

**Z-2 – Section 3 Amended  
Abandoned-Nonconforming Use**

**ORDINANCE NO. 2023-18**

**ENTITLED:**

**EXCEPTION TO RENTAL REQUIREMENTS FOR CERTAIN CALAMATIES AND AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF TYBEE ISLAND GEORGIA, SO AS TO AMEND NOTICE OF AN ABANDONMENT AND NONCONFORMING USE, PREVIOUSLY SECTION 3 TO ORDINANCE NO. 2022-04 (Z-2) TO REDUCE THE REQUIRED 90 DAYS OF RENTAL TO 60 DAYS OF RENTAL SO AS PROVIDE FOR RELIEF IN CERTAIN INSTANCES OF OR FROM THE REQUIREMENTS OF THE 90 OR 60 DAY PROVISION DUE TO CERTAIN CALAMATIES OR FORCES OF NATURE, INCLUDING BUT NOT LIMITED TO PANDEMICS AND/OR PHYSICAL DAMAGES TO A STRUCTURE AND OTHER CIRCUMSTANCES, TO PROVIDE FOR PROCEDURES FOR ADDRESSING REQUESTS FOR SUCH RELIEF AND TO CONFIRM THE EFFECT DATE AND ADOPTION OF SECTION 3, NOTICE OF ABANDONMENT AND NONCONFORMING USE, TO REPEAL CONFLICTING ORDINANCES OR PROVISIONS AND TO INSURE CONFORMITY AND FOR OTHER PURPOSES.**

WHEREAS, the duly elected governing authority for the City of Tybee Island, Georgia (hereinafter the "City"), is authorized under Article 9, Section 2, Paragraph 3 of the Constitution of the State of Georgia to adopt reasonable ordinances to protect and improve the public health, safety, and welfare of the citizens of Tybee Island, Georgia, and

WHEREAS, the duly elected governing authority for the City of Tybee Island, Georgia, is the Mayor and Council thereof; and

WHEREAS, the governing authority desires to revise a zoning ordinance under its police and home rule powers; and

WHEREAS, following numerous public hearings, meetings, and update shops, conference calls, and focus group sessions, conducted in order to address Short-Term Rentals in R-1, R-1-B and R-2 areas; and

WHEREAS, the City previously addressed and adopted ordinances revising the Short-Term Rental code; and

WHEREAS, the City adopted certain zoning ordinances addressing Short-Term Rentals and finds a need to revise Section 3 of Ordinance No. 2022-04 now Ordinance No. 2023-12; and

WHEREAS, the provisions of Section 3 of Ordinance No. 2022-04, as previously adopted, has among other things, a requirement of at least 90 days of rental at full market value within the preceding 12-month period and a presumption that the use has been abandoned and becomes unauthorized if such rentals are not established; and

WHEREAS, the City wishes to revise the same so as to provide a procedure for relief from the 90-day or 60-day requirement in the event the inability to rent is shown to be a result of damages to the property resulting from fire, hurricane or storm damage, and/or due to situations such as spread of disease, such as the pandemic experienced in recent years and potentially for other circumstances justifying relief; and

WHEREAS, the City wishes to consider reducing the 90-day rental requirement to 60 days of rentals; and

NOW THEREFORE, it is hereby ordained by the governing authority of the City of Tybee Island that the Code of Ordinances be amended so as to revise Section 3 of Ordinance No. 2022-4 as follows:

**SECTION 1, AMENDMENT TO SECTION 3 OF ORDINANCE 2022-4, SECTION 3:**

**SECTION 3 -- NOTICE OF AND ABANDONMENT OF NONCONFORMING USE**

If a property holding a Short-Term Rental permit in zoning districts R-1, R-1-B and R-2 fails to conduct short term rentals (rentals of less than 30 days each), at least 60 days of rental at full market value within the preceding 12-month period, it shall be presumed that such short-term rental use has been abandoned and therefore such use shall be unauthorized. It is the owner or rental operator's burden to establish the rentals. The existence of rentals shall be proven by the applicable tax returns filed by the owner for that location. In the event tax returns or other verifiable tax documentation are not available due to the rental occurring, or allegedly occurring, through a marketplace innkeeper or an online booking service, (such as Airbnb or similar providers), the owner may establish rentals through other documentation including rental records to the City's satisfaction. No new permit or renewal of a permit shall be granted if an owner or rental operator fails to make this showing of rentals. Any new owner seeking a permit is responsible to demonstrate the prior property owner's rental history.

Any previously operated Short-Term Rental within the R-1, R-1-B and R-2 zoning districts which is determined abandoned will no longer be allowed to operate as a Short-Term Rental.

Any property holding an STR permit is exempt from the above requirement to establish the short-term rental history for any period where the property is subject to a written lease for a long-term rental. "Long term rental" as used herein means a bona fide written lease agreement for a period of 30 days or more.

Further, and notwithstanding the provisions above, property owners, managers or agents thereof may petition the Mayor and Council for relief from the 60-day requirement by demonstrating that due to damage to the property from fire, hurricane or other storm, and/or due to the unexpected spread of disease, such as the recent pandemic, the property was not available or appropriate for rent or there was no ability to rent during a period making compliance unachievable as a practical matter, relief may be granted if the Mayor and Council determines that the circumstances shown to exist were of such an extent, duration and/or nature that rentals would be substantially impaired for a period of time not less than 45 days.

In addition to the circumstances identified in the above paragraph, a property owner or representative of a property owner may apply for an exception to the 60-day rental requirement when circumstances exist which are peculiar to the particular property and which involve circumstances that the owner or representative contend(s) to be justification for allowing relief or an exemption to the 60-day requirement. The owner or representative must petition for relief with identifying circumstances contended by the owner or representative believed to justify an exception to the requirement. Such circumstances must relate to the property and involve conditions that, although are not identified in the calamities described above, would create an undue hardship or other exceptional circumstances that would warrant relief. The circumstances must be such as to significantly impact the availability or marketability of the property in question and must be directly related to the property itself, as opposed to any unique circumstances of the owner or representative of the owner.

Applications for relief from the requirements of this ordinance shall be made by petition on such forms as the City may designate and will identify the calamity or circumstances the owner or representative contend support entitlement to an exemption to the time rental requirements under the ordinance. The matter will be reviewed by the Planning Commission and a public hearing will be held by the Mayor and Council pursuant to applications and ordinary procedures for a variance such as those provided in Section 5-090. The Mayor and Council will determine, following a public hearing, whether the calamity or circumstances justify the exemption or relief and such conditions or terms as would be applicable to the relief.

## **SECTION 2**

If any section, subsection, clause, or provision of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, subsection, clause, provision or portion of this ordinance which is not invalid or unconstitutional. Where the provisions of this ordinance are in conflict with other ordinances, the most restrictive provision shall be enforced.

## **SECTION 3**

All ordinances and parts of ordinances in conflict herewith are expressly repealed.

## **SECTION 4**

It is the intention of the governing body, and it is hereby ordained, that the provisions of this ordinance shall become effective and be made a part of the Code of Ordinances, City of Tybee Island, Georgia, and the sections of this ordinance may be renumbered to accomplish such intention.

## **SECTION 5**

This ordinance shall be effective upon its adoption by the Mayor and Council pursuant to the code of the City of Tybee Island, Georgia.

This ordinance has previously been determined to be effective as of May 1, 2023. That determination was prior to this amendment.

ADOPTED THIS 22 DAY OF June 2023.

  
MAYOR

ATTEST:

  
CLERK OF COUNCIL

FIRST READING: 6/8/23  
SECOND READING: 6/22/23  
ENACTED: 5/1/23

