



City of Fredericksburg

CITY COUNCIL REGULAR MEETING WEDNESDAY, MARCH 3, 2021 ~ 8:30 A.M.

Charlie Kiehne, Mayor
Tom Musselman, Councilmember
Bobby Watson, Councilmember

Jerry Luckenbach, Councilmember
Polly Rickert, Councilmember
Kent Myers, City Manager

WRITTEN COMMENT

Comment Form #	Name	Address	Agenda Item
1.	Michael McCrea	P.O. Box 2626	3

Short-Term Rentals—Fredericksburg, Texas

Introduction

Fredericksburg is a unique town, centered around several blocks of historic buildings that host shops, restaurants, museums, art galleries, coffee shops and wineries. And while this center, core area of town is what draws people from many places to stay in short-term rentals and buy second homes, her extended neighborhoods are also filled with historic homes and full-time residents.

How do we maintain what is unique about our town in a manner that preserves and protects property rights, advances the strong real estate and housing market, and increases the tax revenues that have resulted from short-term rentals, while also preserving areas that are still largely made up of full-time residents?

We share a common space that is special, and we must work together to keep it that way.

So how do we do it?

Let's look at some of the primary considerations and then list some possible solutions.

Main Street Area

Make no mistake about it, the Main Street area is the heart of the town, offering a variety of opportunities for visitors to walk and experience life as it once was, or at least as close as is possible. Undoubtedly, there are full-time Fredericksburg residents that walk and shop Main Street, but the reality is that the Main Street area customer base is heavily weighted towards those who come from out of town/State, stay in short-term rentals, and walk to Main Street to shop, eat, visit and “experience” Fredericksburg.

The list of who benefits from a thriving Main Street is long, and perhaps unascertainable, but includes: local business owners; Fredericksburg residents who depend on opportunities for employment and business ownership; and local governments who depend upon the tax revenues to fund our schools, our City government and services, including our police, fire department, and judicial system.

Neighborhoods

While Main Street is the heart of the town, the soul might be said to be located in the various neighborhoods, especially those neighborhoods outside the core four to five blocks off of Main Street in each direction. It is in these neighborhoods where many of the property owners are full-time residents—wanting to raise children, enjoy retirement and live in a safe and friendly area.

Full-time residents in our neighborhoods do not want or deserve adjacent properties to host constant loud noise, drunkenness, unsupervised parties, and a dozen cars parked along our streets, often blocking driveways and corner visibility. No one should be heard to suggest that this is okay or must be tolerated.

Results of Improper Regulation of STRs

There are different views about short-term rentals and the pros and cons of allowing them in all R-1 zoned areas. However, it must be noted that our core neighborhoods near Main Street are already filled with many short-term rentals, in both R-1 and R-2 zoning areas. In fact, on most blocks between Milam and Llano to the west and east, and Schubert and Peach to the north and south, there are as many short-term rental properties than otherwise. Some blocks have only short-term rentals. And many of the properties located in the core that are not currently being used as a short-term rental, are second homes to those who live

primarily outside of Fredericksburg. Thus, it would be disingenuous, in fact false, to assert that changes must be made to the short-term rental rules in order to preserve the existing character of core neighborhoods. These core street areas have long been home to “Sunday-houses,” boarding rooms, and most recently, short-term rentals.

Passing new, but improper regulations would have many unintended consequences, including:

