

LEGAL MEMORANDUM

TO: The Sandy City Council
FROM: Zach Robinson
DATE: September 8, 2023
RE: Short-Term Rentals

BACKGROUND

In Sandy City, the burgeoning short-term rental market has precipitated a host of neighborhood challenges. Noise complaints have surged, with late-night parties and disruptive guests fracturing the tranquility of residential areas. Additional vehicles brought by short-term renters have exacerbated already scarce parking, leading to disputes and congestion. Compounding these problems are inconsistent trash disposal practices by transient renters, causing sanitation concerns that may even lead to rodent or insect infestations. In addition to frustrating residents, the transient nature of renters is creating a perception that could deter potential homebuyers, thereby possibly affecting property values. Utah State law imposes a burden on municipal governments to address this issue. Adding to these problems is an unclear process for governing, monitoring, and regulating short-term rentals. Together, these issues present a complex challenge for Sandy City's residents and government.

APPLICABLE LAW

Utah law defines a "short-term rental" as a residential unit or any portion of a residential unit that the owner of record or the lessee of the residential unit offers for occupancy for fewer than thirty (30) consecutive days.¹ Under the auspice of the First Amendment, state law bars a legislative body from enacting or enforcing an ordinance that prohibits an individual from listing or offering a short-term rental on a short-term rental website or using an ordinance that prohibits the act of listing a short-term rental to fine, charge, prosecute, or otherwise punish an individual solely for the act of listing or offering a short-term rental on a short-term rental website.² Essentially, this means Cities cannot use an ordinance to stop a person from listing a short-term rental online or to fine, charge, or prosecute a person just for listing a short-term rental. However, state law does allow a City to take alternative actions to regulate, monitor, and enforce short-term rentals.

Sandy City ordinances prohibit short-term rentals in the City unless a person obtains a short-term rental special use permit and a short-term rental business license.³ Each short-term rental unit needs its own short-term rental business license, and only one license may be issued per person (meaning a person may only operate one short-term rental within the City, not multiple rentals).⁴ Because a person is required to obtain both a special use permit and a rental business license for a short-term rental, the rental property is subject to intermittent inspections as deemed necessary by the Business License Official.⁵ A person to whom a special use permit and a rental business license have been issued may not incur more than three (3) allowed violations or the license and permit may be denied, revoked, or suspended.⁶

¹ Utah Code Ann. § 10-8-85.4(1)(c).

² *Id.* at §10-8085.4(2).

³ Sandy City Code § 15-11-2.

⁴ *Id.* at § 15-11-4.

⁵ *Id.* at § 15-11-5.

⁶ *Id.* at § 15-11-4, § 15-11-6.

OPTIONS

Land Use Regulations/Zoning Districts

There are several options available to Sandy to further restrict short-term rentals within the City to better regulate, monitor, and control short-term rentals and their detrimental side effects. First, the City may restrict where a short-term rental is permitted within the City by using land use regulations and zoning district ordinances. Currently, short-term rentals are allowed within all parts of the City if the applicant has obtained the proper permit and license. The City could further limit short-term rentals by passing an ordinance outright prohibiting short-term rentals in certain zoning districts or allowing short-term rentals only in specifically designated zoning districts. The City may also limit the size of rental properties according to zoning designation. Furthermore, the City may completely ban short-term rentals that are not also owner-occupied (aka: unhosted properties). The City may alternately choose to allow short-term rentals in certain zones as long as the applicant resides within city limits or as long as the applicant can respond to emergencies at the property within a certain amount of time. Additionally, the City may include in its ordinance a provision allowing the City to review an applicant's short-term rental agreement to verify compliance with the City's short-term rental ordinance. Any of the above-described options will reduce the number of short-term rentals available within the City, as well as provide the City greater access to the property and the rental agreements to ensure compliance.

Short-Term Rental Business License

Sandy currently requires a short-term rental applicant to acquire both a special use permit and a short-term rental business license. Additionally, an applicant could be required to obtain a short-term rental business license from Salt Lake County.⁷ The City ordinance does not require an applicant to obtain a license from the County. The City could amend its short-term rental ordinance to include express language stating that a County license is required before the City will issue any permit or license. Additionally, the City may amend its ordinance to require a certain minimum number of inspections of a rental property per year, rather than leaving inspections up to the discretion of the Business License Official.

Third-Party Software Tracking

Although state law prohibits a City from enforcing a short-term rental ordinance based solely on the fact that a person has listed a short-term rental on a rental website, the City can use that information to further investigate short-term rental properties. One way to do this is to use third-party software such as GovOS Short-Term Rental Solution or Granicus to track short-term rentals within the City. The City can then use that information to verify permit and license requirements, regulate inspections, and verify compliance. The use of third-party software to help track short-term rentals may be a good option if the City has limited manpower to keep track of short-term properties.

