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Memorandum

To: Lincoln County Board of Commissioners

From: Wayne Belmont
County Counsel 

Date: March 29, 2021

Re: Recommended Short Term Rental Licensing Program Changes

County staff has been reviewing proposed updates and amendments to the County Code to provide recommendations to the Board and the public for the County's Short Term Rental (STR) Licensing Program¹ for unincorporated areas of the County. This memorandum outlines those recommendations and includes specific code language to implement the proposed changes. It also includes target dates for implementation of the changes and additional actions that will be required to complete this work. As we have discovered in both our own experience and from examples we have examined in other jurisdictions, this Program will likely need further refinement in the future, especially to address some of the rapidly changing ways in which short term rentals are evolving.

Not included with this update are new or revised fees that will be recommended to fund additional work for enforcement of Code provisions. We also are looking separately at adjustments to LCC Chapter 5, Taxes, to update and modernize the Transient Room Tax code provisions, which will also address some of the management practices for businesses serving STRs. That may result in further recommendations for amendments to the STR Program, too.

We are recommending the following changes to our current program and practices to allow the continued existence of STRs with their contributions to our local economy, while recognizing the impact of these uses on neighbors and communities.

¹ For purposes of clarification, we use the term Short Term Rentals (or STRs) in our code. It is used interchangeably 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.

Recommendation # 1 - - Occupancy Limits

Reduce the per unit occupancy allowed in a licensed STR. Many public comments were received from both STR owners and nearby neighbors that the extent of the use of a residence for short term occupancy is a key factor in the viability of the STR and its concomitant impact on its neighbors. No single factor (other than an outright ban on STRs) will have more effect on the impact of an STR on a neighborhood than the intensity of its use based on the number of persons who can use the residence at one time. Now the fact of the matter, which needs to be clearly understood, is that while 2, 3, 4 or more-bedroom homes could house many more people as an STR, the average household size in Lincoln County in the last Census is 2.25 persons per household.² Having 8, 10 or more persons regularly occupy the house as an STR allows for an intensity of use beyond what we see for the average household. Therefore, we are recommending that the occupancy rate be reduced from 3 persons per sleeping area, plus two additional persons, to 2 persons per sleeping area overnight. We are also recommending that a maximum limitation on occupancy be applied to the unit during the day and “events” which involve more than the maximum limitation, such as weddings, graduation celebrations or similar activities, be prohibited. Under this proposal up to 2 additional persons would be allowed from 8:00 am to 10:00 pm. That means, for example, that a unit with an occupancy limit of 4 persons could have 6 persons at that location during the day and 4 at night. This preserves the character of the residential use of the property more in line with surrounding non STR properties. We would recommend that the change in occupancy limits apply at the time of relicensing.

The Board previously allowed certain units to be grandfathered at greater occupancies when the Program was originally implemented. Less than 10 units were grandfathered in. The Board needs to determine if the new occupancy limits will be applied to the grandfathered units, and if so, a similar reduction in overall occupancy should be determined. We already have in place a requirement that if the ESER determined capacity as outlined below is less than the grandfathered capacity, the lesser capacity is applied.

Recommendation # 2 - - Septic Systems (Onsite Waste Management)

Approximately 75% of the STRs in the unincorporated areas of the County are on onsite, subsurface sewage systems. Again, with the average household size of 2.25 persons in the County, having STRs which allow more persons at a home on a regular basis will tax the subsurface system in ways not commonly found outside STRs. After review with County staff, we recommend that the following requirements be implemented for STRs on subsurface systems (septic or other types).

Require for every STR with an onsite waste management system, an initial Oregon Department of Environmental Quality authorized Existing System Evaluation Report (ESER) from a qualified professional to evaluate the condition of the system and its capacity. This initial report will: (1) ensure sewage systems are operating properly; require that any deficiencies are cured; and ensure the property is not licensed until any such deficiencies are cured; and (2) establish a ceiling

² US Census, 2015-2019 data for Lincoln County

capacity on the number of persons who can occupy the property, no matter what is otherwise authorized under the code. Following the initial ESER, the recommendation is to require annual maintenance of the system (inspection and as needed pumping or repairs) for the next two years. The County's Onsite Waste Management Division of the Department of Planning and Development will review and evaluate the ESERs and receive and review the report on annual maintenance of the system. Annual maintenance is currently required for all uses on nonstandard subsurface systems such as Alternative Treatment Technologies (ATTs) and sand filters. A full ESER would be required every fourth year of licensing.

