

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Sitting/Acting as (if applicable)

Policy Session Worksheet

Presentation Date: April 19, 2023 **Approx. Start Time:** 11:00am **Approx. Length:** 30 minutes

Presentation Title: Short-Term Rental Registration Program Proposal - Continued

Department: Board of County Commissioners

Presenters: Commissioner Paul Savas, Commissioner Mark Shull

Other Invitees: Everett Wild, Policy Advisor; Caroline Hill, Policy Advisor

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Commissioner Savas and Commissioner Shull request the Board review and discuss the attached revised Short-Term Rental (STR) policy proposal and direct staff to begin a public outreach process, draft Ordinance language, and schedule public hearings.

EXECUTIVE SUMMARY:

Commissioner Savas presented a proposed alternative STR policy to the Board of County Commissioners (BCC) on June 23, 2022. That concept was analyzed by staff, who reported back at a Policy Session on August 3, 2022. Subsequently, Commissioner Shull and Commissioner Savas agreed to work together to develop a joint proposal, which is included as Attachment A. On March 1, 2023, the Board agreed to hold a Policy Session to discuss the joint proposal, which occurred on March 15. This revised version incorporates the following Board feedback from the initial Policy Session:

- Added a definition for a short-term rental (full definitions will be included in draft code language)
- Revised financial pro forma (Attachment B)
 - Removed possible use of lottery dollars
 - Changed surcharge to be based on the full rental rate rather than the amount of lodging tax collected and adjusted the surcharge rate accordingly
- Added an exploration during the pilot period of establishing agreements with large STR intermediary companies (Airbnb, HomeAway, VRBO, etc.) that requires them to collect and remit lodging tax on behalf of the individual operators using their platform

The BCC has had a number of Policy Sessions, public meetings, and other discussions on STRs over the past several years. There are two parallel components—a registration program, and revising the County's Zoning and Development Ordinance (ZDO) to make STRs an allowed use.

- **Registration program:** adopted by the BCC on November 25, 2020. However, the BCC never approved a fee to fund the adopted program. After moving the effective date multiple times, the BCC voted to entirely withdraw STR regulations on September 8, 2022; the repeal became effective on December 7, 2022.
- **ZDO allowed use:** adopted by the BCC on December 17, 2020. That decision was appealed to the State Land Use Board of Appeals (LUBA). In response to guidance from LUBA and the Oregon Court of Appeals, the BCC adopted amendments to the the ZDO language on December 8, 2022, with the effect of allowing STRs in unincorporated areas of the county outside resource-zoned lands; the revised ZDO are scheduled to become effective on May 30, 2023. However, the revised ZDO has also been appealed to LUBA and could be subject to remand again.

Today's conversation addresses only the first component, a registration program. A wide array of interests including community members and STR operators have requested programmatic support to create a friendly business environment where everyone is on a level playing field.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? Approximately \$225,000 annually

What is the funding source? New funding from a surcharge on STR operators and one-time start-up funds from Transient Lodging Tax.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with the County's Performance Clackamas goals? This proposal aligns with the "Grow a Vibrant Economy" and "Ensure Safe, Healthy, and Equitable Communities" goals.

LEGAL/POLICY REQUIREMENTS:

There is no legal requirement to regulate STRs. Land use and zoning requirements are not being considered today.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Commissioner Shull attended a Hoodland CPO meeting on January 11, 2023 to discuss STRs generally. A public outreach effort would be conducted if the Board decides to move forward with a STR program.

OPTIONS:

1. Formally seek one-time start-up funding from the Tourism Development Council and subsequently direct staff to begin a public outreach process, draft Ordinance language, and schedule public hearings.
2. Direct staff to conduct further analysis and/or revisions of the proposed program.
3. Take no further action.

RECOMMENDATION:

Commissioner Savas and Commissioner Shull recommend Option 1:

1. Formally seek one-time start-up funding from the Tourism Development Council and subsequently direct staff to begin a public outreach process, draft Ordinance language, and schedule public hearings.

ATTACHMENTS:

Attachment A: Revised Proposal for Short-Term Rental Enforcement

Attachment B: Short-Term Rental Program Financing Proposed Pro Forma

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

Revised Proposal for Short-Term Rental Enforcement
Presented by Commissioners Savas and Shull
April 19, 2023

The following is a framework for a short-term rental management program in Clackamas County. The goal is to create a solution that is reasonable for County staff to implement, does not increase General Fund burden, is cost-effective for STR owners, and addresses common neighborhood issues caused by some STRs. As proposed, both additional staffing and funding will be required.

