

DIVISION 1. DEFINITIONS

Sec. 34.801. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated. Where terms are not defined, they shall have their ordinary accepted meanings.

Advertise means the act of drawing the public's attention to a rental unit in order to promote the availability of the rental unit.

Code official means city marshal or designated official who is charged with the enforcement of this Code.

Complex. See "multi-family unit (MFU)".

Director means the department(s) or division(s) of the City designated by the City Manager to administer and/or enforce the provisions of this Ordinance and any person or persons designated by such a department or division to represent the department or division for said purpose.

Duplex unit (DU) — (two-family dwelling). As defined by the International Building and/or Residential Code.

Hotel occupancy tax means the hotel occupancy tax required to be assessed and collected for the operation of any short term rental and paid pursuant to Chapter 351 of the Texas Tax Code. Landlord means the owner, landlord, operator, and lessor, management company, managing agent or on-site manager of a rental unit or multi-family dwelling unit.

Local responsible party means an individual located in the City of San Marcos while a rental unit is being rented and who has access to the premises and is authorized to make decisions regarding the premises.

Long term rental means any rental unit with a lease term for a period of 30 consecutive days or more. A long term rental does not include a hotel or motel as defined in the city's Development Code, subpart B of the city's Code of Ordinances.

Multi-family unit (MFU) means any building or portion thereof which is designed, built, rented, leased, or let to be occupied as three or more dwelling units or apartments. The term shall not include hotels, motels, nursing facilities, or assisted living units as defined in the city's Development Code, subpart B of the city's Code of Ordinances.

Occupant means any individual living or sleeping in a building, or having possession of a space within a building. This includes, but is not limited to, persons that reside at a residence the majority of 21 calendar days, regardless if that person pays rent or provides in-kind services. The person is not required to have a lease, contract or other legal document to be considered an occupant.

Owner means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court.

Owner-occupied rental unit means a dwelling unit in which at least one owner of record of the property resides as his/her primary dwelling.

Premises means property, a lot, plot or parcel of land, easement or public way, including any structures thereon.

Primary residence means the usual dwelling place of the owner or tenant of a residential dwelling and is documented as such by at least two of the following: motor vehicle registration, driver's license, Texas State Identification card, voter registration, tax documents, or utility bill(s). For purposes of this chapter, a person may have only one primary residence.

Property. See "premises".

Registrant means owner, manager or representative of a property. For short term rentals only, it also includes a lessee of property under a lease for a period of at least 30 days.

Rental property means any property upon which a rental unit is located.

Rental unit means a structure, property, or portion thereof that is rented or offered for rent as a residence; including but not limited to, single-family unit, duplex unit, tri-plex, quad-plex unit, multi-family unit, manufactured or mobile home unit, town home or condominium.

 *Short term rental* means a primary residence having fewer than five bedrooms, or portion thereof, **whereby two bedrooms maximum may only be** used for lodging accommodations to guests with a lease term for a period of less than 30 consecutive days. A short term rental does not include a bed and breakfast inn as defined in the city's Development Code, subpart B of the city's Code of Ordinances.

Single family unit (SFU) as defined by the International Residential Code.

Unit. See "rental unit".

(Ord. No. 2018-04, § 11, 4-17-18)

Secs. 34.802—34.809. Reserved.

DIVISION 2. SHORT TERM RENTAL

Sec. 34.810. Purpose and applicability.

- (a) The purpose of this Division is to establish regulations for the registration and use of short term rentals. The requirements of this division apply only to short term rentals located in residential only zoning districts established under the city's Development Code, subpart B of the city's Code of Ordinances.
- (b) Nothing in this division, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for a period of less than 30 consecutive days of property that is located outside of such residential only zoning districts.
- (c) The provisions of this article pertaining to short term rentals shall be reviewed by the city council within one year of the adoption of Ordinance No. 2017-37. Those provisions are subject to amendment or repeal upon such review or at any other time. The adoption of the short term rental provisions of this article shall not be construed to create any enforceable right to the continuation of short term rentals or any right to compensation for loss, damages, costs, or expenses alleged to have been incurred in reliance upon its adoption or suffered as a result of its repeal.

(Ord. No. 2018-04, § 11, 4-17-18)

Sec. 34.811. Registration and standards.

