



Legislation Text

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Update on the short term vacation home rental program and permitting

Presenter:

Morgan Hester, Principal Planner

Peter Wysocki, Director of Planning and Community Development

Summary:

Ordinance 18-112 established the short term rental program, specifically by adding language to sections of City Code Chapter 7, to define short term rental units as a new use and created the associated Short Term Rental Unit (STR) Permit.

This item is a follow-up to the mid-year update for the program that was presented on June 10, 2019 regarding code enforcement issues, information on third party enforcement companies, statistics on issued permits, and suggested program changes.

Previous Council Action:

City Council approved the current short term rental ordinance on November 17, 2018, effective December 31, 2018. A mid-year update was provided at City Council work session on June 10, 2019 and additional information was requested of Staff to be presented in the following month.

Background:

Ordinance 18-112 (Figure 1) 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.

Staff presented mid-year statistics and data from Neighborhood Services regarding code complaints that have been submitted (Figure 2 - Staff Report, and Figure 3 - PowerPoint presentation). As follow-up from that Council work session, Staff has compiled requested information to build upon that data, specifically regarding residential density in relation to high-concentration permit areas, 3rd party enforcement providers and information from Colorado municipalities that utilize their services, and potential Ordinance amendments.

Requested Statistics

*** Multiple STRs**

Based on data as of June 19, 2019 (730 issued permits), 83 different owners have multiple STR permits, totaling 226 permits. Multiple-property ownership ranges from two properties to seven.

Note that a property owner of multiple rental properties is different than an applicant submitting on behalf of a property owner. In that case, there are 17 applicants that have submitted multiple applications, totaling 138 properties, ranging from two properties to 57. Both of these scenarios could be management companies or individuals with income properties.

Heat Map Concentrations

The three areas that have the most STR permits are within Old Colorado City, Downtown, and the Cheyenne Boulevard area. Staff focused on these three areas to show both dwelling unit density and density of issued permits. Lower densities, depicted in green on the attached maps, range from 0 to 3.49 dwelling units/acre, medium densities, depicted in yellow, range from 3.5 to 7.99 dwelling units/acre, and higher densities, depicted in orange and red, range from 8 to 25+ dwelling units/acre. Condos and townhomes are also included in the higher density areas. An overlay of points representing issued STR permits (730 total as of June 19, 2019) has been included on the residential density heat maps.

* Old Colorado City

The neighborhoods focused on in this area include Old Colorado City and Westside. Figure 4 is a heat map showing the density of dwelling units in the area. Higher concentrations of dwelling units are located in the northern-most area of Old Colorado City, bounded by West Colorado Avenue to the south, West Bijou Street to the north, North 32nd Street to the east, and Yale Avenue/North 24th Street to the west; and the area southwest of the Buena Vista School, now known as the Westside Community Center.

Figure 5 is a heat map showing the density of the 160 issued permits in the Old Colorado City and Westside neighborhoods. Interestingly, the area of higher residential density does not correlate with that of issued STR permits. The highest concentration is centrally located within the “core” of Old Colorado City, bounded by West Vermijo Avenue, South 11th Street, West Platte Avenue, and North 25th Street.

* Downtown Region

The neighborhoods focused on in this area to create the Downtown Region include the Old North End, Downtown, Patty Jewett, Middle Shooks Run, and Divine Redeemer. Figure 6 is a heat map showing the dwelling unit density in the area. Areas of higher densities are largely concentrated in Middle Shooks Run neighborhood with some outlier areas along the major North-South corridors, specifically North Nevada Avenue, North Wahsatch Avenue, and North Corona Street.

Figure 7 is a heat map showing the density of the 145 issued permits in the Downtown Region. The area of higher residential density is somewhat in line with the areas of higher STR permit concentrations, centralized east of North Wahsatch Avenue and south of Cache la Poudre Street.

* Cheyenne Boulevard Area

The neighborhoods that were studied to create this specific area include Ivywild and Old Broadmoor. Figure 8 shows residential density within this area and is largely concentrated around the Ivywild area (south of West Cheyenne Boulevard and west of Mt Washington Avenue) and where West Cheyenne Boulevard and West Cheyenne Road merge to the southwest.

In this study area, 66 STR permits have been issued and the density distribution displayed in Figure 9 is in-line with residential density.

