

Denver Short-Term Rental Advisory Committee Meeting Minutes

July 9, 2019

1. Attendance

Participant	Organization
Molly Duplechian	Denver Department of Excise and Licenses
Brian Snow	Denver Department of Excise and Licenses
Erica Rogers	Denver Department of Excise and Licenses
Alex Cobell	Denver Department of Excise and Licenses
Chris Gaddis	Denver City Attorney's Office
Susan Bailey	STR Host
Mary Lou Fenili	Non-Host
Erin Ganser	STR Host
Jack Garber	STR Host
Buffy Gilfoil	STR Host
George Mayl	Non-Host
Michael Murphy	Non-Host
David Pardo	STR Host
Cindy Sestrich	Non-Host
Cindy Wagstaff	STR Host
Charlotte Winzenburg	Non-Host
Sabrina Zunker	Denver Metro Association of Realtors

2. Agenda

- I. Introductions
- II. Old Business
 - Primary Residence Definition
- III. New Business
 - Fine Structure for penalties in Denver

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IV. Public Comment

3. Meeting Notes

Item	Discussion
1. Introductions	<ul style="list-style-type: none"> • Molly Duplechian (EXL) opened the meeting by going around the table for introductions. • Molly also reminded the group that anyone who wants to provide a formal public comment at the end of the meeting should fill out a form.
2. Old Business	<ul style="list-style-type: none"> • One item of old business was to ask Airbnb for a status update on being able to remove illegal, unlicensed listings from their website. However, no one from Airbnb was on phone or in attendance at the meeting. • Molly announced a reminder that the STRAC had previously been meeting every other month, but now will be meeting monthly to tackle the group's goals for the year. • Molly reviewed the compliance trends – year over year from last July: <ul style="list-style-type: none"> ○ In the past year, there was a 15% decrease in the total number of listings ○ There was a 24% increase in the number of actual licensed properties ○ This brings the licensing rate in Denver to 76% • David Pardo asked how the listings were identified. Brian Snow reminded the group that the City has a contract with Host Compliance and they have been able to identify about 82% of the advertisements.
3. Current Events	<ul style="list-style-type: none"> • Molly reviewed some recent news articles about some short-term rental activity, mostly in Europe: <ul style="list-style-type: none"> ○ Barcelona – In June of last year, Barcelona reached an agreement with Airbnb to remove listings if they were found to be operating without a license. This is similar to the request Denver has been making of Airbnb for almost a year. ○ Andalucia – Airbnb announced that only STRs that comply with regulations and have valid registration can be posted online. This resulted in 18,000 listings being removed from Airbnb. ○ This information was sent to Airbnb to ask how this was possible and why there has been resistance to take similar action in Denver. Molly read the following email response from Airbnb: “We remain committed to finding areas where we can work together; Barcelona and Andalucia, as you know, are not under US jurisdiction (Airbnb Ireland). However, I’m happy to

