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Summary: Establish enforcement provisions related to short-term rentals, including but not limited to definitions, evidence of operation, evidence of violations, appeals and associated timeframes, stop activity orders, warnings, penalties, and penalty notices.

BILL NO. _____

ORDINANCE NO. _____

Title:

An ordinance amending the Washoe County Code at Chapter 125 (Administrative Enforcement Code) to establish enforcement provisions related to short-term rentals, including but not limited to definitions, evidence of operation, evidence of violations, appeals and associated timeframes, stop activity orders, warnings, penalties, and penalty notices. Short-term rentals are a type of temporary lodging booked for fewer than 28-days and operated out of private residences such as homes, apartments and condos. They are commonly made available through property management companies and online booking services, and are also referred to as vacation rentals. The amendments also resolve discrepancies arising within existing Washoe County Code chapters as a result of the new code language, and other matters necessarily connected therewith and pertaining thereto.

WHEREAS:

- A. This Commission desires to amend Washoe County Code Chapter 125 as part of its efforts to establish standards and processes for short-term rentals; and,

- B. Pursuant to Washoe County Code Section 2.030, this Commission initiated the proposed amendments to Washoe County Code Chapter 125, on December 10, 2019; and,
- C. The amendments and this ordinance were drafted in concert with the District Attorney; and,
- D. Following a first reading and publication as required by NRS 244.100 (1), and after a duly noticed public hearing, this Commission desires to adopt this Ordinance; and,
- E. This Commission has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, therefore it is not a "rule" as defined in NRS 237.060 requiring a business impact statement.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Washoe County Code Section 125.135, *Definitions*, is hereby amended to insert a definition of "Short-Term Rental" as follows

"Short-Term Rental" (STR) refers to existing single-family dwelling units where, for compensation, lodging is provided within either the entire home or a portion of the home for a rental period of less than 28-days. Short-term rentals are distinguishable from commercial lodging use types in that no meals may be provided within short-term rentals as part of the rental agreement and the home may only be rented out for short-term rental use to one group at a time. STRs are also often referred to as vacation rentals and are commonly made available through property management companies or online booking platforms.

SECTION 2. Section 125.157, *Stop Activity Order and Remediation Order*, is hereby amended as follows:

125.157 Stop activity order and remediation order.

- 1. If an enforcement official observes construction, grading, burning, loose animals, operating a business without a business license, **operating a Short-Term Rental (STR) without the required permit (to include the act of advertising said STR)**, or other activity in progress that is or is likely to be a violation of the Code, or the work or activity must be stopped to prevent unsafe conditions, or irreparable harm or damages, or is being conducted without first obtaining the required permits or approvals, the enforcement official may issue and serve a stop activity order. Upon issuance of a stop activity order all activity described in the order must cease.
- 2. The stop activity order shall:
 - (a) Name the respondent as well as any person who is ordered to stop the work or activity;
 - (b) Describe the location and nature of the illegal activity observed, **or advertised**, and why it appears to be a violation of the Code, with specific citation to the Code;
 - (c) Describe which activities must stop and the duration of the stop activity order;
 - (d) State what must be done, and a specific date by which to correct the situation;
 - (e) State the possible consequences of a failure to obey the order, including, as applicable:
 - (1) Penalties and fees (specify what those penalties and fees will be);

