AUDIT REPORT
Department of Excise and Licenses and
Department of Finance – Treasury Division
Short-Term Rental Enforcement
December 2017

Office of the Auditor
Audit Services Division
City and County of Denver

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Denver Auditor
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Audit report year: 2017
AUDITOR’S REPORT

We have completed an audit of the City’s efforts to ensure the safe, efficient, and responsible operations of short-term rental properties. The objective of the audit was to assess the efficacy of the administrative processes and procedures used by the Department of Excise and Licenses (EXL) and the Department of Finance – Treasury Division (Treasury) for enforcing the City’s short-term rental regulations, including ensuring adherence to licensing requirements and collecting the City’s Lodger’s Tax.

As described in the attached report, our audit revealed that the Department of Excise and Licenses needs to strengthen its implementation of short-term rental regulations to ensure that the regulations are enforced consistently and equitably.

With a more systematic approach to evaluating the effectiveness of short-term rental enforcement strategies and stronger licensing and enforcement activities—including better data validation processes—the Department of Excise and Licenses and the Department of Finance – Treasury Division will be able to ensure consistent and equitable enforcement of the City’s short-term rental regulations. Our report lists several related recommendations.

This performance audit is authorized pursuant to the City and County of Denver Charter, Article V, Part 2, Section 1, General Powers and Duties of Auditor, and was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We extend our appreciation to Excise and Licenses, Treasury, and the personnel who assisted and cooperated with us during the audit.

Denver Auditor’s Office

[Signature]

Timothy M. O’Brien, CPA
Auditor
Short-Term Rental Enforcement Audit
December 2017

Objective
The objective of the audit was to assess the efficacy of the Department of Excise and Licenses (EXL) and Department of Finance – Treasury Division’s (Treasury) administrative processes and procedures for enforcing short-term rental regulations, including ensuring adherence to licensing requirements and collecting the City’s Lodger’s Tax.

Background
Short-term rentals (STRs), also referred to as rentals by owner or vacation home rentals, are privately owned residences that are leased to private parties to provide lodging accommodations for short-term stays.

In July 2016, the City and County of Denver authorized the operation of STRs in primary residences for a period of less than 30 days. To operate lawfully in the City, STR hosts are required to obtain a business license from the Department of Excise and Licenses (EXL). In addition, STR hosts are required to collect and remit Lodger’s Tax and other applicable taxes to the Department of Finance—Treasury Division (Treasury).

Highlights
The City began regulating short-term rentals (STRs) to create a fair operating environment for STRs, ensure minimum safety requirements and protect the public welfare, and allow for data collection to determine the impact of STRs on neighborhoods and affordable housing. Audit work revealed four weaknesses that inhibit the attainment of these goals.

Licensing and Enforcement – EXL needs to improve its current licensing and enforcement activities through better alignment with the law, departmental rules, regulations, and accurate licensing data. Discrepancies between licensing and enforcement rules, regulations, and the law could lead to public confusion and perception of inequity and may put the City at risk for legal action. Also, data that is incomplete, inaccurate, or invalid can hamper EXL’s ability to develop, analyze, and use quality information to assess the effectiveness of its enforcement efforts.

Program Evaluation – EXL has developed a Short-Term Rental Strategic Enforcement Plan, but lacks a systematic approach for collecting and analyzing agency data to determine the effectiveness of STR enforcement efforts. Without a systematic approach for developing, collecting, and analyzing information about STR enforcement efforts, EXL may be missing opportunities to strengthen its ability to ensure the safe, efficient, and responsible operation of short-term rentals within the City.

Contracting Process – EXL’s process for selecting a compliance software service provider did not fully adhere to the City’s competitive selection processes or best practices, which could place EXL at risk for not selecting the most cost-effective option for the best value.

Tax Compliance – Gaps in Treasury’s Lodger’s Tax validation procedures for Lodger’s Tax identification numbers could adversely impact compliance with the City’s tax laws and impede the division’s ability to ensure that all persons holding an STR license are paying all applicable taxes.

For a copy of this report, visit www.denvergov.org/auditor or contact the Auditor’s Office at 720.913.5000.
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BACKGROUND

Short-Term Rental Regulation in the City and County of Denver

Short-term rentals (STRs), also referred to as rentals by owner or vacation home rentals, are residences that are leased to private parties to provide lodging accommodations for a brief period. Residences offering these short-term stays can be houses, condominiums, apartments, or accessory dwelling units such as carriage houses. Advertisement and reservations for STRs are often facilitated by peer-to-peer websites, such as those offered by companies like Airbnb or Vacation Rental by Owner (VRBO).

There are two primary factors that differentiate STRs from other residential rental properties. First, the lease period for STRs is generally shorter than with traditional residential rental properties. Second, STRs are frequently the residence of the person renting the property—commonly referred to as the “host.” STR accommodations can range from a dedicated bedroom to the use of an entire residence for overnight lodging. It is common for hosts to grant access to the kitchen, bathroom, patio, laundry facilities, and parking spaces. An STR host may be present during a guest’s stay, or may choose to rent out his or her home as an STR while on vacation or business travel.

For travelers, STRs can be a cost-effective alternative to more expensive lodging, such as hotels. STRs can also provide proximity to local attractions and flexible housing options that address a wide array of lodging needs, including the number of rooms, beds, and bathrooms, as well as amenities such as wireless Internet, television, and pet-friendliness.

Enforcement of Denver’s Short-Term Rental Regulations

In June 2016, the Denver City Council revised the Denver Revised Municipal Code (D.R.M.C.) to allow property owners and long-term renters to offer STR accommodation in their primary residences to persons who are visiting or working in the City and County of Denver (City) for a period of less than 30 consecutive days.\(^1\) The new legislation also sought to establish an equitable business environment for all persons engaged in the business of lodging through the creation of a licensing and enforcement system that establishes minimum safety requirements, allows for the collection of data to determine the impact of STRs on neighborhoods and affordable housing, and the collection and remittance of the Lodger’s Tax and other applicable taxes.\(^2\)

In January 2017, the City required hosts to obtain a business license to operate an STR and began imposing fines on unlicensed operators. The City’s STR enforcement framework has two primary components: monitoring and investigations.

The City Uses a Third Party to Monitor STR Listings for Potential Non-Compliance

Monitoring involves the routine examination of online STR service provider websites to identify unlicensed properties. To support these efforts, EXL has a contract with Host Compliance—a third-

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1 D.R.M.C., § 33-46(5).
2 City and County of Denver Ordinance No. 262-16.
party “software-as-a-service provider”—for help with searching for and identifying unlicensed properties. Through its Address Identification service, Host Compliance provides EXL with continually updated address information on the STR properties operating in Denver. Specifically, Host Compliance compiles monthly reports and updates a live web-based dashboard with address information, screenshots of active listings, and other identifiable information on STR properties in the City.³

EXL officials compare the information they receive from Host Compliance to business license information stored in Accela—the City’s licensing management software—to identify unlicensed STR properties. If an STR is found to be operating without a license, EXL officials will mail a Notice of Violation (NOV) to the property owner or responsible party.

EXL also receives information from Host Compliance’s Short-Term Rental Trend Monitoring service. This service provides the department with monthly reports and online dashboards with aggregate statistics on short-term rental activity in Denver. This information includes a map of listing locations, the number of listings that meet the City’s STR definition, the number of new STRs advertised in the City in the previous month, listing types (e.g., single-family, multi-family, partial home, entire home, etc.), and other rental property characteristics. According to EXL officials, this information provides them with previously unknown information about the local STR market.

Excise and Licenses Conducts Investigations to Enforce STR Regulations

In addition to routine compliance monitoring, EXL relies on investigations to enforce the City’s STR regulations. Specifically, after receiving a complaint of an unlicensed STR, EXL investigates and, depending on the outcome, issues a NOV or an administrative citation should the violation remain unaddressed. Although complaints surrounding noise, trash, parking, and safety are handled by the City agencies responsible for these areas, EXL tracks the nature of complaints for license renewal or revocation purposes. Specifically, EXL relies on information that the department obtains from the Denver 311 Help Center (Denver 311). Denver 311 receives inquiries, complaints, and requests by phone, email, and PocketGov on a range of STR-related matters, including application assistance, complaints, violations, requests for licenses, and the website. Between January 1 and August 31, 2017, Denver 311 received almost 1,100 STR-related inquiries. According to Denver 311 data, complaints and violations constituted most of the inquiries received, representing almost 70 percent of STR-related inquiries.