* Holland Park

As a comparison, a more suburban-character neighborhood was analyzed. Figure 10 shows residential density of Holland Park while Figure 11 reflects permit density. Within the neighborhood bounds, eight permits have been issued.

3rd Party Provider Companies

* Host Compliance

Two 3rd party enforcement companies - STR Helper and Host Compliance - recently combined into one company, taking the name of the latter. 280 municipalities/counties across the country utilize their services for short term rental programs. In Colorado, they are contracted with 26 cities and/or counties including Aurora, Estes Park, and Manitou Springs.

Figure 12 is an updated presentation, as of June 2019, made to Staff. Note that some of the data included is based on conversations Staff had with Host Compliance in March of this year (ie - number of permits issued), so not all presented information is up-to-date. Additionally, the estimated number of active rental properties extends past the City municipal boundary; therefore, those approximated numbers are not accurate.

Host Compliance has five main services -

1. Address Identification. By monitoring 54 rental platforms and matching with the County Assessor's data, they are able to compile data showing rental properties. This data is verified by a team of analysts to ensure the properties provided are active, largely dependent on the frequency of reviews and when they were made.
2. Compliance Monitoring. By using data gathered through address identification and comparing to active permits, Host Compliance is able to identify properties that are out of compliance and will send an enforcement letter to the property owner. Because the idea is to ensure regulations through the City are met, City letterhead is used and owners are referenced to the City website/application platform.
3. Mobile-enabled permitting and registration. Some registrants feel the current application process is cumbersome as applications can either be emailed, mail, or dropped off in person. This is done after the application/checklist is downloaded off of the STR website or acquired by visiting the Land Use Review office in person. Through a mobile application system provided by the vendor, applicants are able to either apply through their smartphone or on a computer.
4. Rental activity monitoring and tax calculation support. This function focuses on the assistance for municipalities to collect unpaid lodging taxes. By auditing rental data, Host Compliance is able to estimate the amount of revenue a rental has collected and how long the property has been listed. This information can then be used by municipalities when making contact with non-compliant hosts.
5. 24/7 hotline. Neighbors are able to make contact with a representative and provide additional information, such as pictures and videos, when an issue arises. Representatives document all complaints and send to City Staff to follow-up with the complaint as well as serve as a reference for potentially revoking permits for properties with repeat issues. Because this process requires additional documentation (pictures, video), it prevents unnecessary complaints from neighbors that may have a personal conflict rather than a legitimate concern.

Proposed fees are based on a per permit calculation. Clients are able to select which services they want to deploy, but should be aware that all are based on 'Address Monitoring', so when contracted, that feature should be utilized at a minimum.

***Harmari**

Staff spoke with Harmari in March of this year to understand what services they provide (Figure 13). For this City Council update, contact was made with their representative for clarification regarding how information is tracked, if assistance for gathering uncollected lodging tax is provided, and what Colorado municipalities they have worked for or currently have contracts with.

Capturing active listing information ranges from active, intermittent, inactive, or zombie values. Active listings show up in searches at least 70% of the time when platforms are combed. Intermittent listings may show up 30% to 70% when different platforms are checked. Inactive listings show up less than 30% of the time. Zombie listings, which is what Staff has expressed as a main sticking point regarding the accuracy of the estimated non-compliant listings, are identified by showing an active listing but all available dates are booked and has not been updated in the past 12 months. Hosts sometimes switch between active and inactive listings during certain times of the year (ie - seasonally, major events) or decide to take their listing offline after research is done. Because of this, Harmari monitors listings multiple times per week.

As for collecting lodging taxes, Harmari is able to assist in the collection of delinquencies through one of their business partners.

Smaller Colorado municipalities, such as Leadville and Silverthorne, have used or are currently have contracts with Harmari.

*** LodgingRevs**

LodgingRevs is a 3rd party enforcement company based in Durango, Colorado that has been in operation since 2011.

They provide seven main services including -

1. STR Regulations Consulting,
2. Compliance - Discovery, Identification, Reconciliation, Dashboard, Database Management & Notification,
3. Registration/Permitting - "Business Center" Property Owner/Manager Task Management, Registration, Automated Renewals, Online Payment, Inter-Department Collaboration, and Approval Workflow,
4. Lodging Tax Remittance Audit Tool - Use STR booking data and revenue generating night assumptions to flag under reporting owners/manager, built-in notifications, audit tool workflows,
5. Marketplace Booking Reporting - Property Owner/Operator reports revenue generating nights booked on multiple platforms. This helps Finance reconcile the Air B&B agreement payments as well as enables the collection of taxes on non-Air B&B bookings,
6. Tax Collection - Custom online tax forms, owners/managers must pay late penalties and interest, check-out cart which they can remit payment,
7. Support.

