



**NOTICE OF A REGULAR MEETING
OF THE ZONING COMMISSION
OF THE CITY OF SUNSET VALLEY, TEXAS
WEDNESDAY, OCTOBER 27, 2021
6:00 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 27th day of October 2021 at 6:00 P.M. in the Council Chambers, City Hall, 3205 Jones Road, Sunset Valley, Texas, at which time the following items will be discussed, to wit:

1. Call to Order
2. Citizen/Public Comments
3. Consider approval of the minutes from the September 22, 2021 regular meeting.
4. Public Hearing to consider a request for a Special Use Permit for alcoholic beverages to be sold in a restaurant for on-premise consumption under Section 2.503(a) of the Land Development Code by Andre Dinata at 5400 Brodie Lane, Suite 1200.
5. Zoning Commission recommendation to the City Council regarding a request for a Special Use Permit for alcoholic beverages to be sold in a restaurant for on-premise consumption under Section 2.503(a) of the Land Development Code by Andre Dinata at 5400 Brodie Lane, Suite 1200.
6. Discussion and possible direction to staff regarding a process for regulation of Short-Term Rentals.
7. 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 Friday the 22nd day of October 2021 at 6:00 P.M.

Matt Lingafelter
City Secretary



**MINUTES OF A REGULAR MEETING
OF THE ZONING COMMISSION
OF THE CITY OF SUNSET VALLEY, TEXAS
WEDNESDAY, SEPTEMBER 22, 2021
7:00 P.M.**

Commissioners Present:

Robert Skewis, Chair
Miguel Huerta, Vice Chair
Brant Boozer
John Frick
Robert Reetz

Staff Present:

Sylvia Carrillo, City Administrator
Matt Lingafelter, Asst. to the City Administrator
Jeff Ulmann, City Attorney

1. Call to order of the Zoning Commission.

Chair Skewis called the meeting to order at 7:03 P.M.

2. Citizen/Public Comments:

- Susan Durso
- Jose Flores
- Melissa Gonzales

3. Consider approval of the minutes from the August 25, 2021 regular meeting.

Miguel Huerta made a motion to approve the minutes with one spelling correction on page 2, seconded by John Frick. All voted in favor and the motion carried.

4. Discussion of a proposed Ordinance amending Chapter 2 of the Land Development Code that would regulate short-term rentals as a permitted Special Use within the City.

Introduction of the item by Matt Lingafelter and Sylvia Carrillo. Jeff Ulmann, City Attorney, with the Knight Law Firm was present and the attorney and staff briefed the Commission on the memos received from the firm regarding municipal regulations of short-term rentals (STRs).

Question from the Chair for Legal on whether the City can deny a property owner the right to rent out their property.

The Commission began discussing the issue, discussing with legal counsel the issue of regulation of short-term rentals.

Commissioner Huerta asked for the writ history on the cases from legal.

Additional discussion between the Commission, city staff and residents in attendance. Questions from the Zoning Commission for the City Attorney to be formally answered:

1. Can the City forbid STRs within the City of Sunset Valley?
2. If the City cannot forbid STRs, but wish to regulate them, can the City regulate STRs through the Special Use Permit process within Chapter 2 of the LDC?
 - a. Commissioner Huerta suggested a stipulation that a Special Use is required for anything generating HOT Funds within the Single-Family residential district
 - b. If the City cannot regulate STRs through SUPs, can we create a separate permit/registration process within Chapter 2?
3. Can the City limit the number of STR permits within the City?
4. Can the City require STR Permit applicants to have insurance for their rentals?
5. Occupancy Requirements – if the City adopted the Texas Property Code could we enforce occupancy requirements with STRs?

Additional Citizen Comments:

- Rudi Rosengarten
- Melissa Gonzales
- Susan Durso
- Jose Flores

The Commission continued their discussion. Several issues surrounding STRs were discussed:

- Occupancy
- Parking
- Safety Issues, including fire, floods and emergency situations
- Suspension/Revocation

Edits to the proposed regulations were made in real time by the Commission with the assistance of staff and legal (redline documents will be attached to these minutes). The proposed regulations will be brought back at the next meeting for discussion with additional guidance and information provided by staff and legal.

5. Adjourn

Miguel Huerta made a motion to adjourn, seconded by Brant Boozer. All voted in favor, and the meeting adjourned at 9:37 P.M.

COMMISSION MEETING DATE: OCTOBER 27, 2021



ZONING COMMISSION AGENDA ITEM #4-5

STAFF PREPARER/CONTACT INFORMATION: Matt Lingafelter, Asst. to the City Amin.
mlingafelter@sunsetvalley.org

SUBJECT: SPECIAL USE PERMITS

DESCRIPTION:

4. Public Hearing to consider a request for a Special Use Permit for alcoholic beverages to be sold in a restaurant for on-premise consumption under Section 2.503(a) of the Land Development Code by Andre Dinata at 5400 Brodie Lane, Suite 1200.
 - a. Open Hearing
 - b. Presentation
 - c. Public Comments
 - d. Close Hearing

5. Zoning Commission recommendation to the City Council regarding a request for a Special Use Permit for alcoholic beverages to be sold in a restaurant for on-premise consumption under Section 2.503(a) of the Land Development Code by Andre Dinata at 5400 Brodie Lane, Suite 1200.

BACKGROUND: Andre Dinata, owner of the new Bluefin Sushi Bar and Ramen, has submitted an application for a Special Use Permit for alcoholic beverages to be sold in a restaurant for on-premise consumption under Section 2.503(a) of the Land Development Code. This application is for a new sushi and ramen restaurant opening at the old Mama Fu's location in the MarketFair Shopping Center, 5400 Brodie Lane, Suite 1200. According to the lease agreement provided by Mr. Dinata, the property owner is allowing the restaurant to sell alcohol for on-premise consumption, once he receives authorization from the City and TABC.

Mr. Dinata owns and operates two other restaurants in the Austin-metro area, including Eurasia Ramen in Cedar Park and Eurasia Sushi Bar & Seafood in Oak Hill. Both of these restaurants have active alcohol permits with TABC.

A notice of public hearing was placed in the newspaper, posted on the City's website, and notices were mailed to property owners within 500 feet. As of this date, no comments have been received.

APPLICABLE CODE SECTIONS: [Sections 2.502 and 2.503\(a\) of the LDC](#)

STAFF RECOMMENDATION: Recommend Approval to the City Council with the condition that the applicant provide the City with a copy of an approved permit from TABC prior to the release of the Special Use Permit

SUPPORTING MATERIALS PROVIDED: YES

- STAFF MEMO 10.20.21
- SUP APPLICATION MATERIALS

OCTOBER 20, 2021



CITY COUNCIL & ZONING COMMISSION MEMO

ZONING COMMISSION MEETING DATE: October 27, 2021

CITY COUNCIL MEETING DATE: November 9, 2021

STAFF PREPARER: Matt Lingafelter, mlingafelter@sunsetvalley.org

OVERVIEW: Andre Dinata, owner of the new Bluefin Sushi Bar and Ramen, has submitted an application for a Special Use Permit for alcoholic beverages to be sold in a restaurant for on-premise consumption under Section 2.503(a) of the Land Development Code. This application is for a new sushi and ramen restaurant opening at the old Mama Fu's location in the MarketFair Shopping Center, 5400 Brodie Lane, Suite 1200. According to the lease agreement provided by Mr. Dinata, the property owner is allowing the restaurant to sell alcohol for on-premise consumption, once he receives authorization from the City and TABC.

