

DENVER ZONING CODE DETERMINATION – ARE SHORT-TERM RENTALS ALLOWED IN AREAS ZONED UNDER FORMER CHAPTER 59 (FC59)?

ISSUED BY: TINA AXELRAD, ZONING ADMINISTRATOR

Date: April 5, 2018

This determination rescinds all previous determinations, interpretations, and clarifications regarding the same FC59 standards at issue.

SUMMARY

Short-term Rentals have been determined to be a permitted accessory use in all Former Chapter 59 zone districts that permit primary residential uses. Unless otherwise prohibited, Short-term Rentals shall be permitted without a zoning permit as an accessory use that is common and customary to the residential primary use classification with limitations matching those provided for Short-term Rentals as an accessory use in 2010 Denver Zoning Code (DZC) districts (see Applicable Use Limitations below). Like other residential accessory uses, a Short-term Rental must be operated by the primary resident of the dwelling unit, meaning that use of a dwelling unit exclusively for Short-term Rental is not permitted.

This use determination is made per Former Chapter 59 Section 59-38(a)(10)(a), which provides the Zoning Administrator with the authority to determine and impose limitations on accessory uses that are not listed specifically listed in FC59 Section 59-87 (see Background below). The Zoning Administrator has determined that use limitations provided in FC59 Section 59-87, such as the FC59 limitation that permitted accessory uses “shall not include residential occupancy in a detached structure except by domestic employees employed on the premises and the immediate families of such employees” (59-87(b)(1d)), do not apply to the unlisted Short-term Rental accessory use, which is instead governed by the use limitations provided for Short-term Rentals in the DZC (see Applicable Use Limitations below). The Short-term Rental accessory use does not require a zoning permit in FC59 or DZC zone districts. FC59 districts where Short-term Rentals may be permitted as an accessory use include, but are not limited to, districts such as R-1, R-2, RMU-20, and CMU-10.

DEFINITIONS OF KEY TERMS

Former Chapter 59 does not define “Short-term Rental” as a distinct zoning land use. This interpretation adopts the Denver Zoning Code definition in Section 11.12.7.7, as follows, to fill that gap. Accordingly, in Former Chapter 59 zone districts, “Short-term Rental” means a use accessory to a primary residential land use, and more specifically means:

“The provision of temporary guest housing to non-residents, for compensation, by the person or persons maintaining the primary dwelling unit use as their primary residence. The length of stay per guest visit is less than 30 days. Short-term Rental does not include rental of a dwelling unit for meetings such as luncheons, banquets, parties, weddings, fund raisers, or other similar gatherings for direct or indirect compensation.”

Please note that “maintaining the primary dwelling unit as their primary use” means the primary dwelling unit is for permanent (30 days or more) occupancy.

APPLICABLE USE LIMITATIONS

Limitations Identical to DZC Section 11.8.10. In zone districts under Former Chapter 59, a Short-term Rental accessory use shall be subject to the following limitations, which are the same limitations for Short-term Rentals in the Denver Zoning Code (Section 11.8.10):

- A. Shall be clearly incidental and customary to and commonly associated with the operation of the primary residential household living use.
- B. Shall be operated by the person or persons maintaining the dwelling unit use as their primary residence. For purposes of this provision, “person or persons” shall not include any corporation, partnership, firm, association, joint venture, or other similar legal entity. The term “primary residence” shall have the meaning prescribed thereto in D.R.M.C. Ch. 33.
- C. Shall not include rentals where the length of stay per guest visit is 30 or more days.
- D. Shall not be located in mobile homes, recreational vehicles, or travel trailers.
- E. Shall not display or create any external evidence of the Short-term Rental, except one non-animated, non-illuminated flat wall or window sign having an area of not more than 100 sq. inches.
- F. Shall not have any employees or regular assistants not residing in the primary or accessory dwelling unit located on the subject zone lot.
- G. Shall not include simultaneous rental to more than one party under separate contracts.
- H. Shall not be subject to a maximum number of guests per night.

