



TOWN COUNCIL

WORKSHOP AGENDA DOCUMENTATION

PREPARATION DATE: June 12, 2018
MEETING DATE: June 19, 2018

SUBMITTING DEPARTMENT: Legal
DEPARTMENT DIRECTOR: Audrey Cohen-Davis
PRESENTER: Audrey Cohen-Davis

SUBJECT: Draft Ordinances for residential rental licensing fees and program, and discussion regarding structure of Ombudsman position

PURPOSE OF WORKSHOP ITEM

The purpose of this item is to provide Town Council with draft ordinances for a residential rental licensing program and for a discussion on the ombudsman position or program to assist with residential rental issues.

DESIRED OUTCOME

To determine Council's policy preferences regarding draft ordinances for a residential rental licensing program and staff ideas regarding ombudsman position.

BACKGROUND/ALTERNATIVES

At the December 18, 2017 Town Council Workshop, the Town Council discussed potential residential rental policy options, including reiterating state and/or federal nondiscrimination law regarding housing, whether to create a licensing program as an ordinance and enforce the local law within the Town through the Contested Case Rules (which is an administrative process). The Town Council also discussed requiring a business license for persons leasing one or more residential units, and/or creating an ombudsman position and cooperation with Access to Justice. This item was continued for additional discussion.

At the March 19, 2018 Town Council Workshop, discussion was held on creating a licensing program, adopting residential rental ordinances and creating an ombudsman program to assist with residential rental housing disputes. **The Council passed a motion to direct staff to create licensing program for all rentals with the exception of properties where the owner resides on the property at least six months of the year, create an ombudsman program with all responsibilities as listed in the staff report, to include county counterparts in the process as necessary, and bring back for Council's consideration.**

The approved responsibilities/roles of the ombudsman delineated in the March 18 staff report are that the ombudsman will:

1. Generally assist with community education and awareness of the residential rental housing rights and laws, and coordinate with other agencies concerned with such issues.
2. Evaluate the facts of an individual matter and direct citizens to the right avenue of recourse (assist with setting up a mediation or point a citizen to Teton County Access to Justice) and/or the proper venue for recourse (state or federal discrimination matter versus the state circuit or district court).
3. Be granted investigative powers, in order to assist in resolving problems and grievances between a landlord and a tenant.
4. Document, identify issues and problems with residential rentals and landlord-tenant relationship, and recommend needed changes.

The below policy decisions will guide the final structure of an ombudsman program to assist with residential rental housing disputes, which can be presented at the July workshop.

Options for Structure of Ombudsman:

- 1) In-house Town Ombudsman: Since the last meeting, the Chief of Police Todd Smith and the Assistant Town Manager Roxanne Robinson discussed with the Mayor and the Town Attorney, that Victim Services, which is housed in the Jackson Police Department, has access to a grant to almost fully fund a 20 hour/week position. Staff believes that Victim Services might be a good place for the residential rental ombudsman services to operate in that this team is already providing services to the community. Chief Todd Smith will explain to Council that in his discussions with the state, that residential rental housing advocacy and assistance fits into the goals of victim services and they are comfortable with the combination of services being provided by that team. It may also be an option to have all three staff members on this team to assist citizens with these issues and services, combined with their current victim services work.
- 2) Independent Contract with Teton County Access To Justice for Ombudsman and/or Mediation Services (“TCATJ”): TCATJ is a nonprofit organization (similar to Legal Aid) serving citizens in Teton County, and sometimes Lincoln and Sublette County. TCATJ is funded by Equal Justice Wyoming, private grants and generous donations of the Teton County community. TCATJ contracts with local attorneys to provide civil legal representation to individuals who financially qualify to receive free civil legal services (income cannot exceed 200% of federal poverty guidelines, and individual assets cannot exceed \$5,000). If an individual earns between 200% - 250% of the federal poverty level, he or she can contact the Wyoming State Bar and apply for its Modest Means Program. Individuals who do not qualify for either can obtain assistance from TCATJ to find attorneys willing to offer a reduced fee. TCATJ is located on Willow Street in the Teton County Bar Law Library (who leases space from Teton County).

TCATJ also has a civil litigation mediation program for free or at a low-cost for assistance in resolving civil disputes. Mediators are available by appointment and are licensed attorneys trained and experienced in mediation or trained and experienced non-attorneys. There is a \$75/hour mediator fee although for parties with income at or below 300% of the federal poverty level, three (3) hours of mediation is free. Parties can appear without attorneys.

