

# STAFF REPORT – PLANNING & ZONING COMMISSION



MEETING DATE: October 10, 2016

Agenda Item #: 2

## SUBJECT:

### **Text Amendment, Case #16-07-TA:**

Public hearing, discussion and possible action regarding proposed modifications to the *Town of Carefree Zoning Ordinance 10th Publication*. These text amendments address Senate Bill 1350 (SB1350) which restricts local cities and towns from being able to regulate or limit the use of vacation rentals or short-term rentals within municipal boundaries. This is a public hearing and comments from the public will be taken.

## ATTACHMENTS:

- Exhibit "A": Zoning Ordinance Article II. Rules and Definitions and Article V. Uses Permitted in each Zoning District and Additional Requirements and Clarifications for Uses Permitted in each Zoning District.

## SUMMARY:

In May of 2016, Governor Doug Ducey signed into law Senate Bill 1350 that prevents cities and counties from banning short-term rentals and sets state rules for taxation. The bill was described as promoting quiet, clean, and safe neighborhoods while respecting property rights and encouraging economic growth.

Prior to SB1350, short-term rentals were essentially "flying under the radar" in most areas of the Valley, which prohibited less than 30-day rentals. Despite city/town ordinances, online services such as AirBnB, VRBO, HomeAway, and others were displaying listings of this type on their sites. The use of these sites not only placed homeowners in violation of the law, but also created an unfair playing field for the hotel industry where they are required to collect and remit additional taxes related to short-term lodging. SB1350 removed the controversy as to whether private property owners are allowed to rent out their home, as they see fit, on a short-term basis. And, a city, town, or other taxing jurisdiction can more effectively levy and collect a transaction privilege, sales, use or similar tax/fee (in Carefree this is a "Bed Tax") in relation to what is considered transient lodging (rentals of less than 30 consecutive days). This translates to more revenue for communities.

Local governments may regulate in terms of the public's health and safety related to fire and building codes, health and sanitation, transportation or traffic control, and solid and hazardous waste or pollution control. This includes nuisances such as noise, disturbance of the peace, excessive refuse, smells, parking, signs, and other issues as defined in the Zoning Ordinance and Town Code. In practice what this means is that Carefree may address these types of problems in a manner similar to a home occupied by an owner or long-term renter. Also, the bill does not affect third party private agreements such as Homeowners Associations (HOAs). HOAs may regulate time limitations of rental homes at their discretion.

In summary, SB1350:

- Prohibits Carefree from restricting the use or regulation of vacation rentals and short-term rentals.
- Allows the Town to regulate vacation and short-term rentals under current nuisance laws if the law is meant to protect public health and safety.
- Provides a mechanism to collect rental taxes and remit to the Arizona Department of Revenue.
- Allows a Homeowners Association (HOA) to ban vacation rentals and short-term rentals within their community

**PUBLIC PROCESS:**

This is a public hearing to provide opinion and solicit feedback to Town Council and possibly make a recommendation to Town Council regarding adoption of these new measures. The Town is required to adopt the new requirements before the end of this calendar year. Notice was placed in the *Record Reporter* on September 25, 2016 as well as posted on the Town's web site.

## ARTICLE II. RULES AND DEFINITIONS

### Section 2.02 Definitions

- (30) DWELLING, MULTIPLE -FAMILY: A building containing three (3) or more housekeeping units. ~~and used exclusively for residential occupancy.~~
- (31) DWELLING, SINGLE-FAMILY: A building designed for occupancy by one (1) housekeeping unit. ~~and used exclusively for residential occupancy.~~
- (32) DWELLING, TWO-FAMILY: A building designed for occupancy by two (2) housekeeping units in separate and distinct quarters. ~~and used exclusively for residential occupancy.~~
- (50) HOME OCCUPATION: An occupation or profession customarily conducted entirely within a dwelling and carried on by a member(s) of the housekeeping unit residing therein. The occupation or profession is clearly incidental and subordinate to the use of the dwelling for dwelling purposes and does not change the character of the dwelling. There are no employees other than a member(s) of the housekeeping unit residing in the dwelling. No mechanical equipment is allowed except for that which is customarily used for domestic, hobby, or household purposes. ~~Home occupation excludes the transient use of the dwelling.~~
- ~~(93) RESIDENTIAL OCCUPANCY: Non-transient used by one (1) housekeeping unit of a single-family dwelling, two (2) housekeeping units of a two-family dwelling, or three (3) or more housekeeping units of a multiple-family dwelling. Residential occupancy use is restricted to the occupants of a lot or building and their guests, where compensation is not paid or received and where no commercial activity (excluding home occupations) is associated with the use, such as but not limited to, providing services customarily furnished by a resort hotel, except as otherwise required by state and federal fair housing laws. Transient use, including rentals of single-family, two-family, or multiple-family dwellings for periods of less than thirty (30) consecutive days, is not residential occupancy.~~
- ~~(113) TIMESHARE: A use of any property arising from any arrangement, plan, or similar device, whether by membership agreement, sale, lease, deed, license or right to use agreement or by any other means, in which a purchaser, member, or guest or invitee thereof, in exchange for consideration, receives ownership rights in or the right to use property for any period of time annually or on some other periodic basis for a period of time less than a full year during any given year, but not necessarily for consecutive years (including, without limitation, a vacation license, club membership, corporate interest, general partnership interest, limited~~

~~partnership interest, vacation bond or beneficial interest in a trust). A unit that has been divided into fewer than twelve use or occupancy periods and used or occupied by owners or their guests for periods of not less than 30 consecutive days by the same occupant(s) is not a timeshare.~~

