

MEMO

TO: Board of County Commissioners

FROM: David Pesnichak, Senior Planner

DATE: September 10, 2015

RE: Short-Term Rental of Residential Dwelling Units

BACKGROUND

Over the past several years, short-term rentals (aka vacation rentals) of residential housing units have become widely popular. With the advent of the “sharing economy”, websites such as VRBO, FlipKey, Home Away, Craigslist and airbnb have expanded the choice of nightly accommodations available to visitors through the nightly rental of otherwise single-family or multi-family long-term dwelling units. While the nightly rental of residential properties has been occurring for years, it has been primarily limited to highly visible tourist destinations and the units have been managed by local companies. The sharing economy has democratized this market and has allowed property owners in less tourist oriented locations and with less resources available to pay a management company to rent their otherwise typically unused properties to visitors on a nightly basis. Such democratization and a “sharing” of resources possess new challenges from a governmental and community perspective, however.

The Garfield County Land Use and Development Code (LUDC) currently does not contemplate the use of short-term rentals. The closest use that is identified in the LUDC is a Lodging Facility. A Lodging Facility is defined as follows:

An accommodation for a temporary stay that includes, but is not limited to, a resort lodge, guest ranch, overnight shelter, motel, hotel, boarding house, and bed and breakfast establishment. Lodging Facilities exclude seasonal or Temporary Employee Housing on premises; contracted employee housing off premises; seasonal rental of homes; and lock-outs, or portions of homes, consisting of 2 or fewer independent lodging units whether managed by a lodging management agency or not.

The second sentence of the definition identifies uses that are excluded, which consists of “lock-outs, or portions of homes, consisting of 2 or fewer independent lodging units whether managed by a lodging management agency or not.” This type of use, which would include a “short-term rental” of a residential property, is neither further defined nor an allowed use within the Code. In addition, this use is not specifically allowed within Section 3-403, Use Table. Division 4 of the LUDC states that “Development or use of a property for any other use not specifically allowed in the use table and approved under the appropriate process is prohibited.” As a result, short-term rentals of residential properties is currently a prohibited use within unincorporated Garfield County.

In 2011, the National Association of Realtors (NAR) commissioned a White Paper on “Short-Term Housing Restrictions”. The definition of a Short-Term Rental within this paper is excerpted below. It is worth noting that while some websites facilitate the rental of individual rooms or even beds within residential units,

which also occurs throughout the County, this Memo and below definition addresses only the rental of an entire residential dwelling unit.

The term “short-term rental housing” typically means a dwelling unit that is rented for a period of less than thirty consecutive days. In general, short term rental housing differs from bed & breakfasts, hotels, motels, and other “lodging” uses by providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Although bed & breakfasts often are similar in appearance and location to many short-term rentals, they are distinguishable by the presence of the owner/operator onsite. Boarding houses differ from short-term rentals by having multiple rooms or units for rent and common kitchen and dining facilities that are shared by the occupants. Boarding houses also tend to be less transient than short-term rentals. Similarly, hotels and motels are distinguishable from short-term rentals by having separate entrances and an on-site management office. In some communities, short-term rental housing may be referred to as vacation rentals, transient rentals, or resort dwelling units.

Although the exact number of residential units available for rent within unincorporated Garfield County is difficult to specifically identify, a search of just the above noted websites indicates that the number of units available for rent at some point during a given year number over one-hundred (100). The geographic distribution of these units is heavily weighted to the east end of the County with many inside the City of Glenwood Springs and the Town of Carbondale as well as throughout the unincorporated area. The number of units listed for rent west of New Castle drops significantly to near zero around Parachute and Battlement Mesa.

While some of the impacts from short-term rentals are easy to understand, the NAR commissioned White Paper outlines some of the general impacts and ways in which communities across the country have tried to deal with these impacts. According to the Paper, there are five major impact areas jurisdictions attempt to address through regulation, as outlined below.

