

## **CITY PLANNING COMMISSION AGENDA**

**STAFF: MORGAN HESTER**

**FILE NO:**  
**CPC CA 19-00137 – LEGISLATIVE**

**PROJECT: SHORT TERM RENTAL UNITS**

An ordinance amending Chapter 7 (Planning, Development and Building) of City Code establishing density standards for non-owner occupied short term rental units

**APPLICANT: CITY OF COLORADO SPRINGS - PLANNING AND DEVELOPMENT**

### **PROJECT SUMMARY:**

Code Change Description: The proposed ordinance amends City Code Chapter 7 related to short term rental units to define 'owner occupied' and establish densities for non-owner occupied short term rental units.

Per City Council direction, proposed language will accomplish the following:

1. Define 'owner occupied' and establish a military exemption.
2. Limit non-owner occupied STRs in all zoning districts to every 5 lots.
3. Preclude all non-owner occupied Short Term Rental units (STRs) in single-family zoning districts.
  - a. Option for allowing STRs in single-family only through a public hearing process such conditional use or use variance.

A more detailed summary of the language is found in the following sections of this report. The full language of the proposed ordinance amendments are attached.

### **BACKGROUND**

City Council approved the current short term rental ordinance on November 17, 2018, effective December 31, 2018. Ordinance 18-112 establishes the short term rental program that went into effect on January 2, 2019. Prior to the creation of the Ordinance, no regulations were in place regarding short term rentals. Many municipalities across the United States and Colorado have implemented policies to ensure the protection of the general public with use standards as the "sharing economy" of short term rentals on platforms such as Air B&B, VRBO, HomeAway, and similar companies continue to expand their services. As Colorado Springs is a major tourism destination, the trend was increasing and there was a recognized need for clear guidelines.

Mid-year updates, beginning in June 2019, were provided at City Council work sessions and additional information was requested of Staff to be presented in the following months. As follow-up from those work sessions, City Council directed Staff to draft potential Ordinance amendments, specifically regarding potential Code amendments addressing occupancy maximums and a non-owner occupied permit density cap.

An occupancy maximum was presented on October 22, 2019 for first reading and was passed. The ordinance language reads as follows –

Section 7.5.1706(H) “Maximum overnight occupancy of a short term rental unit shall be limited to two (2) occupants per bedroom, plus an additional two (2) occupants per dwelling unit. The maximum occupancy per dwelling unit shall be fifteen (15) occupants.” The maximum of 15 occupants was intentional in order not to conflict STRs with the City Code definition of “motel/hotel”, which is defined as: “...an establishment which provides guestrooms or suites for the temporary occupancy of more than fifteen (15) individuals...”

### **Permit Statistics**

At the time of this report, (November 14, 2019) 1,292 STR permits have been issued. The following information breaks down those issued permits –

#### Characteristic of Owner

- Primary residence – 534
- Do not live at property – 697
- Travel part of the year – 61

#### Homeowner Presence

- Owner present during rental – 428
- Owner NOT present during rental – 864

(Note – Many homeowners have stated that the rental is their primary residence but will not be present during the time of the rental. This can be attributed to various factors such as deployment, traveling professors/doctors, and/or homeowners that will vacate their property during the duration of a rental and will stay with a nearby friend or family member.)

#### Top 3 Zoning Districts with STR Permits

- R-2 – 430
- R1-6000 – 363
- PUD – 190

(Note – Not all PUDs are single-family.)

Of the 438 permits that have been issued in single-family zoning districts, specifically those zoned R, R1-6000, and R1-9000, 250 permits are the permit holder’s primary residence.

### **National Regulations**

City Council directed Staff to research what regulations municipalities of similar size have in place specific to permit densities. Based on research, the following information was found for municipalities both within Colorado and across the nation –

- Manitou Springs, CO
  - Density Regulations – 500’ buffer between STRs, measured from property line to property line. STR permits capped at 58 (no more than 2% of available residential structures).
  - Owner Occupancy Requirement – Only if individual rooms are being rented does the owner need to reside on the property.
- Fort Collins, CO
  - Density Regulations – No.
  - Owner Occupancy Requirement? – Delineate between a non-primary (not owner occupied) and a primary (owner occupied) rental. Each rental is allowed in certain zones. The zones where non-primary is allowed are much more restrictive than primary and is mostly confined to commercial zones.
- Boulder, CO

