City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2016-__

Short Term Rental Update

SPONSOR(S): Councilors Maestas, Mayor Gonzales, Councilor Ives

SUMMARY: The proposed bill amends the short-term rental ordinance to increase the number of permits, amending the applicable fee schedule, and requiring that permit holders pay all applicable taxes, and those that aren't permit holders face certain penalties as well.

PREPARED BY: Jesse Guillen, Legislative Liaison

FISCAL IMPACT: Yes

DATE: March 3, 2016

ATTACHMENTS: Bill
FIR

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2016-__

INTRODUCED BY:

Councilor Joseph M. Maestas

Mayor Javier M. Gonzales

Councilor Peter N. Ives

AN ORDINANCE

AMENDING SECTION 14-6.2 OF THE LAND USE DEVELOPMENT CODE TO REMOVE CERTAIN LIMITATIONS ON SHORT-TERM RENTAL DWELLING UNITS; AMENDING THE FEE SCHEDULE FOR A SHORT-TERM RENTAL PERMIT; AND REQUIRING THAT PERMIT HOLDERS PAY ALL APPLICABLE TAXES OR BE SUBJECT TO CERTAIN PENALTIES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Subsection 14-6.2 of the Land Use Development Code (being Ord. #2011-37 (as amended)) is amended to read:

14-6.2 USE-SPECIFIC STANDARDS

(A) Residential Uses

(1) Continuing Care Community

(a) Density

Independent *dwelling units* are subject to the *density* standards of the district in which the *continuing care community* is located.

(b) Compliance with state and federal law

Continuing care communities must comply with all applicable *state* and federal laws and regulations.

(2) Mobile Home, Permanent Installation

In any district in which permanent single-*family* occupancy of a *mobile home* on an individual *lot* is allowed as a special use *permit* by the board of adjustment, the following minimum standards apply:

(a) the *mobile home* shall be anchored to a concrete foundation and skirted as specified by the *land use director*;

(b) the rental or lease of *mobile homes* used as single-*family* residences on individual *lots* is prohibited; and

(c) minimum requirements for *lot* size, *front, side and rear yards*, and all other standards pertaining to single-*family residential* land use set forth in Chapter 14 apply.

(3) Mobile Home Park

(a) Applicability

New *mobile home parks* are prohibited as of December 10, 2012 (effective date of this Ordinance No. 2012-37). In a district in which *mobile home parks* are allowed, the minimum standards set out in this section apply.

(b) License

Prior to beginning operation, a *mobile home park* owner or operator must obtain a business license from the *city* under the provisions of Article 18-1 SFCC 1987.

(c) Inspection

The *city* may inspect a *mobile home park* for conformance with the provisions of this section.

(d) Transfer of License

The *city* may issue a transfer of the license only after the following:

(i) *application* in writing for transfer of a license and payment of the transfer;

(ii) an inspection report by the *land use director* has been submitted to the *governing body*, stating conformance or nonconformance with the provisions of this section;

(iii) approval by the *governing body*.

(e) Revocation of License

The *governing body* may revoke a license to maintain and operate a *mobile home park*, as provided in Article 18-1 SFCC 1987 when the *licensee* has violated any provision of this section.

(f) Posting

The license certificate shall be conspicuously posted in the office of or on the *premises* of the *mobile home park* at all times.

(g) Standards

Mobile home parks shall comply with the standards set forth in Subsection 14-7.2(1).

(4) Manufactured Homes

Manufactured homes:

(a) are permitted in any district in which site-built, *single-family dwellings* are allowed;

(b) shall meet all requirements of other site-built, *single-family dwellings* in

the same district and all applicable historic or aesthetic standards set forth in Chapter 14; and

(c) shall be constructed according to the Manufactured Home Construction and Safety Standards, 24 CFR Section 3280.

(5) Short-Term Rental of Dwelling Units – Residentially Zoned Property

(a) Dwelling Units

Dwelling units located on *residentially zoned property* may not be rented for less than thirty days except as set forth in this Subsection 14-6.2(A)(5).

(b) Short-Term Rental Units

Short-term rental units are prohibited on *residentially zoned property* except as provided in this Subsection 14-6.2(A)(5)(b).

