious cover
5. Proclamation in support of tiny libraries (City Council)

APPLICABLE CODE SECTIONS: City of Sunset Valley Land Development Code

STAFF RECOMMENDATION: For the library on Pillow Road, and because of its location in a No Parking Zone, Staff offered a compromise on the location of the library. The structure could be moved back closer to the property line requiring visitors park on the property owner's driveway, and out of the flow of traffic; thus resolving the safety concern. The resident who raised the safety concern, was amenable to the resolution, but also wanted some construction standards citing safety issues with the existing library on Pillow Road.

However, any resolution will require defining a Tiny Library, and the determination if the City will regulate. If it so chooses to go down that path, it will require an

amendment to the Zoning Chapter of the Land Development Code regarding location of the structure and any other regulations or exemptions the Commission would like to recommend.

Several members of the Planning and Environmental Committee voiced support of tiny libraries as a type of public service. The recommendations from the committee would address changes needed to allow tiny libraries within the city and mitigate safety concerns regarding location.

SUPPORTING MATERIALS PROVIDED: Attorney Opinion to the City of Sunset Valley.

[Minutes 07/01/2021 Planning and Environmental](#)

INTEROFFICE LEGAL MEMORANDUM

TO: CITY ADMINISTRATOR, SYLVIA CARRILLO
CITY OF SUNSET VALLEY, TEXAS

FROM: ROXANA I. PEREZ STEVENS, CITY ATTORNEY

SUBJECT: LITTLE LIBRARY ON PILLOW ROAD

DATE: NOVEMBER 6, 2020

**PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATIONS AND
ATTORNEY WORK PRODUCT**

ISSUES:

Please accept this memorandum as a supplementation for the first memorandum on this issue dated July 23, 2020. Please take note that the first memorandum offering an opinion on a little library considered a little library in the general sense and addressed two general issues. The general issues being: "Is the Little Library located on a private residence prohibited and is it violating the current parking ordinance?" At the time of the first opinion rendered I did not have specific information including a picture of any particular little library for the review nor was it described as having any alleged signage. The only specific information I had was that there was a little library on Pillow Road. Further, I was not presented with any evidence, facts or documentation (i.e. police reports, pictures, etc.) establishing facts that would indicate that there were any accidents or other incidents related to the little library.

I have been asked to further review this matter based on a citizen's inquiries. The citizen inquiry raises two (2) issues. The first being that (1) the legal opinion does not properly apply the Land Development Code and the little library is in violation of Section 3.306 of the Land Development Code and the second being that (2) the legal opinion with regard to the safety issue (violation of the parking ordinance and car accidents) is unprofessional, unreasonable and ignorant. The citizen inquiry provides rebuttals to the legal memorandum and provides allegations and statements, but no supporting documentation or specific facts. I will address these new issues as they were not addressed in the first memorandum.

ANALYSIS:

I will address the second issue first. With regard to the safety issue, the citizen inquiry alleges and provides that the citizen knows "of at least one collision between two vehicles where one of the vehicles was illegally parked on Pillow Rd. for the sole purpose of accessing the Little Free Library." I have requested further information from the citizen regarding the assertions of this particular instance of a car accident and illegal parking but the response that I received did not

provide specific details and again provided a general assertion. In light of this, I researched police reports related to incidents around the area and location of the little library on Pillow Road. The accident report that I was able to find in that area involved the resident on Pillow across from the residence with the Little Library wherein he had collisions with other vehicles while he was coming out of his private driveway. None of these accident reports that I was able to find are related to the Little Library. Therefore, I have found no documented evidence or specific facts that would establish that there has been documented illegal parking and/or documented car accidents that are specifically caused by or related to the little library on Pillow Road. Even if there has been a car accident in the area of the little library on Pillow Road, the proximate cause of the accident would have to be analyzed and established. Without any further information or specifics, the proximate cause of any accident alleged by the citizen inquiry has not been and cannot be established.

With regard to traffic safety on Pillow Road, Texas common law provides that every motorist has a duty to keep a proper lookout for dangers which might reasonably be anticipated. *Lynch v. Ricketts*, 158 Tex. 487, 314 S.W.2d 273 (1958); *De Winne v. Allen*, 154 Tex. 316, 277 S.W.2d 95, 99 (1955). The Texas Transportation Code Section 545.155 of the Texas Transportation Code states that an operator of a vehicle about to enter or cross a highway (defined as a public roadway) from an alley, building, or private road or driveway shall yield the right-of-way to a vehicle approaching on the highway to be entered. Section 541.401 defines “park” or “parking” as to stand an occupied or unoccupied vehicle, other than temporarily while loading or unloading merchandise or passengers. Further, there is an ordinance prohibiting parking on portions of Pillow Road pursuant to Chapter 72 Schedule I. Specifically, there is a prohibition of parking on Pillow Road from (1) its intersection with Jones Road, on the west side of Pillow Road, to a point 50 feet south of Jones Road and (2) from its intersection with Jones Road, on the east side of Pillow Road, to a point 50 feet south of Jones Road; and no parking to a point 525 feet south of Jones Road unless the vehicle displays a valid residential permit issued pursuant to division (H) of Schedule I. A vehicle that is standing occupied or unoccupied, other than temporarily while loading or unloading merchandise or passengers, on those portions of Pillow Road would be in violation of the parking ordinance. If there are any instances of perceived illegal parking or perceived safety issues related to the little library or in any other case, a citizen is encouraged to call and report the specific instance to the police department for handling.

