

**Boulder City Council
STUDY SESSION**

Televised

**Tuesday
February 10, 2015**

6-8 PM

Potential Regulation of Vacation Rental by Owners

8-9 PM

Chautauqua Lease

Materials for this topic will be available on January 29, 2015

**Council Chambers
Municipal Building
1777 Broadway**

Submit Comments to City Council
Email: council@bouldercolorado.gov

or

Attention: Alisa Lewis, City Clerk
PO Box 791, Boulder, CO 80306
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CITY OF BOULDER
STUDY SESSION

TO: Members of City Council

FROM: Tom Carr, City Attorney
Bob Eichen, Chief Financial Officer

DATE: February 10, 2015

SUBJECT: Potential Regulation of Vacation Rental by Owners

PURPOSE:

This study session will provide an opportunity for council to consider options for regulation of vacation rentals by owner. Vacation rentals by owners have grown dramatically over the last five years. Boulder's current code was drafted long before such rentals became popular. There is nothing in the code that addresses such rentals directly. It appears that this segment of Boulder's economy will continue to grow. This study session is intended to elicit policy guidance from council regarding the approach the city should take in addressing this growth.

INTRODUCTION:

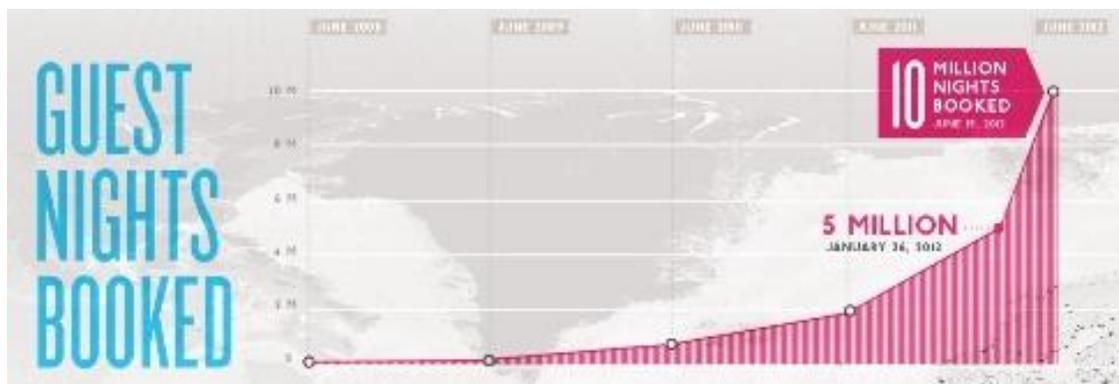
Boulder residents have long rented their homes to visiting vacationers. Previously, such rentals were sporadic and incidental. The so-called "sharing economy" growing out of almost universal internet usage has caused a significant increase in this type of rental activity in Boulder. This growth has coincided with and been spurred by the evolution of companies created to facilitate such rentals. In 2008, city staff examined all listings for vacation rentals in Boulder on the website www.vrbo.com. Staff found 31 properties listed, with only 21 actually located in the city of Boulder. In December 2014, staff accessed the website www.airbnb.com and found over 1800 listings referring to the city of Boulder. Of these, staff confirmed 514 in the city. It appears that it is time to consider how the city should regulate these rentals.

BACKGROUND:

The Vacation Rental Industry

Vacation rentals have increased dramatically over the last 20 years. In 1987, David and Lynn Clouse moved to Aurora, Colorado from California.¹ They sold a rental property and bought a condominium in Breckenridge. Looking to earn enough income to pay the mortgage, they decided to rent the condo when they were not using it. Property management companies generally earned 45% of the rental income. The Clouses decided to rent the condo themselves. They placed a 15 word advertisement in the back pages of Ski Magazine at the cost of \$700 for five months. By 1995, they decided to take advantage of the then nascent internet. Mr. Clouse designed a database that he could transform into a webpage to market his condo. He also offered to post some of his friends' rentals for free. The initial website was text only. He ultimately learned to post pictures, which led to charging for the service and ultimately the founding of vrbo.com. In November 2006, Homeaway, Inc. purchased vrbo.com. Homeaway is listed on the NASDAQ under the symbol AWAY. On December 30, 2014 it closed at \$28.99 with a market capitalization of \$2.7 billion.