(i) [~~An owner may rent the *dwelling unit* that the owner normally resides in for two rental periods within a calendar year. The general provisions set forth in Subsection 14-6.2(A)(5)(c) do not apply and a *permit* is not required.~~]

[~~(ii)~~] i *Short-term rental units* that are operated in compliance with Subsection 14-6.3(D)(1) (Accessory Dwelling Units) and in compliance with this Subsection 14-6.2(A)(5)(b)[~~(ii)~~](i) are allowed.

[~~(iii) *Short-term rental units* owned by the *property* owner who resides on a *contiguous lot* and in compliance with this paragraph are allowed. The operation of the short-term rental shall cease immediately upon sale of either or both *properties* or if the *property* owner no longer resides on the contiguous *lot*.~~]

[~~(iv)~~] ii *Short-term rental units* located in a *development* containing resort facilities approved pursuant to a special use *permit* [~~prior to January 30, 2008,~~] which are owned in common by the *owners* within the *development*, are allowed. As used in this item, "resort facility" means any combination of swimming pools, spa facilities, golf courses, restaurants and tennis facilities. [~~The general provisions set forth in Subsection 14-6.2(A)(5)(e) shall not apply except for Item (ix) regarding applicable taxes.~~]

[~~(v)~~] iii The *land use director* may issue [~~up to three hundred fifty short-term~~] rental *permits* in a quantity approved by the governing body through adoption of a resolution for *residential* units not otherwise qualifying for *permits* under Items (i) (ii) [~~, (iii) or (iv)~~] above. *Dwelling units* on non-*residentially zoned property* pursuant to §14-6.2(6) are not subject to the *permit* limit imposed by this subsection.

[~~(vi)~~] iv Whenever the [~~number of~~] demand for *short-term rental units* exceeds the number permitted in accordance with Item [~~(v)~~] iii above [~~falls below three hundred fifty~~], the number of additional [~~new~~] *permits* may be authorized by the governing body through adoption of a subsequent resolution and issued by the *land use director*. New *permits* shall be issued in the order that qualifying *applications* are received.

~~(vii) *Permit* holders who have been issued a *permit* prior to October 14, 2009 are not required to reapply for a *permit*; provided, however, if the *permit* expires pursuant to Subsection 14-~~

~~6.2(A)(5)(d)(x), a new *application* may be submitted to the *land use director* in accordance with Item (vi) above.~~]

(c) General Provisions

Unless otherwise stated, the following general provisions apply to *short-term rental units*:

(i) no more than one rental is allowed within a seven consecutive day period;

~~[(ii) *short-term rental units* described in Subsection 14-6.2(A)(5)(b)(v) are limited to seventeen rental periods per calendar year;]~~

(ii) short-term rental permits will not be issued to allow more than two short-term rentals units directly adjacent to each other on a residentially zoned street. Directly adjacent for the purposes of this subsection means directly next to another structure on the same side of the street or directly across from another structure on the opposite side of the street. The only exception would be for condominiums, apartment complexes and residential compounds;

(iii) *off-street parking* shall be provided on site as follows: 1) one bedroom, one parking space; and 2) two or more bedrooms; two parking spaces

(iv) all applicable building and fire life safety codes shall be met and all toilets, faucets and shower heads shall meet the water conservation requirements described in Section 25-2.6 SFCC 1987;

(v[~~i~~]) occupants shall not park *recreational vehicles* on site or on the *street*;

(vi) short-term rentals will not be permitted to be used for non-residential purposes. This excludes the use of short-term rentals permits for outdoor events, weddings and the like.

(vii) the total number of persons that may occupy the short-term rental unit is twice the number of bedrooms;

(viii) noise or other disturbance outside the short-term rental unit is prohibited after 10:00 p.m., including *decks*, *portals*, *porches*, balconies or patios;

(ix) all occupants shall be informed in writing of relevant *city* ordinances, including the *city's* nuisance and water conservation ordinances, by the *owner*/operator of the short-term rental unit. All occupants shall comply with all relevant *city* ordinances and comply with all provisions of the lodger's tax ordinance;

(x) the *owner*/operator shall pay all applicable local, *state* and federal taxes, including lodgers' tax, gross receipts tax and income taxes;

(xi) should the *owner*/operator neglect to pay all applicable taxes, the *owner*/operator shall be subject to penalties pursuant to Subsection 14-6.2(A)(5)(f).

