

AGENDA ITEM SUMMARY

REGULAR MEETING DATE: December 15, 2021

AGENDA ITEM TITLE: **An Ordinance of the Board of County Commissioners of Pitkin County, Colorado, Amending Title 6 of the Pitkin County Code to Adopt Laws Pertaining to the Licensing and Regulation of Short Term Rental of Lodging Units and Residential Properties**

STAFF RESPONSIBLE: John M. Ely, County Attorney

ISSUE STATEMENT: This is the first reading of an ordinance amending Title 6 of the Pitkin County Code to adopt laws pertaining to licensing and regulation of short term rentals. In 2020, the Colorado Legislature adopted an amendment to the County General Police Powers Statute and delegated to counties the ability to license and regulate lodge units rented for short-term stays. Attached to this AIS is a proposed ordinance adopting into the Pitkin County Code licensing regulations for short-term rental of residential properties and lodge units.

These proposed regulations were drafted after several work sessions discussing the scope and form of these initial regulations enacted pursuant to this new statutory authority. The proposed ordinance is scheduled for a second reading and public hearing on January, 26, 2022. The ordinance amends the Pitkin County Code Title 6 – Health and Safety, to include the proposed Pitkin County Short Term Rental Code.

BACKGROUND: The Bill adopted and signed into law is reproduced here in its entirety:

House Bill 20-1093

“[T]he board of county commissioners may adopt ordinances for control or licensing of those matters of purely local concern that are described in the following enumerated powers:

(s) (I) To LICENSE AND REGULATE AN OWNER OR OWNER'S AGENT WHO RENTS OR ADVERTISES THE OWNER'S LODGING UNIT FOR A SHORT-TERM STAY, AND TO FIX THE FEES, TERMS, AND MANNER FOR ISSUING AND REVOKING LICENSES ISSUED THEREFOR. AS USED IN THIS SUBSECTION (1)(s)(I), "OWNER'S AGENT" DOES NOT INCLUDE AN INTERNET HOSPITALITY SERVICE.

(II) THE LICENSING OR REGULATION UNDER THE AUTHORITY CONFERRED IN SUBSECTION (1)(s)(I) OF THIS SECTION DOES NOT AFFECT WHETHER A LODGING UNIT IS A RESIDENTIAL IMPROVEMENT, AS DEFINED IN SECTION 39-1-102 (14.3).”

There is no definition section accompanying the Act. However, referring to other taxation statutes “short-term stay” can effectively be interpreted as less than 30 days. Likewise, “lodging unit” can be interpreted as all or part of a residential structure or a structure accessory to a residence.

The Act is careful not to implicate a change in property tax classification for licensed properties. For example, the issuance of a license or permit pursuant to regulations adopted under this Act will mean that property classified residential will not be reclassified as commercial or any other classification. Any potential reclassification is left to standards already in the law.

The import of the Act is that counties now have the authority to license and regulate residential properties that are rented for terms of less than 30 days. Licensing and regulatory authority is broader than the authority conferred to counties through the planning and zoning statutes in that there is no vested right and no previously established use exceptions such are found in the planning and land use statutes.

The principal imperative of the law’s enactment was financial. The original proponents of the law sought to confer to counties, through this delegation, an easier path to collect sales tax. The problem they sought to address was the failure of individual homeowners who rented their properties for short periods to pay the required amount of sales tax. This created an inequity between people renting their residences and owners of bed and breakfasts, lodges, hotels and motels.

Pitkin and other county governments lobbied that the law include the ability to regulate as well as license. Implicit in the power to regulate is the power to conditionally approve or to deny a request for a license and to control the activity associated with short-term rentals.

The now codified statutory amendment allows the County Commission to regulate aspects of licensing and rental activity. Such aspects may include establishing neighborhood exclusions of short-term rentals, limiting the density of licensed properties, limiting the number of nights rented, limiting the seasonality of rental activity, as well as other life safety matters such as the condition of rented structures and notifications and assistance to be provided to renters, guests or neighbors.

The attached proposed regulation was produced to focus primarily upon the registration and licensing process to promote equalizing the tax burden and facilitate tax collection. However, after abundant written public comment during the work sessions discussing this regulation, the Board has entertained two possible limitations to the general availability of short term rental licenses. The first of these is a prohibition on short term rentals in the Rural and Remote Zone District. This discussion focused on the general absence of emergency services in this zone district, the degree of isolation in the zone district that most prospective renters might not expect and the appropriateness of a general limitation of commercial activity in the district.

The second limitation is a prohibition regarding properties that are not also an owner’s primary residence. This discussion focused on the creation of enclaves within communities and neighborhoods that would lack permanent residents. It was thought this absence could contribute to a degraded sense of community, a high number of transient visitors in residential areas, a de facto creation of lodge development without appropriate development review or zoning

compliance and a dispersal of commercial activity throughout the County. The idea expressed is that if a residence has no permanent resident and is only being used as an investment vehicle and continuously rented for short term stays the host neighborhoods would change in ways that would not be permitted under the applicable residential zoning.

The proposed regulation is not intended to penalize an owner whose property is held in a non-natural person's name, i.e. a LLC, Joint Venture, partnership, trust or corporation, etc., which many citizens elect to do for a variety of reasons. Therefore, it is not required that the individual applicant for a license be a titled owner but only that the applicant be a natural person, have an ownership interest in the property and use the residence as their principal residence. A natural person is a human being as opposed to a created entity like a partnership or corporation.

