

**ORDINANCE NO. 2022-04**

**ENTITLED: Now 2023-11**

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES FOR THE CITY OF TYBEE ISLAND GEORGIA, SO AS TO REVISE PERMISSIBLE USES IN RESIDENTIAL ZONING DISTRICTS SPECIFICALLY R-1, R-1-B AND R-2 SO AS TO CLARIFY THE SAME AND TO RECOGNIZE EXISTING AND ONGOING PROPERLY PERMITTED SHORT-TERM RENTALS OF PROPERTIES IN SUCH ZONES BUT TO RECOGNIZE OR ADDRESS ANY PROPERTY CURRENTLY OPERATED AS A SHORT-TERM RENTAL PROPERTY IN SUCH ZONES, AND CONSIDER WHETHER SUCH USES SHALL BE AUTHORIZED TO CONTINUE SUBJECT TO THE TERMS CONTAINED HEREIN AND TO FURTHER AMEND THE CODE SO AS TO CLARIFY THE TERMS THEREOF BY WAY OF APPROPRIATE DEFINITIONS, TO PROVIDE FOR STANDARDS BY WHICH PREVIOUSLY OPERATED LOCATIONS AND NOW TO BE POTENTIALLY NON-CONFORMING USES THAT MAY BE DISCONTINUED, ABANDONED AND NO LONGER BECOME SHORT-TERM RENTAL PROPERTIES, AS DEFINED HEREIN AND TO CREATE REVIEW PROCEDURES RELATED TO ANY DISPUTES AS TO THE DISCONTINUANCE OF SUCH USES AND TO REPEAL CONFLICTING PROVISIONS, TO ESTABLISH AN EFFECTIVE DATE AND FOR OTHER PURPOSES.**

WHEREAS, the duly elected governing authority for the City of Tybee Island, Georgia, 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 zoning definitions and adopt ordinances under its police and home rule powers; and

WHEREAS, the City of Tybee Island has conducted numerous public hearings, surveys, focus group sessions, stakeholder conference calls and other means of gauging public opinion over a period of years, all on the subject of rentals for under 30 days. While these activities have been held covering all zoning areas on Tybee, this ordinance addresses rental activity within the R-1, R-1-B and R-2 areas only; and

WHEREAS, the community has a limited number of housing units contained within these three residential zones and is seeking to protect and maintain the quantity and diversity of housing options for the general public in accordance with the Tybee Island master plan. The character of the island's residential community is an important feature for residents and for any visitor on the island. The existing tourist trade is very dependent upon this diversity and on the unique character currently found in these zones; and

WHEREAS, the City of Tybee Island has demonstrated that the usage of this limited residential housing stock has become increasingly dominated by rentals for less than thirty days, and in many cases, high turnover rentals with stays of less than five days. These units are also increasingly operated by absent owners, agents, investment firms and other real estate operations with no connection to the Tybee Island community, as demonstrated during the many sessions for public input. This increase has been verified by third party software purchased by the City with the intent to identify and monitor these Short-Term Rentals. The methods and results of this software have been made extensively public and have been thoroughly examined; and

WHEREAS, additionally, while anecdotal evidence demonstrates that behavior by this transient, rental population has improved significantly over the last few years, this has not been achieved without significant dedication of resources by the City of Tybee Island well as significant cooperation from local owner/operators, including, but not limited to, the creation of strict residential noise ordinances, sign ordinances, a dedicated complaint hotline, occupancy restrictions, and an entire dedicated enforcement department enforcing ordinances through citations. These efforts demonstrate the need for continued regulation of this expanding short term rental industry within the residential zones; and

WHEREAS, cities must from time to time update existing zoning definitions to keep pace with changes in technology, population trends and land usages. The City of Tybee Island has determined that the increase in online reservation systems and other peer to peer technology breakthroughs has substantially altered the face of the tourism industry and this plays a significant role in changing the character of neighborhoods within these residential zones; and

WHEREAS, the City has conducted a carrying capacity study that addresses the impact of density and consequences upon the City's infrastructure and which calls for restrictions beyond those previously imposed upon certain uses, including Short-Term Rentals; and

NOW THEREFORE, it is hereby ordained by the governing authority of the City of Tybee Island that the Code of Ordinances will be amended so as to provide as follows:

## SECTION 1 - PURPOSE AND INTENT

The purpose of this ordinance is to clarify the definitions and uses for certain residential zoning districts. Section 4-050(A)(B) and (C) of Article 4 of the Land Development Code shall be amended so as to include the following sections for all buildings and structures located within zoning districts R-1, R-1-B and R-2. Except as set forth herein, no residence, structure or building within zones R-1, R-1-B and R-2, shall be operated as a Short-Term Rental or leased or rented or held available for rental for less than thirty days. Existing and ongoing properly permitted Short-Tenn Rentals which have been operated within the City in zones R-1, R-1-B and R-2 prior to the effective date hereof shall not be a use as of right, but rather, such use will be a nonconforming use hereafter, except for owner occupied locations as authorized below or in other sections of the Code of Ordinances.

