



Legislation Text

File #: 18-0440, **Version:** 2

A Resolution rescinding resolution number 12-17 and establishing development application fees for the Land Use Review Division of the Planning and Development Department specifically adding a fee for short term vacation home rental permit.

(Legislative)

Presenter:

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Summary:

The proposed ordinance amends several sections of City Code Chapter 7 by establishing regulations and a permitting process for short term vacation rentals - commonly referred to as AirBnB and VRBO.

Bullets below highlight the proposed ordinance:

- 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 outlining the requirements for obtaining a permit, applying for an annual permit renewal and how that permit may be denied, suspended or revoked.

Also for consideration is a resolution adopting a fee for the Short Term Rental Unit Permit. At the initial work session on September 24th staff recommended a one-time fee of \$120.00. However, Council commented that there is interest in an annual permit and renewal process. This permit would be a zoning permit tracked and administered by the Planning and Development Department. Therefore, the attached fee resolution is a proposal for an annual permit fee of \$119.00. As was stated at the initial work session, there are thought to be approximately 1400 short term rental units in the city. The fee and permit are proposed to go into effect on January 1, 2019. The following sections of the memo outline in more detail the language based on Council input from September 24th.

Also attached is the City Planning Commission report and associated figures that delve deeper into the analysis and include research on other communities for comparison. All of these documents were provided at the original work session.

Previous Council Action:

As stated above, Council was briefed on the item at the work session on September 24th. Staff gave a full presentation on the elements of the ordinance, the permitting fee and permitting process. There

were a number of comments made by Council. Those comments, as understood by staff were:

- Permits should be renewed annually and the fee should be similar to the annual businesses licensing fee administered by the City Clerk;

Staff Comment

Section 1702, Short Term Rental Permit Required, could be amended to specify an annual permit. The short term rental permit would then be codified as an annual permit that may be renewed, but would expire if not renewed in a timely manner or if the property is sold or transferred.

- An owner renting a dwelling unit for 14 days or less per calendar year should not be required to obtain a permit; however a sales tax license should still be required;

Staff Comment

Section 1702 can be further amended that a permit is not required if renting a unit is for less than 14 days per calendar year.

- The penalties for non-compliance should be similar to the penalties outlined in Chapter 6, Neighborhood Vitality/Community Health, related to public health and sanitation enforcement and the impact should be cumulative to all permits held under a specific owner

Staff Comment

The language establishing the short term rental permit process and the review criteria is written into the zoning code, Chapter 7. With this, the permit is reviewed, issued and monitored by the City Planning and Community Development Department. The fee and all application materials will be submitted for review and approval from the Land Use Review Division. All enforcement will be through City Neighborhood Services Division and property owners subject to all zoning enforcement as currently outlined in City Code Section 7.7.10, Zoning Enforcement. Within this section of code, subsection 7.5.1008, Failure to Comply with Notice and Order or Agreement to Abate is almost verbatim of the language from City Code 6.5.106, Failure to Comply with Order to Abate.

Staff also drafted language that the permit will not be renewed if the property owner is deemed a repeat offender or chronic repeat offender per the language in section 7.5.1008.D. This specific section exists in the code currently and is identical language to City Code Section 6.5.106.D.

A repeat offender is defined as an owner previously cited for a failure to comply with a notice and order to abate during any successive six (6) month period for a violation(s) which has occurred at the property, shall be assessed a reinspection fee of two hundred fifty dollars (\$250.00) for each reinspection conducted until compliance is achieved. The Manager may remove the "repeat offender" designation if, after abatement, the owner has no further violation(s) for a period of six (6) months. If a "repeat offender" designation is removed and the owner has a subsequent violation on the same property, that owner shall be immediately reclassified as a "repeat offender".

