

CITY COUNCIL COMMUNICATION FORM

FROM: Dan Foote, City Attorney
THROUGH: N/A
DATE: September 13, 2022
ITEM: Short-Term Rental Tax Implementation Ordinance Discussion Items

DIRECTION
 INFORMATION
 ORDINANCE
 MOTION
 RESOLUTION
 PROCLAMATION

I. REQUEST/ISSUE & BACKGROUND INFORMATION:

The City Council on July 19, 2022 adopted Ordinance No. 2869 in order to refer to the voters the question whether the City should impose a tax on short-term rentals at a rate of up to 9% and for a period of twenty (20) years ("STR Tax"). The ballot question itself does not impose the tax. Instead, if the voters approve the ballot question, the Council would adopt a second ordinance creating a new section in the City's Tax Code, which is Chapter 22 of the Municipal Code, to implement the tax ("Implementing Ordinance").

Council discussed four elements of the Implementing Ordinance at the September 6, 2022 meeting. Council reached consensus on two items:

- i) imposing the tax at a rate of 9% and
- ii) exempting from the tax reservations that are made and fully paid prior to the effective date of the Implementing Ordinance and relate to reservations commencing prior to the end of the 2022-2023 ski season.

Council indicated the need for further discussions with respect to whether the Implementing Ordinance would include a section describing the use of STR Tax

revenues and how and whether the STR Tax would apply to condominium properties that operating like hotels (“Quasi-hotels” or “Condotels”).

Use of Revenues

The ballot language approved by Ordinance No. 2869 will govern the use of revenues from the STR Tax if it is approved by the voters and implemented by the City Council. Council may, but is not required to, adopt ordinance language clarifying or restating the ballot language in more accessible terms. The ordinance implementing the City’s accommodations tax, for example, includes a findings section that restates the 1986 ballot language in a narrative format rather than the more condensed question format submitted to the voters.

Council reached a consensus on September 6, 2022 that staff’s suggested restatement was not accurate and that it is not desirable to restate the purpose of the ballot language approved by Ordinance No. 2869. Instead, Council indicated a preference to proceed with ordinance language either omitting a statement of the restricted uses set forth in Ordinance No. 2869 or reciting the ballot language verbatim.

Council’s decision between these two choices would have no legal effect. Either way, the ballot language approved by Ordinance No. 2869 would control the use of STR Tax revenues without any clarifying provisions.

Staff would recommend reproducing the revenue restrictions verbatim in the Implementing Ordinance. Including the revenue restrictions in the Implementing Ordinance would make the revenue restrictions part of the Tax Code, which is available on-line and would provide for easier reference.

Application of Short-Term Rental Tax to Quasi-Hotels/Condotels

The ballot question applies the tax to short-term rentals (i.e. rentals for fewer than thirty (30) days) of properties that are defined as short-term rentals by the City’s short-term rental licensing ordinance. That definition is as follows:

CDC Section 302.E.4 and Municipal Code Section 12-541(f)

Short-Term Rental

A dwelling unit offered, provided, used, or operated as a lodging accommodation to guests in exchange for remuneration for a period of less than 30 consecutive days while the owner or other permanent resident does not reside in the dwelling unit. The term short-term rental shall only apply to periods of time when the owner or other permanent resident is not residing in the dwelling unit.

CDC Section 802

Dwelling Unit

A building or portion of a building used or intended to be used as the residence of one family. An individual dwelling unit has independent access and living, sleeping, kitchen, and sanitary facilities for the exclusive use of the occupants of the dwelling unit. Dwelling unit does not include temporary or transient accommodations, such as rooms within hotels or other lodging uses, tents, recreational vehicles, or similar structures.

These broad definitions would include "Quasi-hotels" or "Condotels". These uses are dwelling units that are individually or fractionally owned and provide hotel-like management and amenities, such as on-site check-in and front desk facilities and staff and on-site security.

