



## **SPECIAL REPORT – SHORT TERM RENTALS**

### **BACKGROUND**

Nearly two years ago, the Columbia Convention & Visitors Bureau and city staff began investigating ways to deal with the emerging issue of Short-Term Rentals. These are the rental units often marketed through online platforms like Airbnb, VRBO, Flipkey, Booking.com, HomeAway and at least 35 more national and regional websites. Some people think of these as a cozy version of a hotel room, made cozier since they are often located in someone’s private home. Other people think of them as bargain accommodations in larger cities where overnight rates can be high. Others believe these are a great option when larger groups want to visit a community for a specific experience and all want to stay together.

Unfortunately, some people in established neighborhoods believe that using personal homes as de facto hotel rooms ruins the character of a neighborhood; invites noise, parking and trash problems; and creates a situation where the constant churn of overnight guests makes regulation necessary, but difficult.

And, there is the question of taxation. If hotels and motels have to pay a lodging tax in Columbia, shouldn’t the same be true for short term rentals? And, if they are not defined in the zoning code or registered with a city, who do you send the tax bill to? And if they are not regulated, monitored and inspected, are they even safe for occupancy?

On January 6, 2020 the Columbia City Council held a 2-hour work session to explore this issue in advance of the creation of a new set of rules design to regulate and tax short term rentals. The following report recaps some of the discussion and presentations made by city staff during that work session. In addition to the recap, this report lists some questions that have emerged during the debate, some of which have gone unasked – and many of which have remained unanswered.

### **A RECAP OF THE JANUARY 6, 2020 COUNCIL WORK SESSION**

The meeting began with a presentation by city staff and touched on several distinct topics, often interspersed with questions from members of the city council. No public participation was invited during this meeting, however, a general timeline for future debate on the topic was revealed.

### ***General Timeline***

- Ch. 29 Development Code amendments to earlier versions of proposed ordinances were introduced at the council level on November 18, 2019. (This followed consideration by the P&Z Commission earlier in the year that resulted in a tie vote by commissioners, resulting in NO RECOMMENDATION for or against the proposed regulations as earlier presented. Staff then amended the original ordinances (for the 4<sup>th</sup> time) and brought the amended package forward.
- The amended, proposed ordinance was then tabled from December 2, 2019 to January 21, 2020 for a full public hearing
- In the interim, council scheduled a work session on the topic which was held on January 6.
- On January 21, 2020 a public hearing is expected to be held on the proposal, along with any amendments newly proposed by members of the City Council. This public hearing will allow significant public input and is expected to result in significant debate.
- That same night, city staff has indicated that they will INTRODUCE other code chapter revisions that deal with business licenses, lodging taxes, rental certificates, fee schedules, who will be responsible for enforcement, budgets and other “companion” issues. (This has been a source of frustration to many members of the public who believe that this information should be released to the public BEFORE general consideration of the regulations is undertaken by the council.)
- If everything goes smoothly and the council seems to be headed toward some sort of consensus on the issue, the council will vote on the final package of regulations, with amendments on February 3, 2020. The council also has the option to delay such a vote if the issue is still not perfected and could even refer the whole package back to P&Z for another round of hearings. They could also vote the whole proposal down and send everyone back to the proverbial drawing board.

### ***Amendments & Key Provisions Of The Proposed Rules***

These are the key provisions of the new draft regulations, some of which are different than earlier versions of the proposed rules:

- This legislation will revise definitions for hotels and regular bed & breakfast operations, and will create new definitions for short-term rentals to differentiate them from long-term rentals (stays of 30 or less consecutive days)
- Will make the claim that short term rentals are “commercial” uses, not residential uses
- Will differentiate between the concepts of “hosted” vs. “unhosted” rentals (On-site presence of owner or agent required at times and owner must live in the unit at least 270 days per year)
- Will subject short term rentals to use-specific standards and require all unhosted rentals to obtain Conditional Use Permits but will allow administrative approval for hosted rentals
- Will eventually require Proof of Ownership forms and other documents for registrations, inspections, complaints, rules, etc.
- Will impose occupancy limits similar to long term rentals except make no accommodation for “related overnight guests”. All warm bodies will be considered “transient guests” regardless of family relationships, age or other considerations. (Generally, this will cap the maximum number of guests per unit at 3 in R-1 zoning and 4 in other zoning classifications.) This rule can be waived by obtaining a Conditional Use Permit for any specific property.
- In buildings with more than one living unit, like duplexes or multi-family apartments, no more than one of those units may be used as a short-term rental at any one time.
- Will require owners to register each short-term rental unit and disclose what booking platforms they use
- Will require the display of a current Rental Certificate of Compliance (which means inspections)
- Will require owners to obtain a business license (unlike current long-term rentals)

- Adds short term rentals to the definition of hotel in Chapter 26 of the city code (which is different than the part of the code dealing with zoning) which makes the units eligible for taxation
- City notification to neighbors of all approved short-term rentals in the city
- Adds STRs as a type of business in the Business License section of the city code
- Will allow dual registration of a property as eligible to be either a short term or long-term rental property

In presenting these elements of the legislation, city staff noted that there have not been a large number of complaints regarding existing Short Term Rentals and that it may not be wise to simply copy rules from other communities due to the fact that many cities have imposed then revoked rules when it was found that they did not work well. Some cities have also faced legal challenges related to Short Term Rental rules. Both the landscape and the technology surrounding these online rental platforms continues to change, and this city should be prepared to change along with that evolving market. It was also noted that some court cases have indicated that if a city wants to get into the business of regulating STRs, they should focus on the rental owners, not the online platforms and that there are professional tracking companies who can be hired to help monitor STR activity, existence and patterns of operation.

#### ***Some Discussions From The Work Session***

During the January 6 work session, city council members posed several questions to city staff members at various times during the presentation. The following are some of the questions and discussions that arose regarding a variety of issues in the current proposal:

Staff explained that they are proposing that all STR owners come forward and register and they will double check as well as they can against existing online platform listings. They admitted that this could be a difficult task to catch all hosts since there are so many different online marketing platforms. They also noted that there are some companies that help cities implement and enforce these types of regulations and that they may need to look at some sort of consultant or company for help. A cost estimate for such a service was not provided.

Staff said that “hosted” STRs seemed to have the highest general level of acceptance, and that in the case of a “hosted” unit, the owner may designate an agent who will be available to answer questions, take care of check-in, etc. if the owner is not physically in the rental themselves. “Hosted” means that the unit is owned by someone who lives in that residence more than 270 days each year, but they do not have to actually be in the house when the guests are using the home. Neither does the agent. They just have to be available. The Mayor asked if someone bought a property next door to their regular residence, if that could be considered “hosted” since the owners are right there. Staff said no, the regular residence would be considered as the hosted unit, but the house next door would have to be considered to be an “unhosted” unit and would require a Conditional Use Permit. Presumably, the same would be true for one half of a duplex where the owner lives in one half but rents out the other side. Oddly if that were the case, the owner could use the other half of the duplex as a long-term rental without obtaining a business license or without getting a Conditional Use Permit if it were zoned appropriately.

Discussion occurred regarding the topic of familial status. Legal staff explained that there is no reference to “family” members in these proposed regulations. In long term rentals, 5 family members could live in one house with no restriction, and an additional two unrelated people could also live there for a total of 7. Under these rules, the maximum number would be 3 transient guests in R-1 and 4 in other zoning classifications, as long as they have the correct number and size of bedrooms. Large, five-bedroom

houses would not get a break on this rule, and children under 12 or any age would be considered the same as an adult person. Staff did note that any owner could apply for a Conditional Use permit to be allowed a higher capacity, but no specific ground rules for qualification were provided, other than that there are some rules governing occupancy that measure the combines size of bedrooms and living rooms for determining total sleeping occupancy. The Mayor was concerned that some families prefer to rent a house, particularly during events like the Show Me State Games so they can have all their kids and the parents all together in one place. Staff cited an example of having a ball team with 11 players and three parent chaperones and thought that would be too many people in one place. Staff noted that P&Z did consider that possibility but decided against it.