The Salesforce system allows Denver 311 staff to transfer inquiries about STRs to the appropriate partner agencies, as needed, to ensure timely resolution of citizen issues and questions. EXL staff periodically runs Salesforce reports to obtain information about STR-related inquiries and is planning to use this information to support STR enforcement efforts.

³ EXL’s current contract with Host Compliance was for a term of one year, and is set to expire on December 31, 2017.
As shown in Figure 1, EXL assists the public through 4 main services: Administration, Code Enforcement, Licensing, and Marijuana Policy. Currently, STR licensing and enforcement are supported by a combination of the department’s Administration, Licensing, and Code Enforcement services. Among other things, Administration services supports policy development, contract management, and public education and outreach for STR licensing and enforcement activities. Code Enforcement services is responsible for ensuring compliance with the City’s STR regulations. This includes complaint investigation and the issuance of notices, fines, and administrative citations to hosts who are not in compliance with STR regulations. Finally, Licensing services facilitates public and appeal hearings related to STR enforcement.

FIGURE 1. Department of Excise and Licenses Organizational Structure

Source: City and County of Denver’s Auditor’s Office analysis of the Mayor’s Proposed 2018 Budget.

In 2017, EXL received just over $3.2 million in appropriations to support the department’s administrative, licensing and enforcement activities. This appropriation includes funding for a full time equivalent (FTE) position in Code Enforcement services to support and manage the department’s STR licensing and enforcement efforts, and just over $70,000 for Host Compliance address identification and trend monitoring services.

Taxation of Denver’s Short-Term Rental Businesses

In addition to issuing Lodger’s Tax licenses and identification numbers, Treasury is responsible for collecting, recording, and depositing all the City’s taxes, including those related to STR business operations. As shown in Figure 2, Treasury consists of two separate divisions: Tax Compliance and Motor Vehicle. Within Treasury, Tax Compliance is the only section that has responsibilities related to STR enforcement.

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4 D.R.M.C., §33-48(e) and §53-173.
STR hosts are required to collect and remit the City’s Lodger’s Tax, Occupational Privilege Tax, business personal property tax, and local sales tax. See Table 1 for additional information on City taxes that are applicable to STRs.

**TABLE 1.** City and County of Denver Taxes Related to Short-Term Rentals, January 1 - August 31, 2017

<table>
<thead>
<tr>
<th>Tax</th>
<th>Description</th>
<th>Tax Rate or Amount</th>
<th>Amount Collected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lodger’s Tax</td>
<td>Tax imposed on the sale of lodging for overnight sleeping accommodations or rooms, such as hotels, lodging houses, guest houses, resorts, or auto camps.</td>
<td>10.75 percent on the total amount charged</td>
<td>$978,362</td>
</tr>
<tr>
<td>Business Personal Property Tax</td>
<td>Tax imposed on the personal property of businesses or any entity that performs any business, trade, occupation, or profession of any kind.</td>
<td>Tax assessment based on the value of assets owned by businesses located in the City</td>
<td>-</td>
</tr>
<tr>
<td>Sales Tax</td>
<td>Tax imposed on the purchase price paid or charged on retail sales, leases, rentals of tangible personal property, and certain services.</td>
<td>4 percent on the sale of food and beverages not exempt by ordinance and 3.65 percent for retail goods or services</td>
<td>$3,925</td>
</tr>
<tr>
<td>Occupational Privilege Taxes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee</td>
<td>Tax imposed on businesses with employees who earn $500 or more per month.</td>
<td>$5.75 per employee, per month</td>
<td>-</td>
</tr>
<tr>
<td>Business</td>
<td>Tax imposed on businesses or any entity that performs any business, trade, occupation, or profession of any kind.</td>
<td>$4.00 per month minimum for each month in which an entity has any activity in the City</td>
<td>$39,508</td>
</tr>
</tbody>
</table>

**Source:** City and County of Denver Auditor’s Office analysis of Department of Finance—Treasury Division.
Treasury relies on GenTax—an integrated tax processing software—to support almost all aspects of tax collection. Implemented in 2009, GenTax supports the collection of approximately $1.2 billion in tax revenue, including revenues related to the Lodger’s Tax and other STR-related taxes. Between January 1 and August 31, 2017, Treasury collected approximately $1.1 million in STR-related revenue, including roughly $1 million in Lodger’s Tax revenue. This revenue also includes nearly $40,000 in Occupational Privilege Tax and almost $4,000 in City sales tax. Treasury did not collect Business Personal Property Tax from STR-related businesses during this period.
OBJECTIVE

The objective of this audit was to assess the effectiveness of the processes and procedures used by the Department of Excise and Licenses (EXL) and the Department of Finance - Treasury Division (Treasury) to enforce the City and County of Denver’s short-term rental (STR) regulations. This audit describes how EXL and Treasury enforce STR regulations and examines how well enforcement efforts support the safe, efficient, and responsible operation of short-term rentals in the City.

SCOPE

During our examination of the effectiveness of STR enforcement, we identified and described the regulations, processes, and procedures that EXL and Treasury use to enforce the City’s STR regulations, including an analysis of related operational and financial trends. We also examined the extent to which EXL and Treasury’s enforcement efforts align with applicable legal requirements and leading management practices, including steps these entities have taken to evaluate the efficacy of enforcement efforts between June 2016 and August 31, 2017.

METHODOLOGY

We applied multiple methodologies to gather and analyze information pertinent to the audit scope. These methodologies included:

- Reviewing the Denver Revised Municipal Code (D.R.M.C.), Executive Orders, and other applicable laws to identify and summarize legal requirements for STR compliance and enforcement
- Reviewing EXL and Treasury documents to identify and summarize policies and procedures that support STR compliance and enforcement
- Comparing EXL and Treasury policies and procedures to applicable laws and regulations to determine whether STR compliance and enforcement efforts are being conducted in accordance with legal requirements
- Comparing EXL and Treasury policies and procedures to applicable internal control standards and leading industry practices from other municipalities to determine the extent to which STR compliance and enforcement align with applicable guidance
- Analyzing EXL and Treasury operational and financial data between January 1, 2016, through September 30, 2017, to determine whether there have been significant trends in STR compliance and enforcement
- Assessing the reliability of EXL and Treasury operational and financial data to determine the extent to which it was reasonably complete and accurate, was not subject to inappropriate alterations, and met our intended purpose
- Conducting a survey of 10 municipalities to obtain contextual information about their STR compliance and enforcement activities
• Monitoring and analyzing EXL and Treasury operations, including application processing, quality assurance processes, and participation in STR Advisory Committee meetings, to obtain contextual information about STR enforcement.

• Interviewing EXL and Treasury officials, STR Advisory Committee members, compliance service providers, and other subject matter experts to obtain contextual information about STR compliance and enforcement policies, procedures, and factors that may have contributed to trends and anomalies observed in the results of our data analysis.
FINDING

The City Cannot Fully Assess the Effectiveness of its Short-Term Rental Processes and Procedures for Licensing and Enforcement

The City began regulating short-term rentals (STRs) to create a fair operating environment for STRs, ensure minimum safety requirements and protect the public welfare, and allow for data collection to determine the impact of STRs on neighborhoods and affordable housing.5 To address these goals, the Department of Excise and Licenses (EXL) in partnership with the Department of Finance – Treasury Division (Treasury), established an STR business licensing system. Officials say this new system is designed to obtain broad adherence to the City’s new STR regulations through increased public awareness and more user-friendly compliance mechanisms, such as the launch of the department’s first fully online licensing system. However, audit work revealed four weaknesses that inhibit the attainment of these goals. First, EXL needs to improve its current licensing and enforcement activities through compliance with the law, departmental rules and regulations, and analysis of accurate licensing data. Second, although EXL has developed a Short-Term Rental Strategic Enforcement Plan, the department lacks a systematic approach for collecting and analyzing agency data to evaluate the effectiveness of STR enforcement efforts. Third, EXL’s process for selecting a compliance software service provider did not fully adhere to the City’s contracting policies or best practices. Finally, gaps in Treasury’s Lodger’s Tax validation procedures reveal non-compliance with the City’s tax laws.

