

- V. **ZONING ITEMS** - The Zoning Committee met on May 4, 2023, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members Bruce Nicol, Larry Forester, and Robin Michler. Staff members present were; Traci Wade, Autumn Goderwis, Tom Martin, Daniel Crum, Boyd Sewe, Bill Sheehy, Tracy Jones and Evan Thompson; Department of Law.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** - Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) Proponents (10 minute maximum OR 3 minutes each)
 - (b) Objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) Petitioner's comments (5 minute maximum)
 - (b) Citizen objectors (5 minute maximum)
 - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

C. **PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENTS**

1. **PLN-ZOTA-23-00001: AMENDMENT TO ARTICLE 1, 3, 8, 12, 23, & 28 SHORT TERM RENTALS** – a petition for a Zoning Ordinance text amendment to define and regulate Short Term Rentals in residential, business, mixed use, and industrial zones.

INITIATED BY: URBAN COUNTY COUNCIL

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: **Approval of the staff alternative text.**

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.

Staff Presentation – Ms. Goderwis presented the text amendment that had been initiated by the Urban County Council, and shared the staff alternative to that suggested amendment. She began the presentation by pointing out facts regarding the short term rentals that are currently in Lexington, and the regulations that are in place. She described the timeline of the short term rental text amendment that began in June, 2019. She detailed the changes that were suggested regarding the definitions of short-term rentals, general regulations related to the operation of short term rentals, and the

zones that were determined to be appropriate for them. She also pointed out that another ZOTA would be drafted in the coming months for short term rentals in the Rural Service Area. She noted the items that had staff alternative language – Article 3-13 (c) related to the maximum occupancy limit, Article 3-13 (i) related to licensing and conditional use permits, and Article 3-13(i) and (j) related to current short term rentals becoming non-conforming uses.

Commission Questions – Mr. Nicol asked Ms. Goderwis to repeat the options of the Planning Commission regarding this ZOTA and timeline. Ms. Goderwis responded by pointing out that there was a sixty day deadline for the Planning Commission to act on the proposal, so it had to be done at this meeting. She told the Commission that they could approve the initiated text, staff alternative text, or modify it during the meeting, but they had to send something to the Council. Mr. Nicol asked if the Planning Commission would hear the item again, and Ms. Goderwis replied that they would not.

Ms. Worth asked about density in neighborhoods and if there could be an occupancy requirement limited by distance. Ms. Goderwis replied that the Planning Commission could add this to the draft, but staff was comfortable with the suggested wording that gave the Board of Adjustment the flexibility to grant a conditional use, because a measured distance would have a different impact in higher density versus lower density areas of the community.

Mr. Bell asked for clarification of the maximum occupancy that was being suggest in Article 3-13 (c). Ms. Goderwis explained how the original suggestion of a maximum of 12 people was consistent with surrounding cities. She further explained that many neighborhoods felt that 12 was too many, so a maximum of 8 was suggested by staff.

Mr. Pohl asked Ms. Goderwis to elaborate on enforcement procedures. Ms. Goderwis explained that the Code of Ordinances would be updated to included follow up to verified complaints. She detailed the steps that a verified complaint would follow as being investigated by zoning enforcement, and then sent to the Department of Revenue. If a property received two complaints, their license from Revenue would be revoked. If an appeal was not granted, and applicant would need to wait a year to reapply for their business license, as well as their conditional use permit. Mr. Pohl asked what steps would be taken if the revocation was ignored. Ms. Goderwis replied that fees would be assessed, and eventually a lien by the Division of Revenue could be placed.

Ms. Barksdale asked if the occupancy rule could be changed if a home had more bedrooms. Ms. Goderwis replied that the applicant could go to the Board of Adjustment to receive a higher occupancy allowance. Ms. Barksdale further inquired about the neighbors' concerns. Ms. Goderwis stated that their concerns were mostly addressing parties, noise, and parking.

Mr. Bell asked how this information had been collected. Ms. Goderwis told the Commission that staff had attended a Fayette County Neighborhood Council (FCNC) meeting where roughly 60 people attended, and there have been many emails received. She also said that Council had roughly 15 neighborhood meetings. She also said that an earlier draft of the suggested text amendment had been heard during a Council public input meeting, where some neighbors had also voiced their concerns. She believed that the Council meeting had a higher attendance than were present at this meeting.

Mr. de Movellan asked about any property that had a non-conforming status being sold. Ms. Goderwis said that the non-conforming use would end and a new owner would have to get a conditional use permit.

Staff Comments – Evan Thompson, Law Department, reiterated the consequences if citations and fees were ignored. He also mentioned that any of these citations and fees could be appealed to a board or further to the Court of Appeals.

