



MEMORANDUM

P.O. Box 4100 ♦ FRISCO, COLORADO 80443

TO: MAYOR AND TOWN COUNCIL

FROM: DANELLE COOK, HOUSING PROGRAM MANAGER

RE: ORDINANCE 22-10: AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, COLORADO, BY AMENDING CHAPTER 110, CONCERNING THE LICENSING OF BUSINESS, AT SECTIONS 110-38, CONCERNING THE REQUIREMENT FOR A SHORT TERM RENTAL LICENSE; AND 110-39, CONCERNING SHORT-TERM RENTAL LICENSE APPLICATION, TERM, RENEWAL AND NON-TRANSFERABILITY; ALL IN ORDER TO ESTABLISH A LIMIT ON THE TOTAL NUMBER OF SHORT-TERM RENTAL LICENSES ISSUED BY THE TOWN.

DATE: SEPTEMBER 27, 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. Based on Council direction, staff prepared an Ordinance for consideration at the September 13, 2022 meeting 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.

While reviewing the draft ordinance, the Town attorney discovered a recent case decision issued by the Supreme Court that determined that an STR regulation exemption for primary residence homeowners violated the dormant Commerce Clause by discriminating against out-of-state property owners. The Town attorney therefore recommended tabling the first reading of the Ordinance so that Town Council could consider alternative options to the exempt license.

At the September 13th meeting, Town Council directed staff to return to the September 27th meeting with the first reading of an Ordinance that would establish the STR license cap at 25% rather than 22% of the residential housing stock, eliminate the exempt license type for primary residents, include exemptions for properties that are under construction or under contract, and include exemptions to allow the STR license to transfer under certain circumstances. Staff estimates that approximately 119 existing STR license holders may have qualified for the exempt license type. By increasing the cap from 22% to 25%, the total number of STR licenses would therefore be approximately equal to the original intended amount. The Ordinance is included as an attachment to this memo and the STR regulation revisions that are included in the Ordinance are outlined below.

Analysis: At the September 13, 2022 meeting, Town Council directed staff to prepare an Ordinance which would limit the quantity of short-term rental licenses issued within Town boundaries to a maximum of 25% of the residential housing stock and include exemptions for properties that are under construction or under contract. The proposed text is included in the Ordinance as an addition to Town Code Section 110-38, as follows, with the underlined text showing the additions:

Effective May 1, 2019, it shall be unlawful for an owner to lease or advertise for lease, or to permit the leasing or advertising for lease, of any short-term rental property within the Town of Frisco without a valid license for the same issued pursuant to this Article. No person who has obtained a license pursuant to this Article shall be required to hold a general business license pursuant to Article I of this Chapter for the same business activity. No person who has obtained a license pursuant to this Article shall be required to hold a sales tax license pursuant to Chapter 160 of this Code for the same business activity.

Except as otherwise set forth in this Section, at no time shall the Town issue a license that would cause the total number of licenses issued pursuant to this Article to exceed the number that is equal to twenty-five percent (25%) of the total number of residential housing units within Town boundaries. For purposes of this Section, the Town determines that as of October 11, 2022, and until January 3, 2023, the total number of residential housing units within the Town boundaries is Three Thousand Six Hundred (3,600). On the first business day of each calendar year, the Town's Community Development Director shall determine and certify in writing to the Town Clerk the then-current number of residential housing units within the Town boundaries. Such determination shall be made by the addition (if any) and the subtraction (if any) of residential housing units completed or demolished during the immediately prior calendar year from the number initially established herein, as modified from year to year in accordance with this Section. Such number shall remain the total number of residential housing units for purposes of this Section until the next subsequent certification on the first business day of the subsequent calendar year.

Any part of the foregoing paragraph notwithstanding, if a person has made a complete application for a building permit for the construction of a new residential unit on or before October 11, 2022 and, within twenty (20) days from the date of issuance of a certificate of occupancy for such unit, has made a complete application to the Town for a license to be issued pursuant to this Article, the person shall be eligible to receive such a license and the renewal of such license regardless of the fact that the license could not otherwise be issued or renewed due to the limitation on the total number of licenses that may be issued under this Section.

Any part of the foregoing paragraph notwithstanding, if a person has entered into a written agreement to purchase a residential unit on or before October 11, 2022 and, within twenty (20) days after the closing of the sale on the unit, has made a complete application to the Town for a license to be issued pursuant to this Article, the person shall be eligible to receive such a license and the renewal of such license regardless of the fact that the license could not otherwise be issued or renewed due to the limitation on the total number of licenses that may be issued under this Section.

