

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 10/13/2020 **Approx. Start Time:** 3:00 p.m. **Approx. Length:** ½ hour

Presentation Title: File ZDO-273: Short-Term Rentals

Department: Planning and Zoning Division, Department of Transportation and Development (DTD)

Presenters: Dan Johnson, DTD Director; Jennifer Hughes, Planning Director; Martha Fritzie, Principal Planner

Other Invitees: Cheryl Bell, DTD Assistant Director; Matt Rozzell, Building Codes Administrator; Michelle Amend, Code Enforcement Supervisor; Nate Boderman, Assistant County Counsel; Elizabeth Comfort, Finance Dept. Director; Kathryn Stewart, Finance Dept.; Samara Phelps, Tourism Director; Ellen Rogalin, Community Relations Specialist

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

None. This is an informational session only.

EXECUTIVE SUMMARY:

During Issues on October 6, 2020, the Board directed staff to complete, by the end of 2020, County Code and conforming ZDO amendments to implement a program, to be effective July 1, 2021, to register and regulate short-term rentals. This project was tabled in May due to the coronavirus pandemic. The purpose of this policy session is to review the most recent draft (See Attachment 1, **Chapter 8.10 Short-Term Rentals**) of the proposed County Code regulations and respond to any questions from the Board prior to the first reading of the ordinance, which is anticipated to occur on November 5, 2020.

Background

For the purposes of this discussion, a short-term rental (STR), or vacation rental, is a dwelling unit, or portion of a dwelling unit that is rented to any person or entity for a period of up to 30 consecutive nights.

In early 2019, the Board directed staff to look into the most effective ways to potentially allow and regulate STRs for the following three reasons:

1. The County's Zoning & Development Ordinance (ZDO) does not clearly identify STRs as allowed in any homes in the county, and therefore, from a zoning perspective, it is considered a prohibited use of a dwelling. However, there are clearly a number of homes in the County actively being used as short-term rentals and a growing interest among homeowners in pursuing this type of use legally in the county;
2. Several properties in the county operating as short-term rentals have generated enough complaints that it has become apparent that this use can cause unwanted neighborhood impacts; and

3. The Transient Room Tax (TRT) currently applies to STRs, as it does to hotels, motels and other lodging establishments. While there are a number of STRs that are paying the tax as required, there appears to be a large number that are not. Establishing a STR registration program, linking the registration to a requirement to pay the TRT, and funding enforcement of the new regulations could help level the playing field for all lodging establishments, ensuring they are all paying their fair share.

At January 30 and February 13 public hearings, the Board heard testimony and discussed the proposed program and regulations as presented by staff. The draft was revised between the first and second hearings based on input from the Board. While there appeared to be significant agreement on the majority of the proposed regulations and the registration program in general, several issues came up at the public hearings and through written testimony that warranted further consideration, and the Board voted 3-2 to table the proposed amendments pending future discussion about these remaining issues. This additional discussion occurred during a Planning Session on March 11 and did not result in changes to the proposal.

The draft, available on the project webpage (<https://www.clackamas.us/planning/str>) and in **Attachment 1**, is the result of over a year of work that included the following actions:

- Research into STR programs in other jurisdictions;
- Several large public meetings throughout the county in the spring of 2019;
- Extensive public outreach (website, online questionnaires, social media, newsletter articles, news releases and numerous emails to interested parties);
- Eight planning/policy sessions with the Board; and
- Feedback on initial drafts from the public, staff from other departments and agencies, and industry professionals.

Key components of the current proposal include the following:

- Regulations would only apply outside of city limits in unincorporated Clackamas County.
- STRs would only be allowed in a legally-established dwelling (either part or all of the dwelling could be rented, including a guest house). This would include allowing for STRs in accessory dwelling units (ADUs), but would not allow STRs in RVs, tents, barns, shops or similar structures.
- All STRs would be subject to the same regulations, except that STR properties *inside the Portland metropolitan urban growth boundary (UGB)* would be required to be the owner's primary residence or located on the same tract as the owner's primary residence. (The owner would not be required to be there when the short-term rental was occupied). This "primary residence" provision was added as requested by the Board at the last policy session held before the January 30 public hearing.
- STRs would have to be registered with the county. In addition to paying a registration fee, which the county would use to cover the costs of administration and enforcement, the short-term rental owner would also be required to provide information at the time of registration, including:
 - Location;
 - Contact information for someone who can respond to complaints;
 - An affidavit of compliance with safety standards;
 - Evidence that all county fees and taxes have been paid, including registration with the county's Transient Room Tax program;
 - Proof of liability insurance, and