- (2) A misdemeanor criminal citation;
 - (3) A court complaint for injunctive relief or damages;
 - (4) Abatement, including summary abatement, by the county; and/or
 - (5) Any other relief authorized by law.
 - (f) Provide the name, address, phone number, and the email address of the enforcement official and any person who should be contacted to discuss or resolve the stop activity order; and,
 - (g) Describe the right to ask for a hearing before an administrative hearing officer.
3. Remediation order. If a violation of the Code threatens health, safety or welfare of the general public and immediate action is necessary to remove an unsafe condition, an enforcement official may issue a remediation order directing a person to:
- (a) Repair, safeguard, or eliminate a dangerous structure or condition;
 - (b) Clear debris, rubbish, refuse, litter, garbage, abandoned or junk vehicles, or junk appliances which are not subject to the provisions of Chapter 459 of NRS;
 - (c) Clear weeds and noxious plant growth; or
 - (d) Repair, clear, correct, safeguard or eliminate any other public nuisance as defined in the Code.
4. The remediation order shall:
- (a) Name the respondent and any/or other person who is ordered to remediate the illegal activity;
 - (b) Describe the location and nature of the violation of the Code (with specific citation to the Code), and explain that the condition is an unsafe condition requiring immediate remediation;
 - (c) List and describe the corrective actions that need to be taken to remedy the unsafe condition;
 - (d) Specify a date by which the respondent must abate the public nuisance;
 - (e) Specify the possible consequences of a failure to obey the order to include, as applicable:
 - (1) Abatement, including summary abatement, by the County;
 - (2) Penalties and fees (specify what those penalties and fees will be);
 - (3) A misdemeanor criminal citation;
 - (4) A court complaint for injunctive relief or damages;
 - (5) Any other relief authorized by law
 - (f) Describe the right to ask for a hearing before an administrative hearing officer, that such a hearing request must be prior to the deadline established to abate the public nuisance as stated in subsection (d) above, and to contact the administrative hearing office to request and schedule a hearing; and
 - (g) Provide name, address, phone number, and email address of enforcement official and any person who should be contacted to discuss or resolve the remediation order.
5. Stop activity orders and remediation orders should be personally served on the person ordered to stop or remedy the violation. In addition, all stop activity and remediation orders shall be sent to the respondent by certified mail, return receipt requested, to the address indicated on the assessor's records for the property. The order is effective on the earlier date of personal service or service by certified mail. Each person who serves a stop activity order or remediation order shall prepare a sworn affidavit specifying the date, time, and nature of service.
6. Any person who has been named and served with a stop activity order and continues to do any work in violation of the order, except work that is directed or approved by the enforcement official, is guilty of a misdemeanor, and each day or part of a day that the person continues to perform the work, activity, or allows the condition to continue is a separate offense. Any person who has been named in and served with a remediation order who unreasonably fails to perform the required remediation work by the deadline indicated shall be guilty of a misdemeanor, and each day or part of a day that the person continues to fail to perform the work shall be a separate offense.
7. The stop activity order or remediation order may provide for the imposition and collection of civil penalties and for the possibility of abatement, including summary abatement, as specified in this chapter. Administrative action fees may be assessed as contained in the master administrative enforcement penalty and fee schedule adopted by **resolution of** the board as part of any administrative enforcement process as set forth in this chapter.
8. Hearing required; appeals. The respondent who has received a stop activity order or remediation order may request an administrative hearing regarding the stop activity order or remediation order by contacting the administrative hearing office within 30 calendar days from the date the stop activity order or remediation order was served. Because of their injunctive nature, if the person who is served with a stop activity order or remediation order asks for a hearing, an administrative

hearing officer will expeditiously be appointed and a hearing will be conducted within 30 calendar days of the receipt of the appeal by the administrative hearing office. A stop activity order remains in effect pending the hearing. The deadline for a remediation order is suspended pending the hearing. The hearing will be conducted in accordance with the provisions for hearings, and the issuance, enforcement, and appeal of administrative orders as set out in this chapter. The decision of the administrative hearing officer may be taken directly to judicial review in accordance with this chapter at the option of the appellant. If appeal is made to the Board of Adjustment for violation of WCC chapters 100 and 110, the decision of the Board of Adjustment is subject to judicial review in accordance with this chapter. **Appeals of a decision of the administrative hearing officer regarding all other chapters of WCC shall proceed directly to petition for judicial review.**

9. A stop activity order or remediation order may be rescinded by the enforcement official that issued it, by the Director of the Community Services Department, by the County Engineer, by the County Building Official, by an administrative hearing officer, and/or by the Board of Adjustment, **with the exception that a stop activity order issued for operating a Short-Term Rental (STR) without the required permit may only be rescinded by the enforcement official that issued it, by an administrative hearing officer as part of an appeal proceeding, or by court order resulting from judicial review.**
10. Enforcement. If a hearing is held before an administrative hearing officer or the Board of Adjustment as provided in this chapter, then the decision or order shall be enforced as provided for in this chapter. If a hearing is not held, the enforcement official may proceed to enforce the stop activity order or remediation order through any of the administrative, civil, or criminal remedies provided in this chapter.

