



Weber County Planning Division

Date: 11/12/2020
To: Ogden Valley Planning Commission
From: Scott Perkes – Planner | Weber County Planning Division

Subject: Short-term rental regulation scenarios and updated draft ordinance

Commissioners,

During the commission's 10/27/2020 public hearing of the short-term rental regulation scenarios and draft ordinance, the Commission requested that staff develop a clarified regulation scenario to be known as the "Proof of Concept Scenario". The enclosed ordinance (see **Attachment "A"**) has added this scenario and clarified its differences with the "Business as Usual Scenario" that was reviewed during the meeting. Please see Page 1 of the updated ordinance to read through the 5 clarified scenarios, including the requested "Proof of Concept" Scenario.

Proposed Edits to the Draft Ordinance

Following the 10/27/2020 public hearing, staff has followed-up on various commission and public comments in the form of modifications to the draft ordinance language. These modifications are shown in the ordinance with redlined edits. These edits include the following:

1. Under the Prohibitions section, item (c) *Private Covenants* has been rewritten with proposed language from Clark Duellman, who is a member of the public and an attorney specializing in HOA law. Please see Attachment "B" below for an explanation of the proposed language revision.
2. Mr. Clark Duellman has also provided some proposed language for item (2)f. under the *Licensing Procedure* section. This language has been proposed to better match the language being updated in item (c) *Private Covenants* and to better explain the required documentation required for applicants to submit to staff at the time of licensure to verify STRs are allowed based on their neighborhood and any potential covenants that may be associated. Again, see Attachment "B" for Mr. Duellman's explanation for this proposed language.
3. Lastly, under the occupancy section, subsection (2) has been updated to clarify multi-contract STR use within lock-off units that may be associated with approved developments within the DRR-1 zone or approved PRUD developments.

Western Weber Planning Commission Action 11/10/2020

The Western Weber Planning Commission held a public hearing to discuss the five potential regulation scenarios and associated draft ordinance during their 11/10/2020 meeting. Following public comment, the commission moved to table the item to allow the Ogden Valley Planning Commission to review the requested "Proof of Concept" scenario prior to them making a formal recommendation to the County Commission.

I look forward to wrapping-up our discussion on this topic during the upcoming 11/17/2020 meeting. Please feel free to reach out should you have any questions.

Scott Perkes
Planner – Weber County Planning Division
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Attachments:

Attachment A – Draft STR Ordinance Including 5 Potential Regulation Scenarios

Attachment B – Written Comments Regarding Private Covenants and Propose Alternative Language– Clark Duellman

Attachment A

Sec 108-23 Short-Term Rentals

The four regulation scenarios listed below represent a few options for potential short-term rental regulation. These scenarios have been created to facilitate discussion. Any future adopted regulation may or may not follow one or none of these scenarios.

Open Scenario:

Any residential property within the unincorporated Weber County may obtain a short-term rental license to rent a sleeping room, apartment, dwelling unit, or dwelling for a time period of less than 30 days.

- 3rd Party Enforcement **is utilized** to augment county enforcement efforts
- This scenario would be subject to the requirements and operational standards of this chapter.

Open/Limited Scenario:

With exception to properties in the FR-1 zone, any residential property within the unincorporated Weber County may obtain a short-term rental license to rent a sleeping room, apartment, dwelling unit, or dwelling for a time period of less than 30 days subject to the requirements and standards of this chapter.

- This scenario also employs a geographic separation requirement that would prevent STR properties from being located adjacent to, or within a specified distance of another STR property.
- 3rd Party Enforcement **is utilized** to augment county enforcement efforts
- This scenario would be subject to the requirements and operational standards of this chapter.

Business as Usual Scenario:

The rental of a sleeping room, apartment, dwelling unit, or dwelling for a time period of less than 30 days is considered a short-term rental. Short-term rentals are allowed only when listed as either a permitted or conditional use in a specific zone or when approved as part of a planned residential unit development (PRUD).

- This language is unchanged from existing regulation found in Sec. 108-7-25 "Nightly Rentals"
- 3rd Party Enforcement **is NOT utilized** to augment county enforcement efforts
- This scenario would **NOT be Subject** to the requirements and standards of this chapter.