Mr. Dinata owns and operates two other restaurants in the Austin-metro area, including Eurasia Ramen in Cedar Park and Eurasia Sushi Bar & Seafood in Oak Hill. Both of these restaurants have active alcohol permits with TABC.

A notice of public hearing was placed in the newspaper, [posted on the City's website](#), and notices were mailed to property owners within 500 feet. As of this date, no comments have been received.

REVIEW OF APPLICATION: A review of this submittal compared to the City's Land Development Code for Specific Criteria Applicable to Individual Special Uses, 2.503(a) Alcoholic beverages to be sold in a restaurant for on-premise consumption indicates:

- 1) The restaurant where the alcoholic beverage is proposed to be sold is not located within three hundred feet (300') of a church or school as measured by State law;
 - o *The restaurant is not located within 300 feet of a church or school*
- 2) The restaurant where the alcoholic beverage is proposed to be sold is not located on property, two or more sides of which abut property in a residential zoning district;
 - o *All adjacent property is currently zoned Highway Commercial (HC), therefore, the application is in compliance*
- 3) The gross receipts derived from the sale of alcoholic beverages shall not exceed forty-nine percent (49%) of the gross receipts derived from all sales;
 - o *This is an original application; the applicant indicated that projected sales of alcohol will not exceed 49% of the gross receipts*
- 4) The sale and use of growlers shall be in compliance with all applicable federal, state, and local health and safety law. The sale of an empty growler shall not count

as a sale of alcohol beverage for the purpose of determining the percentage of gross receipts derived from the sale of alcoholic beverages;

- o *Not applicable, no growler sales at this restaurant*

5) Sales of alcoholic beverages in a growler shall be limited to sales of beverages with a percentage of alcohol not higher than 15% by volume.

- o *Not applicable, no growler sales at this restaurant*

RECOMMENDATION: Based on the guidelines set forth within the Land Development Code and the information provided by the applicant, staff recommends that the Zoning Commission and City Council approve the Special Use Permit for alcoholic beverages to be sold in a restaurant for on-premise consumption at Bluefin Sushi Bar & Restaurant, subject to the following condition:

- The Applicant shall provide the City with copy of an approved permit from the Texas Alcoholic Beverage Commission prior to the release of City permit.

SUPPORTING MATERIALS PROVIDED:

Special Use Permit Application

TABC Licensing Application

Lease Agreement pg. 1-4

Texas Sales Tax Permit

TABC Permits for other locations

**CITY OF SUNSET VALLEY, TEXAS
SPECIAL USE PERMIT APPLICATION**

Name of Applicant: ANORE DINATA

Phone: (512) 203-2606 Email Address: BLUEFITHAUSTIN@GMAIL.COM

Mailing Address: 5400 BRODIE LN. STE. 1200, SUNSET VALLEY, TX. 78745

THE FOLLOWING INFORMATION MUST BE COMPLETED PRIOR TO SUBMISSION TO THE CITY COUNCIL FOR CONSIDERATION OF APPROVAL:

Site Location/Address: 5400 BRODIE LN. STE. 1200, SUNSET VALLEY, TX. 78745

Describe Special Use Requested: Alcoholic Beverages sold in a restaurant
for on-premise consumption

IF THE APPLICANT REQUESTING THE PERMIT IS NOT THE OWNER OF THE PROPERTY, THIS APPLICATION SHALL BE ACCOMPANIED BY WRITTEN APPROVAL FROM THE PROPERTY OWNER.

Please attach a letter that addresses compatibility with the location's zoning, nuisance and disturbance factors impacting neighboring properties, and traffic issues, such as congestion, safety hazards, or parking. Also, please attach a map showing location site, roadways, entrance and exits, and location of any accessory structures to be placed on the site. *The letter is not necessary if this is a permit renewal application.*

It is hereby agreed that for and in consideration of the approval of this permit application, the proposed use shall be performed and completed in accordance with the plans and specifications as approved and any applicable Ordinance requirements of the City of Sunset Valley. All plans and specifications by the applicant and approved by Sunset Valley in connections with this application are hereby made a part of this application. All work approved by this permit is subject to the inspection and control of the City of Sunset Valley.

I certify that the above statements are true and correct. Authorization is hereby given to the licensing authority of the City of Sunset Valley to enter upon the above described private property for the purpose of evaluation and inspection.

SPECIAL CONDITIONS: _____

10/01/2021 _____ ANORE DINATA

Date

Applicant Signature

Applicant Printed Name

Permit Fee: _____
Amount Paid _____ Date Paid _____ Receipt Number _____



TEXAS ALCOHOLIC BEVERAGE COMMISSION
Texas Helping Businesses & Protecting Communities

Document reference ID : 2638

Licensing Application Summary

You must review your application and confirm that the information displayed here is correct. Select **Review and Confirm** to continue and make the payment. If the information is not correct, select **Next** to return to the application, edit the data as needed and finalize the submission. If you need to store the application packet for your records, select **Download**.

Application ID: 2638
Applicant Name: LILY RESTO LLC
License Type applied for: Mixed Beverage Permit (MB)
Address: , , , ,
Business Structure: Limited liability company
Business Name: LILY RESTO LLC
FEIN/SSN Number: 463948855
Historically Underutilized Business: No
Veteran-owned business: No
Secretary of State Filing Number: N/A
Date Filed: N/A
Filing State: N/A

Principal Parties

Principal Parent Entity	Principal Party	Role	%Ownership
LILY RESTO LLC	ANDRE DINATA	Member, Manager	50
LILY RESTO LLC	LILI LIN	Member, Manager	50

Location Address

Address: 5400 Brodie Ln, 1200, Austin, TX, United States 78745

Property Ownership

Property Type	Property Ownership Type	Entity Name
Building	Lessor	CFH REALTY III SUNSET VALLEY

Location Investment

Investment Category

Investment By

Amount Invested

Term

Principal

ANDRE DINATA

\$50000.00

NONE

COMPTROLLER OF PUBLIC ACCOUNTS CERTIFICATES

I hereby certify on this _____ day of _____, _____, the applicant holds or has applied for and satisfies all legal requirements for the issuance of a Sales Tax Permit under the Limited Sales, Excise and Use Tax Act or the applicant as of this date is not required to hold a Sales Tax Permit.

Sales Tax Permit Number _____

Outlet Number _____

Print Name of Comptroller Employee _____

Print Title of Comptroller Employee _____

SIGN _____ FIELD OFFICE _____
HERE

S E A L

PUBLISHER'S AFFIDAVIT	
Name of newspaper	
City, County	
Dates notice published in daily/weekly newspaper (MM/DD/YYYY)	
<i>Publisher or designee certifies attached notice was published in newspaper stated on dates shown</i>	
Signature of publisher or designee	
Sworn to and subscribed before me on this date	
Signature of Notary Public	
S E A L	
ATTACH PRINTED COPY OF THE NOTICE	

CERTIFICATE OF COUNTY CLERK FOR: (MB, BG & BE)

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the city secretary or clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by ordinance.