- *Protection of Neighborhood Environment* - noise, late night parties, trespassing, increased traffic, and visitors generally not being neighborly.
- *Protection of Physical Characteristics* – absentee property owners can be less attentive to routine maintenance such as painting, lawn maintenance, tree and shrub punning and trash removal.
- *Revenue* – if the property owner does not obtain a State sales tax license, this can mean lost revenue for the County.
- *Fairer Competition with Licensed Lodging* – it has been argued that a lack of regulation for short-term rentals results in unfair competition for hotels, motels and bed and breakfasts that must pay higher taxes and abide by more stringent site development and building codes.
- *Protection of Renter Safety* – while commercial establishments must be constructed to comply with the building code regulations for a hotel, residential units for rent are unlikely to have been built to such standards. As a result, health and safety concerns may be present in residential units which are rented like a commercial establishment.

Staff has reviewed the land use codes and zoning ordinances of 26 jurisdictions throughout Colorado including all 6 municipalities within the County. A detailed summary of these findings is attached. Of the municipalities in Garfield County, only Glenwood Springs and New Castle address short term rentals while the use is generally undefined in Carbondale, Silt, Rifle and Parachute.

The range of regulatory permissiveness among the jurisdictions surveyed generally corresponded with the major types of short-term rental restrictions outlined within the NAR White Paper. According to the Paper, there are four main types of restrictions, as outlined below.

- *Prohibition* – of the 26 jurisdictions reviewed by Staff, only one, the City of Boulder, has an outright prohibition on short-term rentals. And even in this case, the prohibition is only until the issue of taxation of the units can be brought to the voters. Although an example may exist, Staff found no cases in Colorado where a prohibition on short-term housing exists for any of the impacts outlined previously.
- *Geographically-Based Restrictions* – geographically-based restrictions were common among the jurisdictions reviewed by Staff. The vast majority of these restrictions only allowed short-term rentals in specific zone districts. The City of Glenwood Springs utilizes this form of restriction. Other examples include the use of an overlay zone in the Town of Avon and the use of a minimum lot size of one acre in Jefferson County. As a variation on geographically based restrictions, Boulder County employs a tiered review system based on lot size and the number of nights per year the unit is rented.
- *Quantitative and Operational Restrictions* – While quantitative limits were only found in the City of Durango, where short-term rentals are limited to one per street segment and a maximum number within certain zone districts, operational limits were the most common form of restriction. The NAR White Paper identifies 8 general areas of operational restriction found nationwide, 7 of the 8 were found among the Colorado jurisdictions that were reviewed. The observed operational restrictions are outlined below.
 - o *Maximum Occupancy Limits* – occupancy limits were found in 6 of the 26 surveyed jurisdictions. These restrictions range from a simple numerical limit, such as Estes Park which limits occupancy to 8, to relying on the limits imposed by the building code, which is utilized by the City of Glenwood Springs. Other examples are San Miguel County which limits to 2 people per bedroom unless a greater occupancy is permitted by the Onsite Wastewater Treatment System (OWTS) or Boulder County which imposes a limit of 2 people per bedroom with a maximum of 8, unless approved by the director.
 - o *Rental Period Restrictions* – rental period restrictions was not a common operational restriction. The Town of Telluride has the most notable rental period restrictions of the surveyed jurisdictions. The Town allows short-term rentals as a use-by-right in residential zone districts as long as the unit is rented no more than three times for a maximum of 30 days per year.
 - o *Parking Requirements* – parking requirements were found in 8 of the 26 surveyed jurisdictions. The type of parking restrictions ranged from the location where tenants may park, such as the City of Glenwood Springs which prohibits parking on grass or sidewalks,

to a minimum number of parking spaces required. In the case of Estes Park, a restriction is employed that limits the number of cars that can be parked at a short-term rental unit to three and prohibits on-street parking.

