

VILLAGE OF RUIDOSO ORDINANCE 2017-06

AN ORDINANCE AMENDING THE VILLAGE OF RUIDOSO MUNICIPAL CODE OF ORDINANCES CHAPTER 54 LAND USE, SECTION 54-106 SHORT-TERM RESIDENTIAL RENTAL OVERLAY ZONE, TO REVISE THE PROCEDURE FOR REGISTRATIONS AND ADMINISTRATION.

WHEREAS, the Governing Body of the Village of Ruidoso previously adopted Ordinance 2009-06 to establish a process for regulating short-term residential rentals within the Village of Ruidoso; and

WHEREAS, Ordinance 2009-06 has had a positive effect on the Village by providing viable income-earning potential for property owners, offering unique options for visitors to the community, and enhancing local tax revenues, with the intent to minimize adverse impacts to neighborhoods; and

WHEREAS, the Governing Body of the Village of Ruidoso has determined that certain amendments are required to establish a more equitable and streamlined process, that allows for enhanced enforcement capabilities, while building upon the foundation of the original ordinance; and

WHEREAS, the Governing Body has considered the outcomes of recent case law as decided by the New Mexico Court of Appeals in *Mason Family Trust v. DeVaney* 146 N.M. 199 (2009) and *Estates at Desert Ridge Trails Homeowners' Ass'n v. Vasquez*, 300 P.3d 736 (2013), wherein the Court affirmed the ability for short-term nightly residential rentals to be permissible uses within residential neighborhoods; and

WHEREAS, numerous public meetings, hearings and forums were held from June through December 2016 consulting the public and relevant stakeholders to obtain input on revisions to the existing code; and

WHEREAS, the Village of Ruidoso Lodgers' Tax Committee was consulted on this matter, recommending approval at its August 11, 2016 regular meeting and the Village Planning Commission conducted a duly advertised public hearing regarding this ordinance on March 7, 2017, during which the Planning Commission found that the amendments were in the best interest of the public and recommended that the Governing Body adopt the Amendments contained herein; and

WHEREAS, the Governing Body of the Village of Ruidoso conducted a duly advertised public hearing to consider this ordinance on May 9, 2017.

NOW THEREFORE, BE IT ORDAINED By The Governing Body of The Village of Ruidoso, that Village Municipal Code Chapter 54 is hereby amended as follows:

<u>Single Underline</u> is text that is proposed for adoption. Strike-out is language deleted.
--

Section one. Section 54-106 is amended to read:

Sec. 54-106. - Short-term residential rental overlay zone.

- (a) **Purpose of zone.** The Governing Body of the Village of Ruidoso [~~Council~~] finds and declares as follows:
- (1) Short-term residential rentals provide a community benefit by expanding the number and type of lodging facilities available to seasonal visitors.
 - (2) Short-term residential rentals are not commercial, but are strictly a residential use of the property under the Village of Ruidoso Municipal Code.
 - (3) The provisions of this section are necessary to prevent a burden on village services and impacts on residential neighborhoods posed by short-term residential rentals.
- (b) **Applicability of requirements.** This overlay zone applies to all non-commercial residential property within the village regardless of the zoning district. These requirements of section 54-106 shall apply to dwelling units that are rented at some time during the year for a short duration that are not part of a commercial business enterprise such as a hotel, motel or commercial cabin rental located on a single lot or a group of contiguous lots within a commercial zoning district. These requirements do apply to individual dwelling units on non-contiguous property owned and operated by a hotel, motel or commercial cabin rental owner.
- (c) **Definitions.** For purposes of this section, the following words and phrases shall have the meaning respectively ascribed to them by this subsection:
- (1) Local ~~e~~Contact ~~p~~Person means an owner, representative of the owner or local property manager who lives in the Village of Ruidoso or within proximity of the village limits such that he/she is available to respond within an hour or less to

tenant and neighborhood questions or concerns and is authorized to respond to any violation of this section and take remedial action.