I hereby certify on this _____ day of _____, _____, that the location for which the license/permit is sought is in a "wet" and is not prohibited by any valid order of the Commissioner's Court.

- MB** Mixed Beverage Permit
- MB/FB** Mixed Beverage Restaurant Permit with Required Food and Beverage Certificate
- BG/FB** Wine and Beer Retailer's Permit with Required Food and Beverage Certificate
- BG** Wine and Beer Retailer's Permit - **Election for given location was held for:**
 - legal sale of beer/wine (17%) on-premise **AFTER** Sept. 1, 1999
 - legal sale of beer/wine (14%) on-premise **BEFORE** Sept. 1, 1999
- BE** Beer Retail Dealer's On-Premise License

OR

I hereby refuse on this _____ day of _____, 20_____ to certify this location.

SIGN
HERE

_____ County Clerk _____ County

SEAL

CERTIFICATE OF CITY SECRETARY FOR: (MB, BG & BE)

Section 11.37 & 61.37

Not later than the 30th day after the date a prospective applicant for a license or permit requests certification, the city secretary or clerk shall certify whether the location or address given in the request is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by ordinance.

I hereby certify on this _____ day of _____, _____, that the location for which the license/permit is sought is inside the boundaries of this city or town, in a "wet" area for such license/permit, and not prohibited by charter or ordinance in reference to the sale of such alcoholic beverages.

- MB** Mixed Beverage Permit
- MB/FB (RM)** Mixed Beverage Restaurant Permit with Food and Beverage Certificate (MB must also hold a Food and Beverage Certificate)
- BG/FB** Wine and Beer Retailer's Permit with Food and Beverage Certificate (BG must also hold a Food and Beverage Certificate)
- BG** Wine and Beer Retailer's Permit - Election for given location was held for:
 - legal sale of beer/wine (17%) on-premise **AFTER** Sept. 1, 1999
 - legal sale of beer/wine (14%) on-premise **BEFORE** Sept. 1, 1999
- BE** Beer Retail Dealer's On-Premise License

OR

I hereby refuse on this _____ day of _____, 20_____ to certify this location.

SIGN HERE _____, TEXAS
City Secretary/Clerk City

SEAL

SHOPPING CENTER LEASE

This Shopping Center Lease (the "Lease") is entered into as of 6/29/2021 (the "Effective Date"), by and between **CFH REALTY III/SUNSET VALLEY, L.P.**, as "Landlord", and **BLUEFIN AUSTIN, LLC**, as "Tenant", hereby agree that, for good and valuable consideration the receipt of which is hereby acknowledged and upon the terms and conditions set forth in this Lease, Landlord leases to Tenant and Tenant leases from Landlord, the Leased Premises (defined below).

1. Basic Lease Provisions and Definitions.

- (A) **Shopping Center:** Sunset Valley Marketfair located in Austin, Texas as depicted on Exhibit "A"; Building ID No: 113780
- (B) **Leased Premises:** The premises identified as Suite 33 shown hatched on Exhibit "A".
- (C) **Floor Area:** Approximately 3,000 square feet.
- (D) **Lease Commencement Date:** The date that Landlord tenders the Leased Premises to Tenant.
- (E) **Rent Commencement Date:** One hundred eighty (180) days after the Lease Commencement Date.
- (F) **Lease Term/Lease Years:** The "Lease Term" is a period of ten (10) Lease Years plus the period between the Effective Date and the Rent Commencement Date. The first "Lease Year" begins on the Rent Commencement Date and ends on the last day of the twelfth (12th) calendar month after the Rent Commencement Date. Each succeeding Lease Year shall begin on the expiration of the prior Lease Year and shall continue for twelve (12) successive calendar months; however, the final Lease Year will end on the Expiration Date.
- (F-1) **Additional Terms:** Two (2) five (5) Lease Year options. See Article 23. The Lease Term shall include any Additional Terms exercised by Tenant.
- (G) **Expiration Date:** The Lease Term will end on the Expiration Date, which is the last day of the final Lease Year or such earlier date that this Lease may be terminated in accordance with its terms.

(H) Base Rent Schedule – Original Term		
Lease Year	Annual Base Rent	Monthly Rent
1	\$120,000.00	\$10,000.00
2	\$120,000.00	\$10,000.00
3	\$120,000.00	\$10,000.00
4	\$120,000.00	\$10,000.00
5	\$120,000.00	\$10,000.00
6	\$133,500.00	\$11,125.00
7	\$133,500.00	\$11,125.00
8	\$133,500.00	\$11,125.00
9	\$133,500.00	\$11,125.00
10	\$133,500.00	\$11,125.00

(H) (i) Base Rent Schedule – First Additional Term		
Lease Year	Annual Base Rent	Monthly Rent
1	\$146,850.00	\$12,237.50
2	\$146,850.00	\$12,237.50
3	\$146,850.00	\$12,237.50
4	\$146,850.00	\$12,237.50
5	\$146,850.00	\$12,237.50

(H) (ii) Base Rent Schedule – Second Additional Term		
Lease Year	Annual Base Rent	Monthly Rent
1	\$161,535.00	\$13,461.25
2	\$161,535.00	\$13,461.25
3	\$161,535.00	\$13,461.25
4	\$161,535.00	\$13,461.25
5	\$161,535.00	\$13,461.25

- (I) **Fixed CAM:** \$10,620.00 for the first Lease Year. Fixed CAM shall automatically increase on the commencement of the second and each successive Lease Year by 4% over the amount of Fixed CAM for the preceding Lease Year (see Article 4).
- (J) **Percentage Rent Rate:** N/A.
- (K) **Security Deposit:** \$12,050.00. Tenant shall pay the Security Deposit to Landlord simultaneously with Tenant's execution of this Lease. Landlord will retain the Security Deposit.

as security for Tenant's full and prompt performance of Tenant's obligations in this Lease. Landlord may deduct from the Security Deposit sums required to cure any Tenant breach or Tenant Default (as defined in Article 14) or to pay for costs or other damages Landlord may suffer as a result of a Tenant breach or Tenant Default (the "Application"). Upon Landlord's notice, Tenant shall pay Landlord the amount of the Application. Tenant has no right to apply any portion of the Security Deposit against any of Tenant's obligations under this Lease. After the Expiration Date and a reconciliation of Tenant's Rent account, if Tenant is not in breach and there is no Tenant Default, Landlord will promptly return the unapplied balance of the Security Deposit to Tenant. The Security Deposit will be transferred to anyone acquiring the interest of Landlord in this Lease and the prior Landlord will have no obligation to Tenant to return the Security Deposit.

(L) Permitted Use:

The operation of an Asian restaurant primarily serving sushi and ramen, and for no other use or purpose. In no event shall Tenant violate any existing exclusives and prohibited uses attached hereto as Exhibit "D".

