



**MEMORANDUM**

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**TO:** Mandy Dealey, Chair, and Members of the Planning Commission Committee on Codes and Ordinances

**FROM:** Robert Heil, Senior Planner *RH*  
Planning and Development Review Department

**DATE:** April 15, 2011

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**RE: Short Term Residential Rentals / Vacation Rentals by Owner**

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This purpose of this memo is to:

- 1) Provide an overview of the current discussions regarding Short Term Residential Rentals (STR's), also known as Vacation Rentals by Owner (VRBO's),
- 2) Present staff's recommendations for proposed changes in City of Austin policies, procedures, and code, and
- 3) Outline the next steps in the process.

**Current Status**

The Planning Commission has asked staff to present recommendations regarding the short term rental of residential properties, with the intent of clarifying the legality of this practice in single family residential districts, and mitigating any negative impacts the practice of short term rental may have on the surrounding neighborhoods.

As part of that process, staff has made a use determination. A rented residential structure, even one which is rented for a short period of time, is not classified as a Hotel/Motel land use under the existing City Land Use Code and is still considered as a single family residential use.

Two administrative appeals of this use determination have been made, requesting an interpretation of whether the Planning and Development Review Department's Director's determination that a residential structure rented for a short period of time is classified as single family residential use is correct. These applications are scheduled

to be heard by the Board of Adjustment on April 27th, 2011. The meeting will be held at City Council Chambers, 301 West 2<sup>nd</sup> Street beginning at 6:30 PM. For more information on these appeals you may contact Susan Walker of the Planning and Development Review Department at 512-974-2202 and refer to case numbers C15-2011-0037 and C15-2011-0038.

Throughout this process, the Code Compliance Department and the Austin Police Department have continued to enforce all applicable regulations regarding residential housing, including occupancy limits, noise complaints, and threats to public health and safety.

### **Staff Recommendation**

To help mitigate some of the issues that have arisen around the practice of short term rental of residential property, staff is recommending an approach consisting of three main elements – education, registration and inspection.

Education and Outreach. One of the recommendations of the report of the City Auditor, completed earlier this year, was that the City increase its efforts to educate property owners of the additional responsibilities that come with the decision to rent on a short term basis.

Staff recommends that the City of Austin coordinate with the State Comptroller's office to increase the awareness of the hotel occupancy tax, and to provide ready access to information about effected properties and how property owners can pay this required tax.

Staff further recommends that the City work with the Controller's Office to update the proposed amended hotel occupancy tax state ordinance to clarify that it applies to all properties rented for 30 days or less.

Additionally, staff recommends that the City, with the input from industry representatives, assemble information on best practices for property owners of short term rentals. This information could include, among other things, templates of recommended leases agreements that specifically address noise and parking and other issues along with plain language copies of relevant City ordinances. This information could be made available to property owners and to companies that coordinate the rental and leasing on behalf of property owners.

Registration and Compliance. Any property owner who rents a residential unit for a period 30 days or less is required by state law to pay a 15% hotel occupancy tax. This tax applies to traditional hotels, bed-and-breakfasts, and even to single family homes that are rented 30 days or less. Staff proposes that the City of Austin establish a mandatory registry of all properties subject to this tax.

Requiring all owners who at any time rent out their property for less than 30 days to register with the City will increase compliance with the required hotel occupancy tax, and

help more fully capture those taxes due to the City. The registry could be easily cross-checked with the records of the State Comptrollers office, to identify properties which are being rented for short periods of time, but have not paid the hotel occupancy tax. These owners will then be notified of their oversight and be given an opportunity to voluntarily comply with state law.

Additionally, a registration of short term rental properties, with the name and contact information of the owner, would allow Code Compliance staff to quickly contact the owner in the event of a complaint on their property. While Code Compliance staff and Austin Police would continue to respond to complaints directly, the ability to easily access the property owner will facilitate the resolution of the complaints, and tie ongoing or repeated complaints to a property owner, even if the cited complaints involve different tenants.

