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## MEMORANDUM

**TO:** Chairman and Members of the Planning Commission  
**FROM:** Robert Laroco, Planner II  
**DATE:** January 7, 2016  
**RE:** Short Term Rentals

### Introduction

A Core Value identified in Rapid City's adopted Comprehensive Plan is the creation of a responsive, accessible, effective government. Inevitable advances in technology and changes in the way residents live and work within the community require periodic reassessment of City policies in order to bring clarity to new and emerging issues and to eliminate old and obsolete guidelines. In support of this Core Value, City staff requests direction on the matter of short term rentals. This memo provides a comprehensive look at the subject as well as action options for your consideration.

### Background

Short term rentals are a nationally emerging issue which is already impacting Rapid City. New technology has given rise to online listing/booking services such as AirBnB and led to a recent, dramatic increase in the rental of private residences to transient guests. For example, as of October 30, 2015, the AirBnB service listed 27 rooms and/or homes available over Thanksgiving weekend within Rapid City Limits. The average nightly cost of a listing was \$189/night. Most of these "hosts" are either unaware or unconcerned with municipal requirements and/or violations resulting from the operation of their facilities and are generally not paying state or local hotel taxes. In addition, the absence of meaningful regulation means that the operation of these sites varies widely in terms of quality, safety, and character. At a local level, the Rapid City Council recently denied a request to allow an AirBnB facility due to concerns about adverse neighborhood impacts and opposition from the surrounding neighborhood. Research into other communities has revealed "vacation home rentals" gaining reputations as nuisance properties, and there is evidence that the spread of vacation home rentals leads to shortages in affordable and rental housing stock.

The nature of these uses makes tracking the number and location of short term rentals virtually impossible. Website use changes constantly, hosts can advertise across multiple platforms/sites, and most listings do not provide an address for each residence. In addition, a vacation home rental varies substantially in use from a bed and breakfast, which is currently defined by City Code. As a result, using South Dakota Codified Law, International Building and Fire Codes, and



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the Rapid City Zoning Ordinance as a basis for the classification of these new uses is critical to create fair and consistent review and enforcement of short term rentals.

There is no easy or absolute method of addressing this emerging home occupation. The Black Hills economy and special events like the Sturgis Motorcycle Rally magnify the appeal of short term rentals. South Dakota Codified Law exempts short term rentals on private, residentially zoned property a maximum of 14 calendar days a year from further regulation or taxation. Based on preliminary research, it appears that many of the short term rentals in the City operate in this manner for events like the Rally. However, based on cases that City staff has already encountered, rally rooms that continue to operate throughout the season or year-round are only a small part of a larger concern. Evidence of the adverse impacts of these uses has been seen in the community and has been reported nationally. However, an outright ban on these uses would deter a growing economic sector of the local economy and unfairly impact emerging small local business owners, while simultaneously placing a significant burden on City staff and resources. As such, staff is providing City officials with this comprehensive look at short term rentals which should be taken into consideration in directing staff toward appropriate action.

### Policy Considerations

Staff from the Attorney’s Office, Community Planning and Development Services Department, Fire Department, Police Department, and Public Works Department met on October 28<sup>th</sup> to discuss the issues and outline several policy considerations for review by the Planning Commission and City Council. Staff is requesting that the Planning Commission review this subject matter and provide any additional considerations, feedback and/or direction that can be forwarded to City Council.

### Definitions

A new ordinance will require the development or revision of definitions used to describe the physical parameters and use characteristics for short term rentals and various other lodging alternatives. The table below contains a general definition and definitions found in current statutes and city codes including the Rapid City Municipal Code (RCMC), South Dakota Codified Laws (SDCL), and the 2012 International Residential Code and 2012 International Building Codes (IRC/IBC).