~~(115) TRANSIENT USE: Any use of any property, of occupancy by transients, including but not limited to, as a hotel/motel, inn, tourist home or house, bed and breakfast, guest ranch, resort hotel, boarding house, rooming house, apartment house, dormitory, public or private club, or time share as defined by §2.02(104). For purposes of this definition, "Transient" means any person who either at the person's own expense or at the expense of another obtains the right to use or occupy property on a daily or weekly basis, or on any other basis for a period of time less than thirty (30) consecutive days as provided by agreement, lease, license, or any other means, including any agreement to rescind or modify an existing agreement, lease, or license, which would result in a right to use or occupy property for a period of time less than thirty (30) consecutive days.~~

RENUMBER ACCORDINGLY

# ARTICLE V. USES PERMITTED IN EACH ZONING DISTRICT AND ADDITIONAL REQUIREMENTS AND CLARIFICATIONS FOR USES PERMITTED IN EACH ZONING DISTRICT

## Section 5.02 Additional Requirements and Clarifications (*Ord. #2006-05*)

- (8) Mixed use residential and non-residential uses are permitted, pursuant to the following regulations (Ord. #2013-03):
- (A) In existing buildings, one (1) or more residential dwelling unit(s) are allowed, subject to approval by the Zoning Administrator and the following criteria:
- 1) Such residential units are not allowed on the first floor and/or street level of the subject building.
  - 2) Prior to residential occupancy, approval is required by the Carefree Building Department for any change in the building occupancy use classification, pursuant to the Town's building code regulations.
  - 3) Each unit shall be used exclusively for residential occupancy and shall be occupied by no more than one (1) housekeeping unit.
  - 4) Accessory uses are allowed subject to Section 5.02(2).
  - 5) Shared housekeeping facilities for multiple housekeeping units are prohibited.
  - ~~6) Timeshares and/or transient use are prohibited.~~
  - 6)7) A minimum of two (2) onsite parking spaces per residential unit are required. Such spaces shall be specifically reserved for the associated residential units.
  - 7)8) Any improvements related to the residential units shall be designed such that the exterior of the building blends in with the architectural treatment, forms and style of the overall building. The intent is to establish the different uses within the subject building in a manner that ties them together in a whole, consistent appearance.
- (B) A Conditional Use Permit is required to allow new mixed use commercial and residential condominiums within a Commercial zoning district, and shall meet the following minimum criteria:

- 1) The application for the Conditional Use Permit or amendment thereof shall comply with the process prescribed in Article III., Section 3.08.
- 2) The minimum property size (net lot area) to permit residential condominiums within the commercial zoning district is 43,560 square feet (1 acre). All properties shall be internal to the Town Center and shall contain frontage on Easy Street. Any property within the Town Center containing frontage on Tom Darlington Drive, Cave Creek Road or Bloody Basin Road shall not be considered under this Conditional Use Permit for a mixed use development (residential and commercial uses). Additionally, any property outside of the Town Center as defined by the General Plan Land Use Map shall not be considered for this Conditional Use Permit for a mixed use development (residential and commercial uses).
- 3) The minimum size of each residential condominium shall be 1,200 square feet of livable area. A residential condominium plat shall be approved by the Planning and Zoning Commission. All units shall be used solely for residential occupancy. ~~Timeshare and transient use is prohibited.~~
- 4) All properties containing residential condominiums shall have commercial space maintained at street level unless otherwise approved by Town Council. If offices are proposed, the gross square footage of the commercial use at street level may not contain more than 25% offices unless otherwise approved by Town Council. An office associated with retail space is exempt from this requirement.
- 5) All required parking for the residential and commercial uses shall meet the minimum requirements set forth in this Ordinance unless otherwise approved by the Town Council through a development agreement.
- 6) A minimum of one half (1/2) of the required parking for the development, unless otherwise approved by Town Council, shall be placed below the adjacent street curb. All other required parking shall be placed at street level adjacent to or behind store fronts or as approved by Town Council. Parking placed behind store fronts shall be screened from pedestrian traffic along Easy Street.

- 7) The building's maximum height above finished grade (measured from finished floor elevation to ridge of roof or top of parapet) shall not exceed thirty-seven (37) feet. Parking which is fully recessed below finished grade (no day lighting) shall be exempt from maximum building height. In order to adequately screen roof top mechanical equipment, an additional six (6) feet may be permitted. Such screening shall be integrated into the architecture of the building through complementing mansard roof forms with varying slopes and vertical parapets. Elevator shafts and stair wells which are placed near the center of the mechanical equipment enclosure and/or roof deck may extend a maximum of nine (9) feet above the roof deck.
- 8) Along any public street, above eighteen (18) feet in height from finished floor elevation and up to the maximum building height of thirty-seven (37) feet from finished floor elevation, the building facade shall step back  $\frac{1}{2}$  foot (6 inches) for every foot in height. To permit horizontal undulation of the building façade to highlight building masses and to allow for separation between condominium balconies, a maximum of forty-five (45) percent of any elevation (façade) along any public street will be exempt from this step back requirement unless otherwise approved by the Town Council. Canopies or other shade structures may encroach within the building step back envelope.
- 9) Arcades shall extend a minimum of ten (10) feet from the building façade towards the property line and shall not exceed a height of eighteen (18) feet from finished floor elevation unless otherwise approved by Town Council. Shade trellises or awnings shall extend a minimum of six (6) feet from the building façade towards the property line. Where arcades, trellises or awnings are not used along the Easy Street retail frontage, native trees shall be used.
- 10) Lot coverage shall not exceed seventy percent (70%) of the net lot area. Arcades, shade structures and parking structures (covered parking decks) are excluded from lot coverage.