

MEMORANDUM

TO: San Miguel County Planning Commission
FROM: Troy Hangen, Senior Planner, SMC Planning Department
RE: Amendment to the San Miguel County Land Use Code Section 5-30 Short Term Rental to Update and Clarify Specific Standards
DATE: August 12, 2020
[Z:\Applications\2020_Short Term Rentals_LUC Amendments\1 Staff Memo(s) and Resolutions(s)]

Background

For the last few years, the San Miguel County Planning Department has seen an increase in issues related to Short Term Rentals. The Short Term Rental (STR) section of the Land Use Code was introduced into the Land Use Code in 2014 and has not been updated or altered. The Planning Department has analyzed the Short Term Rental part of the Land Use Code and would like to propose an update to the Code in order to provide clarity.

Proposed Amendment

The draft amendment to the San Miguel County Land Use Code is attached. Presently, San Miguel County allows STR properties in most zone districts subject to obtaining a permit. They are required to be licensed with the State and County for tax purposes. Recent activity related to the COVID-19 pandemic has shed light on some of the issues that require clarification. One example is circumventing code requirements by renting rooms to multiple parties. These properties should be permitted as Bed and Breakfasts or Guest Ranches, which requires a One-Step Process through the Planning Commission.

Some notable examples of amendments are clarification of what type of property can be rented, and water and trash issues. The primary residence is the only piece of the property that may be used for Short Term Rentals. Individuals from one single party are only allowed to rent the property. Rental of accessory buildings, RVs, & camp sites are not allowed. It is also the responsibility of the owner to pay taxes even if the property is rented using an on-line platform. Finally, it is clearly stated that the property must have potable water and the source the source must be from a municipality or a permitted well from the Colorado Division of Water Resources. Definitions are being updated to match the clarified text.

Public Noticing

A display ad was published in the Telluride Daily Planet on Friday, August 7 & Sunday, August 9, 2020.

Referral Agencies

The proposed Land Use Code text amendment was sent to the County Attorney and the County Manager. Minor responses were received from both parties and incorporated into the final draft.

Public Comments

As of the writing of this report, no public comments have been received.

Review Standards

Review Standards for Land Use Code Amendments are contained in LUC Section 5-1802 and state, “Land Use Code Amendments may be initiated by the County or by persons who are residents of, or own property in, San Miguel County subject to compliance with the following standard.” This amendment was initiated by staff. The only review standard, LUC Section 5-1802 A., states “Land Use Code Amendments shall be drafted in a form consistent with the organizational format and style of the code.” The proposed amendment has been drafted in the format and style of the code. As needed, the amendment may correct formatting errors that do not change the substance of the Code.

In addition, Section 1-4, Purposes of the Land Use Code, should be considered.

1-402 Implement Policies

To implement the policies of San Miguel County regarding land use and development, housing, growth and related issues, as adopted and amended from time to time.

1-403 Create Common System of Administration and Regulation

To combine the regulation of all aspects of land use and development and the use of land and natural resources into a common system of administration and regulation.

1-404 Simplify the Land Use Regulatory Process

To simplify the application and review process for such regulatory system.

1-405 Protect Health, Safety and Welfare

To protect the health, safety and public welfare of San Miguel County.

Sample Motion for Approval:

I move to recommend to the Board of County Commissioners to adopt the amendments to the San Miguel County Land Use Code Section 5-30, Short Term Rental, based on the finding that the amendment as proposed is consistent with and complies with the review standards in Section 5-1802 Land Use Code Amendment, and is consistent with the Land Use Code Section 1-4, Purpose of the Land Use Code.

Additions are shown as red underlined. Deletions are shown as ~~red strike through~~.

5-30: SHORT-TERM RENTAL

5-3001 General

This section shall govern the use and occupancy of a Single-family Residence, Condominium Unit or Duplex Unit by a third party for compensation for less than thirty (30) consecutive days. Accessory Dwelling Units and/or Caretaker Units and County R-1 Housing Deed-Restricted Units are not eligible for Short-Term Rental. The rental of accessory structures, recreational vehicles, camping spaces, and other spaces not located in a primary dwelling unit is not allowed as a Short-Term Rental. The following standards do not apply A Permit for a Short-Term Rental is not required in the West End (WE) Zone District; however, all applicable taxes shall be collected and remitted as set forth in Section 5-3001 A. Short-Term Rentals are prohibited in the Open Space (OS) Zone District, the High Country Area (HCA) Zone District, and the Affordable Housing Planned Unit Development (AHPUD) Zone District.

5-3001 A. Purpose

The purpose of this Section is to promote public health, safety and general welfare by establishing standards for rental of a Primary Residence for less than thirty (30) consecutive days. These regulations are also intended to ensure that individuals or entities that ~~are~~ Short-Term Renting a residence in the unincorporated areas of San Miguel County are ~~paying~~ collecting and remitting the requisite State ~~and County~~ Sales Tax and County Lodging Tax. (C.R.S. 39-26-102 (11), C.R.S. 39-26-104 (1) (f)) Any individual or entity advertising a residential unit for Short-Term Rental in any media including the Internet or who has hired a property manager to handle the Short-Term Renting of a residence is required to comply with the standards in Section 5-3001 and obtain a County Short-Term Rental Permit.