A chronic repeat offender is defined as an owner who has been previously classified as a repeat offender. A property owner who has been designated a "repeat offender" for a period of twelve

(12) or more successive months shall be reclassified as a "chronic repeat offender". A chronic repeat offender previously cited for a failure to comply with a notice and order to abate for a violation(s) which has occurred at the property in violation for a period of twelve (12) or more successive months shall be assessed a reinspection fee of five hundred dollars (\$500.00) for each reinspection completed until compliance is achieved. The Manager may remove the "chronic repeat offender" designation if the owner has no further violation(s) on the property for a period of twelve (12) months. If a "chronic repeat offender" designation is removed and the owner has a subsequent violation, that owner shall be immediately reclassified as a "chronic repeat offender".

- What is the penalty for not seeking a permit to operate a short term rental;

Staff Comment

If a citizen does not apply for a permit, they are in violation of the zoning code and subject to enforcement as outlined in 7.5.10. If an owner is not in compliance with an existing permit, they too are subject to enforcement via non-compliance with the zoning code and further subject to the escalating penalties as established for repeat offenders and chronic repeat offenders. Then, further subject to non-renewal of their permit or permit revocation prior to the annual permit renewal. This gives a number of escalating methods to deal with repeat offenders - Notice and Order to Abate, escalating re-inspection fees for repeat offenders and/or chronic repeat offenders, scheduling of a show cause hearing to suspend or revoke the permit and non-renewal of the annual permit. All of the steps outlined are appealable to City Planning Commission and/or City Council as stipulated in Chapter 7. This also includes any issued Notice and Order to Abate.

- Council also discussed a cap (and what the appropriate cap should be) on the number of short term rentals as a percentage over the total permits issued as of a certain date to be decided.

Staff Comment

Should the Council wish to establish a cap the following language is offered for discussion:

The total number of valid short term rental unit permits issued at any time shall not exceed 125% of the total number of short term rental unit permits issued as of May 31, 2019. Expired short term rental units shall become available for reissue if a renewal application is not timely submitted, or if the renewal application is denied and the denial is not timely appealed, or if all appeal remedies have been exhausted. The Manager may maintain a waiting list of potential applicants if all available short term rental unit permits have been issued.

With this language, initial permitting would take place from January 1, 2019 through May 31, 2019. The cap on the total number of permits would then be 125% of the total permits as of June 1, 2019.

- Language related to trash collection and time the collection bin is left at the collection point is insufficient and to consider the trash bin to be removed from curbside by the evening of the day trash collection occurred.

Staff Comment

The ordinance can be modified as such, or refer to City Code, Chapter 6, Article 4, which establishes city-wide regulations for storage and usage of trash containers. Should the Council

ever wish to modify the location and storage of trash containers for city-wide implementation, the modification would then only be to one section of city code rather than in two - meaning just Chapter 6 and not Chapters 6 and 7. This would avoid possible inconsistencies and duplicative regulations/ordinance amendments.

Background:

Over the last several years, there have been a number of inquiries by citizens and neighborhood organizations related to the rules for short term rental units 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 a property.

The purpose for the ordinance, therefore, 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 zoning, housing, police, fire and building safety guidelines for transient lodgers who may not be familiar with local laws.

Staff conducted significant research in preparation for drafting this ordinance by reviewing short term rental guidelines in numerous other communities. The spreadsheet attached to the planning commission staff report as Figure 2 is a full analysis of a number of city ordinances.

How cities address short term rentals varies greatly. However, there are several main themes that have resonated through the codes staff reviewed. What are the options?

1. There are a number of cities that limit short term rentals to owner occupied dwellings only. Examples of this are seen in municipal codes for Denver, Colorado, Boulder, Colorado and Golden, Colorado.
2. Several examples exist where short term rental is defined as a stay of less than 30 days then FURTHER defined by type. These types differentiate and define owner occupied and non-owner occupied. There are examples of further clarification of owner occupied as the owner is on-site during the rental and the owner is not present. Often primary and non-primary or owner occupied and non-owner occupied are defined. Primary residence is typically a dwelling vacated by the owner for military service or extended travel. Proof of primary residency is provided via voter registration card, utility bill or tax or mortgage billing address. Examples of this are seen in municipal codes for Fort Collins, Colorado and Austin, Texas.
3. A number of communities separate types, number and overall allowances by zone district; as allowed uses in commercial zones and conditional or special uses requiring a public hearing in low density residential zone districts. The allowances for commercial zones and residential zones vary; although typically all require a permit or license. There are communities that utilize buffers from each short term rental, total caps, limits by street block and census tract. There is also a model from Santa Fe, New Mexico that says no direct adjacency to each other; no two next door to one another.

