

CITY PLANNING COMMISSION AGENDA

STAFF: MEGGAN HERINGTON

FILE NO:
CPC CA 18-00063 – LEGISLATIVE

PROJECT: SHORT TERM RENTAL UNITS

An ordinance amending Chapter 7 (Planning, Development and Building) of City Code defining and establishing standards for short term rental units

APPLICANT: CITY OF COLORADO SPRINGS - PLANNING AND DEVELOPMENT

PROJECT SUMMARY:

Code Change Description: The proposed ordinance adds language to multiple sections of City Code Chapter 7 related to short term rental units and the short term rental unit permit.

Highlights of the proposed changes include:

- a. Addition of a definition of Short Term Rental Unit,
- b. Addition of short term rental unit to the threshold of review,
- c. Addition of language that a short term rental unit is allowed as an accessory use to a residential use in any zone district with approval of the short term rental unit permit,
- d. Addition of short term rental unit permit to the appeals section of code stating that new Part 17 is subject to appeal similar to other permit types, and
- e. New Part 17 outlines the requirements for obtaining and keeping a permit for a short term rental unit and how that permit may be denied, suspended or revoked.

A more detailed summary of the language is found in the following sections of this report. The full language of the ordinance is attached. This ordinance also specifies the required review criteria, and rules and regulations for establishment of a short term rental unit.

BACKGROUND

There are currently no standards for short term rental units within City Code. A number of cities and counties across the United States and here in Colorado have recently adopted regulations related to short term vacation homes; also known as vacation home rentals, VRBO, short term rentals and AirBnB. All of these terms are used to describe a residential home or residential unit or portion of a residential unit rented for less than 30 days. Vacation home rentals are an increasingly popular rental method for travelers. There is no good way to estimate the total number within Colorado Springs, as vacation rental platforms do not typically share their user data. However, third-party sources estimate that there are approximately 1000 units in the area that are used or have been used as a short term rental unit.

Over the last several years, there have been a number of inquiries by citizens and neighborhood organizations related to the rules for short term rentals within the city. However, tracking locations is difficult with no verification of which owners are paying sales tax in the form of Lodgers and Automobile Renters Tax (LART), or who to contact locally if there is an issue or concern with the property.

The purpose for the ordinance is four-fold:

1. To ensure that short term rental owners are paying LART tax similar to other transient lodging including, hotels, motels and bed and breakfasts,
2. To establish a community standard for the integration of short term rental units within existing neighborhoods while maintaining neighborhood and community character,
3. To notify visitors to our community of the neighborhood expectations, how to be a good neighbor, and what to do in case of an emergency,
4. To ensure health and safety of visitors and residents by re-affirming police, fire and building safety guidelines for transient lodgers who may not be familiar with local laws.

The permit process, or registry, will require that short term rental unit owners obtain a sales tax license through the City Sales Tax Office. This is one of the larger controversies surrounding short term rental units; owners don't know that they are required to pay LART and don't obtain the proper sales tax license causing a large leakage of LART tax. Only the website AirBnB currently collects sales tax for the City on behalf of the owners that post with that site. Other than those posted on AirBnB, approximately 200 other addresses are listed with the City Sales Tax Office as having a sales tax license. A map of those short term rental locations which have a sales tax license directly with the City is attached as **FIGURE 1**. Note that the mapping and data is based only on records held by the City. While the website AirBnB hosts numerous listings that data is not readily available.

Analysis and Research:

Staff conducted significant research in preparation for drafting this ordinance; first by reviewing short term rental guidelines in numerous other communities. Those include but are not limited to the cities listed below. The spreadsheet attached as **FIGURE 2** is a full analysis of a number of city ordinances.

Denver, CO	Lake City, CO
Golden, CO	Town of Pitkin, CO
Silverton, CO	Park City, UT
Fort Collins, CO	Austin, TX
Boulder, CO	Ketchum, ID
Manitou Springs, CO	Santa Fe, NM
Edgewater, CO	Phoenix, AZ
Georgetown, CO	Tucson, AZ

The proposed ordinance takes into account processes and standards have been successful in other communities. The preferred method to addressing short term vacation rentals and ensuring compatibility for long term residences is communication and permitting. Instead of bans on short-term rentals, a number of cities have enacted innovative, understandable and enforceable policies and permitting procedures that address negative consequences while maximizing economic and community benefits.