The Department of Excise and Licenses Needs to Strengthen Current Licensing and Enforcement Activities to Ensure Compliance with the City’s Short-Term Rental Regulations

As previously discussed, the City required hosts to obtain a business license to operate an STR and began imposing fines on unlicensed operators in January 2017. To obtain a license STR hosts are required to submit a business license application to the Director of the Department of Excise and Licenses.6 To qualify for an STR business license, an applicant must:

- Be a legal resident of the United States;7
- Operate the STR in the applicant’s primary residence;
- Provide evidence of ownership—referred to as “proof of possession”—of the rental property or, if the applicant is not the property owner, provide written documentation from

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5 City and County of Denver, Ordinance No. 262-16.
6 D.R.M.C., § 33-47 and § 33-48. After December 31, 2016, it became unlawful to operate any short-term rental in the City without an issued license, as required under D.R.M.C., Chapter 33, Article III and other applicable City laws. Also, applications shall be submitted to the Director of Excise and Licenses pursuant to D.R.M.C., Chapter 32 (Licenses). STR business licenses are non-transferrable, and any attempt to transfer ownership or location of a license shall render the license subject to suspension or revocation pursuant to D.R.M.C., Chapter 32.
7 The Public Safety Enforcement Priorities Act took effect on October 13, 2017. The ordinance prohibits City employees from assisting in the enforcement of civil immigration law. Among other things, the legislation prohibits City employees from collecting information about a person’s national origin (place of birth), citizenship, or immigration status, or preventing access to services based on someone’s national origin, citizenship, or immigration status.
the landlord or property owner granting permission to operate an STR on the licensed premises;
• Verify that STRs are allowed, if the rental property is part of a homeowners’ association;
• Possess a valid Lodger’s Tax license and identification number; and
• Possess fire, hazard, and liability insurance within the liability coverage limits set by the EXL director.8

In addition to provisions in the D.R.M.C., STR hosts are required to adhere to provisions in the City’s zoning code, including basic requirements about where and under what conditions an STR can be operated.9

As shown in Figure 3, the STR business license process has three key steps.

**FIGURE 3. Denver Short-Term Rental Licensing Process**

**Step 1** – First, applicants must register with the Department of Finance – Treasury Division (Treasury) to establish a tax account and obtain a Lodger’s Tax license and identification number.10 Lodger’s Tax license applicants are required to pay a $50 fee for a license that is valid for a two-year period. Persons seeking a Lodger’s Tax license and identification number may apply for the license in person or online through the City’s eBiz Tax Center website.

**Step 2** – Using the Lodger’s Tax identification number, an applicant may apply for a business license through EXL’s online application portal. After establishing an online account, an applicant can complete a business license application by entering rental property information (e.g., address or parcel number), owner and responsible party contact information, and self-certifying of the City’s proof of possession, primary residence, rental information brochure, insurance, and safety

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8 D.R.M.C., § 33-48. Summarizes the City’s application requirements for STR licenses.
9 Denver Zoning Code, Text Amendment 8, Short-Term Rentals, adopted June 13, 2016. STRs must be in a zoning district that allows residential use.
10 D.R.M.C., §§ 53-167 and 53-170. All persons engaged in making sales of or furnishing rooms or accommodations for overnight use to a purchaser are responsible for collecting and remitting the City’s Lodger’s Tax.
requirements (e.g., possession of a smoke detector, carbon monoxide detector, and fire extinguisher on premises). Currently, EXL does not require STR business license applicants to submit supporting documentation for the self-certified requirements at the time of application. However, applicants may electronically upload supporting documents as part of their application submission. EXL may also request supporting documentation of these requirements after a license is issued, if a licensing violation occurs. After an applicant enters payment information for the required $25 business license fee, EXL formally issues an STR business license. The applicant will receive by email a copy of the license, including a business license number—referred to as a “Business File Number (BFN).” An applicant may also access a copy of the license by logging into his or her online account. STR business licenses are valid for one year and must be renewed annually.

**Step 3** - STR business license holders must clearly display BFNs on all advertisements, including advertisements through online STR hosting websites, such as Airbnb and VRBO.

EXL estimates compliance with the City’s licensure requirements by calculating the percentage of STR properties with active licenses. To calculate this number EXL divides the number of licenses issued by the total number of unique STR properties advertised in the City, as identified by Host Compliance. The number of advertised properties changes frequently, as STR hosts may add or remove properties from an online advertising platform at will—which changes the percentage of STR properties with active licenses. Figure 4 illustrates the geographic distribution of the 2,592 STR properties advertised in the City on July 26, 2017, including 1,642 properties associated with active—representing about 63 percent of the properties advertised that day.

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11 D.R.M.C., §33-48. Applicants are required to self-certify that the information on the application is accurate and truthful under penalty of perjury under the laws of the State of Colorado.
Current Licensing and Enforcement Activities Do Not Fully Align with the Law or Departmental Rules and Regulations

In assessing how well EXL’s STR administration activities align with the law, we found several instances where the procedures do not align with requirements in the D.R.M.C., as follows:

- **Proof of Possession** – The D.R.M.C. requires an STR business license applicant to submit documented evidence of ownership—referred to as “proof of possession”—of the rental property, or to secure written permission from the property owner to operate an STR.\(^{12}\) However, EXL’s licensing procedures do not require an applicant to submit documented proof of possession at the time of application. Rather, the department allows the applicant, during the online application process, to attest to having proof of possession.

- **Insurance Coverage** – The D.R.M.C. requires an STR host to acquire fire, hazard, and liability insurance coverage, specifying that liability coverage limits are to be set by the Director of Excise and Licenses.\(^{13}\) Despite this requirement, the Director has not yet set these limits. Further, EXL has made it a practice to accept insurance acquired by STR hosts from online STR service providers such as Airbnb. However, the department has not documented this

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\(^{12}\) D.R.M.C., § 33-48 (g).
\(^{13}\) D.R.M.C., § 33-49 (e).
as its policy nor has it assessed the adequacy of the insurance coverage provided through online platforms.

- **Processes for License Issuance and Denial** – The D.R.M.C. prohibits EXL from issuing a license to an applicant who has overdue fines, assessments, or fees owned to the City. Additionally, City law prohibits the department from issuing a license to an applicant who has outstanding warrants for arrest in any municipality. Currently, EXL does not have a process for determining whether applicants meet these requirements. Like “proof of possession,” EXL allows the applicant to attest to these requirements during the online application process.

- **Administrative Citations** – The D.R.M.C. specifies requirements for the content of an administrative citation, including the approximate time the violation was observed and the signature of the enforcement official. These requirements are also reiterated in EXL’s “Rules & Regulations Governing Administrative Citations.” However, during our review of an administrative citation that EXL provided, we found that the document did not include the approximate time the violation was observed, nor did it contain the signature of the enforcement official.

In addition to content requirements, the D.R.M.C. specifies how an STR administrative citation should be issued. Specifically, an EXL enforcement official should deliver an administrative citation to the responsible party at the site of the violation or at the responsible party’s business or personal address. If the responsible party cannot be located, the enforcement official may leave a copy of the administrative citation with any person residing or working at the site or post the citation in a conspicuous place on the property where the violation occurred. Furthermore, the law requires EXL to obtain the signature of the person receiving the citation on the citation itself. If the enforcement official is unable to issue the administrative citation directly to the responsible party, then, in addition to posting the citation as previously described, the department is required to send the citation to the responsible party by first class mail. Despite these specific requirements, EXL sends all citations by certified mail without first attempting to deliver the citation to the property that is the subject of the violation. Also, contrary to the legal requirement to obtain the signature of the responsible party on the citation, EXL currently accepts the signature on the certified mail receipt as the signature of the responsible party.

