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Memorandum

To: Lincoln County Board of Commissioners

From: Wayne Belmont
County Counsel 

Date: November 16, 2020

Re: Short Term Rental Licensing Program Update

Before the series of crisis situations arose beginning last year with the COVID-19 pandemic (which continues to occupy significant attention and efforts of the Board and staff to this date and will continue for the foreseeable future) and continuing through the Echo Mountain Complex Fire (which again requires significant staff attention in the recovery and rebuilding process) we updated the Board on possible Short Term Rental (STR) Licensing Program¹ improvements and updates to the Lincoln County Code. In addition, the Board extended the suspension of accepting new licenses in the STR program until December 31, 2020.²

Since that time, the Program has been updated in two significant ways: first, a software program was purchased and is under implementation to increase the data we have available to regulate STRs, allow for the capture of dwellings which are operating as short-term rentals but are not compliant with the licensing program, and automate the complaint process to give 24 hour access to persons who have complaints about the operation of individual STRs. Lisa Combs from the Sheriff's Office, who manages the STR Licensing Program, will provide a detailed update on implementation of the software and its features and the additional work that is underway. Second, we have now added additional code enforcement capabilities to address specific complaints and to assist in Program operations and compliance. The Sheriff's Office will also address those activities and services in an update today.

¹ For purposes of clarification, we use the term Short Term Rentals (or STRs) in our code. It is used interchangeable with the term Vacation Rental Dwellings (or VRDs) by many constituents (and including staff) in their correspondence with the Board and County. They are one and the same.

² Board Resolution #20-29-9A.

While those resources will greatly enhance our ability to conduct the Licensing Program, there remains additional work to do. You continue to hear from the public and STR owners and operators about what should or should not be done to regulate these activities. That will continue as we move forward and a process to incorporate additional public input opportunities will be included in our recommendations.³

We previously identified a set of recommendations for code amendments and asked that the Board consider other specific actions for staff to pursue. We are prepared to update those recommendations today as follows. They are revised in some particulars from last year to provide more specific guidance:

Recommended Program Changes / LCC Amendments

Septic Systems: Based on what we found in the review of septic systems and best practices in at least one other county, staff would recommend we provide for Septic evaluations (ESER) periodically for all STRs on septic systems. We are now recommending that an Oregon Department of Environmental Quality authorized Existing System Evaluation Report (ESER) from a qualified professional who evaluates the condition of the system and its capacity be required of every property not on a public sewer system. We will need to work out the timing for existing licensed STRs but we are not recommending that we wait until license renewal. The importance of this additional requirement is twofold: (1) to insure systems are operating properly; that any deficiencies are cured; and the property is not rented until repairs are made; and (2) to establish a ceiling capacity on the number of persons who can occupy the property, no matter what is authorized under the code.

New Capacity Limits for Individual STRs (Per Bedroom Limits): Staff is prepared to recommend that maximum capacity (with some grandfathered exceptions) of 2 persons per bedroom be implemented. We would also recommend that this capacity limit at the STR be applicable at all times (not just overnight). This single change, in our view, will do more to lessen the possible issues with parking, noise and garbage (less people = less impact) than any other action you take. This would also effectively preclude a common issue where an STR is used for a party, wedding, or other event venue, during the day/evening far exceeding the capacity at those times. This would also make enforcement much easier as it is a simple head count at any one time.

“Three Strikes” and Compliance Enforcement: Staff has previously noted that compliance and enforcement mechanisms in Oregon cities and counties varies widely. We also recognize that many of the STRs in our County are effectively managed and are owned and operated by people who are nothing but good neighbors in their neighborhoods. Others present either periodic or ongoing problems. While we like the approach that seeks compliance first over enforcement, we

³ An effort is underway to get an initiative petition on the ballot to address STRs through adoption of a new Ordinance. It has not yet qualified for the ballot and therefore I will comment on the draft. It was not crafted by the County and did not include any County input. I have spoken to an attorney representing one of the petitioners (he did not draft the initiative) and expressed my concerns with several legal and risk management issues in the language in the draft Ordinance. It is my legal opinion that if adopted as presented, this Ordinance will lead to litigation and County exposure to monetary claims and could result in the loss of any regulatory scheme for STRs incorporated into the Ordinance. My opinion is not intended to address the policy choices the Board (or the citizenry) desire (or more simply the ends), but rather the means to accomplish those ends.

also recognize the best way to ensure STRs are good neighbors is to have an effective enforcement system and resources. New resources in our software complaint process and additional personnel in code enforcement will help. But one of the areas we want to review in more detail is the “three strikes” system in our code. Three strikes under our system means three verified complaints that are not timely addressed or responded to adequately. That means a property could have say 5 noise issues (all timely responded to and addressed) but still have no verified complaints. Recurring problems with renters may not be adequately addressed in this situation. Likewise, we need to have mechanisms that ensure that an invalid or unsubstantiated complaint does not become a verified complaint penalizing a property owner improperly. In short, further examination of our compliance system is advised.⁴ Finally, although we are not making any specific recommendations at this time, we do want to review our current noncompliance protocols (LCC Chapter 10) to see if other strategies or option are available and if our current tools need refinement or revision. This is a recommendation we made before but we would like specific consensus to proceed with developing proposed changes in these areas.

Cap on number of STRs: Currently, you have suspended new license applications for STRs through December 31, 2020. All the Cities in Lincoln County regulating STRs have a cap in some form or another on the number of STRs allowed in their jurisdictions. We are recommending that you direct us to develop a permanent cap on the number of licenses in unincorporated areas.⁵ If you choose to institute a cap a number of additional questions and issues will need to be resolved, including but not limited to: the cap number; whether or not the cap will include a geographic area component; how to resolve licensing transfers (not currently allowed, but will need to decide if and how an existing license can be replaced by new property owner); new unlicensed property enforcement tools; and waiting list terms and conditions.

Alternative STR Management and Rental Arrangements: We still need to review “alternative” STR situations (room rental, but not house rental or Bed and Breakfast) to see if and how those should be regulated (if for nothing else to ensure that room taxes are collected and remitted to the County). Other entities also have agreements with medium and large service providers like VACASA or AirBnB to ensure code compliance and tax collection and remittance. This is a larger project but needs to take place in line with other changes to the Program and LCC (both STR Licensing and Transient Room Tax provisions).

Public Comments and Input: If your direction is to proceed with these and any other options or alternatives we are asking to pursue, we will schedule public workshop and comment opportunities to receive feedback on the Program and our recommendations, other possible changes or any opposition to the proposed language that will be developed. Amid continuing concerns with COVID-19, these will not be traditional public meetings where all will gather in a single location, but there are virtual options we will provide. We continue to welcome public input through the Board’s link found on the County website on the Board of Commissioners page [here](https://app.smartsheet.com/b/form/363543508b294a83b78cc663fd4dff6b) (https://app.smartsheet.com/b/form/363543508b294a83b78cc663fd4dff6b)

⁴ One interesting comment made during the workshop that has been subsequently mentioned in comments to the County is to hold STR management companies accountable for actions on their client’s properties. We would like to explore that concept in our review of enforcement options.

⁵ I have previously noted concerns with some suggested alternative approaches in my May 29, 2019 Update to the Board. I still have those concerns.