- **Registration**

- Required for all STR owners/operators (STR 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)
- Online process
- Acts as an enforceable affidavit and includes confirmation that the owner/operator:
 - Meets life-safety requirements (working smoke detector, fire extinguisher, maximum occupancy limits, etc.) and will continue to meet those requirements for the duration of STR operation
 - Agrees to provide one off-street parking space per bedroom unless otherwise exempted by State law or County code
 - Agrees to maintain at least weekly garbage pickup
 - Agrees to a daytime occupancy cap of twice the number of bedrooms plus four guests (beds x 2 + 4)
 - Agrees to prohibit renters from subleasing the unit or using the property for generating income (i.e. selling tickets to a party)
 - Will provide the County with up-to-date contact information for the property owner or management company, and establishes a requirement that:
 - A responsible party will be available 24/7 when the unit is rented as an STR
 - The responsible party will respond to guest or neighbor issues at the property within two hours of an initial call for service
 - The responsible party's business name and phone number will be posted when paying guests are on the property, and must be placed within ten feet of the roadway
 - Acknowledges their responsibility to collect and remit TLT
- Registration does not transfer with the property, and new ownership (including moving a property into a trust or LLC) requires re-registration

- STR Program staff will verify lawful establishment of the dwelling and conformance with current ZDO ~~(not in a Rural Reserve or Timber/Ag. Resource Zone)~~
- *BCC discussion: require bear-proof trash cans in the Mountain area?*
- **Transient Lodging Tax**
 - All STRs will be required to collect and remit TLT in accordance with Clackamas County Code Chapter 8.02
 - *Follow-up: staff research how to get TLT information posted on STR websites, as Multnomah County and the City of Portland have*
- **Enforcement**
 - Complaint-driven (no pre-approval or periodic inspections)
 - Follows current abatement model (working with property owners to gain compliance and reserving punitive measures like fines and liens for a last resort)
 - STR Program staff would respond to:
 - Failure to register a short-term rental
 - Failure to collect and/or remit Transient Lodging Tax
 - Trash
 - Issues with registration, including, but not limited to:
 - Inaccurate representation that the dwelling is lawfully-established
 - Inaccurate representation of the number of bedrooms in the dwelling
 - Failure to post emergency contact information for responsible party
 - Code Enforcement would respond to:
 - Other code violations per current practice
 - CCSO would respond to:
 - Noise complaints and disturbances
 - Parking violations
 - Trespassing
 - Other law violations per current practice
 - STR Program staff will also:
 - Coordinate with other departments to monitor calls for service and citations issued at addresses registered as STRs
 - Maintain a database of STRs and record whether owners are in good standing with registration and TLT requirements
 - Operate a hotline and/or email box for questions and complaints

- **Penalties**
 - Violations under CCSO authority (such as noise and parking) and Code Enforcement authority (such as trash) would incur established penalties through the respective processes (such as working collaboratively with the property owner or prosecution in Justice or Circuit Court)
 - Violations of STR code under Program authority would be investigated and, if substantiated, result in suspension from STR eligibility and/or a fine
 - STR owners/operators who violate registration and/or TLT requirements (such as the examples from the prior section) will be sent two warning letters, at least 30 but not more than 90 days apart
 - Failure to comply within 30 days of the second warning letter will be prima facie evidence of a violation and result in automatic suspension from STR eligibility for one year
 - STR owners/operators who advertise and/or have a paying guest(s) on the property while suspended will be fined for each day the property is advertised and/or a paying guest(s) are on the property; unpaid fines accruing 6 months or longer can be assessed as a lien against the property
 - An STR owner may appeal any adverse action relating to the STR program (such as a fine, suspension, etc., but not including citations from law enforcement) to the County's Hearings Officer

- **Program Requirements**
 - Staff will be needed to administer the program in accordance with BCC and community expectations
 - Create 1.0 new FTE (Management Analyst or Management Analyst 2, \$165,135 this FY all-in cost), funded through program revenue, for TLT and registration enforcement, customer service, inter-department coordination, and other functions
 - There will be additional one-time start-up costs, such as creating the registration form and website