- (2) Managing ~~a~~Agency or ~~a~~Agent means a person, firm or agency licensed with the New Mexico Real Estate Commission representing the owner of the residential rental, or a person, firm or agency owning the residential unit.
 - (3) Operator means the person who is proprietor of a residential rental, whether in the capacity of owner, lessee, sub-lessee, or mortgagee in possession.
 - (4) Owner means as defined in section 1-2 of this Code.
 - (5) Remuneration means compensation, money, rent, or other consideration given in return for occupancy, possession or use of real property.
 - (6) Rent means the consideration charged, whether or not received, for the occupancy of space in a residential rental, valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature, without any deductions therefrom whatsoever.
 - (7) Short-~~Term~~ ~~Residential~~ ~~Rental~~ means one or more dwelling units, including either a single-family detached or multiple-family attached unit, rented for the purpose of overnight lodging for a period of not less than one night nor more than 29 consecutive days to the same person or persons.
 - (8) Sleeping Unit as defined by the International Building Code, 2015, and as amended, means a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.
 - (9)Third-Party Internet Listing Service means an internet-based (or online) marketplace that connects owners of short-term residential rentals to potential renters by way of a website and in exchange for a service fee. Third-party Listing Agent shall not mean Local Contact Person or Managing Agency or Agent as defined in this Chapter.
- (d) **Short-term residential rental permit required.** No owner of a residential dwelling unit shall rent the unit for a short term without having a current valid short-term residential rental permit issued by the Village of Ruidoso. Short-term residential rental permits are issued to the owner for a period of three years and are not transferable nor refundable.
- (1) Nothing contained within this section shall be construed to abridge the ability of bona fide neighborhood covenants and/or deed restrictions to be more

restrictive than the regulations within this section. Such covenants and deed restrictions shall not be enforceable by the Village, but remain the responsibility of property owners to ensure compliance within the applicable neighborhood.

- (e) **Application for short-term residential rental permit.** The dwelling unit owner or managing agency or agent shall apply to the village for a short-term residential rental permit and supply, as at a minimum, the following information:

- (1) The maximum number of occupants and vehicles that the dwelling unit can accommodate.

a. The parking calculation [is to] shall be based upon a minimum of 1 (one) off-street parking space provided per sleeping unit.

b. The occupancy per sleeping unit shall be determined by the floor area of each sleeping unit, number of restrooms per dwelling unit, infrastructure suitable to service the occupants and shall be in accord with habitable and occupancy codes contained within the duly adopted International Residential Code or successor.

~~[(2) The length of time that the applicant requests that the permit be issued for, not to exceed three years.]~~

~~(2)~~ (3) The name, address, email address and contact telephone numbers (including 24-hour emergency contact number) of the owner of the residential rental for which the permit is to be issued.

~~(3)~~ (4) The name, address, email address and contact telephone numbers (including 24-hour emergency contact number) of the agent, representative or local contact person for the owner of the residential rental.

~~(4)~~ (5) An application fee.

~~(5)~~ (6) Safety requirements and checklist; certification. ~~[Fire department inspections]. [The Ruidoso Fire Department will be responsible for conducting basic fire inspections of all less than 30 day rental properties. The department will note all National Fire Protection Association Life and Safety Code issues and will]~~ The property owner or their managing agency or agent shall specifically ~~[inspect for]~~ provide the following:

- a. An ABC type fire extinguisher(s) to be mounted at ~~[all]~~ points of egress, with at least 1 provided per floor and minimum 1 per dwelling unit with at least 2 per dwelling unit if greater than 1,000 square feet, at a height not to exceed 48 inches. Extinguishers must be inspected and maintained according to state requirements and must properly display the inspection history of the device.

- b. ~~[Approved single station smoke alarms installed at the highest point in every sleeping room.]~~ Approved (and working) smoke alarms installed as per manufacturer's instructions in every sleeping room, in compliance with the 2015 International Building Code and 2015 International Residential Code, and on every level of the home, including the basement.
 - c. Every sleeping room and living area with access to a primary means of escape ~~[must]~~ shall ~~[and located to]~~ provide a clear, unobstructed path of travel to the outside.
 - ~~[d. A floor diagram reflecting the actual floor arrangement, exit locations and room identification must be posted with emergency contact numbers at, or immediately adjacent to the primary entrance to the building.]~~
 - ~~e. [Fees. The Ruidoso Fire Department will assess a fee of \$25.00 per inspection for the initial inspections and \$15.00 per return inspection when needed.]~~
 - ~~f. Scheduling. Short term rentals will be scheduled for fire inspection once every three years. Scheduling will occur through the village fire marshal's office.]~~
 - d. Where approved, an open fire permit in accordance with Section 42-42 of the Village of Ruidoso Code of Ordinances shall be posted at, or immediately adjacent to the primary entrance to the building. Outdoor cooking appliances shall be properly maintained and notification visibly posted for their permitted use in accordance with Section 42-42. Indoor fireplaces shall be properly maintained and inspected by a qualified person as necessary.
 - e. Authority for code compliance inspection. By submitting application, the owner authorizes the Ruidoso Fire Department, the village code enforcement officer or other designated village employee or representative to conduct a code compliance inspection of the residence at intervals deemed appropriate by the Village, or if deemed necessary when it is alleged or suspected that a violation of this section may exist or have occurred.
- (6) (7) Owner/agent authorization.
- (7) (8) Gross receipts tax number certification and lodgers' tax registration number.

