

## MEMO

TO: Tim McDonough, Village of Los Ranchos  
Tiffany Justice, Village of Los Ranchos

DATE: October 16, 2019

RE: Short Term Rental Policy for Village of Los Ranchos de Albuquerque

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### Summary:

The Village of Los Ranchos de Albuquerque (the Village) is considering enacting regulations for short term rental (STR) properties. Most STR are advertised using an online platform such as AirBnB. A search of the most commonly used platform web-sites (AirBnB, VRBO and Homeaway) shows less than 20 structures (single family homes, casitas, mobile homes, single bedroom, apartment, townhome or condominium and even tents) were available for rent for a five day period in December in the Village. Creating an STR Ordinance benefits the Village and residents by bringing tourists to the Village and minimizing the impacts to the residents and neighborhoods.

Short term rentals give permanent residents the option to occasionally utilize their property to generate extra income from such short-term rental or home-sharing. Regulations can require residents to adhere to rules including, but not limited to, the number of days an STR is available for rental, the number of persons that can occupy a rental, which neighborhoods are conducive to STRs and safety and insurance requirements.

There are only a few Ordinances in New Mexico dealing with short term rentals, Santa Fe and Ruidoso have an STR Ordinance and were used for information. The City of Albuquerque has recently begun reviewing the issue and received a report with findings and recommendations on the STR issue. The report is available here: <https://www.cabq.gov/council/documents/final-task-report-city-council-6-14-2019-revised-7-5-2019.pdf>. Denver, Colorado has enacted an STR

Ordinance that is short and specific and relevant, I have included the Rules with this memo.

**Legal Considerations:**

**New Mexico Courts read any ambiguity in restrictive ordinances in the favor of the property owner.**

New Mexico Courts have provided some guidance on the issue of restricting short-term rentals through covenants and ordinances. In general, when an ordinance or covenant is ambiguous in terms of its restrictions, courts have protected citizens' rights to exercise their property rights. Put another way, if a restriction is not clearly phrased, the presumption is that the homeowner's ability to use their property for short-term rentals should not be suppressed.

Because there is a commercial relationship related to all property, be it by paying a mortgage, property taxes, or rent, New Mexico Courts have ruled short-term rentals are not prohibited by a commercial vs. residential distinction. *Mason Family Trust v. DeVaney* 2009-NMCA-048, ¶¶ 1-3, 146 N.M. 199, 207 P.3d 1176. So long as the primary purpose of a rented property continues to be living and residing in the property, the courts have not considered the length of the term. *See Estates at Desert Ridge Trails v. Vazquez*, 2013-NMCA-051, ¶ 14, 300 P.3d 736.

The current restriction on collection of rent for guest houses is likely valid because most properties in residential zones are limited to one dwelling per lot. See Village Ord. § 9.2.7 for A-1 and incorporated into A-2, A-3, R-2, and R-3 zoning designations. The renting of guest houses would violate its restriction of one dwelling per lot and jeopardize the Village's recognized goal to maintain the residential/agricultural character of the area. *Id.*

The cases below describe scenarios in which restrictions were struck down by New Mexico Courts.

## New Mexico Case Law

- ***Mason Family Trust v. Devaney*, 2009-NMCA-048, 146 N.M. 199.**
  - Plaintiff sought to restrict defendant from using defendant’s cabin as a short-term rental. The ordinance Plaintiff sought to enforce required properties to be used for “dwelling purposes only,” and not for business or commercial uses. *Id.* ¶ 1.
  - Holding: “If a deed restriction is to preclude a short-term rental to be used for dwelling purposes, the restriction needs to be more specific than the restrictions in the present case.” *Id.* ¶ 15.
  - Dwelling means a shelter in which people live. The deed restriction needs to be more specific than the restriction in the deed. “Under our ruling, a deed restriction for dwelling purposes only does not demonstrate an intent to prohibit short term rental for dwelling purposes.” *Id.*
  
- ***Estates at Desert Ridge Trails v. Vazquez*, 2013-NMCA-051, ¶ 14, 300 P.3d 736.**
  - Home Owner’s Association sought to enforce a covenant which stated that lots must be “used for ‘single-family residential purposes’ and the HOA’s rules and regulations barring certain business activities within the subdivision and rentals for less than thirty days.” *Id.* ¶ 1.
  - Holding: Defendant’s rentals did not violate the restriction at issue. *Id.* ¶ 20. The court further reasoned, “Nothing in the plain language of the covenant draws a distinction between what the HOA views as permissible long-term rentals and prohibited short-term rentals.”
  - The Courts have upheld the decision in *Mason* in subsequent decisions, noting that commercial or business use restrictions do not preclude rental income, regardless of the length of the term because the primary purpose continued to be living and residing in the property.

