

ORDINANCE NO. 080 - 2023

AN ORDINANCE AMENDING SECTION 13-13(B) OF THE CODE OF ORDINANCES TO CREATE A SHORT-TERM RENTAL SPECIAL FEES LICENSE AND SETTING ITS FEE; CREATING SECTION 13-76 OF THE CODE TO DEFINE TERMS REGARDING THE REGULATION OF SHORT-TERM RENTALS; CREATING SECTION 13-77 OF THE CODE TO REQUIRE A PERSON OWNING A SHORT-TERM RENTAL TO OBTAIN A SHORT-TERM RENTAL SPECIAL FEES LICENSE, TO PROVIDE THE INFORMATION REQUIRED IN THE APPLICATION FOR A SHORT-TERM RENTAL SPECIAL FEES LICENSE, AND TO SET THE CRITERIA BY WHICH THE DIRECTOR OF REVENUE MAY DENY AN APPLICATION OR REVOKE A LICENSE; CREATING SECTION 13-78 OF THE CODE TO REMIND LICENSEES OF THEIR OBLIGATIONS REGARDING TRANSIENT ROOM TAXES AND OCCUPATIONAL LICENSE FEES; CREATING SECTION 13-79 OF THE CODE TO REQUIRE A LICENSEE TO PERFORM CERTAIN DUTIES RELATING TO ITS SHORT-TERM RENTAL; CREATING SECTION 13-80 OF THE CODE TO REQUIRE LOCAL REGISTRATION NUMBERS PROVIDED BY THE DIVISION OF REVENUE BE INCLUDED BY LICENSEES IN ALL ADVERTISEMENTS; TO REQUIRE CERTAIN INFORMATION IN ADVERTISEMENTS FOR SHORT-TERM RENTALS; AND PROVIDING THE AUTHORITY TO ISSUE SUBPOENAS TO THE ADMINISTRATIVE HEARING BOARD CREATED PURSUANT TO SECTION 12-6 OF THE CODE TO DETERMINE WHETHER VIOLATIONS OF THIS ORDINANCE HAVE OCCURRED; CREATING SECTION 13-81 OF THE CODE TO SET PENALTIES FOR VIOLATIONS; AND CREATING SECTION 13-82 OF THE CODE TO PROVIDE THE ABILITY TO APPEAL THE DENIAL OF AN APPLICATION, THE REVOCATION OF A LICENSE, OR THE FAILURE TO RENEW A LICENSE TO THE DIRECTOR OF REVENUE AND COMMISSIONER OF FINANCE AND CIVIL PENALTIES TO THE ADMINISTRATIVE HEARING BOARD CREATED PURSUANT TO SECTION 12-6 OF THE CODE; AND AUTHORIZING THE DIVISION OF REVENUE TO AMEND ITS REGULATIONS CONSISTENT WITH THIS ORDINANCE; ALL EFFECTIVE UPON PASSAGE OF COUNCIL.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Section 13-13(b) of the Lexington-Fayette Urban County Code of Ordinances be and hereby is amended to read as follows:

- (b) In the event a licensee is engaged in more than one (1) business entity, the highest minimum license fee shall apply. Under the column headed "date due" in the following table the words "before showing" or "before activity" shall, in the case of "before showing," mean that the license fee per showing is due prior to the date of each showing and in the case of "before activity" or "yearly" shall mean that the license fee is due prior to each specified period of engaging in activity.