VRBO's major competitor is airbnb.com. In 2007, Joe Gebbia and Brian Chesky, were 27 years old and sharing a small apartment in San Francisco.² They were struggling to make ends meet. Mr. Gebbia and Mr. Chesky were designers who had attended the Rhode Island School of Design. There was a design conference coming to San Francisco and Mr. Gebbia and Mr. Chesky saw an opportunity. They decided to market the opportunity for participants to sleep at their apartment on air mattresses. They offered to make breakfast. They called their effort an "air mattress bed and breakfast." They rented three air mattresses for \$80 each. In 2008, San Francisco hosted the Democratic National Convention. Based on their earlier experiment, Mr. Gebbia and Mr. Chesky expanded their effort and managed to launch a website two weeks before the convention. They got 800 listings. Airbnb is privately held. The company's value has been estimated as high as \$10 billion. The company's website³ provides the following growth chart:



¹ The information here comes from a corporate history posed on <http://www.tugbbs.com/forums/showthread.php?t=35409> and an interview with Mr. Clouse at http://www.interviewbooks.com/vrbo_com.htm.

² This information is drawn from an article in the Telegraph, which can be accessed at <http://www.telegraph.co.uk/technology/news/9525267/Airbnb-The-story-behind-the-1.3bn-room-letting-website.html>.

³ <http://blog.airbnb.com/5-things-you-didnt-know-about-airbnbs-growth/>

The two companies have different corporate philosophies. VRBO is geared toward the rental of vacation homes. Airbnb, which started as a sharing website, is more focused on rental of owner occupied properties. VRBO only rents entire homes or apartments, while Airbnb will also rent a private room or a shared room. This distinction may be becoming less significant. In Boulder, 65% of Airbnb listings are for entire properties, while less than 1% are for shared rooms.

Vacation Rentals in Boulder

On June 15, 2014, the San Francisco Chronicle published a study entitled [Window into Airbnb's Hidden Impact on S.F.](#) The Chronicle used Connotate, Inc., a data harvesting firm, to mine data from Airbnb's website. Using this data the Chronicle was able to provide a profile of Airbnb users in San Francisco. City staff endeavored to create a similar profile by accessing the Airbnb website manually.⁴

The 514 rental properties identified in Boulder include 335 properties in which the entire home or apartment is offered. There are 174 rentals for private rooms and 5 rentals for shared rooms. The average price per night is \$148, although this is skewed by some higher priced properties. The median price is \$100. Absent an ability to access Airbnb's database, there is no way to determine accurately how often the properties are rented. Airbnb allows users to post reviews for individual properties. These reviews can provide some surrogate for actual use data. The following chart breaks down the 514 properties by number of reviews:

Number of Reviews	Number of Properties	Percentage
Greater than 50	28	6%
11 to 50	109	21%
10 or less	377	73%

This data suggests that most Airbnb hosts in Boulder are occasional renters. It also suggests that there are some properties rented with more regularity. Of the 28 properties with more than 50 reviews, 5 had more than 100 and one had 240 reviews. It also is important to note that not every visitor will post a review and most visits likely last more than one day. Thus, to the extent that the data provides a measure for usage, it understates the actual number or rental days. The following chart breaks down the citywide data by neighborhood:

⁴ Staff also reviewed the VRBO website. It appeared that there were more listings on the Airbnb website than on the VRBO website. Also, it appears that many hosts list on both websites. For this purpose, staff decided to focus on Airbnb.

Neighborhood	Totals		> 50		11 to 50		10 or less		Price	
	#	%	#	%	#	%	#	%	Mean	Median
30 th Street Corridor	51	10%	2	4%	8	16%	41	80%	\$102.34	\$85
East Boulder	27	5%	2	7%	5	19%	20	74%	\$116.96	\$89
Goss Grove	13	3%	2	15%	5	39%	6	46%	\$106.99	\$98
Gunbarrel	6	1%	0	0%	0	0%	6	100%	\$88	\$99
Mapleton/Downtown	53	10%	2	4%	8	15%	43	81%	\$169.70	\$96
Martin Acres	24	5%	0	0%	3	13%	20	87%	\$131	\$119
North Boulder	146	28%	6	4%	31	21%	109	75%	\$155.57	\$100
South Boulder	26	5%	1	4%	5	19%	20	77%	\$161.08	\$89
Uni Hill/Chautauqua	71	14%	6	9%	15	21%	50	70%	\$159.70	\$108
Whittier	98	19%	7	7%	29%	30%	62	63%	\$161.72	\$105

None of this data is definitive. It does suggest that some neighborhoods are more impacted than others. Staff's review of the Airbnb website also found many hosts who joined the site in 2014. This suggests the possibility of significant additional growth in the future.