## SECTION 2 - DEFINITIONS

The following words and phrases, as used in this article, shall have the following meanings:

*Authorized agent* means the owner's agent or the owner's designee who is normally available and authorized to respond to any issues arising from a short-term rental unit within two hours and who is authorized to receive written notice on behalf of the owner.

*Cap* means the maximum number of properties that may be licensed for Short-Term rental use in a given zoning district which may be later defined or established with a restricted zoning designation. The cap may be calculated as a percentage of the total number of developed dwelling units and developable lots within a zoning district or, alternately, as a flat number, not a percentage. Once a zoning district has met its cap, a waiting list or other means of determining eligibility for a permit may be established for properties which seek to obtain a short-term vacation rental permit.

*Nonconforming use* means the use of any land, building, or structure which does not conform with currently applicable use regulations, but which complied with use regulations in effect at the time the use was established.

*Short-term rental (STR) property* means an accommodation for guests where, in exchange for compensation, a residential dwelling unit is provided for lodging for a period of time less than 30 consecutive days. Such use may or may not include an on-site manager. For the purposes of this definition, a residential dwelling shall include all housing types. This is also identified as "STR". This shall exclude bed and breakfast accommodations as they are currently defined by the City of Tybee's land development code. However, bed and breakfast establishments are required to have occupational tax certificates, and to pay taxes and fees as required by law or ordinance.

*Sublet rentals* is a property which is leased from its owner on a long-term basis (30 days or longer) but then made available by the lessee for short term rental or occupancy to a different party and shall be considered a short-term rental and both lessor and lessee are subject to ordinances regulating short term rentals.

### **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 4-ALLOWANCES

In locations other than properties zoned R-1, R-1B or R-2, notwithstanding any other provisions in the Code of Ordinances, a Short-Term Rental use is allowable in any zoning districts as long as the Short-Term Rental location and the owners, agents or representatives for such location are in full compliance with all provisions of the City's then current Short-Term Rental Ordinance currently codified at 34-260, et seq. including but not limited to all requirements regarding the payment of taxes, compliance with the Good Neighbor Policy, enforcement of the occupancy limits, compliance with noise and other regulations and such property has avoided citations for violating the Disorderly House Ordinance.

Any structure on a property that contains multiple STR units must have a permit for each separate unit. In zones R-1, R-1B and R-2, if a property identified by a single parcel identification number per official tax records, has more than one structure on it that contains an STR unit, only one structure is eligible to apply for a permit.

## **SECTION 5 - CAPS IN CERTAIN ZONING DISTRICTS**

For purposes of this section, a restricted zoning designation category or cap shall be any zoning district in which an ordinance exists limiting the number of authorized Short-Term Rental units in that particular district. In the event a cap on Short-Term Rental units exists for a certain zoning district and a permitted unit in that district is thereafter disqualified for a rental permit, that unit's permit shall be void. No new location or unit will be issued a Short-Term Rental permit to operate as an STR in any restricted zoning designation district which has already issued permits equaling the cap. Exceptions to this prohibition of issuing new permits over any cap may be allowed as set forth by ordinance. The City may establish a waiting list or other means of determining eligibility for a permit for locations in a restricted zoning designation district as necessary.

## SECTION 6 - NEW PERMITS PROHIBITED

No new permits are allowable in R-1, R-1-B, and R-2 zones except as otherwise provided herein.

SECTION 7

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

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

The provisions of this ordinance were previously adopted by Council following public hearings and all sections became effective 10-13-22 except Sections 3 and 4 which were to be effective May 1, 2023 as pursuant to a motion made at the meeting. This current ordinance readopts all sections of the ordinance confirming the provisions; the terms of Sections 3 and 4 are to be effective on May 1, 2023.

ADOPTED THIS 27 DAY OF April, 2023.

Shirley Senious  
MAYOR

ATTEST:

Janet Lilean  
CLERK OF COUNCIL

FIRST READING: April 13, 2023

SECOND READING: April 27, 2023

ENACTED: May 1, 2023