They currently have contracts with multiple Colorado mountain towns such as Avon, Montrose,

Winter Park, and Snowmass Village.

Colorado Municipalities and 3rd Party Enforcement

* Breckenridge - Due to the character of Breckenridge being a vacation destination, there are approximately 3,800 active STR licenses. Since the mid-1980s, property owners have been required to obtain a Business Occupational License Tax which is believed to have a big impact on the compliance rates. Additionally, when properties change hands, communication is sent to the new owners requesting information regarding the purpose of the property (ie - short term rental, long term rental, primary residence, second home) which also helps with ensuring compliance. As a 3rd party enforcement company, Host Compliance is utilized only for their 24/7 hotline service due to the Town already having a good grasp on program maintenance as it has been in place for a good amount of time.

* Manitou Springs - The City has been using Host Compliance for the past three years. Host Compliance assists Manitou Springs by sending enforcement letters to properties that are not in compliance with regulations. Once the contact reaches out to the City, they let Host Compliance know what their status is (either have a Conditional Use Permit or do not).

* Aurora - Although Aurora utilizes Host Compliance and has 95% compliance, City Staff still searches rental platforms to ensure compliance. The City manages business licensing, lodging tax collection, and resolution of new rental properties coming into compliance.

* Estes Park - Estes Park adopted stricter STR regulations in December 2016 and since 2017 has been utilizing the services of Host Compliance. Since that time, the number of registered STRs doubled from 400. The services they use are the 24/7 hotline for enforcement calls and identifying unregistered STRs while the Town manages property registration and fee collection. Estes Park finds value in Host Compliance's ability to make contact with the property manager and forwarding all information back to the Town through email, where they have the ability to list to the recording and then follow-up with the owner to ensure compliance.

* Crested Butte - Partnering with Gunnison County, Crested Butte has been utilizing the services of Host Compliance by being included in compliance reports.

Other US Municipalities of Similar Populations and 3rd Party Enforcement

Staff reached out to seven municipalities of similar population - Tucson, AZ, Fresno, CA, Mesa, AZ, Sacramento, CA, Atlanta, GA, Kansas City, MO, Miami-Dade County, FL, and Raleigh, NC. Unfortunately, two cities do not have short term rental programs in place - Tucson and Atlanta - and another two cities got back in touch with Staff regarding their existing programs - Miami-Dade County, FL and Sacramento, CA.

* Miami-Dade County, FL

Miami-Dade County is one of the bigger geographical areas of the southern portion of Florida. While they have a program in place, they are currently in the middle of a lawsuit with Air B&B due to their requirement of removing listings while not in compliance with regulations.

They are currently not working with a 3rd party enforcement company and are handling Code enforcement issues on a complaint-basis only.

* Sacramento, CA

Sacramento utilizes the services of Host Compliance for their 3rd party enforcement. This decision was largely made on the fact that they are able to work with Sacramento's Accela software. Since they have contracted with Host Compliance, they have found there is better compliance which has been proven in property advertisements showing they're operating with required City permits.

Sacramento utilizes Host Compliance for tracking complaints but City Staff still processes all permit. In the future, they will be amending their contract to include automated services for faster turnaround time and compliance.

Like Colorado Springs, Sacramento requires all applicants to acquire a form of a City Sales Tax License in addition to a Business Operation Tax Account - their version of a business license. The City has the ability to collect back taxes but they are currently focusing on bringing property owners into compliance.

Potential Ordinance Amendments

* Occupancy

Staff has been regulating the number of people in a Short Term Rental in two ways - by enforcing the 'Family' definition per City Code Section 7.2.201 and through occupancy regulations. If the individuals renting the home are unrelated, there shall be no more than five in one dwelling unit. The City Code Definition of family is:

FAMILY: As used in this Zoning Code, an individual, two (2) or more persons related by blood, marriage, adoption, or similar legal relationship, or a group of not more than five (5) persons who need not be so related, plus domestic staff employed for services on the premises, living together as a single housekeeping unit in one dwelling unit. The definition of "family" shall apply regardless of whether any member of such group receives outside services for mental, emotional, or physical disability.

