City of Santa Fe, New Mexico

memo

DATE: December 2, 2015

TO: The Mayor and Governing Body

VIA: Randy Randall, Executive Director Tourism Santa Fe
Lisa Martinez, Director, Land Use Department

FROM: Noah Berke, CFM, Senior Planner, Current Planning Division NLB

At the September 30, 2015 Regular Meeting of the Governing Body of the City of Santa Fe, Resolution number 2015-89 was passed. The resolution called on City Staff to analyze the current Land Development Code and make recommendations with respect to short term rentals. The purpose of this paper is to address the requests of the Governing Body and provide recommended changes to the existing Short Term Rental Ordinance.

This resolution stated there has been an increased demand and popularity for short term rentals; there appears to be many unpermitted short term rentals being offered through online sources; unpermitted short term rentals do not contribute lodgers' or gross receipts tax, and the fiscal 2014 Lodger's Tax Agreed-upon Procedures Report by Barraclough & Associates, P.C. recommended: "The City of Santa Fe should reconcile the number of licenses for short term renters with those paying taxes. The City of Santa Fe should reevaluate the limit on short term licenses of 350 to ensure that this number is still appropriate today."

Staff researched and analyzed information from Airbnb, VRBO, HomeAway, FlipKey, Rent by Owner and Craigslist. Staff found the following information for total rent availability:

Rental Organization	Number of Rentals Listed
Airbnb	501
VRBO	622
Home Away	561
FlipKey	513
Rental By Owner	242
Craigs List	130
	2699

Reconciling the total number of rentals available in Santa Fe is somewhat of a challenge, as many owners list their rental on multiple sites; however this supports the belief there are many more than 600 short term rentals being offered without permits despite the limitation of 350 permits in the current ordinance. For the purpose of this analysis we have used the conservative assumption of 600 additional, non-permitted short term rentals.

Staff further compared this data to the permitted short term rentals on file with the City of Santa Fe. Staff was unable to pinpoint whether all of the data collected from the online rental organizations is permitted or unpermitted, as many of the online organizations do not provide exact addresses of the rentals listed. However, Staff was able to conclude the total number of rentals from all the online rental organizations exceeds the total number of permitted short term rentals by a significant number.

Staff researched several cities around the United States to see how regulation of short term rentals differs from the current City of Santa Fe short term rental ordinance. Staff researched Sedona AZ, Vail CO, Austin TX, Bend OR, Truckee CA, Malibu CA, and San Francisco CA. The following provisions are the primary differences between how several other cities regulate short term rentals versus the City of Santa Fe regulations:

1.) Other cities do not impose caps on number of short term rentals permitted.
2.) Other cities do not attempt to restrict the number of arrivals per week or the number of rentals per year as this is determined to be a generally unenforceable restriction.
3.) Other cities impose penalties for non-compliance with short term rental ordinances.
4.) Other cities require all short term rentals in all zoning districts to obtain short term rental permits and pay appropriate taxes.

In response to Resolution 2015-89, staff has studied and analyzed data available to answer the Governing Bodies requests to the following:

1.) *The amount of short term rentals, including both permitted and unpermitted, believed to be offered and used within Santa Fe.*

    The City of Santa Fe currently has 418 short term rentals that are licensed and have paid the appropriate license and permitting fees. The difference between the 350 short term rental permits allowed by the current ordinance and the number issued is due to the provision that properties on contiguous lots owned by the same property owner are also permitted. Staff believes there are in excess of 600 unpermitted short term rentals operating in the City of Santa Fe.

2.) *The revenue lost to the City by means of gross receipts tax and lodgers' tax.*

    In the fiscal year of 2014-2015, the City of Santa Fe collected $136,580 from

license and permit fees and $465,502 in short term rental lodgers' tax. Lodgers' tax is 7% of the revenue generated by the short term rentals and gross receipts tax is 8.1% (2014-2015). Each short term rental permit and license fee averages $326.75 using the current variable fee structure. Based on this fee, the 600 short term rentals not currently paying taxes would generate an additional $671,882 in lodgers' tax, $195,309.40 in license and permitting, and $796,661 in GRT.

A third party analysis (Southwest Planning) of the short term rental situation in Santa Fe confirms that these numbers are both conservative and realistic. Their report (see attached), suggests the loss of revenue to the city in lodgers' tax could exceed $2.5 million. The Southwest Planning report makes some very aggressive assumptions as to rate and occupancy, both of which are unknown factors in our own current data collection process.