	Subject to fee	Minimum fee	Date due
(1)	Adult entertainment establishment	\$600.00 per year	Yearly
(2)	Adult entertainment establishment employee	100.00 per year	Yearly
(3)	Alarm business license	250.00 per year	Yearly
(4)	Amusement	50.00 per showing or	Before showing
		200.00 per year	Yearly
(5)	Bazaar	1 to 9 individuals, 100.00 per 1 week showing or 300.00 per year	Before activity

		10 to 19 individuals, 200.00 per 1 week showing or 500.00 per year	Before activity
		20 or more individuals, 300.00 per 1 week showing or 750.00 per year	Before activity
(6)	Bowling alleys	15.00 per lane	Yearly
(7)	Carnival, regardless of local sponsorship	50.00 per day	Before showing
(8)	Circus, unless sponsored as below	200.00 per showing	Before showing
(9)	Circus, sponsored by a bona fide civic, patriotic, religious or educational organization	50.00 per day	Before showing
(10)	Collection agencies	25.00 per year	Yearly
(11)	Detective agencies	250.00 per year	Yearly
(12)	Emergency and transportation ambulance services	30.00 per year per vehicle	Yearly
(13)	Escort agency	600.00 per year	Yearly
(14)	Escort	100.00 per year	Yearly
(15)	Horse-drawn vehicle business	50.00 per year per vehicle	Yearly
(16)	Itinerant merchant	100.00 per month or	Before activity
		150.00 per 3 months or	Before activity
		200.00 per 6 months or	Before activity
		250.00 per year	Yearly
(17)	Junk dealers	250.00 per year	Yearly
(18)	Meat packer or processor	400.00 per year	Yearly
(19)	Milk distributor	400.00 per year	Yearly
(20)	Model/talent business	100.00 per month or	Before activity
		150.00 per 3 months or	Before activity
		200.00 per 6 months or	Before activity
		250.00 per year	Yearly
(21)	Pawnbroker	250.00 per year	Yearly
(22)	Peddler	10.00 per day per person or	Before activity
		250.00 per year per person	Yearly
(23)	Pool and billiard tables	25.00 per table	Yearly
(24)	Precious metals dealers	250.00 per year	Yearly
(25)	Private impound tow truck service	200.00 per year	Yearly
(26)	Scrap metal dealer	500.00 per year	Yearly
(27)	Shooting gallery	50.00 per year	Yearly
(28)	Short-term rentals	200.00 per year for the first rental, then \$100.00 for each remaining rental	Yearly
(29)	Skating rink	100.00 per year	Yearly
(30)	Teenage canteen	200.00 per year	Yearly
(31)	Temporary mall merchants	100.00 per year	Yearly
(32)	Theater	300.00 per year per theater	Yearly

Section 2 – That Section 13-76 of the Lexington-Fayette Urban County Government Code of Ordinances be and hereby is amended to read as follows:

Sec. 13-76. - Definitions.

For the purposes of this Article, the following definitions shall apply:

- (a) *Director* shall mean the Director of the Lexington-Fayette Urban County Government, Division of Revenue.
- (b) *Hosted short-term rental* shall mean a short-term rental in which the dwelling unit utilized as the short-term rental, or another dwelling unit on the subject property, is a primary residence, and a primary resident continues to occupy the property while the short-term rental is being rented to a transient guest.
- (c) *Hosting platform* shall mean an internet based platform that generally facilitates the rental of the short-term rental accommodations by brokering, coordinating, or in any other way arranging for the rental of the accommodations.
- (d) *Licensee* shall mean any person who owns a short-term rental that possesses a short-term rental special fees license pursuant to this Article.
- (e) *Person* shall have the same meaning as provided in Section 13-1 of the Code.
- (f) *Primary residence* shall mean the permanent residence or the usual place of return for housing of the owner of the short-term rental, the operator of the short-term rental, or an individual who otherwise consents to be an agent of the owner or operator for the purposes of this article, as documented by at least two (2) of the following:
 - (1) Motor vehicle registration;
 - (2) Driver's license;
 - (3) Voter registration;
 - (4) Tax documents showing the premises as the individual's residence;
 - (5) Utility bill.

An individual may only have (1) primary residence and must reside there for a minimum of two hundred and seventy-five (275) days during the calendar year.