Proof of Concept Scenario:

The rental of a sleeping room, apartment, dwelling unit, or dwelling for a time period of less than 30 days is considered a short-term rental. Short-term rentals are allowed only when listed as either a permitted or conditional use in a specific zone or when approved as part of a planned residential unit development (PRUD).

- This language is unchanged from existing regulation found in Sec. 108-7-25 "Nightly Rentals"
- 3rd Party Enforcement **is utilized** to augment county enforcement efforts
- This scenario would be subject to the requirements and operational standards of this chapter.

Closed Scenario:

The county will continue to allow STR licenses to be issued in the DRR-1 zone going forward. Except for existing owners with a valid conditional use permit and business license, STRs will no longer be allowed as a conditional use in the FR-3 zone. Owners within existing PRUD developments (with approved STR use) will be allowed to obtain an STR license, or continue renting if already licensed. New PRUD developments will no longer be approved with the STR use.

- 3rd Party Enforcement **is NOT utilized** to augment county enforcement efforts
- This scenario would **NOT be Subject** to the requirements and standards of this chapter.

Commented [PS1]: This language is unchanged from the existing Sec. 108-7-25 "Nightly Rentals"

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Attachment A

Sec 108-23-X Purpose And Intent

There are benefits to allowing owners of residential units within the County to rent their dwelling units for short periods of time. Short-term rental of dwelling units also brings capacity and diversification to the visitor-accommodation market. However due to the potential for adverse impacts, short-term rentals must be regulated by the County to protect the health, safety, and welfare of owners, neighbors, and visitors.

The intent of this Chapter is to establish procedures and standards by which residential short-term rentals can be provided to visitors and tourists in a manner that protects both the quality of their experience, and the communities in which they are located.

Sec 108-23-X Applicability

Four applicability scenarios for consideration: "Open", "Open/Limited", "Business as Usual", "Proof of Concept", and "Closed".

Sec 108-23-X Prohibitions

A short-term rental license will not be issued for any of the following:

- (a) *Accessory Buildings and Accessory Dwelling Units.* Short-term rentals are not allowed in any accessory building, including licensed accessory dwelling units (ADUs), unless specifically provided for in other areas of this land use code. A property that contains a licensed ADU is not eligible to obtain a short-term rental license for the primary residence.
- (b) *Deed Restricted Housing.* Short-term rentals are not allowed in properties that have been deed restricted for affordable or workforce housing.

~~(c) Private Covenants.~~ A short-term rental license will not be issued for any property that is subject to any recorded private covenants that restrict the property's use for short-term rentals, regardless of whether or not such private covenants are enforced by a homeowners association or committee. Private covenants may be identified as covenants, conditions and restrictions (CC&Rs), protective covenants, restrictive covenants or neighborhood covenants. ~~A short-term rental license will not be issued for any property that is subject to a private covenant that restricts the property's use for short-term rentals.~~

~~(d)~~(c) Sec 108-23-X Short-Term Rental License Required

- (a) *Licensing.* It is unlawful for an owner to rent any property for a time period of less than 30 days within the unincorporated area of Weber County without a valid short-term rental license pursuant to this Chapter. An issued short-term rental license shall also be considered a land use permit for the purpose of operating a short-term rental unit.

(b) *Geographic Separation of Licenses.* With exception to the DRR-1 zone, PRUD developments with short-term rental approvals, and properties in the FR-3 zone with valid short-term rental licenses at the time of the adoption of this chapter (XX/XX/20XX), all licensed short-term rental units shall be located a minimum of 500 feet from other licensed short-term rental units.

(c) *Initial Licensing Period.* Following the adoption of this chapter, County staff will process short-term rental license applications by the order in which they are received. License applications that are found to

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Attachment A

have a proposed short-term rental unit within an existing 500-foot separation buffer will be denied until such a time in which a nearby license/s creating the encumbrance become expired or revoked.