[~~(xi)~~] (xii) the *owner*/operator shall make available to the *city* for its inspection all records relating to the operation of the short-term rental unit to determine compliance with this paragraph[~~. The *owner*/operator shall report to the *land use director* on a monthly~~

~~basis in a format provided by the *land use director*~~]; and

[~~(xii)~~](xiii) the *owner* shall maintain adequate *property* insurance coverage for the *short-term rental unit*. Proof of insurance shall be required at the time the *permit* is issued and such other times as requested by the *land use director*.

(xiv) should ownership of a short-term rental unit transfer from one owner to the other, the short-term rental permit is canceled and shall revert to the land use department. If the new owner wishes to continue using the property as a *short-term rental unit*, a new application shall be made with the land use department.

(d) Applications

Unless otherwise stated, an *application* for a *permit* for a short-term rental shall be submitted to the *city* as follows:

(i) the *application* shall include the name and phone number of the *owner*/operator who is available twenty-four hours per day, seven days per week to respond to complaints regarding the operation or occupancy of the short-term rental unit as well as the name and phone number of *city* staff responsible for enforcing this section;

(ii) the *application* shall include a [~~verified, notarized~~] statement signed by the *owner*/operator that the short-term rental shall be operated in compliance with this paragraph and all other applicable *city* codes and that the operation of the short-term rental is in compliance with any applicable legally binding private covenants, including those that prohibit the presence of

short-term rental;

(iii) all applicants must submit proof of all required inspections with their initial application. Renewal applications for the same property may submit proof of all required inspections in the form of a statement attesting to self-compliance of all fire, health and safety requirements. The city shall perform random inspections to ensure compliance.

[~~(iii)~~](iv) prior to issuance of a *permit*, a *certificate of occupancy* is required to ensure compliance with this paragraph and all applicable codes;

[~~(iv)~~](v) the *permit* is not transferable to another *person* or *property*;

[~~(v)~~](vi) within ten days of the issuance of the *permit*, the *owner*/operator shall mail notice by first class mail, with certificate of mailing, to the *owners* of *properties* within two hundred (200) feet of the subject *property*, exclusive of *rights of way*, as shown in the records of the *county* [~~treasurer~~]assessor, and by first class mail to the physical addresses of such *properties* where such address is different than the address of the *owner* *and the land use department*. Notice shall be on a form approved by the *land use director*, and shall contain the name and phone number of the *owner*/operator who will be available twenty-four hours per day, seven days per week to respond to complaints regarding the operation or occupancy of the short-term rental as well as the name and phone number of *city* staff

responsible for enforcing this paragraph. Copies of all required mailing lists and mailing certificates shall be provided to the *land use director* within ten days of the mailing. Failure to notify neighbors as described is subject to penalties and prosecution pursuant to Subsection 14-6.2(A)5)(f);

[~~(vi)~~](vii) each *application* shall be accompanied by a fee of one hundred [~~fifty~~] dollars ($[~~150~~] 100) to cover *application* processing and inspections. This application fee is non-refundable.

[~~(vii)~~](viii) The annual *permit* fee schedule is as follows:

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

Annual Permit and Registration Fees*		
Short-term Rental Type	**Permit Fee per Unit**	**Registration Fee per Unit**
[~~§14-6.2A(5)(b)(i) — Primary Residence; 2 rental periods per year~~]	[~~$ 0.00~~]	
§14-6.2A(5)(b)[~~(ii)~~](i) — Accessory Dwelling Units	[~~$175.00~~]$325.00	
[~~§14-6.2A(5)(b)[(iii)] — Unit(s) on Contiguous Lot~~]	[~~$175.00~~]	
§14-6.2A(5)(b)[~~(iv)~~](ii) — Resort Units	~~[$150.00]~~ $100	$100
§14-6.2A(5)(b)[~~(v)~~](iii) — Residential Units	[~~$350.00**~~]$325.00**	
§14-6.2A(6) — Commercial Districts	[~~$100~~]	$100
Initial Application and Processing Fee (one-time)	$100	

*The annual permit fee shall not be prorated for a portion of the year.

* *If there is more than one short-term rental unit on a lot, the permit fee is [~~$140.00~~] $350.00 for each additional unit.

[~~(viii)~~](ix) The annual fee includes the *city's* business registration fee and inspections related to issuance of the short-term rental

permit. Revenue from fees imposed pursuant to this paragraph shall be used only to administer, manage, and enforce this section.