- **Program Funding**
 - We recommend funding the program through a program administration surcharge, which would be ~~a percentage of TLT remitted~~ 0.85% of the rental rate, and paid on the same form as TLT remittance
 - ~~8% Program Administration Surcharge~~
 - ~~Customer A remits \$350 of TLT in January, paying \$28~~
 - ~~Customer B remits \$2400 of TLT in January, paying \$192~~
 - Benefits of a surcharge:

- STR owners/operators pay into the program based on their size, rather than a flat fee which would disproportionately impact smaller or part-time owners/operators
 - It could be calculated and paid on the same form as TLT, reducing County administrative overhead, as well as complexity for STR owners/operators
 - Those who follow the rules are paying into a system that will help identify and enforce against those who are skirting the rules, which will increase both fairness among owners/operators and TLT collections over time
 - We are exploring one-time funding from the TDC to assist with Year 1 start-up costs, ideally \$120,000 – \$200,000, which would support the first year of the STR Program 1.0 FTE, creation of a website and other back-end systems, and a contract with a STR data collection firm.
 - Additionally, to assist with program start-up while compliance rates are low, we propose allocating \$100,000 from the County’s State Lottery revenue allotment in both Year 1 and Year 2.
- **Pilot Program**
 - Establish the STR program as a 3-year pilot with a comprehensive programmatic, operational, and financial evaluation prior to the end of the pilot period to include an analysis of feedback from STR owners/operators and the public and culminating in a report to the BCC
 - Explore whether contracting with a company that specializes in STR compliance monitoring would be beneficial to the County, residents, and STR owners/operators; consider issuing an RFI and/or RFP for such a service
 - Explore establishing agreements with large STR intermediary companies (Airbnb, HomeAway, VRBO, etc.) that requires them to collect and remit TLT, rather than individual operators—such a change would streamline the TLT collections process and reduce administrative burden for both operators and the County
 - Lincoln County is currently undergoing both LUBA and Circuit Court cases regarding their STR program; those cases do not prohibit other jurisdictions from creating and enforcing their own regulations, and County staff will continue to monitor the progress of those cases
 - ~~At the end of the pilot, consider:~~
 - ~~A cap on the total number of STRs a single entity (person, LLC, corporation) may have registered within the County~~
 - ~~A cap on the total number of STRs in the County~~
 - ~~A limit on the total number of STRs in a particular geographic radius~~

- **Next Steps and Timeline** **(NOTE: this section is not in redline to improve readability)**
 - Policy Session (April 19)
 - With Board direction, Policy Advisors will reconcile BCC feedback, work with PGA to develop a public outreach process, work with Counsel to begin drafting code language, etc. (April/May)
 - Begin public hearing and BCC adoption process (May/June)

Short-Term Rental Program Financing Proposed Funding Alternatives**Prior Proposal**

Source	Revenues									
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Transient Lodging Tax (pending TDC approval)	\$ 120,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Lottery Dollars	\$ 100,000	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Short-Term Rental Surcharge (8%)*	\$ 92,854	\$ 116,067	\$ 127,674	\$ 140,441	\$ 144,655	\$ 148,994	\$ 153,464	\$ 158,068	\$ 162,810	\$ 167,694
Carryover Balance	\$ -	\$ 90,701	\$ 103,548	\$ 18,497	\$ (63,749)	\$ (152,227)	\$ (247,312)	\$ (349,406)	\$ (458,928)	\$ (576,323)
	\$ 312,854	\$ 306,768	\$ 231,222	\$ 158,938	\$ 80,905	\$ (3,232)	\$ (93,848)	\$ (191,338)	\$ (296,118)	\$ (408,629)

Line Item	Expenditures									
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Management Analyst 2 1.0 FTE**	\$ 165,135	\$ 173,392	\$ 182,061	\$ 191,164	\$ 200,723	\$ 210,759	\$ 221,297	\$ 232,362	\$ 243,980	\$ 256,179
Website Development	\$ 30,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
STR Data and Compliance Contract	\$ 27,018	\$ 27,829	\$ 28,663	\$ 29,523	\$ 30,409	\$ 31,321	\$ 32,261	\$ 33,229	\$ 34,226	\$ 35,252
	\$ 222,153	\$ 203,220	\$ 212,725	\$ 222,688	\$ 233,132	\$ 244,080	\$ 255,558	\$ 267,590	\$ 280,205	\$ 293,431

Ending Balance	\$ 90,701	\$ 103,548	\$ 18,497	\$ (63,749)	\$ (152,227)	\$ (247,312)	\$ (349,406)	\$ (458,928)	\$ (576,323)	\$ (702,060)
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Notes:

All revenues, website development cost, and STR data and compliance contract are estimates.

