

ORDINANCE NUMBER 731

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AMENDING THE MUNICIPAL CODE TITLE 5, BUSINESS TAXES, LICENSES AND REGULATIONS, BY ADDING A NEW SECTION 5.08, SHORT-TERM RENTALS AND VACATION RENTALS REGULATING SHORT-TERM RENTALS AND VACATION RENTALS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS local governments may regulate short term-rentals and vacation rentals ("vacation rentals") in accordance with Arizona Revised Statutes ("A.R.S.") § 9-500.39; and

WHEREAS the City of Cottonwood deems it necessary to adopt certain regulations regarding the use of property as a vacation rental to protect the health, safety, and welfare of the City's residents; and

WHEREAS a central and significant goal for the City of Cottonwood is to protect the health, safety, and welfare of the City's residents, preserve its housing stock, and maintain the quality and character of residential neighborhoods; and

WHEREAS the City of Cottonwood will require all vacation rentals to register and pay registration fees; provide an emergency point of contact to respond to compliance and emergencies in a timely manner; provide neighbor notification; and disclose certain information about the vacation rental in each advertisement; and

WHEREAS the City of Cottonwood will require all short-term rentals to obtain and maintain a valid transaction privilege tax ("TPT") license number, provide proof of the TPT license to the City of Cottonwood, and require disclosure of the TPT number on each advertisement; and

WHEREAS the City Council finds that it is reasonable, necessary and appropriate to establish penalties and fines that apply to vacation rentals;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AS FOLLOWS:

That the Cottonwood Municipal Code, Title 5 Business Taxes, Licenses and Regulations, is hereby amended by adding Chapter 5.08 Short-Term Rentals and Vacation Rentals, to read as follows:

CHAPTER 5.08. SHORT-TERM RENTALS AND VACATION RENTALS

Sections:

5.08.010	<u>Purpose.</u>
5.08.020	<u>Definitions.</u>
5.08.030	<u>Registration Required; Penalties.</u>
5.08.040	<u>Emergency Point of Contact Requirements; Penalties.</u>
5.08.050	<u>Compliance with the Law; Prohibited Uses.</u>
5.08.060	<u>Neighbor Notification Required.</u>
5.08.070	<u>Advertisement Requirements.</u>
5.08.080	<u>Posting on the Property Required.</u>
5.08.090	<u>Suspension of Operation.</u>
5.08.100	<u>Enhanced Penalties.</u>
5.08.110	<u>Appeals.</u>
5.08.120	<u>Judicial Relief.</u>
5.08.130	<u>Severability.</u>

Sections:

5.08.010 Purpose.

This Chapter is adopted to protect the health, safety, and welfare of the community of the City of Cottonwood by enacting reasonable regulations for short-term rentals and vacation rentals. These regulations are in addition to any other applicable codes, regulations and ordinances of the City of Cottonwood, and do not supplant them except as otherwise provided herein.

5.08.020 Definitions.

In this Chapter, unless the context or definitions in A.R.S. § 9-500.39 indicate otherwise, the following terms or phrases are defined as follows:

“Advertisement” means any method of soliciting the use of property for vacation rental purposes.

“Applicant” means the owner or owner’s designee who applies with the City for a permit or renewal of a permit.

"Days" shall mean calendar days unless stated otherwise.

"Designee" and "Agent" are interchangeable for purposes of this Chapter and mean any person or persons with the charge, care, or control of any property, dwelling unit, or portion thereof. "Designee" includes the "emergency point of contact."

"Emergency point of contact" means the owner or individual designated by the owner to: (i) serve as the local twenty-four (24) hour emergency point of contact for the vacation rental; and (ii) respond to complaints and emergencies relating to the vacation rental in a timely manner as required by this Chapter.

"Neighbor notification" means the written notice provided by the owner to each single-family residential property adjacent to the vacation rental property, directly across from the vacation rental property, and diagonally across the street of the vacation rental property that includes the valid permit number issued by the City, the physical address of the vacation rental, and the name, address, and twenty-four (24) hour telephone number of the emergency point of contact.

"Nonresidential use" means any use that is not permitted in a residential zoning district pursuant to a City zoning ordinance.

"Online Lodging Marketplace" has the same meaning prescribed in A.R.S. § 42-5076.