Boulder's Current Regulations

As explained above, Boulder's current code was not drafted in contemplation of large scale rental of private residences for less than thirty days. Nevertheless, there are several code sections that would seem to apply and could potentially be enforced without additional legislative action. Enforcement of these sections would effectively prohibit most residential vacation rentals.

A. Zoning

The city's land use code includes the following definitions:

"Bed and breakfast" means a building of a residential character other than a hotel or motel compatible with the neighborhood offering:

- (1) Temporary lodging for less than one month;
- (2) Twelve or fewer rooms for guests;
- (3) At least one meal daily for guests; and
- (4) A manager residing on the premises, but not providing the accessory uses normally associated with a hotel.

"Hostel" means a facility for residence of under one month that provides simple dormitory or sleeping rooms and common rooms for cooking, meeting, recreational, and educational use; that is chartered or approved by the International Hostel Federation or its national or regional affiliates, or similar organizations; and that is supervised by resident house-parents or managers who direct the guests' participation in the domestic duties and activities of the hostel.

"Hotel/motel" means an establishment that offers temporary lodging in rooms, for less than one month, and may include a restaurant, meeting rooms, and accessory uses and services, including, without limitation, newsstands, gift shops, and similar incidental uses conducted entirely within the principal building but excludes a bed and breakfast, as defined in this section.

§ 9-16-1, B.R.C. 1981, "General Definitions" Most vacation rentals would qualify either as a "Hotel/motel" or a "Bed and breakfast." When the rental is for an entire unit, it would seem unlikely that there is a "manager residing on premises" or "at least one meal daily for guests." Since 65% of the listings in Boulder for Airbnb and all listings for vrbo.com are for an entire unit, it would appear that most vacation rentals would be categorized as a "Hotel/motel" and not as a "Bed and breakfast." This is significant, because the city prohibits hotels and motels in all residential zones, but allows bed and breakfasts. The relevant section of the use table⁵ is as follows:

Districts	RH-1, RH-2, RH-4, RH-5	RH-3, RH-7	MU-3	MU-1	MU-2	MU-4	BT-1, BT-2	BMS	BC-1, BC-2	BCS	BR-1, BR-2	DT-4	DT-5	DT-1, DT-2, DT-3	IG	IM
Use Modules	R6	R7	M1	M2	M3	M4	B1	B2	B3	B4	B5	D1	D2	D3	I2	I3
Hostels	U	U	U	A	U	G	U	G	A	*	A	G	G	U	U	U
Bed and breakfasts	U	A	U	A	A	*	*	*	*	*	*	*	*	*	*	*
Motels/ hotels	*	*	*	*	*	A	U	A	A	*	A	A	A	U	*	*

Hotels and motels are not permitted in any residential zoning district. Bed and Breakfasts are allowed in some residential zoning districts. Most existing residential vacation rentals listed are in residential zoning districts and therefore would not be a permitted use under the current zoning code. To prove a violation, however, staff would need to identify the exact address and determine the zoning district.

B. Taxation

The city imposes an accommodation tax on rentals of thirty days or less:

There is and shall be paid and collected an excise tax of seven and one-half percent on the price paid for the leasing or rental of any hotel room, motel room, or other "public accommodation" located in the city for lodging purposes.

§ 3-3-2, B.R.C. 1981 "Imposition and Rate of Tax." The code defines "Public Accommodation" as follows:

⁵ To allow better readability, staff has deleted the zone districts in which none of the listed uses are permitted. It should be clear that the above table shows only the zone districts where these uses are permitted under any circumstances. The complete use table can be found at Section 9-6-1, Table 6-1: Use Table.

"Lodging services" or "public accommodation" means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses or has the right to use or possess *any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park or similar establishment*, for a continuous period of less than thirty days under any concession, permit, right of access, license to use or other agreement, or otherwise.

§ 3-1-1, B.R.C. 1981 "Definitions." (emphasis added). The definition would appear at first glance to be very broad and inclusive of vacation rentals. The italicized language, however, does not specifically include rentals of residential properties. The phrase "or similar establishment" could be construed in such a manner. To be clear, if council wishes to tax vacation rentals, staff recommends that the code should be modified to include such rentals specifically.