- ~~(8) (9)~~ ~~[Certification of notice]~~ **Proof of certified mail sent or proof of hand-delivered notice signed by the recipient** to all contiguous property owners that the subject property is to be used for short-term rental.
- ~~(10) Exterior signage on short term rental units which indicate availability, phone numbers or other type of information is prohibited.~~
- (9) The owner or managing agent/agency shall attest that they have met these requirements in each property registered as part of the initial rental registration and each successive renewal registration. The form utilized to attest to these requirements shall be part of the registration form provided by the Village and be authenticated by a Notary Public.**
- (f) **Application renewal or update.** Prior to the expiration of the permit or when there is a change to the information contained in the permit regarding ownership, changes in the structure or parking area, or contact person, a new permit application shall be submitted.
- (g) **Fees.** Fees are set forth in appendix A to this Code. The initial application fee sufficient to cover the cost of processing the application, reviewing the information submitted, and issuing a revised permit.
- (h) **Review of application and issuance of permit.**
- (1) The village shall complete review of the **initial** permit application **within [five] ten** business days. **Renewals of all permits shall occur prior to the third anniversary by the first (1st) day of August. Such permits that are active at the time of this ordinance adoption shall not need to be prorated if extending their expiration to coincide with the new renewal date.**
- (2) Once the application review is complete, the village shall notify the applicant of the decision of whether or not to issue the permit based on compliance with this section. If approval is granted, the village will issue a short-term residential rental permit specifying the maximum number of cars and the maximum number of occupants allowed. Failure to renew the permit within ~~[20]~~ **30** days ~~[of]~~ **after** the ~~[expiration of the previous permit]~~ **the applicable first (1st) day of August** shall subject the owner to payment of a late permit renewal penalty fee.
- (3) **An application for permit or renewal application shall be denied if:**
- (a) all applicable fees and taxes have not been paid, including Lodgers' Taxes as provided under Chapter 78, Article II of the Village of Ruidoso Code of Ordinances; or**
- (b) outstanding property nuisance or building code violations exist on the property; or**

(c) the applicant has not met the fuels management certification requirements of Section 42-80, or as amended, of the Village of Ruidoso Code of Ordinances; or [a renewal] permit will not be issued or renewed.]

(d) the owner of the property is not compliant with Subsection (h)(6) herein and has exceeded the number of adjudicated citations afforded under that subsection.

(4) Failure to comply with any provision of Chapter 78 of the Village of Ruidoso Code of Ordinances may result in a revocation of the permit for a 12-month time period at the discretion of the Planning Director.

(4)(5) If the dwelling unit owner plans to discontinue short-term residential rental of the property, a statement to that effect shall be filed with the village and the permit will be revoked.

(5)(6)

(a) In the event that two or more citations for violations of Village ordinances at a specific short-term dwelling unit result in convictions in the Village of Ruidoso Municipal Court within a 12-month time period, or in the event that three or more citations for violations of Village ordinances issued at a specific short-term dwelling unit result in convictions in the Village of Ruidoso Municipal Court within a 36-month period, the Village Manager or his or her designated representative shall revoke the permit for a period of 12 months. After that time, the property owner may reapply for a new short-term rental license after paying all applicable fees and providing self-certification of compliance with the fire safety requirements as detailed in Subsection (e)(5) herein. A warning letter shall be sent to the property owner after the first conviction. Violations shall also be subject to Section 1-6 of the Code for each conviction.

(b) Notwithstanding the provisions of Section 54-106(h)(6)(a) above, citations issued within a 24-hour period at the same short-term dwelling unit that result in more than one conviction in the Village of Ruidoso Municipal Court shall be counted as only one conviction.