It should also be noted the short term rental tax collections for the first four months of the fiscal year 2015-2016 is 22.3% ahead of the prior fiscal year. If this trend continues, the estimated lost revenue increases by $150,000 for lodger's tax and $178,000 for GRT.

3.) *The violations of the current ordinance, the City's response to the violations, and how the City can encourage greater compliance.*

The staff analysis of online rental organizations provides evidence of the violations of the current ordinance. There appears to be a large disparity between the amount of short term rentals advertised on the six sites and how many permits have been issued by the City for short term rentals. Compliance with the short term rental ordinance may require higher penalties and more strict enforcement. However, if more permits are made available, owners are more likely to come into compliance, therefore avoiding the proposed higher penalties.

During the period from January 1, 2008 when the short term rental ordinance was put into place until the present, there have been 93 recorded complaints and violations. The short term rental compliance officer estimates that this represents about 50% of the total volume. An analysis of the recorded complaints is as follows:

Complaint	Number	Percent
Too many people in rental	**10**	**10.8%**
Too many rentals per year/week	**2**	**2.2%**
Neighborhood Notice	**10**	**10.8%**
No Insurance	**9**	**9.7%**
Permit/Listing/advertising	**27**	**29.0%**
No Fire Inspection	**1**	**1.1%**
Nuisance/other	**7**	**7.5%**
No permit	**27**	**29.0%**
	93	

4.) *The staff required to provide necessary enforcement.*

In the current operation of the short term rental ordinance, enforcement is provided by one individual in the Land Use Department and collections are completed through our Finance Department. It is recommended that staffing solely dedicated to short term rental staff be increased through reassignment of existing staff. One individual is needed to manage and oversee all aspects of the short term rental program; an additional enforcement officer would also be needed. Additional fee income is proposed to cover the cost of these positions.

5.) *The penalty structure for operating without a business license and short term rental permit.*

Staff recommends a strict penalty structure for operating without a business license or short term rental permit. First violation carries an initial $500 penalty and would provide 14 business days for the rental owner to comply with the ordinance and obtain permits. If action is not taken and the violations continue, then a $250 per day penalty would be assessed and the city would have the authority to put a lien on the property.

6.) *Changes to the code that would produce increased efficiency in operation and regulation, and greater compliance with adopted regulations.*

1. There is a demand for short term rental permits that is not met by the current regulations due to a limited number of permits. There is a waiting list of 67 for short term rental licenses, but as already documented, it appears there are over 1,000 short term rentals being offered and most owners are simply operating without a permit, due to limited permits and the inability to enforce the cap. Staff recommends the ordinance be changed to remove the cap on licenses and require all short term rental owners to register with the city (as required in section 18-11.6 of the Lodger's Tax Ordinance) and obtain proper licenses and

permits.

2. Eliminate the current restriction of 17 rentals per year maximum and one arrival per week. These are basically unenforceable by the city and complicate the administration of the short term rental ordinance.

3. Provide a 90 day grace period to allow short term rental owners to come into compliance without being subject to penalties.

4. Include a refund within the current ordinance so if a short term rental owner applies and is granted a short term rental permit, but decides to not pursue the permit and requests a fee refund, the administrative cost for refunds be $150.00.

5. All short term rentals, located in all zoning districts of the City, be required to obtain a permit and pay registration, permitting, and license fees.

6. All short term rentals within the City be required to pay lodger's tax and gross receipts tax.

7. Enforcement penalties' be increased as suggested in this report, to provide for greater compliance with the short term rental ordinance.

8. The Lodger's Tax Ordinance be revised to include a definition of "room" as recommended by the City Attorney to allow staff to address with the issuance of exemptions.

9. All short term rental owners be required to register their property. As part of the registration the owner will be required to identify where they market their rental and apply for an exemption on the collection of the lodger's tax if they feel they are entitled to this under the provisions of the Lodger's Tax Ordinance. Without an approved exemption, all short term rental owners will be required to collect and remit lodger's tax

10. Upon licensure, consider requiring a self-compliance statement by the owner with regard to fire, health and safety issues. City would perform random inspections.

11. Execute a Voluntary Collection Agreement with Airbnb. The City and Airbnb are currently negotiating a Voluntary Collection Agreement where Airbnb will collect and remit Lodger's Tax on behalf of their hosts (rental owners). The agreement will provide for an audit opportunity to ensure that all taxes are being properly collected and submitted. The agreement would not address GRT collection as this is the City's responsibility and further, cannot include taxes submitted to the State. We anticipate having a finalized agreement for Governing Body

approval within the first quarter of 2016.