(Note: for additional explanation of number of permitted guests, see below)

Number of Permitted Guests in a Short-term Rental. As an accessory use, Short-term Rental guests are additional to the permitted number of long-term residents permitted under Former Chapter 59. The use limitations on Short-term Rentals, listed above, do not include limits on the number of Short-term Rental guests. However, the limitations state that a Short-term Rental “shall not include simultaneous rental to more than one party under separate contracts,” meaning that different parts (or bedrooms) of an individual dwelling unit may not be rented to separate groups of guests at the same time and both primary and accessory dwelling units on the same property may not be rented to separate groups of guests at the same time (i.e., one guest(s) rents the primary structure and another guest(s) rents an accessory dwelling unit at the same time).

Use of Accessory Dwelling Units for Short-term Rental. The use limitations do not prescribe the square footage or location of a Short-term Rental accessory use on a zone lot/property. Therefore, a Short-term Rental accessory use may be conducted in any part of the primary dwelling unit (including within an attached accessory dwelling unit), or may be conducted in a permitted detached accessory dwelling unit structure.

BACKGROUND

Prior to 2016, Short-term Rentals were not allowed in Former Chapter 59 and DZC Zone Districts, which defined residential uses as only those occurring on a 30+ day or month-to-month basis. The 2015-2016

Sharing Economy Task Force, led by Councilwoman Mary Beth Susman, culminated in a proposal to allow Short-term Rentals as an accessory use, wherever primary residential uses are permitted, with a parallel requirement for licensing and taxation.

Although a number of stakeholders sought legislation to allow Short-term Rentals as a primary use (i.e., allowing for operation of one or more dedicated Short-term Rentals by a single owner), City Council adopted a zoning code text amendment allowing Short-term Rentals only as an accessory use operated by the primary resident in June 2016. City Council also adopted a related D.R.M.C. amendment to require licensing. Additional information regarding the adopted regulatory framework for Short-term Rentals is provided below.

Authority for Former Chapter 59 Use Determination. This determination is made per Former Chapter 59 Section 59-38(a)(10)(a), which provides administrative authority to:

“Determine and impose limitations on accessory uses and structures not covered in sections 59-87 and 59-88. In fulfilling this responsibility the zoning administrator shall determine what uses are common and customary to a specific use by right and if the use is incidental to the specific use by right; and impose limitations which shall be uniform throughout the zoning district on specific accessory uses taking into consideration the intensity of the accessory use, numbers, the space required by the accessory use and the effect on adjacent property permitted accessory to a primary residential use in Former Chapter 59 Zone Districts.”

ADDITIONAL CITY RULES AND REGULATIONS

IMPORTANT: Short-term Rental accessory uses established under Former Chapter 59, per this interpretation, are subject to additional City rules and regulations, including but not limited to the following described below:

Related Licensing Requirement. D.R.M.C. Chapter 33 Article III states that “it shall be unlawful to operate any Short-term Rental in the City and County of Denver without a license duly issued therefor by the director (of Excise and Licenses) under this article III and in compliance with any and all applicable city laws.” The Department of Excise and Licenses issues Short-term Rental licenses via their online portal at www.denvergov.org/str. As of March 2018, a Short-term Rental license may be obtained by ‘self-certification’ (no documentation required) that the licensee meets the applicable licensing requirements in D.R.M.C. Chapter 33 for an annual fee of \$25. Upon receipt of a complaint, Excise and Licenses inspectors will require a licensee to provide documentation that they meet licensing requirements.

Taxation of Short-term Rentals. The Treasury Department has determined that Short-term Rentals are subject to the local City and County of Denver Lodger’s Tax. As of March 2018, the Lodger’s Tax rate is 10.75%. Additional details are available at www.denvergov.org/str.

Please refer to the Department of Excise and License website www.denvergov.org/str for frequently asked questions and additional information about regulations for Short-term Rentals.