ENFORCEMENT CHALLENGES

State law has prohibited the most direct, efficient way to track and monitor short-term rentals for compliance by not allowing cities to utilize information a person lists online about short-term rentals. There are other, less direct methods to regulate and monitor short-term rentals. However, gathering compelling evidence to enforce those other options is extremely time-consuming and requires a lot of manpower. Limited financial and human resources and the complex legal framework make enforcement an uphill

⁷ SALT LAKE COUNTY CODE § 5.19.

battle. The following are several options available to regulate and enforce short-term rentals, and each include their own unique enforcement challenges.

Criminal Charges

The first option available to regulate and enforce short-term rentals is to prosecute violations criminally. Although criminal charges are a more direct and likely the most effective method to minimize the detrimental effects of short-term rentals, it is also the most challenging method. Criminal prosecution requires a much higher standard of evidence than civil or administrative enforcement. Additionally, criminal charges require more legal expertise and attorneys who know how to navigate a criminal system to obtain successful convictions on what essentially amounts to non-criminal offenses. Furthermore, the criminal option may also stretch already-limited City resources (*e.g.*, increased court overhead costs due to increased weighted caseload, increased costs associated with public defense of short-term rental cases, when applicable, increased court and prosecution personnel). Moreover, an additional, incidental side-effect of criminal prosecution may be that utilizing law enforcement resources to enforce short-term rental issues may divert those resources from other, more vital law enforcement activities. The issue of whether to resort to criminal prosecution for this type of behavior, especially when alternative remedial options exist, presents a complex policy question.

Civil Complaint in District Court

The second option available to regulate and enforce short-term rentals is to file a civil complaint in District Court. Civil proceedings are less intense than criminal proceedings and may require a lower standard of evidence to obtain a favorable verdict. However, the civil proceedings option also has its drawbacks. Civil proceedings tend to take much more time than criminal cases, often stretching across years. Additionally, civil proceedings often involve more expensive legal processes and more legal personnel than required in criminal proceedings.

Administrative Process with an Administrative Law Judge/Hearing Officers

The third option available to regulate and enforce short-term rentals is to submit short-term rental complaints and violations to an Administrative Law Judge (“ALJ”) for review and correction.⁸ An administrative process would likely be an effective solution that maximizes the use of municipal resources without added expense, expertise, or time. However, an established administrative review process can become complex and requires the creation and maintenance of a dedicated administrative body. An administrative solution would require the City to hire an ALJ, establish a clear process for violations including providing appropriate notice to an applicant in violation, establishing which City personnel will be responsible for submitting violations to the ALJ, scheduling hearings, etc.

RECOMMENDATIONS

Number 1: Review and Update Municipal Code

Currently, after internal discussions in the City’s Administration, it has been decided that the most effective approach for enforcing short-term rental regulations in Sandy is to file criminal charges for violations in the City’s Justice Court. If the City decides to pursue any enforcement through a Civil process, there are issues to resolve.

⁸ In the Sandy City Code an ALJ is referred to as an administrative hearing officer.

The first uncertainty in enforcing short-term rental violations directly through civil action is that the City likely would not have a defined cause of action for the suit. It is also highly unlikely that a municipality is endowed with the authority to create a new cause of action. Additionally, it may be difficult for the City to establish standing to bring a civil suit as the first step in enforcement. The Sandy City Code addresses these issues by requiring the City to seek administrative remedies *before* seeking a civil action because administrative proceedings would provide the City with an adequate cause of action in a civil suit if necessary. The Sandy City Code has a thorough, clear administrative process to follow; however, the subsequent civil action is not so clearly defined.

Second, the code may present uncertainty because it addresses short-term rentals through two different processes. Short-term rentals are largely covered via business license regulations, violations of which may be heard by the Community Development Director as the designated hearing officer for such things. Additionally, having the Community Development Director as the hearing officer may raise some significant conflicts of interest. However, business license violations are also governed by administrative code enforcement, which requires hearings before an administrative law judge. These two conflicting processes muddy the waters on which process the City should follow for short-term rental violations, increasing the likelihood of inconsistent treatment for violators. Furthermore, the code mandates that the City hire an administrative law judge to hear administrative code cases, including business license violations.

It is therefore recommended that the City update its code to clearly define which process should be used to address business license violations, under which short-term rental violations would fall. It is recommended that the City use the mandated administrative law judge process, rather than use the Community Development Director as a hearing officer. This would provide consistency and fair treatment to business license violators. Additionally, the administrative law judge process ends with an order which, if violated, would give the City standing and a cause of action to file a suit in civil court.