A similar agreement with most other referral sites is not probable as those sites do not typically collect rents on behalf of the owner.

12. Change the fee for "Primary Residence; 2 rental periods per year" from $0.00 to $150.00.

13. Staff will modify administrative procedures regarding the implementation of the ordinance in accordance with approved changes.

ACTION REQUEST:

Staff requests that the Mayor and Governing Body provide specific direction on the recommendations made in this report.

ATTACHMENTS:

EXHIBIT A:
2014 Lodger's Tax Agreed-upon Procedures Report by Barraclough & Associates, P.C

EXHIBIT B:
Southwest Planning Report

EXHIBIT C:
Map of Permitted Short Term Rentals and Unpermitted Short Term Rentals

Exhibit A

CITY OF SANTA FE

LODGERS' TAX AGREED-UPON PROCEDURES REPORT

FISCAL YEAR ENDED JUNE 30, 2014

Barraclough & Associates, P.C.
Certified Public Accountants & Consultants

City of Santa Fe
Lodgers' Tax Agreed-Upon Procedures Engagement
Executive Summary

Background:

A 7% tax is collected by lodging facilities located within the City of Santa Fe for rooms rented 30 days or less. The lodging facilities remit the tax collected to the City of Santa Fe on a monthly basis. These facilities include hotels, motels, bed and breakfasts, and houses.

Objective:

Were lodging facilities collecting and remitting lodgers' tax in accordance with 18-11.9 SFCC 1987?

Barraclough & Associates, P.C. reviewed the records of 8 commercial lodging facilities during July 1, 2013 through June 30, 2014 (FY14) and noted:

- Two facilities over paid their taxes by $1,591.
- One facility owes the City $1,139 in back Lodgers' Tax.
- One facility owes the City penalties and interest of $1,059.
- Three facilities were noncompliant in our request for an audit (Entity #5, Entity #8, and Entity #10).
- One facility did not provide the additional documents requested, and we were unable to complete our procedures (Entity #7).
- The City's spreadsheet containing lodgers' tax payments received had 1 error, see pg. 6 for details.

Barraclough & Associates, P.C. reviewed the records of 8 short-term renting facilities during July 1, 2013 through June 30, 2014 (FY14) and noted:

- Six facilities owe the City penalties and interest of $3,581.
- Six facilities owe the City $4,569 in back Lodgers' Tax.
- Two facilities over paid their taxes by $166.
- Two facilities were noncompliant in our request for an audit (Entity #18 and Entity #20).
- One facility did not provide the additional documents requested, and we were unable to complete our procedures (Entity #11).
- The City's spreadsheet containing lodgers' tax payments received had 18 errors see pages 6-8 for details.

Recommendations:

- The City of Santa Fe should collect $10,348 in interest, penalties, and back taxes from the facilities tested.
- The City of Santa Fe should credit customer accounts for $1,757 in taxes overpaid.
- The City of Santa Fe should review their receipts of payments received and reconcile differences mentioned in this report with their spreadsheet.
- The City of Santa Fe should pursue legal action against those facilities mentioned who were noncompliant with our requests for inspection of their records in accordance with 18-11.11 SFCC 1987.
- The City of Santa Fe should reconcile the number of licenses for short term renters with those paying taxes.
- The City of Santa Fe should reevaluate the limit on short term licenses of 350 to ensure that this number is still appropriate today.

(Continued)

Exhibit B

Santa Fe Tourism

Santa Fe Tourism Short Term Rental Property Audit

Prepared for:

TOURISM Santa Fe

201 W. Marcy St.

Santa Fe, NM 87501

Prepared by:

Southwest Planning, LLC

Nicole Jeffries (Santa Fe Tourism Intern)

P.O. Box 1506

Santa Fe, NM 87504

Submitted August, 2015

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SOUTHWEST PLANNING
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Santa Fe Tourism Lodging Audit

Overview: Santa Fe Tourism conducted an audit in order to estimate the loss to the city of Santa Fe in uncollected lodgers tax. The focus was short term rental properties in the city of Santa Fe. The main objectives were to:

- Identify how many short term rental properties exist in Santa Fe, NM
- Of those properties, how many owners have a license to rent
- Of those who have a license, how many of them should be paying Lodger's Tax
- How many of them are not paying Lodger's Tax
- How much Gross Receipts Tax these properties are liable for in the city of Santa Fe

Methodology: See Appendix A

Findings: The Santa Fe Tourism lodging audit conservatively identified 228 properties with 692 available rooms for rent that are not currently paying lodgers tax to the City of Santa Fe. This equates to 252,580 available room nights. Scenarios were generated for three levels of average annual occupancy and three average room rates.