- A site plan and a dwelling unit floor plan.
- Maximum overnight occupancy of two people per sleeping area plus four additional people, not to exceed 15 people. No maximum occupancy for guests who do not stay overnight.
- One off-street parking spot required for each two sleeping areas.
- Required garbage pick-up at least once a week, with any outdoor garbage containers required to be covered.
- Posted quiet hours from 10 p.m. – 7 a.m. (in accordance with current county noise ordinance).
- Building and fire safety requirements related to smoke and carbon monoxide detectors, emergency escape routes, fire extinguishers, etc. (as established via the affidavit)
- Short-term rental owners who do not comply with the regulations may be subject to enforcement consequences ranging from citations and fines, up to liens and revocation of registration. Enforcement of the regulations will be carried out by either the Sheriff's Office or Code Enforcement, depending on the issue.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the funding source? N/A

The development of regulations for short-term rentals (ZDO-273) is part of the Planning & Zoning Division's current budget, funded by the General Fund; however, if the Board chooses to move forward with a program to register and enforce regulation of the use of dwellings as STRs, there will need to be additional staffing and funding made available for the divisions and departments responsible for implementation and enforcement. Staff proposes this be done through a registration fee that is sufficient to cover administration and enforcement costs. With a proposed implementation date for the new program of July 1, 2021, fee discussion would occur as part of the annual fee setting process that occurs during budget development.

STRATEGIC PLAN ALIGNMENT:

- **How does this item align with your Department's Strategic Business Plan goals?**
The proposal aligns with the Long-Range Planning program's purpose of providing land use and transportation plan development, analysis, coordination and public engagement services to residents; businesses; local, regional and state partners; and County decision-makers so they can plan and invest based on a coordinated set of goals and policies that guide future development.

- **How does this item align with the County’s Performance Clackamas goals?**
The proposal aligns with the Performance Clackamas goal to “Build Public Trust through Good Government” by responding to a work program priority and by creating regulations and a process by which a land use that is not currently specifically allowed in our code may become a permitted and compliant use.

LEGAL/POLICY REQUIREMENTS:

Staff is not aware of any legal requirement to allow STRs. Adoption of STR regulations will follow the established process for ZDO amendments and/or County Code amendments.

PUBLIC/GOVERNMENTAL PARTICIPATION:

County Staff has been engaging in public outreach regarding STRs with Community Planning Organizations and other groups and individuals, and will continue to do so throughout the remainder of this project. In addition, public notice will be provided, as required by law, for any proposed amendments to the County Code or the ZDO that come before the Board for consideration at a public hearing.

OPTIONS:

None, this session is informational only.

RECOMMENDATION:

None, this session is informational only.

ATTACHMENTS

1. Draft amendments to County Code, **Chapter 8.10 Short-Term Rentals** (2/13/20 draft)

SUBMITTED BY:

Division Director/Head Approval *Jennifer Hughes*

Department Director/Head Approval *Dan Johnson*

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Martha Fritzie @ 503-742-4529

Chapter 8.10

8.10 SHORT-TERM RENTALS

8.10.010 Purpose

The purpose of this chapter is to regulate short-term rentals in order to enhance public safety and livability within the unincorporated areas of Clackamas County. Specifically, this chapter addresses public safety concerns typically associated with short-term rentals, and clarifies the process for both property owners and staff related to permitting short-term rentals and enforcing violations of these standards.

8.10.020 Definitions

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

- A. ADMINISTRATOR means the County Administrator of Clackamas County or his/her designee.
- B. DWELLING UNIT is a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.. For the purposes of this chapter only, a guest house is considered to be part of the dwelling unit to which it is accessory, even though it is a separate structure. Guest house shall have the meaning given to that term in Section 202 of the Clackamas County Zoning and Development Ordinance.
- C. OCCUPANTS means persons who are authorized to stay overnight within a short-term rental.
- D. OWNER is the owner or owners of a dwelling unit used as a short-term rental.
- G. PREMISES means the short term rental and the lot on which it is located.
- H. PRIMARY RESIDENCE means a dwelling unit where an owner lives most of the time. At a given time, an owner does not have more than one primary residence. For purposes of determining whether a dwelling unit is a primary residence, the County may consider factors that include, but are not limited to: whether the dwelling unit is the legal residence of the owner for purposes of voting, motor vehicle/driver licensing, income tax calculation, and the time the owner has spent at the dwelling unit.
- I. REGISTRANT means the owner, or agent of the owner, designated on the registration to act for the owner, who is responsible for ensuring the short-term rental adheres to all applicable requirements to maintain a short-term rental registration.
- J. REGISTRATION means a short-term rental registration.
- K. SHORT-TERM RENTAL means a dwelling unit, or portion of a dwelling unit, that is rented to any person or entity for lodging or residential purposes, for a period of up to 30 consecutive nights.
- L. SLEEPING AREA means a room or other space within a dwelling unit designed and intended primarily for sleeping.