Based on staff meetings with individual Councilmembers, additional questions and comments were provided:

1. Should penalties for non-compliance be escalating, up to and including automatic revocation, similar to the chronic and repeat offender penalties for housing code violations recently passed by the City Council?
2. In context of Number 1, above, should violations be tracked by STR owner, or only by property? Housing violations are tracked by owner.
3. Should a violation of not obtaining a STR permit also include a civil penalty granting the City civil damages (in addition to standard zoning code violation penalty) for “back payment” of lost LART since the effective date of the this ordinance?

One question that has greatly varied opinions is whether or not a short term vacation rental should be considered a residential or a commercial use. Again, there are a greatly varied number of opinions. 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 examples from the Colorado Court of Appeals suggesting that a short term rental is a commercial use, while other case law from Colorado, Washington, Kentucky and Wisconsin affirms that HOAs cannot prohibit short term rentals under commercial use prohibitions within covenants.

Additional details on the proposal and public process are attached to this memo in the City Planning Commission Staff report. Figures attached to the Planning Commission staff report illustrate data collected by staff as well as the ordinance tracking changes made through public input and examples from other communities.

Financial Implications:

Data collected from the City Sales Tax office estimates 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 on behalf of hosts listed with AirBnB. While AirBnB does not currently provide the City with a listing count, an estimated \$700,000 was collected in 2017.

Based on there being a number of other host platforms and short term rentals that are not paying sales tax, we can deduct that there is sales tax leakage due to some owners not paying sales tax or LART. However, it is unclear to staff how much sales tax will be gained from the city adopting an ordinance that ensures that owners are paying sales tax. That number is extremely variable depending on the number of short term rentals within the City, number of nights and nightly cost for each. However, examples from other cities with similar permitting requirements show that tax gains can be significant.

If Council chooses to adopt the regulations for short term rentals with the annual permit process and annual fee of \$119.00 there are no identified direct negative financial impacts to the City and the Department. The Land Use Review expenditures will not increase; however, there is the potential for increased revenue based on the approximate 1400 short term rental units operating. If 1400 permits are issued, the revenue generated is approximately \$166,000.00 that can fund staff to manage the

program.

Board/Commission Recommendation:

This item was heard by the City Planning Commission on August 16, 2018. Minutes from the hearing are attached to this memo. At the hearing, over 25 citizens testified. While the citizen input was split between support and opposition, there was not support or opposition to the ordinance as a whole. Those that voiced concerns as well as support to the City Planning Commission agreed that some type of permitting requirement is needed and acceptable; but the question was, and remains, to what level.

Owners of and investors in short term units formed the Colorado Springs Short Term Rental Alliance in order to organize and have their concerns heard. Owners testified that they support a permit process and the main points established in the proposal, but with a few minor variations. Specific items of opposition, as understood by staff, include the self-safety certification checklist, limitations on commercial events and large social gatherings, such as weddings, local contact provisions directing that each rental have a local contact to respond to issues within 1 hour of contact and the perceived vagueness within the permit suspension and revocation language. Testimony included that these homes are just that - residential units - and should be treated just as long term rentals are treated. That short term rental owners and investors often improve the surrounding neighborhood character and that property maintenance standards are often higher with short term rentals when compared to properties that are long term rentals.