<b>Short Term Rental:</b> Any primarily residential property, home, cabin, or similar building which is rented, leased, or furnished, in whole or in part, on a daily or weekly basis to the public. South Dakota allows a maximum regulatory exemption of 14 days per year per property. Generally short term rentals do not exceed more than 30 consecutive days for any single renter or party in other states.	
RCMC	Not defined in this source.
SDCL	Not defined in this source.
IBC/IRC	Not defined in this source.
<b>Month-to-Month or Seasonal Rental:</b> Any property, home, cabin, or similar building which is rented, leased, or furnished, in whole or in part in which different regulations may apply if the rental is for more than 30 days or more but less than 180 days	
RCMC	Not defined in this source.
SDCL	Not defined in this source.
IBC/IRC	Not defined in this source.
<b>Bed and Breakfast:</b> A bed and breakfast (Typically shortened to <i>B&amp;B</i> but also spelled <i>BnB</i> in Internet usage) is a small lodging establishment that offers overnight accommodation and inclusive breakfast, but usually does not offer other meals. Typically, bed and breakfasts are private homes which are primarily owner occupied offering accommodations. A typical B&B has	

between 4 and 11 rooms, with 6 being the average. Generally, guests are accommodated in private bedrooms with private bathrooms, or in a suite of rooms including an en suite bathroom. Some homes have private bedrooms with a bathroom which is shared with other guests. Breakfast is served in the bedroom, a dining room, or the host's kitchen.

**RCMC** A private home which is principally a residence yet also is used to provide accommodations for a charge to the public, with at most 2 lodging units for up to 8 persons per night and in which no more than 2 family-style meals per day are provided. (17.04.080)

**SDCL** Any building or buildings run by an operator which is used to provide accommodations for a charge to the public, with at most five rental units for up to an average of ten guests per night and in which family style meals are provided (34-18-9.3)

**IBC/IRC:** Not defined in this source.

**Vacation Home:** Any short term rental which is not primarily owner-occupied during guest rental periods. Vacation homes typically include exclusive use of kitchens, living area, and outdoor spaces as a part of accommodations. Meal service is not provided.

**RCMC** Tourist home - A dwelling in which sleeping accommodations in not more than 4 rooms are provided or offered for transient guests for compensation. (17.04.700)

**SDCL** ...any home, cabin, or similar building that is rented, leased, or furnished in its entirety to the public on a daily or weekly basis for more than fourteen days in a calendar year and is not occupied by an owner or manager during the time of rental. This term does not include a bed and breakfast establishment as defined in subdivision. (34-18-9.1(1))

**IBC/IRC** Not defined in this source.

**Motel:** A roadside establishment which provides lodging primarily for motorists in which the rooms are typically arranged in a low building with direct access to an outdoor parking area.

**RCMC** Motel. - A building or group of buildings used for the temporary residence of motorists or travelers. (17.04.510)  
 Tourist cabin. - See Motel. (17.04.690)  
 Tourist court. - See Motel. (17.04.695)

**SDCL** See "hotel".

**IBC/IRC** Not defined in this source. However, hotels and motels are classified as a sub-type of dwelling unit or sleeping unit, maintained for "transient" use. "Transient" defined as, "occupancy of a dwelling unit of sleeping unit for not more than 30 days."

**Hotel:** An establishment that has rooms in which people can stay when they are traveling and typically provides restaurant, retail and other services.

**RCMC** Hotel. - A building occupied as the more or less temporary abiding place of individuals who are lodged with or without meals and in which there are more than 12 sleeping rooms with no provision made for cooking in any individual room or apartment. (17.04.375)  
 Hotel apartment. - A building which is used as a temporary residence for more than 12 persons at one and the same time, and which provides short-term, furnished accommodations, with or without cooking facilities and with or without housekeeping services. (17.04.380)

**SDCL** "Hotel," any hotel, motel, lodge, resort, cabins, building, or buildings with more than ten rental units which is used to provide sleeping accommodations for a charge to the public. (34-18-1(6))

**IBC/IRC** Not defined in this source. However, hotels and motels are classified as a sub-type of dwelling unit or sleeping unit, maintained for "transient" use. "Transient" defined as, "occupancy of a dwelling unit of sleeping unit for not more than 30 days."