8.10.030 Applicability

This chapter shall apply within the unincorporated areas of Clackamas County including within urban growth boundaries, but shall not apply within the boundaries of any incorporated city. This chapter does not apply to hotels, motels, bed and breakfast facilities, hostels, campgrounds, recreational vehicle (RV) camping facilities, or organizational camps.

8.10.040 Short-Term Rental Registration Requirements and Fee

- A. All short-term rentals shall be registered, except that any short-term rental that qualifies for an exemption to the Transient Room Tax under Section 8.02.060(C), as “incidental” use of the property, shall be exempt from the registration requirements set forth herein.
- B. Application forms for a registration for a short-term rental will be available at County offices. Applications for initial and renewal registrations for a short-term rental must be submitted to the County and must be signed under penalty of perjury. The application documents must include at least the following:
 - 1. The location of the premises.
 - 2. The true names, telephone numbers, and addresses and any aliases of the persons that have, or have had within the preceding year, a financial interest in the premises.
 - 3. A Land Use Compatibility Statement, signed by a Planning & Zoning Division representative, affirming that the short-term rental complies with Section 8.10.060(A).
 - 4. Signed affidavit of compliance with all building and fire standards in Section 8.10.060(G), and all applicable requirements in Section 8.10.060(D-F).
 - 5. Evidence that all current taxes and fees owed to Clackamas County have been paid for the premises.
 - 6. Evidence that a Transient Room Tax registration form has been submitted to the County.
 - 7. The name, telephone number, and address of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short-term rental.
 - 8. Proof of liability insurance coverage on the short-term rental.
 - 9. A statement that the registrant of the short-term rental has met and will continue to comply with the standards and requirements of this chapter.
 - 10. A site plan that identifies, at a minimum, all structures on the property, driveway(s), off-street parking spaces, and garbage receptacles.
 - 11. A dwelling unit floor plan that identifies, at a minimum, all sleeping areas and other rooms in the dwelling unit.
 - 12. If the premises includes a guest house to be used as a short-term rental, verification that the guest house is equipped with indoor plumbing equipped with a water closet, lavatory, shower, bathtub or combination bath/shower. All plumbing fixtures must be connected to an approved water supply, and an approved sanitary sewer or private sewage system.
- C. A separate registration application must be submitted for each proposed short-term rental; however only one short-term rental registration shall be approved per dwelling unit.
- D. At the time of submission of a short-term rental registration application, the registrant must pay a short-term rental registration fee. The fee amount shall be set by resolution of the Board of County Commissioners.

- E. A registration is transferable to a new registrant, so long as the new registrant submits notification to the administrator, signed by the original registrant, of the transfer and agrees in writing to comply with the requirements of this chapter. A change of registrant notification form will be available at County offices.
- F. No short-term rental may be publicly advertised for rent unless it has been registered with the County

8.10.050 Registration Termination – Renewal – Fee

- A. A short-term rental registration terminates automatically two years after the date of issuance, unless a new registration application is approved by the county.
- B. Registrants wishing to continue uninterrupted operation of a short-term rental shall submit a new application to the County a minimum of 30 days prior to the expiration of the registration.
- C. At the time of submission of a new short-term rental registration application, the registrant must pay the short-term rental registration application fee. The fee amount shall be set by resolution of the Board of County Commissioners.
- D. A short-term rental registration terminates automatically if state statutes, regulations or guidelines are modified or changed to prohibit operation of the short-term rental under this chapter.

