

SHORT-TERM RENTALS
THE LOCAL GOVERNMENT PERSPECTIVE
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I. INTRODUCTION

Local governments across the state are faced with numerous issues regarding short-term rentals (STRs), and they receive pressure from competing interests. Full-time residents demand additional regulation to control nuisances, such as noise, parking and trash, while non-resident property owners demand less regulation. There are also tax implications, because rentals of less than 30 days are legally subject to a lodging tax in certain jurisdictions. In response to all of these issues, some local governments have decided to expressly regulate STRs by establishing a rental licensing structure.

II. LEGAL AUTHORITY

Municipalities and counties, both statutory and home rule, are empowered to regulate the land use aspects of STRs through their general land use authority. Home rule municipalities receive their authority from Article XX of the Colorado Constitution. Statutory municipalities rely on Title 31, C.R.S. and counties rely on Title 30, C.R.S.

In addition, municipalities have the power to impose taxes on STRs (following compliance with Article X, § 20 of the Colorado Constitution, otherwise known as TABOR).

Finally, municipalities are authorized to license STRs under their general police powers, also found in Article XX and Title 31. However, a county's ability to license STRs is not as clear, because counties have more limited police powers than municipalities.

It is important to note that local governments have no authority to enforce private covenants. More importantly, in most instances, local government regulations preempt covenants if they are inconsistent. In other words, if a private covenant allows 4 cars to be parked in a driveway, but the local government limits parking in a driveway to 3 cars, the 3-car limit controls. However, if a private covenant requires quiet hours from 8 p.m. until 8 a.m. and the local government does not impose such restrictions, the private covenant controls.

III. LAND USE ISSUES

The most common complaints received by local governments concerning STRs are complaints about trash, noise and parking. Typically, local governments can address these issues without actually regulating the use of property for an STR. For example, in a typical single-family STR, trash receptacles may be placed on the street too early or taken off the street too late. In

response, several of my clients have enacted general ordinances restricting the times in which trash receptacles can be placed on the street – these ordinances apply equally to single-family homes used by full-time residents and single-family homes used for STRs.

In addition, most municipalities have existing noise ordinances, and my clients encourage neighbors of STRs to call and report noise violations.

For parking, several of my clients regulate the number of cars that may be parked in a driveway or on the street within the vicinity of a residence. The restrictions on street parking, however, are very difficult to enforce (*i.e.* determining vehicle ownership and matching the ownership to a particular residence). The difficulty is compounded in the case of STRs, because often, by the time law enforcement arrives, the vehicles have been moved or the occupants of the STR have left the residence.

IV. TAX ISSUES

Most local lodging taxes apply to the renting of rooms for 30 days or less – meaning that most STRs should be subject to a lodging tax. However, unlike hotels, it is very difficult for local governments to monitor STRs and determine when taxes should be paid. Most property owners offering STRs are unaware of the existence of local lodging taxes. Several mountain communities have now hired consultants to constantly monitor sites offering STRs, including Airbnb, VRBO, HomeAway and craigslist. These consultants find STRs not paying taxes, and then collect the appropriate taxes, keeping a percentage.

Recently, Airbnb offered to enter into agreements with a number of municipalities by which Airbnb would collect appropriate taxes on behalf of property owners using Airbnb's service, and then Airbnb would remit the taxes to the municipalities directly. Airbnb focused on mountain communities such as Avon, Breckenridge, Winter Park, Silverthorne and Vail. However, ultimately, my clients (Winter Park, Silverthorne and Vail) were unable to sign these agreements in the form presented, because the agreements conflicted with local tax collection and audit procedures. We are hopeful that we can eventually work something out with Airbnb, and then that form of agreement could be a model for other similar businesses, such as VRBO and HomeAway.

V. LICENSING

Some larger communities, such as the Cities of Boulder and Aurora, have been licensing all rentals (both short- and long-term) for years. Now, several smaller communities are looking to adopt similar regulations.

The Summit County Town of Blue River recently asked me to assist them in drafting a licensing ordinance that would apply to both STRs and long-term rentals. The impetus for the licensing ordinance was a large number of citations into municipal court charging property owners with violations of the underlying single-family zone district regulations. Many homes in Blue River are duplexes of some sort, and many of them were constructed as two separate residential

units, with interior walls that did not allow access from one unit to the other. So unsuspecting buyers were buying what they thought were legal duplexes, only then to be charged with a violation of the single-family zone district regulations. Luckily, most of these citations were dismissed, and the Town realized that the issue needed immediate attention. The current draft of the licensing ordinance will allow short-term rentals in the single-family zone district, in both single-family homes and duplexes, subject to certain restrictions.

The most common provisions of a municipal rental licensing ordinance are as follows:

- Application, with associated fees
- Inspection of premises for life-safety issues (heat, water, etc.)
- Limitation on the number of persons occupying a dwelling unit
- Requirement for a local agent/local contact
- Restrictions on parking
- Regulation of trash
- Agreement to pay applicable taxes
- Violations and penalties, including fines, the ability to lien a property, and the refusal to issue any permits if a violation remains unresolved.

These provisions attempt to resolve some of the most common issues associated with STRs, while still allowing property owners to benefit from STRs.

VI. CONCLUSION

Local governments have the authority to regulate STRs, in an attempt to minimize the negative impacts of STRs while still allowing a popular land use. The methods selected by particular local governments will depend on the circumstances unique to each community.