



Village of Los Ranchos

Conversation on Short Term Rental

JANUARY 28, 2020

6:30 PM

6718 RIO GRANDE BLVD. NW



New Mexico Cities with STR Regulations

Albuquerque: No official Ordinance, but has a voluntary collection agreement with Airbnb to collect Lodgers' Tax and Hospitality Fees.

Village of Corrales: Zoning Regulation – does not prohibit STRs.

Ruidoso: Permit Required – Compliance with Safety requirements – 12 month revocation of permits for infractions.

Santa Fe: Compliance with Noise Ordinance – only 1 rental per 7 day period – No RVs.

Taos: Permit Required - Compliance with Noise Ordinance – 2 guests per bedroom and limits on daytime visitors – No signs or trash allowed in public view



Recent New Mexico Legislation

In 2019, two bills were passed and signed by the Governor:

- **HB 06 (2019)** – Made “Marketplace Providers,” such as Airbnb, responsible for collecting gross receipts tax (GRT) for all online platforms that “facilitate” a transaction of goods or services. The obligation to collect the state portion of GRT on the relevant sales went into effect July 1, 2019; the requirement to collect the local increment of GRT will not go into effect until July 2021
- **SB 106 (2019)** - revised the Occupancy Tax by removing the exemption for vendor’s offering fewer than three rooms.
- These two bills make it clear that STRs would be taxable by the state and Marketplace Providers would be responsible for collection

So far in 2020:

- **HB 105 (2020)** – Currently the Occupancy/Lodgers Tax allocates portions of rent collected for advertising and tourist related facilities and events. This bill amends the tax law to only apply to rent collected in the first 30 days. This change would allow a municipality to keep more funds collected from a lodgers’ tax



Legislation in Other States

Arizona SB 1350 (2016) – In 2016 Arizona enacted legislation prohibiting cities and counties from banning short-term rentals and set state rules for taxation. The Bill allows the companies, which match travelers to rental properties or rooms, to collect state lodging taxes on behalf of property owners while also keeping the properties classified as residential for tax purposes. Airbnb lobbied for this legislation.

Other states to enact similar legislation include Florida, Idaho, Indiana, Tennessee and Wisconsin.

In New York, individuals are banned from renting out non-owner-occupied apartments for fewer than 30 days. In 2016, the state reinforced the ban by enacting legislation that prohibits any advertising of these units as short-term vacation rentals. Reports, however, have [found](#) that these rentals continue to exist.



Federal Legislation — (in committee)

HR 4232: Protecting Local Authority and Neighborhoods Act (“PLAN Act”)

- Amends the Communications Act to ensure the ability to enforce State and local law relating to leasing and renting of real property, and for other purposes



Example New Mexico Cities with No Policy

City of Las Cruces

- 300 rental sites includes anything from 1 bedroom to single family homes

City of Gallup

- 21 rental sites includes a “Yurt” and hotels listed on AirBnB

City of Farmington

- 45 rental sites includes a ranch and a single room





New Mexico Listings on Airbnb

Our search of Airbnb's listings showed properties in 78 cities and populated areas from Alamogordo to White Rock ...

Everything imaginable, from upscale mansions in Santa Fe to Off-Grid RV's in Catron County ...

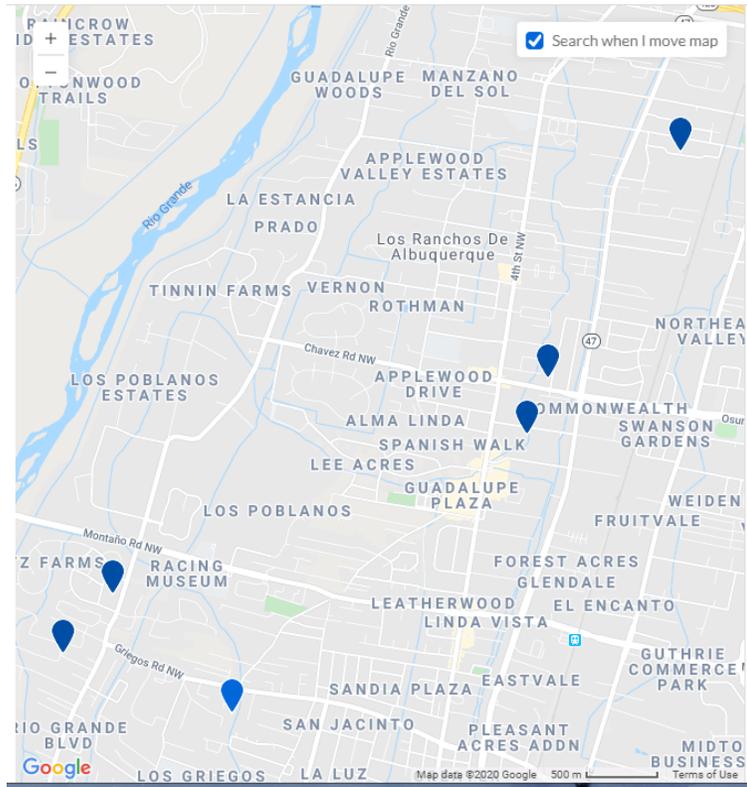
Analysis provided by AirDNA showed 1,944 Active Rentals in the Albuquerque area, with 145 listings in the 87107 zip code and 141 in the 87114 zip code ...