5-3001 B. Standards

- I. County Permit. The owner(s) must complete the application for and obtain a Short-Term Rental Permit approval from the County. An approved Permit is valid for a two-year period and must be renewed every two years.
- II. Registering with the Colorado Department of Revenue (CDOR). Short-Term Rental of a residential unit requires the property owner to file with the CDOR and provide the County Planning Department with a copy of their State Sales Tax License. Taxes may be collected and remitted by property managers or on-line rental platforms that book short term rentals on the owner's behalf. The use of a property management company or on-line rental platform does not relieve the property owner of the responsibility to register with CDOR and to collect and remit taxes.
- III. The County Short-Term Rental Permit number must appear in a conspicuous place on all Short-Term Rental advertising materials.

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- IV. The Short-Term Rental shall only be rented to a single party. If renting rooms instead of the entire dwelling unit, individual guest rooms shall not be rented out to multiple parties.
- ~~IV.~~ V. If the Short-Term Rental is not served by a municipal or community sewer system the Dwelling must have an onsite wastewater system recognized and approved by the County Environmental Health Department according to their applicable regulations. Existing systems do not need to be repaired or replaced unless required by the County Environmental Health Department.
- VI. If the Short-Term Rental is not served by a municipal or community water system, the Dwelling must have a domestic well permitted by the Colorado Division of Water Resources that provides sufficient quantity and quality of potable water.
- VII. Occupancy is limited to two (2) persons per bedroom or sleeping room unless the unit is on central sewer or additional occupancy has been incorporated into the capacity of the onsite wastewater treatment system (OWTS). In this case, the occupancy shall be limited to the number of people for which a County approved ~~onsite wastewater system~~ OWTS has been designed but in no case shall the occupancy exceed ten (10) people. Additional persons may be authorized through a specific Administrative Review process where it is determined that the OWTS ~~or ISDS~~ as designed and built is adequate for the proposed use.
- VIII. The rental residence will be inspected by the Building Department for surface type safety concerns such as emergency escape windows in bedrooms, smoke and CO detectors, and ingress/egress paths of travel for a fee determined by the current Building Code as adopted by the Board of County Commissioners on the initiation of an application for a Short-Term Rental Permit. Subsequent renewals at two (2) year intervals will only require an affidavit signed by the applicant that the unit complies with all safety standards as listed in this Section.
- ~~VIII.~~ IX. Dwellings shall be equipped with operable smoke alarms and carbon monoxide alarms pursuant to State Statute (HB 091091) and the ~~current~~ County's current adopted building code. Dwellings must contain an operable fire extinguisher in proximity to the kitchen.
- ~~VIII.~~ X. Parking Requirement: One (1) space per bedroom located on the subject property.
- IX. Dwellings shall have adequate trash containers sufficient to serve the guests. All trash containers must be in a bear proof enclosed structure such as a garage, barn, or shed or a ~~waste management metal~~ container with a bear proof latch designed to be bear-proof per LUC Section 5-407 A.X.

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- XII. The property owner/manager shall provide each rental guest with a copy of “Being a Good Neighbor” and shall provide the County and the guest with the name, address and contact information, including a 24-hour contact telephone number of a current local contact person.
- XIII. The property owner shall notify each adjacent property owner in writing of the name and contact information for the 24-hour local contact and shall do the same notification when local contact information changes.
- XHIV. It is the property owner’s responsibility to determine whether there are private declarations and covenants within their subdivision that prohibits or further restricts the Short-Term Rental of residences.
- XHV. The County Permit authorizes Short-Term Rental of a Primary Residence but the County is not responsible for the Short-Term Rental. Any concerns a renter has should be addressed to the local contact person or property owner.

5-3001 C. Revocation of County Permit

Any short term rental permit that the county issues pursuant to LUC Section 5-3001 B. shall constitute a Development Permit for purposes of LUC Section 1-301 and shall be subject to revocation in accordance with LUC Section 3-101 for a permittee’s failure to comply with any of the terms and/or conditions of the permit’s approval, as well as any applicable LUC provisions, including, but not limited to LUC Section 5-3001 B. Standards.

ARTICLE 6, DEFINITIONS

Short-Term Rental

A Primary Residence (residential dwelling) that is rented for durations of less than thirty (30) consecutive days to a single party. This includes dwellings rented out by individual owners and dwellings rented out on behalf of an owner by a property management entity. A Short-Term Rental may be an entire dwelling or a single bedroom. Accessory Dwelling Units and/or Caretaker Units and County R-1 Housing Deed-Restricted Units are not eligible for Short-Term Rental. The rental of accessory structures, recreational vehicles, camping spaces, and other spaces not located in a primary dwelling unit is not allowed as a Short-Term Rental. The following standards do not apply A Permit for a Short-Term Rental is not required in the West End (WE) Zone District. Short-Term Rentals are prohibited in the Open Space (OS) Zone District and the High Country Area (HCA) Zone District. Hotels, Bed and Breakfasts, Guest Ranches, and Hunting Lodges are excluded from this definition and require an application and review through a Special Use Permit process.