(d) Licensing Procedure

- (1) The owner or authorized representative shall submit a notarized short-term rental license application on a form provided by the Planning Division, and shall pay the application fee set by County Commission resolution.
 - (2) Applications shall be accompanied by the following materials:
 - a. Detailed floor plan and site plan of rental property indicating all areas allowed to be occupied by short-term occupants
 - b. Parking plan demonstrating compliance with the parking standards established in Sec XXX-XX-X
 - c. Trash disposal and collection plan demonstrating compliance with the trash disposal and collection standards established in Sec XXX-XX-X
 - d. Proof of homeowners' and liability insurance
 - e. Preliminary title report dated within 30 calendar days prior to the submittal of an application.
- ~~f. For properties that are subject to any recorded private covenants, applicants must submit a letter from the community's homeowners association or committee, or submit a copy of the private covenants including any amendments to such private covenants, to verify the short-term rental of dwellings is not restricted. For properties located within an HOA, applicants must submit either a letter from the HOA board, a copy of the community's Covenants, Conditions, & Restrictions (CC&Rs), or other acceptable documentation verifying the community does not have a regulation prohibiting the short-term rental of dwellings.~~
- ~~g.f.~~ Outdoor lighting plan showing compliance with Section 108-16.
- ~~h.g.~~ Submission of the name and contact information associated with the individual or management company being designated as the Responsible Agent.
- ~~i.h.~~ Signed acknowledgement by the owner and responsible agent that they have read this short-term rentals ordinance and understand the licensing, operational standards, and violation structure.

(e) *Application Review Procedure.* Upon submission of a complete application for a short-term rental license, staff shall circulate the application to the Planning Division, Building Department, Fire District, Health Department, and any other reviewing agency deemed appropriate for adequate review and approval of the license. Reviewing agencies shall have 30 days to review the submitted plans and return any requests for additional information or conditions of approval to the applicant. Applicants shall have 60 days to comply with review agency requests or the application will be removed from consideration.

(f) *Issuance of License.* All licenses shall be issued to property owners. Licenses are tied to the owner for a specific property and are non-transferable to other properties or other owners, except to individuals who are next of kin. Licenses shall be issued for a period of one year and shall expire at the end of each calendar year.

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(g) *License Renewal*. Existing licenses must submit for renewal and pay the required fee by no later than December 1st of each year to remain valid through the next calendar year. Licenses issued anytime mid-year will be required to renew their license by December 1st of the same year in order to become concurrent with the sequential annual licensing cycle. Owners wishing to renew a license must provide:

- (1) License renewal application
- (2) Inspection report (if required by Sec. XXX-XX-X)

Sec 108-23-X Property Inspection

(a) *Initial property inspection*. Properties applying for their first short-term rental license shall be inspected for compliance with the provisions of this chapter and other applicable sections of this Land Use Code. The Planning Division shall have the option of designating a county inspector or a 3rd party building inspector. Any deficiencies found during this initial inspection shall be resolved to the satisfaction of the inspector prior to the release of a short-term rental license. Should the deficiencies not be resolved within 90 days from the time of initial inspection, the application shall be removed from consideration and a short-term rental license will not be issued.

(b) *License renewal property inspection*. The County, at its discretion, may require that a property be inspected prior to the renewal of an existing license. The Planning Division shall have the option of designating a county inspector or a 3rd party building inspector. Should the property fail the inspection, the owner shall have 90 days to bring their property into compliance or the license will be suspended. A license may be immediately suspended should life/safety concerns arise during the inspection. If a license is suspended due to life/safety concerns, the property owner must rectify the concerns prior to the license suspension being lifted.

Sec 108-23-X Applicable Taxes And Remittance

Owners of short-term rentals are responsible to collect and remit all applicable state and local taxes. Owners who fail to collect and remit applicable taxes during the license period shall have their short-term rental license suspended and shall not be eligible to renew their license for the next year. To have their license reinstated and renewed, owners may submit payment for all unpaid back taxes in addition to payment of an administrative penalty as established in Sec XXX-XX-X for a major violation.

Sec 108-23-X Responsible Agent

The owner of a short-term rental shall appoint a Responsible Agent for the rental property. This appointed agent may be the owner, independent property manager, or a professional property management company. The appointed responsible agent shall be on-call to manage the property during any period within which the property is occupied. This agent must be able to respond, in person if needed, within 60 minutes to address any complaints, to the best of their ability, which may arise from the operation of the short-term rental. A responsible agent is not required to, and should not, place themselves in a situation that could cause them physical harm in order to attempt to address a complaint. The owner shall notify the Planning Division within three days of a modification to the appointed responsible agent and shall provide name, address, and telephone number of any newly appointed agent. It is the owner's responsibility to update this information throughout the term of the license.