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	<p>discuss potential initiatives particular to Denver, keeping in mind that each city has a unique makeup, and unique challenges and opportunities along with it.”</p> <ul style="list-style-type: none"> ○ Cindy Sestrich asked if the Colorado State Legislature could demand or require by law that Airbnb remove illegal listings. <ul style="list-style-type: none"> ▪ Molly responded that what Cindy is probably referring to is “platform liability” and that will be the topic of discussion at the August meeting. The City is currently researching other cities that have implemented platform liability. No state had adopted such regulations to our knowledge. ○ Several members of the STRAC reiterated that it hurts compliant hosts to have illegal listings that are being tolerated by the platforms.
<p>4. Primary Residence Definition Discussion</p>	<ul style="list-style-type: none"> ● Molly read the current definition of primary residence and listed features for consideration when changing the definition. <ul style="list-style-type: none"> ○ David Pardo asked about criteria #6 with the Denver County Assessor’s office and how that would work for a renter. ○ Cindy Wagstaff asked about people who are out of town and have a forwarding address or a temporary address. Brian responded that we would not be able to know if there was a forwarding address but that ideally the language would create a presumption, and then the burden is on the host to say why they’re having mail sent somewhere else. ● Cindy Sestrich mentioned that we seem to be finding a lot of spouses “having different addresses”. She inquired how to enforce to see if people are switching addresses back and forth and which one of these listed features covers that? <ul style="list-style-type: none"> ○ Brian explained again that this is just a rebuttable presumption. ○ Erica explained that she thought that could be addressed through features #2 and #3. ● Molly asked the group for any suggestions for how to make language any clearer. ● Chris Gaddis stated that our goal, particularly from attorney’s standpoint, is that the definition needs to be clear. Currently the definition is short, but the tighter it can be, the better. ● Molly reminded the group that not necessarily all of the listed features are going to be included; just throwing out ideas we’ve read other places. ● To explain the challenge, Brian stated that he hears everyday “I claim this as my primary residence” but what we really want to know is do you live there? There is a fundamental difference. ● Michael Murphy said he was curious about #5 that requires the licensee to be physically present for a minimum of 183 days. He asked what kind of teeth does that give the City for enforcement? Is that a critical piece?

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	<ul style="list-style-type: none"> ○ Brian explained that it serves two purposes: First, applicants who see that and know they don't meet it can stop. Second, if the applicant is gone for 9 months out of the year and a neighbor can testify to that, it could be grounds for the City to move forward. However, an applicant could still say do something to rebut that. For example, they could provide documentation for their job saying why they have been absent for more than 183 days but they still don't live anywhere else. Putting in the presumption language makes it so that it is not all or nothing so active duty military could come in with orders and we would drop investigation, for example. ○ Chris Gaddis also reminded the group that this is only one feature to consider, there would be others. ○ Buffy Gilfoil asked if perhaps language should be added for those sorts of circumstances. ○ Molly explained that perhaps there is a way to format the application process to assist with this. ● Michael Murhpy asked if many other cities are using a set number of days to define primary residence. <ul style="list-style-type: none"> ○ Brian stated that Denver would definitely not be the first. Boulder has this provision, and some cities are going the other way saying you can only short-term rent your house for 6 months out of the year or some other time limitation. ● Cindy Sestrich recommended requiring proactive notice if the applicant is going to be gone for more than 183 days. <ul style="list-style-type: none"> ○ Molly stated that the City does currently require a local responsible party from everyone now, even if you're only out of town one day so that has to be on file with us.
<p>5. Fine Schedule</p>	<ul style="list-style-type: none"> ● EXL conducted research on what other cities do for STR fine structures. Erica went over the fines in the following cities (see presentation for fine information): <ul style="list-style-type: none"> ○ CO jurisdictions: Boulder, Breckenridge, Georgetown, Golden, Vail ○ Outside of CO: Boston, Miami Beach, NYC, Nashville, Palm Springs, Portland and Washington DC. ● David Pardo asked what types of violations would be eligible for these fines. <ul style="list-style-type: none"> ○ Brian responded that fines would be assessed for violating a city/state law, violating rules related to STR's, not being a primary residence, advertising without a license, operating without a license, not carrying the required amount of insurance, etc. It could be for anything that is a violation of STR rules and ordinances. ● Buffy Gilfoil asked about if somebody that has been operating without a license would also have to pay back taxes? <ul style="list-style-type: none"> ○ Brian responded that Chapter 32 does allow the City to deny a license if a person owes any fines or fees or taxes to the City.

