



TOWN OF ELIZABETH

**TOWN OF ELIZABETH
Planning Commission Regular Meeting
Tuesday, October 18, 2022 at 6:30 PM
Town Hall, 151 S. Banner Street**

CALL TO ORDER

ROLL CALL

AGENDA CHANGES

UNSCHEDULED PUBLIC COMMENT

CONSENT AGENDA

1. Minutes of the Regular Meeting of October 4, 2022

NEW BUSINESS

2. Discussion regarding Elizabeth Municipal Code Review
 - Define Education Institutions
 - Setback Tables
 - Site Plan Requirements - Signature Block
 - Site Plan Requirements - CORE Comments
 - Downtown District Lot Coverage
 - Downtown District Height Requirements
 - Commercial Storage Containers
 - Short Term Rentals

REPORTS

3. Staff Report
4. Commissioner Reports

ADJOURNMENT



TOWN OF ELIZABETH

PLANNING COMMISSION

PLANNING COMMISSION – RECORD OF PROCEEDINGS OCTOBER 4, 2022

CALL TO ORDER

The Regular Meeting of the Elizabeth Planning Commission was called to order on Tuesday, October 4, 2022, at 6:30 PM by Chair Jenny Case.

ROLL CALL

Present were Chair Jenny Case, Vice Chair Barbara McGinn, Commissioners Julie Uhernik, Greg Lindbloom, Rob Porter, and Ed Beard. There was a quorum to conduct business.

Also present were Town Administrator Patrick Davidson, Community Development Director Pam Cherry, Planner/Project Manager Zach Higgins, Deputy Town Clerk Harmony Malakowski, and Engineering Consultant Manny Nuno.

AGENDA CHANGES

No agenda changes from staff.

No agenda changes by the Commissioners.

UNSCHEDULED PUBLIC COMMENT

No Unscheduled Public Comment.

CONSENT AGENDA

Minutes of the Regular Meeting of September 20, 2022

Motion by Vice Chair McGinn, seconded by Mr. Lindbloom, to approve the minutes from the regular meeting of September 20, 2022.

The vote of those Commissioners present was unanimously in favor. Motion carried.

Chair Case closed the regular meeting and opened the Public Hearing at 6:34 p.m.

PUBLIC HEARING

Elizabeth West Rezone

**TOWN OF ELIZABETH**

PLANNING COMMISSION

Ms. Cherry presented the staff report for the Elizabeth West Rezone application. The applicant, Jim Marshall, and his representatives made a report. Comments were also provided by:

Jeff Sherrard – resident of Elbert County

TR Rice – resident of Elbert County

Jeffrey Massey – resident of Elbert County

Michael Fultz - resident of Elbert County

Walter Moore - resident of Elbert County

Paul Schwarzkopf – resident of Town of Elizabeth

Steve Settle - resident of Elbert County

Chair Case closed the Public Hearing at 8:53 p.m.

NEW BUSINESS

Discussion and possible action regarding the recommendation to the Board of Trustees approval of Elizabeth West Rezone application of approximately 425 acres from Agriculture (A-1) to Planned Unit Development (PUD)

Motion by Vice Chair McGinn, seconded by Mr. Lindbloom, to recommend approval of the Elizabeth West rezoning based on compliance with Sections 16-1-240 and 16-1-190 of the Elizabeth Municipal Code with the suggested conditions of approval.

The vote of those Commissioners present was 3 in favor and 1 opposed. Commissioner Uhernik opposed. Motion carried.

REPORTS

- Planner/Project Manager Higgins provided an update to the Commissioners regarding the Historic Advisory Board ordinance.
- Mr. Higgins provided an update regarding the Historic Walk and Talk.
- Mr. Higgins provided a reminder of the upcoming Streetscape Public meeting to be held October 13th at 6:00 p.m. here at Town Hall.

ADJOURNMENT

Motion by Vice Chair McGinn, seconded by Mr. Lindbloom, to adjourn meeting at 9:17 p.m. The vote of those Commissioners present was unanimously in favor. Motion carried.



TOWN OF ELIZABETH

PLANNING COMMISSION

Chair Jenny Case

Town Clerk Michelle Oeser

Elizabeth Municipal Code Review		
	Code Location	Code Language
1	Firework Restrictions	Sec. 10-5-210. - Open fire and open burning restrictions. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH10GEOF_ARTVPUPEORDE_S10-5-210OPFIOPBURE
2	Physical Copy Requirements (Site Plan)	Sec. 16-2-30. - Application submittal requirements. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIISIPSTPR_S16-2-30APSURE
3	ADU - Residential Zoning	Table 16-1 and Table 16-3 https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIZO_S16-1-120MOHOSUDI
4	ADU - Yearly review	Sec. 16-9-20. - Criteria for approval. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIXUSPESPRE_S16-9-20CRAP
5	Parking Space Requirements	Sec. 16-6-10. - Parking space requirements. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTVIPASPRE_S16-6-10PASPRE
6	Beverage Processing	Table 16-5 Food and Beverage Processing https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIZO_S16-1-150RECORCDI
7	Lot Line Adjustments	Sec. 16-3-80. - Replat, vacation, or plat amendment. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIISUPPRE_S16-3-80REVAPLAM
8	CMU - Residential	Table 16-5 https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIZO_S16-1-160COMIUSCMDI
9	Public Institution - Private School	Table 16-5 https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIZO_S16-1-140PUSEBLINDI
10	Downtown District - schools	Table 16-5 https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIZO_S16-1-180DODTDI
11	Define Education Institutions	Sec. 16-1-20. - Definitions. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIZO_S16-1-20DE
12	Use by Special Review - Every year review	Sec. 16-9-30. - Limitations. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIXUSPESPRE_S16-9-30LI
13	Setback tables - Front vs Street Side Setbacks	Table 16-2, Table 16-4, Table 16-6
14	Site Plan requirements	Sec. 16-2-30. - Application submittal requirements. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIISIPSTPR_S16-2-30APSURE
15	Site Plan requirements	Sec. 16-2-30. - Application submittal requirements. https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIISIPSTPR_S16-2-30APSURE
16	Downtown District Lot Coverage	Table 16-6 https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIZO_S16-1-180DODTDI
17	Downtown District Height Requirements	Table 16-6 https://library.municode.com/co/elizabeth/codes/municipal_code?nodeId=CH16LAUSDE_ARTIZO_S16-1-180DODTDI
18	Commercial Storage Containers	Table 16-7 Temporary Residential or Commercial Storage Containers
19	Short Term Rentals	N/A N/A

	Code Comments	
1	Firework Restrictions	Further regulations required?
2	Physical Copy Requirements (Site Plan)	Digital submittal now preferred and has been utilized for quite some time.
3	ADU - Residential Zoning	Allow ADU's in all Residential/Dwelling zone types including MH
4	ADU - Yearly review	Reduce ADU review to only original review not yearly
5	Parking Space Requirements	Better define attached residential/dwelling unit parking requirements (possibly more categories)
6	Beverage Processing	Possibly allow small scale beverage, beer, wine, and spirit processing in RC and DT (eliminate spot zoning where possible)
7	Lot Line Adjustments	Possibly make administrative review and approval (possible percentage increase/decrease limitation)
8	CMU - Residential	Residential/Dwelling uses allowed?
9	Public Institution - Private School	Allow private schools in P.I.
10	Downtown District - schools	Allow private schools in D.T.
11	Define Education Institutions	Public, Private, Vocational, Recreational, etc
12	Use by Special Review - Every year review	Possible reduction in Use by Special review reviews to once versus every year
13	Setback tables - Front vs Street Side Setbacks	Provide better definitions for Front vs Street Side Setbacks
14	Site Plan requirements	Add signature block requirements and scan final document for record keeping
15	Site Plan requirements	Details regarding Civil engineering details (CORE Engineering comments provided)
16	Downtown District Lot Coverage	Possible addition of coverage for commercial development
17	Downtown District Height Requirements	Allow for three stories?
18	Commercial Storage Containers	Currently allowed with permit for 60 days.
19	Short Term Rentals	Currently not regulated

Define Educational Institutions

- College/university/vo-tech means, but is not limited to, colleges, universities, vocational/technical schools, trade schools, business schools, training centers, beauty schools, culinary schools.
- Educational facility means a public, private, charter, or parochial school offering instruction for children ages kindergarten through high school with a level of learning and studies.
- *Studio Classes* means a retail space where training is provided for activities, including, but not limited to taekwondo, yoga, ballet, dance, karate, or gymnastics.

Lot line, front means the property line dividing a lot from a street. On a corner lot, only one (1) street line shall be considered as a front line, or the house will be addressed to ensure that setbacks may be met. Reduce a front setback of 25' to 10' if on a corner lot? I think a reduction of 5' or 10' may work, but 15' seems too much. Pine Ridge Crossing.

Lot line, rear means the lot line not intersecting a front lot line that is most distant from and most closely parallel to the front lot line. A lot bounded by only three (3) lot lines will not have a rear lot line.

Lot line, side means any boundary of a lot that is not a front or rear lot line. On a corner lot, a side lot line may be a street lot line. Reduce a front setback of 25' to 10' if on a corner lot? I think a reduction of 5' or 10' may work, but 15' seems too much. Pine Ridge Crossing.

Lot, reversed corner means a corner lot, the side street line of which is substantially a continuation of the front lot line of the first lot to its rear.



CERTIFICATE OF OWNERSHIP: KNOWN ALL MEN BY THESE PRESENTS THAT _____
 BEING THE OWNER(S), MORTGAGE OR LIENHOLDER OR CERTAIN LANDS IN EVANS, COLORADO,
 DESCRIBES AS FOLLOWS: CONTAINING _____ACRES MORE OR LESS: HAVE BY THESE PRESENTS
 LAID OUT, PLATTED AND SUBDIVIDED THE SAME INTO LOTS AND BLOCKS, AS SHOWN ON THIS PLAT,
 UNDER THE NAME AND STYLE OF, AND DO HEREBY DEDICATE TO THE PUBLIC ALL WAYS AND OTHER
 PUBLIC RIGHTS-OFWAY AND EASEMENTS FOR PURPOSES SHOWN HEREON. EXECUTED THIS _____ DAY
 OF _____, A.D., 2020. OWNER(S), MORTGAGES OR LIENHOLDERS
 _____ THE FOREGOING WAS ACKNOWLEDGED BEFORE
 ME THIS _____ DAY OF _____, A.D., 2020. WITNESS MY HAND AND SEAL
 _____ NOTARY PUBLIC

CERTIFICATE OF APPROVAL BY THE TOWN TRUSTEES: APPROVED BY THE BOARD OF TRUSTEES OF
 ELIZABETH, COLORADO, THIS _____ DAY OF _____, A.D. _____.
 _____ MAYOR
 _____ ATTEST: TOWN CLERK

ARTICLE II Site Plan Standards and Procedures

Sec. 16-2-10. Intent.

- (a) The site plan process is required to ensure that development is consistent with the Town's Community Master Plan and this Code. It also ensures that development is consistent with all applicable federal, state and local standards.
- (b) This Article promotes sustainable design, water conservation and orderly and sound development standards as they apply within the Town. These site development standards are intended to preserve, enhance and protect the community's natural, as well as man-made, environments.

(Ord. 13-09 §1)

Sec. 16-2-20. General requirements.