- 3) Ombudsman at the Jackson/Teton County Housing Department: In reaching out to the Housing Director of the Jackson/Teton County Housing Department, it is her opinion that the Housing Department does not have the capacity or the expertise to serve as an ombudsman. On an additional note, all employees at the Housing Department are county employees and as such, a further conversation with the county commissioners and county administrator would need to occur if this is the chosen option by the Town Council.

ALIGNMENT WITH TOWN COUNCIL’S STRATEGIC INTENT

This item aligns with Town Council’s intent to deliver quality services and facilities in a fiscally responsible and coordinated manner and to sustain Jackson’s unique character and continue to be the primary location for jobs, housing, shopping, educational and cultural activities by ensuring safe, healthy housing options for residents.

STAKEHOLDER ANALYSIS

The public at large, renters and rental property owners are the stakeholders.

FISCAL IMPACT

Bob McLaurin, the former Town Manager, added \$10,000 into the FY2019 budget for the ombudsman program, contract and/or services.

The ultimate fiscal impact of this item varies depending on the ultimate policy decisions Town Council makes and, in particular, what new staff will be required for administrative, enforcement and/or prosecution duties. If Town Council were to undertake enforcement of the state rental law, federal nondiscrimination law regarding housing, and federal anti-retaliation law regarding housing the fiscal impact would be significant, including the need to develop a new department within the Town to independently handle the investigations and administrative enforcement. This will likely require the creation of a separate Administrative Code for the Town.

At this time staff cannot provide a precise additional cost estimate but can do so with more specificity when Town Council's policy determinations are made on the regulations.

The fiscal impact of passage of an ordinance varies between \$250.00 and \$700.00 depending on the length of the ordinance. (Shorter ordinances average around \$350.00 and short franchise ordinances can reach \$700.00.) They appear in the newspaper the Wednesday following Town Council's action on third reading (two (2) days later). Should Town Council make changes to the ordinance on third reading, the ordinance would need to be re-advertised in its final form.

STAFF IMPACT

The initial staff impact of this item focused on the Legal Department's time researching the legal issues involved with the Town Council's policy choices, reworking the Contested Case Rules for a cleaner and clearer administrative process, drafting and revising the public information sheet, working with the Planning Department to ensure the Contested Case Rule revisions integrate into the existing Land Development Regulation enforcement procedures, and subsequently drafting ordinances & resolutions sought by Town Council.

Additional staff time has been spent researching ombudsman programs around the state and country and meeting with Access to Justice regarding programs and the potential for its assistance.

The legal department has prepared draft Ordinances to create a licensing program, spoke with county counterparts and Access to Justice, and the Chief of Police regarding the potential staffing of an ombudsman. As directed, staff added monies into the FY2019 budget for an ombudsman program.

Depending on how the Town Council chooses to regulate in this area, for example adopting and enforcing the state law in the Town, then further staff impacts would need to be evaluated, including the Legal Department creating of a separate Administrative Code, as well as ongoing capacity impacts on the Town Building Department, the Finance Department, the Fire Inspector and the Legal Department.

Depending on the decisions of the Town Council, an additional Town department may also need to be formed to enforce the Administrative Code, necessitating a staff capacity discussion and the hiring of new enforcement staff.

The staff impact of passage of ordinances after second reading is notable in the Town Clerk's office and involves preparing the ordinance for advertising and sending to the newspaper, updating the Jackson Municipal Code online and in hard copy for those receiving hard copy versions of the code. The ordinance is also printed and signed and placed in the permanent record storage book in the vault and indexed and posted on the website. The ordinance is also prepared and sent to the newspaper for advertising

LEGAL ISSUES

Legal review is ongoing.

ATTACHMENTS

- 1) Draft Ordinance Amending Section 5.16.027 regarding non-residential and residential license/permit fees (with tracked changes to current regulation)
- 2) Draft Ordinance enacting residential rental regulations

RECOMMENDATION

Staff has no recommendation at this time.

SUGGESTED MOTION

I move to direct staff to: _____

Synopsis for PowerPoint (120 words max):

Purpose:

The purpose of this item is to provide Town Council with draft ordinances for a residential rental licensing/permit program and for a discussion on the ombudsman position or program to assist with residential rental issues.

Background:

The Town Council has considered enacting residential rental protection measures for residents and landlords in the Town since November 2016 and staff has provided ongoing research support. The directive was to create licensing program for all rentals with the exception of properties where the owner resides on the property at least six months of the year, create an ombudsman program with all responsibilities as listed in the staff report, to include county counterparts in the process as necessary, and bring back for Council's consideration.