**Rooming House or Boarding House** is a house in which lodgers rent one or more rooms for one or more nights, and sometimes for extended periods of weeks, months, and years. May also be called single-room-occupancy (SRO)

RCMC	Rooming House - A building where lodging only is provided for compensation to 3 or more, but not exceeding 12 persons. A building which has accommodations for more than 12 persons shall be defined as either a hotel or a hotel apartment under the terms of this title. (17.04.605)
	Boarding House - A dwelling where for compensation and by prearrangement for definite periods, meals are provided for 3 or more, but not exceeding 12 persons on a weekly or monthly basis. A building which has accommodations for more than 12 persons shall be defined as either a hotel or a hotel apartment under the terms of this title. (17.04.095)
SDCL	Not defined in this source.
IRC/IBC	Boarding House - A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.
<b>Dwelling, Residential Housing:</b> is a self-contained unit of accommodation used by one or more households as a home, such as a house, apartment, mobile home, houseboat or other 'substantial' structure. A dwelling typically includes nearby outbuildings, sheds etc. within the boundaries of the property. "Dwelling" means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.	
RCMC	A building or portion thereof, exclusive of mobile homes, as herein defined, used for residential purposes. (17.04.215)
SDCL	Not defined in this source.
IBC/IRC	Any building that contains one of two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.
<b>Dwelling Unit:</b> A structure or the part of a structure that is used as a home, residence or sleeping place by one person or by two or more persons who maintain a common household. A dwelling unit contains one or more rooms including kitchen and bathrooms designed as a single unit for occupancy by one household for the purpose of cooking, living and sleeping.	
RCMC	One or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household. (17.04.240)
SDCL	Not defined in this source.
IBC/IRC	A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation
<b>Dormitory:</b> A room for sleeping containing numerous beds or a residence hall providing rooms for individuals or for groups usually without private baths.	
RCMC	A building containing sleeping rooms for either transient or permanent occupancy. (17.04.195)
SDCL	Not defined in this source.
IRC/IBC	A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.
<b>Guest Room, Bedroom, Sleeping Unit:</b> An enclosed, lockable room within a dwelling unit with a closet and access to a shared or private bathroom.	
RCMC	Not defined in this source.
SDCL	Guest room. Any room used or intended to be used by a guest for sleeping purposes." SDAR 44:02:08:01(8).
IRC/IBC	Sleeping Unit. A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also a part of a dwelling unit are not

	sleeping units.
	Guestroom. Any room or rooms used or intended to be used by one or more guests for living or sleeping purposes (IRC, 2012).

## Submittal Requirements

Each proposal for a short term rental must be reviewed on a case-by-case basis in order to provide the appropriate recommendation. However, some critical information must be provided upon submittal of each request. These include, but are not limited to:

- An original, complete application signed by the property owner or authorized representative.
- A legal description and tax ID for the property.
- An operations plan detailing the specifics of the request, including but not limited to the number of rooms and beds, the maximum and average number of guests, the times of operation according to year/month/week/day, the number and location of all off-street parking, the hours of check-in and check-out, and the presence/absence of the property owner during guest stays. Other information may be required on a case-by-case basis.
- A scaled and dimensioned site plan of the entire property, including the location of all structures and parking.
- A scaled and dimensioned floor plan of the home, showing the location of all guest quarters and facilities, including but not limited to all bathrooms, kitchens, or other amenities that guests may have access to.
- Proof of insurance, showing that the property is covered for commercial uses.
- All required state licenses for operation.
- Other requirements as identified and/or on a case-by-case basis.