Both of these limitations have been written into the new Code for the Board's discussion and public comment. As the Code changes though time, additional considerations might include:

1. Whether to limit the number of days that may be rented in any year;
2. Whether to limit rental activity seasonally as a means to reduce neighborhood impacts;
3. Whether to increase physical inspection of the residences;
4. Whether to restrict the density of licensed rental properties in a given area;
5. Whether to establish exclusion zones where rental activity cannot occur.

HIGHLIGHTS OF THE PROPOSED LEGISLATION:

The following is a section by section description of particular items of note in the ordinance and regulation.

Ordinance:

The effective date of the regulation is stated as March 31, 2022. This was discussed but not finally decided. If the date is to be changed, that change must be discussed.

The second reading is set for January 26 in order to allow time for public advertisement of the action and as much public participation as possible.

The regulation is not applicable to hotels, motels, lodges, resort cabins, guest ranches, country inns or bed and breakfast establishments as these are defined in the Pitkin County Land Use Code.

Regulation: Purpose and Intent

Simply establishes legal authority and exceptions.

Defined Terms

The terms applicant and principal residence are included to facilitate the prohibition of licensing of residences that do not have a person using the address as their principal residence.

Effective Date and Unlawful Acts

This section makes the prohibited actions applicable to an owner and an owner's agent.

The prohibited actions relate to renting as well as advertising and include activities broader than a lease that would result in housing someone who is not an owner in a residence.

A statement is included that the regulation does not override any private restriction, covenant or development limitation.

A statement is included to make clear that once a property is licensed there is no guarantee to further licensing or renewals.

All advertisements must contain the license number issued by the County.

Finally, licenses are not transferable.

Licensing Authority

There has been discussion as to who or what office in the County would administer the program associated with the regulation. This has simply been left to the County Manager with consultation with the Board so that the decision can be made after enactment and can change through time as appropriate.

The Authority is the position with general administrative responsibility for running the program and procedures needed to implement the regulation. This responsibility includes processing and determining applications, issuing licenses, maintaining records, referring applications to other County staff, imposing any appropriate restrictions on licenses, determining fees with consultation with the Board, investigating complaints and compliance, and referring applications to the Board if appropriate.

Licensing

The outline of the application, evaluation and continuing requirement sections is modeled after the County marijuana regulations.

Actions concerning determination of applications may be appealed to the Board by any interested party within 10 business days of the decision. The appeals are handled without limitation to the record which means the time to produce a record is not needed and the Board can make any decision it feels is correct.

A notice provision is included requiring a mailing to all adjoining property owners advising them of the application. The mailing of a notice is not required for renewals.

Even though notice is provided and the ability to make comments is recognized, a formal hearing is not specifically required. This is to allow the process of determinations to proceed more expeditiously, similar to permit applications.

Application process

Applications may only be made by natural persons in an ownership position of the property and who use the property as their principal residence. If the applicant is less than a full fee owner than permission to use the residence as a rental must be provided from the other owners.

Applications must contain information relating to the two required evidences of residency.

In addition to the listed information, the licensing authority may require additional information of the applicant.

Evaluation criteria

This is a list of criteria that applications must satisfy as well as satisfying all other provisions of the Code.

Applicants and the properties must be in compliance with all County Codes as well as fire district codes, must have smoke and CO detectors and fire extinguishers.

The number of renters and guests must not exceed two times the number of bedrooms plus two.

There must be an appropriate limitation on the number of nights rented considering the residence's use as the principal residence of the applicant.

Rental activity must not negatively impact the community in which the property is located.

Licenses are not available for employee housing.

Licenses are not available in the Rural and Remote Zone District.

Licenses are not available for properties that are not an owner's principal residence.

Reasons for denial

Fairly straight forward list.

License requirements after issuance

During the license term the licensee must meet these requirements in to avoid the risk of losing the license.

License term, renewal and fees

All licenses have a term of one year. There is no automatic right to a renewal.

Renewals must be done within a 60 day window starting 30 days before expiration and running to 30 days after expiration.

If there have been any violations then the renewal will be decided by the Board.

Fees are set by the licensing authority with consultation with the Board and should only be in an amount necessary to cover the costs of administration and enforcement of the Code.

Signs

Self-explanatory

Violations

Any complaints are first referred to the licensee or agent for correction or resolution.

Any repeat complaint or notice of violation is referred to either the licensing authority or the County Attorney's Office. Upon referral, the complaint or violation is investigated if appropriate.

If there is reason to believe a violation has occurred then a hearing will be held with the County Hearing Officer.

If the Hearing Officer determines a violation has occurred then the matter proceeds to the Board for action on the license.

The licensee may appeal the determination of the Hearing Officer to the Board within 5 business days.

Fines

In addition to an action concerning the license, a fine may be brought against the licensee.

Each day of a violation is a new occurrence.

Fines are prosecuted in the Pitkin County Court.

A graduated fine schedule of \$100 for the first occurrence, \$500 for the second and \$1000 for all subsequent occurrences will be used.

All fines collected will go to Pitkin County Treasurer.

Finally, any other remedies in law or equity may be pursued against the licensee or property owners.

RECOMMENDED ACTION:

Review and discuss the proposed Ordinance and accept it on first reading and set for second reading and public hearing on January 26, 2022.

ATTACHMENTS:

Attachment 1-Proposed Ordinance

Attachment 2-Proposed Code Amendment