Sec 108-23-X Operational Standards

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(a) *Information Dissemination Requirements.* The owner shall post the following information in a prominent and visible location:

- (1) *Internal posting.* Each licensed short-term rental property shall have the following information posted in a conspicuous location where it can be easily viewed by tenants:
 - a. Short-Term Rental License number;
 - b. Contact information for the owner and responsible agent, including a phone number for 24-hour response to emergencies;
 - c. The property's maximum occupancy;
 - d. The property-specific parking plan including the maximum number of vehicles allowed to be parked on the property and applicable parking rules;
 - e. Description of the location/s of fire extinguishers and emergency egress routes;
 - f. Good neighbor requirements regarding noise, parking, trash pickup, and fire restrictions;
 - g. Current fire restriction information as disseminated through the Weber County Fire District website; and
 - h. Any other information deemed necessary by the reviewing agencies to ensure the public's health and safety.
- (2) *Street Addressing.* Each licensed short-term rental property shall have its assigned street address posted externally in a conspicuous location where it can be easily viewed day or night from the adjacent access way.

(b) *Advertising Requirements.* As provided in UCA 17-50-338, the following advertising requirements are not intended to prohibit an individual from listing a property for short-term rental on any short-term rental website. All advertising for a short-term rental property shall include:

- (1) The property's short-term rental license number
- (2) The property's maximum permitted occupancy
- (3) Maximum parking capacity
- (4) A digital link to the County's short-term rental regulations
- (5) The following language shall be included verbatim in a prominent location of the advertisement:
"Any advertisement for a short-term rental property in unincorporated Weber County, Utah, that does not provide a unique license number is unlikely to be a lawfully licensed short-term rental."

(c) *Occupancy*

- (1) *Occupancy Limits.* The maximum occupancy for a short-term rental property shall be no more than two people per bedroom, plus four people up to a maximum of 10 people.
 - a. A property's maximum occupancy may be reduced due to a property's unique characteristics, including but not limited to, limited parking, septic/sewer system capacity, culinary water rights, etc.
 - b. A greater maximum occupancy may be approved following additional review and approval of applicable reviewing agencies and the provision of additional components that would otherwise limit capacity including, but not limited to, fire suppression systems, parking, septic/sewer capacity, culinary water rights, sleeping rooms, etc.

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- (2) *Single Contract.* With exception to condominiums with approved lock-off units in the DRR-1 zone or PRUD developments with approved short-term rental use, owners shall not concurrently rent individual rooms or areas to unrelated parties for the same night or nights.
- (3) *External sleeping accommodations prohibited.* All sleeping accommodations must be maintained internal to the licensed dwelling unit as indicated by the floorplan that was submitted and approved during the licensing process. External accommodations such as yurts, teepees, tents, or other temporary structures may not be used for sleeping accommodations or as a means to increase the maximum permitted occupancy.
- (4) *Duration.* , No licensed short-term rental unit may be rented for less than **three** consecutive days, with exception to the following areas:
- Licensed properties within the DRR-1 zone
 - Properties located within PRUD developments with short-term rental approval.
 - Properties located within the FR-3 zone that have obtained a valid conditional use permit and short-term rental license prior to **XX-XX-XXXX**.
- (d) *Parking.* In addition to the parking requirements for dwellings, as outlined by Sec. 108-8-2 of this Land Use Code, the following parking regulations are also required for all licensed short-term rental properties.
- All vehicles of occupants and visitors of a short-term rental property shall be parked only within the property's boundary lines. Additionally, no more than **25%** of the property's front or side yard setbacks shall be dedicated to parking.
 - No parking is allowed within the property's adjacent rights-of-way.
 - No more than one parking space per sleeping room may be provided.
 - No vehicles shall be parked on the lawn or landscaped areas of the property.
 - No person shall be permitted to stay overnight in any vehicle which is parked at the property.
 - No vehicles with a passenger capacity of greater than sixteen **(16) persons** may be parked at the property.
- (e) *Noise.* At no time shall the noise emanating from the property exceed **65 dB** as measured from the property line. Between the hours of **10:00 pm and 8:00 am**, no sound exceeding **55 dB**, and no amplified or reproduced sound, shall be allowed as measured from the property line.
- (f) *Trash disposal and collection.* All short-term rental properties shall provide a trash disposal and collection plan at the time of license application to ensure that trash containers are not left outdoors where they can cause issues for wildlife, snow removal operations, or cause unsightliness. With exception to the property's assigned trash pick-up day, trash containers must be stored behind the property's front setback line and must be shielded from the view of adjacent public rights-of-way. The designated responsible agent shall ensure that any trash generated that exceeds the typical pick-up schedule is collected and removed from the property as needed on a case by case basis. Properties with larger maximum permitted occupancies may require the procurement of additional trash cans to accommodate the volume of anticipated trash being generated.
- (g) *Outdoor lighting.* Incorporated herein for all properties located in unincorporated Weber County desiring a short-term rental license, all outdoor lighting associated with a short-term rental shall at all times comply with the exterior lighting requirements set forth in Sec 108-16 of the Land Use Code.

