



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** April 15, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon

**CASE NUMBER:** BOA-24-10300022

**APPLICANT:** Adrian Chaplin

**OWNER:** WeWelcome LLC

**COUNCIL DISTRICT IMPACTED:** District 9

**LOCATION:** 2831 Whisper View Street

**LEGAL DESCRIPTION:** Lot 8, Block 9, NCB 14139

**ZONING:** "R-6 NCD-4" Residential Single-Family Whispering Oaks Neighborhood Conservation District

**CASE MANAGER:** Juan Alvarez, Planner

**A request for**

An appeal of the Administrator's decision to revoke the Short Term Rental permit, located at 2831 Whisper View (Section 16-1110(d))

**Applicable Code References**

**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(d)**

*Failure to timely pay any applicable hotel occupancy tax is a violation of this section, and shall result in permit revocation if arrearage is not paid within ninety (90) days of the issuance of a delinquency notice, in accordance with subsection 16-1111, revocation procedures.*

## **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.*

### **Executive Summary**

The subject property initially applied for a Short Term Rental (STR) permit on March 14, 2023. After review of the application, the permit to operate a Short Term Rental was approved by staff and issued on March 16, 2023.

STR operators are required to report revenues to the City's Finance Department on a monthly basis, this includes reporting \$0 revenues. Section 16-1110(d) clearly stipulates that failure to do so constitutes a violation of the chapter.

The City's Finance Department, who manage reporting and collections services for the City of San Antonio, notified the owner of the STR of delinquent payments or reports on their Hotel Occupancy Tax account, via email, in July of 2023. The initial 90, 60, and 30-day notices were issued throughout the succeeding months however, records were lost and Finance restarted the 90-day notice on October 18, 2023. On November 17, 2023, a 60-day notice was issued. The applicant contacts Finance to pay, in which they provide a process to pay via email. Applicant still does not pay outstanding taxes. On December 15, 2023, a 30-day notice was issued and on January 24, 2024, their short-term rental permit was revoked.

Section 16-1110(d) states that failure to timely report and pay Hotel Occupancy Tax within 90 days "shall result in permit revocation." No payment was made within the 90 days; therefore, the permit was revoked on January 24, 2024, in accordance with Sec. 16-1111 of the City's Code of Ordinances.

### **Estimated Hotel Occupancy Tax (HOT) Due**

The City of San Antonio contracts with a third-party vendor that gathers online booking and rate data and reports that information to the City. Based upon this information, the City's Finance Department states delinquent HOT taxes were paid after revocation.

**Code Enforcement History**

INV-PST-INV24-3010000341(Permits- Short Term Rentals/Status Closed) – 02/05/2024

INV-PST-INV23-3010000320(Permits- Short Term Rentals/Status Closed) – 02/23/2023

**Permit History**

Short Term Rental Permit Number: STR-23-13500264

Permit Request Type: Type 2

Application Approval Date: 03/16/2023

Application Revocation Date: 01/24/2024

STR permit was revoked due to HOT delinquency.

**Zoning History**

The subject property is legally zoned for a Short-Term Rental. Per the ordinance Shorter Term Rentals are prohibited only on properties zoned “C-3” General Commercial District, as well as all Industrial Districts.

**Subject Property Zoning/Land Use****Existing Zoning**

“R-6 NCD-4” Residential Single-Family Whispering Oaks Neighborhood Conservation District

**Existing Use**

Residential Single Family

**Surrounding Property Zoning/ Land Use****North****Existing Zoning**

“R-6 NCD-4” Residential Single-Family Whispering Oaks Neighborhood Conservation District

**Existing Use**

Residential Single Family

**South****Existing Zoning**

“R-6 NCD-4” Residential Single-Family Whispering Oaks Neighborhood Conservation District

**Existing Use**

Residential Single Family

**East****Existing Zoning**

“R-6 NCD-4” Residential Single-Family Whispering Oaks Neighborhood Conservation District

**Existing Use**

Residential Single Family

**West****Existing Zoning**

“R-6 NCD-4” Residential Single-Family Whispering Oaks Neighborhood Conservation District

**Existing Use**

Residential Single Family

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the North Sector Plan and is designated as “Suburban Tier” in the future land use component of the plan. The subject property is located within the notification area of Whispering Oaks Homeowner Association, and they have been notified of the request.

**Street Classification**

Whisper View Street is classified as a local street.

**Alternative to Applicant’s Request**

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 the 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 approve the appeal, the owner/operator’s STR permit will be reinstated until the original expiration date. The STR permit will be eligible for renewal.

**Staff Recommendation – Appeal**

Staff recommends Denial in BOA-24-10300022 based on the following findings of fact:

1. The ordinance requires that staff revoke the permit for the violation described in this report;
2. The owner/operator of the Short-Term Rental permit violated the STR ordinance by failing to timely report revenues and pay the associated Hotel Occupancy Tax payments; and,
3. The owner/operator failed to comply with the ordinance, even after attempts were made to inform the applicant on October 18, 2023, November 17, 2023, and December 15, 2023, by City staff.