

## MEMORANDUM

To: Development Services staff, BOA staff, Excise and License staff  
From: Matthew Seubert for Tina Axelrad, Zoning Administrator  
Date: December 27, 2019  
Re: **Denver Zoning Code Interpretation — Short-term Rental (STR) Accessory Use**  
Denver Zoning Code (DZC) §11.12.7.7, §11.8.10; Former Chapter 59 (FC59)

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### Summary

This memo provides a written clarification that addresses the following related questions:

**Question 1:** Can an applicant live in an Accessory Dwelling Unit and conduct a Short-term Rental (STR) use in the associated primary dwelling unit?

**Answer 1: No.** The applicant must maintain the primary dwelling unit use as their primary residence to operate a STR. Per DZC §11.8.10, the applicant may not live in an Accessory Dwelling Unit (“ADU”) <sup>1</sup> and rent out the primary dwelling unit for short-term use. DZC §11.7.1.1 states that accessory uses (including STRs) shall be clearly incidental, subordinate, customary to, and commonly associated with operation of a primary use (in this case, the primary dwelling unit is the primary use).

**Question 2:** Can an applicant live in a primary dwelling unit and conduct a STR use in an attached or detached ADU?

**Answer 2: Yes.** Per DZC §11.8.10, if the applicant maintains the primary dwelling unit as their primary residence, they may operate a STR use in an attached or detached ADU.

**Question 3:** Can an applicant live in an attached or detached ADU and conduct a STR use in the attached or detached ADU?

**Answer 3: No.** Per DZC §11.8.10, if the applicant makes their primary residence in an attached or detached ADU, they may not conduct a STR use in the ADU.

**Question 4:** Can an applicant live in a primary dwelling unit and conduct a STR use in a detached accessory structure that does not contain an ADU?

**Answer 4: Yes.** Per DZC §11.8.10, if the applicant makes their primary residence in the primary dwelling unit, they may operate a STR use in a detached accessory structure that does not contain a Complete and Independent Dwelling Unit (CIDU).<sup>2</sup> For example, if there is a detached structure that contains only a sleeping area with no kitchen, the applicant may operate a STR in such structure (e.g., a “guest house”).

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<sup>1</sup> An Accessory Dwelling Unit (“ADU”) use is defined as “a second dwelling unit located on the same zone lot as a primary single unit dwelling use. An accessory dwelling unit is a type of accessory use. Where permitted, an ADU use can occur in either a detached structure separate from the primary dwelling unit, or inside the primary structure containing the primary dwelling unit use (e.g., a basement dwelling unit).”

<sup>2</sup> A “Complete and Independent Dwelling Unit” means a structure or portion of a structure that contains all three of the following types of rooms or spaces: (a) a full or partial kitchen, (b) a bathroom, and (c) sleeping area. Please see DZC interpretation of [Complete and Independent Dwelling Unit](#). If a detached accessory structure contains a CIDU, it is typically assigned the “Detached Accessory Dwelling Unit” building form per the DZC. Other building forms assigned to a detached accessory structure that does NOT contain a CIDU include the “Detached Garage” and “Other Detached Accessory Structure” building forms.

**Question 5:** Can multiple Short-term Rental uses occur at the same time in association with a single primary dwelling unit use?

**Answer 5: No.** DZC §11.8.10.1.G prohibits simultaneous rental to more than one party under separate STR contracts. Only one STR use may be operated at one time by the person(s) maintaining the primary dwelling unit use as their primary residence, regardless of the number of persons holding a Short-term Rental license who live in the primary dwelling unit.

## Background

Excise and License staff requested a DZC interpretation from CPD regarding the questions above. STRs were first added to the DZC in 2016. The staff report to City Council dated June 8, 2016 (p. 2) for DZC Text Amendment #8, Short-term Rentals, states that: “The proposed text amendment allows short-term rentals as accessory to a primary residential use, with limitations, where residential uses are currently allowed.”

## DZC Definitions and Use Limitations

The DZC provides the following definitions and use limitations pertaining to Accessory Uses in general and to STRs in particular.