Finally, the D.R.M.C. specifies that a person who is served with an administrative citation may file a notice of appeal within 10 calendar days after the date of service, and that failure to comply with this requirement will bar the appeal. However, inconsistent with the

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14 D.R.M.C., § 33-53 and § 32-11 (6).
15 City and County of Denver Department of Excise and Licenses, Rules and Regulations Governing Administrative Citations September 29, 2009. These rules and regulations are the most current departmental guidance available to implement administrative citation and penalty assessment provisions of the D.R.M.C., Chapter 2, Article XII. Also, Exhibit 1 of these rules and regulations provide a sample administrative citation form that reflect the approximate time the violation was observed and the signature of the enforcement official requirements established in the D.R.M.C.
16 D.R.M.C., §2-284 (a) through (f). Although the enforcement official is required to obtain the signature of the person receiving the administrative citation on the citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings. Also, citations sent by first class mail should be sent to the most recent mailing address contained in the City’s assessment division records for the property in violation or the property of the responsible party.
D.R.M.C. and department rules and regulations, the administrative citation form states that persons served may file a written notice of appeal within 14 calendar days.

Policy and procedural deviations from the law are not inconsequential. The administrative citation requirements outlined in the D.R.M.C and in EXL’s departmental rules and regulations are forms of procedural due process that prescribe how a person should be notified of and appeal an administrative action or determination that could adversely impact property interests, amongst other things. Failure to provide the notice required by law, within the specified timeframes, could prevent a person from fully exercising their right to dispute an administrative action—making the proper service of an administrative citation extremely important. Further, government standards promulgated by the U.S. Government Accountability Office emphasize the significance of alignment between policies and procedures and the law, as laws frequently prescribe a government entity’s objectives, structure, methods to achieve objectives, and reporting of performance relative to achieving objectives.¹⁷

Thus, it is important for EXL’s STR enforcement and licensing procedures to conform with City law. Without consistency between EXL policies and procedures and legal requirements, discrepancies between licensing and enforcement procedures and the D.R.M.C. could lead to public confusion and perception of inequity and may put the City at risk for legal action.

**RECOMMENDATION 1.1**

The Director of Excise and Licenses should evaluate current and future Department of Excise and Licenses short-term rental licensing and enforcement policies and procedures to ensure compliance with the Denver Revised Municipal Code and other applicable laws, including those related to proof of possession, insurance coverage, processes for issuance and denial, and administrative citations.

*Agency Response: Agree, Implementation Date - March 2018*

**Department Rules and Regulations Do Not Include Practices Related to Short-Term Rental Enforcement**

Audit work also revealed that EXL has not updated its formal department rules and regulations to incorporate current STR enforcement practices. A particularly relevant document that should have been updated after STR regulation began is called “Rules and Regulations Governing Administrative Citations,” which was developed in 2009. Upon examination, we noted that current administrative policies and procedures related to STR enforcement have not been incorporated into this document. For example, EXL issues notices of violation to unlicensed or otherwise non-compliant STR hosts, allowing them 14 days to obtain a license or address other violations as required. If an STR host fails to take the necessary corrective actions, the department issues an administrative citation and a $150 fine. Although EXL has identified some procedures for enforcing STR-related administrative citations—such as protocols for issuing additional citations, escalating fines, and collections for unpaid fines—the department has not formally incorporated these

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protocols into its Rules & Regulations Governing Administrative Citations, nor has it established
timeframes for when administrative citation enforcement activities should occur.

As shown in Table 2, nearly 21 percent of the notices of violation issued between January 1 and
August 31, 2017 (345 out of 1,614) remain unresolved—meaning that EXL does not have a record
of an STR host taking corrective action to address the violation identified nor has an administrative
citation been issued. We also found that nearly 90 percent of unresolved notices of violation (310
of the 345) had not been addressed within the required 14-day response period—some going
unaddressed as much as 80 days past the initial response deadline. Similarly, for administrative
citations issued, roughly 65 percent of citations issued are unresolved—meaning that EXL does not
have a record of an STR host taking corrective action to address the original infraction nor has the
department collected the associated fine. As of August 31, the amount of outstanding fines
stemming from the 22 unresolved administrative citations was $4,550.

**TABLE 2.** Notices of Violation and Administrative Citations Issued, January 1 through August 31,
2017

<table>
<thead>
<tr>
<th></th>
<th>Number issued</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Notices of Violation</strong></td>
<td></td>
</tr>
<tr>
<td>Unresolved Notice of Violations</td>
<td>345</td>
</tr>
<tr>
<td>Number of properties posted by EXL inspector</td>
<td>43</td>
</tr>
<tr>
<td>Mailers returned as undeliverable by Post Office</td>
<td>106</td>
</tr>
<tr>
<td>No action yet taken by EXL</td>
<td>196</td>
</tr>
<tr>
<td><strong>Administrative Citations</strong></td>
<td></td>
</tr>
<tr>
<td>Unresolved Administrative Citations</td>
<td>22</td>
</tr>
<tr>
<td>In collections (unpaid)</td>
<td>14</td>
</tr>
<tr>
<td>Appealed/Hearings</td>
<td>4</td>
</tr>
<tr>
<td>Unconfirmed receipt of citation</td>
<td>4</td>
</tr>
</tbody>
</table>

**Source:** City and County of Denver Auditor’s Office analysis of Department of Excise and Licenses data.

**Note:** Notices of Violation considered unresolved are those who have not remedied the original infraction which include operating an STR without a license or valid lodger’s tax account number. Included in this number are properties that have been posted by an EXL inspector and properties where mailers have been returned for both the property address and mailing address. Administrative Citations that are considered unpaid include those that have been sent to collections. Administrative Citations that are considered unresolved are those that are currently in appeals, hearings, or EXL has not managed to identify if the host has physically received the citation.

As discussed earlier in this report, only one full-time employee is responsible for supporting and
managing the department’s STR licensing and enforcement efforts, and is the sole person
responsible for managing the notices of violation and administrative citations issuance and
resolution process. Given resource and time constraints associated with this position, that
employee reviews outstanding notices of violations and engages in Administrative Citation
enforcement as time permits.

GAO internal control standards specify that documentation of policies and procedures is a critical
component of an organization’s control environment. Specifically, the standards emphasize the
importance of developing and maintaining documentation that communicates information that supports the design, implementation, and operating effectiveness of essential administrative systems. The lack of up-to-date rules and regulations for administrative citations and other enforcement activities places EXL at risk for not having clear policies and procedures that will enable department personnel to fulfill all the department’s responsibilities for ensuring adherence to the City’s STR regulations.

RECOMMENDATION 1.2

The Director of Excise and Licenses should review and update all Department of Excise and Licenses rules and regulations to reflect current STR enforcement practices, including those rules and regulations related to administrative citations.

Agency Response: Disagree, Implementation Date - Not applicable

The Department of Excise and Licenses Lacks a Systematic Approach for Evaluating the Effectiveness of Its Short-Term Rental Enforcement Strategies

EXL has developed a Short-Term Rental Strategic Enforcement Plan to guide its implementation of the City’s STR legislation. As shown in Table 3, EXL’s mission for STR enforcement is to “ensure the safe, efficient, and responsible operation of short-term rentals within the City and County of Denver. The plan identifies four strategies for STR enforcement: community engagement, ease of compliance, compliance monitoring and enforcement, and complaint investigation monitoring and enforcement. Each strategy includes a series of tactics to achieve the enforcement strategies.

