



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL
FROM: DANELLE COOK, HOUSING PROGRAM MANAGER
RE: UPDATE ON STR REGULATIONS AND TABLING THE FIRST READING OF ORDINANCE 22-10
DATE: SEPTEMBER 13, 2022

Summary and Background: At the June 14, 2022, June 28, 2022, and August 23, 2022 Work Sessions, Town Council identified needed amendments to Chapter 110 of the Town Code concerning short-term rental regulations. Since then, Staff prepared an Ordinance to implement a short-term rental license cap and define a license type that would exempt locals who utilize their STR as a primary residence from the license cap. While reviewing the Ordinance in preparation for the September 13th Town Council meeting, the Town Attorney discovered a case decision issued by the Supreme Court on August 22, 2022 that focused on the unconstitutionality of an STR provision that discriminated against out-of-state property owners. For that reason, the Town Attorney recommends that the Ordinance be tabled so that Town Council can consider alternative options to the exempt license type. The Town Attorney will present his findings at the September 13th meeting.

Analysis: The City of New Orleans imposed a residency requirement for STRs in residential neighborhoods. The policy prohibited second homeowners from short-term renting their properties, and only allowed short-term rental licenses to be issued to primary residents. Last month, the United States Court of Appeals for the Fifth Circuit held that the residency requirement discriminated against interstate commerce and is therefore considered unconstitutional under the dormant Commerce Clause. The Court concludes that the residency requirement can survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. The Court's opinion states that for the purpose of preserving neighborhood character and affordable housing, the City could alternatively cap the number of licenses available. The case decision has been provided as an attachment to this memo.

At the August 23rd Work Session, Town Council directed Staff to draft an Ordinance that would cap the maximum number of short-term rental licenses at 22% of the residential housing stock and exempt local property owners who utilize their STR as a primary residence from the license cap. One of the main objectives of regulating short-term rentals is to mitigate negative impacts to the local community, including the availability and affordability of housing. A local resident who short-term rents their primary residence, either while on vacation or as a shared home situation, supports housing affordability for local residents. However, due to this new ruling, Staff recommends removing the exempt license type for primary residents from the Ordinance.

An alternative that may be considered is defining a license type that exempts those who short-term rent for a set number of nights per year from the license cap. A total of 19 locally-owned STRs anticipate renting 30 days or less per year. A survey published by the *U.S. Travel Association* in 2018 estimates that the average American employee takes 17.2 vacation days per year. This data suggests that any locally-owned STRs renting 30 days or less per year, may be a primary residence that is only made available on the home sharing market while the owner is on vacation. If Town Council were to select this option, the Ordinance would include a license type that would exempt any property owner, whether in state or out of state, who only rents for a maximum of 30 nights per year (or any other number that Council deems appropriate) from the license cap.

However, after exploring the ‘*use-it-or-lose-it*’ policy, Staff determined that it is not possible to determine the exact number of nights a property is being short-term rented. The software can determine if the STR booking calendar is blocked off, but there is no way to determine if the property was short-term rented during that time, if it was used by the owner, or if the calendar was blocked intentionally to prevent it from being booked. Therefore, the STR calendar availability is not an accurate indicator of rental activity. Additionally, tax remittance data does not always provide the level of detail needed to determine the exact number of nights each property is being short-term rented. Because of this, Staff does not recommend exempting properties that only short-term rent for a set number of nights due to the enforcement challenges describe above.

Instead, Staff recommends increasing the STR license cap from 22% to 25% of the residential housing stock. Approximately, 119 existing STR license holders would qualify for the exempt license type. By increasing the cap from 22% to 25%, the total number of STR licenses would therefore be equal to the original intended amount.

Financial Impact: Limiting the quantity of STR licenses that can be issued will also limit the amount of revenue generated by STR licenses. Defining an exempt license type could allow for a slight increase in the amount of STR revenue collected from license fees and taxes.

Alignment with Strategic Plan: The Strategic Plan identifies priorities such as *Inclusive Community*, *Thriving Economy*, and *Vibrant Culture and Recreation*. Additionally, the Strategic Plan seeks to increase the number of residential housing units occupied by Frisco residents to 50%. Balancing the quantities of short-term rentals and workforce housing units is key to achieving these priorities.

Staff Recommendation: It is recommended that the Town Council direct Staff to revise the Ordinance to eliminate the exempt license type and increase the STR license cap from 22% to 25% of the residential housing stock.

Approved By:

Thad Renaud, Town Attorney
Tom Fisher, Town Manager
Diane McBride, Assistant Town Manager
Leslie Edwards, Finance Director

Attachments:

Attachment 1: Court of Appeals Ruling