Estimated Revenues Generated: Revenues generated from short term rentals not currently paying lodgers tax range from a low of $6.3 million (based on $100 room rate at 25% occupancy) to a high of $30.3 million (based on a $200 room rate at 60% occupancy).

Estimated Lodgers Tax Revenues: Lost revenues from short term rentals not currently paying lodgers tax range from a low of $442,000 (based on $100 room rate at 25% occupancy) to a high of $2.1 million (based on a $200 room rate at 60% occupancy).

Based on average annual occupancy levels for the City of Santa Fe and average room rates it is likely that short term rentals generate a 50% occupancy at an average room rate of $150. **This equates to $1.3 million in unreported lodgers tax.**

Estimated Gross Receipts Tax Revenues: Gross Receipts Tax Revenues generated by short term rentals not currently paying lodgers tax range from a low of $524,893 (based on $100 room rate at 25% occupancy) to a high of $2.5 million (based on a $200 room rate at 60% occupancy).

The table below provides the impact of varying occupancy and room rate scenarios

	Room Nights	Revenue (avg $100 a night)	Revenue (avg $150 a night)	Revenue (avg $200 a night)
Rooms (per SFT audit)	692	692	692	692
Available Room Nights (365)	252,580	252,580	252,580	252,580
	Revenue Generated			
Average Occupancy (25%)	63,145	$ 6,314,500	9,471,750	12,629,000
Average Occupancy (50%)	126,290	$ 12,629,000	18,943,500	25,258,000
Average Occupancy (60%)	151,548	$ 15,154,800	22,732,200	30,309,600
	Revenue Generated from lodgers tax @ 7%			
Average Occupancy (25%)	63,145	$ 442,015	$ 663,023	$ 884,030
Average Occupancy (50%)	126,290	$ 884,030	$ 1,326,045	$ 1,768,060
Average Occupancy (60%)	151,548	$ 1,060,836	$ 1,591,254	$ 2,121,672
	Revenue Generated from Gross Receipts Tax @ 8.3125%			
Average Occupancy (25%)	63,145	$ 524,893	$ 787,339	$ 1,049,786
Average Occupancy (50%)	126,290	$ 1,049,786	$ 1,574,678	$ 2,099,571
Average Occupancy (60%)	151,548	$ 1,259,743	$ 1,889,614	$ 2,519,486

Appendix A - Methodology

Methodology

Step 1: *Initial research.* Browse top rental sites, and find the number of Santa Fe properties listed for each site.

- HomeAway: 557 properties
- VRBO: 616 properties
- FlipKey: 300 properties
- RBO: 658 properties
- AirBnb: 612 properties

**Note: RBO and AirBnb were not quantifiable due to lack of property/owner information being provided.
Steps 2-6 do not apply to these sites. It can be assumed that there are 400 unique properties out of the combined 1270 properties.

Step 2: *Pull data from each site.* Pull information such as owner name, property ID, phone number, and number of rooms. If none of the stated is provided, properties are categorized as "NA". Sort alphabetically by first name.

Step 3: *Eliminate duplicates.* This was done two ways. HomeAway and VRBO are partner sites and use the same property ID on both sites. Duplicates were identified and eliminated if two identical property IDs existed. To eliminate duplicates from FlipKey, names in the data sheet were cross-referenced with one another.

Step 4: *Reach out to "NA" properties.* All of the owners of these properties were emailed and inquired about their property. The goal was to obtain either the owner name and/or property address. Initially, 200 "NA" properties existed. After further investigation, 78 properties remain "NA" which indicates the owner did not respond.

Step 5: *Cross-reference list of licenses with the data spreadsheet.* First, names were cross-referenced. Furthermore, cell phone numbers were cross-referenced if there was no owner name provided, or if the owner was registered under a different name than the one used for various rental sites. Those who have a license were marked with a "Y" for yes in the license column of the spreadsheet.