### **Accessory Uses**

*Definition:*

#### **DZC §13.1 Accessory Use**

“A subordinate use, clearly incidental and related to the primary use of land, and, unless otherwise permitted by this Code, located on the same zone lot as that of the primary use.” (emphasis added)

*Accessory Use Limitations:*

GENERAL PROVISIONS APPLICABLE TO ALL ACCESSORY USES

#### **DZC §11.7.1.1 General Allowance for Accessory Uses**

A. Accessory uses shall be clearly incidental, subordinate, customary to, and commonly associated with operation of a primary use... (emphasis added)

### **Short-term Rentals**

*Definition:*

#### **DZC §11.12.7.7 Short-term Rental**

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. (emphasis added)

*STR Use Limitations:*

#### **DZC §11.8.10 Use limitations for Short-term Rental**

##### **11.8.10.1 All Zone Districts**

In all zone districts, where permitted with limitations, a Short-term Rental:

- A. Shall be clearly incidental and customary to and commonly associated with the operation of the primary residential household living use. (emphasis added)
- 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. For purposes of this section 11.8.10, the term “primary residence” shall have the meaning prescribed thereto in D.R.M.C. Chapter 33...

- G. Shall not include simultaneous rental to more than one party under separate contracts...

## Discussion

### **I. The STR accessory use must be subordinate and incidental to the primary residential household living use.**

Short-term rental is listed in the Use and Parking Tables as an allowed accessory use, not as a primary use. The definitions and use limitations for all Accessory Uses state that such uses must be incidental and subordinate to the primary use. In other words, an STR cannot be a stand-alone use on a property; it can exist only with an accompanying primary use to which it is subordinate and incidental. To be “subordinate and incidental” to the primary use, the STR accessory use cannot be larger in size, scale, or scope and impact of daily operations than the primary use. Accordingly, the zoning regulations expect an STR accessory use will be smaller in physical size/scale than the primary residential use and/or operated on the property less intensively – in terms or duration, consistency of operation, and potential adverse impacts – than use of the property for its primary residential use and activity.

The STR use limitations further narrow what primary use must be associated with the STR accessory use. The limitations state the STR must be “clearly incidental and customary to and commonly associated with the operation of the primary residential household living use.” In other words, a person cannot conduct an STR accessory use as secondary and incidental to a nonresidential primary use. The STR accessory use may only be conducted in association with a primary residential household living use, which is a category of residential zoning land uses limited primarily to single-unit dwelling, two-unit dwelling, and multi-unit dwelling primary uses.

### **II. The operator of the STR use must live in the primary dwelling unit as their primary residence. If a person makes their primary residence in an attached or detached Accessory Dwelling Unit, that person cannot conduct a STR anywhere on the same property.**

According to the definition of Short-term Rental in DZC, Div. 13.1, an STR use can only be conducted by the person(s) maintaining the primary dwelling unit use as their primary residence. This definition prevents a person maintaining an accessory dwelling unit (ADU) as their primary residence from conducting a STR, regardless whether the ADU is located inside the primary dwelling unit structure (e.g., a basement apartment) or in a detached structure located to the rear of the primary structure.

Note this prohibition only speaks to where the STR operator/conductor/licensee must reside. This prohibition does not prevent a legally operating STR from occurring inside an accessory dwelling unit established on the subject property; it requires only that the person operating the STR (and holding the STR license) must reside in the primary dwelling unit as their primary residence. This prohibition also prohibits a person(s) maintaining an accessory dwelling unit as their primary residence (whether in a detached structure or in a unit located inside the primary dwelling unit) from operating a STR use on the subject property.

### **III. If the operator of the STR lives in the primary dwelling unit, they can operate a STR use in an associated attached or detached ADU or in a detached accessory structure that does not contain a Complete and Independent Dwelling Unit.**

DZC Section 11.8.10 and the definition of Short-term Rental in DZC, Div. 13.1, allows a STR operator to live in the primary dwelling unit (as their primary residence) and operate a STR in any of the following types of spaces and structures:

1. In an attached or detached ADU.
2. In a detached accessory structure that does *not* contain a Complete and Independent Dwelling Unit.
  - a. A Complete and Independent Dwelling Unit means a structure or portion of a structure that contains all three of the following types of habitable rooms or spaces: (a) a full or partial kitchen, (b) a bathroom, and (c) sleeping area.
  - b. For example, a detached accessory structure containing only a habitable sleeping area with no kitchen (a “guest house”).