- (g) *Primary resident* shall mean the owner of the short-term rental, the operator of the short-term rental, or an individual who otherwise consents to be the agent of the owner or operator for the purposes of this article, whose primary residence is the dwelling unit utilized as the short-term rental, or another dwelling unit on the subject property.
- (h) *Rent* shall have the same definition as provided in Section 2-172 of the Code.
- (i) *Short-term rental* shall mean a dwelling unit that is rented, leased, or otherwise assigned, in whole or in part, for temporary occupancy by transient guests for a tenancy of less than thirty (30) consecutive days, where no meals are served. This term does not include hotel or motel rooms, extended stay hotels, bed and breakfast facilities, or boarding and lodging house rooms.
- (j) *Short-term rental advertisement* shall mean any method of soliciting another to use a dwelling unit or portion thereof as a short-term rental.

- (k) *Transient guest* shall mean an individual who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of less than thirty (30) consecutive days. This term shall not be construed to include individuals who rent their primary residence on a weekly basis.
- (l) *Un-Hosted short-term rental* shall mean a short-term rental in which the dwelling unit utilized as the short-term rental, or another dwelling unit on the subject property, is not a primary residence, or a primary resident fails to occupy the subject property while the short-term rental is being rented to a transient guest.

Section 3 – That Section 13-77 of the Code of Ordinances be and hereby is created to read as follows:

Sec. 13-77. – Short-term rental special fee license.

- (a) No person shall own a short-term rental in Lexington-Fayette County unless the person possesses a valid special fee license for the short-term rental issued by the Lexington-Fayette Urban County Government, Division of Revenue, as provided in Section 13-13 of the Code and this Article.
- (b) The Director may promulgate such forms and procedures as reasonably necessary for the orderly and efficient processing of short-term rental special fee license applications and renewals. Provided, however, that an applicant shall be required to provide the following information as part of its application for a special license and renewal:
 - (1) Address of the proposed short-term rental;
 - (2) Name, address, phone number, and email address of the applicant;
 - (3) Name, address, phone number, and email address of the operator of the short-term rental, if different from the applicant;
 - (4) Name, address, phone number, and email address of an emergency contact that resides or is otherwise located in Lexington-Fayette County, Kentucky, or within twenty-five (25) miles of the proposed short-term rental;
 - (5) Approval by the Division of Planning that the short-term rental is a hosted short-term rental or is otherwise a legal nonconforming hosted or un-hosted short-term rental under Section 3-13(i) and (j) of the Zoning Ordinance; that the un-hosted short-term rental has a conditional use permit issued by the Board of Adjustment if applicable; that the hosted short-term rental with an occupancy greater than twelve (12) individuals has a conditional use permit issued by the Board of Adjustment, if applicable; or that the short-term rental otherwise complies with the Zoning Ordinance;
 - (6) The maximum number of occupants requested for the short-term rental, which shall be consistent with the number permitted by Section 13-79(a)(7);
 - (7) A site plan and floor plan depicting the short-term rental, including the number of vehicles that can be legally parked on the property, without encroaching onto the street, sidewalks, alleys, public rights of way or public property;
 - (8) A certificate of insurance or other valid proof of general liability insurance in the amount not less than one million dollars (\$1,000,000.00) per occurrence, which shall remain in effect at all times while engaged in the licensed activity;

