

ORDINANCE

Adopting A New Article In Chapter 13 ROA 1994, Business And Occupations, To Be Known As The “Short Term Rental Ordinance”, Establishing A Permitting Fee, And Amending Section 4-4-13

ROA 1994 Lodgers Tax Advisory Board To Include A Short Term Rental Representative (Gibson)

ADOPTING A NEW ARTICLE IN CHAPTER 13 ROA 1994, BUSINESS AND OCCUPATIONS, TO BE KNOWN AS THE “SHORT TERM RENTAL ORDINANCE”, ESTABLISHING A PERMITTING FEE, AND AMENDING SECTION 4-4-13 ROA 1994 LODGERS TAX ADVISORY BOARD TO INCLUDE A SHORT TERM RENTAL REPRESENTATIVE.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. A new article §13-19 of ROA 1994 is hereby adopted as follows:

“§13-19-1 SHORT TITLE.

SECTION §13-19 ROA 1994 shall be known and cited as the “Short Term Rental Ordinance”.

§ 13-19-2 APPLICABILITY.

This Article applies to the operation of Short Term Rentals as defined by subparagraph 13-19-4, Definitions.

§ 13-19-3 INTENT AND PURPOSES.

The intent of Article §13-19 et seq. is to regulate and provide a permitting system for Short Term Rentals (STR) in order to protect the health, safety, and general welfare of Short Term Rental occupants and neighboring residents.

§ 13-19-4 DEFINITIONS.

DWELLING UNIT: One or more connected rooms and a kitchen designed for and occupied by no more than one family for living and sleeping purposes, permanently installed on a permanent foundation and meeting the requirements of Articles 14-1 and 14-3 of ROA 1994 (Uniform Administrative Code and Technical Codes and Uniform Housing Code), as of the date of the unit's construction. For the purposes of this Ordinance, this definition does not include Hotels, Motels, or Bed and Breakfast establishments.

MARKETPLACE PROVIDER. A person who facilitates the rental of lodging by: (A) advertising the lodging by any means, whether physical or electronic, including by internet website, online booking platform, catalog, television or radio broadcast, and (B) collecting payment from the vendee and transmitting that payment to the vendor either directly or indirectly through agreements or arrangements with the vendor, regardless of whether the marketplace provider

receives compensation or consideration in exchange for the marketplace provider's services.

SHORT TERM RENTAL ("STR"): A rental in a dwelling unit of 29 days or less.

SHORT TERM RENTAL OPERATOR ("STRO"): The owner or party otherwise responsible for a Short Term Rental property or properties.

SHORT TERM RENTAL UNIT ("STRU"): The dwelling unit or portion thereof that is rented for 29 days or less. Each unit within a multifamily apartment building that is rented for 29 days or less is considered a STRU.

§ 13-19-5 GENERAL PROVISIONS. Each STRO shall:

- A. Maintain a valid City Business Registration for purposes of operating any one or more STR within the City of Albuquerque;
- B. Pay all applicable local, state, and federal taxes, including Lodgers' Tax, Hospitality Fee, Gross Receipts Tax and Income Taxes associated with the operation of each STRU unless the Marketplace Provider does this on the operator's behalf;
- C. Maintain short term rental insurance coverage for each STRU in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000) per STRU to insure against damages to guest (s) caused by the STRO, and to insure against damages caused by STRO guest(s) or the STRO when such damages are incurred by other persons including, but not limited to, neighbors;
- D. Clearly display inside each STRU a copy of the applicable STR permit issued pursuant to this Article;
- E. Include the STR permit number issued by the City on all marketing materials for each respective STRU;
- F. Display inside each STRU a current "Good Neighbor Agreement". The Good Neighbor Agreement will be provided by the Planning Department on an annual basis and shall inform the occupants of the maximum overnight occupancy, maximum gathering occupancy and relevant city ordinances, and explain that occupants of any STRU are required to comply with all relevant City ordinances.

§ 13-19-6 STR PERMITS.

A. Permit Required. No STRO shall operate any STR without a valid STR Permit from the Planning Department for each STR unit proposed to be operated. In addition to any other necessary information, the Planning Department shall require submission of the following for each STR Permit application:

1. A physical address of the STRU; and

2. The name, phone number, email, and business address of the STRO or agent(s) who will be available twenty-four hours per day, seven days a week to respond to complaints regarding the operation or occupancy of the STR; and

3. A scaled floor plan showing the layout and square footage of the STR unit(s); and

4. A statement signed by the STRO that the STR will be operated in compliance with this Article and all other applicable city codes, including but not limited to the Integrated Development Ordinance, the Uniform Housing Code, the Fire Code, any relevant Public Health Orders, and the Noise Ordinance; and

5. Proof of insurance as required by subsection 13-19-5(C), above.

B. Permit Duration; Inspection. Any STR permit issued pursuant to this Article is valid for 12 consecutive months unless sooner terminated by the STRO, or cancelled by the City. The Planning Department shall have the right to inspect each STR, without prior notice, to determine compliance with this Ordinance and all other applicable City codes.

