

ORDINANCE NO. 3-2019

AN ORDINANCE OF THE TOWN OF CUMBERLAND GAP, TENNESSEE, TO AMEND TITLE 20 OF THE CUMBERLAND GAP TOWN CODE BY ENACTING A NEW/ADDITIONAL CHAPTER 2 THEREOF TO ADDRESS REGULATION OF SHORT TERM RENTAL UNITS WITHIN THE TOWN OF CUMBERLAND GAP

WHEREAS, the Board of Mayor and Alderman recognizes the increasing existence, locally, regionally, statewide and nationally, of commercial and/or quasi-commercial endeavors whereby residential dwelling units are leased, rented, utilized or occupied, in exchange for a fee and/or various forms of consideration, on a short term basis, and often advertised on or promoted pursuant to internet or digitally based platforms and/or other forms of social media; and

WHEREAS, the Board finds and determines that the present utilization of commercial and/or quasi-commercial short term rental units within the Town, is acceptable; and

WHEREAS, short term residential rental units should be required to comply with certain public safety and operational standards.

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Alderman of the Town of Cumberland Gap, Tennessee, as follows:

SECTION 1. That Cumberland Gap Town Code, Chapter 20, be amended by adding the following new definitions and provisions to Chapter 20, SHORT TERM RESIDENTIAL RENTAL UNITS, as follows:

**Section 20-2-101.** Short term residential rental units. Short term residential rental units is defined as follows:

- (A) “Short Term Rental Unit” or “Unit”: means a residential dwelling unit that is rented wholly or partially for a fee for a period of less than thirty (30) continuous days and does not include a hotel as defined in T.C.A. Section 68-14-302 or a bed and breakfast establishment or a bed and breakfast homestay as those terms are defined in T.C.A. Section 68-14-502.
  
- (B) Grandfathered Short Term Rental Unit is defined: A short term rental unit/property that began being held out to the public for use as a short term rental unit within the Town of Cumberland Gap, and as to which the owner/manager provides therefor remitted taxes due on renting the unit pursuant to the provisions of Tennessee Code Annotated Section 67-6- 501, et seq. for filing periods that cover at least six (6) months within the twelve month period immediately preceding the effective date of this Ordinance, such short term residential unit legally pre-existing (as defined herein) the effect date of this Ordinance shall be hereafter referred to as “Grandfathered short term rental unit(s).”

**Section 20-2-102.** Additional definitions.

(A) Short Term Residential Rental Agent: A natural person designated to be responsible for daily operations by the owner of a short term residential rental or a short term residential rental certificate application. Such person shall be available for and responsive to contact at all times and someone who is customarily present at a location within Claiborne, Tennessee, for purposes of transacting the short term residential rental business. The short term residential rental agent must meet all other requirements set forth by state law.

(B) Short Term Residential Rental Agent: A natural person designated to be responsible for daily operations by the owner of a short term residential rental or a short term residential rental certificate application. Such person shall be available for and responsive to contact at all times and someone who is customarily present at a location within Claiborne County, Tennessee, for purposes of transacting the short term residential rental business. The short term residential rental agent must meet all other requirements set forth by state law.

(C) Short Term Residential Rental Occupants: Guests, tourists, lessees, vacationers or any other person who, in exchange for compensation, occupy a short term residential rental dwelling unit for lodging for a period of time not to exceed thirty consecutive days, but not in any event to be from any period of time less than overnight.

**Section 20-2-103.** Certificate required.

No person or entity shall operate a Short Term Rental Unit, including without limitation a Grandfathered short term rental unit, unless a Short Term Rental Permit has been first obtained from the Office of the Mayor. To obtain a Short Term Rental Permit, an otherwise eligible applicant must submit an application in compliance with the provisions of this Chapter of the City Code on a form provided by the City. If approved, a legible copy of the Short Term Rental Permit shall be posted within the unit and shall include all of the following information:

- (a) The name, address, telephone number and email address of the owner of the short term rental unit and the short term rental agent, if applicable;
- (b) The Business License Number;
- (c) Any applicable Hotel-Motel tax certifications and or numbers as are applicable pursuant to T.C.A. §67-4-1401 et seq.;
- (d) The maximum occupancy of the unit; and
- (e) The maximum number of vehicles that may be parked at the unit;
- (f) The Short Term Rental Permit number.

All Short Term Rental Units must be properly maintained and regularly inspected by the owner to ensure continued compliance with applicable zoning, housing, building, health and life safety code provisions.