(i) **Tenant notification requirements.** Each short-term residential rental unit shall have a clearly visible and legible notice posted by the owner or managing agency or agent within the unit on or adjacent to the interior of the front door containing the following information:

(1) A copy of the short-term residential rental permit.

- (2) The name of the managing agency, agent, property manager, local contact person or owner of the unit, and a telephone number at which that party can be reached on a 24-hour, seven days a week basis.
 - (3) The maximum number of occupants three years of age and older permitted to stay in the unit.
 - (4) The maximum number of vehicles allowed to be parked on the property.
 - (5) The number of on-site parking spaces and the parking rules for seasonal snow removal (if applicable).
 - (6) The specific procedures regarding the disposal of trash and refuse.
 - (7) A notification that an occupant may be cited and fined for creating a disturbance and/or for violating other provisions of the Village of Ruidoso Municipal Code.
 - (8) Notice that noise provisions contained in the Village of Ruidoso Municipal Code section 38-31 will be enforced and that quiet hours are to be observed between the hours of 11:00 p.m. and 8:00 a.m.
 - (9) Notification that the Village of Ruidoso Municipal Code prohibits ground fires, camp fires, fire rings and fire pits other than by permit.
 - (10) The 911 address for the property.
 - (11) Notice that animal leash laws contained in section 14-8 (prohibited acts; animal nuisances; vicious or dangerous animals) will be enforced.
 - (12) Notification that the Village of Ruidoso Municipal Code section 42-40 makes it "unlawful for any person to discard a lit cigarette, cigar, match or other type of incendiary material."
- (j) **Exterior Advertising or Signage. Exterior signage on short-term rental units which indicate availability, phone numbers or other type of information is prohibited. For the purposes of this section, signage shall only be permitted if it includes the name of the dwelling unit or owner's name and does not include advertisement of the property.**
- (k) **Penalties for violation of requirements of this section.** In addition to any other penalties or fines authorized by the Village of Ruidoso Municipal Code, the owner of a short-term residential rental unit shall be required to pay a penalty as set forth in appendix A to this Code in order to obtain, retain or renew a short-term residential rental permit.
- (1) ~~[After 24 months from the adoption of this section],~~ Each day that an owner rents a unit for a short term without first obtaining a short-term residential rental

permit is considered a separate violation of the Village of Ruidoso Municipal Code as provided for in section 1-6.

- (2) The village code enforcement officer or other designated village employee or representative shall take action to correct the violation as provided for in this Code or state statute.
- (3) The first suspected or observed violation of this section by the Village may result in an initial warning notice requesting registration of the unregistered short-term residential rental unit in accordance with the provisions of this code without subject to penalty. Should the property owner fail to comply after receiving such initial notice from the Village, penalties may be assessed as provide elsewhere in this Code in Section 1-6, including the assessment of a registration fee twice the listed amount.**

Section two. Appendix A of the Municipal Code is hereby amended as follows:

FIRE PREVENTION AND PROTECTION (Chapter 42)	
Inspection of fire suppression systems, fire safety inspections and report preparation for new businesses, tents or canopies and every five-year reinspection, per one-half hour	25.00
Violation of Chapter 42, Fire Code	250.00
Fire inspection of nightly rental units	35.00
Reinspection of nightly rental units	15.00

LAND USE (Chapter 54)

(2)	Short-term residential rental permit:		
-----	---------------------------------------	--	--

	a.	Initial application	35.00	per single year permit; or
			70.00 <u>90.00</u>	for a 3- year permit
	b.	Late renewal	70.00 <u>120.00</u>	
	c.	<u>Fee for registering an unregistered rental after continued non-compliance with warning notification.</u>	<u>Twice listed amount in addition to applicable fines and penalties.</u>	

Section three. All other provisions of the aforementioned codes not specifically amended by this ordinance, shall remain unchanged and in full force and effect as written.

Section four. *Effective date.* The provisions of this Ordinance shall become effective fourteen (14) days upon the publishing of its adoption.

PASSED, APPROVED, and ADOPTED by the GOVERNING BODY of the VILLAGE of RUIDOSO this 9th day of May, 2017.

VILLAGE OF RUIDOSO

By: _____
Tom Battin, Mayor

(SEAL)
ATTEST:

Irma Devine, Village Clerk