



STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

PLN-ZOTA-22-00018: AMENDMENT TO ARTICLES 5 AND 7 REGARDING ZONING ENFORCEMENT

APPLICANT: URBAN COUNTY COUNCIL

PROPOSED TEXT: SEE ATTACHED (Note: Red text indicates an addition to the existing Zoning Ordinance; text ~~stricken through~~ indicates a deletion.)

STAFF ALTERNATIVE: SEE ATTACHED (Note: Red text indicates an addition to the existing Zoning Ordinance; Blue text indicates staff alternative text; text ~~stricken through~~ indicates a deletion)

STAFF REVIEW:

On March 23, 2023 the Urban County Council passed a resolution initiating a text amendment to the Zoning Ordinance for Planning Commission review and recommendation regarding defining and regulating short term rentals (Resolution 166-2023). Within the resolution, the Council provided language that would define hosted and un-hosted short term rentals, provide general regulations for short term rentals and to establish short term rentals as an accessory use in certain zones and as a conditional use in certain zones. The following report reviews the proposed Zoning regulations for short term rentals in our community and makes recommendations to modify the proposed Zoning Ordinance text.

Short term rentals have existed in our community for a number of years without a regulatory framework that responds to the unique aspects of this type of use. Based on data from AirDNA, which tracks the performance data of short term rental listings on Airbnb and VRBO, there are at least 1,065 active short term rentals in Fayette County, each having had at least one reserved or available date in the last month. 94% of those rentals are "Entire Home" rentals and 6% are "Private Room" rentals.

Historically, the Division of Planning has considered short term rentals to be allowed under the definition of a "dwelling unit": *one room or rooms connected together, constituting a separate, independent housekeeping establishment for occupancy by a family as owner, by rental or lease on a weekly, monthly, or longer basis; physically separated from any other rooms or dwelling units which may be in the same building, and containing independent kitchen and sleeping facilities.* Utilizing this definition, staff's interpretation has been that one rental contract per week (or 52 in a year) to a "family or housekeeping unit," as defined in the Zoning Ordinance, is an allowable use of a dwelling unit. From time to time, Zoning Enforcement staff has received complaints from neighbors regarding short term rentals and has notified operators of the above interpretation. However, since the use has not been formally distinguished from any other dwelling unit, it has been quite difficult to track the locations of short term rentals and to enforce the limitation on the number of rentals and occupancy limit of one family.



This ZOTA is one piece of a two-part initiative to regulate short term rentals in our community. A Council Workgroup, first established in 2019 has put forth this ZOTA, as well as proposed changes to the Code of Ordinances to address both land use and revenue concerns. While the Planning Commission does not have purview with regard to Code of Ordinance changes, it is important to also summarize that component of the project and explain how the two components work together.

In January, 2019, the topic of short term rentals was placed in the Planning and Public Safety Committee of the Council. Drafted Code of Ordinance language was scheduled to receive first reading on March 17, 2020, but was tabled pending a return to in-person meetings due to the coronavirus pandemic. In March 2022, a workgroup led by Councilmembers James Brown and Liz Sheehan began meeting to resume the discussions on short term rentals. On November 29, 2022, a special meeting of the Planning and Public Safety Committee was held to allow public comment on a new draft which included changes to both the Code of Ordinances and the Zoning Ordinance. Following edits to that draft, the workgroup (now assigned to the General Government and Planning Committee) reported the draft out to the full Council, which then acted to initiate the ZOTA on March 23, 2023. Between March 2022 and February 2023, the workgroup held 15 meetings with stakeholder groups including both short term rental operators and representatives from neighborhoods with a concentration of short term rentals. Planning staff attended various meetings throughout this process and acted as staff to the workgroup, assisting in the development of the initiated ZOTA as directed by the workgroup.

When the ZOTA was initiated, Council also tabled the draft changes to the Code of Ordinances until such time that those changes and the Zoning Ordinance changes can be advanced together. The Code of Ordinances proposal establishes a special fees license for short term rentals, including provisions for a fee structure, relevant definitions, collection of taxes, duties of a licensee, as well as procedures for enforcement, appeals, and revocation of the special fees license. As part of the licensure process, the licensee must demonstrate that they are operating in accordance with the Zoning Ordinance. Violation of the Zoning Ordinance may result in revocation of the special fees license. Continuance of the short term rental's operation following the revocation of a license may result in fees and a lien on the property owned by the licensee.