Fiscal Impact:

Bob McLaurin, the former Town Manager, added \$10,000 into the FY2019 budget for the ombudsman program/contract/services. The fiscal impact of this item varies depending on the ultimate policy decisions Town Council makes and, in particular, what new staff will be required for administrative, enforcement and/or prosecution duties. At this time staff cannot provide a precise cost estimate but can do so with more specificity when Town Council's policy determinations are made. The fiscal impact of passage of an ordinance varies between \$250 and \$700 depending on the length of the ordinance. (Shorter ordinances average around \$350 and short franchise ordinances can reach \$700.) They appear in the paper the Wednesday following Town Council's action on third reading (two (2) days later).

ORDINANCE __

AN ORDINANCE AMENDING AND REENACTING SECTION 5.16.027 OF THE MUNICIPAL CODE OF THE TOWN OF JACKSON PROVIDING LICENSING FEES FOR NON-RESIDENTIAL AND RESIDENTIAL RENTALS, AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED THAT:

SECTION I.

There is hereby amended and reenacted Section 5.16.027 of the Municipal Code of the Town of Jackson regarding regulations for Non-residential and Residential Rentals as follows:

Chapter 5.16

SPECIFIC LICENSE FEES – REGULATIONS OF PARTICULAR BUSINESSES

Sections:

- 5.16.010 Sales tax collecting businesses.**
- 5.16.020 Non-sales tax collecting businesses.**
- 5.16.025 Independent contractors and agents.**
- 5.16.027 Non-residential and residential rentals.**
- 5.16.030 Repealed. (Ord. 676 § 1, 2000.)**
- 5.16.035 Annual review of fees.**
- 5.16.040 through 5.16.680 Repealed. (Ord. 676 § 1, 2000.)**

5.16.027 Non-residential Commercial and Residential Rentals.

A. The business license fee for businesses that lease land, buildings or office space for non-residential purposes shall be One Hundred (\$100.00). The business license/permit fee for persons businesses that lease one ~~3(1)~~ or more dwellings, units or apartments for residential purposes shall be One Hundred dollars (\$100.00) for each residential rental unit permitted pursuant to Chapter 5.65 of the Municipal Code of the Town of Jackson. ~~No business license for residential rentals shall be required for businesses or owners of businesses that: a) own residential rental units in order to meet an employee housing requirement or are used by the business to house its employees; or b) already hold a business license with the Town.~~

(Ord. ____ § 1, 2018; Ord. 959 § 1, 2010; Ord. 929 § 1, 2009.)

Commented [AC1]: This sentence was moved to Chapter 5.65 for regulations; not fees.

SECTION II.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION III.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall

be deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

SECTION IV.

This Ordinance shall become effective after its passage, approval and publication.

PASSED 1ST READING THE ____ DAY OF _____, 2018.

PASSED 2ND READING THE ____ DAY OF _____, 2018.

PASSED AND APPROVED THE ____ DAY OF _____, 2018.

TOWN OF JACKSON

BY: _____
Pete Muldoon, Mayor

ATTEST:

BY: _____
Sandy P. Birdyshaw, Town Clerk

ATTESTATION OF TOWN CLERK

STATE OF WYOMING)
)
COUNTY OF TETON) ss.
)

I hereby certify that the foregoing Ordinance No. _____ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming, on the _____ day of _____, 2018.

I further certify that the foregoing Ordinance was duly recorded on page _____ of Book _____ of Ordinances of the Town of Jackson, Wyoming.

Sandy P. Birdyshaw
Town Clerk

ORDINANCE ____

AN ORDINANCE ADDING CHAPTER 5.65 OF THE MUNICIPAL CODE OF THE TOWN OF JACKSON REGARDING RESIDENTIAL RENTAL LICENSING REGULATIONS, PROHIBITIONS AND ENFORCEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED THAT:

SECTION I.

Chapter 5.65 of the Municipal Code of the Town of Jackson is hereby added to read as follows:

Chapter 5.65 RESIDENTIAL RENTAL PERMITS

Sections:

- 5.65.010 Preamble: Intent and purpose**
- 5.65.020 Definitions**
- 5.65.030 Prohibitions**
- 5.65.040 Residential Rental Permit Required**
- 5.65.050 Residential Rental Business Operational Requirements**
- 5.65.060 Permit Renewal**
- 5.65.070 Permit Expiration**
- 5.65.080 Permit Denial**
- 5.65.090 Appeal**
- 5.65.100 Fraud and Misrepresentation**
- 5.65.110 Administrative Enforcement**
- 5.65.120 Civil Penalty**
- 5.65.130 Criminal Penalty**

5.65.010 Preamble: Intent and purpose

- A. The intent and purpose of this ordinance is to establish procedures and standards by which residential rentals can be provided to the public in a manner that protects both the quality of their experience and the community of Jackson. It is the Town of Jackson's intent to establish residential rental regulations that promote a mix of lodging options to support Jackson's residents, while simultaneously upholding the health, safety and welfare of the public and preserving the long-term residential neighborhoods within the Town.