When not being occupied by an owner, these dwelling units may be rented on a short-term basis through a central reservation system. Rentals of these units would be subject to the STR Tax. Use of these units by their owners would not be subject to the STR Tax, regardless of whether it is full ownership or a fractional or timeshare interest.

Applying the STR Tax to owner use of timeshares or exchange uses of timeshares is possible. However, it would apply the STR Tax in a way that is not consistent with the City's existing sales and public accommodations taxes. The City has historically applied those taxes only to cash transactions for timeshare unit and not to exchanges or owner use of timeshares or fractionally owned units.

Examples of Condotel or Quasi-Hotel uses may include units in The Steamboat Grand Hotel and Resort, Chateau Chamonix, The Ranch at Steamboat, The Highmark, The Village at Steamboat (Worldmark), and the Sheraton Steamboat Resort Villas.

Staff proposes to amend the short-term rental licensing ordinance to clarify that these properties are short-term rentals but exempt them from short-term rental licensing. Staff proposes not to require short-term rental licenses for these properties because they operate as hotels. They tend not to generate complaints from neighboring property owners or are able to manage those internally with onsite staff. In addition, these properties are all located in resort areas in the green zone, so licenses are not required to implement the yellow zone caps or red zone prohibition.

The STR Tax will depend on the basic definitions referenced above. Therefore, it is not necessary to finalize the language of the short-term rental licensing exemption prior to adopting the Implementing Ordinance. However, staff's preliminary view is that the licensing exemption would rely on the following concepts:

"Quasi-hotel" or "condotel" units that are individually or fractionally owned (and therefore taxed at a residential property tax rate) and that meet the definition of dwelling unit are defined as a Short-Term Rental when used for lodging and when the owner or other permanent resident is not residing in the dwelling unit. Staff proposes to exempt these units from the Licensing requirements if they meet the following criteria:

- Provide on-site check-in and front desk facilities and staff
- Provide 24-hour on-site security and staff to assist guests and respond to complaints
- Manage bookings via management company's central reservation system

Timing

November 9 is the earliest date for the Implementing Ordinance to take effect due to the fact that the STR Tax depends on voter approval at the November 8 election. If Council wishes the STR Tax to take effect on November 9, the Implementing Ordinance would have to be approved on first and second reading at two of the three currently scheduled regular meetings on October 11, October 18, and/or November 1.

Delaying second reading beyond November 1 would push back the effective date of the Implementing Ordinance. The remaining regular meetings in 2022 are scheduled for November 15 and December 6.

II. SUMMARY AND ALTERNATIVES:

With respect to whether to include in the Implementing Ordinance a statement identifying the permissible uses of STR Tax revenue, Council has narrowed the options down to including the relevant text from Ordinance No. 2869 or not including any statement at all.

With respect to the application of the STR Tax to Quasi-Hotels or Condotels, the default option would be to apply the tax. The existing definition of Short-Term Rental includes these types of properties and the STR Tax will apply to them unless a change is made.

III. STAFF RECOMMENDATION:

Staff recommends including the relevant text from the STR Tax ballot question in the Tax Code. This option would have the advantage of making this language accessible online.

Staff recommends proceeding with the existing definition of Short-Term Rental, which would mean the STR Tax would apply to Quasi-Hotel/Condotel uses. This recommendation is primarily based on implementing an equitable tax policy that creates a level playing field for competitors in the short-term rental market.

IV. FISCAL IMPACT:

Excluding Quasi-Hotel/Condotel properties from the STR Tax would reduce tax revenue. Staff is not able to quantify the amount of the reduction on the basis of currently available information.

V. LEGAL ISSUES:

None.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

Some members of the lodging community have expressed concerns that excluding Quasi-Hotel/Condotel properties from the tax would be inequitable and would place them at a competitive disadvantage.

VII. CONSISTENCY WITH COUNCIL GOALS AND POLICIES:

This item directly addresses Council's adopted goal regarding short-term rental tax policy.