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TABLE 3. Short-Term Rental Strategic Enforcement Plan Mission, Strategies, and Tactics

<table>
<thead>
<tr>
<th>Mission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure the safe, efficient, and responsible operation of short-term rentals within the City and County of Denver.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Strategies and Tactics</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strategy 1: Community Engagement</strong></td>
</tr>
<tr>
<td>• Provide “town hall” forums to heighten public awareness and seek input; provide a critical stakeholder (industry and host) forum for education on licensing requirements and enforcement; solicit community and stakeholder feedback and make adjustments as needed; establish and launch media campaign to notify and inform the public of the requirements</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Strategy 2: Ease of Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Collaborate with internal City and County of Denver partners to establish core requirements; leverage existing enterprise applications to minimize implementation risks; deliver compliance tools in a medium familiar to core constituency; and develop resources to aid the community in complying with regulations</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Strategy 3: Compliance Monitoring and Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Determine method to identify and track scofflaw STRs; identify resources and mechanism to implement monitoring; coordinate with PEAK team to ensure process efficiency; utilize existing tools to facilitate compliance (reminders, notices of violation, and administrative citations)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Strategy 4: Complaint Investigation Monitoring and Enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Determine method to identify and track operator complaints; identify method for tracking licensed operators violating established requirements; utilize existing tools to facilitate compliance (reminders, notices of violation, postings, administrative citations); coordinate with the City Attorney’s Office, provide evidence for City Attorney’s Office determination to show cause for revocation</td>
</tr>
</tbody>
</table>

**Source:** City and County of Denver Department of Excise and Licenses.

EXL has taken several steps toward addressing some of the strategies outlined in its Short-Term Rental Strategic Enforcement Plan, including the following:

- In accordance with the department’s community engagement strategy (Strategy 1), EXL executed a “Stay Legit Denver” campaign to help educate the public, STR hosts, and industry representatives about the City’s new regulations and to encourage compliance. The campaign included a media campaign and town hall forums to heighten public awareness about STR rules and regulations, discussions with industry representatives and STR hosts about licensing requirements and enforcement activities, and participation on the Denver Short-Term Rental Advisory Committee (STRAC) to obtain feedback on EXL’s administration and enforcement of STR regulations.¹⁹

- Consistent with EXL’s ease of compliance strategy (Strategy 2), the department has worked with Treasury and the City’s Technology Services department to create a web-based portal that provides the public with information about STR licensing requirements.

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¹⁹ According to STRAC’s mission statement, the purpose of the committee is to “provide guidance and recommendations to Excise and Licenses on administration, enforcement and other policies pertaining to Short Term Rental Licensing.” The committee consists of a variety of stakeholders, including STR hosts, neighborhood representatives, hotel and tourism industry representatives, and Denver City Council members.
STR hosts can use the portal to establish a Lodger’s Tax account and apply for or renew an existing STR business license.

- To achieve EXL’s compliance monitoring and enforcement strategy (Strategy 3), the department has entered into a contract with Host Compliance to provide routine monitoring services, including tracking unlicensed advertisements. EXL and Treasury also routinely exchange information to ensure that all license holders are properly registered to report and remit the City’s Lodger’s Tax.

Although EXL has acted to address several of the strategies outlined in the plan, EXL has not developed a systematic approach for evaluating the effectiveness of its STR enforcement strategies and tactics. Specifically, EXL has not:

- **Aligned Strategies and Tactics with Performance Measures or Methods for Assessing Results** - Although the Short-Term Rental Strategic Enforcement Plan outlines strategies and tactics for STR enforcement, EXL has not identified specific measures or methods for determining the extent to which the strategies and tactics implemented are helping address the department’s mission to ensure the safe, efficient, and responsible operation of STRs. For example, to ease compliance with STR regulations (Strategy 2), the plan states that EXL will “deliver compliance tools in a medium that is familiar” to its core customers. However, EXL officials have not specified measures or a method for assessing the impact of the tools selected on customer service and compliance. Similarly, the plan states that EXL will develop resources to aid the community in compliance with STR regulations, but has not developed a way to determine the efficacy of those efforts. Finally, for complaint investigations (Strategy 4), the plan states that EXL will use existing tools such as reminders, NOVs, and Administrative Citations to facilitate compliance. However, officials have not created methods that fully examine the usefulness of those tools for improving compliance with STR regulations.

- **Established Methods for Tracking and Analyzing Data to Determine the Impact of STRs on Denver Neighborhoods** - EXL has not developed an approach that would allow the department to track and analyze data to evaluate the impact of STRs on the City’s neighborhoods. Specifically, a central goal communicated in the legislative declaration of the City’s STR ordinance is to create a licensing system that will “allow for data collection to determine the impact of [STRs] on neighborhoods and affordable housing.”

EXL officials cited the department’s emphasis on developing effective regulations and administrative systems to support STR enforcement as the primary reason for this gap. EXL officials spent much of 2015 and 2016 working with the Denver City Council, community groups, industry representatives, and other stakeholders to develop the City’s STR regulations, and have not dedicated resources toward developing a systematic approach for evaluating the effectiveness of its STR enforcement efforts.

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20 City and County of Denver, Ordinance No. 262-16.
21 U.S. Government Accountability Office. Designing Evaluations: 2012 Revision, GAO-12-208G (Washington, D.C.: Jan. 2012). For some programs, the authorizing legislation outlines the program’s purpose, scope, and objectives; the need it was intended to address; and whom it is intended to benefit.
Numerous external sources underscore the importance of collecting and analyzing data to make management decisions. First, guidance from the U.S. Government Accountability Office (GAO) highlights the importance of collecting and analyzing data on program processes and outcomes in helping government organizations make decisions that affect future strategies, planning and budgeting, identifying priorities, and allocating resources. GAO also suggests that such analysis can be used to identify more effective processes and approaches to program implementation. Finally, guidance from the National Performance Management Advisory Commission specifies that organizations should implement practices to develop, collect, store, analyze, and understand performance data, including the development of indicators or measures of workload activity, effectiveness, efficiency, and actual results or improvements.

Without a systematic approach for developing, collecting, and analyzing information about STR enforcement efforts or the impact of these businesses on Denver neighborhoods, EXL may be missing opportunities to strengthen its ability to ensure the safe, efficient, and responsible operation of short-term rentals within the City.

**RECOMMENDATION 1.3**

The Director of Excise and Licenses should develop and implement an approach for evaluating the effectiveness of its STR enforcement strategies and tactics, including a suite of measures to assess the efficiency and effectiveness of enforcement processes.

*Agency Response: Agree, Implementation Date – Ongoing*

**RECOMMENDATION 1.4**

The Director of Excise and Licenses should develop and implement an approach for tracking and analyzing data to evaluate the impact of STRs on the City’s neighborhoods, including the effect of STRs on housing affordability.

*Agency Response: Disagree, Implementation Date – Not applicable*

**EXL’s Policies and Procedures to Ensure the Accuracy of STR Licensing Information Are Inadequate**

As previously stated, a primary goal of the City’s STR legislation is to allow for data collection to determine the impact of STR properties on neighborhoods and affordable housing. However, in assessing the reliability of STR licensing data, we found that EXL does not have an adequate process in place to ensure the accuracy of licensing data. This has compromised the quality of

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24 City and County of Denver, Ordinance No. 262-16.
available STR enforcement information. For example, based on our analysis of the data, we found the following issues:  

- **Invalid Lodger's Tax Numbers** - Although applicants are required to have a valid Lodger’s Tax license and identification number prior to applying for an STR license, we found that 1,082 of the 1,642 licenses issued (66 percent) were associated with invalid Lodger’s Tax identification numbers. This indicates a flaw in the application and monitoring processes, which could adversely impact the City’s ability to identify STR hosts who are responsible for remitting the Lodger’s Tax and other STR-related taxes. The system should be configured to accept only valid numbers during the application—as is required by law. Also, periodic review and corrections should be performed for licenses already issued.  

- **Multiple People Sharing One Lodger's Tax Number** - We also identified six instances of applicants sharing a single Lodger's Tax identification number for separate properties. This indicates a flaw in the application and monitoring processes, which could impede accurate reconciliation of licensing and tax data—ensuring that all STRs operating in the City are paying the appropriate amount of tax. Accordingly, the system should be configured to prohibit the use of a single Lodger's Tax number for multiple properties, as the practice conflicts with STR regulations. Also, periodic review and corrections should be performed for licenses already issued.  