- (a) *Registration required.* An approved registration is required before operation of short term rental. Application for short term rental registration shall be made upon a form prescribed by the City of San Marcos for such purpose. The following is required of all applications and missing items or information constitute an invalid application. Additional information may be required based on individual circumstances.
- (1) Registrant's name, home address, telephone number, and electronic mail address.
 - (2) Proof of possession of the premises being registered, either by warranty deed, or valid lease.
 - (3) If the applicant does not own the property where the rental unit is located, the applicant must provide written documentation, signed by the property owner before a notary public, authorizing the registrant to operate a short term rental on the premises
 - (4) Proof that the premises is the primary residence of the applicant, including at least two of the following: Motor vehicle registration, driver's license, Texas State Identification card, voter registration, tax documents, or utility bill.
 - (5) Signature or electronic signature by the registrant requiring the applicant to self- certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Texas.
 - (6) Payment of all fees, established by this article or the city council and, for registration renewals, proof of collection and payment of Hotel Occupancy Tax due during the preceding registration periods.
 - (7) The zoning district classification of the property, to be verified by the planning and development services department.
 - (8) Incomplete applications will not be processed and, as a result, any premises associated with an incomplete application will not be registered in compliance with or as required by this division.
- (b) *Standards specific to short term rentals.*
- (1) Short term rental is not permitted for any property that has not been registered under this article or where the registrant's permission to operate a short term rental has been suspended or revoked under this article.
 - (2) An approved short term rental registration shall not be assigned or transferred to any person or entity. Any attempt to transfer a registration shall render the registration subject to suspension or revocation as provided in this article.
 - (3) No registrant shall be allowed to operate or register more than one short term rental in the city, and no registration for a new short term rental shall be authorized, while another registration in the registrant's name is still active or under suspension.
 - (4) An owner of property may not have more than one short term rental unit in the city that is registered or operated as a short term rental. When an owner of property registered or operated as a short term rental is a business organization, trust or other entity, no person or entity affiliated with such business organization, trust or other entity as an organizer, officer, member, manager, shareholder, trustee, beneficiary, partner, equity owner or investor shall be allowed to register or operate an additional short term rental at a different property address in the city.
 -  (5) No more than two adult guests per bedroom, plus no more than two additional adults **for a total of six guests**, shall be allowed when renting a property as a short term rental.
 - (6) Each short term rental registrant shall provide in the premises at least at least one working smoke detector and alarm and one working carbon monoxide detector and alarm per bedroom, and one

working fire extinguisher. The premises shall, otherwise be in compliance with applicable building and fire codes adopted under chapter 14 of the city's Code of Ordinances.

(7) It shall be the sole responsibility of the registrant, owner, and/or landlord to review the registration for each short term rental unit in accordance with the terms outlined within this article.

(c) *Standards for required brochure.*

(1) Each registrant operating a short term rental shall provide to guests a brochure that includes:

- a. The registrant's contact information;
- b. The property owner's contact information if the registrant is not the property owner;
- c. A local responsible party's contact information if neither the registrant nor the property owner are in the city limits when guests are renting the premises;
- d. Pertinent neighborhood information including, but not limited to, parking restrictions, restrictions on noise and amplified sound, trash collection schedule, and relevant water restrictions; and
- e. Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.

(Ord. No. 2018-04 , § 11, 4-17-18)

Sec. 34.812. Registration term and renewal.

(a) All registrations approved under this division shall be valid for a period of one year from the date of their issuance.

(b) A new registration shall be required if a change in ownership, trade name or transfer occurs prior to the expiration of the current registration. The new landlord, owner, or registrant of the premises or rental unit shall have 30 days from the date the change occurred to file a new registration with the city and pay the applicable fee.

(c) If the registrant has received notice of violation of any law or regulation including enforcement action under a current registration, an application for renewal shall include a copy of the notice.

(d) Upon receipt of an application for renewal of the registration, the director may deny the renewal if there is reasonable cause to believe that:

- (1) The registrant has violated any ordinance of the city, or any state, or federal law on the premises or has permitted such a violation on the premises by any other person; or
- (2) There are grounds for suspension, revocation, or other registration sanction as provided in this article.

(Ord. No. 2018-04 , § 11, 4-17-18)



Sec. 34-813. Issuance or denial.