"Owner" means any person who, alone or with others, has title or interest in a property, dwelling unit, or portion thereof, with or without accompanying actual possession thereof, and includes any person who as agent, executor, administrator, trustee, or guardian has charge, care, or control of any property, dwelling unit, or portion thereof.

"Person" means an individual, public entity, firm, corporation, partnership, limited liability company, trust, association, or any other business entity or juridical person, whether operating on a for-profit or nonprofit basis.

"Short-term rental" and "vacation rental" are interchangeable for purposes of this Chapter and means any individually or collectively owned single-family or one-to-four-family house or dwelling unit, or any unit or group of units in a condominium or cooperative, that is also a transient public lodging establishment or owner-occupied residential home offered for transient use. "Vacation rental" does not include:

- i. accommodations or property that is classified for property taxation under A.R.S. § 42-12001; or
- ii. any unit that is used for any nonresidential use, including a special event that would otherwise require a permit, retail, restaurant, banquet space, or other similar use.

"Transaction privilege tax license" is the license issued by the State of Arizona pursuant to A.R.S., Title 42.

"Transient" has the same meaning prescribed in A.R.S. § 42-5070.

5.08.030 Registration Required; Penalties.

A. *Vacation rental registration required.* Prior to use of a property as a vacation rental, the owner of the vacation rental shall register the vacation rental with the City. Renting, or offering for rent, a vacation rental without complying with the registration requirement in this section 5.08.030 is prohibited.

B. *Registration application.* The owner of a proposed vacation rental shall submit to the City a registration application on a form furnished by the City. The application shall be signed by the applicant and shall contain the following minimum information, which shall be made publicly available:

1. The physical address of the residential property proposed to be used as a vacation rental.
2. The name, address, and telephone number of the owner for which the vacation rental registration certificate is to be issued. If the property owner is an entity, the legal name of the entity and its statutory agent.
3. The name, address, and telephone number of the designee, if any, of the owner.
4. The name, address, and twenty-four (24) hour telephone number of the individual who will serve as the emergency point of contact.
5. Evidence the vacation rental is registered with Yavapai County Assessor's Office in accordance with A.R.S. § 33-1902.

C. *Registration number.* The City will provide a vacation rental registration number for each vacation rental registered by a property owner.

D. *Maintaining Accurate Information.* The owner shall give written notice to the City Manager or designee of any change in information submitted in connection with a registration application. The notice shall be provided to the City Manager or designee not less than ten (10) days prior to the effective date of the change. Any information required for an application under this section 05.08.030 is deemed to be material for purposes of this section 5.08.030. A violation of this subsection is a civil offense.

E. *Illegal Operations; Penalties.* A vacation rental that fails to register the vacation rental within 30 days of the registration application being made available by the City shall immediately cease operations. Representations or advertisements including online listings that reference the property, house, or dwelling unit location within the City is prima facie evidence that a vacation rental is operating in the City.

F. *Implementation.* The City Manager or designee shall develop the necessary application, attestation, and/or database necessary to implement this section 5.08.030.

5.08.040 Emergency Point of Contact Requirements; Penalties.

A. *Emergency Responses; Violations.* When requested by a police officer, the owner, designee, or emergency point of contact whose name appears on the permit application must be on the vacation rental premises, or be available over the phone or text, within sixty (60) minutes of such request.

B. *Non-emergency Responses; Violations.* The owner, designee or emergency point of contact shall respond to all other complaints relating to the vacation rental in person, over the phone, by e-mail, or by text within twenty-four (24) hours of the request.

C. *Maintaining Accurate Emergency Information.* All applicants and persons registering pursuant to this Chapter shall give prior written notice to the City Manager or designee of any change to the contact information provided to the City for the emergency point of contact. The notice shall be provided to the City Manager or designee not less than ten (10) days prior to the effective date of the change.

D. *Violations.* In addition to any other penalty pursuant to the City Code, a violation of this section shall be a civil offense.