AirDNA estimated 8% Quarterly Growth in the Albuquerque market with peak pricing in October around Balloon Fiesta

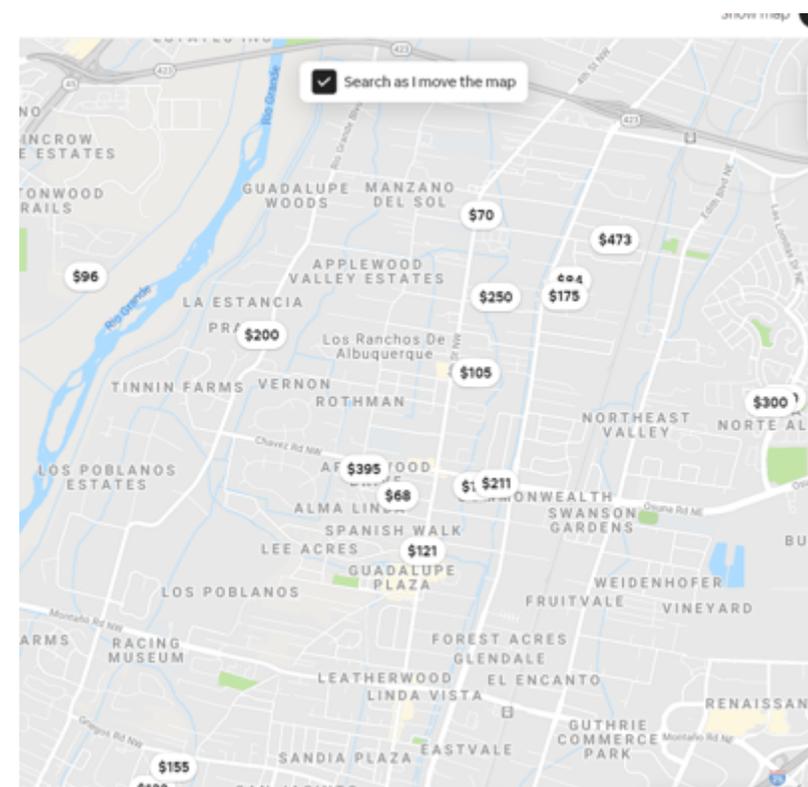


Village of Los Ranchos Example Rentals

HomeAway



AirBnB





Policy Highlights

Potential Benefits to the Village

- **Village Revenues**
 - **Tax Revenue (State will begin collecting GRT)**
 - **Lodgers Tax**
 - **Permit Fees including violations**
- **Ability to Enforce Regulations**
 - **# of Rentals in an Area, Street, Subdivision**
 - **What can be rented (Home, RV, Casita)**
 - **Revocation of Permit if conditions are not met**
- **Gives homeowners option for additional income**
- **Ability to promote Agri-Tourism to area**



Policy Highlights

Potential Issues

- Parties
 - Parking, Noise
- Safety, who is the “tenant”
- Collection of Fees and Taxes
- Enforcement
- State Marketplace Tax begins in 2021, who collects?





Reasonable Restrictions Allowed

Concentration and Spacing

Occupancy Limits

Safety Ordinance Compliance

Noise Control

Parking

Waste Management



Reasonable Restrictions Allowed (cont.)