There is another taxing alternative Council may want to consider. That is to have a separate kind of tax for this new and rapidly growing business industry segment. Based on staff discussions with communities that currently tax these types of rentals, gaining compliance in collecting and remitting the tax it is challenging and very different than collecting accommodations taxes. The staff effort is more labor intensive and the administration and collection efforts required are very different. This means, it is going to cost significantly more than it takes to administer, gain compliance and collect the current accommodations tax. If Council wishes to consider taxing these types of rentals, staff recommends that alternative taxes also be considered rather than adding it to the accommodations tax.

C. Rental Licensing

The city requires any property offered for rental to have a rental license:

(a) No operator shall allow any person to occupy any rental property as a tenant or lessee or otherwise for a valuable consideration unless each room or group of rooms constituting the rental property has been issued a valid rental license by the city manager.

§ 10-3-2, B.R.C. 1981 "Rental License Required Before Occupancy and License Exemptions." There are three exemptions from the rental licensing requirements.

1. An owner-occupied unit may have up to two "roomers."
2. An owner may rent his or her "principal residence" for up to twelve months, if the owner occupies the property before and after the rental and at the time of the rental resides outside of Boulder County.
3. "Commercial hotel and motel occupancies" that rent primarily for less than thirty days. Bed and Breakfasts are not exempt.

Again, it should be clear that this language was not drafted in contemplation of regulating residential vacation rentals. Nevertheless, there is some symmetry here. If a residential vacation rental is not a hotel or motel, it should have a rental license. If it is a hotel or motel, it would not be a permitted use in any residential district.

D. Fire Safety

The city of Boulder has adopted, with revision, the 2012 Edition of the International Fire Code.⁶ § 10-8-2, B.R.C. 1981 “Adoption of International Fire Code With Modifications” The fire code has specific provisions relating to hotels, motels and boarding houses. These provisions could be read to apply to residential vacation rentals. The following are some of the fire code requirements for motels and hotels:

1. Post diagrams showing at least two evacuation routes immediately adjacent to the room exit. 2012 IFC § 408.8.1
2. Have either a manual fire alarm system, sprinklers or be less than two stories with all rooms separated by one hour fire walls. 2012 IFC § 1103.7.5.1
3. Have an automatic smoke detection system. 2012 IFC § 1103.7.5.1.1

E. Affordable Housing

The city’s standard affordable housing covenant prohibits leasing the entire home. Thus, anyone leasing an affordable housing unit would be violating the covenant. There is no similar restriction for leasing a room. Enforcement in that circumstance would require reliance upon the zoning limitations discussed above.

E. Conclusion

The current city code was not drafted to address regulation of residential vacation rentals. If enforced as written, the current code would prohibit most such rentals. Staff seeks direction about whether such enforcement conforms to council’s intent with respect to residential vacation rentals.

Pros and Cons of Residential Vacation Rentals

In this section staff has assembled some brief advantages and disadvantages of residential vacation rentals. These are not meant to be exhaustive or to presume to substitute staff’s thinking for council’s policy judgment. These are merely issues that have arisen through the course of this project of which staff believes council should be aware.

⁶ The 2012 Edition of the International Fire Code can be found at <https://archive.org/stream/gov.law.icc.ifc.2012/icc.ifc.2012#page/n3/mode/2up>.

A. Cons

1. Impact on Residential Neighborhoods.

One major concern raised around the country is the impact of residential vacation rentals on the character of the neighborhoods in which they exist. Frequent turnover, additional traffic and cars can undermine the quality of life in a residential neighborhood. Although the council receives occasional complaints about such activity today, continued growth in this practice could permanently alter the very character of Boulder's residential neighborhoods.

2. Unfair competition to the Hotel/Motel Industry.

The Hotel and Motel Industry is subject to significant regulation both at the city and the state level. Hotel owners pay accommodation tax on every room rental. Residential vacation rentals do not pay taxes and do not comply with health and safety regulations. This creates an unfair playing field motels and hotels who are complying with the law.