The Mayor expressed the fact that he struggles in creating new rules for short term rentals that are significantly different than the rules for long-term rentals. He specifically asked why if any long-term rental was allowed in a neighborhood or zoning district, why would a short-term property be denied just because of the term of stay? Staff said that they believed that the rate of turnover was the reason that people worried about the short term rental more than the long term rental and showed a continuum of intensity of use chart that showed long term, single family rentals as being less intensive in use than STRs, regular bed and breakfasts, fraternity houses and hotels. Staff said that people feared there would be more trash problems from [people not regular to the neighborhood and that the existing neighbors would never know who was staying in the house next door.

Skala asked if these rules were designed with an average house in mind with an average number of bedrooms. Staff said no, this was designed to apply across the board without regard to house size. It had more to do with hosted vs. hosted than number of bedrooms. Staff took current maximum occupancy limits without include family exemptions. Bigger houses would be subject to all rules of the International Property Code adopted by Columbia and that other rules governing parking would be in lace as well. Parking and noise regulations already apply to all rentals and private homes in the city based on zoning regulations. The Mayor noted that noise violations may be a police matter since it violates an ordinance, not zoning and wondered if it would be a good idea to strengthen the responsibility of Neighborhood Services instead of letting all of this fall to the police. Staff indicated that ordinance violations require evidence to make a case and that means having a reliable witness with documentation, but did not provide an opinion about whether it would be a good idea to enhance Neighborhood Services in this regard.

The Mayor suggested that they had tried to regulate Bird Scooters by making agreement directly with the Bird Scooter company, not with the people who are riding them. For instance, if someone has a bad Airbnb, you have Airbnb cut the user off from using that platform, not the city. Legal staff said the courts have often ruled that you can't compel the company to police owners in local jurisdictions. Staff also noted that if you tried to go through the online platform, you would have to contact them ALL, and there are dozens of online platforms that you would have to negotiate with. Staff was vague in saying exactly what would constitute a bad violation of rules or how many complaints a property had to have before enforcement against the property escalated. They also did not spell out a process for appeal or for verification of complaints. Ultimately, however, the penalty is that you can lose your license to operate if the city gets too many complaints.

The Mayor asked if neighborhoods with restrictive covenants could take care of regulating short term rentals on their own. Staff said the city's policy is that any such covenants are private agreements between the homeowner association and the property owner and that the city does not get in the middle of those kinds of agreements and is not responsible for enforcement. That responsibility would

fall to the association itself. The Mayor asked how this would work downtown in the M-DT. He noted that if the city is now going to call short term rentals a “business use” then couldn’t they put a short-term rental on the first floor of a downtown building since it is a business? Staff said that because it is considered to be residential it would be subject to different setbacks and entrances. The Mayor countered by asking then, is it a business or a residence. Staff said the M-DT zoning calls for mixed uses, so it is not a problem there.

Council asked how much time it would take to process all of these new Conditional Use requests. Staff said they weren’t sure how many there would be, but thought that the Conditional Use Permit process would be generally reserved for unique or exceptional properties. The rule, however, does not make that distinction and forces ALL unhosted properties into the Conditional Use Permit process. Staff suggested that the applications could be ganged up over the course of a few months possibly and some may end up appearing on the Consent Agenda. The mayor asked staff to produce a map of all existing STRs between now and the hearing so he can see it visually. Staff said they could do this and noted that 95% of the zoned property in town is zoned as residential, so they will appear all over town in terms of geography. Staff was asked if conditional uses expire? Staff said that if the property changed hands or use it could expire and that conditional use permits were not transferrable. It was noted that long term rental certificates are transferrable. Staff said that was true but in this case the rule was written to NOT allow that and that there will be an annual renewal process for short term rentals since they may change online platforms more frequently. Skala asked about grandfathering in properties that are already operating as STRs. Staff said there would be no grandfathering, but there would be a transition period so people would not lose bookings. They did not specify how long that transition period would be.