- (a) An approved site plan shall be required prior to the commencement of any site or building improvements or construction activities. Site development regulations shall also apply to all new development, changes in use and uses by special review. Legal conforming single-family detached residential housing shall not be subject to the site plan process. Approved site plans may be revised or amended, as required, for changes in allowed uses or changes to buildings or structures, including additions thereto or major alterations to exteriors of buildings, including but not limited to changes to color schemes and materials. Site plans shall also be required for alterations to an existing site. Permits shall not be issued until a site plan has been approved. In the event that the Planning Commission and/or the Board of Trustees waive their respective rights to review site plans in accordance with Section 16-1-200 of this Chapter, an approved site plan shall still be required prior to commencement of any proposed improvements. Site plan applications shall not be processed until a land use application has been executed, applicable fees paid and the required documentation submitted in accordance with Section 16-2-30 of this Article. A site plan application is typically comprised of a site plan/plat, a landscape plan, lighting or photometrics plan, a grading/drainage plan, including grading, drainage, erosion and sediment control plans (GESC/DESC), details, notes, drainage studies, construction documents and all other pertinent documents. Additional information as deemed necessary may also be required for the review process. The applicant is strongly encouraged to attend a preapplication meeting with Town staff prior to the formal submittal. These site development regulations shall not apply to properties that seek only a new use or change of use for buildings that have received an historic designation either through a federal or state designation or through a designation by the Board of Trustees, provided that exterior site modifications are not proposed. Site development regulations shall, however, apply to all new buildings, new structures or major alterations to existing building exteriors and sites, regardless of whether the building or site has received an historic designation. These site development regulations shall apply to the following:
 - (1) All uses allowed in the PD Planned Development zone district, with the exception of those uses relating to use-by-right single-family detached housing.
 - (2) Uses which are located or to be located within any zone district which is specifically made subject to this Section by the Board of Trustees.
- (b) Site plans shall not be approved prior to the platting of the subject property. A final plat or minor development plat may be submitted simultaneously with the proposed site plan upon approval by the Board

of Trustees. In such cases, approval of the site plan application may be made conditional upon the final approval of the subdivision plat by the Board of Trustees.

- (c) Building permits for any use other than legal conforming single-family residential detached housing shall not be issued for the construction of any new building, structure or improvement to a site or any addition or alteration to the structure or site, including exterior materials or colors, without first obtaining approval of a site plan (GESC/DESC plan included) for the proposed use.
- (d) Overlot grading, drainage work, parking lot construction or other site improvements shall not be allowed unless specifically provided for by the Board of Trustees, without first obtaining approval of a site plan (GESC/DESC plan included) for the proposed use.
- (e) Certificates of Occupancy (CO) shall not be issued until all improvements approved as part of the site plan have been completed.
- (f) The site development standards outlined by this Section apply to all improvements to new and existing sites and buildings throughout the zone districts and land uses, with the exception of legal conforming single-family detached housing. These standards are in addition to any other development or design standards which may otherwise be applicable to a particular property or specific area within the Town. In the case of any perceived conflict among applicable development standards, the more restrictive standard shall apply.
- (g) The following items must be addressed on all site plan submittals:
 - (1) Rooftop mechanical structures shall be fully screened, either separately or by a parapet wall level with the top of such structure.
 - (2) Trim schemes shall appear on all sides of the building.
- (h) The Town may require public improvements to be constructed as a condition of site plan approval. Any such improvements shall be reasonably related to the proposed use and may include, but not be limited to, street widening, acceleration/deceleration lanes, access control devices, traffic signals, water and sewer lines, pedestrian/bicycle trails or other related improvements.
- (i) Changes to an approved site plan shall be reviewed and evaluated for scale and impact to determine if the proposed changes can be processed as a minor revision or a formal amendment to the approved site plan requiring submittal to referral agencies. Modifications beyond the scope of the site revision or formal amendment which require submittal to referral agencies shall be subject to the full site plan review and approval process.
- (j) A revision to an approved site plan shall be administratively processed by an authorized Town official. Revisions shall be limited to minor changes consistent with the intent of the approved site plan and shall not adversely impact adjacent property values or disrupt community harmony. Such revisions shall further comply with all conditions of the originally approved site plan.
 - (1) Revisions may include, but not be limited to, site and building maintenance activities, such as reroofing, painting or re-siding buildings, removing or replacing plant materials, restoring drainage facilities, replacing windows, generally activities that shall not increase a building footprint, shall not alter site grading or drainage or increase impervious surfaces or otherwise impact fire and life safety issues on the subject site.
 - (2) The authorized Town official shall review and either approve or deny the revision request in a timely manner, not to exceed ten (10) business days. If the modifications proposed are beyond the scope of the site plan revision review process, the application shall be processed as an amendment to the approved site plan, and therefore subject to additional review.
- (k) Formal amendments to an approved site plan shall be based upon the scale, and impacts of the proposed changes may require submittal to referral agencies. Such amendments generally consist of modifications to

the site plan, including changes of use, grading/drainage alterations, increased parking, site and building access, enlarged or altered building footprints and/or landscaping, and any other improvements that may create life safety concerns.

- (1) An amendment to an approved site plan shall be administratively processed by the authorized Town official and subject to, including but not limited to Fire, Building, Engineering and Public Works referral reviews.
- (2) Proposed site plan amendment modifications shall be consistent with the intent of the approved site plan and shall not adversely impact adjacent property values or disrupt the local community character and harmony.
- (3) The authorized Town official shall review and either approve or deny the amendment request in a timely manner, not to exceed twenty (20) business days. If the modifications proposed are beyond the scope of the site plan amendment review process, the application shall be processed as a new site plan application subject to the full Planning Commission and Board of Trustees review and approval processes.

(Ord. 13-09 §1)

Sec. 16-2-30. Application submittal requirements.

- (a) Each request for a site plan approval shall be accompanied by an executed land use application, a written narrative, twelve (12) copies of the proposed site plan with all related information and the appropriate application fee. This submittal information shall be accompanied by a signed transmittal letter from the applicant describing the contents of the submittal. Applicants who submit revisions or amendments to an approved site plan shall be required to submit properly prepared site plan drawings, color and materials boards, elevations and/or landscape and grading plans that clearly depict the proposed modifications.
- (b) Submittal requirements. The applicant shall submit the information listed below to the authorized Town official:
 - (1) Completed land use application form and appropriate fees.
 - (2) Twelve (12) full-sized copies of the site plan (folded to 9" x 12") prepared in accordance with the site plan exhibit standards listed below.
 - (3) A written narrative outlining the proposal.
 - (4) A copy of the warranty deed and title commitment current within thirty (30) days of submittal.
 - (5) A disclosure letter and/or letter of consent from the property owner.
 - (6) ~~Three (3) copies of the drainage plan with GESC/DESC BMPs, as applicable (folded to 9" x 12"), if not already approved as part of a subdivision.~~

Three (3) copies of:

- Grading and Drainage plan
- Final Drainage Report
- GESC/DESC Plan (may be combined with Grading and Drainage Plan above)
- Utility Plan which includes Water Mains and service lines and meter locations, Sanitary Sewer mains and service line, and Storm Drainage lines and related inlet, and detention facilities.

- The above items typically require substantial Engineering Detail, and may require numerous plans sheets to provide that level of detail. For the purpose of the Site Plan this level of detail may be minimized, as long as a separate set of Engineering Construction Documents are simultaneously provided with the required level of detail, which then will process concurrently with the Site Plan.

- (7) Twelve (12) copies of the landscape plan (folded to 9" x 12").
- (8) Twelve (12) copies of the building elevations (folded to 9" x 12"), to include rooftop mechanical structures.
- (9) Colored building elevations of all sides.
- (10) Two (2) color and materials boards (one [1] of 9" x 12" maximum size and one [1] of suitable size for presentation to the Planning Commission) containing materials, colors, specifications, manufacturers' names and product numbers.
- (11) A diagram or schematic showing screening of rooftop mechanical structures.
- (12) A photometric plan which identifies proposed lighting intensities across the subject property in the form of Ft-candles, and includes detailed "cut sheets" or similar of proposed exterior lighting facilities including parking lot facilities, attached building facilities, walkway etc.
- (13) An Engineers Estimate of costs identified as "Public Improvements" of Civil related items and a separate estimate of "Public Improvement" Landscape related items, based on current itemized costs and each estimate to include a 15% contingency. The items that constitute "Public Improvements" are, at minimum, those items located within any adjacent public right of way.
- (14) The preferred method of plan submittal is by use of electronic file transfers such as PDF's, which negates the need for multiple plan copies described above, with the exception of item (10) above.

Failure to submit all required documentation shall result in a delayed application. Additional information may be requested after the formal application is received.

(c) Submittal standards.

- (1) Site plan exhibit. The proposed site plan shall be prepared by a qualified professional (architect, landscape architect, land planner or engineer) and drawn on one (1) or more sheets of paper measuring 24" x 36" with a minimum scale of 1" = 50'. Scales drawn at 1" = 40', 1" = 30', 1" = 20' and 1" = 10' may be acceptable. Each site plan shall be signed by the applicant and shall contain the following information:
 - a. Date of preparation.
 - b. North arrow with written and graphic scale.
 - c. Vicinity map showing the relationship of the site to the surrounding area within a one-half-mile radius with zoning districts designed thereon.
 - d. Listings of the site zoning, gross lot and net acreage of each proposed use, as well as the number of dwelling units and/or the number of buildings and gross floor area.
 - e. The existing grading and drainage information on the site drawn at five-foot intervals and related to United States Geological Survey (USGS) datum, as well as finished grades and contours proposed by the applicant.

- f. The size and location of all existing and proposed public and private utility and emergency easements or other rights-of-way.
 - g. The building envelope, size, setback dimensions and height of all proposed structures and all existing structures which are to be retained on site.
 - h. Location, dimensions and names of adjacent streets, and proposed internal streets showing center line radii and curb return radii.
 - i. The location and dimensions of bike/pedestrian paths and walkways.
 - j. The location, dimensions and number of bicycle storage spaces or facilities.
 - k. Listings of the number of all parking stalls, as well as indications of the number of compact cars and accessible spaces.
 - l. The proposed layout of the parking lot, including locations and dimensions of parking spaces, curb islands, internal planter strips, maneuvering aisles and access driveways with indications of direction of travel.
 - m. Location of all exterior lighting, signage and fencing used to divide properties and to screen mechanical equipment and trash receptacles. All trash receptacles shall be screened by a solid opaque fence surrounding at least three (3) sides of the container.
 - n. Existing specific physical features on the site, including drainage ways, lakes, buildings and structures, with indications as to which are to be retained.
 - o. Adjacent properties and their physical features within fifty (50) feet of the property line with zoning and land uses, including setback dimensions of adjacent structures.
 - p. The location and dimensions of landscaped areas, locations and names of all plant material and ground cover and the locations of other pertinent landscape features.
 - q. Location of all existing and proposed recreational amenities, such as open play areas, swimming pools, tennis courts, tot lots and similar facilities.
 - r. **The maximum height and type of material and color of any proposed Retaining Walls**
- (2) Other information which shall be required, but need not be designated on the site plan, includes:
- a. A plat or metes-and-bounds description of the property verified and signed by a registered land surveyor in the State. If the site is on a portion of land that has an existing recorded plat, a legal description referencing lot, block and subdivision name will be sufficient.
 - b. A copy of the executed covenants (when applicable).
 - c. A copy of the approved development guide and plan required by the Planned Development PD District (when applicable).
 - d. Additionally, the applicant shall provide any reasonable information not covered above to aid in the review of the request by the authorized Town official, including but not limited to plat notes, easements and design guidelines. Such items may include traffic studies, soil and geo-tech surveys and other engineering information that may be required, depending on the circumstances of the particular application.
- (3) Site plan narrative. The applicant shall submit a narrative which includes the following information:
- a. Applicant's name.
 - b. Detailed description of the general proposal.