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Attachment A

(h) *Signage*. On-site signage intended to advertise the property as a short-term rental is not permitted anywhere on the property or adjacent right-of-way.

(i) *Fire safety*.

- (1) The property must have primary access along a public right-of-way or access easement that meets the fire marshal's requirements for a fire access road.
- (2) The property must have a fire prevention system as approved by the fire marshal.
- (3) Outdoor fire pits must be permanently affixed natural gas or propane gas fixtures.
- (4) Smoke and carbon monoxide detectors must be installed and maintained per current building and fire codes.
- (5) Fire extinguishers must be placed in an approved location on each level of the property and adjacent to outdoor fire pits.
- (6) An emergency egress plan must be posted in a conspicuous location on each level of the property.
- (7) Properties located within the Wildland-Urban Interface (WUI) area shall comply with the current Wildland-Urban Interface code requirements.

Sec 108-23-X Complaints And Violations

(a) *Complaints*. The Planning Division requires all complaints regarding the operation of any short-term rental unit to be made through the County's short-term rental hotline or website.

- (1) Complaints concerning the use or occupancy of a licensed short-term rental unit may be made to the County through the County's short-term rental hotline or website. The subject of the complaint may include, without limitation, such things as parking, trash, noise, or other concerns related to the short-term rental unit. The complaining party will then be provided with a reference number associated with their complaint; however, anonymous complaints made through the website or call center will not be processed.
- (2) When a complaint concerning a short-term rental unit has been received, contact to the responsible agent for the unit will be attempted by a County designee using the telephone number on file with the County. If the responsible agent can be reached by phone, the agent will be notified of the details of the complaint as filed by the complaining party. The time that the responsible agent was notified shall be recorded.
- (3) The responsible agent is required to make an attempt to resolve the issue that was subject to the complaint as outlined in **Sec 108-23-XX**. The responsible agent shall promptly notify the County's hotline if the agent believes a complaint has been successfully resolved. If the County's hotline does not receive notification from the responsible agent that a complaint has been successfully resolved within the timeframes outlined in **Sec 108-23-XX**, it shall be presumed that the complaint has not been successfully resolved, and the complaining party may follow up with the County's hotline or website with the reference number issued for the original complaint.
- (4) If a complaint involves the immediate health and safety of any person or property, or if, despite good faith efforts, the problem that was the subject of a complaint cannot be resolved, the responsible agent shall immediately contact the police, and follow any direction(s) given by the police.

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- a. If a complaint is not resolved to the satisfaction of the complaining party, a formal complaint may be filed with the Planning Division. The formal complaint shall describe in detail the violation(s) of this chapter alleged to have occurred on the short-term rental property. Within three (3) days of receipt of such a complaint, the County shall provide a copy of the formal complaint to the owner and responsible agent if applicable. Formal complaints shall be signed by an individual and are subject to public inspection; no anonymous formal complaints shall be accepted.
- b. The County shall investigate any formal complaint received, in order to determine if it is a substantiated complaint that represents a documented violation of any provision(s) of this Chapter.

(b) *Violations.* For the purposes of this chapter violations for licensed short-term rental properties shall be classified as either a Minor Violation or a Major Violation. Violations for unlicensed rental properties shall be classified as an Unlicensed Violation.