Commission Questions - Mr. Pohl asked if any of these provisions for Short Term Rentals were currently in place. Mr. Thompson said they were entirely new.

Mr. Michler asked about the difference between short term rentals and Bed & Breakfasts. Ms. Goderwis replied that in a Bed & Breakfast, the owner must live at the property, there are restrictions on the number of bedrooms that can be used, and a meal is provided. She also stated that a Bed & Breakfast has several regulations that must be followed and it is one of the more difficult conditional use permits to obtain.

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Mr. Nicol asked why the short term rentals were not being addressed within the Rural Service Area, and asked if it could be included now. Ms. Goderwis replied that the rural stakeholders had not been part of the short term rental discussions. She further noted that because the Planning Commission had 60 days to respond to this text amendment initiated by Council, there was not enough time to include them or their concerns. She said that staff had concluded that it would be better for the Rural Land Management Board to come up with their own proposal that was tailored to the agricultural zones. She also stated that their proposals would come in the form of another ZOTA. Mr. Nicol shared his concern that there was not sufficient time for the text to be discussed or shared.

Mr. Bell requested information regarding the 15 neighborhood meetings that had been held since 2019. Ms. Goderwis replied that Planning did not become involved in the process until the summer of 2022. She stated that there were neighborhood associations involved with the Council work group that worked on this text amendment. Mr. Bell asked if there were any other public meetings that addressed the short term rentals. Ms. Goderwis said that there was a special meeting of the Public Safety Committee in November, 2022 where residents and operators were able to voice their concerns. Mr. Bell further asked what the role of Planning staff was in the process. Ms. Goderwis replied that they advised the Council Work Group with text suggestions, and helped write the original draft, so that it would fit with the Zoning Ordinance.

Council Comments – Urban County Councilmembers James Brown and Liz Sheehan spoke to the Commission members about the ZOTA that they initiated. Mr. Brown stated that they had been receiving calls from their constituents regarding concerns about short term rentals. He stated that they were working on a registry of short term rentals, but hadn't addressed the land use portion of them. He said that there were several meetings with both operators and neighbors. He said he believed that, while some changes would most likely be needed, this policy would begin to protect both the operators and neighborhoods. He shared his concern about the staff alternative text for a lower maximum occupancy. He said that there are some neighborhoods that could handle a higher capacity, while others could not. He also said that their original draft had no occupancy limit, but they changed it to 12 after several concerns were heard. He said he believed that the policies that they put forward would best address the concerns of the neighborhoods. Councilmember Brown also stated that there needed to be a registry and policy in place so that they could see if they are working correctly, and only then should there be changes made.

Ms. Sheehan reiterated the time and work that was put into the process. She stated that their original text, especially regarding the occupancy rate was very specific and thought out, with the comments that had been heard from the public.

Mr. Brown said that he believed if a conditional use didn't carry forward to new owners, the property could be devalued. He also explained that the new budget did include funding for software to track and monitor short term rentals.

Citizen Comments – Mr. Walt Gaffield, president of the Fayette County Neighborhood Council; Janet Cabaniss, 704 Cumberland Road, and Lynn Flynn, 518 Springhill Drive shared a presentation stating the position and concerns of the Fayette County Neighborhood Council. They were concerned with the maximum occupancy numbers being too high, and asked for any occupancy over 4 people to require a Condition Use Permit. They also asked that all short term rentals would be at least 600 feet apart. They believed that no permits should carry forward to new owners. There was concern that small neighborhoods wouldn't have the financial resources to confront concerns with the short term rentals in their area.

Chris Huestis, 709 Lynn Road, believed that the short term rentals were already being regulated, and that they put significant money into the local economy. He asked that the text amendment not be passed.

Seth Hillenmeyer, 1952 Blairmore Road, owns several short term rentals in Lexington. He believes that the regulations are important. He was concerned about the maximum occupancy and the distance requirements being proposed. He mentioned that many people that use his rentals are local.

Miranda Hinchman, 4224 Ridgewater Way, does not want any of the proposed changes, specifically the occupancy restrictions. She pointed out the benefits of short term rentals over hotels.

Damon Snyder, 704 Cumberland Road, opposed commercial business in a neighborhood. He stated that all neighbors need to be informed when a short term rental is being requested.

Brian Luftman, 360 Andover Drive, explained the benefits of large short term rentals and requested no occupancy limitations. He pointed out that they are good for all local business and tourism.

Gregory Clarke, 3695 Military Pike, believed that the suggested proposals would hurt his business, and felt that crime was a more important issue.

Stephanie Clarke, 3695 Military Pike, spoke in support of short term rentals. She believed that there was no way to verify the number of guests in a rental, and that the suggested occupancy maximum would hurt small business owners.