- Density Regulations – No.
  - Owner Occupancy Requirement? – Required to be primary residence (more than six months out of the year).
- Denver, CO
  - Density Regulations – No.
  - Owner Occupancy Requirement? – Required to be primary residence, which is defined as “a residence which is the usual place of return for housing as documented by at least two of the following: motor vehicle registration, driver’s license, Colorado state identification card, voter registration, tax documents, or a utility bill. A person can only have one primary residence”. The owner does not have to be present through the duration of the rental. Hosts are required to leave a brochure for guests that includes appropriate contact information and instructions on City services. A General Manager and/or Local Responsible Party must be provided as part of the license application. This person must be available to address issues with the STR when the owner is not present.
- Aurora, CO
  - Density Regulations – No.
  - Owner Occupancy Requirement – Primary residency required, but they do not have to be on site at the time of the rental.
- Nashville, TN
  - Density Regulations – No.
  - Owner Occupancy Requirement – Non-owner occupied STRs are only permitted in certain non-residentially zoned areas.
- Arlington, TX
  - Density Regulations – Must locate within the established STR Zone within the Entertainment Zoning District (encompassing amusement parks and sports stadiums).
  - Owner Occupancy Requirement – No, but need a local contact within 1-hour of property.
- Austin, TX
  - Density Regulations – No.
  - Owner Occupancy Requirement
    - Type 1 – Owner-occupied
    - Type 2 (SF or duplex) or 3 (multi-family) – Not owner-occupied. Cap on the percentage of STRs allowed the legally operate in each Census tract of the City. Only permitted in commercial zoning districts.
- El Paso, TX
  - No regulations in place.
- San Antonio, TX
  - Density Regulations
    - Type 1 (owner occupied) – no density regulations.
    - Type 2 (non-owner occupied) - up to 12.5% of the units on a block face, multi-family buildings with 5 to 7 units permitted to have one Type 2 STR permit, STR permits for multi-family buildings with 8+ units allowed for 12.5% of units.
  - Owner Occupancy Requirement – Yes, if Type 1.
- Sacramento, CA
  - Density Regulations – No.
  - Owner Occupancy Requirement – Two permit types – primary residence and non-primary. If a non-owner occupied property is utilized for STR, it cannot be

rented for more than 90 days in a calendar year. After that time, a Conditional Use Permit is required. The non-owner occupied property must have a manager who resides within a 30-mile radius of the STR.

- Atlanta, GA
  - No STR regulations in place.
- Miami-Dade County, FL
  - Currently in litigation between Air B&B and the City of Miami.
- Arizona
  - Arizona cities/towns cannot restrict or prohibit vacation or short term rentals aside from issues regarding traffic, trash, and noise; however, the Governor recently signed House Bill 2672 which precludes “party houses” or short term rentals that are used for special events. To further expand, the Arizona Revised Statutes states that “a vacation rental or short-term rental may not be used for nonresidential uses, including for a special event that would otherwise require a permit or license pursuant to a city or town ordinance or a state law or rule or for a retail, restaurant, banquet space, or other similar use.”

### **Permit Density Cap**

At the November 12, 2019 City Council regular meeting, Staff was directed to draft ordinance options that clearly establish a definition of ‘owner occupancy’, including an active-duty military personnel exemption, and a density buffer for non-owner occupied properties. Two options have been drafted – one that limits non-owner occupied STRs in all zoning districts through a 5 lot separation (Option A) and a second that in addition to the 5 lot separation between non-owner occupied STRs also prohibits non-owner occupied STRs in single-family zoning districts, specifically R, R1-6000, and R1-9000, as well as single-family Planned Unit Development (PUD) zoned properties (Option B).

Based on City Council direction, the draft Ordinance language for Option A is as follows:

Section 7.5.1704(C) “No non-owner occupied short term rental unit shall be located within five (5) lots of another non-owner occupied short term rental unit in any direction. The distance between lots shall be measured by selecting the route with the fewest number of adjoining lots separating non-owner occupied short term rental units, without regard for lot size or ownership and ignoring rights-of-way. Where an Owner Occupied short term rental unit is owned by an active duty military service member whose permanent duty station is within El Paso County, the Manager shall waive this requirement for up to one (1) year if the service member receives order to report to a temporary duty station outside of El Paso County.”

An example of how the 5 lot separation is accomplished can be found in **FIGURE 1**.

The draft ordinance language for Option B is as follows:

Section 7.5.1704(D) “No non-owner occupied short term rental unit shall be located in R, R1-6000, or R1-9000 single-family zoning districts or single-family PUD zoning districts. Where an Owner Occupied short term rental unit is owned by an active duty military service member whose permanent duty station is within El Paso County, the Manager shall waive this requirement for up to one (1) year if the service member receives order to report to a temporary duty station outside of El Paso County.