SECTION 3. Section 125.160, *Complaints, Warning, and Administrative Penalty Notice, Procedures*, is hereby amended as follows:

125.160 Complaints, warning, and administrative penalty notice, procedures.

1. Any person who observes a possible violation of the Code may notify the appropriate agency or department in person or by written communication, telephone contact, fax, or e-mail. Such a complaint is considered a public record under the law. After receipt of a complaint, the enforcement official will investigate the complaint if it is warranted.
2. Warnings. Whenever it is determined by the enforcement official that a violation of the Code exists, that is not a serious risk to public health, safety or welfare, the enforcement official shall start the formal enforcement process by providing to the respondent either an oral or a written warning seeking correction, mitigation, or remedy within a time frame specified by the enforcement official, but no more than 30 calendar days from the date the warning was served. The enforcement official may extend this time frame at the official's discretion to provide additional time to complete acts required for compliance with the Code. The enforcement official may also grant a request by the respondent for additional time to complete acts required for compliance with the Code. Extensions of time by the enforcement official are allowed if reasonable progress in the repair, correction, or abatement of violations is underway or there are extenuating circumstances that prohibit compliance within the established timeline, and a plan of action with accompanying time frames is made between the enforcement official and the respondent. **If the enforcement official determines that a violation of the Short-Term Rental (STR) ordinance has occurred, then no warning shall be issued due to the potential for serious risk to public health, safety or welfare created by the operation of a STR in violation of required standards, unless the enforcement official determines that the violation may be corrected through issuance of a warning without endangering the public health, safety or welfare.**
 - (a) The warning shall state:
 - (1) That respondent is in violation of the Code and the nature of the alleged violation, to include the Code citation of the violation;
 - (2) The action(s) needed to correct the alleged violation;
 - (3) The time given to correct the alleged violation, and that an extension of this time period may be requested of the enforcement official either orally or in writing:

- (i) If reasonable progress in the repair, correction or abatement of violations is underway, or there are extenuating circumstances that prohibit compliance within the established timeline; and
 - (ii) A plan of action with accompanying time frames is made between the enforcement official and the respondent;
 - (4) That an administrative penalty notice will be issued at the end of that period if the violation is not corrected;
 - (5) That an administrative penalty will be assessed at the time of issuance of an administrative penalty notice in the amount set forth in the master administrative enforcement penalty and fee schedule adopted by the board; and
 - (6) That the collections office may charge and collect any subsequent fees, penalties, and costs, to include interest, or follow any administrative actions authorized by state law and/or Washoe County Code, necessary to collect unpaid fees, penalties and costs. The amount of any unpaid fee(s), penalty(ies), and/or costs may be sent to the county collections office for further action, and may result in a lien being placed on the property to recover unpaid fee(s), penalty(ies) and/or costs.
 - (b) If no action is taken to correct the alleged violation within the time allocated by the enforcement official under the warning, the enforcement official shall issue an administrative penalty notice in conformance with this section or, upon consultation with the district attorney's office, seek civil or criminal remedies.
 - (c) The enforcement official shall determine if the alleged violation has been corrected within the time stated in the warning.
3. If, in the opinion of the enforcement official, a more urgent action is needed to safeguard public health, safety, or welfare, the official may, in lieu of a warning, issue an administrative penalty notice, issue a stop activity order and/or remediation order, or proceed with summary abatement in accordance with this chapter.
4. Administrative penalty notice. If the Code violation is not resolved as set forth in subsection 2 above, **or if the enforcement official did not issue an administrative warning pursuant to WCC 125.160.2 regarding the Short-Term Rental (STR) ordinance, then** the enforcement official shall issue an administrative penalty notice to the respondent except when a summary abatement, stop activity order, and/or remediation order is required in accordance with this chapter. Service of this administrative penalty notice shall be made pursuant to this chapter.
5. The administrative penalty notice shall include the following information:
- (a) The name and address of the respondent in violation. The notice shall contain the address, and may contain the assessor's parcel number of the real property, when applicable.
 - (b) If not contained in the warning, **or if a warning was not required pursuant to WCC 125.160.2 regarding the Short-Term Rental (STR) ordinance,** a statement from the enforcement official identifying the conditions or conduct that violate the Code and the specific Code citation of the Code which the respondent violated, **to include reference to the STR ordinance, as applicable.**
 - (c) If applicable, and not contained in the warning, a list of recommended corrections to bring the property or violation into compliance.
 - (d) A statement that the respondent who has received an administrative penalty notice may request an administrative hearing regarding the administrative penalty notice by contacting the administrative hearing office within 30 calendar days from the date the administrative penalty notice was served, **or in the case of a violation of the Short-Term Rental (STR) ordinance, within 14 calendar days from the date the administrative penalty notice was served.** The administrative penalty notice shall also inform the person served that failure to respond to the administrative penalty notice within 30 calendar days, **or within 14 calendar days if the penalty notice was issued for a violation of the STR ordinance,** of the date the administrative penalty notice was served shall be deemed an admission of liability and a waiver of any right to an administrative hearing.
 - (e) A statement of the penalty amount, and **a statement** that Washoe County will accept as payment in full for the administrative penalty one-half of the authorized penalty indicated on the administrative penalty notice if payment is received within 30 calendar days of service, **or in the case of a violation of the Short-Term Rental (STR) ordinance, within 14 calendar days**