**Section 20-2-104.** Minimum standards for short term rental units:

(A) Short Term Rental Unit shall meet the following minimum standards:

- (i) A short term rental unit may include a primary dwelling unit and/or a secondary dwelling unit, but cannot include uninhabitable structures such as garages, barns or sheds.
- (ii) A short term rental unit must meet all applicable laws related to zoning, housing, building, health, electrical, gas, plumbing and life safety.
- (iii) There shall be no more than five (5) sleeping rooms made available for rental.
- (iv) Maximum occupancy: the maximum occupancy shall be determined by the total of:
  - (1) Two (2) persons per bedroom up to 140 square feet.
  - (2) For bedrooms over 140 square feet the occupant load will be determined by the area of the room divided by 70 square feet.
  - (3) The occupancy maximum shall be conspicuously posted within the short term residential rental unit.
  - (4) The short term rental unit Owner shall not receive any compensation or remuneration to permit occupancy and shall not permit occupancy of a short term rental property for any agreed or contracted period of less than twenty-four (24) hours.
- (v) The short term rental Permit holder shall be responsible for collecting and remitting all applicable Hotel and Motel and sales taxes and any other taxes required by state law and/or by the Town Code of the Town of Cumberland Gap.
- (vi) Adequate on-site parking shall be provided, as determined by the Town after considering proposed/maximum permitted number of guests, frequency of operations, and availability of on-street parking (if any). As a general rule, parking shall not be allowed on any vegetated area of the premises on which the short term residential rental is located.
- (vii) All occupants shall abide by all generally applicable codes, ordinances and regulations, including without limitation, applicable noise restrictions and all applicable waste management provisions of the Town Code of the Town of Cumberland Gap.
- (viii) The name and telephone number of the owner of the short term rental unit or the short term rental Agent shall be conspicuously posted within the short term rental unit.

(ix) As per the provisions of T.C.A. Section 13-7-601, certain limited provisions of this subsection may not be applicable or wholly applicable to “Grandfathered Short Term Rental Units”.

**Section 20-2-105.** Certificate application; action on certificate application; certificate approval or appeals to Board of Mayor and Alderman.

(A) Certificate applications. Applicants for a short term rental units Permit shall submit an application to the Office of the Mayor. The application shall be furnished under oath on a form specified by the Town. This provision shall apply whether the Application is for a short term rental unit or a “Grandfathered short term rental unit” together with documentary evidence which supports classifying to (proposed) Short Term Rental Unit as a “Grandfathered Short Term Rental Unit”. Such application shall include:

- (i) The name, address, telephone number and email address of the owner of the short term rental unit and the short term rental Agent, if applicable;
- (ii) Documentation that applicant is the owner or the short term rental Agent;
- (iii) The Business License number;
- (iv) Certification and/or registration number relating to the Hotel-Motel occupancy tax authorized by T.C.A. §67-4-1401 et seq.;
- (v) A concept plan, , indicating the subject property, the building(s) on the site intended for short term rental unit, proposed parking and guest access;
- (vi) A narrative with the following:
  - (1) A description of the area available for short term rental (i.e. the entire property and house, a guest cottage, a portion of the house, etc.);
  - (2) A description of the number of bedrooms proposed for rental, which shall not be more than five (5) bedrooms under any circumstance;
  - (3) The maximum number of guests to be accommodated at one time;
  - (4) The days of operation (all year, just holidays, weekend/weeknights, etc.);
  - (5) How trash will be handled, and the method of informing occupants about method of disposal of trash; and
- (vii) Proof of insurance on the dwelling unit.

(A)(1) As per the provisions of T.C.A. Section 13-7-601, certain limited provisions of this subsection may not be applicable or wholly applicable to “Grandfathered Short Term Rental Units”.

(B) Application fee.

(i) The permit application fee for owner-occupied short term rental units shall be \$75.00.

(ii) The permit application fee for all other non-owner-occupied short term rental units shall be \$125.00.

(C) Application review.

(i) The Office of the Mayor shall also by mail or email submit a copy of the application for any short term rental unit permit to individual members of the Board of Mayor and Alderman.

(ii) The Mayor shall notify the Fire Chief and the Building Inspector to ensure compliance with state and local laws.

(v) If the Application meets all of the requirements set forth in this Chapter, the Office of the Mayor shall so advise the Board of Mayor and Alderman and shall issue, to the applicant, a short term rental unit Permit within thirty (30) days of receipt of the Application.

