City of Ketchum

November 1, 2021

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

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Update Regarding Proposed Next Steps for Short-Term Rental Ordinance

Recommendation and Summary
In June, City Council directed staff to further investigate a standalone license for short-term rentals (STRs) with new associated policies. Staff has been working on several due diligence items and will be prepared during the November 18th City Council meeting to walk through each item to receive feedback from Council prior to the first reading of an ordinance.

1. **Staffing:**
   The first concern with any new ordinance is to make sure we have proper staff bandwidth to investigate non-compliant properties, send payment demand letters for LOT, etc. We have recently promoted a staff member to oversee the business license program, which would include the new STR program. Depending on the frequency of fire inspections, a new inspector could be required.

2. **Data**:
   Since the initial news of the city's intention of a new licensing program for STR, we have only received a couple of calls from STR property owners wishing to comply. This demonstrates that we will need to have access to dependable third-party data to pursue non-compliant properties. Staff has had discussions with a couple different vendors. The top performing software to date would cost approximately $20,000 annually. Staff is completing a quick audit of the three large platforms (AirBnb, Homeaway, VRBO) payments to ensure the assertion from several of the software providers is correct regarding unpaid Location Option Tax.

3. **Fire regulations**:
   The most significant policy question will be how to treat these properties from a fire/building code perspective. Staff is recommending that we regulate them similar to hotels to ensure we are treating all short-term properties in a consistent manner.

Introduction and History
During the June 21, 2021 City Council meeting, the City Attorney reviewed the following potential elements that could be included in a new short-term rental ordinance based upon state law and examples from the cities of McCall and Sandpoint.

In 2017, the Idaho Legislature adopted legislation that sets forth limitations on the ability of counties and cities to regulate STRs. Most particularly, this legislation, now Idaho Code §67-6539, prevents a city from prohibiting STRs. The open question still remains as to what extent STRs can be regulated.

Idaho Code §67-6539

67-6539. LIMITATIONS ON REGULATION OF SHORT-TERM RENTALS AND VACATION RENTALS. (1) Neither a county nor a city may enact or enforce any ordinance that has the express or practical effect of prohibiting short-term rentals or vacation rentals in the county or city. A county or city may implement such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate. A short-term rental or vacation rental shall be classified as a residential land use for zoning purposes subject to all zoning requirements applicable thereto. (2) Neither a county nor a city can regulate the operation of a short-term rental marketplace.

IC 67-6539 makes clear that the City cannot outright prohibit STRs within city limits. Less defined is what amount of regulation would be proscribed as constituting a "practical effect of prohibiting" STRs. To date, there has not been further legislation or judicial analysis clarifying where the boundaries might be drawn on such regulation.

Additionally, IC 67-6539 makes clear that STRs are to be generally treated as a residential land use for zoning purposes. This means that STRs cannot be regulated by limiting them only to areas of non-residential zoning (one of the more popular approaches in the early days of STRs).

As the Council reviews options for potential STR regulations, the key finding that should be considered is how the regulations are "necessary to safeguard the public health, safety and general welfare …" including how to "protect the integrity of residential neighborhoods." IC 67-6539.

Two Idaho cities that have been at the forefront of STR regulations after the adoption of IC 67-6539 are the City of McCall and the City of Sandpoint. Both cities have generally adopted a permit/license process as the procedural mechanism for STR regulations.

City of Sandpoint Key Provisions:
- STR permit required, tied to LOT to ensure collection of LOT
- Definition of STR that explicitly states that temporary shelters (such as RVs, tents) are to be used as an STR
- In residential zones, two-night minimum stay and only one STR per parcel
- Maximum of 35 non-owner occupied STRs across all residential zones within the City, with exceptions for STRs approved within PUDs or multi-unit developments meeting certain standards (primarily tied to proximity to tourism areas)
- Permits only valid for one year and tied to specific property owner (not tied to property itself)
- Inspection required for permit to verify certain health/safety standards
- Local representative/contact required
- Infraction-based enforcement policy

City of McCall Key Provisions:
- Permit/business license required, tied to LOT permit to ensure collection of LOT
- Conditional use permit approach for any STR with occupancy of 20+ guests. CUP addresses factors such as parking, access, noise, neighborhood impacts, and health and safety
- Room occupancy limits on all STRs
- Noise and health/safety requirements, including posting of such on premises
- Identification and provision of contact information for a property manager

Sustainability Impact
No direct impact. Increased inventory of long-term rentals does decrease the amount of auto trips as local workers are closer to their place of employment.

Financial Impact
Depending on final new costs associated with the new program (software, increased staffing), the Council will need to determine a reasonable license fee in relation to proper cost recovery.

Attachments:
None