Several homeowners that are neighbors to short term rentals have formed the Neighborhood Preservation Alliance (NPA). The NPA was present at the Planning Commission hearing and testified that the saturation of short term rental units, specifically in single-family residential neighborhoods, erodes neighborhood character as they deal with a revolving door of strangers, loud parties and lose the opportunity to get to know long-term neighbors as friends and support. This group supports a limit to short term rentals as a cottage industry; speaking to the need to have owners present on-site during the duration of the rental OR that the rentals only be allowed in the owners primary residence. Testimony included that residential homes in neighborhoods purchased by investors and used as transient lodging are hotels; and they do not want commercial businesses in their residential neighborhoods.

At the conclusion of the hearing and two hours of public testimony, the City Planning Commission vote was split on the ordinance 3-3-2 with Commissioners McDonald, Smith and Satchel-Smith voting in favor and Commissioners Hente, Graham and Raughton voting against (Almy and McMurray absent). All of the Commissioners agreed that they were torn; that an ordinance is needed and supported. All acknowledged the public process and the full vetting of the ordinance with all interested citizens.

Points made by Commissioners in favor of the ordinance:

- * Interesting that testimony included that this ordinance will cause problems when we have nothing now. With or without an ordinance people will still rent out homes as STRs and the City have no control?
- * The ordinance addresses most of the concerns.
- * Ordinance is not perfect and will never meet everyone's needs.
- * Lawful dwelling as limitation keeps a "hotel" from being located next to single-family.
- * HOA's will end up creating appropriate limits for individual neighborhoods.

- * Not perfect, but needs to be a standard to be set.
- * This will continue to be a conversation that the city has and this is a necessary foundation.

Points made by Commissioners in opposition of the ordinance:

- * Have seen examples in California where entire neighborhoods changed in character and AirBnB takes over; no longer a residential neighborhood but felt it was more like a commercial neighborhood.
- * Recommend changes that homeowner on the property and with that it could be supported.
- * Opening to investment community converts residential uses to commercial uses and that is concerning.
- * Split into one type for commercial and one type for residential.
- * Some degree of regulation is a good thing.
- * Sees in his neighborhood on his street that it causes strife - increased traffic, increased trash.
- * Zoning should provide protection - we tell you if you are living in a residential zone you have an expectation that you live in a residential neighborhood; an R1 zone is single-family and that is the expectation, a quiet residential zone.
- * Diminution of zoning code as written.
- * If I want to live near a hotel nightclub or bar I'd buy a loft downtown
- * If the owner is not on-site it is really just running a business out of a home.

Several commissioners suggested that staff take this back to the stakeholders to find solutions. However, it was explained that the stakeholder input has been on-going and the more controversial points of the ordinance had been under discussion for several months with no mutual agreement. Reconvening the stakeholders would not be likely to end in consensus.

Stakeholder Process:

To discuss the topic of short term vacation rentals and craft proposed regulations, the staff 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 Council of Neighbors and Organizations (CONO) hosted a citizen meeting on June 13, 2018 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 14, 2018 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 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 18, 2018. 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 hosted a second citizen meeting on August 7, 2018. Over 50 citizens attended. The intent was to brief citizens on the process that occurred since June, discussion of the changes, and briefing on the public process. Additional details on the public outreach process can be found in the attached planning commission report under the Stakeholder Process and Involvement section.

In addition, the citizen meeting and the public hearings have all been 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.

Alternatives:

Since the City Planning Commission vote was tied on this item 3-3 the typical alternatives as presented on legislative zoning items have been updated. Under circumstances where the Planning Commission has made a clear recommendation to Council, alternatives include upholding, modifying or reversing the action of the Planning Commission. With a tie vote and no recommendation moving out of that hearing, alternatives may include:

1. Approve the ordinance as presented;
2. Modify the ordinance as presented;
3. Deny the ordinance as presented; or
4. Refer the matter back to the City Planning Commission for further consideration.

Proposed Motion:

Move to approve a resolution rescinding resolution number 12-17 and establishing development application fees for the Land Use Review Division of the Planning and Development Department specifically adding a fee for short term vacation home rental permit.

N/A