(vi) If objections or appeals are made to the issuance of the short term residential rental Certificate, the Mayor shall note and hold a hearing, upon notice to the applicant and the objecting parties, in a manner that the Mayor prescribes and shall determine whether to grant or deny the short term rental unit Permit based upon the minimum standards for review as set forth herein, and as relates to any generally applicable health, safety, and/or building codes with respect to the short term rental unit. Such hearing shall take place not later than forty-five (45) days after the application has been submitted to the Office of the Mayor. The decision of the Mayor as to whether to issue, deny or revoke any Permit shall be final, reviewable only by application for Writ of Certiorari to the Chancery Court of Claiborne County, Tennessee as provided in the Tennessee Code Annotated.

(C)(1) As per the provisions of T.C.A. Section 13-7-601, certain limited provisions of this subsection may not be applicable or wholly applicable to “Grandfathered Short Term Rental Units”.

**Section 20-2-106.** Permit approval, transferability, conditions, renewal and revocation.

(A) Permit approval. The Permit Application, if approved, shall be issued for a specific site location and/or address of the proposed short term rental unit or Grandfathered short term rental unit provided in the application as set forth in this Chapter of the Town Code.

Upon receipt of a short term rental unit Permit number, the applicant must display said number on any materials or platforms used to advertise the short term rental unit.

(B) Grant or denial of application. Review of an application shall be conducted in accordance with due process principles and shall be granted unless the applicant fails to meet the conditions and requirements of this Chapter, or otherwise fails to demonstrate compliance with generally applicable local ordinances, state or federal law. Any false statements or

information provided in the application are grounds for revocation, suspension and/or imposition of penalties, including denial of future applications. The decision of the Mayor as to whether to issue, deny or revoke any Permit shall be final, reviewable only by application for Writ of Certiorari to the Chancery Court of Claiborne, Tennessee as provided in the Tennessee Code Annotated.

(C) Transferability. The Certificate is non-transferable to another site, property, location or owner. Grandfathered short term rental unit Permits are subject to additional transferability restrictions as provided in T.C.A. Section 13-7-601, et seq., as now enacted or hereafter amended.

(D) Revocation. The Town reserves the right to suspend, revoke and/or modify any Permit as restrictions and/or conditions imposed as a granted short term rental unit at any time upon notice to the address of record for the short term rental unit and after a public hearing. Once the property has three (3) documented Town Code and/or other violations of any generally applicable state laws or breaches of the peace within any running 12 month period and/or based upon unreasonable interference with the use and enjoyment of adjoining or other nearby properties. Such violations shall be evidenced by a finding of guilt or fault or unreasonable interference with the use and enjoyment of nearby properties, by a court or an administrative officer or other body designated by the Board of Mayor and Alderman.

A short term rental unit Permit which is revoked shall prevent its Permit holder and/or any owner of or agent for the specific property from applying for a new Permit for short term rental unit Permit for a period of one (1) year from date of revocation.

(E) Suspension of Permit. The Mayor may suspend a previously issued Permit in the event that a Permittee is found to be noncompliant with any of the terms, conditions or requirements of this Ordinance. Any permit which is suspended for administrative noncompliance with permitting requirements may be, upon payment of a fifty (\$50.00) dollar reinstatement and inspection fee, be reinstated upon the Permittee demonstrating, to the satisfaction of the Mayor, that the noncompliance issue(s) which resulted in suspension of the Permit have been resolved.

(F) No property shall be operated as a short term rental unit which its Permit is suspended and/or if it's Permit has been revoked and unless and until a valid short term rental unit permit shall be subsequently issued by the Mayor.

(G) As per the provisions of T.C.A. Section 13-7-601, certain limited provisions of this subsection may not be applicable or wholly applicable to "Grandfathered Short Term Rental Units".

**Section 20-2-107.** Short term rental unit annual fee.

(A) There shall be a short term rental unit Permit renewal and inspection fee to be paid annually in the amount of \$100.00 which, upon inspection by the City and satisfactory demonstration of compliance by the Permit holder and property of the terms, provisions and

conditions of the Ordinance shall entitle the Permittee to renewal of the Permit for the ensuing twelve (12) months.

(B) Failure to pay the annual renewal fee and to cooperate with permit inspection requirements shall result in suspension of the Permit which, if not remedied within sixty (60) days after suspension, shall automatically result in revocation of the Permit for that particular location.

**Section 20-2-108.** Short term rental agent.

(A) The owner of a short term rental unit shall designate a short term rental Agent on its application for a Permit for a short term rental unit. A property owner may serve as the short term rental Agent. Alternatively, the owner may designate a person as his or her agent who is over age 18 and meets all local and state regulatory requirements to fulfill the duties of a short term rental Agent.

