

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Planning Session Worksheet

Presentation Date: 3/13/19 **Approx. Start Time:** 9:30 a.m. **Approx. Length:** 2 hours

Presentation Title: ZDO-273: Short-Term Rentals

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

Presenters: Jennifer Hughes, Planning Director; Martha Fritzie, Senior Planner; Nathan Boderman, Assistant County Counsel; Cheryl Bell, DTD Assistant Director

Other Invitees: Dan Johnson DTD Director; Danielle Cowan, Tourism Director; Jim Austin, Tourism Coordinator; Kevin Ko, Housing & Community Development Manager; Stephen McMurtrey, HACC Development Manager; Nicole Cross, Planner; Ellen Rogalin, Community Relations Specialist II; Michelle Amend, Code Enforcement Supervisor, Laura Zentner, BCS Director

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Board direction relating to four specific components of ZDO-273: Short-Term Rentals, a project led by the Planning & Zoning Division to determine if and how short-term rentals (STRs) should be regulated in Clackamas County.

EXECUTIVE SUMMARY:

The purpose of this policy session is to discuss work done to date and recommended direction for project L-4 in the Board-approved Long Range Planning Work Program for the current fiscal year - ZDO-273: Short-Term Rentals. The purpose of this project is to determine whether and how to regulate homes being used as short-term rentals (i.e. Airbnb, Vacasa, etc.) and to ultimately develop and adopt those regulations.

What is a short-term rental (STR)?

A short-term rental, or vacation rental, is the rental of part of, or a whole furnished home, apartment or condominium for a short-term stay, typically on a nightly or weekly basis. An operator/host typically has a business license, pays income and self-employment taxes, and lodging/hotel tax; some local governments also require a separate STR permit. Operators/hosts may be owners, renters, or property management companies. Short-term rentals are advertised on websites such as Airbnb, Vacasa, HomeAway, VRBO, VacationRentals.com, or Booking.com.

Most jurisdictions define “short-term” in this context as occupancy of less than 30 days at a time. Interestingly, the Oregon Revised Statutes defines “vacation occupancy” as not exceeding 45 days (ORS 90.100(50)(c)).

Why are we doing this now?

Currently the County’s Zoning & Development Ordinance (ZDO) does not clearly identify STRs as allowed in any homes in the county; and therefore, it is considered (from a zoning perspective) a prohibited use of a dwelling. However, given that 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, the Board directed the Planning and Zoning to look into the most effective ways to potentially allow and regulate short-term rentals (STRs). This regulation may be in the form of a land use application through the Planning and Zoning Division or through a STR registration administered by another division (or some other method).

What have we done so far?

Research. Planning staff has been conducting research to understand if and how other jurisdictions in Oregon are allowing and regulating short-term rentals and, more importantly, what is and is not working well with their regulations.

Over the last several months, Staff has gathered information from seven cities and ten counties¹. Of these, ten (59%) specifically allow and regulate STRs, with varying degrees of success; the remainder are similar to Clackamas County and do not specifically address STRs in their ordinances. Based on feedback from these jurisdictions and a search of published studies on the matter, the following are the main opportunities and challenges with regulating STRs.

Opportunities with allowing and regulating short-term rentals:

- a) Provides an additional source of income for owners
- b) Provides unique vacation destinations and encourages tourism
- c) Regulates which properties can and cannot be used as STRs, maximizing retention of affordable housing
- d) Can generate tax revenue by properly taxing STRs
- e) Allows for the creation of a process for enforcing and revoking permits on problem properties
- f) Provides a lodging option in communities for which there is not any other traditional lodging available.

Challenges with allowing and regulating short-term rentals:

- a) The variety of stakeholders do not always agree on how to regulate STRs; it can be a contentious process to establish rules
- b) Bad actors (public nuisances, noise, parking, trash, and "party" houses)
- c) Loss of neighborhood investment, loss of affordable housing
- d) Often hotel/transient tax is not paid
- e) Can be difficult to track number and density of STR units within neighborhoods and/or multi-unit buildings (only relevant, however, if regulations are written in such a manner that this would need to be tracked)

And some important lessons learned from jurisdictions who regulate STRs:

- a) The public hearing process was highly contentious with stakeholders on both sides who feel very strongly. Once adopted, jurisdictions are very weary to re-open public hearings to make amendments. It is important to get the ordinance right the first time.
- b) Enforcement! Even with a legal path to allowing STRs, enforcement remains an issue for many jurisdictions.

¹ Including: The Cities of Bend, Eugene, Hood River, Lincoln City, Portland and Salem and Benton, Clatsop, Crook, Deschutes, Grant, Hood River, Lincoln, Tillamook, and Washington Counties.