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- Erica noted that in Palm Springs, if somebody is operating an STR without a license, they require payment of back taxes and payment of the fine before a license would be issued.
- The group discussed whether fines could be more of a deterrent if raised, and how doing so would be a good way to collect the revenue made from the illegal listing.
 - Erica noted that some cities do base their fines based on a percentage of what a host makes from renting the property.
- Brian stated that he does not think our fines are influencing behavior. Most people have heard that they do need a license to operate and are voluntarily complying. However, those that are being fined are not necessarily deterred by the fine amounts, and rather consider the fines a cost of doing business.
 - Charlotte Winzenburg stated that she feels different, higher fines are needed that actually influence changes in behavior and act as a deterrent to those wishing to host illegally.
- George Mayl asked what constitutes a first violation and if we should consider a “3 strikes you’re out” provision so that if a host gets several violations for operating without a license, they would be denied a license if they do apply.
 - David Pardo asked if revocation and suspension of a license would go with the location or with the person (licensee).
 - Brian stated that the City would need to be able to show a bona fide sale to be able to remove the violation from the location.
- Cindy Wagstaff stated that she personally would support a 3 strike rule and a limitation on being able to get a license rather than exorbitant fines.
- Charlotte Winzenburg stated that she would like to look at making the fine equal to the revenue or nightly rental rate.
- Cindy Sestrich provided her opinion that if the violation is per day, the fine should also be “per day”. She stated that the fines should address the business they are owning and that there needs to be a big deterrent to illegal activity. Suspension also needs to come into play because that will really hit their pocket book. She also stated she would like to see a notice on a house so that new renters can see if the location has been ticketed or should not be operating as an STR, and possibly even removal of tenants or renters if the location is illegally operating.
 - Chris Gaddis stated that removing tenants or renters from the STR would be difficult to implement. Molly highlighted that we would seek a solution that we feel most effectively solves the problem.

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	<ul style="list-style-type: none"> • George Mayl stated that he feels Denver is light on the fine amounts. He would like to elevate the fines to be \$500, \$999 for second, and \$999 for third along with a suspension and inability to apply for and receive a license. • Cindy Wagstaff offered that maybe there should be leniency on the first citation for those that don't know about the rule. <ul style="list-style-type: none"> ○ Brian reminded the group that fines are appealable and can be dismissed. In his view, the strongest, most effective penalties would include an inability to get a license. • Brian also reminded the group that our first goal is compliance-to get operators licensed if it is their primary residence. • Erica let the group know that some cities have higher fines for if they are operating an STR under suspension. • Buffy offered that maybe the City should consider different fines for different violations. (ex: trash vs non-primary residence vs. noise vs. operating without a license) <ul style="list-style-type: none"> ○ Brian stated that non-primary residence would result in a show cause rather than a citation. • Cindy Sestrich stated that neighbors would probably say the biggest issue is noise complaints. • David Pardo informed the group that things like Noise Aware are things that can be used to mitigate noise complaints. Airbnb and other platforms do not advertise it because they are 3rd party systems. • A question was asked if a noise complaint is received, is the City able to force hosts to get a noise mitigation device or system?
<p>6. Public Comment</p>	<p>Tyler Fabschutz is the owner of Noise Aware. He noted that the most common issues for neighbors of a short-term rental are noise, trash, parking and property damage. If noise is mitigated it can have an impact on trash and parking. He stated that legislating for the lowest common denominator does not work and is not the right approach. He left informational materials about the device for members to review.</p> <p>Dana Luber is a community advocate and an employee of a property management company. She felt that adopting stricter fines and regulations is akin to taking a prescription to mask a health problem rather than addressing the underlying issue. She recommended the following:</p> <ul style="list-style-type: none"> ○ 3 strike policy to address hosts with problem properties ○ Noise Aware ○ Dedicated officer to respond to the biggest problem properties ○ Measure the results after 3-6 months ○ Denver should be leading the effort, rather than copying what other cities are doing.

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7. Final Comments	<p>Sabrina Zunker asked if there is research on the true economic impact of STRs in Denver.</p> <ul style="list-style-type: none">○ Molly let the group know that they are working on getting a housing representative at future STRAC meetings and a report would likely be shared prior to the August meeting.
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