Provided Tenant obtains and maintains all necessary governmental permits and approvals and Tenant carries a liquor liability insurance policy with limits of liability as set forth in Article 12, Tenant shall be permitted to maintain a service bar for the sale of alcoholic beverages for on-premises consumption and only as part of full meal service. Tenant is specifically prohibited from: (i) serving alcoholic beverages to customers who are not dining at the restaurant, and (ii) operating the Leased Premises, or any portion thereof, as a bar, nightclub, tavern, or cocktail lounge.

(L-1) Exclusive:

Landlord agrees that during the term of this Lease, but only for so long as Tenant is open for business, using the Leased Premises for the Exclusive Use (as hereinafter defined) and is not otherwise in default of any of the provisions of this Lease, Landlord will not hereafter enter into a new lease in the Shopping Center the operation of a full service with a tenant whose principal permitted use is a restaurant offering sushi and ramen noodles dishes (the "Exclusive Use"). For the purposes hereof, the term "principal permitted use" shall be defined as a tenant who derives more than twenty-five percent (25%) of its annual gross sales from sales of sushi and ramen noodles dishes. The aforementioned restriction shall not: (a) apply to: (i) any existing tenants at the Shopping Center which presently have the right to engage in the Exclusive Use, or their successors, assigns or replacements, or (ii) any existing leases at the Shopping Center as same may be renewed, extended, modified or amended (except that no such renewal, extension, modification or amendment shall grant a tenant the right to engage in the Exclusive Use where such tenant did not previously have that right), or (iii) any store measuring 10,000 sq. ft. or more; (iv) any tenant operating pursuant to the order or judgment of a court of competent jurisdiction; or (b) prohibit Landlord from entering into a Lease for the Exclusive Use that does not become effective until the expiration or sooner termination of this Lease. Furthermore, the rights contained in this Article are intended exclusively for the benefit of Bluefin Austin, LLC and shall not be available to any successor, assignee, subtenant or transferee of Bluefin Austin, LLC. In the event of any assignment or other transfer of Bluefin Austin, LLC's interest in this Lease or the Leased Premises, this Article shall be deemed deleted from the Lease.

(M) Trade Name:

Bluefin Sushi & Ramen

(N) Landlord's Notice Address:
(see Article 21)

CFH Realty III/Sunset Valley, L.P.
c/o Kimco Realty Corporation
500 North Broadway, Suite 201
Jericho, New York 11753

with a copy to:

CFH Realty III/Sunset Valley, L.P.
c/o Kimco Realty Corporation
6060 Piedmont Row Drive South, Suite 200
Charlotte, North Carolina 28287
Attn.: Regional Counsel

(O) Tenant's Notice Address:

Bluefin Austin, LLC
7101 West Highway 71, Suite c-13
Austin, Texas 78735
Attn: Andre Dinata
Telephone No.: 512-203-2606
Email Address: din4t4@yahoo.com

(P) Broker(s): Endeavor Real Estate Group
500 West 5th Street, Suite 700
Austin, Texas 78701
Attn: Pierce Jones
Tel: 512-682-5582
Email: pjones@endeavor-re.com

Edge Realty Partners Houston LLC
623 West 38th Street, Suite 310
Austin, Texas 78705
Attn: Hutch Hutchings
Tel: 512-391-6275
Email: hhutchings@edge-re.com

(Q) Guarantor(s): Andre Dinata
103 Lodestone Cove
Lakeway, Texas 78738
Tel: 512-203-2606
Email: din4t4@yahoo.com

Lili Suryanni Lin
103 Lodestone Cove
Lakeway, Texas 78738
Tel: 512-203-2606

(R) Terms/Exhibits: The following Terms/Exhibits are attached to this Lease and incorporated and made a part of this Lease:

General Terms and Provisions

Exhibit "A" - Site Plan with Outdoor Seating Area

Exhibit "B" - Intentionally Deleted

Exhibit "B-1" - Contractors Indemnity Agreement

Exhibit "C" - Tenant's Pre-Approved Signage, if any

Exhibit "D" - Shopping Center Exclusives and Prohibited Uses

**Remainder of Page Left Intentionally Blank
Signature Page to Follow**

IN WITNESS WHEREOF, the parties hereto have executed this Lease under their respective hands as of the day and year first above written.

LANDLORD:

CFH REALTY III/SUNSET VALLEY, L.P.

By: CH Realty III/Retail GP, L.L.C., its general partner

By: PRK CH LLC, its sole member

By: PRK Holdings IV LLC, its sole member

By: Kimco CFH Holdco, LLC, its managing member

By: Kimco CFH Business Trust, its managing member

DS
jw

DocuSigned by:



BY: _____

2E2042DEC884442...

NAME: Gary J. Bazydlo

DS
GJB

TITLE: Vice President

DATE: 6/29/2021

TENANT:

BLUEFIN AUSTIN, LLC

DocuSigned by:



BY: _____

BD738FD2A47040B...

NAME: Andre Dinata

TITLE: Manager

DATE: 6/25/2021



Office of the Secretary of State

CERTIFICATE OF FILING OF

Bluefin Austin, LLC
File Number: 804121558

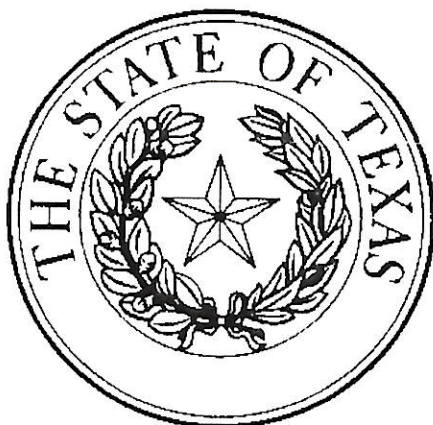
The undersigned, as Deputy Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Deputy Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 05/20/2021

Effective: 05/20/2021



A handwritten signature in black ink, appearing to read "Jose A. Esparza".

Jose A. Esparza
Deputy Secretary of State

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Jose A. Esparza
Deputy Secretary of State

Office of the Secretary of State
Packing Slip

June 23, 2021

Page 1 of 1

Eurasia
PO Box 341781
Austin, TX 78734

Batch Number: **105745957**

Batch Date: **05-20-2021**

Client ID: **821837736**

Return Method: **Mail**

Document Number	Document Detail	Number / Name	Page Count	Fee
1057459570002	Certificate of Formation	Bluefin Austin, LLC	0	\$300.00
			Total Fees:	\$300.00

Payment Type	Payment Status	Payment Reference	Amount	
Check	Received	90679	\$300.00	
			Total:	\$300.00

Total Amount Charged to Client Account: \$0.00

(Applies to documents or orders where Client Account is the payment method)

Note to Customers Paying by Client Account: This is not a bill. Payments to your client account should be based on the monthly statement and not this packing slip. Amounts credited to your client account may be refunded upon request. Refunds (if applicable) will be processed within 10 business days.

User ID: BDEJOYA



Office of the Secretary of State

June 23, 2021

Eurasia
PO Box 341781
Austin, TX 78734 USA

RE: Bluefin Austin, LLC
File Number: 804121558

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created domestic limited liability company (llc).