5.65.020 Definitions

- A. "Residential Rental" means the rental of all or a portion of a residential unit such that occupancy is for a term of more than one calendar month. One calendar month is the period of time from a day of one month to the corresponding day of the next month if such exists; or if not, to the last day of the next month. One calendar month shall be computed by excluding the first and including the last day (as from January 4 to February 3 or from January 31 to February 29).
- B. No Residential Rental business license shall be required for owners of businesses:
 - a) that own residential rental units in order to meet an employee housing requirement or are used by the business to house its employees; or b) where the owner(s) inhabit or occupy the property at a minimum of six (6) months of the calendar year, in an attached or detached structure upon the same parcel as the rental unit.

5.65.030 Prohibitions

- A. No person shall lease or operate a Residential Rental without first obtaining a Residential Rental Permit in accordance with the provisions of this Chapter.
- B. No person shall lease or operate a Residential Rental in violation of the provisions set forth in this Chapter.

5.65.040 Residential Rental Permit Required

- A. An application for a Residential Rental Permit must be submitted and approved by the Town before a unit can be rented as a Residential Rental.
- B. Applications for Residential Rental Permits must be notarized statements made in writing and must include:
 - 1. The legal name, phone contact and mailing address of the residential rental unit owner;
 - 2. The physical and mailing address of the residential rental unit;
 - 3. If the unit is part of a common interest community and there is a homeowner's association for such community, a letter from the homeowner's association stating that Residential Rental is permitted and the application is being made with the homeowner's association knowledge;
 - 4. The name, phone number, mailing address, and an emergency contact number of a designated owner representative for the rental unit, who must be located within Teton County, Wyoming and who must be on call 24 hours a day, seven (7) days a week to manage the property; and
- B. The fee for each Residential Rental Permit shall be set forth in Section 5.16.027 of the Jackson Municipal Code.
- C. Where one agent or owner manages or owns multiple Residential Rental units within the same complex, a single consolidated permit application may be submitted. Each Residential Rental unit will be assigned a unique permit number.

If the units are managed by different owner representatives, despite being in the same complex, separate applications are required.

- D. It is the applicant's responsibility to notify the Town of any changes to the items set forth in this subsection if it changes during the year.
- F. Residential Rental Permits are nontransferable, except that upon death the property may be transferred to an immediate family member.

5.65.050 Residential Rental Business Operational Requirements

- A. **Advertising Requirements:** Any advertising, including but not limited to newspaper, radio, print, digital, or voice advertising of residential rental units must include:
 - 1. The valid permit number issued to the unit; and
 - 2. For digital advertising, an effective internet link to the Town of Jackson residential rental law.

5.65.060 Permit Renewal

- A. Residential Rental Permits must be renewed annually.
- B. Residential Rental Permit renewal applications shall be filed annually with the Town of Jackson Administrative Department. The Town may, for good cause, refuse to renew a permit.
- C. Residential Rental Permit renewal applications must be written notarized statements and must specify what, if any, information has changed since the previous year's application was filed.

5.65.070 Permit Expiration

- A. All Residential Rental Permits expire on the thirty-first (31) day of December each year.
- B. It is the duty of each permittee to renew and maintain a valid permit in conformance with the requirements of this Chapter. The Administrative Department shall mail to all permittees of the Town a renewal statement. However, failure to send out such notice or the failure of the permittee to receive it shall not excuse the permittee from a failure to obtain a renewal of their permit, nor shall it be a defense in a case alleging residential rental operation without a permit.

5.65.080 Permit Denial

- A. A Residential Rental Permit issued under this section shall be a personal privilege, good for the period for which issued, subject to the condition that it may, for good cause, be suspended, revoked, or denied. Good cause includes, but is not restricted to:
 - 1. Violating any of the provisions of this Chapter;
 - 2. Making a false material statement in the permit application;

3. Violating any ordinance relating to health and safety of the premises being rented or relating to zoning;
4. Operating a rental property that does not fully comply with the Town building and safety codes or the Land Development Regulations;
5. Otherwise becoming disqualified for the issuance of a permit under the terms of this Chapter; or
6. Violating any of the provisions of this Code or other ordinances of the Town or the laws of the United States or the State of Wyoming, the violation of which reflects unfavorably on the fitness of the holder to offer Residential Rental Unit(s).

