



Memorandum

TO: Town Council

FROM: Finance Department

DATE: June 7, 2022

SUBJECT: Ordinance No. 11, Series of 2022, an ordinance repealing and updating Ordinance No. 19, Series of 2018, providing for adjustments to regulations and fees for short-term rental properties within the Town of Vail.

I. SUMMARY

The first reading of Ordinance No. 11, Series 2022 was approved with amendments at the May 17, 2022 Council Meeting. The attached ordinance has been amended to reflect the removal of a per-bedroom fee for short-term rental (STR) licensure. Additionally, the ordinance has been amended to include an effective date of January 1st, 2023 with existing registrants required to become compliant by February 28th, 2023 (the next renewal date in the current licensing cycle). An additional amendment was made in the violations section so that infractions of the existing regulations occurring before the effective date would be cumulative toward penalties under the new ordinance.

During the first reading of Ordinance No. 11, the Council requested additional information regarding the requirements for STR activity insurance. The discussion section of this memo contains the requested information, along with an overview of the other sections of the ordinance.

II. BACKGROUND

The ordinance was drafted in response to feedback received from the Town Council and community in response to a comprehensive study of STR activity in Vail during the January 17, February 15, March 15, April 5, and May 17, 2022 Vail Town Council meetings. The study was conducted by Economic Planning System Inc. and RRC Associates.

III. DISCUSSION

The study has presented the challenges that come with managing STR activity while trying to address local housing availability. In the attached ordinance, several updates to the existing STR regulations are included as outlined below:

Require Proof of Adequate Insurance for Short-Term Rental Activity

As identified by the Rocky Mountain Insurance Information Institute and Insurance Information Institute, standard homeowner's insurance policies are generally inadequate on their own to cover claims due to STR activity. In fact, of the more than 15 insurers contacted by staff during the drafting of this ordinance, **no agency covers STR activity in a standard homeowner's policy without limitations or requiring some notice from the homeowner of the activity.** Many insurers require an additional endorsement to a homeowner's policy for the activity, some will not cover the activity at all, and yet others require an entirely different class of policy to cover claims arising from STR activity.

Staff recommends requiring proof of adequate insurance as a condition of licensure to not only mitigate impacts to STR owners but also to protect neighboring property owners who may incur claims due to the STR activity they are not engaged in nor required to consent to.

Staff recommends requiring proof of a minimum \$1.0M coverage for STR activities to mitigate potential risks. This, however, may not be adequate for most STR properties in Town. As was identified in the STR study, the median sale price for an STR property in 2021 was \$1.8M and only slightly lower for condominium STRs (\$1.75M) and townhomes (\$1.6M). Duplexes and single-family homes both averaged higher. While insurance should be adequate to cover the worst-case scenarios and claims, it may be challenging to obtain policies above \$1.0M through traditional homeowner's policy providers. Staff recommends a \$1.0M minimum to provide a baseline throughout the community but would recommend individual owners assess their own needs above and beyond this amount.

In contacting insurance providers, staff found this type of coverage can be obtained for an additional annual cost ranging from \$500 - \$4,000, depending on the property and provider. There is a wide array of insurance coverages on the market that would comply with the requirements, and in some cases, it may be more economical for an STR owner to obtain a policy separate from their homeowner's insurance.

Fire Department Inspections

Town staff recommends requiring a periodic inspection of all short-term rental units not located in buildings with on-site, 24/7 management. Staff recommends requiring **proof of inspection every three years** as a condition of renewal of the STR license and verification of the fire and life-safety affidavit in intervening years. In order to stagger inspections of existing STR licensees, staff recommends an effective date of January 1st, 2026 for this requirement. Staff estimates approximately half of all current STR licenses would require an inspection and recommends requiring the following items in the proposed fire safety inspection:

1. Fire extinguishers
2. Adequacy of egress (exits)
3. Egress plan is posted
4. Carbon monoxide detectors
5. Smoke alarms
6. Occupant load
7. Improvised electrical conditions and use of extension cords
8. Use of portable heating appliances

9. Outdoor heating appliances

10. Physical address including unit # is provided in a conspicuous manner

These items are already required by the existing STR regulations, for which the property owner or manager must sign a notarized affidavit to confirm compliance. Due to an increasing number of instances of non-compliance with these requirements, the Fire Department is recommending mandatory inspections. Some examples of recent incidences include:

- A fire caused by mechanical issues in a professionally managed, multi-family STR unit, where smoke detectors were nonfunctioning and inadequately placed. Additionally, no fire extinguishers were found in the unit. Fire extinguishers are required to be placed on every level of the living area, in the garage, and within thirty feet of the kitchen in every STR.
- Incorrect disposal of cigarettes in a multi-family STR unit caused a fire. As reported by neighbors, none of the unit's smoke alarms activated and the fire was only reported when a neighbor entered the unit.
- Burning logs were removed by STR guests from a fireplace upon leaving and left on a deck.