- *State ex rel. Vaughan v. Bernalillo County Bd. of County Comm'rs*, 1991-NMCA-151, 113 N.M. 347.
  - Vaughan petitioned the court to overturn board's decision to cancel Vaughan's special use permit to add a warehouse to his property. *Id.* ¶ 2.
  - Such permit was granted for "for the life of the use." *Id.*
  - Holding: Nothing in the relevant statutes and ordinances allowed for cancellations of permits that were granted for the life of the use. *Id.* ¶ 8.
  - Because zoning statutes arise from the partial suppression of property rights, they are strictly construed.

## Village of Los Ranchos Considerations:

Necessity for license or permit: promote order and safety, safeguard property values. Application should address:

- Application Fee for Business License
- Renewed annually
- 24-hour contact information including legal notice address
- Can agent (e.g. management agency) be contacted?
- Parking on street, Noise Control for “party house”
- Occupancy Limit (# of persons per sleeping area? Or dwelling square footage?)
- Liability – if Ordinance states requirements
  - Who does inspections?
  - Is insurance required? Proof of insurance provided and notice if discontinued
- Types of Rentals – Residential Zone
  - Whole house rental – owner on site
  - Whole house rental – no owner on site
  - Partial Home rental – owner on site
  - Accessory to home rental
- Liens on Property, taxes

Enforcement and Penalties considerations include:

- What if property owner does not get permit?
  - Penalty
  - Required to get a permit
- Property has loud parties, parking in street – violates ordinance
  - Penalty – escalating per incident?
- Enforcement Officer to verify compliance
- Adversely affects the public health, safety or welfare of neighborhood, or not applicants primary residence

Most likely a neighbor would have to report an STR to the Village office which can then research to verify property is listed as an STR. Once a property has been confirmed to be an STR and not in compliance with the Ordinance, a letter to property owner letting the owner know that a permit is required.

The Registration Process may include (Denver Co):

Step 1 – Business Registration Certificate/STR Permit

Step 2 – Affidavit of Compliance with insurance requirements (\$1,000,000), safety codes and Village requirements for STR

Step 3 – Approved by Village Administrator

## City of Santa Fe:

The City of Santa Fe recently updated their requirements to include business registration and a permit or registration. Permits are required for residential zoned areas and a business registration is required in non-residential zoned areas.

Other provisions of the Santa Fe Ordinance (2016-20):

Santa Fe STR within the Land Use Development Code –

- no more than 1 rental is allowed within a 7 consecutive day period
- STR permits will not be issued for more than 2 STR units directly adjoining each other on a residentially zoned street (not include condo, etc)
- Off street parking = # of bedrooms
- Fire and building safety codes including water conservation requirements
- No recreational vehicles allowed
- Limits number of people to 2x number of bedrooms (2 bdrm = 4 ppl)
- Noise restriction after 10:00 PM
- Local and state taxes must be paid otherwise penalties
- Inspection to city of all records when requested
- STR insurance required
- Permit terminates upon sale of property

SF Application for permit for STR –

- Name, phone etc. of owner 24/7 availability
- Statement of compliance with provisions of ordinance
- Proof of inspections with application; city can perform random checks
- Cert of occupancy
- Not transferable
- Certified letter to all neighbors (200 ft) with contact info. Copies to city
- \$100 applicant fee
- \$325 permit fee
- Renewed every year

Violations –

- Allows director to pursue enforcement of ordinance and through court – written notice of violation with 15 days to correct. The director may revoke the permit.
- If STR is being rented without permit – it is a violation subject to penalties, property liens, prosecution.
- Agent that knowingly allows STR with owner that is not permitted is subject to same penalties including license revocation

Penalties –

- \$500 for rental with no permit – can be daily for each day after notification by letter
- Revocation of permit

**Village of Ruidoso Provisions:**

- Requires a Permit to rent residential dwelling
- STR Ordinance does not supersede covenants
- Compliance requirements including fire extinguishers, smoke alarms, escape per room, fireplace safety
- Notification to adjoining properties (200 feet)
- Denial can be due to back taxes, property liens or property nuisance
- Revocation for 12 months for any of the above
- Notification Requirements posted
- Violations are daily - \$50 per day

**New Orleans: Three rental categories:**

1. Accessory Short-term Rental Limited to 3 bedrooms and 6 guests
2. Temporary Short-Term Rental - In-town property manager - Maximum of 90 rental nights per year
3. Commercial Short-Term Rental - Entire dwelling may be rented -