Emily Sharp, 661 Cooper Drive, stated that limiting the number of people in a rental home would be limiting her business. She further stated that she screens her renters and has no complaints in the time that she has owned her short term rental homes.

Gary Chidester, 832 Quirks Run Road, Danville, KY, was present to represent The Farm LLC. He told the Planning Commission that all of the properties he represented are large and an occupancy limitation would hurt his business. He requested that there be an exemption for children in the occupancy limits.

Sherrie Graham-Green, 272 Hillsboro Avenue, expressed her concern over the proposed distance between short term rental properties as well as the 52 rentals per year. She explained her current business taxes and requested that the Planning Commission not approve the proposal. She used a map that pointed out how difficult a distance restriction would be for her business.

Robert Bratton, 5997 Winchester Road, expressed the benefits of short term rentals on the city of Lexington and the employees who work for them. He was opposed to the maximum occupancy.

John Grimes, 272 Sherman Drive, shared his concerns with the short term rentals that were already in his neighborhood. His concerns were the safety, trash, noise, and parking. He felt that hotels were adequate to meet the needs, and that the economy would not be harmed if there were no short term rentals.

James Wilcox, 3528 Brookewind Way, spoke about the positive impact of Short term rentals in Lexington. He pointed out the benefits to local business and the extra income for home owners. He believed that short term rentals promote urban renewal.

Burgess Carey, 8039 Old Richmond Road, spoke for the Clays Ferry Neighborhood Association. He was concerned that the rural areas were being left out of the short term rental conversation. He felt that the Rural Land Management Board should not be the sole decision maker for short term rentals in the rural areas.

Amy Clark, 628 Kastle Road, does not believe that the ZOTA is in agreement with the Comprehensive Plan, and she is concerned with the impact of Short term rentals on the housing shortage.

Todd Saladin, 409 Limestone, shared that two of his short term rentals were next door to each other and is concerned about the density requirements being proposed.

Beth Overman, Purchase of Development Rights Director, spoke about why the rural area was not included in this proposed ZOTA. She also shared the work that had begun to address the particular issues in the rural area and said they would report back in the fall with their findings.

Stephanie Dalton, 2376 Abbeywood Road, stated that she was concerned about the details of implementation and the timeline.

Mr. Davis left the meeting at 2:47 p.m.

Staff Rebuttal – Ms. Goderwis clarified that hotels are significantly regulated at the state level, and because they are not located in residential areas, there is a vast difference between them and short term rentals. She also reminded the Commission that the sunset clause would only take effect if the property had been grandfathered in as

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a non-conforming use, because they had not been to the Board of Adjustment. She clarified the definition of a primary resident, and stated that they did not have to be the owner. Ms. Goderwis also explained that, while the owners are currently required to have a business license, there was no way to know how many properties there were or their locations. She said that staff had been in discussion with the Division of Building Inspection, and they had no objection to the occupancy being 8 or 12. She also stated that they would not have to be regulated under commercial building code, because they are addressed in the residential building code. She reminded the Commission that all existing operators would be considered a legal non-conforming use and would not have to sell their properties. She specifically mentioned that they would get to increase their occupancy as well as the number of rentals per year, while not be subject to any spacing requirements.

Commission Questions – Mr. Nicol asked for clarification on Article 3-13 (g) “the Board of Adjustment shall take into consideration...the number of STRs within 1,000 feet”. Ms. Goderwis explained that the Board could look at each property and make a decision based on what is in the surrounding areas. She added that even if the 1,000 feet consideration was removed, staff would most likely consider it anyway, because the conditions surrounding any property is evaluated with each request to the Board of Adjustment.

Mr. de Movellan asked about the occupancy allowance for an owner living in the home versus a short term rental. Ms. Goderwis clarified that the definition of family applies to the home. The only changes being made were for the short term rental occupancy. Mr. de Movellan then asked if there was anything preventing an existing owner from going to the Board of Adjustment to get a Certificate of Occupancy so that they could transfer the use to a buyer. Ms. Goderwis replied that there was nothing preventing that.

Mr. Pohl asked if there was any information regarding the percentage of units that had received complaints from the community. Ms. Goderwis replied that while a majority of the complaints received had been residents that did not want a short term rental near them, most complaints were difficult to track at this time.

Ms. Worth shared her thoughts about density and distance. She expressed concern over neighborhoods having their community hurt, but also expressed understanding about short term rentals that are existing and close together already. She suggested a density number that adjusted based on the amount of dwelling units in the area. Ms. Goderwis stated that the Board of Adjustment could be the answer to those concerns, as they look at each property on a case by case basis.