- **Multiple Licenses Issued to the Same Applicant** - We identified 45 instances out of 1,642 applicants who applied for and received more than 1 STR license. Within the 45 instances, 25 of the licenses were issued to applicants who registered to operate more than one STR at the same address. This indicates a flaw in the design of the application process; the system should be configured to prohibit licensure that would conflict with STR regulations.  

- **Violation of the Primary Residence Requirement** - Within the same group of 45, we identified 20 instances in which an applicant obtained a license registered to more than one address. This could indicate violations of the City’s primary residence requirement for STR hosts, which may have an adverse impact on housing affordability.  

- **Invalid Driver's License or Government-Issued Identification** - We identified a single instance in which a driver’s license number was associated with STR licenses registered to 2 applicants and 2 unique property addresses, indicating the invalid use of the same driver’s license or government-issued identification information.  

- **Duplicate Entries from License Renewal** - We identified three instances of duplicate STR license numbers out of 1,642 active licenses stemming from the renewal process. Currently, STR business licenses expire one year after the date of issuance. An STR host can renew an existing license by completing the application renewal process online and submitting a $25 licensing fee. After analyzing how duplicate entries may have occurred, we learned the following:  
  
  - **EXL’s Compliance Tracker Does Not Differentiate between License Numbers and Renewal Numbers** - When a license renewal application is processed in Accela, the system creates a renewal confirmation number that is different than and subordinate to the original STR license number issued. All original licenses and renewals are tracked in a spreadsheet, known as the STR Master Tracker, which EXL uses to help manage its...  

25 The data analyzed included information through June 30, 2017.  
26 D.R.M.C. §33-48(e).
compliance monitoring activities. The query that EXL uses to update the STR Master Tracker only captures the original license number without indicating if the license number is associated with a renewal. This causes the original license number to appear more than once. The creation of duplicate entries in the STR Master Tracker can artificially increase EXL’s calculation of the number of licenses the department has issued if careful manipulation of the data is not performed to exclude duplicates.

- **STR Licensees May Confuse Renewal Confirmation Numbers for New License Numbers**
  - After completing the STR license renewal process, the licensee receives a confirmation number, which is in the same format as the original license number. Accordingly, an STR licenses may inadvertently display the renewal confirmation number as opposed to the original license number, as is required. This could put a licensee in the position of being cited for being out of compliance even when possessing a valid, renewed STR license. Given that STR licenses are only valid for one year and that the majority of STR licensees were issued their original licenses in December 2016, the bulk of renewals will be expected to occur in December 2017. EXL was unaware of this condition until it was brought to their attention by the audit team and currently does not have a procedure for notifying hosts about the accurate number to display. If not addressed, this could lead to large numbers of notices of violations being issued for the use of an invalid STR license number.

GAO guidance emphasizes the importance of reliable data and information systems that meet operational information requirements and respond to an entity’s objectives and risks. Specifically, the standards state that managers should evaluate information processing to ensure that transactions are:

- **Complete** – Fully recorded and not understated;
- **Accurate** – Recorded correctly and in a timely manner; and
- **Valid** – Represent events that occurred and were executed according to prescribed procedures.27

The absence of policies and procedures to ensure the completeness, accuracy, and validity consistency of data hampers EXL’s ability to develop, analyze, and use quality information to assess the effectiveness of STR enforcement efforts and the impact of STRs on the City’s neighborhoods and affordable housing.

**RECOMMENDATION 1.5**

The Director of Excise and Licenses should improve the reliability and quality of short-term rental enforcement data by developing policies and procedures to ensure that the data collected is complete, accurate, and valid.

**Agency Response: Agree, Implementation Date – Ongoing**

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27 GAO-14-704G.
EXL’s Compliance Software Service Selection Process Did Not Fully Align with City Contracting Policies or Best Practices for Business Case Analysis

As previously discussed, EXL receives compliance monitoring and enforcement software services through a contract with Host Compliance. However, audit work revealed that EXL did not fully adhere to the City’s contracting guidance for competitive bidding as outlined in the City’s Executive Order No. 8B. Amongst other things, for contracts that are less than $100,000 and not covered by the D.R.M.C. or City Charter, Executive Order No. 8B states that every department and agency should:

- Document the department’s method for soliciting bidders;
- Requests bids from at least three responsible bidders or proposers or inform potential bidders or proposers of an invitation to bid “in a manner that will achieve maximum competition” to the City; and
- Require written responses from all interested parties.

Consistent with Executive Order No. 8B, EXL officials documented the department’s method for soliciting bidders in Alfresco—the City’s contract records management system. However, EXL did not request bids from at least three responsible parties, nor did the department solicit bids in a manner that would achieve maximum competition. Rather, EXL relied on solicitation that it received from Host Compliance and another STR compliance software provider to identify the potential bidder for the current contract. Also, the department did not obtain a written response from both competing bidders during the bidding process; EXL received a written response from Host Compliance but received only a verbal quote from the competitor that did not secure the contract with the City.

As stated in Executive Order No. 8B, the City “owes a duty to its citizens to exercise strong financial stewardship” by maintaining “a fair, open, and competitive market for the goods and services it purchases.” Not adhering to the competitive selection requirements outlined in the order could place EXL at risk for not selecting the most cost-effective option for the best value.

**RECOMMENDATION 1.6**

For future procurement of STR enforcement software services, the Director of Excise and Licenses should adhere to the requirements outlined in Executive Order No. 8B to ensure that the City selects the most cost-effective option for the best value.

*Agency Response: Agree, Implementation Date – November 2017*

Further, during the competitive selection process for acquiring compliance software services, EXL did not conduct a business case analysis to identify and compare the quantifiable and non-quantifiable costs and benefits associated with the bids presented and determine the best alternative. Although this approach is not outlined explicitly in Executive Order No. 8B, it is widely accepted as best practice for procuring goods and services. It is especially relevant in the public sector where governments have a fiscal responsibility to taxpayers.
EXL officials acknowledged the previously mentioned shortcomings, attributing them to what they believed to be a lack of truly viable options in the marketplace. EXL was unaware of the existence of other STR software service providers.

Again, GAO provides valuable guidance, specifically in its publication titled, “GAO Cost Estimating and Assessment Guide,” on conducting a business case analysis. Specifically, the guidance states that business case analysis allows organizations to compare the operational effectiveness, suitability, costs, and risks associated with available alternatives. Furthermore, the guidance states a business case analysis should be balanced and should not be developed to support a pre-determined solution. Although EXL did meet with two competitors during the selection process, department officials acknowledged having met with the firm that did not secure the contract, not by seeking them out, but only after receiving an offer for a conference call with them to learn more about the firm’s services.

Finally, GAO guidance states that any analysis of alternatives that occurs when procuring goods or services should consider mission threats and dependencies on other programs. For example, although Treasury has a significant role in the collection of the Lodger’s Tax and other business taxes associated with STR operation, EXL did not consult with Treasury when making its selection for STR enforcement services. This is particularly important as some STR software service providers, including Host Compliance, provide offers for tax collection—which could have provided an efficiency to Treasury.

**RECOMMENDATION 1.7**

For future procurement of short-term rental enforcement software services, the Director of Excise and Licenses should conduct a business case analysis to compare the operational effectiveness, suitability, cost, and risk associated with available alternatives. When considering alternatives, the Director should also consider mission threats and dependencies on other programs.

**Agency Response: Agree, Implementation Date – November 2017**

Treasury Needs to Improve Its Lodger’s Tax Validation Procedures to Ensure Compliance with the City’s Tax Laws

Treasury is responsible for collecting, recording, and depositing the City’s tax revenue, including that generated by STR business operations. The D.R.M.C. requires that applicants obtain a valid lodger’s tax account to remit taxes to Treasury for STR activities. To ensure that all applicable taxes are collected, EXL and Treasury exchange licensing information from Accela and tax information from GenTax to ensure that all persons holding an active STR business license also have a valid Lodger’s Tax license and number. The reconciliation process that matches parcel numbers and addresses between both systems is manual, which unlike automated processes tend to be

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28 D.R.M.C., §33-48(e).
less reliable and more susceptible to human error. Furthermore, Treasury officials acknowledged that the reconciliation process was documented during the course of the audit.

