

Memo

Date: February 28, 2023
To: Clackamas County Board of Commissioners
From: Commissioner Savas and Commissioner Shull
Subject: Short-Term Rental Revised Policy Proposal

Purpose:

Update the Board on progress on developing revised short-term rental (STR) regulations and request a Policy Session for more in-depth discussion and feedback.

Background:

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, we agreed to work together to develop a joint proposal, which is included as Attachment A for the Board's consideration.

Prior BCC Action:

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 and regulation program, and revising the County's Zoning and Development Ordinance (ZDO) to make STRs an allowed use.

- **Registration and regulation program:** adopted by the BCC on November 25, 2020. However, the BCC never approved a registration 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 ZDO language on December 8, 2022, the effect of which is to allow STRs in unincorporated areas of the County outside of resource-zoned lands; the ordinance will become effective on May 30, 2023.

Attachments:

Attachment A: Revised Proposal for Short-Term Rental Enforcement

Attachment B: Draft STR Pro Forma

**Revised Proposal for Short-Term Rental Enforcement
Presented by Commissioners Savas and Shull**

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
- 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
 - 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 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, \$163,000 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, 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
 - 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**
 - Bring to Issues for request for Policy Session (February 28)
 - Joint BCC/TDC meeting (March 8)
 - Policy Session (mid-March)
 - Policy Advisors will reconcile BCC feedback, confirm dollar amounts and other numbers, work with PGA to develop a public outreach process, work with Counsel to begin drafting code language, etc. (March/April)

- Begin public hearing and BCC adoption process (April/May)

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Short-Term Rental Program Financing Proposed Pro Forma

Revenues

Source	Year 1 Amount	Year 2 Amount	Year 3 Amount
Transient Lodging Tax (pending TDC approval)	\$120,000	\$0	\$0
Lottery Dollars	\$100,000	\$100,000	\$0
Short-Term Rental Surcharge (8%)*	\$108,932	\$117,647	\$127,059
Carryover Balance	\$0	\$130,932	\$169,929
	\$328,932	\$348,579	\$296,988

Expenditures

Line Item	Year 1 Amount	Year 2 Amount	Year 3 Amount
Management Analyst 2 1.0 FTE**	\$163,000	\$171,150	\$179,708
Website Development	\$30,000	\$2,500	\$2,500
STR Data and Compliance Contract	\$5,000	\$5,000	\$5,000
	\$198,000	\$178,650	\$187,208

Notes:

Clackamas County currently has 639 registered STRs, staff has previously estimated 1700 total Countywide, or approximately a 37% compliance rate today

*Assumes an 8% annual increase in compliance for the duration of the pilot

**Assumes a 5% COLA

Numbers in *italics* are estimates

Financial analysis is still underway