

**MEMORANDUM**

TO: Deschutes County Board of Commissioners

CC: David Doyle, Legal Counsel

FROM: Stephanie Marshall, Assistant Legal Counsel

DATE: February 8, 2024

RE: **Legal Analysis of Short-Term Rental Program Options**

I. INTRODUCTION

In coordination with the County Administrator, Strategic Initiatives Manager, Director of Community Development, Legal Counsel and Finance and CDD staff, this Memorandum generally sets forth issues relating to Deschutes County's current Short Term Rental (STR) program and summarizes two (2) potential regulatory approaches the Board of County Commissioners may wish to consider.

II. CURRENT PROGRAM

Deschutes County collects payment of Transient Room Taxes (TRTs) on STRs in unincorporated areas of the County. Currently, TRTs are collected by the Finance Department which uses a program called GovOS. GovOS is a dynamic software program that identifies STRs in the County by crosschecking most online booking platform listings, notifying Finance of new active advertisements which allows staff to contact the property owner/manager to register for a Certificate of Authority in GovOS. The system also allows for the collection, payment, and reporting of TRTs. TRTs are collected on all registered STRs identified in the GovOS software program.

Finance reviews the registration form submitted by the owner/manager, approves the registration and issues the Certificate of Authority (COA). The COA authorizes the owner/manager to collect transient room taxes within the unincorporated areas of Deschutes County for one year, **but does not serve as an approval certifying that the dwelling/residence is lawfully established and can be used as a STR.**

Finance staff contacts CDD on properties that are not clearly identified as the primary single-family dwelling within the allowed zoning districts. Currently if Finance determines in coordination with CDD that a STR has a code violation(s) or complaint(s), is within restricted zoning districts (e.g. resource zoned properties), and/or is in non-permittable structures, Finance notifies the property owner/manager that the County cannot issue a COA. However, **there is no formal County Code provision or other legal authority that would allow the County to prohibit and/or require discontinuation of using a dwelling as a STR under any of these circumstances.** Note that operating a short-term rental without registration is a Class A violation for which the property owner could be subject to penalties under DCC Chapter 4.08.

Given potential risks associated with the current program, the Board may wish to consider adopting and implementing a business licensing or a combination land use /business licensing approval process for regulatory oversight of STRs and for protection of the public health, safety and welfare, both for visitors staying at STRs and surrounding properties. Legal notes, however, that adoption of a formal licensing or licensing/land use approval process also carries a risk of legal challenges.

III. LICENSING PROGRAM

One option for STRs is a business licensing program only, without a separate and additional land use permitting process. As noted above, certain components should be required to be demonstrated and/or certified by a property owner wishing to operate a STR will still require CDD staff review.

Clackamas County adopted a new section of its code governing Short-Term Rentals, which program is administered by the Finance Department and sets forth registration requirements, compliance with which is certified by the property owner in a signed affidavit of compliance. See **Attachment A**. The Clackamas County program will be revisited by its Board of Commissioners in two years.

Briefly summarized, if Deschutes County were to consider adopting a similar licensing program, the following elements are recommended to be included:

- (1) Verification of Zoning, Legal Lot of Record and Existence of Lawfully-Established Dwelling;
- (2) Verification of operational and appropriately-sized Wastewater System
- (3) Verification of Utilities, including garbage pick-up
- (4) Verification of compliance with Fire Life Safety standards
- (5) Verification of adequate parking
- (6) Establishment of maximum occupancy
- (7) Property Manager availability 24/7
- (8) Noise restrictions
- (9) Fire pit/ring restrictions or prohibitions
- (10) Verification of compliance with all applicable zoning and use standards
- (11) Proof of liability insurance coverage

In addition to considerations of appropriate fees to be charged for a STR license, the following elements of a licensing program will also need to be addressed:

- (1) Possibility of revocation of a STR license and terms under which revocation may occur
- (2) Enforcement and appeal procedures (including resources associated therewith)
- (3) Whether or not a STR business license is transferrable
- (4) Whether to include properties within destination resorts in an STR license program
- (5) Whether notification to surrounding property owners of a STR license should be required
- (6) Whether to accept a signed affidavit of compliance and, if so, under what circumstances additional staff verification and review should be required

Legal notes that the Clackamas County STR program was adopted after a LUBA appeal and remand and that Lincoln County has also had success defending legal challenges. A common challenge to STR business licensing programs is that such a license is in fact a land use permit because it regulates use of land. In a Curry County LUBA decision last summer, LUBA rejected the argument that STRs represent “commercial uses.” We should be aware of potential legal challenges when developing new code provisions to govern a business license or combination land use and business license program for STRs.

Several counties have acknowledged they require significant involvement from their Community Development Departments (planning, building, on-site septic) in their licensing programs.

IV. LAND USE AND LICENSING PROGRAM

A second option for consideration is a combination land use permit and licensing program. This would recognize significant CDD staff involvement that will already be required in a licensing program and could potentially avoid LUBA challenges based on arguments that the “business license” is in fact a land use decision, regardless of the form and regulatory basis for its issuance. For example, Curry County requires issuance of a conditional use permit as well as TRT registration and a business license for its STRs. Although Curry County prevailed at LUBA last summer, they believe there may be problems going forward with implementation and enforcement.

There are significant budgetary impacts associated with either approach, as detailed separately in a memorandum prepared by Peter Gutowsky, Deschutes County Community Development Department Director.

Finance notes that additional costs to expand the use of GovOS to include workflow and approvals from CDD are estimated at a \$4,000 one-time implementation fee and \$4,000 annually for the subscription fee increase.

V. DESTINATION RESORTS

A frequently considered question is whether properties within destination resorts¹ should also be subject to a licensing or licensing and permitting process. Ultimately, this is a policy decision for the Board. Such decision-making may be guided by the following.

On one hand, an argument may be made that many of the concerns addressed by a license and/or land use permit may already be addressed by governing homeowner associations through enforcement of CCRs. On the other hand, exempting certain properties from County review, and relying on outside (not regulated or governed by the County) entities could be problematic.

First, property owners who are not within a destination resort could raise arguments that their property is unfairly subject to stricter regulation and fee burden than those properties within destination resorts. Whether such an argument is wrapped in a type of economic discrimination cloak or not, the County should not be surprised if there is public outcry on this basis. Second, without a revocable license or permit, the only recourse for other property owners within a destination resort who are subjected to violation of some of the standards set forth above would be to initiate proceedings with the HOA. The County has no information on how well regulated some HOAs are, what the turnover on those boards is, etc. The outcome may be that – not only are property owners who wish to obtain a STR approval outside of destination resort subjected to additional fees and review that those within destination resorts – but adjoining and nearby property owners in destination resorts could ultimately end up with less protection from adverse safety and welfare impacts than those outside the resorts.

Legal Counsel is available to answer any questions that seek more detailed information and responses.

¹ For the purpose of this memorandum, “Destination Resort” refers to Goal 8 destination resorts, Sunriver Urban Unincorporated Community, and Resort Communities (Black Butte, Inn of 7th Mountain/Widgi Creek).