- Enforcement was not always clearly defined in the ordinance leaving questions as to how to warn, fine, or revoke a permit for a STR. Strong enforcement regulations are a necessity.
 - “Neighbor enforcement” is a tactic used by some to give neighbors the ability to contact the rental operator directly with an issue before contacting the jurisdiction. For example, Clatsop Co. and Tillamook Co. require operators to post on the property and notify neighbors with their direct phone number to handle noise or other complaints directly.
 - Some jurisdictions look to contract out enforcement work to companies such as STR Helper (a third-party service for tracking and enforcement).
- c) Zoning- or area-based ordinances may make sense for jurisdictions with vacation areas. For example, the City of Bend exempts resort areas like Mt. Bachelor Village from requiring a land use permit because these areas were developed to be predominantly vacation/resort rentals. They still require a business license and must pay lodging tax.
- d) “Legacy” properties and increases in home costs. For properties that transfer short-term rental approvals to new owners, the STR approval has become part of the value of the property and drives up the sales price. This is a larger issue in jurisdictions that regulate STRs based on a “density” or only allowing a fixed number in a particular neighborhood or area.
- e) Non-conforming (or “grandfathered”) uses are common with a land use path for approval. It is very important to think about how pre-existing rentals will be treated.

“Internal Stakeholder Group”. On January 10, 2019, Planning Staff hosted a meeting with an “internal stakeholders group” which included representatives from Planning & Zoning; Code Enforcement; Building Codes; Tourism; Health, Housing & Human Services; the Housing Authority; Septic & Onsite Wastewater Program; County Counsel; and Public & Government Affairs (representatives from Business & Community Services and the Sheriff’s Department were unable to attend). The intent was to include the various departments/divisions that may be affected by the permitting of short-term rentals, or that may ultimately be involved in the crafting and administering of the regulations. At that meeting there was an array of different perspectives and an extensive discussion about potential opportunities, concerns and issues around the use of dwellings as STRs.

Major takeaways and general agreement from this meeting include:

- The County needs to be thoughtful about regulations from an administration and enforcement standpoint, as well as an equity standpoint. As we make decisions about a potential STR program, we need to remain cognizant of the fact that additional budget and staffing may be required to administer such a program.
- Enforcement is a big concern. Code enforcement staff do not work 24-7 and cannot be the first point of contact for many of the complaints because they tend to occur in the evenings and on weekends.
- The ability to tie regulations into the collection of transient lodging taxes is important to help ensure all STR operators comply with the required tax, thereby resulting in more fair treatment of all transient lodging (hotels, motels, and STRs).

- Regulations that include required building inspections are problematic for the County as it would require an entirely new program and staff. This type of inspection could not be performed by existing Building Codes Division Staff because the County's current program is authorized by the State only to inspect new construction.
- The County Code may be a more appropriate location for STR regulations – using a business license/permit model – rather than in the zoning code. (This issue is discussed in more detail in the next section.)

Discussion areas for today's Planning Session:

Planning Staff has identified four areas for discussion in today's planning session. At this point, Staff requires general direction with which to begin public outreach and the drafting of regulations. Specific language in the regulations will be discussed at future policy sessions and/or public hearings.

(1) Where should STRs be allowed (if at all – in terms of both structure type and geographic location)?

Dwelling type: The most straightforward and equitable way to allow STRs (subject to reasonable regulations) is to allow any legally-established permanent dwelling to be used as a STR – with the exception of dwellings authorized by a land-use permit for a specific use (farm worker dwellings, temporary care dwellings, etc.). Due to the County's owner occupancy requirement for accessory dwelling units (ADUs), only one of the two dwellings on a lot with a legal ADU would be allowed to be used as an STR. If allowed in this manner, STRs would be allowed in multi-family development. In all cases, the owner of the property/dwelling(s) would be authorizing the use as a STR.

Alternatively, STRs could be allowed only in certain housing types: detached single-family dwellings, attached single-family dwellings, accessory dwelling units, plexes, and/or multi-family units. Staff can also look into whether the County can allow the use only within multi-family dwellings that are individually owned (condominiums) but not in rental apartments. This type of regulation could be specific to dwelling type or could be zoning-district based.

Geographic area: It may be appropriate to regulate the resort areas on Mt. Hood differently than the remainder of the unincorporated area because Mt. Hood is the County's main tourist destination. The communities on Mt Hood already contain a relatively large number of STRs, many of which have been operating for several decades. In addition, there are a number of condominiums, particularly in Government Camp, that were specifically developed as resort/vacation rental properties. Or, if the Board is inclined to *not* allow STRs generally in the County, the Mt. Hood area may be an appropriate location to make an exception and allow STRs.