- c. Present zoning.
 - d. General development schedule and phasing plan if the project is not to be constructed at one (1) time.
- (4) Deed. The applicant shall submit a copy of the most recent deed recorded with the County Clerk and Recorder.
- (5) **Grading & Drainage plan, Final Drainage Report, GESC/DESC plan, Utility plan.** Each request for site plan approval shall be accompanied **by these 4 items.** ~~plan if a final drainage plan as part of a subdivision was not approved.~~ Three (3) copies of the proposed **Grading & drainage plan, Final Drainage Report, GESC/DESC Plan and Utility Plan** indicated on the plans, prepared by a professional engineer or architect shall be submitted to the authorized Town official with the site plan submittal and then forwarded to the office of the Civil Engineer. ~~Review of the drainage plan will be simultaneous with that of the site plan.~~ **The plans described in this item (5) shall be submitted in accordance with Section 16-2-30(b)(6). Any separate detailed Engineering Construction plans, which may be submitted, will process concurrently with the Site Plan.**
- (6) Each request for a site plan approval shall be accompanied by a landscape plan prepared by a qualified professional and drawn on one (1) sheet of paper measuring 24" x 36" with a minimum scale of 1" = 50'. Larger scales are encouraged to effectively portray the landscape plan. The landscape plan shall contain the following information:
- a. Date of preparation.
 - b. Scale and north arrow.
 - c. Building footprint.
 - d. Parking lots.
 - e. Location, quantity and size of landscape materials. The location of all landscape materials shall be shown on the plan, accompanied by a chart or legend showing the quantity planted, mature size and years to maturity, common names of the plant materials and planting notes.
 - f. A calculation of the percentage of the site that is to be landscaped in accordance with Town regulations.
- (7) Building elevations. Each request for site plan approval shall be accompanied by a set of elevations of the proposed buildings or structures. Five (5) 24" x 36" paper copies of the illustration or rendering will be submitted to the authorized Town official. These drawings shall include front, rear and side elevations accurately depicting the finished building or structure on the site. Perspective renderings showing the building in one (1) or more oblique angles, color chips, material boards, scale models, photographs, on-site mockups or other similar techniques may also be submitted. In addition to this submittal, the following information shall be supplied:
- a. All exterior surfacing materials and colors shall be specified on the plans.
 - b. Outdoor lighting, furnishings and architectural accents shall be specified on the plans.
 - c. Any proposed signage for the site and its placement in relationship to the building or structure shall be indicated on the plans.

(Ord. 13-09 §1)

Sec. 16-2-40. Review procedures and requirements for approval.

- (a) The site plan submittal, narrative, application form and fee and accompanying information shall be submitted to the authorized Town official. The applicant will be issued a receipt acknowledging the date of the submittal package. **This submittal Should include any separate detailed Engineering plans related to Grading & Drainage, GESC/DESC, and Utilities, which will process concurrently with the site plan.**
- (b) The authorized Town official will review the submittal package and indicate any deficiency found in the application. Once the application is found to be complete, the review procedure shall begin.
- (c) ~~Drainage and GESC/DESC plans will be forwarded by the authorized Town official to the Civil Engineer. The Civil Engineer shall be in receipt of these plans within the first twenty (20) working days of the review procedure.~~
- (d) Revisions or amendments to an approved site plan shall be processed administratively by the authorized Town official. In the event the proposed modifications exceed the scope or intent of the revision or amendment administrative procedures, the authorized Town official may determine that additional review processes are required to ensure compliance with Town standards and codes. The application shall then be processed as a new site plan application subject to the full Planning Commission and Board of Trustees review and approval processes.
- (e) The authorized Town official shall schedule a meeting before the Planning Commission to consider a new site plan application during a regularly scheduled meeting. The public meeting shall be the next available date on the Planning Commission's agenda. The applicant must post the land on which the site plan is proposed. Posting shall be in accordance with Subsections 16-4-30(b) through (d) of this Chapter.
- (f) The Planning Commission shall, at the public meeting, carefully consider the attributes of the proposal as presented by the applicant, input by the members of the Planning Commission and any public opinion expressed during the meeting.
- (g) The Planning Commission shall then consider the application and make a recommendation to the Board of Trustees to approve, approve with conditions, continue to obtain additional information or deny the site plan. The Planning Commission's recommendation shall be based on the evidence presented and compliance with the adopted standards, regulations, policies and other guidelines.
- (h) Following the recommendation from the Planning Commission, the authorized Town official will schedule the site plan with the Board of Trustees and notify the applicant of the hearing date and time. The applicant shall be responsible for providing public notice prior to the Board of Trustees' hearing in compliance with the public notice requirements contained in Subsections 16-4-30(b) through (d) of this Chapter. At the public hearing, the Board of Trustees shall evaluate the site plan, referral agency comments, the Planning Commission recommendation and public testimony, and shall either approve, conditionally approve, continue to obtain additional information or deny the site plan. The Board of Trustees' decision shall be based on the evidence presented and compliance with the adopted standards, regulations, policies and other guidelines, and its decision shall be final.
- (i) If and when the application is approved or conditions for approval have been met, a building permit may be issued upon the request of the applicant.
- (j) The certificate of occupancy will be issued, provided that:
 - (1) Landscaping requirements have been met by the applicant.
 - (2) A final drainage plan with GESC/DESC BMPs has been approved by the Civil Engineer.
 - (3) Parking lots and drainage facilities are in and are useable.

- (4) Sufficient fire flows or protection is present and accepted by the Fire Protection District.
- (5) Any other requirements made by the Building Official, utilities or other agencies are satisfied.
- (k) Additional referrals. In the event the Board of Trustees or the Planning Commission determines that any land use application submitted under this Article has been materially changed following its initial referral to referral agencies and prior to the Planning Commission making a final advisory recommendation or the Board of Trustees making a final decision on the application, the Planning Commission or the Board of Trustees may require that said land use application as materially amended, be re-sent to referral agencies for additional referral comments prior to any final advisory decision by the Planning Commission or any final decision being made by the Board of Trustees.

(Ord. 13-09 §1)

Sec. 16-2-50. Landscape regulations.

- (a) The authorized Town official hereby finds that it is in the public's best interest for all developments, including but not limited to all new development, to provide landscape improvements for the purposes of complementing the natural landscape; improving the general appearance of the community and enhancing its aesthetic appeal; preserving the economic base; improving the quality of life; delineating and separating use areas; increasing the safety, efficiency and aesthetics of use areas and open space; screening and enhancing privacy; mitigating the adverse effects of climate, aspect and elevations; conserving water and energy; abating erosion and stabilizing slopes; sound mitigation; and preserving air and water quality.
- (b) Xeriscape and low-water indigenous landscaping is the preferred form of landscaping. To ensure that landscaping is provided and maintained, the following requirements for the installation, maintenance and protection of landscape areas shall be met for every project.
 - (1) Landscape plan. Each request for a site plan approval shall be accompanied by a landscape plan prepared in accordance with the following standards:
 - a. Landscape areas and buffer strips shall be a minimum of fifteen percent (15%) of the total site areas.
 - b. All material in a landscaped area shall be live plant material. Artificial landscape materials, including but not limited to plastic trees, shrubs, etc., are prohibited within landscape areas. Nonliving materials, such as bark, crushed aggregates and river rock, may be used only if approved as part of the overall landscape plan.
 - c. All materials shall be utilized in accordance with recognized landscaping industry standards.
 - d. All materials planted under the provisions of this Section shall meet the material specifications.
 - e. When a landscaping plan is required, plant material shall be provided in the following quantities:
 - 1. Along all public and private streets and along buffer strips adjacent to or within a residential zone district, deciduous and coniferous trees shall be planted at forty-foot intervals within ten (10) feet of the pavement or curb line, except along State Highway 86 where the property line shall be used.
 - 2. In all landscaping areas, one (1) tree and five (5) shrubs shall be planted for each one thousand five hundred (1,500) square feet of lot area not covered by a building or required parking.
 - 3. A mix of deciduous and coniferous trees is encouraged to provide year-round color and screening.

- f. Landscape areas in excess of five thousand (5,000) square feet shall have a properly designed irrigation system providing full coverage to all sod and plant material areas. Impacts, pop-up and surface spray or rotary stream sprinklers, bubblers and drip or trickle irrigation, as appropriate for the area to be landscaped, shall be an acceptable method of irrigation. All irrigation systems shall be designed and installed to minimize overspray, run-off and water waste. Landscape areas of five thousand (5,000) square feet or less are strongly encouraged to have an automatic irrigation system, but an adequate water source, such as outdoor hose bibs within fifty (50) feet of the center of the area regularly used to keep the materials alive and growing, is also acceptable. Any area to be landscaped that cannot meet these irrigation requirements shall comply with Xeriscaping attributes (www.csu.org) if approved by an authorized Town official.
- (2) Landscaping requirements.
- a. All portions of a property which are not occupied by structures or water bodies or surfaced by streets, roads, driveways, sidewalks, parking areas, other vehicle use areas, trails or paths shall be required to be landscaped in accordance with this Section. A minimum of fifteen percent (15%) of a site's total area shall be required for landscaping. Xeriscaping may be used for these areas.
- b. At least seventy-five percent (75%) of the area required to be landscaped shall have a ground cover of living plant materials, including but not limited to grass and other recognized ground-covering plant materials.
- c. The remaining twenty-five percent (25%) of the area required to be landscaped may be covered with bark, wood chips, wood shavings, rock, stones or other materials approved during the site plan processes.
- d. All open industrial or commercial storage areas shall be screened from all public rights-of-way or adjacent properties by use of landscaping, berms, solid opaque fencing or walls, or a combination thereof to a minimum height of six (6) feet.
- e. When a parking lot and public right-of-way are contiguous, a landscaped or Xeriscaped area of a minimum of ten (10) feet in width separating the parking lot from the right-of-way shall be provided to screen off-site views. An earthen berm, view-obscuring hedge/evergreen plantings or fence or decorative wall, or combination thereof, shall be constructed to screen the parking lot.
- f. All development projects requiring off-street parking spaces for fifty (50) or more cars shall allocate a minimum area equal to ten percent (10%) of the total area covered by the parking lot for landscaped islands. The area covered by the parking lot shall include parking stalls and vehicular circulation aisles, but exclude driveways, access drives, loading areas and similar access features.
- g. Landscaped islands within parking lots shall meet the following requirements:
1. Landscaped parking lot islands shall be at least one hundred fifty (150) square feet in area and contain a minimum of four (4) shrubs and one (1) tree per individual island.
 2. Landscaped parking lot islands greater than one hundred fifty (150) square feet in area shall have one (1) additional shrub for each additional fifteen (15) square feet in area or fraction thereof.
 3. When landscaped islands exceed two thousand (2,000) square feet, plant material quantities may be calculated at a rate of one (1) tree or ten (10) shrubs for every six hundred (600) square feet of area in the island.
 4. One (1) tree may be substituted for ten (10) shrubs if approved during the site plan process.

5. Landscaped parking lot islands shall be dispersed throughout the parking lot in such a manner as to divide and break up the expanse of paving. Landscaped islands shall be a minimum of ten (10) feet in width.
 6. Landscaping within landscaped islands shall not obstruct visibility for vehicles entering, maneuvering in or exiting the parking lot.
 7. Interior landscaped islands shall not satisfy any portion of the minimum fifteen-percent landscaping requirement for the total property.
- h. Where a parking lot boundary adjoins property zoned for any residential use, a minimum landscape buffer of twenty-five (25) feet from such parking lot boundary to the residential property shall be required. Within this landscape buffer, an earthen berm with average side slopes no greater than 3:1, a view-obscuring fence or a decorative wall, a minimum of four (4) feet in height, shall be required.
 - i. All landscaped areas, with the exception of an approved Xeriscape plan, shall be served by a functioning irrigation system. Individual single-family residential lots are exempt.
 - j. The landscaping materials required by these provisions shall be evenly distributed throughout the areas to be landscaped in such a manner as to avoid overmassing plant materials, except in those areas necessary to obstruct off-site views.
 - k. Landscaping shall be protected from vehicles by the placement of wheel stops, barriers, raised curbs, planter beds or other acceptable means.
 - l. To the greatest extent possible, existing trees shall be saved or preserved in place during development of a property unless it can be demonstrated that site restrictions necessitate their removal.
 - m. Existing trees saved during the development of a site shall be credited for required landscaping based on the size and species of the preserved tree.
 - n. Any site contiguous to or fronting any residential use or future residential use shall screen its parking lots, loading docks or similar uses from off-site views through the use of landscaping elements or fencing to a height of four (4) feet.
 - o. Deciduous trees shall be planted at forty-foot intervals within ten (10) feet of the pavement or curb along all public and private streets and along buffer strips adjacent to or within a residential zone district.
 - p. Large trees shall be planted and staked as per American Nursery standards.
- (3) Landscaping material specification.
- a. Landscape plant materials shall be provided in a sufficient variety of species to ensure that the aesthetic appeal of a site remains intact in the event a particular species is killed through disease or infestation. Insect- and disease-resistant plant species are highly recommended.
 - b. The size and characteristics of a plant and other landscaping materials at the time of planting or installation shall be as follows:
 1. Deciduous trees shall be at least two-inch caliper measured at DBH (diameter at breast height), except ornamental and flowering trees, which shall be one-and-one-half-inch caliper measured at DBH.
 2. Evergreen trees shall be a minimum height of six (6) feet.