Transition to STR Licenses

To increase requirements for obtaining the right to short-term rent a residential property in the Town of Vail, it is also recommended that the Town transition from an STR registration to an STR license requirement.

A license is a legal document that gives official permission to engage in the act of short-term property rental. The existing requirement of a registration does not grant official permission, it is merely signing up or registering the STR property with the Town. Changing the requirement will allow for:

- Enhanced enforcement of STR regulations
- Enhanced enforcement of STR penalties
- Greater staff oversight of STR activity in the Town
- Ability to require additional proposed STR Fire Safety Inspections and Insurance requirements

Increased Penalties and Fines

During the STR study presentation, Council expressed concern over STR properties impacting neighborhood character and community standards. It was questioned whether our current STR enforcement structure is adequate to mitigate these problems. Currently, the town's STR violation structure has four levels, with the fourth being a revocation of the STR registration for two years. Staff recommends changing this policy by reducing the maximum number of violations from four to three, increasing the fine amounts for each level, and increasing the revocation period from two to three years.

Additionally, staff suggests imposing a significant fine of \$2,670, the maximum allowed penalty under code, for any STR found operating without a valid license. The purpose of this would be to dissuade non-compliance from unlicensed units.

The second reading of Ordinance 11, Series of 2022 updated this section to carry-over violations which occur before the effective date of February 28th, 2023.

Below is a summary of the recommended violation and fine structure (unchanged from first reading):

| Suggested Fines | | Vs. Existing Fines |
|--|-----------------------------|----------------------------------|
| First Violation | \$1,500 | \$500 |
| Second Violation | \$2,650 | \$1,500 |
| Third Violation | License Revoked for 3 Years | \$2,500 |
| Fourth Violation | N/A | License Revoked for 2 Years |
| Fine for operating without an approved STR license, each day is a separate violation | \$2,650 | Follows four-step fine structure |

Flat-Rate License Fee

The Town of Vail’s current license fees are lower than peer communities and are well below the town’s administrative costs for STR enforcement. At the last council meeting, Town Council expressed support for the following Flat Fee for STR licenses to cover administrative costs incurred by the Town. This fee remains low compared to Vail’s peer communities. The proposed fee is unchanged from first reading.

| Base Fees (to cover Admin costs) | | Annual Estimated Revenue |
|----------------------------------|-------------------|--------------------------|
| All STR Licenses | \$150 Per License | \$375,000 |

This base fee will cover costs to the Town including, but not limited to:

- Software dedicated to the enforcement of STR regulations and licensing
- Staff time across the finance, fire, and code enforcement departments
- Legal costs of enforcement
- Monitoring of STR activity in Town

IV. ACTION REQUESTED OF COUNCIL

Approve, or approve with amendments, the second reading of Ordinance 11, Series of 2022.

**ORDINANCE NO. 11
SERIES 2022**

**AN ORDINANCE REPEALING AND REENACTING CHAPTER 4-14 OF
THE VAIL TOWN CODE, REGARDING SHORT-TERM RENTALS, AND
ESTABLISHING A LICENSING PROGRAM FOR SHORT-TERM
RENTALS**

WHEREAS, without regulation by the Town, nuisances created by short-term rentals, such as noise, parking issues and over-occupancy, would negatively impact neighborhoods in the Town; and

WHEREAS, the Town wishes to ensure the safety of guests staying in short-term rentals by ensuring that they meet minimal life-safety requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

Section 1. Chapter 4-14 of the Vail Town Code is hereby repealed in its entirety and reenacted as follows:

**CHAPTER 14
SHORT-TERM RENTALS**

4-14-1: PURPOSE AND APPLICABILITY:

A. The purpose of this Chapter is to establish a comprehensive licensing program to safeguard the public health, safety, and welfare by regulating and controlling the use, occupancy, location, and maintenance of short-term rentals in the Town.

B. This Chapter shall apply to short-term rentals only, as defined herein. This Chapter shall not supersede or affect any private conditions, covenants, or restrictions applicable to short-term rentals.

4-14-2: DEFINITIONS:

For purposes of this Chapter, the following terms shall have the following meanings:

LEASE: Any agreement, whether verbal or written, by which an owner gives to a tenant, for valuable consideration, possession and use of property or a portion thereof for a definite term, at the end of which term the owner has an absolute right to retake control and use of the property.

PRINCIPAL PLACE OF RESIDENCE: The home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom. In determining what is a principal place

of residence, the Town shall consider the criteria set forth in C.R.S. § 31-10-201(3), as amended.

PROPERTY MANAGEMENT FIRM: An entity comprised of one or more professional property managers with all required licenses in good standing, or a group of one or more employees of a lodge or fractional fee club (as those terms are defined in Section 12-2-2 of this Code) who are trained in property management and provide such services to owners of STRs within the lodge or fractional fee club, which entity or group is designated by the STR owner to act as the STR owner's agent regarding the STR.