<b>Review Criteria:</b> The level of scrutiny during review of these requests can vary widely from community to community. The agencies listed below are currently included in a basic review of any development application submitted in Rapid City. Staff has identified some issues that could be reviewed by each of the agencies as a part of the criteria for short term rentals:	
Public Works:	Current and proposed utility and infrastructure capacity, pending Capital Improvement Projects in the area.
Transportation Planning:	Conflict with aspects of the Major Street Plan or the Bicycle/Pedestrian Master Plan. Traffic impacts
Fire Department:	Previous calls for service. Compliance with the International Fire Code. Provision of fire extinguishers/smoke alarms in guest quarters.
Police Department:	Previous calls for service. Violations/citations on the property in regards to noise, odor, traffic, disturbances to the peace, dangers to the public welfare.
Building Services:	Compliance with the International Building Code, including provision of egress windows, escape routes, and ADA accessibility as necessary. Violations/citations of building code and/or substandard housing. Provision of Certificate of Occupancy/Completion.
City Attorney's Office:	Review of submitted insurance, state licensing materials to ensure compliance.
Risk Management:	Review of submitted insurance, state licensing materials for tracking purposes.
Emergency Services:	Review of requirements for provision of effective emergency services to the property, including addressing issues.

Community Planning & Development Services	Review of compliance with land area regulations, including use, setbacks, lot coverage, building height, landscaping (where applicable), the provision of sufficient parking, sign code, saturation levels, neighborhood compatibility, and compliance with the Comprehensive Plan.
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The Planning Commission and City Council may determine that additional criteria for review or alternative methods of review may be appropriate. Staff has identified some additional considerations.

Classification of Use: As noted in the definitions above, a bed and breakfast typically is defined as having the property owners present and providing a service to guests on the property, whereas a vacation home rental typically has no owners on the property for the duration of guest stays. Classifying the different types of operation for these rentals may be beneficial as a method of tailoring requirements to each specific type of use.

Requirement for home inspection prior to commencement of the use: An inspection of each facility will ensure fire and building safety, as well as the accuracy of submitted application materials. However, any requirement for home inspection will increase staff workload and cost City resources. If an inspection policy is adopted, all inspection should take place during normal business hours and property owners should be provided a minimum 24 hours advanced, written notice.

Renewals: Some models for operation of short term rentals require a renewal of permitting or licensing at regular intervals. Considerations include:

- How often, if at all, should the use be renewed?
- What criteria must be met in order to qualify for renewal?
- What violations might disqualify an owner from renewal?
- What fees should be required?
- Is an inspection of the premises required?

Saturation: Some model ordinances limit the total number of short term rentals permitted within the community, citing concerns with over-saturation. Caps can vary widely and may be determined through many methods. Benefits of capping the number of short term rentals include tighter control of these uses when they are initially identified, as well as protection of the existing residential character of neighborhoods. Disadvantages of a capping system include artificially inflating the value of a short term rental permit and potentially forcing existing operators to cease operation due to caps. It should be noted that other communities' efforts to cap short term rentals have recently failed. As such, any attempt to place restrictions on the number of short term rentals within a given range should be backed by clear, rational justification.

Background Checks for Owners/Operators: Some model ordinances require a background check for owners/operators of short term rentals prior to approval. Benefits of this option include ensuring safe, responsible owners/operators of short term rentals. Disadvantages include an increase in staff time and resources dedicated to the topic. It should be noted that current listing services typically do not require background checks for owner/operators or for guests. However, the sites provide a ranking and review system which allows owner/operators and guests rate and review each other. The system is largely self-regulating, ensuring the good behavior and hospitality of its users. Council may determine that background checks for owner/operators are not necessary.

## Fee Structure

South Dakota Codified Law 10-52A-2 and Rapid City Municipal Code Section 3.18.020 similarly classify short term rentals as a lodging accommodations, subject to the Municipal Gross Receipts Tax (commonly referred to as the bed and booze tax), currently 1 percent of all “gross receipts for leases or rentals of hotel, motel, campsites or other lodging accommodations within the municipality for periods of less than 28 days.” This revenue is currently directed to the Chamber of Commerce and is applicable to commercial property. Short term rentals in residential areas are not subject to taxation. The Chamber of Commerce should be consulted as to whether short term rentals should be subject to similar fees, and if the Chamber should receive said fees. Additional consultation with the Rapid City Finance Department may be helpful in determining how this revenue should be collected and distributed.