Occupancy of a dwelling unit is regulated through Housing Code set forth in City Code Chapter 6, Section 6.12.303 'Space, Use, and Location' outlines the allowed square footage per person in a dwelling unit:

"A. Space Required: Every dwelling unit shall contain at least:

- 125 square feet _ 1 person
- 200 square feet _ 2 persons
- 275 square feet _ 3 persons
- 350 square feet _ 4 persons
- 425 square feet _ 5 persons
- 500 square feet _ 6 persons
- 560 square feet _ 7 persons
- 620 square feet _ 8 persons
- 680 square feet _ 9 persons
- 740 square feet _ 10 persons

and a minimum of forty (40) square feet for each additional person. The required floor space shall be calculated on the basis of total habitable room area. In no case shall more than eight hundred fifty

(850) square feet be required for one family.”

Based on information provided by Fire Marshall Lacey, the maximum occupancy of a dwelling is 16.

Staff would like to note that determining familial status is difficult and often inconclusive. Determination based on the definition of “family” is further complicated if the occupants are minors. For example, if five unrelated adults rent an STR, but let’s say one of the adults brings two children under the age of 16, and a second adult brings one child under the age of 10, are the children counted toward the “five unrelated” persons? The definition of “family” in Chapter 7 was established in context of permanent residency, not contemplating the short-term rental use of homes. Staff is not suggesting that “family” definition cannot be applied to STRs, staff is just highlighting the challenges with practical application and enforcement.

Due to the difficulty Neighborhood Services staff has with determining and confirming familial status, consideration should be given to limiting occupancy based on regulations set by the Housing Code or some other objective criteria that can be verified by staff.

Regardless of the occupancy standard adopted, staff would like to note that immediate enforcement and abatement directly with the renters may not be possible - meaning that if a complaint is filed by a neighbor that an STR is over-occupied staff may not be able to order the “over” occupants to immediately vacate the STR. The enforcement maybe need to be addressed with the property owner and through some level of penalty for repeated violations. Staff, of course, will list the maximum occupancy allowed in a particular dwelling on the STR permit.

* Permit Caps

It was suggested at the June 10, 2019 Council Work Session that it may be appropriate to explore the possibility of putting a cap on STR permits issued on a block face/within a block. The City of Manitou Springs has implemented this regulation by limiting the number of permits within 500’ from property line to property line.

* Tax Collection

The City of Colorado Springs entered into a voluntary agreement with Air B&B which provides that Air B&B collects the City’s sales tax and lodging tax on short term rental properties located within the City. Many other municipalities have opted into this agreement, as well, but it does not mean all have the same agreement or are involved in that process.

For those hosts that do not list solely with Air B&B, City Council has expressed concern regarding the collection of unpaid taxes for those that are not in compliance with the Short Term Rental program. Although tax collection is not a function of the Planning & Community Development Department, the proposed amendment incorporated into the STR ordinance serves as an acknowledgement that all applicants must be current with their taxes prior to issuance of their permit. Other municipalities, such as Manitou Springs, require that all lodging taxes owed must be paid in full and current at the time of permit issuance.

The proposed amendment (Figure 14) can be read in its entirety. It is scheduled to be heard at the July 9, 2019 City Council meeting for first reading.

* Noncompliance Fines

At the June 10, 2019 City Council work session, the potential for increasing permitting fees or implementing stronger penalties for those that are not in compliance was expressed. The Code is currently written with references to established penalties in Section 7 and 8 of Section 7.5.1707(G) 'Permit Suspension or Revocation'.

In researching Colorado municipalities and what mechanisms they have in place, Breckenridge appears to have one of the more robust systems. Violations range from a 30-day license suspension and potentially a \$200 fine within 3 days of entry of suspension order in lieu of serving suspension to suspension of up to one year or revocation of license after the fourth violation.

Financial Implications:

N/A

Board/Commission Recommendation:

N/A

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.

Because no Code amendment is being proposed by Staff, stakeholder engagement comparable to when the Ordinance was created has not been necessary; however, 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 -

- * Old North End
- * Neighborhood Preservation Alliance
- * Pikes Peak Association of Realtors
- * CONO

Alternatives:

No motion is proposed with this item; however, if City Council feels the need to propose amendments to the existing ordinance that may be done at this time.

Proposed Motion:

N/A

N/A