



## Agenda Memorandum

Agenda Item – 3.C.

City Council Study Session  
March 6, 2023



### **Strategic Priority 2: Proactive Public Safety**

Enhance public safety to emphasize both prevention and enforcement, engage the community through education and outreach and provide the resources necessary to ensure safety and well-being throughout Westminster.

**Subject:** Presentation of Short-Term Rentals: Update and Next Steps

**Prepared By:** Aric Otzelberger, Operations & Community Preservation Manager

### **Recommended City Council Action:**

Receive a presentation and information gained from recent engagement and stakeholder activities related to short-term rentals and provide direction regarding draft short-term rental regulations for consideration and action by City Council.

### **Summary Statement:**

- Short-term rental (STR) generally means the rental of all or a portion of a property for less than 30 days. These rentals are generally listed on websites such as Airbnb.com or vrbo.com.
- Westminster Municipal Code (W.M.C.) is silent on STRs.
- Following Study Sessions on STRs with City Council on March 7, 2022, and October 17, 2022, City Council provided direction and Staff proceeded with conducting ongoing community engagement and stakeholder outreach activities to gather input and recommendations.
- Pending direction from City Council, the next step in the STR process might be to present a draft Ordinance for consideration and action at a regular City Council meeting.
- Draft language for W.M.C. inclusion is presented as Attachment 1.

### **Fiscal Impact:**

\$0 in expenditures.

**Source of Funds:**

Not applicable.

**Policy Issue(s):**

Does City Council wish to receive a presentation and information from recent engagement and stakeholder activities related to STRs and provide direction regarding draft STR regulations?

**Alternative(s):**

1. City Council could choose not to receive this presentation. This is not recommended due to increasing inquiries from the community regarding the issues surrounding regulation or prohibition of STRs in the City.
2. The City of Westminster could choose not to pursue efforts to regulate STRs. Zoning is permissive in nature, and STRs are technically not allowed in the City of Westminster as they are not referenced in W.M.C. However, this current state presents legal and enforcement challenges. W.M.C. is not clear on policy intent around STRs.
3. The City of Westminster could explicitly prohibit STRs. City Council would need to seek legal counsel around considerations with this policy approach. This approach would present significant legal and enforcement challenges. No jurisdiction in the region has taken this approach.

**Background Information:**

The issue of regulating STRs has been of increasing interest to local governments across the country over the past several years. STR generally means the rental of all or a portion of a property for less than 30 days. These rentals are generally listed on websites such as Airbnb.com or vrbo.com.

Per the most recent City of Westminster data as corroborated through the City's vendor, GOVOS, Inc. (LodgingRevs), at the end of 2022 there were 210 STR properties within the City with nights booked during the last year. Currently, there are 53,892 residential units in the City of Westminster. This includes all residential types including single-family, duplex, and apartments. The number of active STR properties in the City represents 0.4 percent of the City's residential housing stock.

City of Westminster STR data for 2022 shows:

- Average Nightly Rate = \$185.55
- Gross Estimated Annual Rental Revenue = \$4,163,943
- Potential Accommodations Tax Revenue (seven percent) = \$291,476

City Council held a Study Session to discuss STRs on March 7, 2022. Information was presented

from 2018 and 2019 when the City conducted initial stakeholder outreach, worked with a subject-matter steering committee, conducted a STR census, examined regulatory and enforcement approaches from other jurisdictions, and assessed concerns from the community. City Council provided direction to continue with community engagement and stakeholder outreach activities to gather input and feedback on STRs. City Council also indicated its general policy direction to work toward regulating STRs in the City of Westminster. The Staff Report from this Study Session is provided as Attachment 2.

City Council held a second Study Session on October 17, 2022. Information was presented on continued engagement and outreach efforts. STR survey results were reported. Key recommendations were presented from focus groups. Comparative policies and regulations were presented and discussed from 12 comparative Front Range municipalities. City Council confirmed its general policy direction to work toward regulating STRs in the City of Westminster. The Staff Report from this Study Session is provided as Attachment 3.

### **Engagement and Outreach Summary**

Engagement and outreach efforts on STRs formally commenced in early 2019. Following open invitations through a variety of communication channels, City Staff created and has maintained a list of interested community members and stakeholders. This distribution list has close to 350 individuals, and anyone can ask to be added at any time. The City has had hundreds of interactions with interested parties on STRs over the past several years.