Unless exempted, the entity formed is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the entity. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <https://window.state.tx.us/taxinfo/franchise/index.html>.

The entity formed does not file annual reports with the Secretary of State. Documents will be filed with the Secretary of State if the entity needs to amend one of the provisions in its certificate of formation. It is important for the entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the involuntary termination of the entity.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555

Enclosure

The State of Texas

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Transaction ID: 6406086427

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TEXAS SALES AND USE TAX PERMIT

This permit is not transferable, and this side must be prominently displayed in your place of business.

Retailers: A seller may NOT accept a copy of this permit in lieu of a properly completed exemption or resale certificate. A certificate is necessary to document why tax is not collected on a sale.

You must obtain a new permit if there is a change of ownership, location, or business location name.

TAXPAYER NAME, BUSINESS LOCATION NAME, and PHYSICAL LOCATION

BLUEFIN AUSTIN, LLC

BLUEFIN SUSHI BAR AND RAMEN
5400 BRODIE LN STE 1200
SUNSET VALLEY
TRAVIS COUNTY

TX 78745-2545

Type of permit	SALES AND USE TAX
Taxpayer number	3-20798-1304-7
Location number	00001
First business date of location	01/01/2021

NAICS: 722511 Full-Service Restaurants

WE SHOW THIS BUSINESS IN THE FOLLOWING LOCAL SALES TAX AUTHORITIES:

CITY: SUNSET VALLEY EFF: 01/01/2021
SPD: SUNSET VALLEY CRM CONT EFF: 01/01/2021

Glenn Hegar
Glenn Hegar
Comptroller of Public Accounts

You may need to collect sales and/or use tax for other local taxing authorities depending on your type of business. For additional information, see "Collecting Local Sales and Use Tax" section on the back of this document.

If you have any questions regarding sales tax, visit our website at www.comptroller.texas.gov or call us at 1-800-252-5555.

Detach here and prominently display your permit only. Retain the portion below for your records.

01-300-F04

Is the Information Printed on this Permit Correct?

The information printed on your permit is public information. It must be accurate and current. If there is an error, make corrections on the form below. Enter the correct information for incorrect items only. Detach the form and mail it to:

Comptroller of Public Accounts
111 E. 17th Street
Austin, TX 78774-0100

More helpful information about your permit is on the back of this document.

Texas Sales and Use Tax Permit Corrections Form

Taxpayer name shown on the permit BLUEFIN AUSTIN, LLC		If you need to make changes to your local sales tax authorities or to the NAICS code printed on your permit, see information on the back of this form.	
Taxpayer number shown on the permit 32079813047	Location number shown on the permit 00001		
Correct business location name •			
Correct business location (no P.O. Box or directions accepted) •			
City	State	ZIP code	County
Correct taxpayer name •		Daytime phone (Area code and number)	
Correct mailing address •			
City	State	ZIP code	Federal Employer Identification Number
If you are no longer in business , enter the date of your last business transaction. _____			
sign here Taxpayer or authorized agent		Date	



000000802

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License #: BG1038947
AIMS License Type: BG
AIMS License #: 105920793
Trade Name: EURASIA RAMEN
Owner: LILY RESTO LLC
Location Address: 1335 E WHITESTONE BLVD BLDG T100
 CEDAR PARK , TX
 786137649
 UNITED STATES
Mailing Address: 103 LODESTONE CV
 LAKEWAY , TX
 787386160
 UNITED STATES
County: Williamson
Status: Active
Orig. Issue Date: 12/4/2018
Exp. Date: 12/3/2022
Wine Percent: Upto 17%
Location Phone No.:
Subordinates:
Related To: **Gun Sign:** BLUE

License #: MB961579
AIMS License Type: MB
AIMS License #: 104949000
Trade Name: EURASIA SUSHI BAR & SEAFOOD
Owner: LILY RESTO LLC
Location Address: 7101 W HIGHWAY 71 STE C13
 AUSTIN , TX
 787358328
 UNITED STATES
Mailing Address: 103 LODESTONE CV.
 LAKEWAY , TX
 787386160
 UNITED STATES
County: Travis
Status: Active
Orig. Issue Date: 10/20/2016
Exp. Date: 10/19/2022
Wine Percent:
Location Phone No.:
Subordinates: FB
Related To: **Gun Sign:** BLUE

COMMISSION MEETING DATE: OCTOBER 27, 2021



ZONING COMMISSION AGENDA ITEM #6

STAFF PREPARER/CONTACT INFORMATION: Matt Lingafelter, Asst. to the City Amin.
mlingafelter@sunsetvalley.org

SUBJECT: SHORT TERM RENTALS

DESCRIPTION: Discussion and possible direction to staff regarding the regulation of Short-Term Rentals.

BACKGROUND: The Zoning Commission was directed by the Mayor and City Council to discuss the possible regulation of short-term rentals (STRs) in the City of Sunset Valley. At the July meeting, the Commissioners directed staff to bring back regulations from other cities with a variety of stringency to their regulations of short-term rentals (STR).

Staff researched three cities: Port Aransas, Wimberley and Lakeway. At the August meeting, there was a consensus among the Commissioners to use Lakeway's STR regulations as a starting point for possible amendments to Chapter 2 of the LDC. Staff synthesized the Commissioners comments and markups to produce draft regulation that was presented at the September meeting.

[Click Here for the Backup Materials presented at the September 22nd Meeting.](#)

However, just prior to the September meeting, staff received a memo from the City Attorney informing staff and the Commission that as a General Law City, Sunset Valley does not have the legal authority to create stringent regulation for STRs, based on previous rulings in Texas courts, and must treat them similarly to Single Family Residential properties.

At the September meeting, the Commission did proceed with edits of the proposed regulations, and came up with a list of questions to be answered by the City Attorney before the next discussion surrounding STRs. The questions were:

1. Can the City forbid STRs within the City of Sunset Valley?
 - a. *Response from Legal – No.*

2. If the City cannot forbid STRs, but wish to regulate them, can the City regulate STRs through the Special Use Permit process within Chapter 2 of the LDC?
 - a. *Response from Legal- No*

- b. Commissioner Huerta suggested a stipulation that a Special Use is required for anything generating HOT Funds within the Single-Family residential district.
 - i. *Response from Legal – No.*
 - c. If the City cannot regulate STRs through SUPs, can we create a separate permit/registration process within Chapter 2?
 - i. *Response from Legal – Yes, a simplified registration process, but not a permit may be permissible.*
3. Can the City limit the number of STR permits within the City?
 - a. *Response from Legal – No*
 4. Can the City require STR Permit applicants to have insurance for their rentals?
 - a. *Response from Legal- As a general law city, you don't ask about insurance. You could ask but the City can't do anything if they don't.*
 5. Occupancy Requirements – if the City adopted the Texas Property Code could we enforce occupancy requirements with STRs?
 - a. *Response from Legal – No. You don't have occupancy requirements for any other type of owned residential property.*

Provided in the backup are the redline edits, including comments and questions, of the proposed regulation presented at the September 22nd meeting.

