

CITY COUNCIL COMMUNICATION FORM

FROM: Dan Foote
THROUGH: N/A
DATE: September 6, 2022
ITEM: STR Tax Draft Implementation Ordinance Discussion

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. The tax could be imposed at a rate of up to 9% for twenty (20) years and revenues would be dedicated to affordable and attainable housing and related infrastructure at locations including Brown Ranch. A copy of Ordinance No. 2869 is attached as Attachment 1. If approved by the voters, the ballot question would provide the necessary authority to the City Council to impose the tax.

However, the ballot question itself does not impose the tax. Instead, the Council would need to adopt a second ordinance creating a new section in the City's Tax Code, which is Chapter 22 of the Municipal Code. The ordinance would impose the tax and establish the details for its collection: transactions/properties subject to the tax, tax rate, effective date, and other terms. Staff has prepared the following draft ordinance language for Council's consideration:

“DIVISION 5. – SHORT-TERM RENTAL TAX

Sec. 22-227. - Findings.

(a) The City Council hereby finds and declares that the creation of a source of revenue for the purpose of funding contributions; incentives; and infrastructure, including without limitation, energy, stormwater, water, wastewater, and multi-modal transportation infrastructure to encourage the development of affordable and attainable housing for the local workforce is of primary importance in maintaining the community identity, local workforce, and economic health of the City.

(b) The City Council further finds that a healthy labor market is necessary to the provision of services to visitors to and residents of the Steamboat Springs by the City and by private businesses and is essential to the public health, safety, and welfare.

(c) The City Council further finds that state law governing the assessment of property taxes gives Short-Term Rentals a competitive advantage over other lodging businesses and that the imposition of a Short-Term Rental Tax is a fair and equitable distribution of tax burdens and that the Short-Term Rental industry is capable of adjusting its pricing to accommodate a Short-Term Rental Tax.

(d) The City Council further finds that Short-Term Rental uses have a unique impact on the housing market in Steamboat Springs and in other Yampa Valley communities and that it is necessary and appropriate to impose a Short-Term Rental Tax on Accommodations in the City in order to preserve, promote and enhance the community identity, local workforce, and economic health of the City.

Sec. 22-228. - Imposed; Rate; Tax cumulative; Sunset.

(a) On and after January 1, 2023, there is imposed, and shall be collected and paid in the manner provided for in this Article, a Short-Term Rental Tax of nine percent (9%) on the Price paid on the Sale of Lodging or Accommodations services in any Short-Term Rental located in the City.

(b) The Short-Term Rental Tax imposed by this Division shall be in addition to the Sales and Public Accommodations Taxes currently imposed by this Article on the sale of Lodging and Accommodations services.

(c) The tax imposed by this Division shall expire on December 31, 2042 unless an extension is approved by the voters of the City of Steamboat Springs.

Sec. 22-229. - Taxable transactions, commodities, and services.

The Short-Term Rental tax shall apply to the Price paid on the Sale of Accommodations services at any Short-Term Rental located in the City to any Person for consideration of any kind. Accommodations services shall include the use or possession or the right to use or possess a Short-Term Rental for a total continuous duration of fewer than thirty (30) days. "Short-Term Rental" shall for purposes of this Article have the same meaning as set forth in Chapter 12, Article IX of this Code. The Short-Term Rental Tax shall be due and payable as of the date the Accommodations services are rendered.

Sec. 22-230. - Exempt transactions and commodities.

(a) *Lodging term of thirty (30) days or more.* The Sales and Purchase of Accommodations services to any occupant who is i) a permanent Resident of any Short-Term Rental or ii) has entered into a written agreement for occupancy of a room or rooms or Accommodations for a period of at least thirty (30) consecutive days.

The following entities and transactions are exempt from the duty to pay Short-Term Rental Tax under this article but not the duty to collect and remit the Short-Term Rental Tax levied hereby:

(b) *Sales to federal, state, and local governments.* The United States Government, the State of Colorado, its departments and institutions, and the political subdivisions thereof including the City, when acting in their governmental capacities and performing governmental functions and activities.

(c) *Sales to religious, Charitable, and quasi-governmental organizations.* Religious, Charitable, and quasi-governmental organizations but only in the conduct of their regular religious, Charitable, and quasi-governmental capacities and only if such organizations have obtained an exempt organization license and furnish the exempt Tax license to the Person who rents or leases public Accommodations to the organization.

(d) *Certain Pre-Paid Transactions.* Sales of Accommodations services in Short-Term Rentals that were contracted and pre-paid in full prior to

November 9, 2022 shall be exempt from the Short-Term Rental Tax imposed by this Division.

Sec. 22-231. – Use of Short-Term Rental Tax Revenues

Revenues received by the City from the Short-Term Rental Tax shall be used solely for the purpose of i) providing incentives for the owners of Short-Term Rentals to make their properties available on the long term rental market on an affordable and attainable basis; ii) providing contributions to property owners and developers to facilitate the development of affordable and attainable housing at the Brown Ranch and in other locations; and iii) to support the development of affordable and attainable housing by constructing and acquiring infrastructure including, but not limited to, energy, stormwater, water, wastewater, and multi-modal transportation facilities.”