Options:

1. Direct Staff to proceed with the necessary ZDO amendments to allow and create reasonable regulations for STRs in:
 - a. Any legally-established permanent dwelling (with the exception of dwellings approved through a specific process that would prohibit such a use, like farmworker dwellings), understanding that only one dwelling on a parcel with an ADU could be authorized for a STR.

- b. Only in certain housing type(s), as identified by the Board, which may include detached single-family dwellings, attached single-family dwellings, accessory dwelling units, plexes, owned multi-family units (condominiums) and/or rented multi-family units (apartments).
 - c. Only in legal dwellings in a specific location or locations identified by the Board, for example, in/near the resort areas on Mt. Hood.
2. Direct Staff to proceed with the necessary ZDO amendments to specifically prohibit STRs in the County.

Staff Recommendation:

Staff recommends Option 1a, largely for the purpose of engaging in a broad public outreach effort, but also because it provides the most equitable opportunities for property owners and the highest potential for revenues from transient lodging taxes.

(2) Where should the regulations reside – in the Zoning & Development Ordinance (ZDO) or the County Code?

Staff has identified two models for regulating STRs: (1) Regulations in the zoning code, which requires a land use application and approval for each STR, or (2) Regulations in the municipal code, requiring a license or registration for each STR. Some jurisdictions (who already have a general business license) require both land use approval and a business license.

Of those cities and counties from which information was gathered:

- Seven (41%) have no regulations for short-term rentals (all but 1 of these are counties)
- Eight (47%) regulate short term rentals through the zoning code, land use permit (all but 2 of these are cities and also require a business license)
- Two (12%) regulate short term rentals only through the municipal code, business license (both of these are counties)

Only 4 of the 10 counties in this data set have regulations for STRs. The one county (Hood River County) with the most broad-based regulations for STRs through their zoning code has strongly advised Staff to avoid this model and go the county code/registry route. The other county that includes STR regulations in their zoning code (Jefferson County) allows STRs only within a specific overlay, in the Camp Sherman vacation area; STRs are not allowed generally in that county.

There are a number of reasons why placing STR regulations and permitting in the County Code rather than the Zoning & Development Ordinance may be preferable:

1. Administration of the program could occur in any of a number of Departments – it, in fact, may be appropriate for Tourism, rather than Planning & Zoning, to administer an STR registry program.
2. It could allow for more flexibility for enforcement, as the Board would have more discretion to assign enforcement duties under the County Code. Enforcement of the zoning code is done by the Code Enforcement Division.
3. It would eliminate the creation of non-conforming land uses and a corresponding influx of applications to verify the legality of a potentially large number of existing STRs that may not meet the new standards. Current estimates of STRs operating in the County are as

high as 800-1,000 dwellings. With permitting in the County Code, each dwelling would be required to obtain a permit and would not be subject to State non-conforming land use rules. It should be noted that because the ZDO is silent on the status of STRs, it is unknown whether non-conforming uses would be created by the adoption of new ZDO regulations, but the County Code approach avoids the concern entirely, particularly if the Board decides to allow STRs in most dwelling types and all geographic areas.

4. Land use applications under the ZDO are subject to public notice requirements and appeals by any interested party, unless all of the criteria are clear and objective. This process can result in controversy and consume a great deal of staff time.

Options:

1. Direct Staff to proceed with drafting amendments to the County Code to include appropriate regulations and procedures for a STR registration/permit and enforcement.
2. Direct Staff to proceed with drafting amendments to the ZDO to include appropriate regulations and procedures for land use permit approval.

Staff Recommendation:

Staff recommends proceeding with Option 1. Staff feels strongly that the best place to house the permitting and regulations for STRs is in the County Code and not in the ZDO for the reasons listed above.

(3) What elements should the County consider for regulation with the permitting of a STR?

If STRs are to be allowed, the Board may wish to establish requirements and limits for the approval of a permit. Those jurisdictions that staff consulted, and which regulate STRs, all have a number of standards each STR needs to meet in order to address potential impacts associated with this use and to help ensure the safety of users. Typical elements that are subject to regulation include the following:

- a. Garbage. It is important to ensure garbage will not pile up on a property. This is typically and fairly easily taken care of with a requirement that the property has garbage pick-up service and covered garbage receptacles.
- b. Maximum occupancy. To help ensure safety and try to minimize noise and parking conflicts, many jurisdictions have limits on the number of persons per bedroom that are allowed in an STR. These limits are typically 2-3 persons per bedroom and are, admittedly, difficult to enforce (because County Staff will not be visiting in the middle of the night and counting people) but may help stop overcrowding of units in some cases.
- c. Maximum number of days rented annually. Some jurisdictions have limits on the amount of usage of the dwelling as a STR and may even have different standards/maximums in different areas of the city, or different permitting processes for different amounts of usage. The intent of these regulations is to limit the number of people coming and going in some neighborhoods that may be more sensitive to the transient nature of the STR use. These regulations can get fairly complicated and also may be difficult to enforce.
- d. Off-street parking. Some off-street parking is required by most jurisdictions and can be a set number of spaces or vehicles or it can be based on the number of bedrooms (i.e. 1 space per bedroom). Most also contain very strong statements to the effect that in no case shall vehicles block access for emergency vehicles. Typically, vehicles parked illegally in the right-of-way become an issue for the Sheriff's Department to enforce.

- e. Noise. Noise/nuisance tends to be the issue at the top of the list of concerns when the topic of STRs is discussed. Other jurisdictions have addressed this by requiring owners of the STR to agree to and post in their unit “quiet hours”, based on their jurisdiction’s noise ordinance. In addition, many require owners of the STR to mail a notice to neighbors with a contact name and number, which becomes the first point of contact for a complaint about noise (or other problems) in the STR. Violations of the noise ordinance are also enforced by the Sheriff’s Department.
- f. Transient lodging taxes. Regardless of permitting method for STRs, all jurisdictions include a requirement to register and pay transient lodging taxes.
- g. Building and fire safety. The safety of the STR and availability of such features as fire extinguishers, CO2 alarms/sensors, and smoke detectors are important for the protection of the users of the STR. Some jurisdictions have an inspection process for the permitting of the STR. This process can be time consuming and potentially expensive for the applicant. In addition, County Building Staff is not authorized to do this type of inspection. If the County were to implement an inspection process, it would necessitate the creation of an entirely new program with new staff. The Internal Stakeholders Group spent a fair amount of time discussing this very issue and came to the conclusion that these items could be handled with a self-reporting, affidavit-type system (much like the State requirement of a landlord of a regular “long-term” rental unit to provide signed documents about the availability of working smoke detectors, lead paint disclosures, etc.).

Options:

- 1. Direct Staff to draft regulations to address all of the items (a-g) above.
- 2. Direct Staff to draft regulations to address only some of the items (a-g) above.
- 3. Direct Staff not to draft regulations addressing the items above.

Staff Recommendation:

Staff recommends proceeding with Option 2, and to include regulation for all the items listed with the exception of item c (maximum number of days annually), due to the complexity of this regulation and the difficulty in enforcement, and regulating (building and fire safety) via an affidavit system.

(4) What type of public engagement does the Board feel is appropriate for this project?

Planning and PGA Staff intend to engage in public outreach regarding the potential regulation of STRs. At this time, we do not anticipate there will be a need to create a technical advisory group or citizen advisory group, as extensive research into the issues in similar jurisdictions in the region, as well as research into national publications, led to a fairly consistent list of opportunities, constraints, lessons learned and potential regulation.

Public outreach is expected to include reaching out to and attending meetings of interested Community Planning Organizations (CPOs), Hamlets or other citizen groups upon request. In addition, Staff expects to host at least one public meeting in the Mt. Hood area. Other outreach efforts will include social media and website postings, press releases and public hearings for adoption of any regulations proposed.

Options:

1. Direct Staff to proceed with a public outreach plan that includes outreach to community groups; a public meeting in the Mt. Hood area, on-line and social media posting and public hearings.
2. Direct Staff to create and implement a more intensive public outreach program to include advisory committee(s) and more opportunities for public open houses before staff embarks on the tasks in Option 1. This option is most appropriate if the Board wishes to consider regulations beyond those identified in (3), above.

Staff Recommendation:

Staff recommends proceeding with Option 1 for the reasons listed above but also because of a desire to complete this project in a timely manner. Staff expects the remainder of this project including public outreach (under Option 1), drafting regulations and the adoption process can be completed by July-August 2019.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the funding source?

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 permit and enforce the use of dwellings as short-term rentals, there will likely need to be additional staffing and funding made available for the Divisions/Departments that are responsible for both the implementation and enforcement of the new regulations. The amount of additional staffing will be determined, in part, by the scope of the new regulations, the frequency with which STR permits must be renewed, and the level of enforcement undertaken.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department’s Strategic Business Plan goals?

The project 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 will engage in public outreach with Community Planning Organizations and other groups 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:

Options for the Board are embedded in each of the four discussion items, noted above.

RECOMMENDATION:

Staff recommendations are embedded in each of the four discussion items, noted above.

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

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