The Zoning Ordinance text developed by the Council workgroup includes definitions to establish two kinds of short term rentals, hosted and un-hosted; lays out which zones are appropriate for short term rentals; and provides general regulations related to the operations of short term rentals. Staff is generally supportive of much of the text as initiated, but has provided staff alternative language (attached) in a few locations throughout the draft. Below is an outline and assessment of the body of the ZOTA, as well as staff's alternative text.

It is important to note that the current ZOTA only addresses urban zones and does not provide for short term rentals in the agricultural zones. It is unlikely that short term rental regulations in our agricultural zones will need to be the same as those in our urban zones, as the impact and desired types of short term rentals will likely be different in the two contexts. Agritourism uses like "farmstays," which are defined by the State may be more appropriate in agricultural zones. Additionally, farm employee dwelling units are allowed in the agricultural zones, but currently can only be rented to relatives of the farm's operator and employees of the farm. It will be important for the Rural Land Management Board to weigh in on any proposed changes to the uses allowed in the



Rural Service Area and staff anticipates that another ZOTA to address short term rentals in this portion of our community will be forthcoming, and will involve considerable discussion.

The regulatory regime proposed in this ZOTA distinguishes between two type of short term rentals, hosted and un-hosted. A “hosted” short term rental is one in which a primary resident resides full-time in or on the same property as the dwelling unit being utilized as the short term rental, and is present during the short term rental period. An “un-hosted” short term rental is one in which there is no primary resident associated with the short term rental operation living on the property. It is expected that hosted short term rentals will have a lesser likelihood of creating nuisance issues in neighborhoods, since a full-time resident will be on-site and available to address any issues that may arise. As such, the proposal recommends that hosted short term rentals be regulated as accessory uses in residential zones and less intense mixed-use zones. Un-hosted short term rentals are proposed to be regulated as conditional uses, requiring approval by the Board of Adjustment in most zones, except for higher intensity mixed-use zones, where they may be the principal use. Additionally, the number of hosted and un-hosted short term rentals allowed on a property are delineated by zone. Staff recommends alternative text for the number of short term rental units allowed in multi-family residential zones for multi-family and group residential lots. The initiated text allows for a maximum of three units; however, because the number of units in multi-family structures and on group residential lots can vary greatly, staff is proposing a maximum of 10% or one unit, whichever is greater. This will reduce the impact that short term rentals could have on lower density multi-family buildings.

The drafted general regulations for short term rentals include an occupancy limit of a maximum of two individuals per bedroom, plus an additional four individuals, or a total of 12 individuals, whichever is less. It also allows the BOA to establish a different occupancy for short term rentals regulated as conditional uses. Staff has some concerns regarding this provision and has provided alternative text to modify the occupancy limitations proposed. Because short term rentals are a commercial use occurring in a dwelling unit, it is reasonable for them to be regulated differently than a traditional residential use. However, there are concerns that allowing a commercial use of a dwelling unit to have a higher occupancy cap than that unit would have as a dwelling unit may be in conflict with the Fair Housing Act. While the definition of “family or housekeeping unit” does not limit the number of related individuals who may occupy a dwelling unit, only four unrelated individuals may live together, unless they have a disability, as outline in the Fair Housing Act. In our residential zones, up to eight individuals who have a disability, including sober living arrangements for those recovering from alcohol or substance abuse, may occupy one dwelling unit. For numbers greater than eight, a conditional use is required in most residential zones. Staff feels that an occupancy cap of eight individuals would be more consistent with the existing provisions of the Zoning Ordinance and will not create a conflict with the Fair Housing Act. Staff is proposing that all short term rentals, hosted or un-hosted with a desired occupancy greater than eight be regulated as conditional uses.