C. Permit Fee. The Planning Department shall collect a STR Permit fee of \$120.00 for each initial permit, and \$90.00 for the renewals thereafter. Revenue from fees imposed pursuant to this paragraph shall be used only to administer, manage, and enforce this section. Upon the transfer of ownership of a STRU, the STR permit shall terminate. If the new owner wishes to use the property or unit as a STR, a new application shall be submitted.

§13-19-7 STR OCCUPANCY.

A. The maximum overnight occupancy of an STRU is limited to a maximum of two adults per bedroom, plus an additional two adults for each unit excluding studios or efficiencies, such that a two bedroom house would have an overnight occupancy of six adults, or a three bedroom house would have an overnight occupancy of eight adults. For the purposes of this subsection, an adult is any person over 12 years of age.

B. Gatherings of Persons in excess of the maximum overnight occupancy prescribed by subsection 'A', above, shall not exceed two times the maximum overnight occupancy or 20 persons, whichever is less. All such gatherings shall conclude and attendees disburse by 10:00 p.m. local time.

§ 13-19-8 ENFORCEMENT AND PENALTIES.

The Zoning Enforcement Officer has the duty and authority to enforce the Ordinance consistent with the Integrated Development Ordinance, Part 14-16-6: Administration and Enforcement: 6-9 (C)

A. Notice. The Zoning Enforcement Officer shall send a written notice by First Class Mail to the agent designated for such purposes pursuant to Section 13-19-6(A)(2), or if no such person has been identified then to the owner of record as listed in the real property records of the County Clerk. At a minimum, the notice must include:

1. A statement that a violation of this Section has been observed or otherwise determined to exist;
2. A brief description of the nature of the violation;
3. Advisement of a 30-day grace period (or longer if appropriate in the reasonable determination of the Zoning Enforcement Officer) within which to come into compliance; and
4. A reference to the penalty provisions of this Section.

B. Penalty. If the property has not been brought into compliance within the grace period set forth by the notice prescribed under subsection 'A' above or any period of extension granted by the Zoning Enforcement Officer, the owner or responsible party is subject to:

1. The penalty provisions set forth in § 1-1-99 of this code of ordinances, with each day of violation is considered a separate offense; and

2. Instead of or in addition to the penalty provision set forth in § 1-1-99, the City acting through the City Attorney, is hereby authorized to file an action in a court of competent jurisdiction as a means of compelling compliance to:

- a. Enjoin any person from violating or threatening to violate the terms, conditions and restrictions of this ordinance;

- b. Collect civil assessments against the property of \$500 per day for every day the property remains or remained in violation of this Section after the expiration of the grace period or any extensions granted by the Zoning Enforcement Officer identified in the notice by the Zoning Enforcement Officer; and

- c. Recover damages from the owner of a STR in an amount of money adequate for the City to undertake or reimburse expenditures for any construction remediation, cleanup, or other activity necessary to bring about compliance with this Section ordinance.

3. In addition to judicial remedies, any expenditure by the City to bring the property into compliance, or any damages or assessments are recoverable through the imposition of a municipal lien on the parcel under NMSA 1978, § § 3-36-1 to 3-36-5. To the extent that monetary penalties are recovered as a result of enforcement under this Section, any funds so recovered shall be used exclusively for the purpose of funding enforcement activities under this Section.

4. If the STR commits three (3) or more instances of violations of City Ordinances or State statutes within a 12 month period the STR Permit shall be revoked for a period of two years and the STR shall cease to operate.”

SECTION 2. INITIAL COMPLIANCE. Each STRO is required to come into compliance with respect to every STR being operated at the time of the Effective Date prescribed by ‘SECTION 6’, below, within six months of the Effective Date.

SECTION 3. Amend Lodgers Tax Advisory Board Section 4-4-13(A) to read as follows:

“There is created the Lodgers' Tax Advisory Board, which shall consist of seven members all of whom shall be residents of the city; two of whom shall represent the lodging industry, two of whom are directly involved in tourist-related industries; one who shall represent the Short Term Rental industry; and two members at large who shall represent the public. The members of the Lodgers' Tax Advisory Board shall be appointed by the Mayor with the advice and consent of the City Council.”

SECTION 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 5. COMPILATION. SECTION 1 and SECTION 3 of this Ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect six months after publication by title and general summary.

X:\CL\SHARE\CL-Staff_Legislative Staff\Legislation\24 Council\O-30final.docx