- (1) *Minor violations.* A minor violation shall be any violation of the short-term rental standards as provided in **Sec XXX-XX-X** and **XXX-XX-X**.
 - a. Owners will be given one warning following their first minor violation within each calendar year. If this warning is subject to a static and prevailing concern, owners shall be given three calendar days to correct the issue or the warning will become a documented minor violation.
 - b. After three minor violations within 12 consecutive months, the owner shall be issued a major violation on the fourth and subsequent occurrences.
 - c. Each minor violation shall be subject to an administrative penalty as provided in **Sec 108-23-XX**.
- (2) *Major violation.* A major violation shall consist of the failure of the responsible agent to perform their responsibilities as provided in **Sec. XXX-XX-X**, or the fourth and subsequent minor violations within a 12 month consecutive time frame as provided in **Sec. XXX-XX-X**.
 - a. Owners will be given one warning in the event of a responsible agent failing to perform their responsibilities within each calendar year.
 - b. Each major violation shall be subject to administrative penalties as provided in **Sec XXX-XX-X**.
- (3) *Unlicensed violation.* An unlicensed violation is committed upon the rental of an unlicensed property on a short-term basis.
 - a. Owners will be given one warning within each calendar year. Each violation thereafter shall be subject to administrative penalties as provided in **Sec XXX-XX-X**.

Sec 108-23-X Administrative Penalty

Any person found in violation of any provision(s) of this Chapter is liable for an administrative penalty in the form of a monetary fine based on the property's average nightly rate. The average rental rate of the property shall be determined through advertised nightly rental rate. Each day a violation remains unresolved shall carry a daily administrative penalty and monetary fine as follows:

- (a) *Minor violations.* Monetary fines shall be **50%** of the advertised nightly rental rate on the date/s of the violation.
- (b) *Major violations.* Monetary fines shall be **100%** of the advertised nightly rental rate on the date/s of the violation.

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(c) *Unlicensed violations.* Monetary fines shall be 200% of the advertised nightly rental rate on the date/s of the violation. If the unlicensed property does not have advertised rental rates, then the administrative penalty shall be the average nightly rental rate for all rental properties located in unincorporated Weber County for the dates associated with the violation.

Sec 108-23-X License Revocation

(a) *Revocation due to minor violations.* If a short-term rental unit has four minor violations within three consecutive months, or six minor violations within twelve consecutive months, the short-term rental license shall be revoked in accordance with the provisions of Sec. 102-4-3.

(1) If a short-term rental license is revoked due to an accumulation of minor violations, for a minimum of one year following the revocation, the County shall not accept an application for a new license for the same short-term vacation rental property; with the exception that a new application by a new property owner, proven to be unaffiliated with the property owner whose license was revoked, may be considered.

(b) *Revocation due to major violations.* If a short-term rental unit has two major violations within three consecutive months, or four major violations within twelve consecutive months, the short-term rental license shall be revoked in accordance with the provisions of Sec. 102-4-3.

(1) If a short-term rental license is revoked due to major violations, for a minimum of two years following the revocation, the County shall not accept an application for a new license for the same short-term vacation rental property; with the exception that a new application by a new property owner, proven to be unaffiliated with the property owner whose license was revoked, may be considered.

Sec 108-23-X License Revocation Appeal Procedure

Any owner who has been issued a notice of impending license revocation may file an appeal with the Planning Division as directed by Sec 102-4-3.

Amendment to Sec 102-4-3: (Required to accommodate this new ordinance and permit type.)

A land use permit or conditional use permit may be revoked for violation of any part of this Land Use Code related to the specific use or permit in accordance with the following:

(a) Revocation shall be conducted by the land use authority that is authorized to approve the permit.

~~(b) Prior to permit revocation, the land owner and, if different, permittee shall be given reasonable opportunity to resolve the violation by bringing the property into compliance or by diligently pursuing an amendment or modification to the permit, as may be allowed by this Land Use Code.~~

~~(c)~~ ~~(b)~~ In the event compliance cannot be attained, the land-owner and, if different, permittee shall be given a notice of the impending permit revocation 14 days prior to final revocation. The notice of the impending permit revocation shall specify the violation, and inform the land-owner and, if different, permittee of the right to request a hearing.

~~(d)~~ ~~(c)~~ The land owner and, if different, permittee shall have a right to a hearing with the land use authority to show cause for why the permit should not be revoked, if a written request for such is submitted prior to a final written revocation decision. If a hearing is requested, final revocation of the permit shall be stayed until after the hearing. The hearing shall be scheduled at a time specified by the land use authority.

Commented [PS6]: These amendments will need to consider "License" vs. "Permit" nomenclature in order to be consistent.