A license shall be denied under this article if:

- (a) The short-term rental is not the applicant's primary residence. In determining whether a location is the applicant's primary residence for short-term rental licensing purposes, the director may consider any of the following applicable factors:

-
- (1) Whether the applicant has or claims any other location for domestic, legal, billing, voting, or licensing purposes;
 - (2) Whether and how often the applicant returns to the short-term rental or resides at any other location within a calendar year;
 - (3) Whether the address listed on an applicant's legal documents or tax assessment records is different than the address of the short-term rental;
 - (4) Whether an applicant's business pursuits, employment, income sources, residence for income or other tax purposes, leaseholds, situs of personal and real property, and motor vehicle registration indicate that the short-term rental is the applicant's primary residence;
 - (5) Whether the amount of time that the short-term rental has been, or will be, rented within the calendar year indicates the short-term rental is or is not the applicant's primary residence;
 - (6) Whether the applicant is actively deployed in the United States military; or
 - (7) Whether any other relevant information discovered by the director or submitted by the applicant indicates that the short-term rental is or is not the applicant's primary residence.
- (b) There is good cause to deny the application. The term "good cause" means:
- (1) Evidence that an applicant or licensee has violated, does not meet, or has failed to comply with any of the terms or conditions placed on his license, any city or state law, or any rules and regulations promulgated thereunder, including, but not limited to, the San Marcos Development Code;
 - (2) Evidence that the short-term rental has previously been, or will be, operated in a manner that adversely affects the public health, safety, or welfare of the immediate neighborhood in which the short-term rental is located.
- (c) The applicant fails to provide a complete application and documentation required pursuant to section 34.811.
- (d) The applicant fails to obtain or maintain insurance in the amounts set by the director.
- (e) The application fails to comply with any state or local laws, or any rules and regulations adopted pursuant thereto.



Sec. 34-814. Disciplinary actions; sanctions; penalties.

- (a) A short-term rental license may be suspended or revoked for any of the grounds for denial set forth in section 34.813 of this article.
- (b) Procedures for investigation of license violations and for suspension, revocation or other licensing sanctions as a result of any rules and regulations promulgated by the director.

Sec. 34.815. Violations.

- (a) A violation of this division is a class C misdemeanor offense. Any persons, firm, corporation or any others acting on behalf of said person, persons, firm or corporation violating or failing to comply with any of the provisions of this division is subject to payment of a fine not to exceed \$2,000.00 plus court costs. Each act of violation and each day upon which such violation occurs constitutes a separate offense. Additionally, this division authorizes cumulative enforcement action against repeated or multiple violations under this division.

-
- (b) Violations of this division shall additionally be enforced in accordance with and subject to the remedies in division 4 of this article.
- (c) It is unlawful, and shall be considered a violation of this article, to:
- (1) Rent, lease, or otherwise permit or allow any rental unit or premises to operate, or be operated as a short term rental without first registering the property in which the rental is to occur and unless all requirements of this code and State laws and codes are met;
 - (2) Operate a short term rental in any location that is not the registrant's primary residence;
 - (3) Operate a short term rental without paying the required hotel occupancy taxes;
 - (4) Operate or allow to be operated a short term rental without first registering the property in which the rental is to occur with the city in accordance with this article;
 - (5) Operate a short term rental in any location that is not the registrant's primary residence;
 - (6) Operate a short term rental that does not comply with all applicable city and state laws and codes;
 - (7) Operate or allow the operation of more than one short term rental within the city limits;
 - (8) Operate a short term rental without paying the required hotel occupancy taxes;
 -  (9) **It shall be unlawful to advertise a short term rental without the license number clearly displayed on the face of the advertisement. For the purpose of this section, the terms "advertise," "advertising" or "advertisement" mean the act of drawing the public's attention to a short term rental.**
 - (10) Offer or allow the use of a short term rental for having a party;
 - (11) Fail to include a written prohibition against the use of a short term rental for having a party in every advertisement, listing, or other publication offering the premises for rent; or
 - (12) Fail to renew required registration (may result in double fees).
 -  (13) **On and after November 1, 2021, it shall be unlawful for any booking service provider to receive payment, directly or indirectly, for an unlicensed short-term rental located in the City of San Marcos. The provisions of this subsection (13) are entirely strict liability in nature.**
 -  (14) **On and after November 1, 2021, it shall be unlawful for any person or entity to fail to comply with section 34.816.**

(Ord. No. 2018-04, § 11, 4-17-18)

Secs. 34-816 Records

- (a) Each short-term rental licensee shall maintain the following records for the past year:
 - (1) Total number of nights the short-term rental was rented to a guest; and
 - (2) The dates in which the short-term rental was rented by a guest.
- (b) Each booking service provider shall maintain the following information for short-term rental transactions facilitated in the City of San Marcos within the past five years:
 - (1) The name of the person who offered the short-term rental;
 - (2) The address of the short-term rental;
 - (3) The dates for which the short-term rental was booked by a guest;
 - (4) The price paid by the guest for each short-term rental transaction; and

-
- (5) The short-term rental license number.
 - (c) The department shall maintain and make publicly available a list of all licensed short-term rentals within the city.

34.817—34.819. Reserved.