Clackamas County currently has 639 STRs registered to pay Lodging Tax, approximately 550 of which are in unincorporated areas. Staff has previously estimated 1700 total STRs countywide.

*See table below for estimated increase in compliance rate

**Assumes a 5% annual COLA

Est. total TLT Collected	\$ 1,361,652	\$ 1,702,065	\$ 1,872,272	\$ 2,059,499	\$ 2,121,284	\$ 2,184,922	\$ 2,250,470	\$ 2,317,984	\$ 2,387,523	\$ 2,459,149
Est. TLT Collected (unincorporated only)	\$ 1,160,672	\$ 1,450,840	\$ 1,595,924	\$ 1,755,517	\$ 1,808,182	\$ 1,862,428	\$ 1,918,300	\$ 1,975,849	\$ 2,035,125	\$ 2,096,179
Modeled % increase		25	10	10	3	3	3	3	3	3
Total registration based on modeled % increase	639	799	879	966	1024	1086	1151	1220	1293	1371

Short-Term Rental Program Financing Proposed Funding Alternatives

Recommended Funding Structure

Source	Revenues									
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Transient Lodging Tax (pending TDC approval)	\$ 120,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Lottery Dollars	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Short-Term Rental Surcharge (0.85% of rental cost)*	\$ 164,429	\$ 205,536	\$ 226,089	\$ 248,698	\$ 256,159	\$ 263,844	\$ 271,759	\$ 279,912	\$ 288,309	\$ 296,959
Carryover Balance	\$ -	\$ 62,276	\$ 64,591	\$ 77,955	\$ 103,966	\$ 126,993	\$ 146,757	\$ 162,959	\$ 175,281	\$ 183,385
	\$ 284,429	\$ 267,811	\$ 290,680	\$ 326,654	\$ 360,125	\$ 390,837	\$ 418,517	\$ 442,871	\$ 463,590	\$ 480,344

Line Item	Expenditures									
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Management Analyst 2 1.0 FTE**	\$ 165,135	\$ 173,392	\$ 182,061	\$ 191,164	\$ 200,723	\$ 210,759	\$ 221,297	\$ 232,362	\$ 243,980	\$ 256,179
Website Development	\$ 30,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
STR Data and Compliance Contract	\$ 27,018	\$ 27,829	\$ 28,663	\$ 29,523	\$ 30,409	\$ 31,321	\$ 32,261	\$ 33,229	\$ 34,226	\$ 35,252
	\$ 222,153	\$ 203,220	\$ 212,725	\$ 222,688	\$ 233,132	\$ 244,080	\$ 255,558	\$ 267,590	\$ 280,205	\$ 293,431

Ending Balance	\$ 62,276	\$ 64,591	\$ 77,955	\$ 103,966	\$ 126,993	\$ 146,757	\$ 162,959	\$ 175,281	\$ 183,385	\$ 186,913
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Est. total booking revenue (TLT multiplied to 100%)	\$ 22,694,200	\$ 28,367,750	\$ 31,204,525	\$ 34,324,978	\$ 35,354,727	\$ 36,415,369	\$ 37,507,830	\$ 38,633,065	\$ 39,792,057	\$ 40,985,818
Est. TLT Collected (unincorporated only)	\$ 1,160,672	\$ 1,450,840	\$ 1,595,924	\$ 1,755,517	\$ 1,808,182	\$ 1,862,428	\$ 1,918,300	\$ 1,975,849	\$ 2,035,125	\$ 2,096,179
Est. total booking revenue (unincorporated only)	\$ 19,344,536	\$ 24,180,670	\$ 26,598,737	\$ 29,258,611	\$ 30,136,369	\$ 31,040,460	\$ 31,971,674	\$ 32,930,824	\$ 33,918,749	\$ 34,936,311
Modeled % increase		25	10	10	3	3	3	3	3	3
Total registration based on modeled % increase	639	799	879	966	1024	1086	1151	1220	1293	1371