PROFESSIONALLY MANAGED STR: An STR that is managed, operated or controlled by a property management firm.

SHORT-TERM RENTAL (STR): A residential dwelling unit, or any room therein, available for lease for a term of less than thirty (30) consecutive days, but excluding bed and breakfasts and accommodation units.

4-14-3: LICENSE REQUIRED:

A. General. A current, valid license is required for each STR in the Town. Each STR license is non-transferable.

B. Application. For new licenses and renewals, the STR owner or property management firm shall file an application with the Finance Director or designee, on forms supplied by the Town, accompanied by the following:

1. An administrative fee of \$150, which administrative fee shall be used by the Town to offset the costs of processing the application;

2. An affidavit, signed by the owner or the property management firm, under penalty of perjury, certifying that the STR is in habitable condition and complies with the health and safety standards set forth in this Chapter; and

3. If the STR is located within a duplex, a copy of a written notice sent by the owner or property manager to the last known address of the record owner of the adjoining residential dwelling unit, by first-class mail at least seven (7) days prior to submission of the application.

B. Local Representative. Each application shall include the appointment of a natural person who shall remain within a sixty (60) minute distance of the STR and is available twenty four (24) hours per day, seven (7) days per week, to serve as the local representative for the STR. At least five (5) days prior to any change in such appointment, the STR owner or property management firm shall notify the Town of such change, including new contact information. For an STR located in a building with onsite

management services available at all times, if the STR owner uses such services, no local representative appointment shall be required.

C. Expiration; Renewal. Each STR license shall expire on February 28 of each calendar year, or when title of the STR transfers to a new owner, whichever occurs first; each change in ownership of a STR shall require a new license.

D. Timing. An initial license application shall be filed at least thirty (30) days prior to any advertising of an STR. A renewal application shall be filed by January 31 of the year in which the license expires.

E. Revocation. In addition to any other penalties allowed by this Chapter, the Town may revoke any STR license if the Town finds and determines that any violation of this Chapter exists at the STR; provided that the Town provides the licensee with at least fourteen (14) days' prior written notice and an opportunity to be heard prior to revocation. The notice shall include a description of the violation and the date and time when the STR owner may appear and be heard, and the notice shall be either personally served on the STR owner or mailed by first-class United States Mail to the last-known address of the STR owner or property management firm.

4-14-4: INSURANCE:

Every STR shall be continuously insured, with minimum limits of \$1,000,000. The insurance may be in any of the following forms: property liability insurance; commercial liability insurance; or an endorsement to a homeowner's policy for coverage of STR activities. Insurance provided by online STR platforms does not qualify as valid insurance under this subsection.

4-14-5: HEALTH AND SAFETY STANDARDS; INSPECTIONS:

A. Standards: Each STR shall comply with all of the following standards, at a minimum, at all times while the STR is occupied:

1. Buildings, structures or rooms shall not be used for purposes other than those for which they were designed or intended.

2. Roofs, floors, walls, foundations, ceilings, stairs, handrails, guardrails, doors, porches, all other structural components and all appurtenances thereto shall be capable of resisting any and all forces and loads to which they may be normally subjected and shall be kept in sound condition and in good repair.

3. An operable toilet, sink, and either a bathtub or shower shall be located within the same building, and every room containing a toilet or

bathtub/shower shall be completely enclosed by walls, doors, or windows that will afford sufficient privacy.

4. There shall be a sufficient number of trash receptacles to accommodate all trash generated by the occupants, and all receptacles shall comply with Title 5, Chapter 9 of this Code.

5. Occupancy of an STR shall comply with Title 12, Chapter 2 of this Code.

6. The use of portable outdoor fireplaces is prohibited.

7. Electrical panels shall be clearly labeled.

8. All pets shall be subject to Title 6, Chapter 4 of this Code.

9. All items listed in subsection B.2. hereof shall comply with the current Vail Fire Code.

10. Parking for each STR shall comply with all applicable provisions of this Code. All vehicles shall be parked in designated parking areas, and parking is prohibited in any landscaped area.

11. A sign shall be conspicuously inside each STR with the STR license number, the local representative's current contact information, and the physical address of the STR, including unit number if applicable.

B. Inspections:

1. When required:

a. Each STR, other than those located in buildings with on-site management services available at all times, shall obtain a fire and life safety inspection as a condition of license issuance and every three (3) years thereafter. Requests for inspections shall be made to Vail Fire and Emergency Services at least sixty (60) days prior to the date of the initial license application and at least sixty (60) days prior to the end of each subsequent three (3) year period.

b. Notwithstanding the foregoing, each STR that was validly registered with the Town on the date of the ordinance codified in this Section, and is not located in a building with on-site management services available at all times, is eligible for an STR license without an initial inspection, provided that the STR is inspected prior to January 1, 2026 and every three (3) years thereafter. Requests for initial inspections shall be made to Vail Fire and Emergency Services on or before July 1, 2025, and requests for later inspections shall be

made at least sixty (60) days prior to the end of each subsequent three (3) year period.