Fees for development applications are established annually by resolution and, as of this writing, a fee for a similar type of request (such as a Conditional Use Permit) is \$250.00. Factors such as potential inspections, review times, public hearings, notification mailings, and newspaper publication may increase or decrease the appropriate fee and should be clearly noted in justification for any established fee amount. Fees for the renewal of the permit, if adopted, would also need to be established.

## Enforcement and Penalties

To this point the City has been informed of the operation of these facilities through complaints filed with Code Enforcement. As such, current violators are subject to the same fines and penalties established in the Rapid City Municipal Code with regard to Zoning Code violations. Additional fines and penalties may be established by the Council. Under a permitting structure, additional enforcement/penalty options become available for permitted operators. First and foremost, operation of a short term rental without a permit can be identified as a violation. Code Enforcement, the Police Department, and Community Planning & Development Services can use existing permit tracking systems to track violations on each property. If uses and complaints are tracked, then enforcement of minor penalties could be deferred to renewal periods or enforced on a case-by-case basis. Repeated or egregious violations could result in the revocation of a short term rental permit, with the revocation of a permit appealable to the City Council.

## Options for Adoption

Due to the unique purpose of the Zoning Ordinance to regulate the type and nature of uses within the various area of the City, it is the most logical and efficient manner to regulate short term rentals. However, the City Council has several basic options at its disposal:

- Do nothing: An Ordinance is in place regulating the use of bed and breakfasts in Rapid City today. This Ordinance may continue to function as the sole means of addressing all types of short term rentals. An operator would be required to obtain a Conditional Use Permit for a bed and breakfast.
- Short Term Rental Certificate: An Ordinance could be adopted treating a short term rental similar to a home occupation. The operator/property owner is informed of the operation criteria expected to be maintained, and a copy of the completed form will be kept on file. The required information will only be reviewed upon receipt of a complaint on the property. No public hearing request or notification requirements are required.
- Administrative Review and Action: An Ordinance could be adopted which creates a special use permit specific to the type of short term rental being proposed (i.e., bed and breakfast versus a vacation home rental). All standard submittal materials would be required to be provided. Staff would review the request and make a recommendation to the Director of

Community Planning and Development Services within a time frame at the City Council's discretion. The Director's decision is appealable to the City Council. Notification of neighbors may or may not be required at the Council's discretion.

- Planning Commission Review and Action: Similar to Administrative Review and Action. However, the request would be considered as a Conditional Use Permit, with a mandate for the applicant to meet all required review criteria and a minimum six to eight week time frame for each application. The request would require a hearing before the Planning Commission, appealable to the City Council. Notification of property owners within a certain proximity to the subject property would be required.
- City Council Review and Action: All requests to allow short term rentals would go directly before the City Council for their consideration. Publication and notification requirements at the City Council's discretion.

The best solution to resolve these considerations is probably some hybrid of the implementation options and review criteria noted above. Whatever the outcome, any changed to existing policy should be accomplished through an Ordinance Amendment to the existing Zoning Ordinance to create a special use permit for the establishment, submittal requirements, criteria for review, and enforcement of short term rentals in the City.

### **Summary**

Rapid City must meet new challenges head on if it is to continue to identify as a leader of the Black Hills community. Today, the challenge is to address short term rental housing as an emerging home occupation and economic catalyst with potential for serious impact to the character of the City's residential neighborhoods. Ordinance today is not effective in adequately addressing these issues. Adoption of a special use permit with clearly established definitions and requirements for submittal, review, and approval is the best way to clearly establish City policy moving forward. City staff seeks direction from the Planning Commission and City Council on how to proceed on the issue.