B. Suspension, revocation, or denial may be instituted by any appropriate Town department, including Planning, Building, Fire, Police, Legal or Finance. Immediately upon such suspension, revocation, or denial written notice thereof shall be provided by the appropriate Town department to the permittee by certified United States mail, which will be addressed to the registered agent as identified in the then-current Residential Rental Permit. Immediately upon the giving of such notice the permit shall become null and void.

C. Such suspension, revocation, or denial may be in addition to any fine imposed.

5.65.090 Appeal

A. If a Residential Rental Permit is suspended, revoked, or denied by the Town the permittee may seek review of the decision, in which case the Town of Jackson Contested Case Rules shall govern the hearing and appeal processes.

5.65.100 Fraud and Misrepresentation

A. It is unlawful for any Residential Rental unit owner or their agent to induce or attempt to induce any person to rent a unit by knowingly or wantonly misinforming or misleading such person as to the time period for which the unit is available, the regulations applicable to Residential Rental units, the location of the unit within the Town of Jackson, or the rental rate of the unit.

B. It is unlawful for any Residential Rental unit owner or their agent to knowingly or wantonly misinform or mislead any Town agent or department during the initial permitting process or a renewal, or during any revocation, suspension, or denial process or hearing.

5.65.110 Administrative Enforcement

A. Advertising that offers a property as a Residential Rental shall constitute prima facie evidence of the operation of a Residential Rental and the burden of proof shall be on the owner, operator, or lessee of record to establish that the subject property is being used as a legal Residential Rental or is not in operation.

- B. Any communication by a property owner, manager, operator, or lessee to any person where the owner, manager, operator, or lessee offers their home for rent as a Residential Rental shall constitute *prima facie* evidence of the operation of a Residential Rental and the burden of proof shall be on the owner, operator, or lessee of record to establish that the subject property is being used as a legal Residential Rental or is not in operation.
- D. Other evidence of the operation of a Residential Rental without a valid permit number may include, but is not limited to: guest testimony, rental agreements, advertisements, and receipts or bank statements showing payments to the owner by a guest.
- E. A conviction under § 5.65.130 or a finding of guilt under § 5.65.120 for the operation of a Residential Rental without a permit shall result in the property owner being ineligible to apply for a permit for five (5) years.

5.65.120 Civil Penalty

- A. Any person in violation of any provision(s) of this Chapter is liable for a civil penalty not to exceed seven hundred fifty dollars (\$750.00) per day per violation.
- B. The civil penalty may be recommended in an administrative hearing and the proceedings shall be governed by the Town of Jackson Contested Case Rules.
- C. In addition to the penalty above set forth, the Town may institute an injunction or any other appropriate action to prevent or enjoin the operation of a Residential Rental within the Town.

5.65.130 Criminal Penalty

- A. A person may be prosecuted criminally in Municipal Court for violating any provision(s) of Sections 5.65.050, 5.65.060, 5.65.070, 5.65.080 or 5.65.100 of this Chapter if said person has already been found guilty of violating any provision of this Chapter under Sec. 5.65.120.
- B. Upon conviction the person shall be guilty of a misdemeanor and punished according to penalties provided in Section 1.12.010 of this Code. Each day during which a person operates a Residential Rental Unit for which a permit is required, constitutes a separate violation hereof.

SECTION II.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION III.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall

be deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

SECTION IV.

This Ordinance shall become effective after its passage, approval and publication.

PASSED 1ST READING THE ____ DAY OF _____, 2018.

PASSED 2ND READING THE ____ DAY OF _____, 2018.

PASSED AND APPROVED THE ____ DAY OF _____, 2018.

TOWN OF JACKSON

BY: _____
Pete Muldoon, Mayor

ATTEST:

BY: _____
Sandy P. Birdyshaw, Town Clerk

ATTESTATION OF TOWN CLERK

STATE OF WYOMING)

) SS.

COUNTY OF TETON

I hereby certify that the foregoing Ordinance No. ____ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming on the ____ day of _____, 2018.

I further certify that the foregoing ordinance was duly recorded on Page ___ of Book ___ of the Ordinances of the Town of Jackson, Wyoming.