2. Items Inspected: The following will be inspected by Vail Fire and Emergency Services for compliance with the current Vail Fire Code:

- a. Fire extinguishers;
- b. Adequacy of egress;
- c. Posted egress plan;
- d. Carbon monoxide detectors;
- e. Smoke alarms;
- f. Occupant load;
- g. Improvised electrical conditions and use of extension cords;
- h. Use of portable heating appliances and outdoor heating appliances; and
- i. Conspicuous posting of the physical address of the STR.

3. Re-inspection: If an inspection reveals that an STR is not in compliance with this Chapter, a re-inspection shall be required. Re-inspections must be scheduled in advance and may take up to sixty (60) days to complete.

4-14-6: ADVERTISING:

Advertising for an STR shall include the STR license number immediately following the description of the STR.

4-14-7: TAXES:

All applicable Town Sales and Lodging Taxes for STRs shall be timely collected and remitted.

4-14-8: INITIAL COMPLAINTS:

Initial complaints concerning a short-term rental property shall be directed to the local representative. The local representative shall resolve the issue that was the subject of the complaint within sixty (60) minutes, or within thirty (30) minutes if the problem occurs between 11:00 p.m. and 7:00 a.m., including visiting the site if necessary.

4-14-9: VIOLATION AND PENALTY:

A. Violation: It is unlawful to violate any provision of this Chapter. Each day of violation shall be deemed a separate offense.

B. Liability: Each STR owner shall be liable for any and all violations occurring at the STR. A property management firm shall be jointly and severally liable for any and all violations occurring at any of its professionally managed STRs in the Town.

C. Civil Enforcement:

1. If the Town chooses civil enforcement, a citation may be served by posting on the front door of the STR, or by personal service on the STR owner or professional management firm, or by mailing first-class U.S. Mail to the last known address of the STR owner or property management firm.

2. Civil violations shall be subject to the following fines and penalties, per STR:

First violation in any twelve (12) month period: \$1,500

Second violation in any twelve (12) month period: \$2,650

3. All penalties shall be paid within fourteen (14) days of the date of the citation. If the civil violation is paid, there shall be no opportunity to challenge or otherwise appeal the violation. If the STR owner disputes the violation, the STR shall file a written protest with the Town within fourteen (14) days of the date of the citation.

4. If the STR protests the citation, the Town shall cancel the citation and proceed to criminal enforcement.

5. If the penalty is not timely paid and no protest is timely filed, the Town may summarily suspend the STR license until the penalty is fully paid. Written notice of such suspension shall be provided to the last-known address of the STR owner, or to the local representative or property management firm.

D. Criminal Enforcement: If the Town chooses criminal enforcement or a protest is filed and the civil citation is canceled, a summons and complaint may be served as provided in the Colorado Municipal Court Rules of Civil Procedure. The penalties shall be as set forth in Section 1-4-1 of this Code.

E. Suspension: Regardless of the type of enforcement, the third violation in any twelve (12) month period for a single STR, regardless of ownership of the STR, shall result in a three (3) year suspension,

commencing on the date of the last violation, during which no license shall be granted for such STR.

F. Other Remedies: In addition to the penalties described above, the Town shall have any and all remedies provided by law and in equity for a violation of this Chapter, including without limitation: damages; specific performance; and injunctive relief, including without limitation an injunction requiring eviction of any occupants of the STR and an injunction to prohibit the occupancy of any property in violation of this Chapter.

G. Prior Violations: Any violations of the prior version of this Chapter shall count toward the number of violations for the particular property.

Section 4. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portions of this ordinance; and the Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 5. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town and the inhabitants thereof.

Section 6. The amendment of any provision of the Vail Town Code as provided in this ordinance shall not affect any right which has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision amended. The amendment of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

Section 7. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

Section 8. Effective Date. This ordinance shall take effect as provided by the Vail Town Charter, but the code amendments set forth in this ordinance shall take effect on January 1, 2023, and all registered short-term rentals in the Town shall comply with the new Chapter 4-14 by February 28, 2023.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING this 17th day of May, 2022 and a public hearing for second reading of this Ordinance set for the 7th day of June, 2022, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

Kim Langmaid, Mayor

ATTEST:

Tammy Nagel, Town Clerk

READ AND APPROVED ON SECOND READING AND ORDERED PUBLISHED this 7th day of June, 2022.

Kim Langmaid, Mayor

ATTEST:

Tammy Nagel, Town Clerk