3. Shrubs shall be five-gallon container size or larger. Three (3) shrubs of one-gallon size may be substituted for each five-gallon shrub per the approved site plan.
 4. Ground cover and vines shall be a minimum one-gallon size.
 5. Wood chips and wood shavings have no minimum size, but shall be a minimum depth of four (4) inches installed over an approved geotextile weed barrier fabric.
 6. Rock or stone shall be one (1) inch to six (6) inches in diameter and a minimum depth of three (3) inches installed over an approved geotextile weed barrier fabric.
- c. These requirements shall not apply to homeowner-owned single-family detached dwellings, duplexes, townhouses or manufactured homes unless so processed as a use by special review. In those instances when plantings and landscape materials are to be installed by a commercial home builder (or developer), a homeowners' association or special district, these regulations shall apply.
- (4) Xeriscaping definition and requirements.

- a. *Xeriscape* is an attractive, sustainable landscape that conserves water and is based on sound landscape architectural practices. The Xeriscape concept has been defined by Denver Water as seven (7) basic principles:

1. Plan and design. Create a diagram, drawn to scale, that shows the major elements of the landscape, including house, driveway, sidewalk, deck or patio, existing trees and other elements.

Once a base plan of an existing site has been determined, the creation of a conceptual plan (bubble diagram) that shows the areas for turf, perennial beds, views, screens, slopes, etc., is undertaken. Once finished, the development of a planting plan that reinforces the areas in the appropriate scale is done.

2. Soil amendment. Most plants will benefit from the use of compost, which will help the soil retain water. Some desert plants prefer gravel soils instead of well-amended soils. Plants should either fit the soil or soil should be amended to fit the plants.
3. Efficient irrigation. Xeriscape can be irrigated efficiently by hand or within an automatic sprinkler system. Zone turf areas separately from other plants and use the irrigation method that waters the plants in each area most efficiently. For grass, use gear-driven rotors or rotary spray nozzles that have larger droplets and low angles to avoid wind drift. Spray, drip line or bubbler emitters are most efficient for watering trees, shrubs, flowers and groundcovers.

If watering by hand, avoid oscillating sprinklers and other sprinklers that throw water high in the air or release a fine mist. The most efficient sprinklers release big drops close to the ground.

Water deeply and infrequently to develop deep roots. Never water during the day, to reduce water lost to evaporation. With the use of automatic sprinkling systems, adjust the controller monthly to accommodate weather conditions. Also, install a rain sensor to shut off the devices when it rains.

4. Appropriate plant and zone selection. Different areas in a yard receive different amounts of light, wind and moisture. To minimize water waste, group together plants with similar light and water requirements and place them in an area that matches these requirements. Put moderate-water-use plants in low-lying drainage areas, near downspouts or in the shade of other plants. Turf typically requires the most water, and shrub/perennial beds will require approximately half the amount of water. Dry, sunny areas support low-water-use plants

that grow well in this climate. Planting a variety of plants with different heights, color and textures creates interest and beauty.

5. Mulch. Mulch keeps plant roots cool, prevents soil from crusting, minimizes evaporation and reduces weed growth. Organic mulches, such as bark chips, pole peelings or wood grindings, should be applied two (2) to four (4) inches deep. Fiber mulches create a web that is more resistant to wind and rain washout. Inorganic mulches, such as rocks and gravel, should be applied two (2) to three (3) inches deep. Surrounding plants with rock makes that area hotter; limit this practice.
6. Alternative turf. Native grasses (warm season) that have been cultivated for turf lawns, such as buffalo grass and blue grama, can survive with one-quarter ($\frac{1}{4}$) of the water that bluegrass varieties need. Warm-season grasses are greenest in June through September and are straw brown the rest of the year.

Native grasses (cool season), such as bluegrass and tall fescue, are greenest in the spring and fall and go dormant in the high heat of the summer. New cultivars of bluegrass, such as Reveille, and tall fescue can reduce typical bluegrass water requirements by at least thirty percent (30%). Fine fescues can provide substantial water savings and are best used in areas that receive low traffic or are in shady locations.

Use the appropriate grass and limit the amount of grass to reduce the watering and maintenance requirements.

7. Maintenance. All landscapes require some degree of care during the year. Turf requires spring and fall aeration, along with regular fertilization every six (6) to eight (8) weeks. Keep the grass height at three (3) inches and allow the clippings to fall. Trees, shrubs and perennials will need occasional pruning to remove dead stems, promote blooming or control height and spread. Much of the removed plant material can be shredded and used in composting piles.
- b. Xeriscape materials. See Paragraph (3) above for landscaping materials; see below for additional suggestions as appropriate.
1. Grasses may include buffalo grass, blue grama, western wheat grass, crested wheat grass and smooth brome grass.
 2. Consult the Natural Resources Conservation Service, Soil Conservation Service and the Cooperative Extension Service in the County.
 3. Consult with the Colorado State Forestry District Forester in Franktown, the Town's Tree Advisory Board and the Arbor Day Foundation for appropriate trees and plants materials.
 4. Refer to the City of Colorado Springs www.csu.org website for more information.
- (5) Landscape maintenance requirements.
- a. All plantings shall be maintained in a healthy and attractive manner by the property owner of record or whoever has assumed landscape maintenance responsibilities. Maintenance shall include, but not be limited to, periodic mowing, watering, fertilizing, weeding, cleaning, pruning, trimming, spraying and cultivating. In addition to these requirements, the property owner shall be responsible for ensuring that the subject site is maintained in an orderly and clean manner with regularly scheduled trash and litter pick-up and immediate removal and replacement of dead or dying plant materials. Dead or dying plant materials shall be replaced with another living plant consistent with the intent of the originally approved site plan. All replacement plants shall be installed within a time schedule consistent with industry standards and permissible per the local weather and climate conditions. It shall be the property owner's responsibility to ensure

that the site remains compliant with all applicable Town codes and standards, including the approved site plan.

- b. Natural landscape materials, such as rock, stone, bark chips and shavings, shall be replenished on a regular basis to ensure adequate coverage consistent with the approved site plan (minimum of three- to-four-inch depth).
- c. Landscape structures and site features, such as fencing, planter boxes, benches, site furniture, etc., shall be maintained in a sound structural and attractive condition to ensure that public health, welfare and safety are not compromised.

(Ord. 13-09 §1)

Sec. 16-2-60. Lighting standards.

Refer to Article VIII of this Chapter.

Sec. 16-2-70. Parking space requirements.

Refer to Article VI of this Chapter.

Sec. 16-2-80. Signage requirements.

Refer to Article XII of this Chapter.

Sec. 16-2-90. Screening standards of mechanical and visible equipment.

- (a) Unless otherwise specifically noted in this Chapter, all required screening shall be constructed and maintained in accordance with the regulations of this Section.
- (b) Required screening shall be appropriate to the height of the equipment being screened. (Refer to Subsection 16-2-20(g) of this Article for more information.)
- (c) The Board of Trustees may allow alternative screening when it finds:
 - (1) The alternative standard meets to exceeds the purposes of the screening; and
 - (2) The alternative technique does not adversely impact neighboring properties.
- (d) In the event a development is approved utilizing an alternative screening method different from the standards as set forth in this Section, the standards established in the development review process shall control.
- (e) Required screening shall be constructed of:
 - (1) Brick, stone or concrete masonry, stucco, concrete or wood unless a different but equivalent material is specifically approved by the authorized Town official.
 - (2) Earthen berm planted with turf grass or ground cover generally recognized by landscape architects and horticulturalists for local area use.
 - (3) Evergreen plant materials generally recognized by landscape architects and horticulturalists for local use. The plant materials shall be located in a bed that is at least three (3) feet wide. Initial plantings shall be capable of obtaining a solid appearance within three (3) years. Plant materials shall be placed a maximum of twenty-four (24) inches on center over the entire length of the bed unless an alternative

planting density is determined to be capable of providing a solid appearance in three (3) years and is approved by the Town.

- (4) Any combination of the above.
- (f) A required screening wall or fence may not have more than ten (10) square inches of openings in any given square foot of surface. Plant materials used for required screening shall obtain a solid appearance and provide a visual barrier of the required height within three (3) years of their initial planting.
- (g) Access through the required screening may be provided by a solid gate or other site feature that preserves the integrity of the screening.
- (h) Garbage storage areas shall be visually screened on all sides by a brick, stone, concrete masonry, stucco, concrete or wood wall or fence consistent with the architecture of the primary structure. Screening is not required on a side adjacent to an alley or easement used for garbage pick-up service.
- (i) An owner shall provide screening in accordance with this Section for the rear or service side of a nonresidential building if:
 - (1) The nonresidential building is in a residential district and is visible from the residential use; or
 - (2) The nonresidential building is in a nonresidential district and is exposed to and closer than one hundred fifty (150) feet to the boundary line of a residential district or an arterial street or regional thoroughfare.
- (j) When all service, storage and loading facilities are contained within a nonresidential building, the screening requirements of this Section do not apply.
- (k) Plant materials used for required screening shall be maintained in a healthy growing condition at all times. The property owner is responsible for regular weeding, mowing of grass, irrigating, fertilizing, pruning and other maintenance of all plantings as needed. Any and all plant materials that die shall be replaced with another living plant consistent with the intent of the originally approved site plan. All replacement plants shall be installed within a time schedule consistent with industry standards and permissible per the local weather and climate conditions.
- (l) All required screening with plant materials shall be irrigated by an automatic irrigation system installed to comply with the Town's standards and specifications.

(Ord. 13-09 §1)

Sec. 16-2-100. Pedestrian circulation requirements.

- (a) The Town hereby finds that it is in the public's best interest for developments within the Town that require site plan approval to provide convenient, accessible, and practicable connections for pedestrians between improvements within the public right-of-way and parking areas connecting to building entrance(s).
- (b) For the purposes of this Section 16-2-100, the following definitions shall apply:
 - (1) *Connections* are defined as continuous, unobstructed ways of pedestrian passage by means of which the building improvements may be approached, entered, and exited, and which connects the accessible building entrance with an exterior approach (including sidewalks, streets, and accessible parking areas);
 - (2) *Facilities within the public right-of-way* shall include sidewalks, streets, trails, or other defined pedestrian ways; and
 - (3) *Entrance* means any point of access to a building or portion of a building or facility.

-
- (c) Where permitted by the Town, drive-throughs must be placed in a manner that do not require pedestrians entering and exiting the building to cross the drive-through lane(s). When it is necessary for individuals to have to cross drive-through lanes, crosswalks shall be clearly demarcated from the parking area to the building entrance.
 - (d) None of the requirements of this section shall be deemed to supersede or otherwise modify other generally applicable standards or requirements, including those identified in the Americans' With Disabilities Act.

(Ord. No. 21-01 , § 1, 1-26-2021)

PORTABLE STORAGE CONTAINERS:General Requirements:

Site plan approval shall be required for portable storage containers in all nonresidential zones.

No container shall be used as a permanent structure or an appendage to a permanent structure.

Vertical stacking of portable storage containers or materials on top of containers shall be prohibited unless approved through the site plan review process.

Portable storage containers shall not be used as dwellings, or for camping, cooking or recreation purposes, and may not be connected to plumbing or electricity.

Portable storage containers not being actively used may not be stored in the town.

Portable storage containers shall be kept in good repair.

Portable storage containers shall not be allowed on vacant parcels of real property.