Notable items for discussion include the rate of tax, the transactions, and properties to which it applies, and the effective date of the tax.

Transactions and Property Subject to the Tax

The draft ordinance 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. The applicability of the current language of the licensing ordinance is somewhat ambiguous with respect to properties that operate similarly to hotels but that do not have the typical hotel ownership structure, i.e. units are owned individually and/or on a fractional basis.

Staff proposes to amend the short-term rental licensing ordinance to clarify that these “quasi-hotel” 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 and 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.

Initial staff discussions regarding the proposed short-term rental tax tied the tax to properties that are required to be licensed, which would exempt the “quasi-hotel” properties described above from the tax if Council agrees that these properties should be exempt from licensing. Questions have arisen as to whether excluding these “quasi-hotel” properties from the short-term rental tax is equitable in that it would give them a tax advantage over their

competitors. In addition, unlike hotels, they are assessed as residential property for purposes of property taxation.

Staff recommends applying the proposed short-term rental tax to quasi-hotel properties in order to avoid creating inequities in the tax system between these properties and other short-term rental properties that would be subject to the tax.

If Council agrees that the "quasi-hotel" properties should be subject to the proposed tax, staff would recommend clarifying the definition of short-term rental in the licensing ordinance to include the "quasi-hotel" properties in the short-term rental definition but exempt them from the short-term rental licensing requirement.

Rate of Tax

The ballot question that has been referred to the voters authorizes the tax to be imposed at a rate of 9%. However, the ballot question merely creates the authority to impose the tax. It does not require the tax to be imposed or to be imposed at any particular rate. Council may elect to impose the tax at a lesser rate than 9% and can at any time in the future modify the rate up or down, or eliminate the tax entirely, so long as the rate does not exceed 9%. The draft ordinance sets the tax rate at 9% due to Council direction on this point.

If Council wishes to impose the tax at a rate of less than 9%, that can be accomplished by direction to staff.

Effective Date of Tax

The tax would apply as of the date of stay, i.e. the days the short-term rental unit is actually occupied. Staff would propose to implement the tax effective January 1, 2023, per Council's direction. Staff requests direction as to the treatment of reservations made prior to the November 8, 2022 election for stays after January 1, 2023.

If the tax is approved by the voters and the implementing ordinance is adopted by the City Council it would, in the absence of an express exception, apply to stays that are already booked and paid for at the current tax rate for stays beginning on or after January 1, 2023. In other words, individuals or groups with confirmed and prepaid reservations would be liable for an additional payment for the new tax.

Imposing the STR Tax in this manner would be lawful. However, it would also upset the usual expectations of persons making lodging reservations, i.e. that

the price won't change once the booking is made. These individuals will not necessarily have the option to withdraw their reservation. Applying the tax to existing bookings may also be an administrative burden on short-term rental property owners and/or their property management companies.

The draft ordinance addresses these concerns by exempting from the tax all stays that were booked and pre-paid in full prior to the effective date of the implementing ordinance (which would be on or after November 9, 2022). Staff recommends limiting the exemption to fully paid reservations in order to have clear and unambiguous standard for determining whether the exemption should apply. However, if Council wished to be more lenient, the exemption could be expanded to include partial payments or even to reservations that are secured only with a deposit or that are not secured at all.

II. SUMMARY AND ALTERNATIVES:

If the voters approve the Short-Term Rental tax referred by Ordinance No. 2869, the Council would need to adopt an ordinance to impose the tax. However, voter approval does not require Council to impose the tax or to impose it at the maximum voter approved rate of 9%.

Assuming voter approval, Council may choose to impose the tax starting on January 1, 2023 or at some later date or not at all. If Council chooses to impose the tax, it may be imposed at any rate up to and including 9%.

III. STAFF RECOMMENDATION:

Assuming voter approval, staff proposes to impose the tax at a rate of 9% based on previous Council direction.

If imposed, staff recommends that the tax apply to all properties that fit the definition of short-term rental in Chapter 12, Article IX of the Municipal Code, which was adopted by the short-term rental licensing ordinance. As noted above, the principal basis for this recommendation is to apply the tax in an equitable way amongst the businesses and property owners operating in the short-term rental market.

If imposed, staff recommends that the tax exempt full paid reservations made prior to the effective date of the ordinance imposing the tax, which can be no earlier than November 9, 2022. The basis for this recommendation is to give lodging businesses and their customers a level of certainty as to price when booking stays in 2023.

IV. FISCAL IMPACT:

Estimated revenues from the proposed Short-Term Rental Tax in 2023 are \$14,309,858.

V. LEGAL ISSUES:

None. The City has clear legal authority to elect any of the options described above.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

Some representatives of the lodging community have expressed grave concerns about the effect of the proposed tax on the City's lodging industry and broader economy.

VII. CONSISTENCY WITH COUNCIL GOALS AND POLICIES:

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

ATTACHMENTS:

Attachment 1: Ordinance No. 2869

Attachment 2: Powerpoint Presentation