8.10.060 Standards and Conditions

Any short-term rental must comply with the following standards at all times, in addition to any other state and local requirements:

- A. Dwelling Unit. The short-term rental must be operated within a legally-established, permanent dwelling unit.
 - 1. The dwelling unit associated with a short-term rental shall not have been established through a land use approval or other approval process that specifically limited the use of the dwelling unit, the occupancy of the dwelling unit, or the duration of the existence of the dwelling unit. Examples of non-qualifying dwellings include those approved as an accessory farmworker dwelling, a caretaker dwelling, or a temporary dwelling for care.
 - 2. Guest houses may only be used as a short-term rental where a registrant can demonstrate that the structure is equipped with indoor plumbing equipped with a water closet, lavatory, shower, bathtub or combination bath/shower.
 - 3. Temporary sleeping accommodations such as tents and recreational vehicles are not considered to be dwelling units under the county's zoning and development ordinance and may not be used as a short-term rental.
- B. Maximum Overnight Occupancy. The number of overnight occupants in the short-term rental shall not exceed the number of occupants authorized in the registration. The maximum overnight occupancy shall be clearly posted in the short-term rental, disclosed in any advertising of the availability of the short-term rental, and included in any rental agreement with tenants. The maximum overnight occupancy authorized in the registration for the short-term rental shall be calculated as follows:
 - 1. Two occupants per sleeping area, plus four additional occupants.

2. Roll-out beds, fold-out couches, or other similar temporary beds shall not be considered a “sleeping areas” for the purposes of calculating maximum allowed occupancy, but could accommodate the four additional occupants.
 3. In no case shall more than 15 occupants be authorized by a short-term rental registration. If only a portion of a dwelling unit is used as a short-term rental, all occupants, including those occupying the portion of the dwelling unit not used as a short-term rental, shall be counted toward the 15-occupant maximum.
- C. Noise. Notice shall be clearly posted in the short-term rental that identifies and informs occupants of their obligation to abide by the County’s current noise control ordinance standards (Clackamas County Code Chapter 6.05).
- D. Parking. One off-street motor vehicle parking space per two sleeping areas is required. Garage space may be used to meet required parking standards if evidence is provided that there is sufficient cleared garage space to fit a vehicle(s). All required parking spaces must be available for occupants to use.
1. If the short-term rental contains only one sleeping area, one off-street parking space is required.
 2. If the short-term rental cannot provide the required number of parking spaces based on sleeping areas, the registrant may request a reduced maximum overnight occupancy based on available parking. In no case shall the registrant advertise for, or rent to, more persons than are authorized under the reduced maximum occupancy total.
 3. In no event shall vehicles block access for emergency vehicles, block access to the premise, or block a parked motor vehicle. Violation of this section may subject the offending vehicle to immediate tow pursuant to ORS 98.853.
- E. Garbage. All garbage from a short-term rental shall be legally removed from the premises by the owner, occupant or franchised service provider at least once per week during any week, or portion thereof, in which the short-term rental is occupied. All outdoor garbage receptacles shall be covered. Recycling container(s) shall be available for use by renters.
- F. Registration Identification. The registration identification number assigned to the short-term rental by the administrator shall be included on any advertisement or rental platform where the short-term rental is offered to the public for occupancy.
- G. Building and Fire Safety. A short-term rental shall comply with all ordinances that apply to a dwelling, and all structural components shall be kept in sound condition and good repair. In addition:
1. Working smoke detectors and carbon monoxide detectors shall be installed and maintained in locations as required by the Oregon Residential Specialty Code.
 2. Two (2) working fire extinguishers shall be provided in the unit, with one of the extinguishers placed within the kitchen in an easily accessible location
 3. Code-compliant pool and hot tub barriers shall be present, if applicable.
 4. Every sleeping area shall have not less than one operable emergency escape and rescue opening, including basement sleeping areas. Emergency escape and rescue openings shall have a net clear opening of not less than 5.0 square feet. The net clear height shall not be less than 24 inches, and the net clear width shall not be less than 20 inches.
 5. All exterior building exits shall be clear, operable and available to renters.

6. All electrical wiring shall be covered, and wall outlets, switches and junction boxes shall have code-approved covers in place.
 7. Electrical panels shall have a clear working space of at least 30 inches wide in front of the panel, and a clear space 78 inches high in front of the panel. All circuit breakers and/or fuses shall be clearly labeled in the event the power needs to be shut off to a certain area or appliance.
 8. All restrictions and prohibitions for burning as determined by the local Fire District shall be observed. All wood-burning fire pits and fireplaces shall be covered or made otherwise unavailable during burn prohibition periods. Contact information for the local Fire District shall be clearly posted in the short-term rental.
 9. The dwelling shall have no open building or zoning code violations.
- H. For any short-term rental located within the Portland Metropolitan Urban Growth Boundary, the dwelling unit to be used as a short-term rental must be located on the same tract as the owner's primary residence. However, the owner is not required to be present on the tract when the short-term rental is occupied. Tract shall be defined as set forth in Section 202 the County's Zoning and Development Ordinance.