Residential Requirements:

Portable storage containers shall not be allowed for permanent storage.

Only one portable storage container shall be allowed per parcel.

Portable storage containers shall only be allowed for moving purposes or during construction or remodeling and shall meet the following requirements:

Portable storage containers used for moving in or out of a residence shall be allowed for a maximum of fourteen (14) days, and shall only be located on a driveway or other paved area on private property.

Portable storage containers used during construction shall

Only be allowed if a valid building permit is currently on file with the town

Be allowed for a maximum of six (6) months. An extension of up to six (6) months may be granted by the Community Development Director;

Not be located in a public right of way; and

Be removed before a certificate of occupancy is issued.

Commercial Requirements:

Containers may not be used for everyday business operations, except for incidental shipping and receiving of materials or products for a period not to exceed thirty (30) consecutive calendar days or ninety (90) calendar days in a calendar year.

Portable storage containers shall be located on a concrete or asphalt surface.

Portable storage containers shall be completely screened from streets and residential areas.

Manufacturing Requirements:

The combined footprint of all portable storage containers shall not exceed twenty five percent (25%) of the footprint of the main building.

Portable storage containers shall be located on concrete or asphalt surface.

Portable storage containers shall be completely screened from public streets and residential areas.

ORDINANCE 16-05

AN ORDINANCE AMENDING CHAPTER 6 OF THE ELIZABETH MUNICIPAL CODE BY THE CREATION OF A NEW ARTICLE IX THEREIN ENACTING A LODGING OCCUPATION TAX, SUBJECT TO VOTER APPROVAL

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF ELIZABETH, COLORADO, THAT:

Section 1. A new Article IX within Chapter 6, of the Elizabeth Municipal Code is enacted to read as follows:

CHAPTER 6 – Business Licenses and Regulations

ARTICLE IX - Lodging Occupation Tax

- Sec. 6-9-10. Definitions.
- Sec. 6-9-20. Levy of tax.
- Sec. 6-9-30. Exemptions.
- Sec. 6-9-40. Filing.
- Sec. 6-9-50. Failure to pay.
- Sec. 6-9-60. Penalty clause.
- Sec. 6-9-70. Inspection of records.

Sec. 6-9-10. Definitions.

Lodging business means a business providing rooms or accommodations for overnight use by any person who pays to use, possess or occupy, or has the right to use, possess or occupy, any such room or accommodation in a lodging facility under any concession, permit, lease, contract, license to use, or other similar arrangement involving monetary consideration and includes any hotel, bed and breakfast, apartment hotel, lodging house, motel, motor hotel, guest house, guest ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park, campground or hostel where two (2) or more rooms or accommodations are used for lodging.

Sec. 6-9-20. Levy of tax.

- (a) The provision of lodging rooms and accommodations to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services such as police protection and has a substantial effect upon the health, safety and welfare of the citizens of the Town and upon the expenditures budgeted by the Town which is a matter of local concern.
- (b) The classification of the provision of lodging as separate businesses and

occupations is reasonable, proper, uniform and nondiscriminatory; and the taxable amount hereby levied is reasonable, proper, uniform, nondiscriminatory, and necessary.

(c) There is hereby levied by the Town an occupation tax on the provision of lodging upon every lodging business furnishing any room or accommodation for less than one (1) month or thirty (30) consecutive days within the Town in the amount of three percent (3%) of lodging price paid per day, per occupied lodging room or accommodation.

Sec. 6-9-30. Exemptions.

Lodging Tax Exemptions. The following transactions shall be exempt from the tax imposed by this Article:

(a) Accommodations provided by the United States, the State of Colorado, its departments and institutions, and the political subdivisions of the State in their governmental capacities only.

(b) Accommodations provided by those charitable, religious and eleemosynary organizations that have received from the Internal Revenue Service status under Section 501(c)(3) of the Internal Revenue Code as a tax exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities.

(c) Accommodations provided to a person who is a permanent resident of a hotel, motel, apartment hotel, lodging house, motor hotel, guest house, or other similar business pursuant to a written agreement for a period of at least one (1) month or thirty (30) consecutive days.

(d) Accommodations provided to a person without Monetary Consideration being paid to the vendor for such accommodations.

Sec. 6-9-40. Filing.

(a) Every lodging business shall remit the lodging occupation tax on or before the tenth (10th) day of each month on account of lodging provided in the preceding month. Said payment shall be accompanied by a return which shall contain such information and be in such form as the Town Clerk may prescribe.

(b) The burden of providing that any transaction is exempt from the tax shall be upon the lodging business.

Sec. 6-9-50. Failure to pay.

If any business subject to the provisions of this Article shall fail to pay the taxes

as herein provided, the full amount thereof shall be due and collected from such lodging business and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town Attorney upon direction of the Board of Trustees shall commence and proceed to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt in the name of the people of the State.

Sec. 6-9-60. Penalty clause.

If any officer, agent or manager of a lodging business that is subject to the provisions of this Article shall fail, neglect or refuse to file as required by Section 6-9-40 above, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense.

Sec. 6-9-70. Inspection of records.

The Town, its officers, agents or representatives shall have the right to all reasonable hours and times to examine the books and records of the lodging businesses that are subject to the provisions of this Article and to make copies of the entries or contents thereof.

Section 2. Severability. If any section, paragraph clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or enforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 3. The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Election. Upon adoption of this Ordinance by the Board of Trustees of the Town of Elizabeth, the question of the imposition of a lodging tax as set forth by this Ordinance shall be submitted to an election by the registered electors of the Town of Elizabeth for their approval or rejection. Such election shall be held on November 8, 2016, as a special election coordinated with Elbert County.

Section 5. Effective Date. The Town Clerk shall publish this ordinance as required by Town Code. Upon approval of the lodging tax by the registered electors as herein provided, this Ordinance shall become effective and in force at 12:01 a.m. on January 1, 2017.

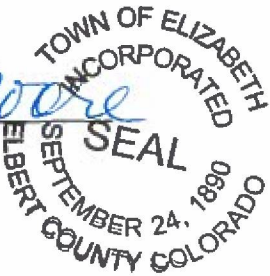
Read and approved at a meeting of the Board of Trustees of the Town of Elizabeth, Colorado, this 12th day of July, 2016.

Passed by a vote of 7 for and 0 against and ordered published.


H. Clay Hurst, Mayor

ATTEST


Amanda W. Moore, Town Clerk





American Planning Association

Creating Great Communities for All

January/February 2019

PAS MEMO

Short-Term Rentals: Regulation and Enforcement Strategies

By Jared E. Munster, PHD, AICP

Short-term rentals, home sharing, vacation rentals, Airbnb: regardless of what you call the concept, it is clear that the new sharing economy has worked its way into virtually every residential area in the country.

Short-term rentals (STRs) can be defined as the rental of all or part of a residential dwelling unit for a duration of occupancy of less than 30 days. They have raised the passions of free-market advocates who believe that the government should not regulate property rentals, as well as neighborhood activists who fear that STRs will degrade neighborhood cohesion and price out the very culture and experience visitors are venturing into neighborhoods to embrace. This conflict, as well as the challenge of attempting to regulate what is at its very core a residential occupancy, make the role of the planner critical in developing clear regulations that balance neighborhood concerns with practical limitations on how far local government can intervene in rental agreements for private property.

The City of New Orleans Department of Safety and Permits (DSP) has developed and implemented a regulatory regime that has been internationally cited as a model for balancing the inescapability of this use with the protection of neighborhoods and residents. Over the course of several years, through formal planning studies, zoning ordinance text amendments, and prolonged negotiations with listing platforms, residents, interest groups, and neighborhoods, the city developed a robust package of practical and enforceable regulations that provided the market flexibility required by private industry.

This *PAS Memo* provides a case study of New Orleans's experience with this phenomenon and offers strategies and lessons learned for planners as they navigate this highly contentious issue.

Background and History of Short-Term Rental Regulations in New Orleans

New Orleans's history with transient rentals begins far before the age of digital bookings and informs the conversations of the last several years. In the 1960s, the Vieux Carré, or French



Figure 1. New Orleans's Vieux Carré (French Quarter). Flickr photo by Pedro Szekely (CC BY-SA 2.0).

Quarter, the oldest residential neighborhood in the city (Figure 1), was losing its inhabitants at an unsustainable pace. Hotel and tourism-supportive development were destroying the historic buildings that made the area attractive to tourists and pricing out the residents, businesses, and artists that created the unique nature of the neighborhood.

In 1969, a New Orleans City Council moratorium on hotel or transient lodging development in the Vieux Carré stemmed the tidal wave of hotel development and stabilized an otherwise at-risk community. This moratorium was converted to a permanent prohibition on hotel development through subsequent zoning changes. Even today the basis for opposition to tourist lodging in the Vieux Carré is still the nearly 50-year-old moratorium.

Early Attempts to Regulate Short-Term Rentals

As the nature of tourism changed through the years, residents began renting out homes or apartments during major festivals, such as Mardi Gras or the Jazz and Heritage Festival. New Orle-

ans, as a major tourism destination hosting large-scale events on an annual basis, became a laboratory of creative ways to rent property.

The practice benefitted both parties to the transaction. New Orleans residents could vacation out of town during periods of high tourist volume when many businesses temporarily close or become overwhelmed. Visitors had access to a new pool of accommodations that could host families or groups too large to share a single hotel room or afford a traditional hotel.

This very capitalistic pairing of supply and demand naturally coalesced into a local cottage industry with unintended—but certainly not unforeseen—consequences. Over time, local property owners and outside investors noticed the demand for non-hotel accommodations and began acquiring property for the sole purpose of renting to tourists. This began displacing local residents, turning once-thriving neighborhoods into seasonal entertainment venues.

To address this burgeoning concern, the New Orleans City Council adopted Ordinance 21606 M.C.S. in 2004. This strong attempt by the city council to rein in vacation rentals ordained that:

[i]t shall be unlawful for any person to knowingly offer to rent for monetary compensation for a period of less than 30 days or, in the case of premises located in the Vieux Carré District, 60 days, any living accommodations in the city if the premises offered for rent are not lawfully licensed or permitted for such use. (§54-491.1(b))

Should a property owner or lessor be prosecuted for the offense, the publication of such an offer to rent in print or electronic media would “create a rebuttable presumption that the person had knowledge of the offer to rent” (§54-491.1(d)).

At the time, the city’s comprehensive zoning ordinance contained a defined use category of “Transient Vacation Rental” that provided three primary criteria in the classification of the use:

- the property was successfully rented for periods of less than 30 days (not just advertised as such)
- the property was rented to “non-residents”
- these rentals occurred over the course of a year or longer

Transient Vacation Rentals were allowed only within the Central Business District zoning districts, not any residential or business districts.

Unfortunately, however, the construction of these laws made enforcement virtually impossible, which led to growing frustration among neighbors who believed that the city was unwilling to enforce its own regulations regarding these uses.

The language of the 2004 ordinance outlawed only the “offer to rent” a living accommodation—it did not prohibit the action of executing such a rental. Additionally, the restriction was housed within the city’s criminal code, which meant that any citation for the misdemeanor would have to be issued by the police department and the violation adjudicated by a

judge in the city’s municipal court. A second concern was the potential for a constitutional claim that the city was violating the free speech rights of property owners, because the restricted speech was not advertising a service prohibited by law.

DSP had administrative jurisdiction over the Transient Vacation Rental zoning provisions, but as noted above, the city was required to prove that rental actions of less than 30 days had physically occurred over a period of one year or longer.

Even with these limitations, in 2015 DSP chose to bring nine properties known to be in violation through its administrative adjudication process. Success would establish that DSP could build a prosecutable case under existing law where suitable documentation for violations existed and take actions against the hundreds of properties that had received complaints. However, if after years of compiling evidence, building cases, and partnering with neighbors to collect evidence the city was judged unable to meet its burden of proof in the administrative hearings, the cases would be dismissed.