Inspection. Finally, staff proposes that any property that is rented for 30 days or less, on five or more occasions in one year, be subject to an annual health and safety inspection. This inspection would ensure that the property was being maintained properly and could also include a record of any complaints made against the property.

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### Next Steps

The Planning Commission Committee on Codes and Ordinances will discuss this topic at their next meeting, Tuesday April 19, 2011, 6:00 PM. at 301 West 2nd Street, City Hall, Conference Room 1029. While this meeting is open to the public, it is not a public hearing. Any member of the public is welcome to attend, but is not guaranteed an opportunity to speak. Written comments are accepted and will part of the formal record, and everyone who wishes to speak on the issue will have an opportunity to do so at the public hearings that will be held in front of the full Planning Commission and then later, City Council.

As previously discussed, two administrative appeals of the use determination will be heard by the Board of Adjustment on April 27th, 2011, 6:30 PM. at City Council Chambers, 301 West 2<sup>nd</sup> Street.

In addition to the Planning Commission, this memo will be distributed to any individual or group who has requested to be kept informed on the issue. A follow-up email to this same list will specifically request feedback and suggestions on the proposed approach.

Throughout this process, staff will be available to meet with interested parties, either individuals or groups, as requested.

Depending on the actions of the Committee on Codes and Ordinances, the item will either undergo further review and come back to the Committee, or it will be forwarded on to the full Planning Commission for consideration and recommendation. The Planning Commission will hold a full public hearing, at which any interested party will be permitted to speak. When the date of this public hearing as been set, notification will be

sent to all community organizations that have registered with the City, and an electronic notification will sent to any individual who has requested to be kept informed via email.

After the public hearing and a recommendation by the Planning Commission, the item will move on to City Council. A public hearing will be set, and then later held, by the City Council. The dates of these actions have not been scheduled, but, as with the public hearing at the Planning Commission, notification of the public hearing at City Council will be sent to all community organizations that have registered with the City, and an electronic notification will sent to any individual who has requested to be kept informed via email.

For additional information, or to provide feedback or comments on this issue, please contact Robert Heil, Senior Planner, Planning and Development Review Department, at 974-2330 or via email at [Robert.Heil@ci.austin.tx.us](mailto:Robert.Heil@ci.austin.tx.us).

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<b>Code Compliance Department</b>			
<b>Guest Room Inspection Checklist</b> <input checked="" type="checkbox"/>			
<b>Inspector:</b>	<b>Initials:</b>	<b>Guest Room #:</b>	<b>Date:</b>

**Bathroom**

Items Checked	(Circle Confirmed Deficiencies)	Comments
<input type="checkbox"/> Vent. system	inoperable      loose vent cover	
<input type="checkbox"/> Lav. (sink)	not secure      leaking	
<input type="checkbox"/> Tub	inadequately caulked/sealed      leaking tub valve(s) improperly maintained	
<input type="checkbox"/> Water closet	not secure      inadequately caulked/sealed      leaking flush mechanism inoperable      broken	
<input type="checkbox"/> Electrical	cover plates not maintained      GFCI outlets/switches not functioning properly light fixture(s) inoperable/not maintained	
<input type="checkbox"/> Privacy Door	Missing      not provided/maintained	
<input type="checkbox"/> Walls/Floor/Ceil.	Holes      damaged      trip hazard loose surface material	

**Sleeping/Living Area**

Item	(Circle Confirmed Deficiencies)	Comments
<input type="checkbox"/> Smoke Detector	Missing      inoperable	
<input type="checkbox"/> Electrical	cover plates not maintained outlets/switches not functioning properly light fixture(s) inoperable/not maintained	
<input type="checkbox"/> Walls/Floor/Ceil.	Holes      damaged      trip hazard loose surface material	
<input type="checkbox"/> A/C Unit	Improperly maintained      cover panel not secure	

