

ORDINANCE 2017-435

AN ORDINANCE AMENDING THE BERRY HILL COMMUNITY DEVELOPMENT CODE TO ESTABLISH REGULATIONS FOR SHORT TERM RENTAL PROPERTIES

WHEREAS, short-term rental of dwelling units can provide a flexible housing stock that allows travelers a safe accommodation while contributing to the local economy; and

WHEREAS, short-term rental of dwelling units or sleeping rooms within dwelling units, can provide resident homeowners an opportunity to hold property in difficult economic circumstances; and

WHEREAS, the needs of long-term residents should be balanced with the allowance of short-term rentals; and

WHEREAS, the majority of properties in the City of Berry Hill are located in mixed-use zoning districts, with less than five percent of the city's land area being zoned for residential use only; and

WHEREAS, the only commercial uses that have been permitted (without special exception) in the city's residential zone have been home occupations where customers or clients are not served on-site and the use occupies no more than 500 square feet; and

WHEREAS, owners of homes in the city's residential zone have forgone the appreciation in property values enjoyed by owners of properties in the city's mixed-use zones, in favor of the quiet enjoyment of residing in residential neighborhoods; and

WHEREAS, there is a wide variety of dwelling types located in the city's mixed-use districts, including single family detached dwellings, accessory apartments, single-family attached dwellings, and multifamily dwellings;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BERRY HILL, TENNESSEE, that the Berry Hill Community Development Code shall be amended as follows:

Section 1. Section 6.2 General Terms shall be amended by adding the following definitions:

"**Occupancy**" means the use or possession or the right to the use or possession, of any room, lodgings or hotel accommodations for a period of less than thirty continuous days.

"**Owner-occupied**" means the owner of the property permanently resides in the STRP or in the principal residential unit with which the STRP is associated on the same lot, and occupies the STRP or principal residential unit a minimum of 243 days each calendar year.

"**Transient**" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings or hotel accommodations for a period of less than thirty days.

Section 2. Section 6.3 Specific Terms shall be amended by adding the following definitions:

“Short term rental property (STRP) – Not Owner-Occupied” means a residential dwelling unit that is not owner-occupied containing not more than four sleeping rooms that is used and/or advertised through an online marketplace for rent for transient occupancy by guests.

“Short term rental property (STRP) – Owner-Occupied” means an owner-occupied residential dwelling unit containing not more than four sleeping rooms that is used and/or advertised through an online marketplace for rent for transient occupancy by guests.

Section 3. Section 4.2 District Permitted Use Matrix shall be amended as follows:

- a. Under the “Residential” category, the Use Classification, “Short term rental property (STRP) – Owner-Occupied,” shall be added.
- b. “Short term rental property (STRP) – Owner-Occupied” shall be listed as “Permitted Conditionally” for all streets in each District except District 7-Woodlawn Memorial.
- c. Under the “Commercial” category, the Use Classification, “Short term rental property (STRP) – Not Owner-Occupied,” shall be added.
- d. “Short term rental property (STRP) – Not Owner-Occupied” shall be listed as “Permitted Conditionally” for all streets in each District except Districts 5- Rosedale and 7-Woodlawn Memorial, where it shall not be listed.

Section 4. Section 4.2.3 Additional Requirements for Uses Permitted Conditionally shall be amended by adding a new Subsection 4.2.3.11 and renumbering the remaining subsections appropriately. The new Subsection 4.2.3.11 shall read as follows:

4.2.3.11 Short term rental property (STRP) – Owner-Occupied or Not Owner-Occupied.

1. The maximum number of occupants permitted in a STRP at any one time shall not exceed the lesser of:
 - a. twice the number of sleeping rooms plus two; or
 - b. twice the number of off-street parking spaces located on, or assigned to, the property plus two, unless the property is a condominium or apartment unit in a multifamily building with over twelve units; or
 - c. eight occupants.
2. The occupancy maximum shall be conspicuously posted within the STRP unit.
3. Advertising or renting a STRP for more occupants than allowed by this regulation shall be grounds for revocation of the permit.
4. In District 5 - Rosedale, no more than one STRP permit shall be issued per lot for lots containing a single-family detached dwelling or two-family dwelling.

