

From: Darien Alcorn
To: Dustin Fratto
CC: James Sorensen; Brian McCuiston; Michael Wilcox
Date: 2/28/2018 11:27 AM
Subject: Short-Term Rentals

Dustin,

I am copying some Community Development staff on this. You may want to have them reply also, in case they can add/delete/modify anything to make it more clear. I tried to make it as clear as possible, but sometimes (most times!) a person who is using these laws in practical pursuits on a daily basis can explain things better.

Background. The Utah Code, through the Land Use Development and Management Act ("LUDMA"), regulates land use decisions. The regulations range from requiring Planning Commission, Board of Adjustment or City Council involvement to mandatory noticing and hearing requirements. Sandy City may define the specifics so long as they are in compliance with the requirements of LUDMA. Adoption of land use ordinances is specifically regulated by LUDMA. Prior to adopting a land use ordinance, the ordinance must be presented to Sandy City's Planning Commission for a recommendation and then to the Sandy City Council for adoption, and certain notice and hearing requirements must be followed. (U.C.A. §10-9a-501, §10-9a-502). Review and approval of a land use application is also regulated by LUDMA, which mandates approval "if the application conforms to the requirements of the municipality's land use regulations in effect when the complete application is submitted and all application fees have been paid." (U.C.A. §10-9a-509).

Short-Term Rental Land Use Ordinance. The Sandy City Council expressed an interest in potentially adopting a land use ordinance related to short-term rentals. Members of City staff are reviewing and evaluating which zones may allow short-term rental as a land use as well as regulations that may apply to the use. Currently, members of Sandy City staff are considering the possibility of listing short-term rental as a "special use," which is a permitted use but requires a land use application and approval prior to commencing the use. As a "special use," the short-term rental use will also have regulations specific to that land use. Compliance with those regulations will be required in addition to compliance with all other State and local laws, ordinances, rules, regulations and standards. In order to adopt the proposed land use ordinance regulating short-term rental and setting forth the zones in which the special use will be allowed, Sandy City will need to follow the LUDMA requirements for adoption of land use ordinances. This will include certain notice requirements and at least one public hearing during which the public will have an opportunity to be heard. If the City Council adopts the ordinance, their decision is the legislative, policy decision. Thereafter, applications for short-term rentals will be required to conform to those adopted land use regulations.

Approval of Application. As stated in the Background above, an application that conforms to the requirements of the adopted land use regulations will be entitled to receive approval. This is a simplified statement for a process that involves receiving an application, determining if the application is complete, providing substantive review of the application and determining whether regulations are met. Nonetheless, only if it is determined through that review process that the application does not meet applicable land use regulations, the application may be denied. Concerns other than a failure to meet land use regulations will not be pertinent to the determination. There is no opportunity at this point for neighbors to argue that a short-term rental should not be permitted in a particular location if the short-term rental application is complete and meets the City Code.

Appeal. In responding to a question from the City Council regarding appeals, I think I may have misunderstood the question and would like to clarify. Appeal of the approval/denial of the short-term rental land use application must be based on alleged error in the approval/denial. There are a number of potential errors that could result in erroneous issuance, such as evidence that one of the special use requirements is not met. There are also a number of potential errors that could result in erroneous denial. Whether the appealing party is claiming to be adversely affected by an erroneous approval or an erroneous denial, a party that is adversely affected by the error may appeal the decision. However, the alleged error must be based on City Code requirements. Such an appeal would not provide an opportunity to revisit the initial policy decision (see Short-Term Rental Land Use Ordinance above) on allowed locations or regulatory requirements. One purpose of short-term rental being a "special use" is to enact additional requirements that apply to short-term rentals but not necessarily to other uses in the zone, which should make the short-term rental use more compatible with other uses. As an appeal, a neighbor could allege error in applying those requirements but not in the requirements themselves.

Thank you,
Darien



Darien Alcorn

Senior Civil Attorney

10000 S. Centennial Parkway | Sandy, UT 84070

o: [801.568.7194](tel:8015687194)

dalcorn@sandy.utah.gov

The information contained in this electronic mail message may be confidential information and is intended only for the use of the individual or entity named above, and may be privileged. If the reader of this message is not the intended recipient or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (801-568-7176) and delete the original message. This communication is not intended as an offer or acceptance. Except in certain instances where the sender represents Sandy City in a lawsuit, the sender lacks the authority to make an agreement on behalf of Sandy City, which can only be done by the mayor in a written agreement. If you have any questions about this, please promptly contact the sender. Thank you.