In early 2019, the City initiated direct communication with a variety of known stakeholders including homeowner's associations, neighborhood associations, property owners of STRs, and more to gather input. Input was also solicited at this time through The Weekly, the City Website, and Economic Development communications outlets. The City conducted a brief, non-scientific survey through the City's regular communication channels to seek high-level impressions on STRs. The City received 629 responses. Due to other priorities and the disruption of the COVID-19 pandemic, the City halted further work on STRs. Per that direction, nothing formally happened regarding STRs until the March 7, 2022 Study Session.

Following City Council's direction given at the March 7, 2022 Study Session, an STR campaign was launched. During the week of June 13, 2022, the City re-initiated formal STR engagement efforts. These included:

- Website Landing Page: The City built out and updated the existing page with more resident-friendly language accessible via a link that was emailed out to an existing STR distribution list and The Westy email newsletter - <https://www.cityofwestminster.us/Short-TermRentals>.
- Online Survey: The City built out a survey accessible directly via the STR email and from the STR landing page. The 2022 survey included previous questions from the 2019 survey to gather trend data as well as additional demographic and priority rankings questions. The City received 423 responses to the STR survey.
- Focus Groups: The City conducted four different focus group sessions with interested

community members and stakeholders to gather input, recommendations, and to discuss potential regulatory approaches to STRs:

- Tuesday, July 19, 2022 from 5:30pm to 7:30pm (MAC)
- Tuesday, July 26, 2022 from 11:30am to 1:30pm (City Park Recreation Center)
- Wednesday, August 3, 2022 from 6:00pm to 8:00pm (Westview)
- Saturday, August 6, 2022 from 11:30am to 1:30pm (City Park Recreation Center)
- City Council Update: City Council was provided with a list of outreach details in the City Council Update email at the end of the week of June 13, 2022.
- The Westy: Materials needed for promotion were provided in The Westy email newsletter.
- Social Media: The City posted on Facebook, Twitter, and Instagram with an image and link to the STR landing page so residents could learn more and register or complete the survey.
- STR Stakeholder Email: The City sent an email using the EMMA platform to the existing STR lists of interested parties who have engaged over the past several years.

Following City Council's direction from the October 17, 2022 Study Session, the City drafted potential regulations for W.M.C. and returned to the community and stakeholder focus groups for input and feedback. Four sessions were held where invaluable insights, feedback, and recommendations were provided:

- Saturday, January 7, 2023 from 11:00am to 1:00pm (Westview)
- Monday, January 9, 2023 from 6:30pm to 8:30pm (The MAC)
- Wednesday, January 11, 2023 from 11:00am to 1:00pm (City Park Recreation Center)
- Thursday, January 19, 2023 from 6:00pm to 8:30pm (City Park Recreation Center)

Email and phone input was received and documented from 27 different individuals. All input will be documented up until the consideration of a STR Ordinance.

### **Draft STR Language for W.M.C. and Key Policy Considerations**

Attachment 1 provides draft language for consideration for W.M.C. This content would form the basis of a draft recommended Ordinance. The City Attorney's Office has reviewed and edited content as to legal considerations and format and will continue to review and advise on any potential modifications that are desired per policy direction.

City Council questions, feedback, and direction on any element of this draft language is welcome. Community and stakeholder recommendations have significantly helped guide this recommended language. Legal considerations and high-level policy direction are also reflected. Through ongoing

engagement efforts, several key policy questions have arisen as key considerations where policy guidance is desired:

1. Number of Licensed STR Premises per Applicant – Citing the desire to maintain neighborhood character and the public health, safety, and welfare, the City's draft Ordinance language allows one license per Applicant. This has been the most challenging policy item discussed in the draft Ordinance. One perspective shares concern about preservation of residential neighborhood character and what unlimited license potential might mean in relation to large investors. The other perspective sees a limitation on licenses as infringing on private property rights and freedom.