Recommendation # 3 - - Additional Code Enforcement Options

In our review of County Code enforcement options, we found that our current language, including the concept of STR owner / neighbor complaint resolution attempts as a first step, followed by other enforcement options thereafter, and including the "three strikes" for license suspension or revocation protocol, is a standard feature on many, if not most of the regulatory codes in Oregon. We are not recommending abandoning or significantly modifying those features. What is lacking, and what we are recommending adding, is another option for problem resolution / violation determination / and enforcement that entails establishment of an administrative process to receive complaints, investigate them, and determine if violations of the STR Program Code provisions have occurred, and what sanctions will be enforced for violators. This process will incorporate the online complaint features of our new STR software, together with the code enforcement and investigation resources of the Sheriff's Office, to bring potential violations before a Hearings Officer, not part of the Circuit Court system, to hear and decide violation allegations. County Counsel's office will be delegated authority to design the hearing system to ensure due process is provided; hearing procedures are established; evidentiary, standard of review and decision-making requirements are identified; and enforcement authority delineated. In any case, the standards and procedure will be less formal than in Circuit Court while providing appropriate due process to all the parties involved.

This administrative process is in addition to, but does not replace, all the other options for enforcement found in Chapters 4 and 10 of the County Code. The Sheriff's office, working with County Counsel's office, will decide which enforcement tool is best suited for each individual situation. It expands enforcement options.

A key feature of this new option is that a determination that a violation occurred made by the Hearing's Officer constitutes a "strike" that could ultimately lead to revocation of an STR license.

Recommendation # 4 - - Caps on Licenses Issued

This issue has received, and will continue to receive, more public comment than any other recommendation that we are making. The comments have ranged from banning all STRs in residential areas to removing any caps on the number of STRs, and everything in between. Some comments suggested changes that stray into the realm of land use regulations which we have previously indicated we will not recommend. There are some options that can be explored, but they are all predicated on an initial decision whether the Board desires to place some limit on the number of STRs in the unincorporated areas of the County. At this point in the process, and to

establish some options to facilitate discussions, we are recommending the Board approve one of four alternatives in the unincorporated areas of the County:

Alternative # 1 would not establish any limits on the number of STRs.

Alternative # 2 would set a cap, to be determined by the Board, at a level equal to, or greater than, or lesser than, the number of licenses currently issued. It would establish a procedure to create a waitlist for owners to get the next available license under the cap.

Alternative # 3 would also create a cap on the number of licenses and establish a waitlist. The cap, however, would include creation of geographic subarea caps³ that would allow new licenses in a subarea only when the subarea cap is not exceeded, and the owner is next in line on the waitlist. This would be a more complicated process but it could be administered with the software and mapping capabilities we currently have. This could allow for a reduction of concentration of STRs in some areas, and spreading of the units to other areas within the overall limits.

Alternative # 4 is a variation of alternative # 3, but with removal of an overall cap and replacement with only geographic subarea caps. This could allow a variation of caps, allowing fewer than the number of existing licenses in some areas, but a greater number than currently exist in others. The individual subarea caps could be periodically adjusted.

In all these alternatives, existing STRs would be allowed to remain licensed and operating until the property is sold or transferred.

All four of the recommendations have been incorporated into draft amendments to the Lincoln County Code which will be available on the County website.

Next Steps:

The next opportunity for public comment on these recommendations is set for **Wednesday, April 7th at 6:00 pm** in a virtual workshop.⁴ Public Information Officer Casey Miller will provide information on how to participate in that meeting. If needed, to allow everyone the opportunity to comment, additional workshops will be scheduled after the 7th.

Once initial comments are received, staff will discuss with the Board the recommendations and public input on **April 12th**, at the regular board meeting at 3:00 that day.

Public input may still be submitted to the Board and staff using the county's [website](#) and the link to the County smartsheet as noted below:

<https://app.smartsheet.com/b/form/363543508b294a83b78cc663fd4dff6b>

³ County staff with GIS assistance has developed a map with seven geographic subareas that could be used for this purpose. The maps and additional information will be made available to illustrate how this option would work. From this information an allocation of subarea caps could be developed.

⁴Comments received after the amendments were developed but before the meeting on March 29th will be incorporated into the workshop record.

Additional public comment opportunities will be provided later in April before the Board determines what changes it wishes to see incorporated into the final code amendments. Those amendments will be formally considered and adopted in May. This fits the timeline established in Resolution #20-21-12C.