- (9) An affidavit confirming that the health and safety requirements of Section 13-79(a)(1)-(6) of the Code of Ordinances have been satisfied for each short-term rental;
 - (10) An affidavit confirming that the applicant complies and shall continue to comply with all aspects the applicable building codes, fire codes, and all other applicable state, federal, and local laws or regulations; and
 - (11) For short-term rentals utilizing septic tanks, evidence indicating that the septic tank is of sufficient size to accommodate the occupancy requested in subsection (6).
- (c) All applications for a special fee license and renewal shall be accompanied by the fee referenced in Section 13-13 of the Code for short-term rental special fee licenses.
 - (d) The operator of the short-term rental may apply on behalf of the owner of the short-term rental, with the express written permission of the owner. However, the owner of the short-term rental shall remain the Licensee.
 - (e) A short-term rental special fee license shall cover all short-term rentals owned by the Licensee holding the license.
 - (f) All short-term rental special fee licenses and renewals shall expire upon the earlier of (1) December 31st following the most recent application or renewal; (2) a change in Licensee or ownership of a dwelling unit used as a short-term rental; or 3) the revocation of a conditional use permit.
 - (g) Upon receipt of the short-term rental special fee license, each Licensee shall be issued a unique Local Registration Number, by which the short-term rental may be identified.
 - (h) The Director may refuse to issue a license or renew the license of a Licensee in the following circumstances:
 - (1) When the applicant intentionally or knowingly makes a false statement as to a material matter in an application;
 - (2) When the applicant fails to complete any part of the application;
 - (3) When the Licensee has failed to pay any fee, tax, fine, or penalty related to a violation of Sections 13-76 through 13-82;
 - (4) When the property submitted for registration or renewal as a short-term rental is subject to unsatisfied penalties, fines, or liens assessed or levied by the Government for any reason;
 - (5) When the Licensee fails to maintain a conditional use permit, if applicable; or
 - (6) When the Licensee or short-term rental is not in compliance with any applicable federal, state, or local law or regulation, including, without limitation, mandatory zoning, building, safety, maintenance, health, sanitation, fire, electrical, plumbing, and mechanical codes.
 - (i) The Director may revoke the registration of any short-term rental for any of the following reasons:
 - (1) When any one of the circumstances provided in section (h), above, occurs;

- (2) When the Licensee or the short-term rental has been found to be in violation of Sections 13-76 through 13-82 two (2) or more times during the relevant license term.

A Licensee whose special fees license is revoked is not eligible to apply for another short-term rental special fees license for the dwelling unit in which the license was revoked for a period of one (1) year.

- (j) The Director may revoke, suspend, or refuse to renew or issue a license on a dwelling unit basis.
- (k) Relevant divisions and departments with necessary information for the Director to perform his or her responsibilities under this article should provide such information to the Director at his or her request. Members of the public may also provide complaints and relevant evidence indicating violation of this article to the Director.

Section 4 – That Section 13-78 of the Code of Ordinances be and hereby is created to read as follows:

Sec. 13-78. – Taxes.

- (a) Pursuant to Section 2-172 of the Lexington-Fayette Urban County Government Code of Ordinances, each Hosting Platform shall be required to collect and pay to the urban county government all transient room taxes on all rent charged or collected by the hosting platform. If rent is not charged or collected by a hosting platform, the Licensee shall be required to collect and pay to the urban county government all transient room taxes required by law.
- (b) Pursuant to Article I of this Chapter, Licensees are responsible for payment of occupational license fees on net profits earned from the operation of short-term rentals and on withholdings from employee compensation paid for work done or services performed in the urban county, subject to any applicable exemptions, including for rental property.

Section 5 – That Section 13-79 of the Code of Ordinances be and hereby is created to read as follows:

Sec. 13-79. – Duties of a Licensee.

It is the duty of a Licensee under this Article to ensure that:

- (a) Every short-term rental owned by the Licensee meets and complies with the following at all times:
 - (1) Contains sufficient smoke detectors installed and in working order as required in Section 12-1 of the Code of Ordinances;
 - (2) Contains at least one (1) functional carbon monoxide detector installed in an appropriate location as set forth in the Kentucky Residential Code;
 - (3) Contains at least one (1) maintained and charged fire extinguisher located in an open and easily accessible location on each habitable floor of the short-term rental;
 - (4) Contains at least one (1) operable emergency and rescue opening in every sleeping room, as set forth in the Kentucky Residential Code;