E. *Penalties.* In addition to any other penalty pursuant to the City Code, an owner shall be subject to civil penalties of up to \$1,000 for every thirty (30) days the owner fails to provide notice to the City as required under this subsection. Before imposing the initial

civil penalty, the City shall provide thirty (30) days' notice to the owner by emailing or mailing a notice of violation to the owner's email address or mailing address that was provided to the City. The notice of the violation shall inform the applicant of the right to appeal the denial as provided for in section 5.08.110. Notwithstanding the date of the notice of violation, the date for calculating the penalties shall be the first day the vacation rental is occupied following the owner's failure to provide the notice to the City regarding the change.

5.08.050 Compliance with the Law; Prohibited Uses.

A. A vacation rental shall comply with all applicable federal, state, and local laws, including laws relating to public health and safety, sanitation, solid waste, hazardous waste, tax privilege licensing, property tax registration, traffic control, pollution control, noise, property maintenance, and nuisance abatement.

B. No person or entity shall operate a vacation rental in violation of this Chapter or other applicable law. In addition, the use of a vacation rental property for any of the following uses or purposes is strictly prohibited:

1. Any nonresidential use;
2. Holding a special event that requires a permit or license pursuant to a City ordinance or state law or rule;
3. Operating a retail business, restaurant, event center, banquet hall or similar use;
4. Housing sex offenders;
5. Operating or maintaining a sober living home;
6. Selling liquor, illegal drugs, or pornography;
7. Operating a nude or topless dancing establishment;
8. Obscenity;
9. Adult-oriented business; or
10. Any other use prohibited by A.R.S. § 9-500.39 or this Code.

C. A vacation rental lacking a valid transaction privilege tax license issued by the State of Arizona shall not be rented or offered for rent.

D. No person or entity may receive payment or accept a fee, directly or indirectly, for facilitating the rental of a vacation rental operating in violation of this Code or other applicable law.

E. In addition to any other penalty pursuant to this Code, any person who causes, allows, facilitates, aides, or abets any violation of this Chapter shall be guilty of a civil offense.

F. The failure of any designee to comply with this Chapter shall not relieve the owner of liability under this Chapter.

5.08.060 Neighbor Notification Required.

A. *Neighbor notification.* Prior to offering a vacation rental for rent for the first time, the owner or designee shall provide neighbor notification to each single-family residential property adjacent to the vacation rental property, directly across from the vacation rental property, and diagonally across the street of the vacation rental property. The neighbor notification shall be provided in writing in the form required by the City and shall include the following minimum information:

1. The permit number issued by the City;
2. The physical address of the vacation rental; and
3. The name, physical address, email address, and twenty-four (24) hour telephone number of the emergency point of contact.

B. *Additional neighbor notification required.* Any change to the information provided under subsection A shall require additional neighbor notification by the owner or designee not later than five (5) days prior to each change. The additional notification shall be provided in the manner required by subsection A above.

C. *Attestation.* Prior to offering a vacation rental for rent for the first time, the owner or designee shall provide to the City an attestation of compliance with the neighbor notification required by this section 5.08.060.

D. *Violations.* In addition to any other penalty pursuant to the City Code, a violation of this section 5.08.060 shall be a civil offense.

5.08.070 Advertisement Requirements.

A. *Required Disclosure.* To protect the peace, health, safety, and general welfare of the City's residents and visitors, the owner or owner's designee shall be responsible for displaying the permit number issued by the City on each advertisement for such vacation rental.

B. *Violations.* In addition to any other penalty pursuant to the City Code, a violation of this section shall be a civil offense. Each advertisement in violation of this section 5.08.070 shall constitute a separate violation.

5.08.080 Posting on the Property Required.

A. *Posting at the Vacation Rental.* The owner of the vacation rental must display the name, phone number, and email address of the owner, designee, and emergency point of contact in a conspicuous place within fifteen (15) feet of the primary entrance of the vacation rental.

B. *Failure to Comply.* In addition to any other penalty pursuant to the City Code, a violation of this section 5.08.080 shall be a civil offense. Each day a vacation rental does not display the information required by this section 5.08.080 shall constitute a separate violation.

5.08.090 Suspension of Operation.

A. *Suspension of Operation.* The City may initiate an administrative process to suspend a vacation rental operation for a period of up to twelve (12) months for any of the following:

1. Three verified violations of any provision or provisions of this Chapter within a twelve (12) month period, not including any such violation based on an aesthetic, solid waste disposal or vehicle parking violation that is not also a serious threat to public health and safety.