[~~(ix)~~](x) If payment of a *permit* fee was in excess of that for which a *person* was liable, the *person* may claim a refund by directing to the city [~~treasurer~~]finance director a written claim for refund no later than one year from the date payment was made. Every claim for refund shall state the amount and basis for the claim. The *city* [~~treasurer~~]finance director may allow the claim in whole or in part or may deny it. If the claim is not allowed in whole, the *person* may appeal the decision pursuant to Section 14-3.17.

[~~(x)~~]xi Unless revoked as set forth in Subsection 14-6.2(A)(5)(e), a *permit* holder may renew the *permit* annually. If not renewed by March 15 of each year, the [~~*permit* expires~~] the *owner*/operator may pay late fee of fifty dollars ($50) which will permit them to renew by April 15. An *owner* of an expired *permit* may submit a new *application* for a short-term rental *permit* to the *land use director* in accordance with Subsection 14-6.2(A)(5)(b)(vi) subject to availability of *permits* [~~within the three-hundred-fifty limit~~].

[~~(xi)~~](xii) [~~The~~]A valid *permit* number shall be included in all advertising of the short-term rental, including listings on web-based rental sites.

(e) Violations

(i) The *land use director* shall document all alleged violations of this paragraph and shall pursue enforcement through the municipal court as set forth in Article 1-3 SFCC 1987 or in another appropriate court of law. The City shall give the owner a written Notice of Violation, which shall be mailed either to the owner's local or business address or agent's address, informting the owner of the violation. If corrective action is not completed within fifteen (15) days of the date of the letter, the City may file a criminal complaint in municipal court. Upon conviction of a [~~third~~] first violation, the *land use director* shall revoke the *permit* and operation of the short-term rental shall cease within thirty days.

(ii) An *owner* who offers for rent as a short-term rental a *dwelling unit* that is not permitted for use as a short-term rental is in violation of this paragraph and is subject to penalties, property liens and/or prosecution pursuant to Subsection 14-.2(A)(5)(f).

(iii) An agent who knowingly assists an *owner* in advertising or renting a *dwelling unit* as a short-term rental unit that is not permitted under this paragraph is subject to penalties and prosecution [~~and the agent's business license is subject to revocation~~] pursuant to Subsections 18-1.7 through 18-1.9.

(f) Penalties

(i) If an *owner* fails to report [~~their lodgers' tax~~] all applicable taxes, including gross receipts tax and lodger's tax, they shall be subject to [~~the provisions of the Lodgers' Tax Ordinance,~~

~~Section 18-11.11 SFCC 1987, and shall be~~] all enforcement authority permissible under the short-term rental ordinance and any applicable city, county, state, or federal law or statute. The owner shall also be subject to revocation of their short term rental permit pursuant to Subsection 14-6.2(A)(5)(f)(ii).

(ii) If an *owner* is found guilty of operating a short term rentalwithout a valid permit, they shall be fined five hundred dollars ($500). The city may ask the municipal court to treat each day after the initial written notice of violation as a separate violation and assess two hundred fifty dollars ($250) for each day of these daily violations for a total cumulative fine amount. If the city is awarded money as part of this court hearing and defendant does not make timely payments to the city, the city may bring an action in lien or equity for the collection of any amounts due.

[~~(f)~~](g) Private restrictive covenants, enforceable by those governed by the covenants, may prohibit short-term rental units.

[~~(g)~~](h) Real estate brokers listing *residential property* in Santa Fe shall provide prospective buyers a current copy of this [~~paragraph~~] ordinance.

[~~(h)~~](i) The *land use director* shall establish administrative procedures necessary to implement, manage and enforce this paragraph.

(6) Short-term Rental of Dwelling Units – Non-residentially Zoned Property

Short-term rental of *dwelling units* on non-*residentially zoned property* is permitted as set forth in Table 14-6.1-1, required to register; pay a one-time $100 application fee; one-time $100 application, inspection and processing fee; and

comply with submission requirements of all applicable taxes.

(7) Dwelling Units in Specified Commercial Districts

In the C-2 and SC Districts, *dwelling units* do not include *mobile homes* or *recreational vehicles* and shall be either:

(a) *accessory dwelling units* for occupancy only by *owners*, *employees* or tenants of *nonresidential* uses that are operated on the same *premises*;

(b) part of a planned *development*; or

(c) part of a use for which a *development plan* or special use *permit* is required.