- *Noise Level Limits* – the most common method for jurisdictions to apply noise restrictions is to require the short-term rental units to abide by all State and local noise statutes and ordinances. The Town of Basalt has the most nuanced regulations prohibiting all amplified music or other outdoor devices after 10 PM. Other jurisdictions that have specific language related to noise are Colorado Springs, Grand County, the Town of Telluride and Lake County.
 - *Required Posting* – required posting was found in 5 of the 26 surveyed jurisdictions. While these postings are to be located within the residence to provide the visitor with information about the local laws and regulations, occupancy limits, trash collection, parking, etc., the City of Aspen also recommends an outdoor posting of the property which provides contact information for the local manager of the property.
 - *Mandatory Designated Representative* – the requirement for a designated representative located within the local area and available 24-hours per day is common among the surveyed jurisdictions, including the City of Glenwood Springs.
 - *Trash and Recycling Facility Storage* – trash and recycling storage can be an issue for short-term rental units. This is because the timeframe for guests at the unit may not correspond with trash and recycling pick up days. As a result, trash and recycling can end up being stored outdoors for several days before it is picked up. In response, the Town of Ridgway, Town of Telluride, Lake County, and San Miguel County all require that garbage be stored in bear proof containers or a bear proof structure.
- *Registration/Licensing Requirements* – the primary theme among the regulations reviewed by Staff is the requirement for short-term rentals to obtain local and State sales tax licenses. For towns such as New Castle, Avon and Vail where no land use or zoning permits are issued for short-term rentals, the only requirement is that a sales-tax license be obtained with the State and town. Counties tended to be less concerned with sales tax collection than municipalities, which often have local lodging taxes. Boulder County, for instance, has one of the most extensive and nuanced land use review processes yet does not mention the collection of sales tax. Meanwhile, the City of Boulder has determined short-term rentals to be illegal until the issue a taxation can go on the ballot for popular vote.

Beyond the application of the LUDC to short-term rentals, the building code possess an additional regulatory challenge. While the building code can adapt to short term rentals, certain items need to be addressed with each of the short term rental units. Specifically, the occupancy rate should not exceed the capacity rating for the unit as defined by the International Building Code (IBC) or the capacity of Onsite Wastewater Treatment System (OWTS). In addition, smoke and Carbon Monoxide detectors need to be in place and operational and emergency egress doors, windows, stairs and routes need to meet the IBC requirements. Many communities have dealt with these issues by requiring posting of the occupancy limit, providing a checklist of the items that need to be maintained in the home (e.g. alarms), and some go as far as requiring an inspection of the home to ensure these building code issues are addressed.

Code enforcement related to these units are also a challenge due to variable use by different people over time. In addition, the units can be very quickly made available for rent or removed from the marketplace. Historically, the County has only pursued code enforcement in regard to these units if there is a complaint filed. For example, Staff has over the past two years received complaints and issued Notices of Violation (NOV) for four short term rentals of which one was located in Cheyln Acres and three where located in Elk Springs; a subdivision that prohibits short-term rentals in the covenants. Even as the popularity of these rental units have increased over the past 15 years, very few complaints have been filed with the County.

REQUESTED DIRECTION TO STAFF

Short-term rentals have existed for some time (15+ years) within Garfield County with few complaints received over this timeframe relative to the number of units available. However, as noted previously, since short-term rentals are not identified within the Land Use and Development Code and specifically Table 3-403, Use Table, the use of residential structures for nightly rentals is currently not a legal or allowed use throughout unincorporated Garfield County.

With the proliferation of short-term rental units, Staff would recommend clarifying the Code to clearly identify whether these units should remain prohibited, be considered By-Right, or otherwise require special review. Further, if special review is deemed necessary, the code amendments should identify the level of review, review standards, and whether there is any procedural variation between zone districts.

Generally, Staff sees a few options for clarifying short-term rentals within the Code, which could include the following:

- Prohibiting short-term rentals
- Allowing short-term rentals as a By-Right use without Standards
- Allowing short-term rentals as a By-Right use with Standards (structured similarly to Home Occupation/Business but with standards specific to short-term rentals)
- Requiring a Land Use Change Permit for short-term rentals with an Administrative Review

Should the Board wish to pursue clarifying and legitimizing short-term rentals in the County, Staff would like direction in regard to initiating a land use and development code text amendment and any standards that should be contained therein.

Allowable	Short Term Definition	Permit Required	Public Process	Pay Lodging Taxes	Permit Expiration	Occupancy Limitation	Building Code Requirements	ADU Allowable	Indoor Property Posting	Parking Restrictions	Local Responsible Party	Permitted In Multi-Family	Area Restriction
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Municipalities in Garfield County

Glenwood Springs	Yes	For Rent for 30 days or less	Yes – Comm Dev and Sales Tax License	No	Yes	Permits good for 2 Years	Yes – Per International Property Maintenance Code (IPMC)	Yes – With inspection	No	Yes	Yes – Not on grass or sidewalk	Yes	Yes – Limited to 25% per building	Yes – Only in Residential and Comm Zones
New Castle	Yes	For Rent for 30 days or less	No – Sales Tax License	No	Yes									
Carbondale	Undefined													
Silt	Undefined													
Rifle	Undefined													
Parachute	Undefined													