from the date the administrative penalty notice was served. A respondent filing an appeal of an administrative penalty notice or paying the penalty after 30 calendar days of service, **or in the case of a violation of the STR ordinance, within 14 calendar days from the date the administrative penalty notice was served,** shall not be entitled to reduction of the administrative penalty provided for in this subsection. A request for an administrative hearing shall stay the required payment of the administrative penalty until the hearing is completed. Any unpaid penalties shall be turned over to the county collections office, **at the discretion and/or timeframe recommended by the enforcement official,** and a collections fee, payable to the collections office for cost recovery of the unpaid penalties, shall apply. The amount of the administrative penalty and collections fee is set forth in the master administrative enforcement penalty and fee schedule adopted by **resolution of** the board. The penalties and any fees assessed are cumulative.

- (f) The name, address, phone number, email address, and signature of the enforcement official, and any person who may be contacted to discuss or resolve the administrative penalty notice.
 - (g) A statement that the administrative penalty notice is not a criminal proceeding.
 - (h) A statement that each and every instance the act or omission exists after the deadline together with any granted extensions constitutes a separate and distinct offense.
6. The administrative penalty notice and/or an electronic facsimile thereof, must be filed with and retained by the issuing department and is deemed to be a public record of matters which are observed pursuant to a duty which is imposed by law and is prima facie evidence of the facts which are alleged therein.
 7. A peace officer or enforcement official may issue an administrative penalty notice to the same respondent for a second or subsequent violation of the same ordinance within a two-year period without being required to issue a warning.
 8. A peace officer or enforcement official may issue a criminal citation for a second or subsequent violation by the respondent of the same ordinance within a two-year period.
 9. The administrative penalty notice may be issued by peace officer or enforcement official based upon a written and signed statement of a complaining party. **Any photographic, audio, or video evidence submitted by the complaining party as part of the written and signed statement shall be time and date stamped, and the location from which the evidence was collected shall be attested to by the complaining party.** In such a case, the complaining party must appear at any hearing subsequently scheduled pursuant to this chapter to testify. If the complaining party does not appear at the hearing in the case, the administrative penalty notice will be dismissed and the respondent released from liability.
 10. An appeal to an administrative hearing may be requested during an administrative proceeding only after the enforcement official issues an administrative penalty notice.

SECTION 4. Section 125.165, *Administrative Fees, Penalties and Costs*, is hereby amended as follows:

125.170 Administrative fees, penalties and costs.

1. Administrative penalties will be assessed for a first, second, **third**, or subsequent violation of the same ordinance, as contained in the master administrative enforcement penalty and fee schedule adopted by **resolution of** the board.
2. Administrative action fees may be assessed as contained in the master administrative enforcement penalty and fee schedule adopted by **resolution of** the board as part of any administrative enforcement process as set forth in this chapter.
3. If any administrative fees, penalties, or costs remain unpaid after the date stated on the notice, the amount shall be sent to the collections office. A collections fee for cost recovery of the unpaid fees, penalties or costs shall be added to the fee, penalty and cost amount. The amount of the collections fee is contained in the master administrative enforcement penalty and fee schedule adopted by **resolution of** the board.
4. Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the county.

SECTION 5. General Terms.

1. All actions, proceedings, matters, and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this Ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this Ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this Ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then the offending provision or term shall be excised from this Ordinance. In any event, the remainder of this Ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

DRAFT: January 22, 2021

Passage and Effective Date

Proposed on _____ (month) _____ (day), 2021.

Proposed by Commissioner _____.

Passed on _____ (month) _____ (day), 2021.

Vote:

Ayes:

Nays:

Absent:

Robert Lucey, Chair
County Commission

ATTEST:

Nancy Parent, County Clerk

This ordinance shall be in force and effect from and after the
15 day of the month of April of the year 2021.