3. Public Safety

The growing number and diversity of residential vacation rentals makes it very difficult to assure compliance with minimum standards of health and safety. Many commentators have noted that a host is inviting a stranger into his or her home. There have been reports of abuse and damage by guests booked through Airbnb.⁷ A man in Barcelona was convicted of raping two women who rented his apartment through Airbnb.⁸

4. Impact on Availability of Housing

Housing that shifts to permanent short term rental is taken out of the pool of units available for residential use. In some communities, it is common for investors to purchase a home for the purpose of short term rental. Boulder's popularity suggests that this could be a trend here. Each house dedicated to short term rental is one less house available for residential use. Such a trend could negatively affect the city's already challenging housing market.

B. Pros

1. Generating Income for Residents

Renting a residential property appears to be a way for Boulder residents to earn a little extra income. Living in Boulder can be very expensive. Boulder has struggled to find means to

⁷ For example, *PHOTOS: An Airbnb Guest Held A Huge Party In This New York Penthouse And Trashed It*, Business Insider, March 18, 2014. This article can be accessed at <http://www.businessinsider.com/how-an-airbnb-guest-trashed-a-penthouse-2014-3?op=1>. *10 incredible Airbnb horror stories*, Fox News, May 8, 2014. This article can be accessed at <http://www.foxnews.com/travel/2014/05/08/10-incredible-airbnb-horror-stories/>.

⁸ Spain: Man jailed for raping holidaymakers who rented his flat through AirBnB, International Business Times, December 20, 2014. This article can be accessed at <http://www.ibtimes.co.uk/spain-man-jailed-raping-holidaymakers-who-rented-his-flat-through-airbnb-1480434>.

provide affordable housing to its residents. Allowing residents to rent their homes or rooms in their homes can provide some extra income to assist with residential affordability.

2. Economic Activity

Airbnb has done studies of its economic impact on the following eight cities: San Francisco, New York, Paris, Amsterdam, London & Edinburgh, Sydney and Barcelona.⁹ The following is a summary of the San Francisco results:

- The average San Francisco hotel guest visits for 3.5 days and spends \$840. The average San Francisco Airbnb guest visits for 5.5 days and spends \$1,045.
- 56 percent of Airbnb hosts in San Francisco said they use their Airbnb income to help pay their mortgage or rent.
- 72 percent of Airbnb properties in San Francisco are located outside the central hotel district.
- 42 percent of hosts in San Francisco use their Airbnb income to pay for regular living expenses.

There has been no study of economic impacts on Boulder or any similarly situated community.

3. Supports Marijuana Tourism

Boulder law prohibits smoking in most hotel and motel rooms. § 6-4-3(a)(2), B.R.C. 1981 “Smoking Prohibited Within Buildings and Enclosed Areas” (No more than 25% of the rooms in a hotel or motel can be smoking rooms). Marijuana consumption is permitted in any fenced area of a private residence. § 6-16-2, B.R.C. 1981 “Definitions” (“Place open to the general public” shall not include any fenced area of a private residence regardless of whether it can be seen from a place open to the public.”); § 6-16-13, B.C.R. “Prohibited Acts” (“It shall be unlawful for any person to: Cultivate, distribute, produce, smoke, use, or ingest marijuana openly or publicly in a place open to the general public”). Thus, it is possible that residential vacation rentals provide a place for marijuana tourists to consume their purchases legally.

Responses from Other Communities

The sudden growth of residential vacation rentals has triggered a response by many local governments. Ironically, San Francisco, where Airbnb was founded, prohibited short term residential rentals until the county supervisors approved an ordinance, effective February 1, 2015, conditionally legalizing and taxing such rentals. Homeaway, Inc. has sued San Francisco challenging the ordinance as an unfair burden on interstate commerce.

The following is a summary of the provisions of some municipal ordinances addressing residential vacation rentals.

⁹ The studies can be found at <http://blog.airbnb.com/airbnb-economic-impact/>

A. Towns and Cities in Colorado

1. Aspen

In 2011, the Aspen City Council adopted an ordinance allowing for residential vacation rentals in Lodging Zone Districts, Commercial Zone Districts, Mixed Use Zone Districts, and Residential Zone Districts. The ordinance also limits rentals to no more than 30 days. It requires that the host obtain a vacation rental permit and a city tax. If there is a homeowner's association, the host must notify the HOA of the application for a vacation rental permit. The ordinance prohibits a host from renting individual rooms and requires that the host have a local representative to respond to renter issues.