Regarding the application forms, proof of ownership forms, etc., none were presented at this meeting and staff seemed to indicate that they have not yet been created, although they did say that the rental inspection process could be expected to be similar to that for long term rentals. In a side conversation, one staff member seemed to indicate that a similar fee structure could also be expected, but none of that was presented in writing or as a part of this ordinance. Those details will come in companion legislation that will be introduced at the meeting on January 21. The staff did note that the forms will include an affirmation statement by the applicants that says they have read and accept all the terms of use so they can never claim “they didn’t know they weren’t supposed to do that”. Ironically, city staff was not prepared to show the actual documents to council at this meeting even though council is expected to vote on some of this as soon as January 21.

Legal staff noted that there was no local requirement for insurance, but this does make STRs a permitted use in the zoning code and defines them as a commercial use. They said inspections would be required but did not specify on what cycle. Peters noted that long term rentals are on a 3-year cycle, but if there are no complaints in the first 3 years you only have to be inspected every 6 years. Staff also acknowledged that if you own more than one property you can operate more than one STR and there is no limit on that or on density of STRs in any geographic area. It is too hard to enforce that fairly and it would create a true market interference scenario.

Peters asked if we had really figured out what enforcement of all of this would cost? Staff said they may need to dip into the lodging tax receipts to pay for this. Right now, those funds are used to promote tourism and hotel stays. Enforcing these rules might be considered to be a part of that marketing function. Application fees could also be used to offset new costs. License fees would not be used for enforcement. Those are used for staff time to actually the cost of processing the license. The cost of

those fees was not disclosed. Trapp said he thought that the Rental Conservation inspection program only covered about 70% of its true cost. Staff said no, that they actually cover 100% of costs currently.

Thomas asked about density restrictions in neighborhoods. Staff said no and noted that some neighborhoods are really not interested in having STRs at all. They suggested that in some cases, some neighborhoods may want to investigate the idea of creating an overlay that could restrict such uses. That would require 60% of the people in a neighborhood to agree to such a plan, but puts the onus on the citizens to pass such a rule, not the city. This whole issue could also change over time, kind of like the ADU situation. Staff said they need clarification now for STRs since 95% of this city is zoned R-1 and this particular land use is not entitled in the current code.

Council asked about the timeframe for getting Conditional Use permits. Staff said a typical CUP takes 8 to 10 weeks and requires a Public Information Meeting, a P&Z hearing and a council hearing and approval. Staff said they could consider processing these in batches if the time frame did not become too onerous for applicants. Staff noted that a Conditional Use Permit application has a \$350 application fee along with a \$125 advertising fee. That is in addition to any license, registration fee or tax that may be charged.

Skala said he is generally worried about the nuisance part of STRs and will probably come down on the side of neighborhood protection and would support caps for STR density in certain neighborhoods.

The Mayor asked if any council members had any additional specific amendments. Mike Trapp said he would be willing to support an amendment that simply defines STRs as a permitted use but would impose none of the additional licensing and would eliminate the whole conditional use process. He would be OK with inspections it sounded like. The Mayor suggested that if there are any amendments, those could be approved on January 21, then the whole package, with amendments could lay on the table until February 3 when the council could vote on the whole thing.

Pitzer said he was struggling with the concept of making short term rentals a "use" since long term rentals are NOT considered to be a "use". The Mayor agreed with that and seemed to indicate that he had a problem with treating the two differently just because of the emergence of a new economic model. Staff admitted that that is certainly one point of view on this issue.

Council asked if complaints about rentals were tracked by property type? Staff said that they maintain a case file on each complaint, but that they do not categorize those complaints by the nature of the properties involved. A violation is a violation regardless of where it occurs.

The work session concluded without any public comment taken. Approximately 20 non-staff people attended the hearing.

It should be noted here that the next day, Karl Skala appeared on the Morning Meeting radio program on KFRU and suggested that additional public input would be received between now and the public hearing on January 21.