Moving on to the first issue raised by the citizen inquiry and the application of the Ordinances and the Land Development Code, the following authorities apply. Section 10.02 of the City of Sunset Valley Ordinances provides the method of interpretation for the Ordinances themselves (including the Land Development Code) and specifically states, “[U]nless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.” Texas Government Code Chapter 311 entitled the “Code Construction Act” provides the general rules and laws for the interpretation of Texas state law. Common law also provides the application and statutory interpretation of the law, but common law is not static as it changes and evolves through the reevaluation of common law concepts in light of the current conditions and distinguishing facts and circumstances of each case. The most commonly stated rule today is that the “plain meaning” of the statute is to control. In determining the plain meaning of the statute where there may be ambiguities, you must look to the legislative intent of the statute.

That being said, it is not established or documented anywhere that “little libraries” were considered by the City Council at the time the land development code was last written and amended.

Using the above reasoning and legal standards, I take into consideration the assertions made by the citizen regarding this new issue. The Citizen inquiry and rebuttal asserts the position that the following definitions in the Land Development Code apply to the Little Library at issue:

City of Sunset Valley Land Development Code
Section 1.201

...

“Accessory Structure”: means a structure that is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure.

...

“Building”: Any structure, either temporary or permanent having a roof or other covering, and designed or used for the shelter or enclosure of any person, animal or property of any kind, including tents, awnings or vehicles situated on private property and used for purposes of a building. The word “building” includes the word structure.

"Building/Accessory Use": A subordinate building or use, the use of which is clearly incidental to and customarily found in connection with the main building or principal use of the land.

...

“Setback”: As applied to a sign, the distance from the closest portion, whether the support or edge of the sign, to the property line.

...

“Sign”: Any device or surface on which letters, illustrations, designs, figures or symbols are painted, printed, stamped, raised, projected or in any manner outlined or attached and used for advertising purposes. Also, a name, identification, image, light device, figure, painting, drawing, message, plaque, poster, billboard, description, display or illustration which is affixed to, painted or represented directly or indirectly upon a building, picture, window, or piece of land, and which directs attention to an object, product, place, activity, facility, service, event, attraction, person, institution, organization or business which is visible from any street, right-of-way, sidewalk, alley, park or other public property. Customary displays of merchandise or objects and material without lettering which are placed behind a store window are not signs or parts of signs. The term “Sign” includes the term “Outdoor Advertising.”

“Structure”: Anything, constructed or erected, which requires location on the ground, or attached to something having a location on the ground, but not including, advertising signs, billboards, and poster boards. The word “building” includes the word “structure.” For purposes of the flood loss control provisions of this Code, “structure” means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

In my legal opinion and using the standard for interpretation of laws provided by the Ordinances and state law, the definitions found in the Land Development Code for accessory structure, building, building/accessory use and structure do apply to a “little library”. For instance, a “building” defined in the Land Development Code is any structure, either temporary or permanent having a roof or other covering, and designed or used for the shelter or enclosure of any person, animal or property of any kind, including tents, awnings or vehicles situated on private property and used for purposes of a building. It goes to further state that “building” includes the word “structure”. Section 1.200 (a) states that words used in the Land Development Code and not defined therein shall have the meaning established by Texas statutory or case law or, if not defined in Texas law, their ordinarily accepted meaning. Using the plan language of the statute, a “little library” does qualify as a “structure” or “building” under this definition. A little library, in its commonly accepted definition, is a free book-sharing box where anyone may take a book or share a book. It normally resembles type of mailbox.

Therefore, as the “little library” does fall under the definition of a “building” or “structure”, Section 3.306 (e) regarding minimum building setbacks does apply to the “little library” as well as any other section of the Land Development Code dealing with “buildings” or “structures”. This, in of itself, does not prohibit “little libraries” but does place standards, limitations as well as requirements or exemptions therefrom on the “little libraries”. If a “little library” is placed within the setback, then it would be in violation of the minimum building setbacks pursuant to Section 3.306 and must be corrected. Therefore, if the “little library” located on Pillow Road is placed less than the minimum fifty (50) feet setback (as this is not a corner lot), it would be in violation of Section 3.306(e) and the “little library” would need to be moved.

The Sign Regulations in Chapter 14 of the Land Development Code hold the following:

Section 14.200

This chapter shall not be construed, applied, interpreted, nor enforced in a manner to violate the First Amendment rights of any person, and the building official shall seek the advice and recommendation of the city attorney prior to taking any action to enforce any provision of this ordinance with respect to any non-commercial sign or speech by any person. No provision in this chapter shall be construed in a manner as to violate Section 216.903 of the Texas Local Government Code (protecting certain political signs).

The definition of a sign includes the requirement that it be “used for advertising purposes” pursuant to Section 1.201 of the Land Development Code as cited above. Again, a “little library”, in its

commonly accepted definition, is a free book-sharing box where anyone may take a book or share a book. As stated above and to continue the parallel example of a mailbox, some mailboxes are commonly labeled “mail”. The “little library” located on Pillow Road does have “little library” written on it. It could be argued that this is a label rather than a sign used for advertising purposes such as would be the case of a mailbox labeled with “mail”. Another example would be if a resident wished to display a decorative wishing well on their property with the terms “wishing well” on their property, I don’t believe that would fall under the definition of a sign either. If the “little library” were to state something more than just the label “little library” and somehow “advertise” something such as for example “please stop and take a free book from this little library” then that may possibly be construed as advertising rather than a label. Using the plain meaning of section and applying the above logic, I am of the opinion that the “little library” in its current condition does not fall under the current definition of a sign and therefore, the sections of the Land Development Code regarding “signs” does not apply to the “little library”.

Again, this is a legal opinion based on the current language of the Land Development Code and the “little library” at issue. The Land Development Code and “little libraries” are issues that the Council may consider and address if they chose to do so.

CONCLUSION:

Therefore, based on the foregoing and considering the additional information and issues presented, I present the above opinions and stand by my previous memorandum and its opinions.