



TO: Honorable Mayor and Council
FROM: Steve Kemp, City Attorney
RE: Moratoriums
DATE: June 7, 2018

The mayor raised the question of whether Colorado law limited the imposition of a moratorium on permitting short-term vacation rentals (also known as vacation rentals by owner, Airbnb, etc.)

Unlike other states, Colorado has no moratorium statute; therefore, we look at case law. The issue with restrictions on development is whether the restriction constitutes a taking under the Fifth Amendment of the United States Constitution and the Colorado Constitution. Generally, a taking occurs when a local government action results in any of the following:

- a. Denies a property owner any use of their property;
- b. Requires from a property owner actions in favor of the government that do not have an essential connection between the property owner action and the governmental action;
- c. Government enacts a regulation that has the effect of denying the property owner the use of the property.

Courts look to the investment backed expectations of the property owner for the use of the property in answering these questions.

Several cities in Colorado have enacted short-term rental moratoriums: Salida, Golden and Silverton.

All of these cities actions have the following features in common:

- a. The moratoriums are for short periods, between 3 and 6 months;
- b. The purpose of the moratorium is to develop regulations during the moratorium period;
- c. The purpose is to maintain the status quo while new regulations are developed.

From a legal standpoint, I would suggest that a short-term moratorium is defensible for the reasons outlined above. I don't recommend longer than six months and I think three months with the possibility of an extension is better. It is my recommendation that it be coupled with the intent to revise and improve city codes on this item. This is the practice followed by other communities.