A primary element of DSP’s cases was the user reviews publicly available on websites such as airbnb.com. By matching neighbor complaints and documentation against the dates provided in the published reviews, DSP was confident in its ability to adequately meet the three-pronged burden of proof for operation of a Transient Vacation Rental. Recognizing the limitations of this body of evidence, DSP concentrated its efforts on the most egregious violators for which there was significant documentation.

But the adjudication hearings were never held. Days before the scheduled hearing, one of the property owners filed for a temporary restraining order against further proceedings due to vagueness of the charges and a constitutional challenge to the city’s administrative hearings process. After several weeks of correspondence with the plaintiff’s attorney, the city agreed to suspend prosecution of the nine cases. This agreement marked the end of active enforcement efforts against alleged STRs pending a new body of law.

Developing the New Regulatory Regime

The need for an updated regulatory package was now clear. Beginning in late 2014, a rough framework of reform began to take shape. If transient vacation rentals were legalized, the regulation process would have to be understandable and transparent to inspire confidence in the community. From these guiding principles, DSP, in coordination with the City Planning Commission and community stakeholders, began to formulate a new approach to regulation.

Whatever framework emerged had to be easily enforceable with a readily demonstrable burden of proof. But before the city could create a solution, it had to understand the problem.

The Short-Term Rental Study

In response to the now-demonstrated inability of the city to administratively enforce its transient vacation rental regulatory structure, in August 2015 the New Orleans City Council directed the City Planning Commission to study the regulation of these uses.

Over the course of nearly six months, the commission solicited information from neighborhoods, industry groups, hosting platforms, peer cities, and other agencies within the city to gain a full understanding of the nature of STRs as a land use—from the regulatory issues faced by DSP, to perception and documentable issues from neighborhoods, to the projected benefits of legitimizing the use fostered by the hosting platforms. Staff held more than a dozen meetings and multiple public hearings, and over 400 written comments were submitted to the commission (Rivers 2017).

In addition to these outreach efforts, the commission embarked on a study of documentable evidence and national best practices. In evaluating the practices of cities throughout the United States to determine previous regulatory successes and failures, the study found several key points (New Orleans City Planning Commission 2016):

- these uses fall into different categories and should be regulated differently based on location and rental type
- there must be performance standards to which operators can be held responsible to ensure the stability of neighborhoods
- fees and fines must be set at the appropriate level to encourage compliance while being impactful enough to penalize illegal behavior

Based on this study, staff presented four use types to the commission for consideration before a recommendation was made to the City Council: accessory, temporary, principal residential, and commercial (Figure 2). The commission voted to remove the “principal residential” type on the concern that this would cause exactly the scenario community groups feared most—turning residences into hotels and displacing residents.

In consultation with DSP, commission staff also recommended a series of requirements and performance standards creating an easily enforceable, comprehensive list of guidelines to ensure neighborhood compatibility, guest safety, and meaningful regulatory enforcement. These standards also provided many requirements with a low burden of proof for administrative enforcement, considered key to a high rate of compliance with the new regime.

Negotiation and Policy Priorities

The city knew that not gaining buy-in from the listing platforms would be a recipe for failure. Throughout policy negotiations, only Airbnb actively engaged with the process, which created the unintended result that compliance was easier for its platform than others. However, the city would work with other platforms following launch to bring compliance as close as possible in consideration of demonstrated technical and data considerations.

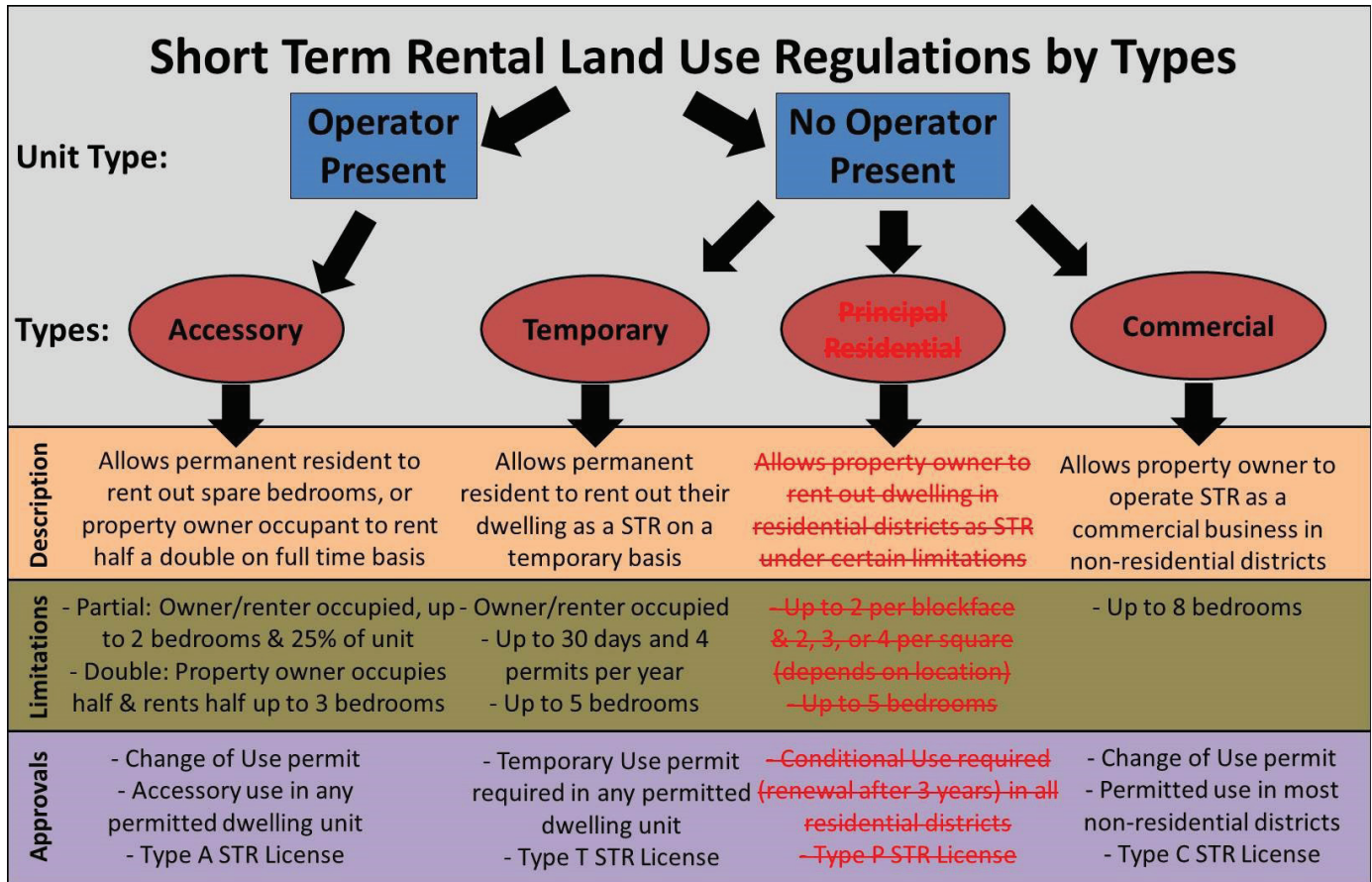


Figure 2. Short-Term Rental Types. Courtesy New Orleans City Planning Commission.

The New Regulations

The four ordinances adopted by the New Orleans City Council in 2016 established the provisions in the city code and zoning ordinance required to successfully implement the recommendations of the City Planning Commission's study and regulate STRs in New Orleans. Ordinances 27209 and 27204 provided the framework of the enforcement regime, including easily enforceable standards to allow swift citations of property owners who did not comply with the regulations. The other two ordinances addressed taxation and investment into the city's Housing Improvement Fund as mechanisms to turn STRs into a benefit to the communities they would be occupying.

Ordinance 27204 M.C.S. This ordinance (codified as §26-613 et seq.) established a licensing and enforcement regime, provided for a public registry of licensed STRs as well as provisions for datasharing with the listing platforms, and set fees and penalties for the program. The licensing provisions formally created three license types (accessory, temporary, and commercial) corresponding to concurrently created zoning land-use types, and provided safety and compliance standards by which DSP would evaluate applications for these licenses. To maintain a low barrier to entry into the permitting process, applicants were permitted to comply with these provisions by attestation, with DSP following up to verify compliance. Falsification or misrepresentation of any material information in the application process would result in the immediate revocation of the license.

Ordinance 27209 M.C.S. This zoning text amendment ordinance implemented the changes outlined in the city planning commission's 2016 study. It defined the STR land use generally, as well as the specific STR subcategories (accessory, temporary, and commercial), and imposed standards and requirements for the three use types. Additionally, this ordinance amended the permitted use tables to designate where STRs would be permitted as by-right or conditional uses. Accessory STRs were permitted within any legal dwelling unit located within an owner-occupied single- or two-family dwelling (except for within the Vieux Carré). Temporary STRs would be permitted in any legal dwelling unit (except within the Vieux Carré) without consideration of owner occupancy but with a 90-night occupancy limitation. Commercial STRs would be permitted in virtually every commercial zoning district, including the Vieux Carré Entertainment District (Bourbon Street) but excluding the remainder of that neighborhood.

The standards can be broken into two primary categories (see table below). Regulatory compliance standards are black-and-white requirements for which the city can easily demonstrate noncompliance, while performance compliance standards are more subjective in nature and require a higher level of documentation to determine noncompliance.

Regulatory Compliance	Performance Compliance
<ul style="list-style-type: none"> • All short-term rentals require a license. • License placard to be prominently displayed in a manner visible from the public right-of-way. • License number to be posted on any rental listing. • Any rental listing must match the occupancy limitations of the approved license. • Any short-term rental has to have the outward appearance of a residential building. • Short-term rentals may not occupy any accessory structure, outdoor space, or recreational vehicle. 	<ul style="list-style-type: none"> • Only one party of guests is allowed in a short-term rental unit. • The number of guests may not exceed occupancy limitations stated on the license. • An in-town contact must be available to address any unruly guests or dangerous situations. • The rental shall not adversely affect the residential character of the neighborhood. • The rental shall not generate noise, vibration, odors, or other effects that unreasonably interfere with any person's enjoyment of their residence.

Ordinance 27210 M.C.S. This ordinance imposed a \$1.00-per-night fee on STRs above the city's standard tax structure directed to the Neighborhood Housing Improvement Fund, a limited-access fund that can be used only for community development under specific guidelines.

Ordinance 27218 M.C.S. This ordinance authorized the mayor to enter into a cooperative endeavor agreement with Airbnb, which agreed to collect and remit taxes on behalf of its users by including the required taxes and fees at the time of booking. This saved the city from creating tax accounts for every licensed property and requiring property owners to calculate and remit taxes individually. This was part of the negotiation process with the listing platform that would ease the regulatory burden on both the city and licensees—creating a “win” on both sides of the taxation transaction.

Safety & Permits Enforcement Process

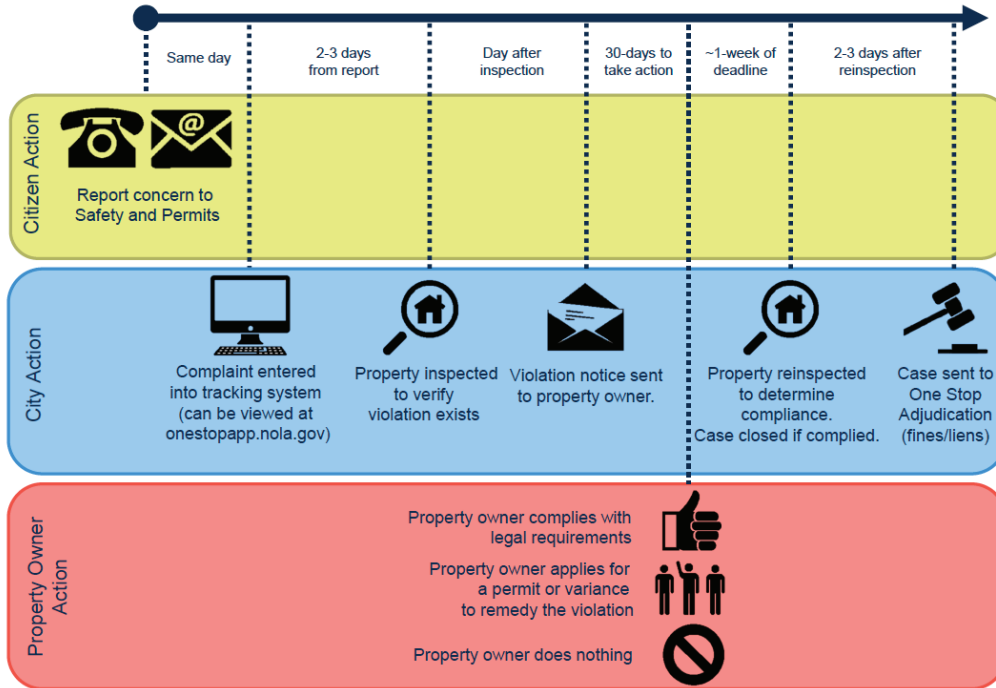


Figure 3. DSP's short-term rental enforcement process. Courtesy City of New Orleans Department of Safety and Permits.