8.10.70 Registration Review

- A. The administrator shall, within thirty (30) days after receipt of a complete application for a short-term rental registration and applicable fee, either issue the owner a registration or provide notice of denial.
- B. Upon approval, the administrator shall furnish notice of the approval to all property owners of record within 300 feet of the premises, and contiguous properties under the same ownership. This approval notice shall provide the name, telephone number, and address of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short-term rental.
- C. The administrator may deny a registration application for failure to submit the materials or fee set forth in Section 8.10.040, for failure to meet the standards and conditions set forth in Section 8.10.060, for submitting falsified information to the County, or for noncompliance with any other applicable County ordinances.

8.10.080 Examination of Books, Records and Premises

To determine compliance with the requirements of this chapter, the Clackamas County Zoning and Development Ordinance, and any local tax measures, the administrator may examine or cause to be examined by an agent or representative designated by the administrator, at any reasonable time, the premises, and any and all financial, operational and facility information, including books, papers, and state and federal income tax returns. Every owner is directed and required to furnish to the administrator the means, facilities and opportunity for making such examinations and investigations.

8.10.090 Emergency Revocation

- A. In the sole determination of the Clackamas County Building Official, when a violation of the building code or applicable county ordinance exists at a short-term rental that presents an immediate serious fire or life safety risk, the Clackamas County Building Official may immediately revoke the short-term rental registration as a fire or life safety risk. The

Clackamas County Building Official shall provide written documentation of the violation, and notification of the owner's right to appeal, as provided in 8.10.100.

- B. Upon an emergency revocation, the short-term rental shall not be rented or used as a short-term rental unless the revocation is withdrawn or a new short-term rental registration has been obtained.
- C. At any time following the emergency revocation of a short-term rental registration pursuant to this subsection, the Clackamas County Building Official may reinstate the registration upon a re-inspection by the Clackamas County Building Official verifying that the subject building code or county ordinance violation has been corrected.

8.10.100 Administration and Enforcement

The County encourages owners, registrants, occupants, and affected residents and owners of nearby properties, to cooperate directly to resolve conflicts arising from the occupancy of any short-term rental. Along those lines, the first attempt to remedy a violation of any of the standards in this chapter should be to contact the representative associated with the registration, as identified in the approval notice and the required short-term rental posting. In the event that the listed representative does not respond within 24 hours or does not adequately remedy the issue, the Clackamas County Department of Finance should be notified.

- A. For acts of noncompliance, the Code Enforcement Program of the Department of Transportation and Development shall administer, supervise, and perform all acts necessary to enforce this chapter or any other chapters of the Clackamas County Code applicable to short-term rentals, except as otherwise provided for in state law or in the Clackamas County Code, including those regulations for which the Clackamas County Sheriff's Office has been vested with enforcement authority.
- B. Except as otherwise provided in this chapter, Chapter 2.07 of the Clackamas County Code shall govern the process for enforcement of this chapter, including but not limited to the notice and procedures associated with any compliance hearing.
- C. An owner that operates a short-term rental without an approved registration, or fails to pay the fees prescribed herein, shall be subject to immediate citation. Additionally, an owner that fails to pay the fees prescribed herein may have their short-term rental registration immediately revoked.
- D. A person who receives a citation for violation of this chapter shall respond within fourteen (14) days of the issuance of the citation by payment of any penalties established under this chapter, or by requesting a hearing as provided in this section.
- E. In addition to citation, the Code Enforcement Program of the Department of Transportation and Development may require an inspection of the premises.
- F. In addition to citation, the Hearings Officer may:
 - 1. Suspend the short-term rental registration until the short-term rental is in compliance with the standards and conditions set forth in Section 8.10.060; or
 - 2. Revoke the short-term rental registration if there have been three separate violations of this chapter related to the same short-term rental within the applicable two-year registration period.
- G. Alleged acts of noncompliance must be based on either:
 - 1. The personal observation of the Sheriff or designee, code enforcement officer, or Clackamas County Department of Finance staff; or;

2. A determination by the Sheriff or designee, code enforcement officer, or Clackamas County Department of Finance staff that there are reasonable grounds to conclude that the alleged acts of noncompliance did, in fact, occur, after either an investigation or following a sworn statement of a person who personally witnessed the alleged incident.

8.10.110 Penalties

Violation of this chapter shall be punishable by suspension or revocation of a short-term rental registration, or by a penalty or fine in an amount set by resolution of the Board of County Commissioners. Except in the case of an emergency revocation, any owner may not obtain or renew a short-term registration on the premises sooner than one year after the date of revocation.

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