At the June 14, 2022 Work Session, staff proposed to revise the short-term rental regulations to require contact information for the property owner, since the property owner is not always the person applying for the STR license. Section 110-39.A.1. of the Code, concerning the license application, would also be revised to add the following language:

1. The full name, residential address and telephone number of the applicant, who must be the owner of the short-term rental property;

By adding this language, the owner becomes the license holder, therefore making the ordinance enforceable against the owner.

To address Town Council's request to allow exceptions to the transferability of the STR license, Section 110-39.D. of the Code, concerning the transferability of license, would be amended to include the following additional language:

- D. *Transferability of license.* No license issued under this Article shall be transferable and no license is valid as to any person or entity other than the person or entity named thereon, excepting spouses and partners in a civil union. The issuance and renewal of a license pursuant to this Article is a privilege, not a right, and the Town may determine at any time that the allowance of the use of property as short-term rental property is not, or is no longer, in the best interests of the health, safety or welfare of the citizens of the Town, and may amend or repeal this Article accordingly.

Any part of the first sentence of the foregoing paragraph notwithstanding, a license issued under this Article shall not be deemed to have been transferred if there has been a transfer in legal title or beneficial interest to the property that is the subject of the license as a result of:

1. Any transfer where the United States or any agency of the state, any county, city, municipality, district or other political subdivision of the state is either the grantor or the grantee;
2. A gift of real property, where there is no consideration other than love and affection or a charitable donation;
3. A transfer between the same parties creating or terminating a co-ownership in real property;
4. The transfer of title or change in interest in real property by reason of death, pursuant to a will, or the law of descent and distribution;
5. A reorganization, merger or consolidation of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock, or transfers made to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization, in each instance if that entity, association or organization is owned by the persons by whom such transfer was made and so long as such owners have the same relative interests in the new entity, association or organization as they had in the real property immediately prior to said transfer and there is no consideration other than their respective interests in the new entity, association or organization, or transfers made from a corporation,

- partnership, limited partnership, joint venture, business trust or other association or organization to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if, at the time of the transfer, the identities and ownership interests of the persons who own the transferor entity, association or organization are the same as the identities and ownership interests of the persons who own the transferee entity, association or organization, whether or not consideration is provided;
6. A transfer made pursuant to a confirmed bankruptcy plan or pursuant to an order by a court of competent jurisdiction under the Bankruptcy Code or in an equity receivership proceeding;
 7. A transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded for the purpose of making minor boundary line adjustments, removing clouds of titles, or granting rights-of-way, easements or licenses;
 8. Any decree or order of a court of record quieting, determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding;
 9. Any transfer between spouses or former spouses made pursuant to a separation agreement, decree of legal separation or dissolution of marriage;
 10. Any transfer by deed in lieu of foreclosure if the grantee is the person holding the obligation being cancelled in whole or part;
 11. Any transfer by sheriff's deed, trustee's deed or other conveyance of real property in connection with an execution sale, foreclosure sale by the public trustee under a power of sale, court decree foreclosing a mortgage, deed of trust or other security instrument or court decree of lien foreclosure, provided that the grantee is the person holding the obligation or instrument upon which the proceeding is based; or
 12. Any transfer pursuant to IRS 1031 regulations concerning like-kind exchanges that is from an Exchange Accommodation Titleholder that has obtained a license pursuant to this Article, to the person for whose benefit the Exchange Accommodation Titleholder took title to the property.
 13. For purposes of enforcing the provisions of this Subsection D, the Town's Finance Director may require that any person claiming that a license issued under this Article should not be deemed to have been transferred provide an affidavit, signed under penalty of perjury, that alleges fact sufficient to cause the Director to believe, in the Director's reasonable discretion, that the transfer should not be deemed to be a transfer pursuant to this Subsection.

Financial Impact: To apply for a short-term rental license, the applicant must submit a \$250 fee. The same fee is applied annually in order to renew the license. In addition to the license fee, the STR owners must collect and remit taxes in an amount equal to 15.725% of the gross revenue generated by the STR, which includes the 5% excise tax that went into effect June 1, 2022.

The STR revenue is used to pay for staff time, STR software, workforce housing, the Information Center, recreation, special events and marketing, as well as general operating expenses. In effect, limiting the quantity of STR licenses that can be issued will also limit the amount of revenue generated by STR licenses.

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: Based on the information contained in this report, it is recommended the Town Council approve Ordinance 22-10, on first reading.

Approved By:

Thad Renaud, Town Attorney
Tom Fisher, Town Manager
Don Reimer, Community Development Director
Leslie Edwards, Finance Director

Attachments:

Attachment 1: Ordinance 22-10