Counties

Jefferson County	Yes	For Rent 30 days or less	Yes – County BOA and Sales Tax License	Yes – Notice to adjacent property owners	Yes	Yes	No	Fire Extinguisher, Smoke Alarm and CO Detector; All applicable building codes	No – Unless whole property is used for Short Term Rental	No	Yes	Yes	Yes	Yes – Limited to certain zone districts and properties over 1 acre
Lake County	Yes	For Rent 29 days or less	Yes – Comm Dev and Business License	Yes – Notice on website only	Yes	Yes – 12 months	No	Yes – fire extinguisher, smoke alarms, CO detector		Yes	No	Yes	Yes	Yes – Limited to specific zones
San Miguel County	Yes	For Rent 30 days or less	Yes – Comm Dev and Business License	Yes – Notice of 24-hour manager contact to adjacent property owners only	Yes	Yes – 24 months	Yes – 2 people/bedroom unless OWTS has added capacity or served by sewer	Yes – current building code, fire extinguisher, smoke alarms, CO detector	No	Yes	Yes – 1 space/bedroom	Yes	Yes	Yes – Limited to specific zones
Grand County	Yes	For Rent 30 days or less	Yes – County and Sales Tax License	Yes – Notice to adjacent property owners	Yes	Permits good for 12 months		Fire Extinguisher, Smoke Alarm and CO Detector	Yes	Yes	Yes	Yes	Yes – Limited to Estate and Residential Zone Districts	

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Boulder County	Yes	For Rent 30 days or less	1-14 days, No Permit. 15-45 days, no permit in some districts. >15 days in some dis & >46 days in all dist require permit	No - Permit available for public review			Yes – 2 per bedroom with max. of 8, unless otherwise approved by Director	Yes - current building code (except for legal non-conforming structures), fire extinguisher, smoke alarms, CO detector	No		Yes – 1 space per bedroom			No (variations is permit process based on zone district and nights/yr rented)
Pitkin County	Yes	"Used by visitors from time to time"	No	No										No
Eagle County	Undefined													
Mesa County	Undefined													

Municipalities Outside Garfield County

Avon	Yes	For Rent less than 31 days	No – Need Sales Tax License	No	Yes	No Permit		Install CO Detectors	No		No	No	Yes	Yes – Only in Overlay Zone
Basalt	Yes	For Rent less than 30 days	No – Need Sales Tax License	No	Yes	No Comm Dev Permit – 12 month expiration on Sales Tax License		Yes – building inspection, fire extinguisher, smoke alarms, CO detector	Yes – cannot rent ADU and primary at same time	Proposed	Yes – No more than 3 cars, No on street parking	Yes	Yes	No
Estes Park	Yes	For Rent less than 30 days	No – Need Sales Tax License	No	Yes		8		Yes – Only in certain districts	Proposed	Yes – No more than 3 cars, No on street parking	Yes	Yes	Yes – ADU and proposed Occupancy Restriction Differences between districts

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Colorado Springs	Yes	For Rent less than 30 days	No – Need Sales Tax License	No	Yes		Yes – Per Building and Fire Codes	No – except for occupancy		No	No	No	Yes	Yes – Only in zone districts that allow single and multi-family
Telluride	Yes	For Rent 30 days or less	No	No	Yes	No	No	No		No, but suggested	No	Yes	Yes	Yes – Not permitted in some zone districts, allowed in all Residential zone districts
Frisco	Yes	For Rent 30 days or less	No – Need Business License	No	Yes	No	No	No					Yes	No
Vail	Yes	For Rent 14 days or less	No – Need Business License	No	Yes	No	No	No		No	No	No	Yes	No
Durango	Yes	For Rent 30 days or less	Yes – Comm Dev and Business License	Yes	Yes	No	Yes – based on bedrooms or parking, whichever is less	Yes – Requires building inspection, fire extinguisher		Yes	Yes	Yes	Yes	Yes – Limited to specific zone districts. Limited to 1 per street segment. Limitations on number of permits in some zone districts.
Ridgeway	Yes	For Rent 31 days or less	No – Need Business License	No	Yes	No	No		No	No	Yes	Yes	No – Unless mixed use	Yes – Not permitted in industrial zoned property areas