The Mayor also appeared on KFRU radio with David Lile on the morning of the work session, and indicated that he thought the decision tree on this issue would be to first consider should these STRs be regulated at all, then move to the question of inspection and finally to the question of whether they should be taxed or not. He acknowledged that the existence of Short-Term Rentals could pose

competition for hotels, but he also noted that some people prefer the Airbnb type of accommodations. He also worried that they were not treating all rentals in the same manner and said that if we aren't banning rentals in one zoning category or area, why would we be banning them in ANY zoning category or area.

### ***A Few Lingerin*** Questions

Throughout this discussion, many questions were posed, but not all were answered. We have noted some of those in the previous commentary. However, some questions that were not asked at the meeting, but have been posed in earlier meetings and hearings remained unanswered. The following are a few such questions compiled for the reader's consideration:

If properties in an R-1 zoning district, they are presumed to be residential in nature. How then, can they be considered as a commercial use, if the primary use is for residential purposes? If anything, shouldn't any rental function be considered to be an accessory use if a change is desired?

Why are the "companion" pieces of legislation being held back until AFTER the initial council hearing on the Short-Term Rental topic? Shouldn't we know the total cost and process of application and enforcement before we decide to adopt new policies in this regard?

How can you include Short Term Rentals in the definition of a hotel in Chapter 26 of the city code, but specifically define STRs as NOT a hotel in Chapter 29 of the same city code?

When applying for a Conditional Use Permit for and STR, do you have to demonstrate hardship or any other tangible metric before your application can be considered?

Are rules regarding visitors to STRs clear in this legislation. If 4 "transient guests" are allowed to sleep in an STR overnight, how many guests can visit them in that location if they do not spend the night?

What constitutes a verifiable complaint against an STR, and does it have to be substantiated before a case file is opened? What is the process of appeal? What violations will be counted against an STR specifically. Will it include violations of noise ordinances or trash violations or will it only include items specific to STRs such as the requirement to display a rental certificate?

If city staff believes that only "exceptional properties" should be subject to a Conditional Use Permit review, why are ALL "unhosted" properties required to undergo the CUP process. Wouldn't many of them be considered to be standard and reasonable enough for administrative approval?

Will the adoption of any of these new regulations aimed at Short Term Rentals be used to force changes in Long Term Rental property policies?

Staff indicated that dual registration of properties is possible (both long term and short term) with no additional fees. Is that true. Wouldn't most converted Long-Term properties be required to pay fees related to the Conditional Use Permit application process and pay a separate registration fee?

Can dual registration properties be flipped back and forth in use at will or do they have to remain as one or the other for some defined period of time?

Who will be in charge of enforcement of these new rules and policies?

If my online rental platform does not collect any applicable taxes, is it my responsibility to collect and remit those taxes?

Will there be an annual registration fee and license fee or are they one-time only?

If I own multiple properties, do I pay one registration and license fee, or do I pay separate fees for each property involved?

Can applications for Conditional Use Permits be combined like applications for downzoning of properties at different addresses are allowed to do?

What is the penalty for failure to register a Short-Term Rental property?

What is the fee schedule for licensure?

Does a Conditional Use permit for STRs expire?

When will these new regulations take effect if approved by the council on February 3?

#### **A Few Related Resources**

The following links provide additional information directly related to this topic without editorial comment or compilation:

[SHORT TERM RENTAL PRESENTATION BY CITY STAFF](#)

[PROPOSED TIMELINE FOR CONSIDERATION OF NEW SHORT TERM RENTAL REGULATIONS](#)

[DRAFT SHORT TERM RENTAL LEGISLATION AS PRESENTED TO CITY COUNCIL ON DECEMBER 2, 2019](#)

[STAFF MEMO ABOUT THIS ISSUE AS PRESENTED TO COUNCIL ON DECEMBER 2, 2019](#)

[STAFF MEMO ABOUT THIS ISSUE AS PRESENTED TO PLANNING AND ZONING ON OCTOBER 10, 2019](#)

**END**

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