The text also includes provisions related to the use of accessory structures as short term rentals, the use of short term rentals for parties or gatherings, and specific considerations that shall be taken into account by the Board of Adjustment in their assessment of conditional use applications. Staff is generally supportive of these provisions. While some other conditional uses in our Zoning Ordinance include additional requirements or considerations, the majority do not, and the Board is tasked with evaluating each request on a case by case basis. While staff does not feel that such codified guidance is completely necessary as the Board must always evaluate each application based on its



own specific circumstances, the items listed for the Board's consideration provide helpful guidance, not only to the Board, but to applicants who are considering applying for a conditional use and will help inform staff's recommendations to the Board.

Staff is proposing two additional sections related to short term rentals that are currently in operation based on Planning's interpretation of weekly rentals of dwelling units. Typically, when a use that has been allowed is further defined or the Zoning Ordinance establishes new regulations for that use, existing operations may continue as legal non-conforming uses, provided they were operating in accordance with earlier regulations and do not expand their operations. In this case, that would mean that existing short term rentals operating with no more than 52 rentals per year to one family or housekeeping unit per rental contract could continue to do so. However, because the proposed regulations are more permissive in some ways, there has been a desire expressed by the Council workgroup to allow existing operators that would now be regulated as a conditional use to be "grandfathered" in, while still being able to take advantage of some of the new flexibility offered in these new regulations. With the proposed staff alternative language in Article 3-13(i), existing, legally operating un-hosted short term rentals that would now require a conditional use would be granted the ability to have more than 52 rentals in a year and to utilize the new occupancy cap of eight individuals until there is a change in ownership. Article 3-13(j) essentially reiterates the provisions of Article 4-3 related to non-conforming uses for existing short term rentals operating in zones which will not specifically list short term rentals as a principal, accessory, or conditional use in this ZOTA. However, such non-conforming uses must operate in accordance with Planning's earlier interpretation of weekly rentals of dwelling units and must comply with the licensure requirements provided in the Code of Ordinances draft. It is expected that this section will be modified once another ZOTA is developed to address short term rentals within the agricultural zones.

Staff is supportive of this effort to modernize the uses in the Zoning Ordinance to reflect a relatively new and popular use that has both residential and commercial qualities and historically been difficult to categorize and regulate, not only in our community, but in cities across the county. Nationally, short term rentals are a controversial topic, with concerns relating to housing affordability, the ability of a homeowner to supplement their income on their property, tourism, and even interstate commerce. Many cities have attempted to regulate short term rentals, with varying degrees of success. It is not uncommon for jurisdictions to adopt regulations for short term rentals and then quickly modify them. The proposed ZOTA in conjunction with the proposed changes to the Code of Ordinances will greatly improve the LFUCG's ability to track short term rentals and to provide better enforcement of nuisance issues related to this type of use. Hosted short term rentals in particular can provide value in our neighborhoods by allowing individuals to utilize their property to a greater extent to supplement their income or to allow them to age in place rather than downsizing. Un-hosted short term rentals do pose more concern as they utilize otherwise available housing stock for a commercial purpose rather than providing needed housing to our growing population. However, the proposed regulations will help to insure that neighborhoods are not overwhelmed by an influx of un-hosted short term rentals by requiring a conditional use permit. The conditional use process requires notification of nearby property owners and includes a public hearing, giving neighbors the opportunity to provide input regarding short term rentals in their neighborhoods. The proposed changes clarify an existing use that has been difficult to monitor and should result in better communication between short term rental operators and the neighborhoods in which they operate, while also enabling the LFUCG to track short term rentals and provide better enforcement when violations occur.



The Staff Recommends: Approval of the proposed text amendment with staff alternative text to the Zoning Ordinance, for the following reasons:

1. The proposed text amendment with staff alternative text allows for the definition and regulation of short term rentals. In conjunction with the proposed changes to the Code of Ordinances, this text amendment will enable the LFUCG to track short term rentals and provide better enforcement when violations occur.
2. The proposed text amendment with staff alternative text provides enforceable limitations on hosted and un-hosted short term rentals in order to prevent adverse impacts on the health, safety, and welfare of the local community and visitors to the Urban County.