One question that has greatly varied opinions is if this is a residential or a commercial use. Again, there are a greatly varied number of opinions on if the use of a residential unit as a short term rental is a continuation of the residential use or the commencement of a commercial use. There is significant case law related to short term vacation rentals and it is notable that case law has found short term vacation rental differently in varying states and circumstances. There are several examples from the Colorado Court of Appeals that have stated that short term rental is a

commercial use, and other case law from Colorado, Washington, Kentucky and Wisconsin that affirmed that an HOA cannot prohibit short term rental under commercial use prohibitions within covenants.

Research materials provided by the American Planning Association indicate that this is a hybrid use and it is important to recognize the need for finding a compatible balance for limited commercial use in residential areas, similar to the allowance for home occupations.

In addition, data was collected from the City Sales Tax office. It is estimated that there are approximately 250 active short term rentals in the City of Colorado Springs that are licensed directly with the city. The City and AirBnB entered into an agreement in 2006 that allows AirBnB to remit sales tax directly to the city on behalf of hosts listed with AirBnB. While AirBnB does not currently provide the city with a listing count, an estimated \$700,000 in LART was collected in 2017.

STAKEHOLDER PROCESS AND INVOLVEMENT:

To discuss the topic of short term vacation rentals and craft proposed regulations, the City formed a specific group of concerned citizens. Members of the original short term rental group included: representatives from Council of Neighbors and 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.

After a series of meetings, staff drafted the Code language and worked with that group to refine the ordinance; relying heavily on the group to distribute the proposed ordinance. Additionally, emails were sent to a number of citizens and short term rental owners that had contacted the city with questions and concerns. The email included the draft language, original schedule of public hearings and instructions for how to ask questions and provide written feedback. That email was sent specifically to:

- Mountain Shadows HOA
- Chase Point HOA
- Golden Hills HOA
- Organization of Westside Neighbors
- Old North End
- Discovery HOA
- Broadmoor Brownstones HOA
- Ivywild Improvement Society
- Falcon Estates HOA
- CONO

The Council of Neighbors and Organizations (CONO) hosted a citizen meeting on June 13th and invited staff to speak to the proposal. Approximately 60 citizens attended that meeting. Most of the comments heard were not favorable to the ordinance; having specific opposition to the limits to the number of rentals per week and the limit to the number of short term rental units per property (**FIGURE 3**). On June 14th staff spoke to the Organization of Westside Neighbors (OWN) board and approximately 25 guests. Again, concerns over the ordinance were mainly voiced. Following the meetings, a number of emails and calls were received voicing additional questions and concerns (**FIGURE 4**). The item was originally scheduled to be heard by the City

Planning Commission on June 21st. However, based on the comments received at the public input meetings, staff requested a postponement in order to take additional time to make changes based on the additional input received.

As part of this expanded and extended public input process, the original working group, or stakeholder group, was expanded to re-review the topic and potential revisions to the proposal. Staff reconvened the working group with additional members; 6 citizens representing the Colorado Springs Short Term Rental Alliance and 6 citizens representing homeowner associations OR having known short term rentals in their neighborhoods. That meeting was held on July 18th. As part of the meeting staff walked the group through changes proposed from the original draft and research utilized in making the recommendations. **FIGURE 3** is a redlined document that illustrates the proposed amendments from the first draft that was originally presented in June. This document was the center of the discussion with the working group. That group also provided additional input and recommendations for consideration.

As a follow-up on the re-drafted proposal, CONO will host a second citizen meeting on August 7th. The intent is to brief citizens on the process that occurred since June, discussion of the changes, and briefing on the public process. The City Planning Commission will be given a full summary of that meeting at the public hearing.

In addition, the citizen meeting and the public hearing were posted on the city website, specifically to the Planning and Development events calendar with a link to an evolving vacation rental webpage. That webpage will be the future site of all permitting requirements and good neighbor recommendations. The hearing materials were also posted to this webpage.

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

Summary of Ordinance

The proposed ordinance is attached and a redlined version as **FIGURE 3**. The major addition is the language related to the short term rental unit and permit as described in the newly proposed Part 17 (Short Term Rental Unit), Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building). The new language is broken out into several sections that outline the permit purpose, requirements and criteria:

7.5.1701: PURPOSE:

7.5.1702: SHORT TERM RENTAL UNIT PERMIT REQUIRED:

7.5.1703: APPLICATION:

7.5.1704: SHORT TERM RENTAL UNIT PERMIT REVIEW CRITERIA:

7.5.1705: CONDITIONS OF APPROVAL:

7.5.1706: RULES AND REGULATIONS:

7.5.1707: PERMIT SUSPENSION OR REVOCATION

The language requires all short term rental units to obtain a permit through the Planning and Community Development Department. The permit requirements are specifically listed in the Code language stating that the permit shall include the following information as part of the permit submittal:

1. Standard City application;
2. Safety self-inspection certification;

3. Sales tax license customer ID;
4. The name, address and contact information including a 24-hour contact phone number for the owner or the owner's property manager or agent within El Paso County or a Colorado Springs resident who can be contacted in the event of an emergency and respond within one (1) hour.
5. Proof of insurance;
6. Proof that short term rental unit permit review criteria will be met; and
7. A statement that the owner has read and understands the rules and regulations for a short term rental unit set forth in City Code.