Attachment A

380 ~~(e)~~(d) _____ Revocation of a permit is final upon the issuance of a final written decision. The final written
381 decision may be appealed pursuant to title 102, chapter 3.
382 ~~(f)~~(e) _____ Revocation of a permit shall not prohibit prosecution or any other legal action taken on account
383 of the violation, as provided in this Land Use Code or any other applicable law
384

From: Clark Duellman <clark@cjdlegal.com>
Sent: Tuesday, November 10, 2020 11:14 PM
To: Perkes, Scott
Subject: [EXTERNAL]Re: Draft Short-Term Rental Ordinance - HOAs & Private Covenants

CAUTION: This email originated from outside Weber County. Do not click links or open attachments unless you know the sender and are expecting the link or attachment. **Think Before You Click!**

Good morning Scott, I appreciate being given the chance to weigh-in on the two subsections of the draft short-term rental (STR) ordinance pertaining to HOAs and private covenants. Any changes to the County's ordinance or policies regarding STRs will have a significant impact on Ogden Valley communities, so I especially appreciate the time and attention you are putting into this effort.

I'll share my proposed revised language for each of the two subsections, followed by a few explanatory comments.

(c) *Private Covenants.* A short-term rental license will not be issued for any property that is subject to any recorded private covenants that restrict the property's use for short-term rentals, regardless of whether or not such private covenants are enforced by a homeowners association or committee. Private covenants may be identified as covenants, conditions and restrictions (CC&Rs), protective covenants, restrictive covenants or neighborhood covenants.

Here are my comments:

- > Many Ogden Valley communities are subject to private covenants that are identified as "Covenants, Conditions & Restrictions" (CC&Rs). Other communities, however, are subject to private covenants with other names such as "protective covenants," "restrictive covenants," etc. For example, the private covenants currently recorded against the entire Elkhorn subdivision are simply labeled "Protective Covenants." I think it would be helpful to clarify that subsection (c) equally applies to all private covenants, regardless of how they are identified.
- > Throughout Ogden Valley, some private covenants are governed and enforced by a homeowners association or committee, while other private covenants are not. The language I've proposed is intended to apply to all private covenants, including those that are recorded against communities that have no HOA or have no currently active HOA.
- > While some private covenants in Ogden Valley are governed and enforced by an HOA, others are merely governed by a homeowners committee with the same or similar authority of an HOA.

f. For properties that are subject to any recorded private covenants, applicants must submit a letter from the community's homeowners association or committee, or submit a copy of the private covenants including any amendments to such private covenants, to verify the short-term rental of dwellings is not restricted.

Here are my comments:

- > Instead of referring to properties located within an HOA community, I've referred to "properties that are subject to any recorded private covenants." This ties Subsection (d)(2)f to the language of subsection (c) regarding private covenants, including private covenants that are enforced by an HOA and private covenants that may have been recorded against a community with no HOA or no currently active HOA. As currently written, Subsection (d)(2)f appears to require the submission of private covenants (CC&Rs) only if the property is located in an HOA community.
- > As I noted in my comments regarding subsection (c), some private covenants in Ogden Valley are governed and enforced by an HOA, while others are governed by a homeowners committee. I've added language to that effect.
- > I've eliminated the reference to CC&Rs, and instead referred to "private covenants" as that term is described under subsection (c).
- > I added the phrase "including any amendments" to cover the fact that private covenants may be periodically amended.
- > I eliminated the word "regulation" because that could be interpreted to broadly encompass not only private covenants but also any "rules and regulations" that might be adopted by a homeowners association or committee. It's important to note that Utah's HOA laws allow rules and regulations to be fairly easily adopted by a Board of Directors. Meanwhile, private covenants may only be adopted or amended by at least a majority vote, and often no less than 67%, of the homeowners. In my experience, it's not unusual for HOA Boards to be overzealous by using rules and regulations (with zero homeowner approval) to address an issue that should actually be addressed under the private covenants (which requires a significant amount of homeowner approval). I strongly believe any restrictions regarding STRs should only be adopted and enforced as part of the community's private covenants – not as part of the community's rules and regulations.

Those are my only suggestions and comments regarding the HOA and private covenant language. Of course, please don't hesitate to email or call with any follow-up comments or questions you might have.

Best regards,
Clark
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