The City may also revise its code language to specifically address applicants (whether owners, operators, or lessees) of short-term rentals and clarify their responsibilities and set clear penalties for non-compliance. Such revisions to the code would provide a legal framework that can more effectively address the unique challenges presented by short-term rentals, thereby ensuring that they operate within the bounds of community standards. For example, the City can amend the code to specify that the ordinance applies to applicants, whether they are owners or lessees of a rental property. The City may review the option of amending the code to expressly state that a County license is also required in addition to the City's permit and license requirements. The code may also be amended to include more specific penalties outside of denial, revocation, and suspension, as well as the specific person within the City that would enforce violations (*e.g.*, Planning Commission, City Council, Business License Official...). The code may also be amended to reduce the number of allowable violations before a license is revoked or suspended.

Number 2: Revisit the Hiring of an Administrative Hearing Officer or Amend the Code

Given that the criminal process requires a higher standard of evidence and places a strain on existing legal and law enforcement resources, and that civil actions may consume considerable time and financial resources, an administrative process may be strategically favorable. In fact, in 2018, the Council⁹ engaged in a comprehensive and meticulous debate over matters concerning the issue of enforcement. After an exhaustive deliberation that scrutinized various facets and implications, the Council arrived at a consensus to implement a policy that is non-discretionary in nature. This policy sought to standardize administrative

⁹ It is noteworthy that this legal framework for appointment was reviewed and approved by the Council and Mayor on October 26, 2018, under Ordinance No. 18-32.

procedures of enforcement and review, thereby obviating subjective interpretation and ensuring a more uniform application of the law.

In accordance with Section 1-4-8 of the Sandy City Code, the process for appointing an Administrative Hearing Officer has been clearly outlined and stipulates specific qualifications for the appointee. Section 1-4-8(a)-(b) states:

The Mayor, with the consent of the City Council, *shall* appoint an administrative hearing officer to preside at administrative hearings and issue administrative orders. A person appointed to serve as an administrative hearing officer shall either be law trained or have significant experience with the requirements and operation of administrative hearing processes. The person shall be free from any bias or conflict of interest that might affect impartiality of decisions.¹⁰

This codification ensures that the administrative hearing officer possesses either legal training or substantial experience in administrative hearing processes, thereby guaranteeing a level of expertise and impartiality essential for the role. The adoption this policy reflects the Council's commitment to upholding equitable governance, while assiduously considering the complexities and nuances of the issues at hand.

Despite the unambiguous, non-discretionary language articulated in the Code concerning the appointment of an administrative hearing officer, the City has yet to retain an individual for this role. Several factors contribute to this issue, ranging from pragmatic to philosophical. On the practical front, the City faces challenges in identifying a candidate who meets the qualifications outlined in the Code. Philosophical considerations also come into play, as there exists an ongoing debate concerning the role and necessity of an administrative hearing officer within the municipal framework. Additionally, fiscal constraints have contributed to the hesitation, raising questions about cost-effectiveness.

There are two options for resolving the current impasse regarding the retention of an administrative hearing officer. The first option is to revisit the issue of retaining a qualified individual for the role and to allocate the necessary funding for the position. This would bring the City into compliance with its existing legal framework and potentially enhance the efficacy of administrative processes. The alternative is to consider amending the Code to reflect the practical challenges and philosophical reservations that have precluded the hiring. Such an amendment could mitigate the risks associated with non-compliance and provide the City with greater flexibility in administrative enforcement. Each option has its merits and drawbacks, and a thorough analysis is warranted to determine the most prudent course of action.

Number 3: Enhance Collaboration with Short-Term Rental Platforms

Enhancing collaboration with platforms such as Airbnb could facilitate the enforcement of City regulations. By partnering directly with these platforms, Sandy City could work towards ensuring that all listings comply with local laws and standards. This collaborative approach might include data sharing agreements, regular consultations, and joint enforcement efforts. Such a partnership could significantly improve oversight and foster a more responsible short-term rental market within the City. In the past, Sandy has contracted with a vendor to provide this service, perhaps it is time to revisit this option.

Number 4: Public Education and Outreach

Public education and outreach are essential components in creating a community-aware approach to regulating short-term rentals. Launching community engagement programs that inform residents of the existing regulations, their rights, and the process for reporting violations can empower the community to

¹⁰ See Ord. No. 18-32, § 1(1-8), 10-26-2018, (Emphasis added).

actively participate in maintaining neighborhood standards. Through informational materials, and other engagement tools, Sandy City can foster an informed and proactive citizenry that actively supports responsible short-term rental practices

CONCLUSION

In conclusion, something must be done about the growing problem of short-term rentals. The current situation is not sustainable. There are various issues that cannot be ignored, including legal challenges and community disruptions. We need to review and update our code, if needed, and make sure the rules are enforced.