5. Simultaneous rental to more than one party under separate contracts shall not be allowed.
6. No person or entity shall operate a STRP or advertise a residential property for use as a STRP without the owner of the property first having obtained a STRP permit issued by the City of Berry Hill. The fee for issuance or renewal of the permit shall be set by resolution of the Board of Commissioners.
7. Any advertising or description of a STRP on any internet website must prominently display the Berry Hill STRP permit number for the STRP unit.
8. The STRP permit application shall verify by affidavit that all information being provided is true and accurate and the application shall include the following information:
 - a. The name, telephone number, address, and email address of the owner and of a person or business ("responsible party") residing or located within twenty-five miles of the STRP that is responsible for addressing all complaints, maintenance issues and safety concerns, and that is available to respond twenty-four (24) hours per day during STRP occupancies;
 - b. Proof of insurance evidencing owner's fire, hazard, and liability insurance. Liability coverage shall have limits of not less than one million dollars per occurrence.
 - c. Proof of written notification to the owner of each adjacent property, prior to filing the application. Such proof shall be (i) a signature of an owner; (ii) a signed receipt of U.S. registered or certified mail addressed to an owner; or (iii) notice from the U.S. Postal Service that registered or certified mail to an owner was refused or not timely accepted.
 - d. A statement that the applicant has confirmed that operating the proposed STRP would not violate any Homeowners Association agreement or bylaws, Condominium Agreement, Covenants, Codes and Restrictions or any other agreement governing and limiting the use of the proposed STRP property.
 - e. Proof of payment of all taxes due, including property taxes and, for permit renewals, all applicable state or local room, occupancy, and sales taxes and business license fees.
9. Before issuance of a STRP permit, the applicant shall obtain a Certificate of Occupancy for the short-term rental use from the Berry Hill Building Official or his designee, following an inspection of the premises. The applicant shall pay the applicable inspection fee. If additional sleeping rooms are listed for short-term rental, an additional inspection and updated certificate of occupancy shall be required.
10. The STRP shall meet all applicable requirements of the state and local building and fire safety codes, including, but not limited to, having approved smoke alarms meeting Underwriters Laboratory (UL) 217 standards installed as follows:

- a. In all sleeping areas.
 - b. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.
 - c. In each story within the sleeping unit, including basements.
11. STRP occupants and owners shall abide by all applicable Berry Hill ordinances and provisions of the Berry Hill Municipal Code, including without limitation:
 - a. Provisions regarding Offenses Against the Peace and Quiet, contained in Berry Hill Municipal Code §§ 11-301 and 11-302;
 - b. Provisions regarding Trespassing, Malicious Mischief and Interference with Traffic, contained in Municipal Code §§ 11-601 to 11-604;
 - c. Provisions regarding Obscenity, Morals, contained in Municipal Code §§ 11-801 to 11-804; and
 - d. Provisions regarding Refuse and Trash Disposal, contained in Municipal Code §§ 17-101 to 17-105.
12. The name and telephone number of the local responsible party shall be conspicuously posted within the STRP unit. The responsible party shall answer calls twenty-four hours a day, seven days a week for the duration of each short term rental period to address problems associated with the STRP.
13. If a STRP is located in a gated subdivision, the STRP owners shall provide occupants the use of automatic gate openers during their stay, equal to the number of sleeping rooms leased, up to a maximum of four. The use of a gate control box by STRP occupants or persons transporting them, to call neighborhood residents, other than the STRP owner or responsible party, for entry into a gated subdivision shall be a violation of this section.
14. No recreational vehicles, buses, or trailers shall be visible on the street or property in conjunction with the STRP use.
15. No food shall be prepared for or served to the transient by the permit holder.
16. The principal renter of a STRP unit shall be at least twenty-one years of age.
17. The STRP owner shall not receive any compensation or remuneration to permit occupancy of a STRP for a period of less than twenty-four hours. The maximum stay for any guest shall be thirty consecutive days.
18. Expiration and Renewal of permit.
 - a. A STRP permit shall expire three hundred sixty-five days after it is issued, unless it is renewed prior to its expiration.
 - b. STRP permits may be renewed upon the payment of the required renewal fee (set by Resolution of the Berry Hill Board of Commissioners) and submission of a statement, verified by affidavit that:

- i. includes all of the information required in an application under §4.2.3.11.8; and
 - ii. the STRP continues to be in full compliance with all applicable laws, including the payment of all applicable taxes.
 - c. Permits that have been revoked are not eligible for renewal. If a permit expires while a revocation decision is under appeal to the Board of Zoning Appeals, the permit holder will be allowed to continue operation of the STRP until the Board of Zoning Appeal's action is final. If the revocations is overturned, the permit holder will be allowed to renew the permit and the renewal term shall be from the expiration date of the prior permit term.
19. The permit holder shall be responsible for collecting and remitting all applicable room, occupancy, and sales taxes required by state law or Metropolitan Nashville/Davidson County or City of Berry Hill Code.
20. An STRP permit shall not be transferred or assigned to another individual, person, entity, or address, nor shall the permit authorize any person or entity, other than the person or entity named therein, to operate a STRP on the property.
21. Denial or Revocation of Permit:
 - a. Upon the filing of a complaint regarding a STRP permit, the Codes Enforcement Officer or City Manager shall notify the permit holder in writing or by e-mail of such complaint.
 - b. If the City Manager determines, based on reasonably reliable information -- including, without limitation, public records or reports, records of regularly conducted activity, or a direct or online statement against a person's own interest -- that two (2) violations of this section or other Code sections referenced in this section have occurred within a 12-month period, the permit to operate a STRP may be revoked.
 - c. Before revoking any permit, the City Manager or Codes Enforcement Officer shall give the permit holder fifteen-days written notice of the alleged violation(s) against him/her.
 - d. Any denial or revocation of a STRP permit may be appealed to the Board of Zoning Appeals as an administrative appeal pursuant to Section 1.2.6.13 of the Berry Hill Community Development Code. The zoning administrator's decision to deny or revoke a permit shall stand, unless the appellant shows, through clear and convincing evidence, that the decision should be reversed. The burden remains upon the applicant-appellant to make such a showing.
 - e. Once a STRP permit has been revoked, no new permit shall be issued to the applicant for the same property for a period of one year.
22. The penalty for operating a short term rental property without a permit shall be:

- a. A fine of up to fifty dollars ~~fine~~. Each day of operation without a permit shall constitute a separate offense.
- b. Upon a finding by the Board of Zoning Appeals that a short term rental property has operated without a permit, there shall be a one-year waiting period from the date of such finding for the property to become eligible for a STRP permit.
- c. Upon a finding of a court of competent jurisdiction that a short term rental property has operated without a permit, in addition to any other relief granted, there shall be a waiting period of three years from the date of such finding for the property to become eligible for a STRP permit.

Section 5. Operators of STRPs located in the City of Berry Hill shall apply for STRP permits from the city by February 28, 2018, and obtain said permits by March 31, 2018. Operation of a STRP after March 31, 2018 without a permit shall be a violation of this ordinance and Community Development Code Section 4.2.3.11.6, the penalty for which shall be as set out in Section 4.2.3.11.22.

Section 6. If any sentence, clause, phrase or paragraph of this Ordinance is declared to be unconstitutional by any Court of competent jurisdiction, such holding will not affect any other portion of this Ordinance.

Section 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict; provided, however, that nothing herein contained shall affect any rights, actions, or causes of action that shall have accrued to the City of Berry Hill prior to the effective date of this ordinance.

Section 8. This Ordinance shall take effect at the earliest day authorized by law after passage, the public welfare requiring it.


Passed First reading: December 11, 2017

Passed Second reading: January 8, 2018


MAYOR


CITY RECORDER

APPROVED AS TO LEGALITY AND FORM:


CITY ATTORNEY