The attorney provided staff and the Commission a memo on October 20th which answers the questions asked by the Commission in September. It is included in this agenda backup and associated materials. Although marked confidential, we have been authorized to share it publicly.

APPLICABLE CODE SECTIONS:

STAFF RECOMMENDATION:

SUPPORTING MATERIALS PROVIDED: YES

- REDLINE REGULATIONS FROM 9.22.21
- ATTORNEY MEMO 10.20.21

CONFIDENTIAL LEGAL MEMORANDUM

TO: Sylvia Carrillo, City Administrator

FROM: Barbara Boulware-Wells, City Attorney
Jeff Ulmann, Assistant City Attorney

DATE: September 21, 2021, updated on October 20, 2021

RE: Short Term/Vacation Rentals – Overview/Advice and Q/A

www.cityattorneytexas.com
attorneys@cityattorneytexas.com

OVERVIEW/ADVICE

This has been an area that has caused quite a bit of litigation as the growth of the industry has flourished. City of Austin, as you are likely aware has borne the brunt of challenges in our neck of the woods but certainly other cities in Texas (and elsewhere) have also been challenged – primarily for a taking of a property right. This has occurred in cities who have had long term “uses” defined that don’t list as a “use” in their zoning code short-term rentals/vacation rentals. A recent case in Arlington seems to have initially been upheld for the city by the court but it is on appeal. Zaatari v. City of Austin is the most recent case that seems to be in line with the challenges that I have seen through the years:

Background: Property owners sued city, challenging municipal ordinance amending city's regulation of short-term rental properties. The State intervened to contend that ordinance's ban on short-term rentals of non-homestead properties was unconstitutional. The 53rd District Court, Travis County, [Tim Sulak, J.](#), denied property owners' and State's traditional motions for summary judgment, overruled city's plea to the jurisdiction, granted city's motion for no-evidence summary judgment, and sustained in part State and city's evidentiary objections. All parties appealed.

Holdings: The Court of Appeals, [Rose](#), C.J., held that:

- [1](#) state had standing to intervene;
- [2](#) property owner who was both operating licensee and tenant of short-term rental property had standing to challenge ordinance on behalf of tenants;
- [3](#) dispute was ripe for adjudication;
- [4](#) court had jurisdiction over dispute;
- [5](#) sworn declarations from owners of short-term rental properties were admissible;
- [6](#) Court of Appeals would take judicial notice of legislative history;

[7](#) retroactive city ordinance provision banning short-term rentals of single-family residences that were not owner occupied was unconstitutional infringement on settled property rights; and
[8](#) city ordinance provision restricting assembly in short-term rental property was unconstitutional restriction on fundamental right to assembly.
Affirmed in part, reversed in part, and remanded.

Since that case was decided in 2019, there have been others that have similarly challenged it. Those are still bouncing around the courts of appeal, but I have attached at least one of them. Even the federal courts have been pulled in under 1983 claim – which is a civil action for deprivation of rights. The New Orleans case is actually really good at laying out various constitutional provisions, but given that any challenge will likely rise up through the Texas courts, its best to focus some attention on those cases.

In this past legislative session, there were several bills that were introduced (but did not get out of committee) relative to regulating STRs and I've attached those as well. They are fairly in line with some of the recent decisions: a city can regulate via a permit scheme, the permit fee should be not excessive, a city can focus on parking and nuisance matters but cannot do so more onerously than in other areas of town.

I believe the biggest takeaways from all of this is that people have a right to do what they want with their property so long as they knew what the rules were when they purchased the property and there are constitutional protections that a City should not tread on. (More on this below). Permit fees can be charged but not excessively. There is some question as to peaceable assembly which was challenged under *Zaatari* and which appears to be the method of challenge to any ordinance.

Below are some key headnotes from the case:

Property owners' challenge to constitutionality of city ordinance regulating short-term rental property was ripe for adjudication; some ordinance provisions were already in effect and limited property owners' rights with respect to number of tenants, term of tenancy, and permissible uses of property during short-term rental tenancy, and facial abridgment of their constitutional rights was an injury for which they could seek relief. [Tex. Const. art. 1, §§ 3, 9, 19, 27.](#)

The three-part test to determine whether a retroactive law is unconstitutional, which requires examination of the public interest, the prior right impaired by law, and extent of the impairment, acknowledges the heavy presumption against retroactive laws by requiring a compelling public interest to overcome the presumption, but it also appropriately encompasses the notion that statutes are not to be set aside lightly. [Tex. Const. art. 1, § 16.](#)

Property owners' right to lease property on a short-term basis was a settled interest, for purposes of determining constitutionality of retroactive ordinance prohibiting short-term rental of non-owner-occupied single-family

residences; short-term rentals were established practice and historically allowable use in city, property owners invested significant time and money into property for that purpose prior to adoption of ordinance, and ban would result in loss of income for property owners. [Tex. Const. art. 1, § 16.](#)

City ordinance regulating short-term rental property imposed burdensome and significant restrictions on property owners' fundamental right to assembly, as protected by Texas Constitution; ordinance banned “assembly” in private rental property between certain hours without regard to peaceableness or content of assembly, and set limits on how many individuals could use rental property even if property was licensed for higher occupancy. [Tex. Const. art. 1, § 27.](#)

The last headnote above is the heart of where this case went in my opinion, and, as I stated, will be where the biggest challenges are. The following is out of the courts opinion and highlights the areas of the ordinance that they believe were violative of freedom of assembly:

4. Texas's Right to Assemble and the City of Austin's Ordinances

*199 What is at stake, then, is the authority of the City, through its ordinances, to prohibit or restrict the peaceable assembly of citizens on private property with respect to the purpose, time, and number of people. The Property Owners here argue that review of the alleged violation of their fundamental right to assemble by Austin's City Code must be examined under strict scrutiny. We agree.

[54](#)Section 25-2-795 of Austin's short-term rental regulations provides that:

(B) Unless a stricter limit applies, not more than two adults per bedroom plus two additional adults may be present in a short-term rental between 10:00 p.m. and 7:00 a.m.

(C) A short-term rental is presumed to have two bedrooms, except as otherwise determined through an inspection approved by the director.

(D) A licensee or guest may not use or allow another to use a short-term rental for an assembly between 10:00 p.m. and 7:00 a.m.

(E) A licensee or guest may not use or allow another to use a short-term rental for an outside assembly of more than six adults between 7:00 a.m. and 10:00 p.m.

(F) For purposes of this section, an assembly includes a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping.⁸

(G) A short-term rental use may not be used by more than:

- (1) ten adults at one time, unless a stricter limit applies; or
- (2) six unrelated adults.

