STRAC
April 27th, 2017

STR Primary Residence Report

Excise and Licenses
Convened in March to dive further into Primary Residence issues with Denver STR framework

Consists of EXL, 2 hosts, and 2 non-hosts.

Currently Researching:
- Justification of Primary Residence Requirement
- Enforcement via:
  - Tax documents
  - Voter registration documents
  - Other enforcement tools
  - Other municipalities / jurisdictions enforcement tools
- Occupancy Issues
- Potential rule-making to further define the Primary Residence requirement for enforcement
Sec. 33-48. - Application.
- (b) The applicant shall self-certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Colorado.
- (c) The director may, at the director's discretion, require additional documentation associated with the application as may be necessary to enforce the requirements of this article or chapter 32.
- (f) The property where the licensed premises are located must be the applicant's primary residence.

Sec. 33-46. – Definitions:
- (4) Primary residence means a residence which is the usual place of return for housing as documented by at least two of the following: motor vehicle registration, driver's license, Colorado state identification card, voter registration, tax documents, or a utility bill. A person can only have one primary residence.

Sec. 33-49. - Unlawful acts.
- Primary residence. It shall be unlawful to operate a short-term rental in any location that is not the applicant's primary residence.
Sec. 11.8.9.1 All Zone Districts In all Zone Districts, where permitted with limitations, a Short-term Rental:

A. Shall be clearly incidental and customary to and commonly associated with the operation of the primary residential household living use.

B. Shall be operated by the person or persons maintaining the dwelling unit use as their primary residence. For purposes of this provision, “person or persons” shall not include any corporation, partnership, firm, association, joint venture, or other similar legal entity. For purposes of this section 11.8.9, the term “primary residence” shall have the meaning prescribed thereto in D.R.M.C. Chapter 33.

G. Shall not include simultaneous rental to more than one party under separate contracts.

H. Shall not be subject to a maximum number of guests per night.
EXL & CPD Staff Recommend Primary Residency Requirement:

- Recognize STRs are a new, evolving industry in Denver that might take time to achieve appropriate regulatory balance. Requiring primary residence is a more conservative, deliberate approach to fully understand impact of STRs in Denver.

- While numbers and impact of STRs on available housing stock today may be limited, still no real understanding of what STR industry will have on housing stock in the future - i.e., what will market demand be for guests and hosts alike? What is saturation level? Will long term rental vacancy decrease over time?

- Policy goal to prevent wholesale purchasing of market rate units from business entities, corporations, commercialization, etc. Preserve residential fabric of neighborhoods for residential use, and treat STRs as an accessory use like other home-based businesses (not primary use).
### Primary Residency Analysis:

<table>
<thead>
<tr>
<th>More Restrictive Primary Residence/Owner Requirements</th>
<th>Medium Restrictions on Primary Residency (both models licensed)</th>
<th>No Restrictions on Primary Residency Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>- San Francisco</td>
<td>- Austin</td>
<td>- San Jose</td>
</tr>
<tr>
<td>- Boulder</td>
<td>- Nashville</td>
<td>- Jersey City</td>
</tr>
<tr>
<td>- Philadelphia</td>
<td>- Sacramento</td>
<td>- Colorado Springs</td>
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<tr>
<td>- Portland</td>
<td>- New Orleans</td>
<td>- Louisville, KY</td>
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Wide Range of STR Regulatory Models Nationwide:

- **Philadelphia:**
  - STR only limited to primary residence (limited lodging). Primary residence can only be rented for no more than 180 days.
  - No STR license required for STRs less than 90 days. If more than 90 days, STR license required.

- **San Jose:**
  - No STR license required. STRs established as use-by-right in the zoning code. Non-hosted STRs capped at 180 days a year.

- **Sacramento:**
  - No primary residence requirement, but non-primary residence units capped at 90 days per year.

- **Louisville, KY:**
  - No primary residency requirement. Licenses available online ($25 fee)

- **Portland:**
  - Primary residency requirement for all three different types of licenses depending on number of bedrooms available.
  - In-person inspections required for STR licenses, including zone use permits for certain STR types.
  - Lower compliance rate due to inspection and zone use permit requirements.

- **Jersey City:**
  - No STR license required. Operators pay 6% hotel tax through platforms.

- **Boulder:**
  - STR license limited only to principal property owner/resident.

- **San Francisco:**
  - Licensee must live in unit for at least 275 nights per calendar year.

- **Colorado Springs:**
  - No license required. STRs allowed in all residential zone districts.

- **Austin & Nashville:**
  - Three different STR licenses for three different STR models (owner-occupied type I, non-owner occupied type II, multi-family type III).
  - Type II permits capped at 3% per census tract.
  - Austin City Council recently voted to phase out type II non-owner occupied licenses by 2022.
Primary Residence audits conducted to determine proof of primary residence:

1. **STR Complaint Received**
   - Complaints can vary from noise, trash, primary residency status, etc.