Negotiations at this phase also took place with community leaders, city council members, and interest groups to create a structure that would be acceptable to the majority of stakeholders. Key points were appropriate annual limitations on temporary rentals, the mechanics and scope of data sharing, and the level of control platforms would have over encouraging compliance among their users.

Annual limitations on rental nights was one of the most public points of debate as the legislative process drew to a close. Type A (accessory) and Type C (commercial) licenses would have no limitations on annual rentals, but Type T (temporary) licenses would be subject to an annual cap on the number of nights the property could be rented out. STR advocates pushed for periods as long as 180 nights, while opponents, short of a ban, believed that the spirit of a “temporary” license could be satisfied with a cap of 30 nights per year (which was also the position of the commission). The city council ultimately decided to allow Type T rentals across the city with a maximum annual rental of 90 nights.

The remaining two points of negotiation, data sharing and platform assistance in overall compliance, were resolved as two sides of the same coin. The city would require data on rentals to enforce the 90-night cap on Type T licenses, and the listing platforms agreed that assistance from their side would boost user compliance with the new regulations and provide better data to track rentals, while the new standards would help ensure the safety of guests.

As part of the overall agreement, the platforms would voluntarily remove any unlicensed listings from their platform after a reasonable compliance period. The city would coordinate a pass-through registration program that would

allow applications to be filed through Airbnb’s website, then uploaded into the city’s permitting and licensing database. Additionally, Airbnb agreed to share certain anonymized data each month: a unique identifier for each listing, the number of nights rented in the last 30 days, and the total nights rented year-to-date. If additional information was required, the platform agreed to an administrative subpoena process, all of which was codified as Section 26-620 of the New Orleans City Code.

Implementation and Enforcement of STR Regulations

On December 1, 2016, the New Orleans City Council adopted four ordinances to implement the new STR program. The ordinances provided for regulation and taxation of STRs, as well as other administrative functions that aided the process (see sidebar).

As a result of the legislative action, DSP created the Short Term Rental Administration to serve as the single point of contact for the public in the licensing and enforcement process. Without this administrative office, the authority of implementation and enforcement would have been spread across several administrative units within DSP.

Building Public Confidence

As the agency responsible for licensing and enforcement, DSP knew that public confidence from day one would be critical for success. To demonstrate the city’s intention of complete transparency and full compliance, the website nola.gov/str was launched on December 2, 2016, with all available information on the program: the data available from the 2016 study, the subsequent ordinance adoption process, and approximate timelines for program benchmarks.

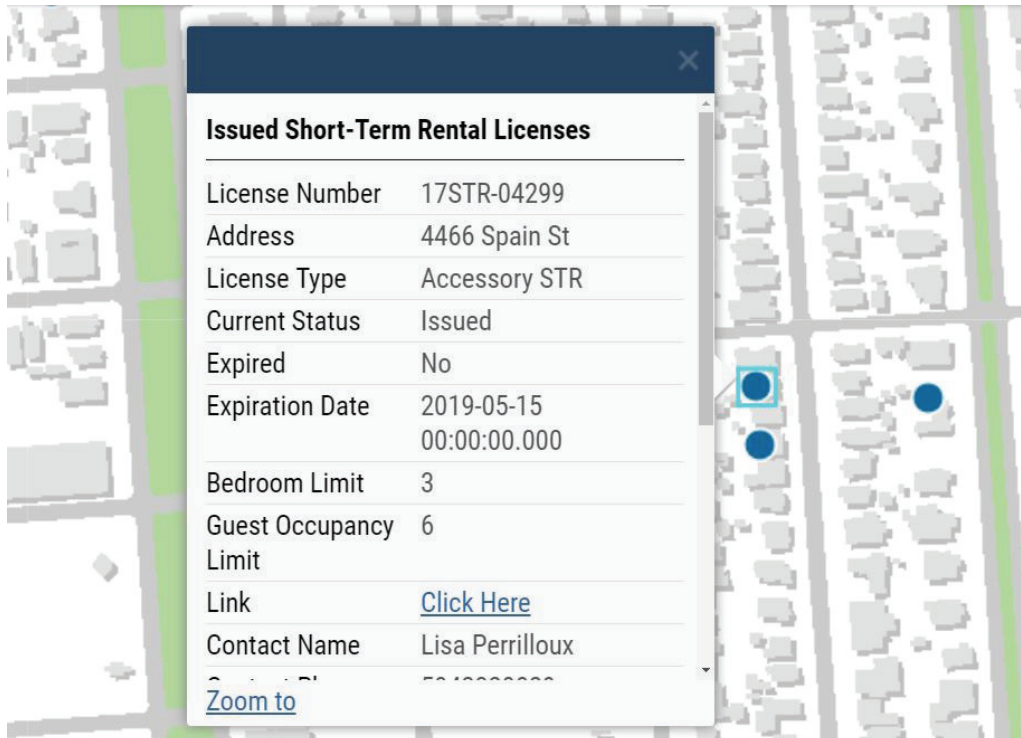


Figure 4. The city's interactive short-term rental registry and map. Courtesy City of New Orleans Department of Safety and Permits.

Within days, staff updated this website with information distilled from the adopted ordinances, simplifying the requirements and creating tables to help users understand the zoning restrictions. There were four months from adoption to the April 1, 2017, effective date to create internal and external processes for something that had never been tried before. DSP would focus its attention on three areas during this period: development of a robust internal process, transparency in process and enforcement, and development of a strong enforcement presence.

Development of Internal Processes

Internal processes were the first focus. Database configuration started early in the legislative process, which then allowed DSP to focus on other areas of internal process standardization: the pass-through connection from the city's database to Airbnb, a comprehensive analysis of license application workflow, and development of the enforcement regime that would be implemented.

Ultimately, the pass-through process was not a panacea of compliance as many hoped. Staff required information for license processing beyond that needed by the listing platform, so separate correspondence with every applicant was still required, and every applicant had to return to the city's permitting and licensing portal (onestopapp.nola.gov) to pay for the license prior to issuance.

A license application workflow needed to be developed and standardized. The expectation of a same-day turnaround, paired with the need to streamline the process to the furthest extent possible for pass-through integration, led DSP to reimagine a number of internal processes and ways staff could be cross-trained to address peak workloads. Printed and digital forms had to balance information that the average applicant

would have available against whether the city was capturing all necessary data in the license review process.

This same level of creativity became necessary in developing enforcement protocols. The new regulations required a methodology for how staff would collect data, record violations, and build cases (Figure 3, p. 5). DSP could then use that standardization to set community expectations for enforcement action.

Transparency in Process and Enforcement

The commitment to providing all available information to the public in an easily digestible format remained the policy of DSP. A public-facing portal for its permitting and licensing database (onestopapp.nola.gov) that allows users to search for activity on a given property in real time was made easily searchable for STR license approvals or enforcement cases.

The ordinances took transparency one step farther in requiring publication of a list of all STR licenses, along with the property address, license holder name, and the contact information for the responsible party. This allows a neighbor to contact someone about a problem with a rental. To fulfill this requirement, DSP coordinated with the city's Office of Information Technology to develop an interactive [STR registry and map](#). This tool allows users not only to search by name or property address, but also to see all license applications on a map of the city (Figure 4).

During this time, DSP leadership participated in numerous neighborhood meetings to outline the process, regulations, guidelines, and enforcement strategies. The focus was on implementing a program that would succeed and deliver on the promise that was made to the council and, more importantly, the community.

City of New Orleans
Department of Safety & Permits
Short Term Rental Administration

Field Warning

Location: _____

Date: _____ Time: _____

This notification is intended to inform the owner/operator of this premises of failure to comply with the City's Short Term Rental requirements. Legislation and information on Short Term Rentals in New Orleans is available at www.nola.gov/str

This property has been reported as an operating short term rental, but our records indicate no application on file.

This property is registered as a licensed short term rental, but no license is posted.

This property is licensed as a Short Term Rental, but we have received a complaint of excessive:

- Noise
- Vibration
- Glare
- Odors
- Other effects

Which unreasonably interferes with neighbors enjoyment of their residence.

This property is registered as a licensed short term rental, and there have been reports of unpermitted commercial or social events that may result in license revocation.

This property has a license posted, but our records indicate that the license was issued for a different location/address.

This property has been reported as an operating short term rental, but is located in a portion of the French Quarter where Short Term Rentals are prohibited.

Please contact the Short Term Rental Administration at 504-658-7144 or str@nola.gov for additional information. A formal violation letter will also be mailed to the owner of record within the week to initiate adjudication procedures.

City of New Orleans
Department of Safety & Permits
Short Term Rental Administration

Figure 5. Field warning tags to flag short-term rental noncompliance. Courtesy City of New Orleans Department of Safety and Permits.

Importance of a Strong Enforcement Presence

DSP needed to assure doubtful residents that enforcement would be both proactive and responsive. To that end, the agency took two new simple, cost-effective actions.

First, DSP developed “field warning” tags to post on STR properties where a violation was believed to have occurred (Figure 5). These were simple half-sheet forms with checkboxes for common violation types, allowing an inspector to post a notice to the property owner on the spot and document the posting via photograph. But most importantly, these documents are hot pink and unmistakable as a “scarlet letter” of STR noncompliance to show neighbors that inspectors were on the job.

The second action was to brand DSP’s vehicles as such. Prior to 2017, all DSP vehicles were tagged as city vehicles, but these markings did not indicate to which department the vehicle belonged. Residents wanted DSP to work into the evenings and late at night during major events to maintain compliance

with the STR performance standards provided in the city code. Based on these community concerns, vehicles were branded as “Department of Safety & Permits” to provide a level of visibility critical to maintaining the confidence of neighbors in the overall regulatory regime.

One last key element of the city’s STR regulations is based on a long-standing provision of the building code that authorizes termination of utility services if a property is found to be in violation of the zoning ordinance. To eliminate any potential challenge to the use of these provisions, the enabling legislation for the licensing regime explicitly states that discontinuance of electrical service is an appropriate penalty for violation of the licensing provisions (§26-618).

Within four months of program launch, the Short Term Rental Administration sought its first utility disconnect order against a property owner in the Vieux Carré who would not remove online listings or stop using the property as a STR. The city’s utility provider terminated electrical service to the dwelling, and from that point compliance was swift and the property was soon sold.

Status of STR Administration After Year One

The STR program in New Orleans celebrated its first anniversary on April 1, 2018, and DSP is proud of the success achieved in the implementation of the program.