- (5) Has posted, in a conspicuous location in the short-term rental, the following:
 - a. the name, email address, and telephone number of the Licensee or operator of the short-term rental, if different from the Licensee;
 - b. the name, email address, and telephone number of the registered emergency contact for the short-term rental referenced in the Licensee's application for a special fees license;
 - c. the emergency and non-emergency telephone numbers for police, fire, and emergency medical service providers;
 - d. trash and recycling pickup information;
 - e. a clearly marked emergency evacuation plan for the premises showing exit routes, exits, and fire extinguisher locations;
 - f. the maximum number of occupants permitted in the short-term rental;
 - g. a copy of the conditional use permit, if applicable; and
 - h. the website address of the Lexington-Fayette Urban County Government where the guest may review the locally-required duties of a Licensee and file a complaint;
 - (6) Contains no outdoor signage identifying the dwelling unit as a short-term rental;
 - (7) May be occupied by a maximum of two (2) individuals per bedroom, plus an additional four (4) individuals, up to a maximum of twelve (12) individuals; or as otherwise allowed in the Licensee's conditional use permit or the Zoning Ordinance. Any permanent resident of the dwelling unit present during the short-term rental period shall count toward the maximum occupancy; and
 - (8) May not become the location where a violation of the laws governing assault, sexual offenses, prostitution, controlled substances, weapons, gambling on the premises, or any felony has occurred. Instances in which the Licensee or primary resident is the victim of the crime and had no control over the criminal act, including domestic violence, shall not be considered.
- (b) Short-term rentals shall not be utilized for private events, such as weddings or parties, in which the number of participants exceeds the maximum occupancy limit described in this section. No private events, such as weddings or parties, shall occur between the hours of 11:00 p.m. and 7:00 a.m. Special events for a commercial purpose shall be prohibited at all times;
 - (c) The Licensee shall abide by all requirements contained within the conditional use permit, if applicable;
 - (d) The Licensee shall submit a true and accurate report annually to the Division of Revenue, in the manner and form specified by the Director, identifying:
 - (1) The address of each short-term rental owned or operated by the Licensee;

- (2) The Local Registration Number of each short-term rental owned or operated by the Licensee; and,
 - (3) The number of contracts to which each short-term rental owned or operated by the Licensee was subject in the preceding year, and the duration of each contract;
- (e) Every short-term rental operated by the Licensee complies with all applicable planning and zoning rules, ordinances, and regulations.

Section 6 – That Section 13-80 of the Code of Ordinances be and hereby is created to read as follows:

Sec. 13-80. – Advertising on a Hosting Platform.

- (a) Short-term rentals registered in accordance with Sec. 13-77 may be advertised for stays of less than thirty (30) days on a Hosting Platform.
- (b) All advertisements for a short-term rental, including, without limitation, those on Hosting Platforms, shall include the following:
 - (1) The short-term rental’s Local Registration Number;
 - (2) language specifying the allowed maximum number of occupants allowed under this Article; and
 - (3) language specifying that guests of the short-term rental are prohibited from allowing more people onto the premises than the maximum occupancy allowed.
- (c) Pursuant to KRS 65.8821, the Administrative Hearing Board established in Sec. 12-6 of the Lexington-Fayette County Code of Ordinances and assigned hearing officer(s) shall have the authority to subpoena information from any person to determine whether there has been a violation of any ordinance that the Board or hearing officer has jurisdiction to enforce. Any such subpoena shall:
 - (1) Be served upon the person, or its registered agent, if applicable, via certified mail;
 - (2) Identify the provision(s) of any ordinance that the Government has reason to believe may have been violated; and
 - (3) Describe with reasonable specificity the evidence supporting the Government’s reasonable belief that a violation of said ordinance has occurred.

Section 7 – That Section 13-81 of the Code of Ordinances be and hereby is created to read as follows:

Sec. 13-81. – Enforcement.