**Window(s) & Exit Door**

Item	(Circle Confirmed Deficiencies)	Comments
<input type="checkbox"/> Window	Broken      locking mechanism inoperable Inadequate weather seal	
<input type="checkbox"/> Exit Door	locking mechanism inoperable threshold not maintained Inadequate weather-stripping	

## Regulation of Short Term Rentals

City	State	Length of Lease	Separate Use Defined	Permitted in Single Family?	Notes
Austin	TX	n/a	No	Yes	Under review
El Paso	TX	n/a	No	Yes	Not regulated
New Braunfels	TX	30 days	No	No	Proposed regulations - existing uses would be grandfathered
Fort Worth	TX	30 days	Yes	Conditional	Permit required
Galveston	TX	n/a	No	Yes	Not regulated
Rollingwood	TX	30 days	No	No	Prohibited
San Antonio	TX	n/a	No	Yes	Not regulated
Cannon Beach	OR	30 days	Yes	Yes	Set maximum number allowed in the city 5 year permits granted by lottery
New York	NY	30 days	No	-	Short term leases of most apartments prohibited
Otsego	NY	30 days	No	Yes	Permit required
Tahoe	NV	28 days	No	Yes	Permit required
Whitefish	MT	30 days	No	see note	Allowed on sites >= 10 acres
Kansas City	MO	n/a	No	Yes	Not regulated
Traverse City	MI	30 days	Yes	No	
Chicago	IL	30 days	Yes	No	Proposed regulations
Sanpoint	ID	30 days	Yes	Yes	Inspection required
Milford	CT	30 days	No	Yes	Permit required
Napa	CA	30 days	No	No	Permitted in agricultural zones
Palm Springs	CA	30 days	No	Yes	Additional standards apply
Phoenix	AZ	3 months	Hotel	No	Requires provision of food and housekeeping services

## Short Term Rental - Vacation Rental by Owner

### Summary Staff Recommendation

- ***Education and Outreach.*** Increase awareness of the required hotel occupancy tax and of industry best practices.
  - ***Registration and Compliance.*** Mandatory registry of all properties rented for 30 days or less.
  - ***Inspection.*** Mandatory annual health and safety inspection for property that is rented for 30 days or less on five or more occasions in one year.
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# Short Term Rental - Vacation Rental by Owner

## Potential Discussion Options

The following items are not part of the staff recommendation but are included as potential options for discussion.

### To address the legal status of short term rental in residential districts

- *To allow:* Amend 25-2-3 Residential Uses Described to delete the term “transient”
- *To disallow:* Amend 25-2-3 Residential Uses Described to define the term “transient” and prohibit rental for less than 30 days.

### To allow the short term rental under some conditions:

- *Accessory Use:* Amend 25-2-893 Accessory Uses for a Principal Residential Use to expressly allow for the renting of a principal residential use or portion of a principal residential use for less than 30 days, possibly with conditions (see below)

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- *New Use:* Amend 25-2-3 Residential Uses to create a new residential use that would allow permanent occupancy *and* short term rental. This new use could be allowed only in certain zoning districts (for example it could be prohibited in SF-1 or SF-2), or could be made a conditionally permitted use in most residential zoning districts, requiring a conditional use permit, which could be subject certain conditions (see below). Existing uses could be grandfathered, or grandfathered for a specific period of time.

## Potential Conditions

### *Triggering threshold:*

The following are examples of thresholds that could trigger additional conditions:

- Any rental of the property for less than 30 days
- Any rental of the property for less than 30 days if the property is not the primary residence of the property owner
- Rental of the property for 30 days or less on more than 5 occasions per year

### *Additional requirements or conditions:*

The following conditions are examples of the types of requirements that could be placed on an accessory use, or as conditions in a conditional use permit:

- Only on properties adjacent to or across the street from commercial uses or zoning – to act as a transition to other residential properties.
- Maximum number of residents based on the number of bedrooms and/or square footage of the house.
- Minimum leasing period of 3 days.
- Maximum number of vehicles allowed to be parked on the property.
- Required use of a standard short-term lease agreement.