- In the core area of Fredericksburg, any prohibitions to the use of properties as short-term rentals would not be *rationally related to the general welfare* of the core neighborhoods since the properties are already largely used for short-term rentals. As such, prohibitions would be subject to sustainable challenges, tying up City time and resources trying to defend the new rules in costly litigation.
- Property transactions that have closed before new rules are passed have a legally recognized, buyer’s *“investment backed-expectation”* property right of being able to utilize the property as contemplated at the time of purchase. Thus, new rules prohibiting short-term rentals on properties purchased by those intending to participate in the short-term rental market would be subject to a sustainable challenge that would cost the City tax dollars to fund expensive litigation.
- There would be Constitutional challenges to the rules by existing property owners, both for *“compensable regulatory takings”* and for *“violations of due process and right to assembly;”* resulting in expensive lawsuits for the City to pay for, and likely lose. Even if the City prevailed, which it likely would not, property valuations would then need to reflect the changes and their impact on property values for different properties within the same blocks. There would be countless challenges to the valuations, legal and otherwise. If one property on the block has the right to have a short-term rental, but the neighboring property does not, there would have to be a corresponding difference in the City/County valuation of the two properties.
- Texas in general, and Fredericksburg in particular, have been known to preserve and protect *property rights*. The right to lease one’s property, including as a short-term rental, is a basic and fundamental property right and legally recognized privilege. Does the current City Council and staff really want to be remembered as the “DC council and staff” that stripped property rights from its citizens, rather than working to accommodate property rights for all?
- There is no sustainable legal justification for simply “grandfathering” existing short-term rentals and prohibiting new ones. The disproportional impact on the value of one’s property without the right to do short-term rentals is substantial, easily approximating \$150,000 to \$200,000, depending on the location and condition of the structure. In addition, some properties have recently been purchased and are undergoing expensive restorations before they are put into short-term rentals—but they were purchased with the “investment backed-expectation of being used as a short-term rental once completed.
- Most, if not all, of the restorations of homes in the historic district over the past decade are driven by owners who may enter the short-term rental market. Millions of dollars have been spent locally in purchasing property, hiring local real estate agents, title companies, contractors, architects, plumbers, electricians, roofers, carpenters, surveyors, as well as contracting with numerous local service providers. The result has been a fresh and positive restoration of many homes that had deteriorated or were simply, unattractive. New, improper rules on short-term rentals would negatively impact the market driven improvement of the town’s homes and neighborhoods.

- Real Estate agents have long trumpeted, and massively benefitted, from the strong real estate market—driven in large part from a purchaser being able to purchase property that would allow the owner to host a short-term rental in both R-1 and R-2 neighborhoods. Are the realtors prepared to return their commissions from sales where representations were made about short-term rentals that could be proved to be less than true or reliable. Will there be lawsuits against agents who made representations about the right to operate a short-term rental?

Proposed Changes to STRs Rules

The most identifiable issue with short-term rentals in Fredericksburg is compliance with the rules and regulations and the need for stricter and more consistent enforcement. Here is a list of potential changes to consider to the existing rules on short-term rentals that would avoid sustainable legal challenges:

- **Effective date**: All new STR rules apply to properties purchased after the effective date of the new rules
- **Fee increase to fund enforcement**: Increase the fees charged for STR permits, and use a significant portion of the additional revenues to fund the hiring of necessary personnel, and purchasing of necessary infrastructure, to strictly enforce the rules
- **24/7 contact number for neighbors**: Require a 24/7 available phone number for owner or manager of short-term rentals to be on file with the City, posted on the internet and provided to neighboring property owners
- **Hotel Occupancy Tax collection**: Take all action necessary to insure all short-term rental owners are paying hotel/occupancy taxes that are owed
- **Notice of Rules**: Require proof that the short-term rental owner has provided a copy of the rules and potential fines to each guest and proof that the guest has read and agreed to be bound by the rules and be subject to the fines
- **Fines for violations of the rules**: Raise and collect the fines imposed on guests who violate the rules. Also, raise and collect the fines imposed on property owners and managers who do not comply with City regulations
- **Off-street parking**: Require an off-street parking location for at least two cars in rear or on the sides of all short-term rental properties
- **Revocation or suspension of permit**: Revoke or suspend the permits of owners of short-term rental properties that are repeat violators

Conclusion

Short-term rentals are not passive income. In fact, to operate one well, and in full compliance with the rules, is considerably challenging and takes hard work. There are many existing short-term rental properties that would likely return to single family rentals or owner-occupied homes if proper rules were passed AND ENFORCED. The marketplace in Fredericksburg is currently astir with the idea of short-term rentals. But as the City moves forward with clear rules and consistent enforcement, the market will weed out those not passionately operating a fully complying short-term rental. The effect will be, in part, more homes used as a family residence and affordable long-term rentals. Private property rights and a prosperous real estate market are as much a part of the fabric of Fredericksburg as any other thread.

Let us look after the interests of our neighbors, and not our own interests alone. Clear rules and consistent enforcement is the best way to look after all the interests of all the neighbors.