

Case Number:	BOA-23-10300135
Applicant:	Paula Kothmann
Owner:	Paula Kothmann
Council District:	1
Location:	118 East Summit
Legal Description:	Lots 4 and 5, E 23.8 feet of 3, Block 2, NCB 1700
Zoning:	“R-4 H AHOD” Residential Single-Family Monte Vista Historic Airport Hazard Overlay District
Staff Representative:	Emily Garcia, Planner

Request

An appeal of the Administrator’s decision to revoke the short-term rental permit, located at 118 East Summit.

Applicable Code References

Chapter 16, Article XXII

Sec. 16-1100

The purpose of this article is to establish regulations for the protection of the health and safety of occupant(s) of short term rental properties, and to protect the integrity of the neighborhoods in which short term rental properties operate.

Chapter 16, Article XXII

Sec. 16-1104 (a) (6)

A sworn, self certification that the owner of the short term rental has met and will continue to comply with the standards and other requirements of this article including, but not limited to: maintenance of insurance coverage of the unit or portions thereof in accordance with this article and obtaining annual independent inspections of required fire extinguishers in compliance with the city's current fire code.

Chapter 16, Article XXII

Sec. 16-1104 (c)

Acknowledgement by applicant. In connection with submission of the application, each applicant shall acknowledge that any permit granted by director under this article does not supersede any property-specific restrictions against short term rentals that may exist under law, agreement, lease, covenant or deed restriction.

Chapter 16, Article XXII

Sec. 16-1108 (d) (1)

Short term rentals and structures where they are located shall conform to all applicable city-adopted codes, regulations, and ordinances.

Chapter 16, Article XXII

Sec. 16-1108 (f) (10)

Notice that failure to conform to the occupancy and parking requirements is a violation of the City Code and occupant or visitor can be cited.

Chapter 16, Article XXII

Sec. 16-1110 (c)

Violation of any section of this article shall constitute an offense resulting in permit revocation in accordance with subsection 16-1111, revocation procedures.

Chapter 16, Article XXII

Sec. 16-1110 (g)

Violation of the terms and conditions of a short term rental permit under this article shall be punishable by a fine of not less than two hundred dollars (\$200.00) but not more than five hundred dollars (\$500.00) per occurrence. Penalties for other violations of the city code shall be as applicable. Each day a violation of this article continues shall be considered a separate offense. Each day that a unit is occupied in violation of this article shall be considered a separate offense, and, upon conviction, shall be subject to a minimum fine of two hundred dollars (\$200.00) to a maximum fine of five hundred dollars (\$500.00) per violation, per day.

Chapter 16, Article XXII

Sec. 16-1111

The director is authorized to suspend or revoke a short term rental permit issued under the provisions of this chapter wherever the permit is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building, structure, unit, or portion thereof is in violation of any ordinance or regulation or any of the provisions of this article. In addition, if any violations have been committed and not corrected within the time specified, the director shall begin the procedures to revoke the short term rental permit in accordance with the following:

- (a) The director shall give written notice to the owner/operator regarding the revocation.*
- (b) If a short term rental permit is revoked, the owner/operator may not reapply for the same property for a period of twelve (12) months.*

Chapter 35, Article III

Sec. 35-374.01(b)

*(b) **Limitations on Other Activities at Short Term Rentals.** The following activities or uses may not occur as part of the operation of a short term rental, either (type 1) or (type 2):*

- (1) The operator shall not provide prepared food or beverage, directly or indirectly (e.g., using caterer), for consumption for a fee. This subsection shall not prohibit an operator from providing prepackaged food or beverages either as a gift or for a fee.*
- (2) Short term rentals in residential zoning districts shall not include venues for weddings, events, restaurants, meeting halls, or any other uses otherwise*

described in the tables of permitted uses (table 311-1 and table 311-2) either as an accessory use or a primary use.

Executive Summary

The subject property initially applied for a Short Term Rental (STR) permit on July 19, 2022. After review of the application, the permit to operate a Short Term Rental was approved by staff and issued on August 02, 2022.

Staff was informed that the property in question was being advertised as a Party House, Reception Hall or venue for concerts, as well as a short term rental, in violation of Sec. 35-374.01 of the Unified Development Code (UDC). As a result of an investigation the permit was revoked on May 09, 2023, in accordance with Section 16-1111 of the City's Code of Ordinances.

Code Enforcement History

No pending Code Enforcement cases.

Permit History

Short Term Rental Permit Number: STR-22-13501389

Application Submission Date: July 07, 2022

Permit Approval Date: August 02, 2022

Original Expiration Date: August 02, 2025

Date Property is Eligible for New Permit: May 09, 2024

Zoning History

The subject property is legally zoned for a Short-Term Rental. Per the ordinance Short-Term Rentals are prohibited only on properties zoned "C-3" General Commercial District, as well as all Industrial Districts. The subject property is not zoned for the commercial uses described in the online posting.

Board of Adjustment

The Board of Adjustment is asked to determine whether staff made the correct decision in revoking the STR permit. The Board of Adjustment has the authority to review and consider the appeal, investigate facts, weigh evidence, and draw conclusions. The Board may reverse or affirm, in whole or in part, the administrative decision brought forward by the appellant and discussed in this report.

If the Board reverses staff's decision, and approves the appeal, the owner/operator's STR permit will be reinstated until the original expiration date. The STR permit will be eligible for renewal.

While the Board has the ability to grant the applicant's appeal, the Board *does not* have the ability to approve the use of the property for commercial uses in violation of Sec. 35-310 of the Unified Development Code. The State of Texas does not authorize the Board of Adjustment to grant use variances. Requests to alter the permitted use of the property require submission of a change of zoning application, notification to property owners, and may be approved or denied after public hearings before the Zoning Commission and City Council.

Staff Recommendation

Staff recommends Denial of the applicant's request for an appeal of the Administrator's decision to revoke the Short-Term Rental permit, based on the following findings of fact:

- 1) The ordinance requires that staff revoke the permit for the violation described in this report;
and
- 2) The owner/operator of the Short-Term Rental permit violated the STR ordinance by advertising the property as commercial uses, in violation of the STR ordinance.