2. One verified violation that results in or constitutes any of the following:

- a. A felony offense committed at or in the vicinity of a vacation rental by the owner of the vacation rental or by the owner's designee;

- b. A serious physical injury or wrongful death at or related to a vacation rental resulting from the knowing, intentional or reckless conduct of the owner of the vacation rental or the owner's designee;

- c. The owner of the vacation rental or the owner's designee knowingly or intentionally housing a sex offender, allowing offenses

related to adult-oriented businesses, sexual offenses, or prostitution, or operating or maintaining a sober living home; or

d. The owner of the vacation rental or the owner's designee knowingly or intentionally allowing the use of a vacation rental for a special event that would otherwise require a permit or license pursuant to the City Code or a state law or rule or for a retail, restaurant, banquet space or other similar use.

B. *Appeals.* A decision to suspend a permit may be appealed by the owner as set forth in section 5.08.110.

5.08.100 Enhanced Penalties.

A. The remedies in this Chapter are cumulative and the City may proceed under one or more such remedies.

B. In addition to any other penalty pursuant to this Chapter, and notwithstanding any other law, the City may impose a civil penalty of the following amounts against an owner if the owner causes, allows, facilitates, aides, or abets a verified violation of any provision of this Chapter or fails to perform any act or duty required by this Chapter, related to the same vacation rental property within the same twelve-month period:

1. Up to \$500 or up to an amount equal to one night's rent for the vacation rental as advertised, whichever is greater, for the first violation.
2. Up to \$1,000 or up to an amount equal to two nights' rent for the vacation rental as advertised, whichever is greater, for the second violation.
3. Up to \$3,500 or up to an amount equal to three nights' rent for the vacation rental as advertised, whichever is greater, for a third and any subsequent violation.

If multiple violations arise out of the same response to an incident at a vacation rental, those violations are considered one violation for the purpose of assessing civil penalties.

C. In addition to any other penalty pursuant to the City Code, any property that operates as a vacation rental and fails to apply for vacation rental permit in accordance with this Chapter within thirty (30) days of the application process being made available by the City, must cease operations immediately. In addition to any

finer imposed pursuant to this section 5.08.0120, the City may impose a civil penalty of up to one thousand dollars (\$1,000) per month against the owner if the owner or owner's designee fails to apply within thirty (30) days of receiving written notice of the failure to comply with this Chapter.

5.08.110 Appeals.

A. Any person aggrieved by any decision with respect to the denial of or a refusal to issue a vacation rental permit, the suspension of a vacation rental permit, or a penalty imposed pursuant to this Chapter may appeal the decision by filing a written notice of appeal with the City no later than thirty (30) days from the date of the decision letter. The notice of appeal shall be on a form approved by the City, and/or provide sufficient information so as to allow the City to reasonably respond and adjudicate the appeal.

B. An appeal under this section 5.08.110 does not operate as a stay of the permit suspension.

C. This section 5.08.110 is not applicable to judicial actions brought pursuant to section 5.08.120 or to penalties including fines imposed by a court.

5.08.120 Judicial relief.

A. Notwithstanding section 5.08.110, any attempted or completed felony act, arising from the occupancy or use of a vacation rental that results in a death, or actual or attempted serious physical injury, shall be grounds for judicial relief in the form of a suspension of the property's use as a vacation rental for a period that shall not exceed twelve (12) months.

B. The City Attorney or designee may initiate proceedings in the City's municipal court or other court of competent jurisdiction to enforce this section 5.08.120.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in direct and irreconcilable conflict with the provisions of this Ordinance or any part of the City Code adopted herein by reference are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the City Code adopted herein by reference is, for any reason, held to be invalid

or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties.

A. Pursuant to the City's general penalty clause, and except as provided herein a person convicted of a violation of this code shall be guilty of a class 1 misdemeanor and subject to the punishment for a class 1 misdemeanor under state law. With respect to violations of this code that are continuous with respect to time, each day the violation continues is a separate offense and each act constitutes a separate offense. In all cases where the same offense is made punishable or is created by different clauses or sections of this Chapter, the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided, the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being pursued and enforced. Officers of any corporation or partners of any firm licensed that are found to have committed a violation of this Code shall be individually subject to fine and/or imprisonment.