In the first 12 months, the Short Term Rental Administration reviewed more than 8,000 applications and issued 4,477 licenses (Figure 6). This generated \$979,274 in permit fees, exceeding expectations and completely covering the administrative costs of the program. Based on the 2016 study’s estimate of 4,000–5,000 STRs operating in New Orleans and the number of licens-

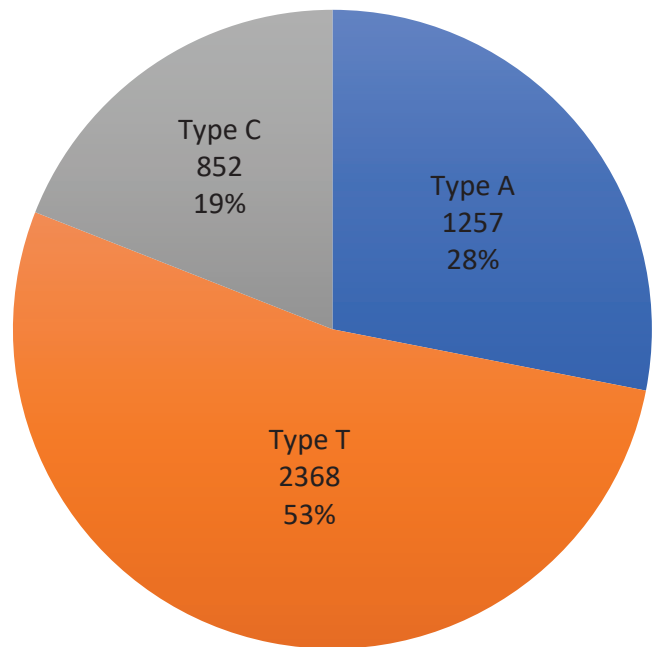


Figure 6. Breakdown of STR licenses by rental type. Courtesy City of New Orleans Department of Safety and Permits.

es issued during the first year of program implementation, DSP believes the compliance rate is in the high 90 percent range.

In terms of enforcement activities, DSP opened 1,719 violation cases between January 1, 2017, and April 1, 2018, from which 280 administrative hearings were held and \$268,538 in total fines assessed.

The mechanisms for identifying and enforcing rentals in prohibited zones and licensing requirements were successful, but challenges remained. Type T rentals made up the largest share of licenses issued, but also proved to be the most problematic from both a regulatory and neighborhood perspective. This became the single largest liability to the program.

Key to administering the Type T license was the ability of the city to monitor and enforce compliance on the 90-night annual rental cap provided in the adopted regulations. While the listing platforms initially represented that they would be supportive of the licensing program and provide the necessary information to DSP, both Airbnb and HomeAway subsequently declined to provide complete rental documentation based on their interpretation of the Stored Communications Act (see sidebar). As a result, while monthly reports could tell the enforcement team how many nights all STRs were rented, those

numbers were not tied to specific properties or listings to allow meaningful, consistent enforcement action.

Because of the problems caused by the Type T STRs, the public was not completely satisfied with the initial iteration of the STR program. While the city was proud of the overall success rate in terms of registration and enforcement effectiveness, the inability to effectively police the annual rental cap led to a public pushback against elected officials who were viewed as being nonresponsive to this inability.

Implemented and Proposed Changes to the Program

The city's municipal elections were held in the fall of 2017, and STRs featured prominently in city council campaigns. Of the three district councilmembers running for reelection, the only one reelected was the sole councilmember to vote against the STR regulations. The new city council came into office with a clear intention of revisiting the regulatory regime.

During the transition period, then-Councilmember LaToya Cantrell (now mayor) initiated two separate actions that would lay the foundation for updating the city's STR regulations. The first was the proposal and ultimate adoption of a zoning text amendment to require conditional use approval for some STRs

The Stored Communications Act and Its Effect on STR Enforcement

As planners negotiate the regulatory and enforcement balance of STR program development, the city or county legal team should be consulted in the early stages of the process about the Stored Communications Act (SCA), an element of the Electronic Communications Privacy Act of 1986 intended to ensure the privacy of electronic records created by a company about its customers. If communities are developing local regulations reliant on data sharing by hosting platforms, they must be aware of the SCA and ensure the proper provisions are in place to minimize its impact on STR enforcement efforts.

New Orleans's data-sharing provision within the new licensing regime required routine reporting of basic rental information to help the city monitor compliance with the 90-night rental limitation for Type T rentals. Key to the effectiveness of this agreement was the provision for issuance of administrative subpoenas to get specific user data based on potential violations identified based on the anonymized data being provided on a monthly basis. While the hosting platforms suggested the administrative subpoena provisions during regulatory negotiation, once these subpoena were issued they became less-than-willing partners in providing the necessary data to match anonymized data to specific properties or licenses.

Under the SCA, platforms have to provide any requested data subject to either a subpoena issued by a court or an administrative subpoena authorized by federal or state statute. In the case of New Orleans, the subpoena authority under which DSP requested this information was the city's home rule charter, which is enabled by the Louisiana Constitution. However, the hosting platforms deemed this insufficient to turn over

anything more than "basic subscriber information" as provided by the SCA and subsequent jurisprudence. (There is currently no legal consensus on how the SCA should be applied to listing platforms.)

The "basic subscriber information" provided illustrates how difficult Internet regulation can be, particularly for a local government. To fill in the gap between specific property and anonymized identification number, HomeAway and Airbnb provided the first and last name of the account holder and their user identification number, email address, and telephone number—but not the license number issued by the city associated with the listing or the property address. As a result, city staff needed to match names, email addresses, and telephone numbers with over 4,000 issued licenses. This highlighted one problem that DSP had not planned for: licenses issued to property owners but listings posted or managed by a third party.

In revisiting the 2016 regulatory structure, deficiency in data production was one of the primary concerns. Had the city been aware of the industry's use of the SCA as a shield against providing the information required to properly implement and enforce the proposed program, the regulations as initially adopted would have likely looked quite a bit different. This would have likely ranged from creating a licensee-reporting requirement to elimination of the Type T license entirely. What is certain is that the changes being evaluated by the city planning commission and the city council in 2018 are keeping the SCA in the forefront as they evaluate how best to modify the STR licensing regime to ensure compliance and enforceability.

in the city's historic urban core business districts. This change was made in response to the concerns of neighbors that structures containing apartments were being converted into "hotels" in otherwise neighborhood-scale commercial corridors. The second action directed the City Planning Commission to conduct a full study of the new STR regulatory regime.

When the new city council took office in May 2018, it wasted no time in delivering on the promises made to its constituents. At the second meeting of the new term, the council adopted Motion M-18-195: a partial moratorium on new STR licenses with a full prohibition on Type T STR licenses in the historic areas of the city, the central business district, and mixed use districts, and a prohibition of new Type C STR licenses on the first floor of mixed use buildings, though they would remain permitted on upper floors. This moratorium was scheduled to last nine months while the commission completed its study and the city's regulations were updated.

The commission completed its updated study in early October 2018 (New Orleans City Planning Commission 2018). While the study makes several recommendations, the most substantial is the elimination of the problematic Type T STRs. Type C STRs would carry on, but the Type A STRs would be redefined to cover nearly any owner-occupied property. A new third type of license, valid for special events only, would allow owners or rental tenants to rent out a permanently occupied dwelling unit for not more than 14 days per year. At the time of writing, the city council has not yet taken action on the report, but it is likely that that will do so within the next several months.

Lessons Learned

STRs are a planning challenge: they are residential units by design but can act like hotels in their impact on a community. A proliferation of these uses—particularly in tourism-heavy cities—can lead to significantly increased housing costs and begin to price out actual residents in favor of residents-for-a-day. New Orleans's experience in studying and regulating STRs highlights several key considerations in dealing with this issue.

Ensure that regulations are clear and enforceable. In developing the STR regulations, planning staff worked closely with DSP to ensure that enforcement was based on the information likely to be available. Compliance is easily provable for regulations such as requiring a license and requiring that license to be posted. Some STR regulations lie in more of a gray area, such as nuisance prohibitions, but with rigid enforcement standards and vigilant neighbors these have also proved enforceable.

Partner with listing platforms when possible. Partnerships can either be formal or informal, but platform buy-in helps ensure consistent communication on regulatory requirements and may aid in enforcement. The city's data-sharing agreement with Airbnb allowed DSP to coordinate actions to de-list unlicensed properties posting on that platform. While this was not a complete solution to illegal rentals, it greatly improved compliance rates throughout the city and helped stop rental listings in the Vieux Carré.

Recognize your limitations. Initially, residents and councilmembers pushed to regulate STR listing platforms in the same way that DSP regulates transportation network companies (TNCs). Where the city has the authority to regulate TNCs due to the long-standing regulation of vehicles-for-hire, that level of regulatory authority was not possible for dwellings, where state law prohibits local governments from regulating contractual transactions relative to real property. To address this lack of direct regulatory authority, the city negotiated data sharing to the extent possible and crafted regulations that could withstand legal scrutiny.

Coordinate STR policy making with policies surrounding affordable housing. While New Orleans began to take this approach by requiring contributions to the City's Neighborhood Housing Improvement Fund, there was no consistent strategy for the investment of those fees. A combination of this and the proliferation of Type T STRs had the effect of pricing out long-time residents and artificially inflating property values due to the expectation of return on investment.

Conclusion

During 2017, the City of New Orleans became a model for STR regulatory compliance across the nation. Thanks to data sharing and some regulatory assistance from Airbnb, DSP was able to successfully license nearly 5,000 short-term rentals. This represents a compliance rate above 90 percent in less than one year, while many peer cities struggle to reach a 20 percent compliance rate after one year.

While the city was proud of this achievement, it understood that the regulatory regime would need to be revisited after the first year to evaluate neighborhood impacts and overall compliance—and indeed, regulatory enforcement proved more difficult, especially for the Type T temporary STR licenses. The city hopes to resume enforcement of licensing standards in cooperation with listing platforms as this regulatory revision comes to a close.

Just as New Orleans is now revisiting the initial regulatory structure to respond to changing dynamics of the industry and public sentiments, planners will need to be prepared to continually address issues like STRs for years to come. There is no formula which can be applied across every jurisdiction to address the impacts of the use and the concerns of residents. Rather, it is our job to understand the implications of decision making, continually observe the effects of those decisions, and recommend change when necessary—recognizing that maybe we were wrong the first time.

Regulation of emerging technologies is not new to planners, and STRs will not be the last challenge of this sort we face as practitioners. Combining best practices and lessons learned in New Orleans can help communities across the country develop and implement regulatory structures that will adapt to emerging technologies and industries while also protecting residents and the stability of communities.

About the Author

Jared E. Munster, PHD, AICP, was the director of the Department of Safety and Permits for the City of New Orleans from No-

vember 2012 through June 2018 and worked closely with the City Planning Commission, City Council, and the Landrieu and Cantrell administrations in shaping the regulatory and enforcement processes of the New Orleans Short Term Rental Program. Munster holds an undergraduate degree in urban studies and planning, a master's degree in urban and regional planning, and a PhD in urban studies from the University of New Orleans. He is also a certified floodplain manager and is presently serving as the interim executive director of the Regional Transit Authority of New Orleans.

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PAS Memo is a bimonthly online publication of APA's Planning Advisory Service. James M. Drinan, JD, Chief Executive Officer; David Rouse, FAICP, Managing Director of Research and Advisory Services; Ann F. Dillemath, AICP, Editor. Learn more at planning.org/pas

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TOWN OF ELIZABETH

COMMUNITY DEVELOPMENT DEPARTMENT

TO: Planning Commission
FROM: Pam Cherry, Community Development Director
DATE: October 18, 2022
SUBJECT: Staff Report

- Elizabeth West hearing before the Board of Trustees is scheduled for October 25
- Wine in the Pines is considered a success with about 400 tickets sold
- We continue to receive inquiries regarding Frontier high school and the Abraham property
- We have an intern from the high school working two afternoons a week in our department learning about land development and the engineering that goes into a project
- There was a Public check-in meeting on the Main Street Streetscape Plan last Thursday evening
- Two of the tablets are in and will be delivered to Julie and Barb.
- Pine Ridge Apartments, the first two buildings are going vertical
- Cleary building interior finishes are in progress. Cleary has a number of inquiries regarding the dirt stockpiles. When the amount that they need for backfilling purposes is determined the remaining dirt will be provided to others for other projects.