(B) The duties of the short term rental Agent are to:

(i) Be reasonably available to handle any problems arising from use of the short term rental unit;

(ii) Appear on the premises of any short term rental unit within two hours following notification from the City of issues related to the use or occupancy of the premises. This includes, but is not limited to, notification that occupants of the short term rental unit have created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of the City Code or other applicable law pertaining to noise, disorderly conduct, overcrowding, consumption of alcohol, or use of illegal drugs. Failure of the agent to timely appear to two or more complaints regarding violations may be grounds for penalties and/or permit/certificate revocations as set forth in this Chapter. This is not intended to impose a duty to act as a peace officer or otherwise require the agent to place himself or herself in a perilous situation;

(iii) Receive and accept service of any notice of violation or notice of hearing related to the short term rental unit; and

(iv) Monitor the short term rental units for compliance with all laws, including without limitations compliance with the provisions of the Hotel-Motel tax authorized by TCA 67-4-1401, et seq.;

(C) An owner may change his or her designation of a short term rental Agent temporarily or permanently; however, there shall only be one such agent for a property at any given time. To change the designated agent, the owner shall notify the Mayor in writing of the new agent's identity, together with all information regarding such person as required by the applicable provisions of this Chapter.

(D) As per the provisions of T.C.A. Section 13-7-601, certain limited provisions of this subsection may not be applicable or wholly applicable to "Grandfathered Short Term Rental Units".

**Section 20-2-109.** Failure to obtain permit; penalties.

(A) Any violation of this Article, including failure to obtain a Permit or to renew a Permit of continued or initiating operation of a short term rental unit either without a Permit or after revocation of a Permit shall be punishable by a civil penalty of fifty (\$50.00) dollars per violation. Each day that the violation continues shall be a separate offense. There shall be a rebuttable presumption that a person or entity is in violation of this Chapter if they list or hold out a property as a short term rental unit without first obtaining a short term rental Permit. This rebuttable presumption also applies to those dwellings featured on websites whose primary purpose is business related to short term rental unit reservations.

(B) The owner and/or Agent of or with respect to a “Grandfathered Short Term Rental Unit”, which may be otherwise exempt from compliance with some of the regulations, conditions and requirements of this Ordinance shall nevertheless be required to apply for a Permit within the thirty (30) days next following the effective date of this Ordinance. If the owner or agent shall fail to apply within said thirty (30) day period or shall otherwise fail to meet the requirements of generally applicable laws, rules and ordinances as to said Grandfathered short term rental units, shall, upon notice from the Mayor cease operations as a short term rental unit and shall not resume such operations or advertisement as a short term rental unit until such time as the owner and/or property shall make a proper application for a Permit and demonstrate compliance with all requirements of this Ordinance and generally applicable law. As provided in T.C.A. Section 13-7-601, a “Grandfathered short term rental unit” may lose grandfathered status by failure to adhere to and/or violation of all or any of the qualifying conditions and/or requirements of T.C.A. Section 13-7-603, including but not limited to

(1) The property used as a Grandfathered short term rental unit is sold or otherwise transferred by or from the owner(s) of the property when first qualified or established as a Grandfathered short term rental unit and/or;

(2) The property ceases to be used as a short term rental unit for any period of thirty (30) continuous months and/or;

(3) The property has been found to be in violation of a generally applicable local Ordinance or state law on three (3) or more separate times and with no appeal opportunities remaining.

(C) As per the provisions of T.C.A. Section 13-7-601, certain limited provisions of this subsection may not be applicable or wholly applicable to “Grandfathered Short Term Rental Units”.

**Section 20-2-110.** Invalidity of part; private agreements and covenants.

Should any court of competent jurisdiction declare any section, clause or provision so declared unconstitutional, such decision shall affect only such section, clause, or provision so declared unconstitutional, and shall not affect any other section, clause or provisions of this Article. Additionally, this Chapter shall in no way be used to supersede any privately

created agreements or covenants by any homeowner associations or developers restricting certain uses.

SECTION 2. Every section, clause, and phrase of this Ordinance is separable and severable. Should any section, sentence, clause, or phrase be declared unconstitutional or invalid by a court of competent jurisdiction, said unconstitutionality or invalidity shall not effect or impair any other section, sentence, clause, or phrase.

SECTION 3. This Ordinance shall take effect from and after the date of its final passage the health, safety and welfare of the citizens of the Town of Cumberland Gap requiring it.

Passed on first reading: July 1, 2019

Public Hearing: July 29, 2019

Passed on second reading: August 5, 2019

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Mayor

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Recorder