Ms. Barksdale asked if a Conditional Use Permit would allow a larger house to have a higher occupancy allowance. Ms. Goderwis replied that 3-13 (d) would allow to Board of Adjustment to increase occupancy if there was evidence that the greater occupancy would not cause a nuisance or create overcrowding. Ms. Barksdale asked if the square footage of a home was considered in the occupancy allowance. Ms. Goderwis replied that only the number of bedrooms determined the occupancy, and that was fairly consistent with other communities.

Mr. Michler pointed out that it seemed Article 3-13 (i) and (j) gave current operators more flexibility. Ms. Goderwis affirmed that they would be able to operate as they had been previously or go the Board of Adjustment to receive the Conditional Use Permit. He then asked for clarity about the hosted or un-hosted rentals and their occupancy limits. He also asked if Bed & Breakfasts had an occupancy maximum. Ms. Goderwis replied that Bed & Breakfasts were allowed 2 people per bedroom. He suggested that maybe a hosted rental could be the higher occupancy of 12, but an un-hosted rental could default to the Board of Adjustment.

Mr. Bell asked Councilmember Sheehan how the Council concluded that 12 should be the maximum occupancy. She replied that they felt that while some operators did have large numbers of guests, some did not like having more than 4. They felt like 12 was good middle ground.

Mr. de Movellan asked if large homes with extra sleeping spaces would be treated differently. Ms. Goderwis stated that staff was concerned that long term renters would not be given the same flexibility as short term renters.

There was some discussion among the Commission members about whether they should make a motion or continue to another day. Mr. Duncan stated that if they did not come to a decision, then they could continue to the following week’s work session where they would have to make a decision.

Mr. Nicol suggested that he could make a motion but wanted to make some changes. He wanted to change the occupancy to accept Council’s original maximum occupancy number of 12, and make a change to the space between the rentals.

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Mr. Bell made comments about short term rentals in the Agricultural areas. He believed that they are a wonderful opportunity to share the rural areas with visitors. He also stated that he was in favor of accepting the Council's version of the amendment.

Mr. Pohl stated that the suggestion to put the occupancy maximum at 8 while excluding children was a good idea. He also suggested wording for the distance between short term rentals as follows: "The Board of Adjustment should take into consideration the proximity of other short term rentals to the property being considered for such use".

Mr. de Movellan reiterated his concerns regarding rentals with a higher number of bedrooms because they could not be used in a similar way, proportionally.

Mr. Bell was concerned that the Planning Commission had not had enough time to consider the details, while the Council members had worked with the operators for a significant period of time and had looked at all the details very carefully. He stated that he wanted to be fair to those who were already operating these rentals.

Ms. Worth stated that she would like to continue to the following week's work session so that the Planning Commission members had more time to come to an agreement.

Mr. Michler said he was ready to move forward with the staff recommended language.

Ms. Barksdale echoed Mr. de Movellan's concerns regarding larger houses. She felt that occupancy limits without regard to the property was arbitrary.

Mr. Forester was concerned that some of the operators were not aware of all the language being suggested. He also felt that many of the members would be absent at the work session. He asked staff if there was enough time to work with the operators on text revisions. Ms. Goderwis replied that there was some time, but felt that the staff heard the general concerns and could work with the Planning Commission on alternative language at that time, and suggested taking a short recess to do so.

Mr. de Movellan asked if there could be language about current non-hosted rentals having the 2 per bedroom plus 4, with no cap occupancy, while future rentals would have to go to the Board of Adjustment to request that occupancy. Ms. Goderwis replied that it was possible.

Mr. Forester called for a 5 minute recess at 4:39 p.m.

The Meeting resumed at 4:44 p.m.

Action - Mr. Nicol made a motion, and seconded by Mr. Bell, to approve **PLN-ZOTA-23-00001: AMENDMENT TO ARTICLES 1, 3, 8, 12, 23, & 28 SHORT TERM RENTALS**, staff alternative text, changing 3-13(c) to say "12", per initiated text, and 3-13 (g)(1) to say "in proximity to" replacing 1,000 feet.

There was some discussion among the Planning Commission to clarify the wording that was being suggested in each section.

Continued Action - The motion carried 6-2 (de Movellan and Barksdale opposed, Davis, Penn, and Meyer, absent).

Ms. Worth stated that she hoped that Council could find a better solution for the density issue.

Mr. Bell said that this was a beginning point that could be changed.

VI. COMMISSION ITEMS

Mr. Duncan reminded the Planning Commission of the upcoming Work Session on May 18, 2023 and that it would be held in the Council chambers.

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VII. ADJOURNMENT – The meeting was adjourned at 4:49 p.m.