- (a) Pursuant to Section 14-10 of the Code, this Article shall be enforced by citation officers within the Division of Revenue and the Administrative Hearing Board established in Sec. 12-6 of the Lexington-Fayette County Code of Ordinances in accordance with the rules and procedures established therein.
- (b) Except as otherwise provided herein, any person that violates any provision of this Article shall be subject to civil penalties, as imposed by a citation officer within the Division of Revenue in accordance with Section 2B-6 of

the Lexington-Fayette County Code of Ordinances, in the following amounts:

1st Offense	\$125.00
2nd Offense	\$250.00
3rd Offense	\$500.00
4+ Offense	\$1,000.00

- (c) In addition to the penalties provided in Section 13-15 of the Code for failure to obtain a special fees license, any person that violates Section 13-77(a) of the Lexington-Fayette Urban County Code of Ordinances shall be subject to civil penalties, as imposed by a citation officer within the Division of Revenue in accordance with Section 2B-6 of the Lexington-Fayette County Code of Ordinances, in the amount of \$500 per offense.
- (d) Any person that violates Sec. 13-78 of the Lexington-Fayette Urban County Code of Ordinances shall be subject to the penalty provided in Article I of this Chapter for failure to pay the applicable tax or occupational license fee.
- (e) Each day that a violation continues after notice of the offense has been served shall constitute a separate offense.
- (f) The Government shall possess a lien on the property owned by the Licensee in accordance with section 2B-9 of the Code of Ordinances for all civil fines issued or incurred under this Section.
- (g) In addition to the penalties provided herein, the Director is authorized, with the assistance of the Department of Law, to bring and prosecute civil actions for violations of this Article as appropriate, including, without limitation, actions for injunctive relief and declarations of rights, in any court of competent jurisdiction.
- (h) Nothing provided herein shall limit the power of the Director, as provided in Sec. 13-77, to deny, revoke, or fail to renew the registration of a short-term rental.

Section 8 – That Section 13-82 of the Code of Ordinances be and hereby is created to read as follows:

Section 13-82. –Appeals

- (a) If an application is denied, a Licensee's short-term rental special fee license is revoked, or the Director fails to renew a Licensee's short-term rental special fee license under this article, the Licensee may appeal as follows:
 - (1) Upon finding that a condition exists to deny an application, revoke a license, or fail to renew a short-term rental special license fee, the director shall issue a letter to the Licensee or applicant requiring that it come forward and show cause why the above action should not be taken.
 - (2) The Licensee or applicant shall have ten (10) days to respond to the director's letter and shall present evidence showing that the proposed action should not be taken.

- (3) The director shall determine whether the business has produced sufficient evidence to contest the proposed action and shall request review by the commissioner of finance if such evidence exists.
 - (4) Within thirty (30) days, the commissioner of finance shall review all evidence and hold a hearing at which the business shall be allowed to present witnesses on its behalf. The commissioner's decision whether to deny an application, revoke a short-term rental special fee license, or fail to renew a license shall be final.
 - (5) Failure to appeal as provided above shall result in the Director taking the proposed action described in his or her letter.
- (b) Any person issued civil penalties for violations of this Article may appeal to the Administrative Hearing Board in accordance with Section 12-6 and Section 2B of the Code of Ordinances.
 - (c) Any person issued civil penalties for zoning code violations may appeal to the Infrastructure Hearing Board in accordance with Section 5-9 of the Zoning Code and 16-79 of the Code of Ordinances.

Section 9 – That the Division of Revenue be and hereby is authorized to amend the Lexington-Fayette Urban County Government, Division of Revenue, License Fee Regulations (5th Edition) as necessary to implement this Ordinance.

Section 10 – That if any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 11 – That this Ordinance shall become effective on the date of its passage.

Section 12 – That the Division of Revenue shall not enforce this Ordinance for a period of six months from the Ordinance's effective date to allow property owners adequate time to comply.

PASSED URBAN COUNTY COUNCIL: July 11, 2023

Linda Gorton

MAYOR

ATTEST:

[Signature]

CLERK OF THE URBAN COUNTY COUNCIL

PUBLISHED: July 20, 2023-1t

0699-23:EPT:X:\CASES\CO\19-CC0441\LEG\00782923.DOCX