See Exhibit A for a graphic summary of the above provisions.

**IV. Only one STR accessory use can occur at a time in association with a single primary residential dwelling unit use.**

As described above, DZC §11.8.10.1.G states: “[The STR] shall not include simultaneous rental to more than one party under separate contracts.” This zoning standard seeks to limit the potential for adverse impacts on adjacent properties by controlling the scale of a residential property’s incidental STR use, and preclude any tendencies for the STR use to morph into a primary lodging use.

Some STR license applicants have argued that the limit means no more than one STR contract at a time *per STR license holder*. Under that argument, if there are multiple STR license holders who also are primary residents of the same home, each STR licensee could conduct a STR in the same primary dwelling unit, *at the same time*, provided each licensee executed a separate contract with their respective STR guest.

The Zoning Administrator finds that allowing multiple primary residents of the same dwelling unit to conduct STRs at the same time would be contrary to the intent of DZC §11.8.10.1.G to limit the impacts from an incidental STR use. The limitation does this by allowing only one active STR use at a time to occur in the same primary dwelling unit. The standard expressly prohibits “simultaneous rentals under separate contracts” regardless of the number of STR licensees residing in the primary dwelling unit. In other words, only one STR use may be operated at a time by a person(s) maintaining the primary dwelling unit use as their primary residence, regardless of the number of persons holding STR licenses who make the primary dwelling unit their primary residence.

**Authority for Interpretation**

DZC §12.4.6, Code Interpretations and Determination of Unlisted Uses, authorizes the Zoning Administrator to make Code interpretations if appropriate findings are made. DZC §12.4.6.1.A establishes a procedure whereby interpretation of the Code’s provisions may be determined, including but not limited to:

1. Interpretations of terms, words, and phrases not otherwise defined in the Code;
2. Interpretations of Code provisions when additional clarity is required to apply such provisions to a specific case or to guide general application of the Code.

This interpretation provides additional clarity required to guide general application of the code.

## Review Criteria for Interpretation

DZC §12.4.6.4.A requires the Zoning Administrator to make Code interpretations only upon finding that the interpretation is:

1. Consistent with the intent of this Code; and
2. Consistent with the intent of the subject Neighborhood Context and Zone District(s) and with the intent of any specific Code provision(s) at issue.

## Zoning Administrator Findings

1. Per DZC §12.4.6.4.A.1, the Zoning Administrator finds this interpretation is consistent with the intent of this code to guide Denver's prosperous and sustainable future by providing clear regulations and processes that result in predictable, efficient, and coordinated review processes.
2. Per DZC §12.4.6.4.A.2, the Zoning Administrator finds this interpretation is consistent with the intent of the Suburban, Urban Edge, Urban, and General Neighborhood contexts to provide certainty to property owners, developers and neighborhood interests about the limits of what is allowed in such areas. This interpretation is also consistent with the intent of the Urban Center Neighborhood context to ensure new development contributes positively to established neighborhoods and character; and is consistent with the intent of the Master Planned Context to provide clarity and predictable outcomes as development proceeds.

## Applicability

This code interpretation applies to Short-term Rental accessory uses in the DZC. It also applies to STRs in areas zoned under Former Chapter 59 (FC59). Short-term Rental is not an enumerated primary or accessory use in FC59, however the Zoning Administrator issued a use determination on April 5, 2018, determining that STRs are allowed in areas zoned under FC59, and specifying that the limitations regarding STRs in the DZC would also apply to such areas zoned under FC59. Accordingly, this interpretation of the DZC also applies to FC59.

## Appeal

This code interpretation is a final decision of the Zoning Administrator and may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this interpretation according to DZC §12.4.8, Appeal of Administrative Decision.

# EXHIBIT A: SHORT-TERM RENTALS

## Tina's House has an ADU unit:

Tina lives in the Main House as her primary residence and rents the ADU unit to Bob, who lives in the ADU as his primary residence.

- Only Tina can conduct STRs with a city license, because she uses the primary dwelling unit (the “Main House”) as her primary residence
- Bob, as the primary resident of the “accessory” dwelling unit, cannot conduct STRs
- Tina can have STR guests stay in the Main House and/or in the ADU unit
- But: Only one STR contract at a time, per zoning rules

