



## **CENTRAL HILL COUNTRY BOARD OF REALTORS®**

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March 21, 2022

City of Fredericksburg  
City Council  
126 W Main Street  
Fredericksburg, TX 78624

Mayor Kiehne and Members of the Council,

On behalf of the more than 350 members of the Central Hill Country Board of REALTORS® and the many homebuyers, sellers, and tenants we represent in the City of Fredericksburg, we write today to express our ongoing concerns regarding Request #Z-2120 Version 6.

We are grateful for the city's recent time and consideration of this proposal, and we are encouraged by the positive changes that have been made since the March 7, 2022 Council meeting. The clarifications that have been made to the conditional use permit process and the "House Rules" requirements are more workable for property owners than provisions in previous drafts.

However, CHCBR still has some significant concerns with Version 6 of Request #Z-2120, and without modification, we must maintain our opposition to the proposal.

### **Penalty Provisions**

In their March 7 discussion, the City Council rightly agreed that revoking a property owner's right to rent is an extreme step that should be done only with the most careful consideration.

As drafted, #Z-2120 version 6 now allows for suspension or revocation of an STR permit for a single violation of Section 5.401, except for trash, lighting, water, or signage issues. Previous versions did not invoke suspension or revocation until after three or even six violations. Having one violation of any other provision of Section 5.401, which could include food service to non-overnight guests, occupancy limits, an error about parking spaces in an STR listing, or other non-disruptive offense, is unreasonable and overly punitive.

Version 6 made good progress by noting some types of offenses that could not result in permit suspension or revocation, but the Council needs to at least restore the three-violation minimum for all considerations under this section. Further, more consideration should be given to whether other violations of Section 5.401 should be exempted.

CHCBB would prefer to see suspension or revocation as a penalty for repeated actions that are under property owner control, such as permitting and building code compliance, while tenant behavior should be addressed with fines. The City of Fredericksburg already uses an escalating fine schedule for enforcement of other city codes, culminating in possible utility shut-offs. A similar enforcement mechanism for short-term rental properties would be effective in ensuring that property owners are addressing problems at their properties without taking the drastic step of removing one's right to rent.

### **Other Questions and Concerns**

CHCBB has identified a number of other unanswered questions and areas of concern in #Z-2120 Version 6, including questions regarding definitions of terms, inconsistent permitting requirements depending on property type, and unclear permitting processes related to inspections and complaints. *(See attached memo for specific areas of concern.)*

### **Review**

Should the city move to pass Request #Z-2120 or any other STR-related regulations, CHCBB requests that a formal six and 12-month review provision be added to ensure that the ordinance is effective and does not overly burden property owners' rights.

### **Conclusion**

With the extreme penalty provision as drafted and with so many items still needing clarification, CHCBB believes that Request #Z-2120 is still not ready for passage and adoption by the Fredericksburg City Council, and we request that the Council table this proposal until more improvements can be made. Further, we believe many of the ideas that have been discussed over the past several weeks could be implemented within the existing short-term rental requirements the city adopted in 2018.

CHCBB renews our pledge to work with the city as partners in all matters related to housing and real estate, and we look forward to continuing this conversation.

Respectfully,

Michael Starks  
Central Hill Country Board of REALTORS®  
2022 Government Affairs Committee Chair

**Central Hill Country Board of REALTORS® Comments**  
**March 21, 2022**

**Overview**

Overall, Version 6 of the Housing and Zoning Code draft changes has improved from previous versions. Language has been updated to provide more legal clarity, and some troublesome provisions have been removed.

**Concerns and Objections**

Version 6 still contains some provisions that are of concern to the Central Hill Country Board of REALTORS®.

- This new draft now allows for suspension or revocation of an STR permit for a single violation of Section 5.401, with the exception of trash, lighting, water or signage issues. Previous versions did not invoke suspension or revocation until after three or even six violations. Having one violation of any other provision of Section 5.401, which could include food service to non-overnight guests, occupancy limits, an error about parking spaces in an STR listing, or other non-disruptive offense, is unreasonable and overly punitive.

Version 6 made good progress by noting some types of offenses that could not result in permit suspension or revocation but needs to restore at least the three-violation minimum for all considerations under this section. Further, more consideration should be given to whether other violations of Section 5.401 should be exempted.

CHCBB would prefer to see suspension or revocation as a penalty for repeated actions that are under property owner control, such as permitting and building code compliance. Tenant behavior should be addressed with fines.

- Version 6 appears to require that for a B&B-style short-term rental, a separate permit for each bedroom will be required. This is inconsistent and unreasonable when compared to other property types. The B&B structure is within the operator's principal residence, which provides for onsite management of guest behavior and thus neighborhood disturbances are less likely. The City should not put such a high barrier to STR permitting on this property type.

**Questions**

There are still some questions raised by Version 6 that should be addressed.

- Can owner-occupied properties be approved for STR permits regardless of zone and/or property type (e.g.: owner-occupied duplex or triplex)?

- What is the definition of “transient” or “temporary transient” as used throughout this document? It is not included in the ordinance’s list of definitions, nor is it defined in Texas Property Code Chapter 92 (governing residential tenancies) or Occupations Code 2155 (governing hotels).
- Version 6 adds a sentence to the definition of “Home Occupation” stating that *“this definition does not include short-term rentals.”* Is it the city’s intent that this should mean that STRs are not a residential use? Such a definition would be contrary to *Tarr v. Timberwood’s* findings that STRs are a residential use and should not be included in city ordinance.
- The draft states that property inspections may be required when a complaint is filed against an STR property. Will the cost for inspections following a complaint be paid by the property owner? What if the complaint is found to be invalid? Should the person filing the complaint be liable for that cost to prevent frivolous complaint activity?
- Section 5.401-10(g) refers to conflicts between municipal law and property owners’ associations deeds and restrictions, and says where conflicts arise, the “more stringent restrictions” shall prevail. How will stringency be determined?
- Version 6 has some confusing provisions related to corporate housing. The draft defines corporate housing as *“housing of a transient nature, provided by a business, corporation, or similar other entities... [that] **may not result in payment** by occupants for the duration of the stay.”* Further, the draft defines short-term rental housing as *“any structure used for transient or guest lodging accommodations, **rented for compensation** of a dwelling unit...”*

Despite the opposite definitions regarding paying tenants, corporate housing is subject, in some cases, to STR permitting. How can STR permitting requirements be applied to a housing type that does not fall under the STR definitions, and why would those requirements apply only in certain zones?