2. Vail

Vail has not adopted any specific regulations for vacation rentals. Vail does not require a business license for persons who rent no more than two units. Vail does require that owners pay sales and lodging taxes.

3. Breckenridge

Hosts must obtain an Accommodations Unit license and pay an annual fee. Hosts must also collect sales and lodging tax.

4. Frisco

Frisco requires hosts to obtain a town business license and pay sales and lodging taxes.

5. Colorado Springs

Short-term rentals are allowed in any zone where single family or multi-family residential uses are allowed. Hosts must collect sales and lodging tax. No signage identifying the property as a short-term rental is permitted.

B. Other Cities

1. San Francisco, California

San Francisco's ordinance requires that only permanent residents may rent and they can only rent their primary residence. The host must reside in the primary residence for 275 days in each year, effectively limiting entire unit rentals to 90 days. The host must put his or her name on a registry. Advertising for rental without being listed on the registry is a violation. The host is required to have at least \$500,000 in liability insurance or participate in a hosting platform that provides such insurance. The host must post a sign on the inside of the front door listing the location of all fire extinguishers in the unit and building, gas shut off valves, fire exits and pull fire alarms.

2. Austin, Texas

Austin adopted comprehensive regulations of residential rentals in 2012. Austin requires that a host obtain a “short-term” rental license. To apply for a license the owner must submit: 1) a \$285 fee; 2) proof of property insurance; 3) a valid certificate of occupancy or a certified inspection and 4) proof of payment of hotel occupancy tax. Unless the unit is owner occupied, Austin will only issue licenses for up to 3% of the units in a census tract.

3. Portland, Oregon

Portland, Oregon adopted its short term rental ordinance during the summer of 2014. Portland requires that a host obtain a short term rental permit. To obtain a permit, the unit must first pass an inspection to verify that the unit was a legal bedroom under the law existing when it was constructed, has a smoke detector interlinked with a smoke detector outside of the bedroom and has a carbon monoxide detector. The host must also provide a notice to all recognized neighborhood organizations. The host must live in the unit at least 270 days. The host may obtain a permit to rent up to two bedrooms. For a permit to rent three to five bedrooms, the host must go through a conditional use review.

4. Palm Desert, California

Palm Desert has perhaps one of the most detailed regulations. The Palm Desert ordinance includes the following provisions:

- a. A three day, two night minimum stay
- b. A maximum number of occupants based on the number of rooms
- c. No change to the outside appearance of the structure
- d. All parking associated with the rental must be on-site
- e. Twenty-four hour access to the host or a representative
- f. A Duty to limit noise or disorderly conduct and respond within 60 minutes of any complaint to halt the behavior
- g. A permit fee and tax.

Policy Questions for Council

Staff requests direction from council on the following questions.

1. Does council need more information?

Staff has attempted to provide council with sufficient information for council to begin the conversation. To date, all work has been done in house. There are consultants who can provide a much more comprehensive look at vacation rental activity in Boulder. If council believes that a more comprehensive look would be helpful, staff could prepare a budget for retaining a consultant and a work plan for a more comprehensive examination of the issue. Staff does not believe that such additional work is necessary. Additional information is not likely to change the basic facts, which are that the number of vacation rentals is growing and could present a

problem in Boulder. Nevertheless, council is always the ultimate judge of what information would be helpful.

2. Does council prefer to ban or to regulate residential vacation rentals?

3. If council would prefer to ban residential vacation rentals, would council like staff to propose an ordinance clarifying the ban and facilitating enforcement?

4. If council would prefer to regulate and tax, which issues should staff explore for regulation?

The following are some provisions found in other ordinances around the country. If council is interested in regulating, which of these or others is council interested in considering:

- a. Location
- b. Number of rental days
- c. Fire safety
- d. Inspections
- e. Parking
- f. Rental only of principal residence
- g. Rental only by full time residents
- h. Insurance
- i. Neighborhood notification
- j. Noise or disorderly conduct
- k. Licensing
- l. Taxation

It should be noted that most of these regulations should be fairly simple to draft depending on council direction. Limitation by location is the most complex. To craft such an ordinance would require a significant planning effort. Staff would appreciate council direction regarding the nature and extent of public process council believes would be appropriate for such regulations. For most of the alternatives listed above, the legislative process may be sufficient for adequate public input. This issue would appear to be similar to the regulation of food trucks. A more involved process will require staff time and adjustment to work plans.