Several neighboring jurisdictions only allow STRs for the primary/principal residence of the owner, which is usually defined as living at the property for at least 180 days of the year. Boulder, Broomfield, Denver, Fort Collins, and Golden are several municipalities with this requirement. In August of 2022, the Fifth Circuit U.S. Court of Appeals held that a city cannot ban non-resident owners from renting out their homes for short-terms. Six days prior, the Third Circuit Court of Appeals upheld New Jersey City's STR Ordinance that contains a primary/principal residency requirement. This presents two conflicting rulings on the same question. The question regarding limitation of STRs to primary owners may ultimately be heard by the United States Supreme Court.

With this legal uncertainty, City staff recommended one STR license per person in the draft Ordinance in an attempt to take a different approach focused on maintaining neighborhood character and public health, safety, and welfare. Both the Fifth and Third Circuit Court of Appeals upheld the ability of municipalities to regulate the STR industry, and both Courts refuted the argument that these regulations represented a taking of property. When it comes to a primary/principal residence requirement, there are significant operational deficiencies and challenges regarding practical enforcement realities that have been observed in neighboring communities.

There are some neighboring municipalities with different policies. Arvada allows one person up to three STR licenses. However, the City of Arvada has a restriction where only one property can be rented out per day, with a total cap on STR booked rentals per person of 270 nights per year. This approach presents significant enforcement challenges. The City of Wheat Ridge allows two licenses per person where one can be an investment property and the other must be the person's primary residence. The City of Northglenn has no limit per person on STR licenses.

2. License Cap – The draft Ordinance did not suggest a limit or cap on the number of STR licenses that could be issued within the City of Westminster. The City received significant feedback both for and against setting a limit on the number of STR licenses. While not new, STRs do represent a somewhat new and evolving use. It is difficult to predict the market and what impacts this market may have on neighborhood character and public health, safety, and welfare. With this in mind, a license cap could be added to the Ordinance.

Many mountain communities in Colorado have had caps on STR licenses for many years. In the Front Range, Wheat Ridge has a STR cap of two percent of the total units within single and two-family dwellings in each of that municipality's four City Council districts. Three of Wheat Ridge's four City Council districts are at the license cap. This restriction does not apply to owner-occupied STRs and does not apply in mixed-use and Commercial districts, which includes multi-family properties. It appears that many other neighboring municipalities do not have a license cap.

There are 53,892 residential units of all types in the City of Westminster. A two percent license cap would represent 1,077 licenses. If multi-family units are removed from consideration of a cap, the total number of residential units – both detached and attached - is 31,808. A two percent license cap would be 636 licenses. The City believes there are 210 STRs operating within the city today, which would be 0.7 percent of detached and attached residential units in the city.

3. Occupancy - The original draft Ordinance offered an occupancy limit of eight persons per property, with the exception of children under the age of 13. Based on community and stakeholder input, along with other considerations, the draft Ordinance has been updated to reflect the occupancy limitations in the existing Rental Property Maintenance Code (Section 11-12-4, W.M.C.). These limits focus on a life safety consideration and are more defensible and enforceable. These limits have two factors. The first is 150 square feet of habitable space per first occupant and 100 square feet for each additional occupant. The second test is per bedroom with 70 square feet per first occupant and 30 square feet for each additional occupant per bedroom.
4. Parking – The original draft Ordinance contemplated the requirement of a parking plan with a basic narrative and visuals for each STR license application. Based on feedback and input, this requirement has been removed from the draft Ordinance. The existing parking regulations and restrictions in Section 10-1-12, W.M.C. appear sufficient and equitable to address STRs in equity.

### **Next Steps**

Pending City Council direction, the next step would be for Staff to prepare an STR Ordinance for City Council consideration and action in second Quarter 2023. The City would then work to operationalize the adopted policy for STRs to create a licensing program within the adopted regulatory framework approved by City Council.

The City's Strategic Plan priority of Proactive Public Safety is met by working towards STR regulations that balance greater neighborhood and community interests with private property rights.

Respectfully submitted,

A handwritten signature in black ink that reads "Mark A Freitag". The signature is written in a cursive, flowing style.

Mark A. Freitag  
City Manager

### **Attachments:**

City Council Meeting Presentation

Attachment 1 – Draft STR Code Language

Attachment 2 – March 7, 2022 City Council Study Session – STR Staff Report

Attachment 3 – October 17, 2022 City Council Study Session – STR Staff Report