As part of our data reliability assessment, we found 120 instances out of 1,642 in which persons holding an STR business license had not secured a Lodger’s Tax license or identification number from Treasury, as is required by the law. Although it was not possible for auditors to determine how much STR-related tax may be owed to the City by the 120 STR business license holders, without a valid Lodger’s Tax license or identification number, these operators are unable to remit taxes owed to the City.

As previously mentioned, GAO guidance highlights the importance of having complete, accurate, and valid data to develop, analyze, and use quality information to assess the effectiveness of STR enforcement efforts. Without an effective data validation policies and procedures, Treasury may be unable to ensure that all persons holding an STR business license have obtained a Lodger’s Tax license and are paying applicable taxes in accordance with City law.

**RECOMMENDATION 1.8**

The Treasurer should improve the Treasury Division’s data validation policies and procedures to ensure that all persons holding an STR business license have obtained a Lodger’s Tax license and identification number and are paying all applicable taxes.

**Agency Response: Agree, Implementation Date – November 2017**

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29 GAO-14-704G. Control activities can be implemented in either an automated or a manual manner. Automated control activities are either wholly or partially automated through the entity’s information technology. Manual control activities are performed by individuals with minor use of the entity’s information technology. Automated control activities tend to be more reliable because they are less susceptible to human error and are typically more efficient.

30 D.R.M.C., §33-48(e).

31 GAO-14-704G.
RECOMMENDATIONS

We make the following recommendations to enhance the administrative practices of the Department of Excise and Licenses and the Department of Finance - Treasury Division for enforcing short-term rental regulations:

1.1 **Compliance with Applicable Laws** - The Director of Excise and Licenses should evaluate current and future Department of Excise and Licenses short-term rental licensing and enforcement policies and procedures to ensure compliance with the Denver Revised Municipal Code and other applicable laws, including those related to proof of possession, insurance coverage, processes for issuance and denial, and administrative citations.

*Auditee Response: Agree, Implementation Date - March 2018*

Auditee Narrative: Excise and Licenses (EXL) appreciates that the Auditor recognizes that we are in the early stages of implementing a new program and that we have made several steps forward. EXL is in the process of executing our Short-Term Rental (STR) Strategic Enforcement Plan for implementation (Table 3) and we have successfully completed many of our strategies. EXL will continue to review and adjust STR enforcement practices as advised by the City Attorney’s Office to ensure compliance with legal requirements. In conjunction with the Short-Term Rental Advisory Committee (STRAC) and other stakeholders, and in accordance with our STR Strategic Enforcement Plan, EXL will review licensing requirements for potential modification. EXL will also work with the STRAC to establish liability coverage limits and will require documented proof of possession rather than self-certification.

1.2 **Rules and Regulations** - The Director of Excise and Licenses should review and update all Department of Excise and Licenses rules and regulations to reflect current STR enforcement practices, including those rules and regulations related to administrative citations.

*Auditee Response: Disagree, Implementation Date - Not applicable*

Auditee Narrative: EXL rules are intentionally written to apply to all of the more than 100 license types the Department issues for clarity and ease of use by the community, applicants, licensees, the department, hearing officers and other stakeholders. In addition, EXL is still in the process of assessing and monitoring its STR program in accordance with our strategic plan and it would be premature at this time to plan whether or not unique administrative citation rules are needed for this specific license type.

1.3 **Performance Evaluation** - The Director of Excise and Licenses should develop and implement an approach for evaluating the effectiveness of its STR enforcement strategies and tactics, including a suite of measures to assess the efficiency and effectiveness of enforcement processes.

*Auditee Response: Agree, Implementation Date - Ongoing*

Auditee Narrative: EXL is committed to measuring progress toward strategic goals to ensure the effectiveness and efficiency of the short-term rental program. Once we are one year into the program and can establish the baseline data for this seasonal industry, specific
measures will be identified and monitored to inform ongoing adjustments to programmatic tactics.

1.4 **Neighborhood Impact** - The Director of Excise and Licenses should develop and implement an approach for tracking and analyzing data to evaluate the impact of STRs on the City’s neighborhoods, including the effect of STRs on housing affordability.

**Auditee Response: Disagree, Implementation Date - Not applicable**

Auditee Narrative: EXL is collecting data that can be used to analyze the impact of STR’s on affordable housing and neighborhoods. We are also making that data publicly available for research and analysis by interested parties. However, affordable housing analysis is beyond EXL’s expertise and analytical capabilities. While we agree that this type of analysis may be interesting, it would be inappropriate and irresponsible for EXL, a business licensing organization, to conduct such an analysis based solely on the short-term rental data collected secondary to licensee compliance. In addition to making the data publicly available, EXL has notified peer agencies of the data as one potential data point in an affordable housing analysis.

**Auditor’s Addendum:** As stated in the audit report, a central goal communicated in the City’s STR ordinance is to create a licensing system that will “allow for data collection to determine the impact [STRs] on neighborhoods and affordable housing.” Therefore, EXL should work with City Council to clarify who is responsible for tracking and analyzing data to evaluate the impact of STRs on the City’s neighborhoods, including the effect of STRs on housing affordability.

1.5 **Data Reliability** - The Director of Excise and Licenses should improve the reliability and quality of short-term rental enforcement data by developing policies and procedures to ensure that the data collected is complete, accurate, and valid.

**Auditee Response: Agree, Implementation Date - Ongoing**

Auditee Narrative: EXL agrees with the need to improve data reliability over the long-term. In accordance with EXL’s STR Strategic Enforcement Plan, we prioritized educating hosts and the community of the new licensing requirements and making it easy for hosts to get licensed over enforcement mechanisms. Because of that strategic decision, it appears that Denver has the highest compliance rate of any city in the country, including those that have been licensing short-term rentals for a much longer period of time (See attached graph showing steady increase in licensing). We understood that at the outset while we focused on bringing hosts into the regulatory framework, data reliability would not be as strong as it would be once we stabilized. As the program matures, we will continue to actively work towards ensuring data collected is complete, accurate, and valid as evidenced through the work conducted with the Treasury Division to verify Lodger’s tax account information (please see response to recommendation 1.8).

1.6 **Contracting Practices** - For future procurement of STR enforcement software services, the Director of Excise and Licenses should adhere to the requirements outlined in Executive Order No. 8B to ensure that the City selects the most cost-effective option for the best value.
Auditee Response: Agree, Implementation Date - November 2017

Auditee Narrative: Excise and Licenses, in consultation with Purchasing and the city Attorney’s Office, worked on the procurement and selection of the vendor for STR enforcement software services per the requirements outlined in Executive Order 8B. Moving forward, we will ensure greater documentation of vendor selection.

1.7 Business Case Analysis - For future procurement of short-term rental enforcement software services, the Director of Excise and Licenses should conduct a business case analysis to compare the operational effectiveness, suitability, cost, and risk associated with available alternatives. When considering alternatives, the Director should also consider mission threats and dependencies on other programs.

Auditee Response: Agree, Implementation Date - November 2017

Auditee Narrative: Given the uniqueness of the services being requested and the limited number of candidates in the market at the time, Excise and Licenses conducted an appropriate business case analysis when procuring STR enforcement software services. Moving forward, we will ensure greater documentation of the business case analysis and vendor selection.

1.8 Lodger’s Tax Validation - The Treasurer should improve the Treasury Division’s data validation policies and procedures to ensure that all persons holding an STR business license have obtained a Lodger’s Tax license and identification number and are paying all applicable taxes.

Auditee Response: Agree, Implementation Date - November 2017

Auditee Narrative: Excise and Licenses has worked with Treasury and Technology Services to enable real-time verification of Lodger’s tax account numbers when registering or renewing business licenses.
6 December 2017

Auditor Timothy O’Brien, CPA
Office of the Auditor
City and County of Denver
201 West Colfax Avenue, Dept. 705
Denver, Colorado 80202

Dear Mr. O’Brien,

The Office of the Auditor has conducted a performance audit of the City’s short-term rental enforcement efforts.