(8) Effective Date.

The provisions of Article 14-6.2(A)(5) of the Land Use Development Code shall go into effect immediately upon approval of the governing body. A ninety (90) day grace period shall be given for affected units to enter into full compliance with this ordinance. All owners who have a current 2016 permit shall pay the new application and permit fees, but shall receive a credit for amounts already paid to the City for current 2016 permits. All owners who have a current 2016 permit under Subsection 14-6.2(A)(5)(b)(iii) who reapply subject to these revisions to Subsection 14-6.2(A)(5) within sixty (60) days of the Effective Date and who meet all requirements shall be guaranteed to receive one of the allowable permits for 2016. This guarantee shall only apply for 2016. All owners who have a current 2016 permit who reapply subject to these revisions to Subsection 14-6.2(A)(5) within sixty (60) days of the Effective Date and meet all requirements shall be grandfathered in and are not subject to the geographic requirements of Subsection 14-6.2(A)(5)(c)(ii).

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

M/Legislation/Bills 2016/Short Term Rental Update Final

FIR No. 2791

City of Santa Fe
Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. **General Information**

(Check) Bill: X Resolution: X
(A single FIR may be used for related bills and/or resolutions)

Short Title(s): **AN ORDINANCE AMENDING SECTION 14-6.2 OF THE LAND USE DEVELOPMENT CODE TO REMOVE CERTAIN LIMITATIONS ON SHORT-TERM RENTAL DWELLING UNTS; AMENDING THE FEE SCHEDULE FOR A SHORT-TERM RENTAL PERMIT; AND REQUIRING THAT PERMIT HOLDERS PAY ALL APPLICABLE TAXES OR BE SUBJECT TO CERTAIN PENALTIES.**

Sponsor(s): Councilor Maestas, Mayor Gonzales, Councilor Ives

Reviewing Department(s): Land Use/Tourism

Person Completing FIR: Lisa Martinez/Randy Randall Date: 3/1/16 Phone: x6957

Reviewed by City Attorney: (Signature) Date: 3/2/16

Reviewed by Finance Director: (Signature) Date: 3-2-2016

Section B. **Summary**

Briefly explain the purpose and major provisions of the bill/resolution.
This bill amends the short-term rental ordinance to increase the number of permits, amending the applicable fee schedule, and requiring that permit holders pay all applicable taxes, and those that aren't permit holders face certain penalties as well. The City currently has a waiting list for the 350 short-term rental permits, and many properties operate without a permit. The City cannot guarantee these properties adhere to applicable safety code, and the majority do not pay gross receipts or lodgers' tax on the revenue. This bill aims to streamline the process and make it more transparent and fair.

Section C. **Fiscal Impact**

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:
a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)

b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Column #: 1	2	3	4	5	6	7	8
Expenditure Classification	FY 16/17	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 17/18	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected
Personnel*	$164,000	N($110,000)	R	$164,000	N	R	
Fringe**	$82,000	N($55,000)	R	$82,000	N	R	
Capital Outlay	$			$			
Land/ Building	$			$			
Professional Services	$9,700	N	NR($8,000) R($1,700)	$			
All Other Operating Costs	$121,800	N ($70,500)	NR($53,000) R ($68,800)	$70,500	N	R	
Total:	$377,500			$316,500			

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:
a. To indicate new revenues and/or
b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #: 1	2	3	4	5	6
Type of Revenue	FY 16/17	"R" Costs Recurring or "NR" Non-recurring	FY 17/18	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected
Fees	$350,000		$350,000		
GRT	$500,000		$500,000		
LT	$650,000		$650,000		
Total:	$1,500,000		$1,500,000		

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

Fee and permit schedule changes, and stronger enforcement of Gross Receipts and Lodgers Tax requirements will generate additional revenue for the city. Expenditures will be covered by expected revenue increases, and include the hiring of one additional code enforcement officer, and a program manager/enforcement supervisor. No funding for this program will not come from the General Fund; this program will be self-sustaining, and provide additional GRT and Lodgers Tax revenue to the City.

Section D. **General Narrative**

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

This bill modifies existing code, but does not conflict with any other existing ordinance.

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

The number of permits would remain at 350, and many properties would continue to operate outside the legal framework of the ordinance. Gross Receipts and Lodger's tax would continue to not be paid in an appropriate manner by certain properties.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None identified.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.