Austin, Tex., Code, § 25-2-795 (emphases added). This section plainly restricts the right to assemble and does so without regard to the peaceableness or content of the assembly—as emphasized above, the word “assembly” is used to describe what is being banned or severely restricted temporally, quantitatively, and qualitatively. Even if it the ordinance did not expressly use the word “assembly,” section 25-2-795 represents a significant abridgment of the fundamental right to peaceably

assemble—i.e., to get together or congregate peacefully. It forbids owners (i.e., “licensees” in the ordinance) and tenants from gathering outdoors with more than six persons, at any time of day, even if the property is licensed for occupancy of six or more. And it prohibits use by two or more persons for any activity “other than sleeping” after 10:00 p.m. *Id.*

So, in drafting anything for Sunset Valley, and I did see ideas from Lakeway about the number of adults in the house per bedroom, you should be very cautious about that line of thinking. Perhaps the best way to look at it is: What would a private resident be able to do, that the City is NOT allowing a renter to do under a regulation – it will likely draw a challenge.

QUESTIONS/ANSWERS

Short – term Rentals – The following is a run-down of various questions raised about Short Term or Vacation Rentals as well as a broad overview on the topics related thereto.

Is a short-term rental considered a hotel for the purposes of the hotel occupancy tax?

Yes. Pursuant to legislation passed in 2015, Tax Code §156.001(b) specifically includes a residential short-term rental property in the definition of “hotel” for the purposes of hotel occupancy taxes.

What legislation has been passed related to short-term rentals?

While the Texas legislature has been very interested in the issue of short-term rentals, it has passed only limited legislation addressing it. In 2015, HB 1905 was enacted to make clear that short-term rentals are considered “hotels” for the purposes of the hotel occupancy tax. In recent sessions, legislators have regularly filed bills to implement consistent rules for STRs across the state or to remove local authority to regulate them entirely. While those bills have thus far not made it to final passage, it is likely that similar preemption legislation will continue to be proposed.

Can a home rule city regulate duration of the rental period for short-term rentals?

Indirectly, yes. Most existing local ordinances define as “short term rental” as a rental of property lasting fewer than 30 days. This is consistent with the approach of the Texas Comptroller, which charges a 6% state hotel tax for sleeping accommodations or rooms ordinarily used for sleeping for fewer than 30 consecutive days. Tax Code §156.001(b).

What powers do general law cities have to regulate short-term rentals?

General Law cities have fairly limited powers to regulate short-term rentals. The Local Government Code does not provide any specific authority to regulate STRs, whether via registration requirements, differing inspection schedules, permitting requirements, etc. Therefore, General Law cities are limited to the more blunt instruments that they are

specifically authorized to use and which would apply to properties other than short-term rentals, like limits on street parking and the enforcement of noise or nuisance ordinances, or regulation through zoning ordinances. For example, in *Zaatari v. City of Austin*, 615 S.W.3d 172 (Tex. App.—Austin 2019, pet. denied), in which the Court struck down Austin’s STR regulation scheme, the court suggested that the City’s ordinances against regulations regarding noise, public urination and defecation, and parking density, taken together with state laws against disorderly conduct, could amount to effective controls on the problems posed by STRs. The court also strongly suggested that the City should have started by more effectively enforcing or updating those ordinances before regulating STRs directly.

Does it matter whether an owner uses a short-term rental as a primary or secondary residence, or if it is purely a rental property?

Probably not. This issue was recently addressed in *Zaatari v. City of Austin*, 615 S.W.3d 172 (Tex. App.—Austin 2019, pet. denied). The City of Austin’s 2016 ordinance categorized STRs into three different types: Type 1 “owner-occupied” properties; Type-2 “not-owner occupied” single-family residences; and Type-3 “not-owner occupied” multi-family residences. The ordinance prohibited the issuance of new Type-2 permits and set a 2022 sunset date for existing permits. The Supreme Court held that property owners have a substantial interest in renting out one’s property as an STR, even if the property is not-owner occupied, and that the City had not sufficiently demonstrated evidence to justify infringing on those property rights.

The City argued a that a variety of considerations supported the law, including public health and safety concerns, drug and alcohol use, stabilizing property values, and minimizing noise and traffic disruption. However, the Court held that these considerations did not amount to a compelling public interest to support the ban – especially because the record showed that the City had not issued a single citation to an STR owner or guest in the years preceding the ordinance. While it had issued several notices of violation for over occupancy or trash violations, it had not issued any citations, nor had it revoked any licenses for noise disturbances or party-related complaints. Given the lack of evidence demonstrating a compelling public interest, the Court held that the Type-2 ban was unconstitutional because it infringed on fundamental privileges of private property ownership. The Court also noted the established practice and historically allowed use of STRs in determining that the ordinance “significantly affects property owners’ substantial interests in well-recognized property rights while serving a minimal, if any, public interest.” The court suggested that the City instead enforce existing its ordinances to deal with disruptive STRs. In short, the court held that renting out one’s property is a substantial privilege of property ownership and set a high bar for justifying restrictions on that right.

Can a home rule city impose a moratorium or sunset period on certain types short-term rentals?

Probably not, if the ordinance would operate retroactively to existing STRs. Austin had adopted an STR Ordinance in 2016 after studies and hearings to demonstrate the impact of

STRs to local neighborhoods and the broader community. In addition to more traditional types of regulation like licensing requirements, inspections, etc., the ordinance also included provisions providing for the elimination/phase-out of certain types of STRs in residential neighborhoods.

Plaintiffs filed suit against the City, and the appellate court held that the City's prohibition of new STRs in residential neighborhoods and phase-out of existing STRs was unconstitutional because the ordinance "significantly affects property owners' substantial interests in well-recognized property rights while serving a minimal, if any, public interest." To determine whether a law is unconstitutionally retroactive, a court considers three factors: "(1) 'the nature and strength of the public interest served by the statute as evidenced by the Legislature's factual findings;' (2) 'the nature of the prior right impaired by the statute;' and (3) 'the extent of the impairment.' This test, the court explained, "acknowledges the heavy presumption against retroactive laws by requiring a compelling public interest to overcome the presumption."

Also relevant to this question is *Vill. of Tiki Island v. Ronquille*, 463 S.W.3d 562 (Tex. App.—Houston [1st Dist.] 2015, no pet.), where property owners filed suit after the Village adopted an Ordinance prohibiting STRs, arguing that the ordinance amounted to a regulatory taking of their property by disallowing a use that had been historically allowed. The trial court ruled against the Village, holding that the plaintiffs had investment-backed, reasonable expectations that they would be able to rent out their properties, issuing an injunction which was affirmed on interlocutory appeal. However, it is also important to note that the court of appeals did not rule on the merits in this case.

Can a home rule city impose occupancy or use restrictions on short-term rentals?

No. The 2016 Austin ordinance at issue in *Zaatari* also placed restrictions of the types of assemblies allowed at STRs. The city defined "assembly" to include weddings, bachelor parties, concerts, sponsored events, or similar group activities other than sleeping. The specific restrictions included:

- prohibiting assemblies other than sleeping between 10 p.m. and 7 a.m.;
- prohibiting outdoor assemblies of more than six adults between 7 a.m. and 10 p.m.;
- restricting occupancy to no more than six unrelated or ten related adults; and
- requiring that no more than two adults per bedroom, plus two additional guests, may sleep at the rental.