Violations of this code that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.

B. Pursuant to section 5.08.030, and in addition to any other penalty pursuant to the City Code, a violation of section 5.08.030 shall be a civil offense and a vacation rental that fails to register the vacation rental within 30 days of the registration application being made available by the City shall immediately cease operations. Representations or advertisements including online listings that reference the property, house, or dwelling unit location within the City is prima facie evidence that a vacation rental is operating in the City.

C. Pursuant to section 5.08.040 and in addition to any other penalty pursuant to the City Code, an owner shall be subject to civil penalties of up to \$1,000 for every thirty (30) days the owner fails to provide notice to the City as required under this subsection. Before imposing the initial civil penalty, the City shall provide thirty (30) days' notice to the owner by email or mail a notice of violation to the owner's email address or mailing address that was provided to the City. The notice of the violation shall inform the applicant of the right to appeal the denial as provided for in section 5.08.110. Notwithstanding the date of the notice of violation, the date for calculating the penalties shall be the first day the vacation rental is occupied following the owner's failure to provide the notice to the City regarding the change.

D. Pursuant to section 5.08.060 and in addition to any other penalty pursuant to the City Code, a violation of section 5.08.060 shall be a civil offense.

E. Pursuant to section 5.08.070 and in addition to any other penalty pursuant to the City Code, a violation of section 5.08.070 shall be a civil offense. Each advertisement in violation of section 5.08.070 shall constitute a separate violation.

F. Pursuant to section 5.08.080 and in addition to any other penalty pursuant to the City Code, a violation of section 5.08.080 shall be a civil offense. Each day a vacation rental does not display the information required by section 5.08.080 shall constitute a separate violation.

G. Pursuant to section 5.08.100,

1. The remedies in this Chapter are cumulative and the City may proceed under one or more such remedies.

2. In addition to any other penalty pursuant to the City Code, and notwithstanding any other law, the City may impose a civil penalty of the following amounts against an owner if the owner causes, allows, facilitates, aides, or abets a verified violation of any provision of this Chapter or fails to perform any act or duty required by this Chapter, related to the same vacation rental property within the same twelve-month period:

- a. Up to \$500 or up to an amount equal to one night's rent for the vacation rental as advertised, whichever is greater, for the first violation.
- b. Up to \$1,000 or up to an amount equal to two nights' rent for the vacation rental as advertised, whichever is greater, for the second violation.
- c. Up to \$3,500 or up to an amount equal to three nights' rent for the vacation rental as advertised, whichever is greater, for a third and any subsequent violation.

If multiple violations arise out of the same response to an incident at a vacation rental, those violations are considered one violation for the purpose of assessing civil penalties.

3. In addition to any other penalty pursuant to the City Code, any property that operates as a vacation rental and fails to apply for vacation rental permit in accordance with this Chapter within thirty (30) days of the application process being made available by the City, must cease operations immediately. In addition to any fines imposed

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pursuant to section 5.08.0120, the City may impose a civil penalty of up to one thousand dollars (\$1,000) per month against the owner if the owner or owner's designee fails to apply within thirty (30) days of receiving written notice of the failure to comply with this Chapter.

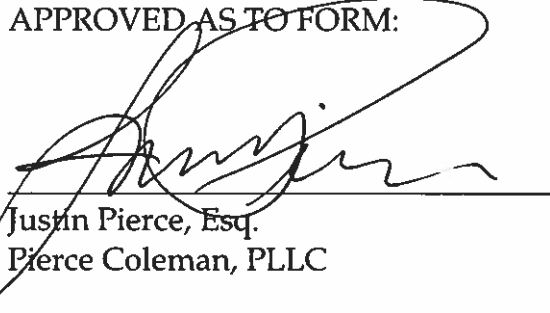
Section V. This ordinance shall be effective from and after May 1, 2023.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 7TH DAY OF MARCH 2023.



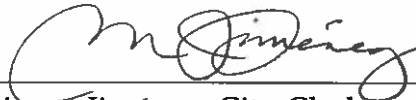
Tim Elinski, Mayor

APPROVED AS TO FORM:



Justin Pierce, Esq.
Pierce Coleman, PLLC

ATTEST:



Marianne Jiménez, City Clerk

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