This memorandum provides a written response for each reportable condition noted in the Auditor’s Report final draft that was sent to us on November 14, 2017. This response complies with Section 33-276 (c) of the Denver Revised Municipal Code (D.R.M.C.).

AUDIT FINDING
The City Cannot Fully Assess the Effectiveness of its Short-Term Rental Processes and Procedures for Licensing and Enforcement

RECOMMENDATION 1.1
Compliance with Applicable Laws – The Director of Excise and Licenses should evaluate current and future Department of Excise and Licenses short-term rental licensing and enforcement policies and procedures to ensure compliance with the Denver Revised Municipal Code and other applicable laws, including those related to proof of possession, insurance coverage, processes for issuance and denial, and administrative citations.

<table>
<thead>
<tr>
<th>Agree or Disagree with Recommendation</th>
<th>Target date to complete implementation activities (Generally expected within 60 to 90 days)</th>
<th>Name and phone number of specific point of contact for implementation</th>
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</thead>
<tbody>
<tr>
<td>Agree, ongoing.</td>
<td>All ongoing and should be completed within 90 days, if not sooner.</td>
<td>Dominic Vainoa 720-865-2753</td>
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</tbody>
</table>

Narrative for Recommendation 1.1

Excise and Licenses (EXL) appreciates that the Auditor recognizes that we are in the early stages of implementing a new program and that we have made several steps forward. EXL is in the process of executing our Short-Term Rental (STR) Strategic Enforcement Plan for implementation (Table 3) and we have successfully completed many of our strategies. EXL will continue to review and adjust STR enforcement practices as advised by the City Attorney’s Office to ensure compliance with legal requirements. In conjunction with the Short-Term Rental Advisory Committee (STRAC) and other

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stakeholders, and in accordance with our STR Strategic Enforcement Plan, EXL will review licensing requirements for potential modification. EXL will also work with the STRAC to establish liability coverage limits and will require documented proof of possession rather than self-certification.

**RECOMMENDATION 1.2**
**Rules and Regulations** – The Director of Excise and Licenses should review and update all Department of Excise and Licenses rules and regulations to reflect current STR enforcement practices, including those rules and regulations related to administrative citations.

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<td>Not Applicable</td>
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**Narrative for Recommendation 1.2**
EXL rules are intentionally written to apply to all of the more than 100 license types the Department issues for clarity and ease of use by the community, applicants, licensees, the department, hearing officers and other stakeholders. In addition, EXL is in the process of assessing and monitoring its STR program in accordance with our strategic plan and it would be premature at this time to make a decision whether or not unique administrative citation rules are needed for this specific license type.

**RECOMMENDATION 1.3**
**Performance Evaluation** – The Director of Excise and Licenses should develop and implement an approach for evaluating the effectiveness of its STR enforcement strategies and tactics, including a suite of measures to assess the efficiency and effectiveness of enforcement processes.

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**Narrative for Recommendation 1.3**
EXL is committed to measuring progress toward strategic goals to ensure the effectiveness and efficiency of the short-term rental program. Once we are one year into the program and can establish the baseline data for this seasonal industry, specific measures will be identified and monitored to inform ongoing adjustments to programmatic tactics.

**RECOMMENDATION 1.4**
**Neighborhood Impact** – The Director of Excise and Licenses should develop and implement an approach for tracking and analyzing data to evaluate the impact of STRs on the City’s neighborhoods, including the effect of STRs on housing affordability.

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**Narrative for Recommendation 1.4**
EXL is collecting data that can be used to analyze the impact of STR’s on affordable housing and neighborhoods. We are also making that data publicly available for research and analysis by interested stakeholders.
parties. However, affordable housing analysis is beyond EXL’s expertise and analytical capabilities. While we agree that this type of analysis may be interesting, it would be inappropriate and irresponsible for EXL, a business licensing organization, to conduct such an analysis based solely on the short-term rental data collected secondary to license compliance. In addition to making the data publicly available, EXL has notified peer agencies of the data as one potential data point in an affordable housing analysis.

**RECOMMENDATION 1.5**

Data Reliability – The Director of Excise and Licenses should improve the reliability and quality of short-term rental enforcement data by developing policies and procedures to ensure that the data collected is complete, accurate, and valid.

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**Narrative for Recommendation 1.5**
EXL agrees with the need to improve data reliability over the long-term. In accordance with EXL’s STR Strategic Enforcement Plan, we prioritized educating hosts and the community of the new licensing requirements and making it easy for hosts to get licensed over enforcement mechanisms. Because of that strategic decision, it appears that Denver has the highest compliance rate of any city in the country, including those that have been issuing short-term rentals for a much longer period of time. (See attached graph showing steady increase in licensing). We understood that at the outset while we focused on bringing hosts into the regulatory framework, data reliability would not be as strong as it would be once we stabilized. As the program matures, we will continue to actively work towards ensuring data collected is complete, accurate and valid as evidenced through the work conducted with the Treasury Division to verify Lodger’s tax account information (please see response to recommendation 1.8).

**RECOMMENDATION 1.6**

Contracting Practices – For future procurement of STR enforcement software services, the Director of Excise and Licenses should adhere to the requirements outlined in Executive Order No. 8B to ensure that the city selects the most cost-effective option for the best value.

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**Narrative for Recommendation 1.6**
Excise and Licenses, in consultation with Purchasing and the City Attorney’s Office, worked on the procurement and selection of the vendor for STR enforcement software services per the requirements outlined Executive Order 8B. Moving forward, we will ensure greater documentation of vendor selection.

**RECOMMENDATION 1.7**

Business Case Analysis – For future procurement of short-term rental enforcement software services, the Director of Excise and Licenses should conduct a business case analysis to evaluate operational effectiveness, suitability, cost, and risk associated with available alternatives. When considering alternatives, the Director should also consider mission threats and dependencies on other programs.

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**Narrative for Recommendation 1.7**
Given the uniqueness of the services being requested and the limited number of candidates in the market at the time, Excise and Licenses conducted an appropriate business case analysis when procuring STR enforcement software services. Moving forward, we will ensure greater documentation of the business case analysis and vendor selection.

**RECOMMENDATION 1.8**
**Lodger's Tax Validation** — The Treasurer should improve the Treasury Division's data validation policies and procedures to ensure that all persons holding an STR business license have obtained a Lodger’s Tax license and identification number and are paying all applicable taxes.

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**Narrative for Recommendation 1.8**
Excise and Licenses has worked with Treasury and Technology Services to enable real-time verification of Lodger’s tax account numbers when registering or renewing business licenses.

Please contact Dominic Vaiana at 720-865-2753 with any questions.

Sincerely,

Ashley Rea Kilroy
Executive Director
Department of Excise and Licenses

cc: Valerie Walling, Deputy Auditor, CPA, CMC
Katja Freeman, Audit Manager, MA, MELP
LaKesha Allen Horner, MPA, Audit Supervisor

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AGENCY RESPONSE ATTACHMENT

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<tbody>
<tr>
<td>Total Unique Hosts</td>
<td>9,753</td>
<td>9,266</td>
<td>9,063</td>
<td>7,791</td>
<td>7,751</td>
</tr>
<tr>
<td>Total Addresses Identified</td>
<td>294</td>
<td>2,137</td>
<td>1,900</td>
<td>1,407</td>
<td>1,694</td>
</tr>
<tr>
<td>Licensed</td>
<td>520</td>
<td>676</td>
<td>935</td>
<td>1,283</td>
<td>1,452</td>
</tr>
<tr>
<td>% Addresses Identified</td>
<td>7.64%</td>
<td>35.60%</td>
<td>62.71%</td>
<td>50.20%</td>
<td>56.51%</td>
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<tr>
<td>Compliance Rate</td>
<td>13.66%</td>
<td>27.38%</td>
<td>32.31%</td>
<td>43.74%</td>
<td>52.65%</td>
</tr>
</tbody>
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Source: Department of Excise and licenses

Note: The analysis presented in this attachment was prepared by the Department of Excise and licenses, and provided to the City and County of Denver Auditor's Office as part of the department's agency response. The Auditor's Office has not assessed the reliability of the data provided in this attachment.