The City argued these restrictions were necessary to preserve the character of local neighborhoods and discourage the use of STRs for disruptive parties. Again, the court held that this was not a sufficiently compelling interest, especially in contrast to other cases involving the right to assemble on private property *without* the permission of the property owner. Further, the law banned nearly all types of assemblies on private property "without regard to the peacefulness of or reasons for the assembly." Once again, the court suggested that the city's regulatory goals could be achieved by the enforcement of existing nuisance ordinances.

Do deed restrictions limiting a property to “residential” or “single-family” use operate to prohibit short-term rentals?

No, unless the terms are specifically defined to reference the intent, duration of occupancy, or the presence of the owner, rather than the use of the property itself. In *Tarr v. Timberwood Park Owners Association*, 556 S.W.3d 274 (Tex. 2018), a San Antonio homeowner decided to rent out his home as an STR after relocating to Houston. The Timberwood HOA claimed that the use of his home as an STR violated a deed restriction restricting homes to a “residential purpose” and another restricting properties to a “single-family residence.” The trial court and appellate court each found in favor of the HOA, but the Texas Supreme Court disagreed.

For the first issue, the Court held that the restriction of home to a “residential purpose” is not violated by rentals for short-term occupancy. Applying the ordinary meaning of the term “residential” and noting that the covenants merely require that activities comport with a “residential” and not a “business” purpose, the Court declined to impose an “overly narrow” reading of the ordinance that would impose intent or physical-presence requirements that are absent in the covenant. Therefore, as long as the home was being used as a residence, the duration of occupancy for short-term rentals would not by itself render its use a “business purpose.”

The Supreme Court also held that the “single family” deed restriction applied only to the structure, rather than the use and occupancy of the home. In other words, the restriction determined only the *type* of building that could be erected on the lot – not the use or occupancy of the structure itself.

What types of short-term rental regulation *have* been authorized by the courts?

Some types of regulation have thus far withstood legal scrutiny, though not every case discussed below was decided on the merits.

In *a v. City of Arlington*, 02-19-00410-CV, 2021 WL 2966139, (Tex. App.—Fort Worth July 15, 2021, no pet. h.), homeowners sued the City of Arlington arguing in part that the City’s STR ordinance violates the Texas Constitution’s substantive due-course-of-law clause, because the right to lease one’s property is a vested right and that the ordinance is unrelated to a legitimate governmental interest. The ordinance in question was similar to the Austin ordinance that allowed STRs only in certain defined zones of the city. The trial court denied the Homeowners’ request for an injunction, and the Homeowners appealed.

On appeal, the court contrasted this case with a similar argument made against the City of Austin in *Zaatari*. Unlike the plaintiffs in *Zaatari*, the Homeowners in *Draper* did not plead a retroactivity claim. The court explained that a “retroactivity analysis fundamentally differs from the rational-basis analysis applied in due-course-of-law challenges. Determining that *Zaatari* is inapplicable to a due-course-of-law challenge and in light of the considerable evidence that the ordinance was rationally related to objectives within the

City's powers, the court affirmed the trial court's ruling. However, the court did not indicate if such a claim would have changed its analysis if properly pleaded.

Additional questions posed during the last Zoning Commission meeting held on September 22, 2021:

1. Can we forbid STRs within the City of Sunset Valley? No. Please see the answer to the question beginning on page 4 of this memo.
2. If we cannot forbid STRs, but want to regulate them, can we regulate STRs through the Special Use Permit process within Chapter 2 of the LDC? Given that several recent cases are based on property rights of the landowner and whether their ordinances are retroactively applied, I would advise that the City ***should not regulate based on Special Use Permits***. These would be retroactively applied in virtually all cases in Sunset Valley as well as the restrictions that a general law city has with only being able to do that which is specifically authorized to do.
 - a. Commissioner Huerta suggested a stipulation that a Special Use is required for anything generating HOT Funds within the Single Family residential district. See answer above.
 - b. If we cannot regulate STRs through SUPs, can we create a separate permit/registration process within Chapter 2? You can seek to have a rationally related registration process rather than a permit.
3. Can we limit the number of STR permits within the City? No. All property owners have the same set of property rights.
4. Can we require STR Permit applicants to have insurance for their rentals? As a general law city, you don't ask about insurance. You could ask but the City can't do anything if they don't.
5. Occupancy Requirements – if we adopted the Texas Property Code could we enforce occupancy requirements with STRs? No. You don't have occupancy requirements for any other type of owned residential property.

Sec. 30.05.004.5 — Criteria applicable to short-term rental use permits Short Term Rental 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 liability insurance with the use "short-term rental" clearly identified; (Question to Legal, can we require?)
- (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~~, 1 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 NOT~~ transferable ~~and shall be void upon transfer or conveyance of the~~ provided that the new owner reapplied within sixty (60) days of closing on 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;
Accessory buildings structures, including guest houses, cannot be used as a Short-Term Rental;
A placard that is clearly visible one the structure outside the Short-Term Rental is required displaying the permit number and name of designated local contact with their 24/7 contact information;
- (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, or access 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 have provided written notice and 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 Title IX, General Regulations, of the Sunset Valley Code of Ordinances 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,

Commented [ML1]: Clarification needed on what the number of permitted STRs should be in the City

Commented [ML2]: No condominiums or other multi-family residences allowed within SF

Commented [ML3]: Suggestion for City Staff to provide a "Short Term Rental Use Legal Restrictions Notice" that provides a summary of all rules which the homeowner can provide to the renter. Consider preparing a complete notice to the renter that includes the contact information, emergency information, and any other pertinent information or regulations.

pets, public urination, public [indecent](#) 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; ~~maximum rental period shall be thirty (30) consecutive nights;~~

Commented [ML4]: Differing opinions on whether there should be a minimum rental period or not

(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~~ [Quarterly](#) basis ~~or such other basis as the City determines or upon request of the City;~~

(18) The city ~~manager or assistant city manager may~~ [administrator or designee 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.

~~The City may initiate such suspension on its own or upon application by any city resident. The City Administrator or their designee shall provide written notice to the Permit Holder of suspension proceeding (Question to legal- what does this look like?) and provide the Permit Holder opportunity to respond to such suspension proceeding. The City Administrator shall make such determination and provide a written report on why the Permit Holder's permit has been suspended or not suspended, which such suspension shall be effective immediately upon such determination. Determinations made by the City city manager or Administrator assistant city manager may be appealed to the board of adjustment. (Question to legal (suspension and then revocation... severity... etc))~~

~~This proposed language would be added to Section 2.503 Specific Criteria Applicable to Individual Special Uses and Temporary Special Uses~~

Specific criteria ~~applicable for 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:~~ (Question to Legal – if the property requires a HOT tax, then apply the special use permit process)

- (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; local responsible contact must be available within thirty (30) minutes notice to be on site;
- ~~(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;~~ (Question to Legal - Discuss occupancy – adoption of a Property Code, etc- Health and Safety)
- (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;~~ application.
- (5) Proof of property insurance for the short-term rental; (Question to Legal – Can we require?)
- ~~(6) Any additional information the city manager determines necessary for the administration of this chapter.~~

Commented [ML1]: Need clarification from legal if we can regulate STR thru SUP Permit Process

Commented [ML2]: Question for Legal: can the City require this for the STR Permit?