2. **Inspector Contacts Licensee**
   - Inspector contacts licensee asking to see documentation proving primary residency.
   - Alerts licensee to ordinance requirement.

3. **Licensee Uploads Documents to Records**
   - Licensee may upload at least two of the following to record:
     - Driver’s License
     - Voter’s Registration
     - Vehicle Registration
     - Tax Documents
     - Utility Bills

4. **Inspectors Consult with CAO on Sufficiency of Docs**
   - Inspector consults with City Attorney to determine if evidence is sufficient to meet primary residency requirement.
   - Director can request more documentation if needed.
Many STR operators have submitted voter’s registration to demonstrate proof of primary residency.

Majority of voter records obtained have been legitimate – documenting both primary residence AND record of unit being their primary residence for a while – even before licensure.

EXL can still request full record from Denver Elections to determine history of voting address or mailing changes. Large voter database tracks moves, address changes, and other type of transient activity of voters.

Still underlying concern that voter registration may be easily changed, or might not adequately reflect true primary residence status. Similar concern with driver’s license.
EXL has mainly obtained various property tax or other tax-related documents, but not necessarily W2 income tax documents. Most operators choose to provide something other than tax documents.

IRS requires income from property rentals to be listed on “Schedule E”.

Need more research on what tax documents EXL should request while respecting other more private, sensitive information that’s not applicable to STRs (i.e., income, dependents, SSN, etc.).

Ordinance allows for EXL to request additional documents such as tax information:
- Sec 33-48(c): The director may, at the director's discretion, require additional documentation associated with the application as may be necessary to enforce the requirements of this article or chapter 32.
Overview of Current STR Complaints

- Vast majority of complaints related to concern of licensee NOT being a primary resident of the STR.

- Nearly 50 audits done so far on STR licensees – appx 1 dozen operators may be subject to more extensive auditing/investigation (tax documents, more detailed voter record info, etc.)
  - Neighbors have also submitted formal license complaints and noted their willingness to testify in court in their complaint.

- Complaints also surrounding large groups of guests and multiple contracts (largely associated with operators with complaints about primary residence requirement)
Principal residence means the dwelling unit in which a person resides for more than one-half of the year. However, if (1) the entire unit is offered and available for rental for more than twenty days in any month; or, (2) the person owns another dwelling unit that is not licensed for long term rental; (3) the person's spouse or domestic partner has a different principal residence; (4) the person's driver's license, voter registration or any dependent's school registration shows a different residence address, or (5) the Boulder County Assessor lists a mailing address different from the dwelling unit address it shall be presumed that the dwelling unit in question is not a principal residence.
10-3-20. - Occupancy.

(a) Every operator of any property with fewer than five dwelling units, shall at the time any dwelling unit is shown to any prospective renter, post conspicuously on the inside of the main entrance to each dwelling unit a sign listing a maximum occupancy number that shall be no greater than the maximum number of unrelated individuals permitted under section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981 in a form specified by the city manager. Any such sign may include an occupancy limit smaller than that allowed by Section 9-8-5.

(b) Each license shall include a notation of the legal occupancy, including the number of unrelated individuals permitted for each dwelling unit covered by the license. Acceptance of the license shall constitute a waiver of any claim for a non-conforming occupancy in excess of the occupancy stated on the license. The notation on the license shall also not provide the basis for an assertion of non-conforming occupancy.

(c) Each advertisement for rental shall include a statement of the maximum occupancy, such statement shall include a number no greater than the number of unrelated individuals permissible pursuant to Section 9-8-5, B.R.C. 1981 of the dwelling unit to be rented. Any such advertisement may include an occupancy limit smaller than that allowed by Section 9-8-5.
Tools and Steps to Explore Moving Forward:

A) Implement enhanced auditing of licensees with multiple, egregious complaints:
   - Request more detailed tax, voter registration, or any other relevant documents to prove primary residency requirement. If documents are not sufficient, or preponderance of evidence suggests it is not the primary residence, show-cause for license revocation is initiated.

B) Determine if current Denver primary residency requirements/enforcement are sufficient through show-cause/revocation hearings:
   - Monitor outcome/success of show-cause proceedings for licensees who may be violating primary residence requirement.
   - Observe willingness and effectiveness of neighbor testimony in hearings.

C) Explore occupancy limit tools through licensing (conditions on the license through disciplinary action).
   - Need to determine if this provides direct conflict to Zoning Code.

D) Explore formal rule-making process to expand on current definition of Primary Residence
   - Potentially utilize other jurisdictions’ definitions of primary residence that could also work in Denver.
   - Authority to expand and enforce definition in separate EXL rule – not through ordinance change. Would still require public process and public hearing to formally adopt.
   - STRAC and Sub-Committee well-suited to explore further rules of primary residence.
Questions?