Party Rentals

Signage and Display of Permit

Application Fees

Neighbor Notification



Summary of Major City Ordinances

City	Summary	Take Effect	Fine	STR License Fee	Additional Cost
New York	<ol style="list-style-type: none"> 1. Can't rent out entire apartment (hosts must be present) 2. Can't advertise an apartment 3. Up to 2 paying guests 	May 2011	\$1,000 - \$7,500 (illegal advertising of apartments)	N/A	<ol style="list-style-type: none"> 1. Sales and use tax 2. Hotel room occupancy tax
San Francisco	<ol style="list-style-type: none"> 1. Must register as a business and as a short-term rental 2. Hosts must be permanent residents 3. Up to 90 nights a year without hosts 4. No income-restricted affordable housing 	Feb. 2015	≥ \$484 (per day)	\$250	<ol style="list-style-type: none"> 1. Transient occupancy tax 2. Business personal property tax
Los Angeles	<ol style="list-style-type: none"> 1. Must obtain licenses 2. Must be primary residence 3. Up to 120 days a year 	July 2019	≥ \$500 (per day)	\$89	Transient occupancy tax
Washington DC	<ol style="list-style-type: none"> 1. Must obtain license, additional "vacation rental" endorsement for renting out an entire unit 2. Must be primary residence 3. Up to 90 nights a year without hosts 	Oct 2019	\$500 - \$6,000 (per violation)	TBD	Transient lodging tax
Chicago	<ol style="list-style-type: none"> 1. Short-term rental platforms must obtain license 2. Hosts with 1 home-share unit register through the rental platform 3. Hosts with ≥ 1 home-share unit must obtain license from city of Chicago 4. Vacation rental must obtain license 	March 2017 (host registration)	\$1,500 - \$3,000 (per day)	\$0 - \$250	Hotel accommodation tax
Boston	<ol style="list-style-type: none"> 1. Must obtain license 2. Must be primary residence or an secondary unit at their primary residence 3. No income-restricted units 	Jan. 2019	\$100 - \$300 (per day)	\$25 - \$200	Same tax as hotel
Seattle	<ol style="list-style-type: none"> 1. Short-term rental platforms must obtain license 2. Hosts must register as a business and as a short-term rental 3. Up to 2 units 4. If operate 2 units, one must be primary residence 	Sep. 2019	\$500 - \$1,000 (per violation)	\$75	<ol style="list-style-type: none"> 1. Retail sales tax 2. Lodging tax 3. Business and occupation tax



Major Litigation - 2019

Palm Beach County Florida

- **6% tax – Platform is required to pay “tourism” tax before property listed**

City of Austin, Texas

- **Banned STRs on non-owner occupancy property – Court Ruled Unconstitutional**

Miami Beach, Florida

- **Excessive fine (\$20,000 up) overturned by Court of Appeals**
- **2011 State law bans local STR laws**



Major Litigation – 2019 (continued)

Santa Monica, CA - In Santa Monica, the 9th Circuit Court of Appeals upheld an ordinance that required short-term rentals to be licensed by the city, and required marketplace providers to remove unlicensed listings from the site.

New York City, NY – The New York City Council recently cracked down on short-term rentals by introducing a [bill](#) that required Airbnb and other marketplace providers to disclose details about their listings, and the identities and addresses of their hosts every month. The bill was recently [blocked by a federal judge in US District Court](#) in January 2019. The litigation is on going. New York City allocated [\\$8 million in 2019](#), a tenfold increase from 2015 to crack down on illegal rentals.



New Mexico Litigation - Guidance

Mason Family Trust v. Devaney, 2009-NMCA-048, 146 N.M. 199.

- Plaintiff sought to restrict cabin owner from using his 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.
- Case 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.
- Case Holding: Defendant’s rentals did not violate the restriction at issue. *Id.* ¶ 20. The court 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.



New Mexico Litigation – More Guidance

State ex rel. Vaughn v. Bernalillo County Bd. of County Comm'rs, 1991-NMCA-151, 113 N.M. 347.

- Vaughn petitioned the court to overturn County Commission's decision to cancel Vaughn'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.

Take away: suppression of property rights is frowned upon



Homeowner Rights

HOAs have sued homeowners seeking to prevent short term rental of property and not prevailed – Texas, Florida, Illinois

In sum, Property owner rights to rent for short term have generally been upheld





Village of Corrales Highlights – Land Use / Zoning

- Requires Application and Permit Fee and Approval by the Planning and Zoning Commission.
- Does not allow for events
- Application Fee - \$150 Permit Fee - \$35 (annual)
- Recently required Short Term Rental Application and Permit