The safety self-inspection certification checklist is required. An example of that checklist as a draft is attached as **FIGURE 5**. The checklist is meant as a guide for owners to ensure safety of the unit for transient residency and as verification that all elements of the permit have been verified by the owner and that the owner understands the rules and regulations as set forth in City Code. The concept of a self-safety certification checklist is currently utilized by the Colorado Springs Fire Department as recommendations for business owners. In development of the safety items as listed on the draft checklist the City Fire Department was consulted. The items included on the checklist reflect additional safeguards to protect in transient lodging.

A name of a local contact is required for all permits to be approved. This is listed as a permit requirement and reiterated and expanded upon under Rules and Regulations. The intent is that there is someone local and available 24 hours a day for the duration of all rentals to address concerns of the neighbors and/or renters at the address. This contact information will be made available to Homeowner Associations and neighbors as requested. The first course of action when a problem arises, depending on the severity of the issue, is to contact the local designee. If it is a severe issue, of course, the police should be contacted. The local designee is responsible to mitigate the issue promptly. If this is not done, the Neighborhood Services Division (Code Enforcement) can also be contacted.

Many home insurance companies consider short term renting a commercial use and thus not covered under some of the standard policies. If an accident were to occur, how are neighbors and/or tenants protected if the owner has no coverage? The easiest solution is to require short term rental units to carry the appropriate liability insurance; one that specifically covers the activity and level of risk. This proof of insurance concept is standard in many communities that require a short term vacation rental permit or license. If an owner hosts on AirBnB, liability coverage is provided by that host platform.

Similar to other permits issued by the City Planning Department, a fee will be required and a five (5) day review of the submitted materials. Staff will propose a \$120.00 one-time fee for Council adoption. This is similar to the existing fees established for home occupation permits and temporary use permits.

There are a number of good neighbor criteria and rules and regulations proposed through the ordinance. The intent is to balance the need for varied accommodations for visitors with retaining the character of residential areas. The recommendations are based on standards adopted in other communities as well as recommendations found on the Short Term Rental Advocacy webpage at <http://stradvocacy.org/> and reference materials from the American Planning Association at <https://www.planning.org/> to name a few. The criteria, rules and regulations were also drafted with consideration of public comments received.

In the event an owner fails to operate the short term rental unit in accord with the provisions, the language specifies a process for Permit Suspension or Revocation. The Manager is authorized to initiate permit suspension or revocation proceedings against an owner when these circumstances arise, by issuing a notice to show cause to the owner. The Planning Commission will be required to hold a hearing on the allegations listed in the notice sent to the owner. This hearing will be held following the standard Planning Commission process with staff documentation provided and a chance for the owner to speak to the allegations. The language includes findings that the Commission will need to make in order to suspend or revoke the permit:

1. The operation of the short term rental home no longer conforms with the review criteria of this part; or
2. The owner has violated a condition of approval; or
3. The owner has violated the rules and regulations provided for in this part.

This suspension or revocation hearing is the first step towards a revocation or suspension. If the City Planning Commission revokes or suspends the permit, the use must cease. The permit suspension or revocation as dictated by the Planning Commission may be appealed to City Council. If the use does not cease or desist after the hearing, Code Enforcement shall take the appropriate steps as outlined in Chapter 7.

In addition, staff will be working closely with the Council of Neighbors and Organizations, Visitors Bureau, Chamber and EDC and Colorado Springs Short Term Rental Alliance to produce and distribute informational materials related to the permit requirement and explaining why the permit/registry process is important and highlighting the ease of submittal and timely review of the permitting process as well as how neighbors and HOA's can work with the City if issues arise in their areas. This is all part of the public outreach process to be finalized with approval of the ordinance that will go into effect 90 days after approval by City Council.

STAFF RECOMMENDATION:

CPC CA 18-00063 - CODE AMENDMENT

Recommend to the City Council adoption of an ordinance amending Chapter 7 (Planning, Development and Building) City Code defining and establishing standards for short term rental units.