City Council suggested the possibility of requiring a Conditional Use Permit or a Use Variance for non-owner occupied STRs in single-family zoning districts. Both application types are quasi-judicial and the applications must be reviewed by the City Planning Commission with the option of appealing to City Council.

A Conditional Use is an allowed use in a zone district but has operating and/or physical characteristics which require careful consideration and public review of the impact upon the neighborhood and public facilities surrounding the proposed location.

Conditional Use requests require a complete application, which includes documents such as a project statement with justification for the request, a Development Plan, and Mineral Rights Certificate, as well as a minimum \$1,445 fee. As the request must be reviewed by the City Planning Commission, notification of the application and public hearing for property owners within 1,000' of the subject property is required. The timeline from application to being heard at the public hearing could take a couple of months.

Using the month of October 2019 as an example, of the 132 total permits issued, 41 were in single-family zoning districts, 16 of which were non-owner occupied. If a Conditional Use request for non-owner occupied STR properties in single-family zoning districts were to be implemented, those 16 applications would be required to comply with the process. The City Planning Commission would then make the following findings –

1. Surrounding Neighborhood: That the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.
2. Intent of Zoning Code: That the Conditional Use is consistent with the intent and purpose of the Zoning Code to promote public health, safety, and general welfare.
3. Comprehensive Plan: That the Conditional Use is consistent with the Comprehensive Plan of the City.

Use Variance requests require the same documents and fees as a Conditional Use, including notification of the application and public hearing for property owners within 1,000' of the subject property is required. The timeline from application to being heard at the public hearing could also take a couple of months.

A Use Variance differs from a Conditional Use as it is authorization for a use that is not permitted in the subject zoning district and pursuant to 7.5.803 'Use Variances' of City Code, review criteria requires that the following are reviewed –

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to the property or class or uses in the same zone so that a denial of the petition would result in undue property loss;
2. That such variance is necessary for the preservation and enjoyment of a property right of the petitioner, and also
3. That such a variance will not be detrimental to the public welfare or convenience nor injurious to the property or improvements of other owners or property.

Essentially, the established criteria would be reviewed to argue that the single-family property could not be utilized as such for reasons supplied by the applicant.

With that being said, if it is decided to provide the option, Staff's recommendation is a Conditional Use Permit.

In the event a permit density ordinance is adopted, permits issued prior to the new implementation date will be grandfathered to the previous ordinance until the time they fail to renew prior to their established annual anniversary date.

A major component of these proposed ordinances is the defining of 'Owner Occupied'. From the October 7, 2019 City Council work session meeting, a consensus was reached to achieve this by establishing a time limit for how long an owner shall be occupying the property. Proposed language is as follows –

Section 7.2.201: Definitions Enumerated: "OWNER OCCUPIED: shall mean that the property is actually occupied by the owner for not less than one hundred and eighty (180) days each year.

This definition will be included in both ordinance options.

### **3<sup>rd</sup> Party Enforcement**

An RFQ (Request for Qualifications) was posted nationally in August with the intent of hiring a 3<sup>rd</sup> Party Enforcement Company to assist City Staff with identifying non-compliant properties. Host Compliance has been selected to provide this service and contract negotiations are currently in process.

### **Stakeholder Process**

The creation of the Short Term Rental Ordinance involved multiple stakeholder meetings, including establishing a specific group of concerned citizens. Members of that group included: representative from Council of Neighbor Organizations (CONO), short term rental owners, Chamber and EDC, Patty Jewett HOA, Organization of Westside Neighbors, Pinecliff HOA, Colorado Springs Convention and Visitors Bureau, and City Council representatives.

Staff has met with various interest groups on the progress of the Short Term Rental program to provide updates as well as listen to their input on the process execution. Those groups include the following –

- Old North End Neighborhood
- Neighborhood Preservation Alliance
- Colorado Springs Short Term Rental Alliance (COSSTRA)
- Pikes Peak Association of Realtors
- CONO

## **ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:**

### **Summary of Ordinance**

The two proposed ordinance options are attached as **FIGURES 2** and **3**. The amendment that is voted upon will be incorporated into Part 17 (Short Term Rental Unit), Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building). The new language is located in the following section:

7.5.1704: SHORT TERM RENTAL UNIT PERMIT REVIEW CRITERIA:

### **STAFF RECOMMENDATION:**

**CPC CA 19-00137 - CODE AMENDMENT**

**Recommend to the City Council adoption of an ordinance** amending Chapter 7 (Planning, Development and Building) of City Code establishing density standards for non-owner occupied short term rental units