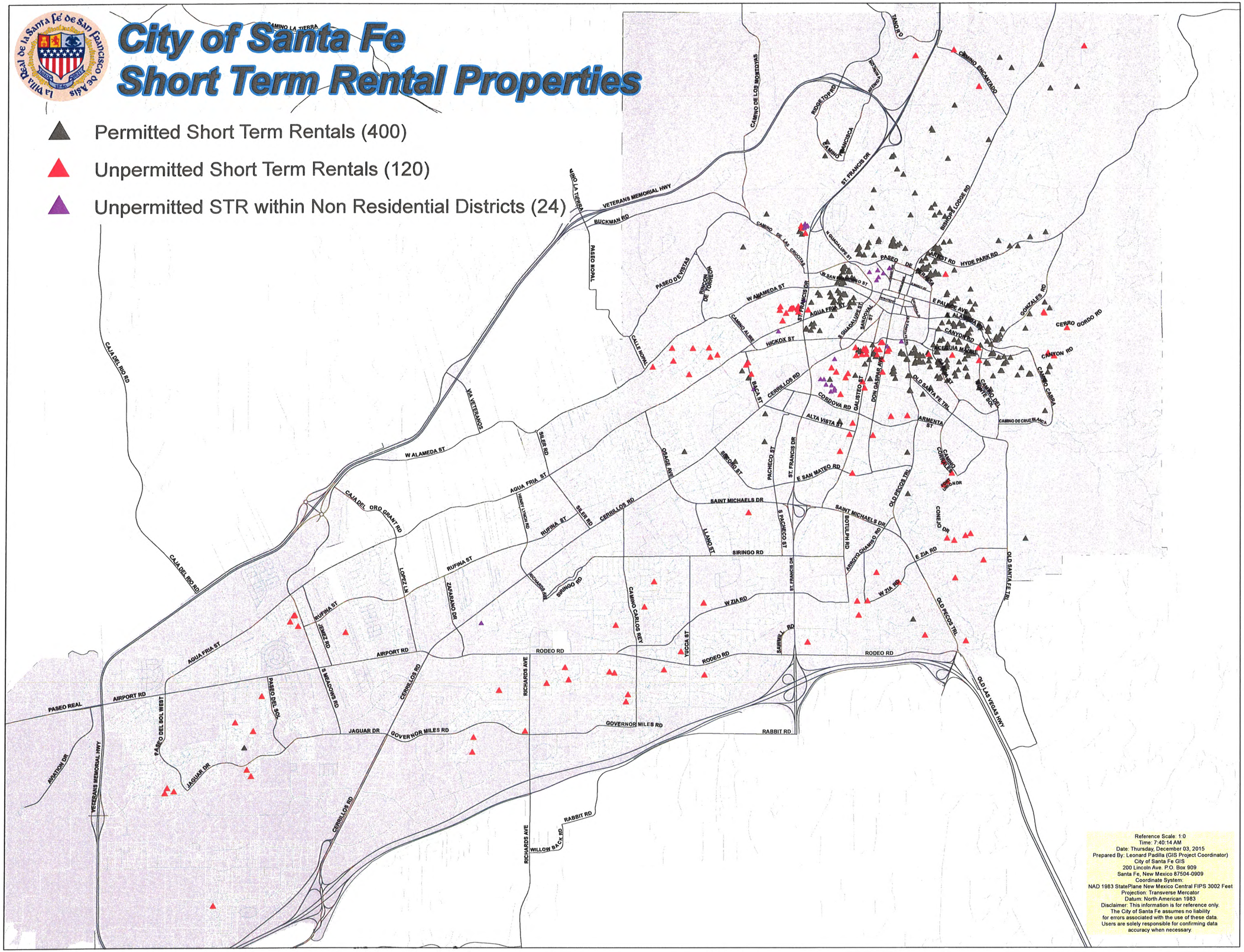
Step 6: *Determine who needs to pay Lodger's Tax.* According to the law, one must pay Lodger's Tax if their property has three or more rooms, or if they have multiple properties in which there are three or more rooms combined. The properties on the spreadsheet that fit this criterion were categorized as needing to pay Lodger's Tax. Once this was established, these names were cross-referenced with the list of those who are currently paying Lodger's Tax. From this it was determined that **out of the 280 properties that we identified and are obligated to be paying Lodger's Tax, 52 properties are paying the tax.**

Step 7: *Analyze the data.* As of Wednesday, August 4, 2015 the data is as follows:

- **Total properties researched: 1,473**
- **Total unique properties (after duplicates were eliminated): 817**
- **Total properties that could not be identified (NA): 78**
- **Total properties w/ a license: 330**
- **Total properties w/ out a license: 487**
- **Total properties obligated to pay Lodger's tax: 280**
- **Total properties paying Lodger's tax: 52**

**This data is from those properties that could be identified and quantified. It is not inclusive of the assumed 400 unique properties from RBO and AirBnb.

Exhibit C

City of Santa Fe
Short Term Rental Properties

- Permitted Short Term Rentals (400)
- Unpermitted Short Term Rentals (120)
- Unpermitted STR within Non Residential Districts (24)