



Planning and Public Safety Committee Meeting

February 18, 2020

Summary and Motions

Vice-Chair James Brown called the meeting to order at 1:05 p.m. Committee Members Chuck Ellinger, Josh McCurn, Jake Gibbs, Susan Lamb, Preston Worley, Amanda Mays Bledsoe, Jennifer Reynolds, and Kathy Plomin were in attendance. Chair Jennifer Mossotti was absent. Council Members Angela Evans, Fred Brown, Steve Kay, and Bill Farmer were in attendance as non-voting members.

I. Approval of January 21, 2020 Committee Summary

A motion was made by Plomin to approve the January 21, 2020 Planning and Public Safety Committee Summary, seconded by Bledsoe, the motion passed without dissent.

II. Complete Review of Short-term Rentals

As council members who currently operate short-term rentals, Kay and Ellinger recused from the discussion on the *Complete Review Short-term Rentals* item.

Farmer provided a brief background of the item and said our basis for today is to establish an even playing field where participants pay the same taxes and are subject to the same fees. J. Brown emphasized that today's discussion is one piece of the larger short-term rental discussion and other issues will be taken up during future conversations.

Charles Edwards, Attorney with Law Department, provided a presentation on short-term rentals and referenced the Draft Ordinance included in the packet which primarily relates to tax accountability and guest safety. He reviewed what is in the current ordinance compared to the proposed ordinance being discussed today. He emphasized that operating a short-term rental is considered a business activity and a host is required to obtain a business license and pay an occupational license fee. He stated that the income limit is not subject to the \$50,000/year minimum which applies to long-term rentals. He explained that, unless the advertising platform being used has an agreement with LFUCG, the host is responsible for collecting transient room tax. When discussing the accountability component, Edwards said there is an annual registration fee of \$300 and each host will be provided with a unique local registration number which must be used on all advertisements. He described the denial and/or revocation process of a license which can be appealed to Division of Code Enforcement. He spoke about the monthly reporting requirement that specifies each host is to submit a monthly report which includes the number of contracts for each of the guests and how many nights those covered. Finally, he reviewed the level of citations that can be enforced with this draft ordinance.

At this time, J. Brown opened the floor for public comment. Issues that were frequently spoke about included the 52 unique rentals per year requirement, having all participants play by the same rules, non-owner occupied short-term rentals, the monthly reporting requirement, restricting land use for short-term rentals, and the increased registration fee from \$100 to \$300.

Lamb expressed concern about the increase in the registration fee from \$100-\$300 and asked why that amount changed. She spoke about the Greater Lexington Apartment Association and asked if there is a similar organization that will represent short-term rentals. She asked who is responsible for seeing that the "duties of the host" are met. Lastly, she asked if the administrative hearing board has subpoena

power or it that if that is something that we would have to be added. Farmer responded that the fee goes toward the amount of time it takes us to make this program compliant. He said it will be our staff going out to inspect short-term rentals and that is why we increased the fee from \$100 to \$300. He said the important thing here is the information we are trying to derive. In response to the question regarding “duties of the host”, Rusty Cook, Director of Revenue, said they currently have two employees who are business license inspectors and they will be dedicated to this. The \$300 will go toward funding external resources or additional staffing. Edwards responded that when hosts register annually, they are required to submit an affidavit swearing under oath that they have satisfied the safety requirements. Edwards confirmed that the Administrative Hearing Board does have subpoena power under state law.

Reynolds expressed concerns about limiting no more than one room rented out at one time. She asked if the 30-day limit applies to residents and hotels. Jim Duncan, Director of Planning, said the limit is no more than one rental per week and does not limit the maximum number of days a unit can be rented. Edwards clarified that if you had a stay that was longer than 30 days, it would not qualify as a short-term rental under our ordinance. It would be treated as a long-term rental or normal rental. Reynolds asked what the monthly report includes. Edwards said the report would include the number of contracts (bookings) and the number of nights the short-term rental was rented out, but no information about the guests.

Evans expressed interest in having this item remain in committee because of potential constitutional issues. She spoke about passive income and said we are treating this business very different than we do other passive-income businesses and even treating this different than regular rentals. She expressed concern with renters who want to rent their home for a month or 2, but are not subject to the same rules as short-term renters. She said she is concerned that we require a business license for short-term rentals, but not for other passive-income businesses. She also expressed concern with the revocation process because those licensees would be entitled to a hearing. She spoke about the increase in the registration fee and said she understands the need for us to collect taxes, but this amount seems high enough that it may keep people from doing this which is not the message we want to send.

Bledsoe explained that there is a taxing component to this and a registration requirement that will provide accountability. Having this accountability in place, provides us with an assurance in knowing that a particular location is registered and there is a safety in that knowledge and understanding. She said land use is a whole different conversation than what we are trying to do today which is level the playing field between those who are registered and those who are not. If someone is paying the tax and being accountable and the neighbor down the street is not, that is a problem. The legislation, as proposed, was meant to fix that piece of it by providing accountability and a registration process so we can be informed. She said this piece needs to move forward so we can have it in place, but we need to have the secondary issues at a separate meeting where we can really discuss them because that is a different conversation.

Worley said this piece of the item is ready to move forward because it gives us the appropriate platform to continue these discussions. He said this addresses a direct problem that we currently have which is “bad actors” who are not paying the transient room taxes, not registering, and not complying with the ordinances we currently have in place. This gives us the opportunity to regulate short-term rentals and level the playing field. He said the hope is that having monthly reporting and requiring taxes to be collected and paid will allow us to have platforms that are more cooperative with the city. He said the ordinance was meant to address this, but we should continue to talk about several of these issues.

Gibbs asked if the \$100 fee and the \$300 fee are separate and Cook confirmed. Gibbs asked what we are getting for this and if it is included in the budget to hire more people. Cook said the budgets haven't been submitted yet, but the fees would be used to help run the program. He said currently we have two analysts who look for new businesses and there are no addresses on our registration numbers which makes it difficult and time consuming to reconcile. Edwards clarified that for short-term rentals and all businesses, the \$100 business license fee is credited toward the occupational license fee owed at the end of the year. Gibbs asked about the provision for when people have multiple rooms in their house that says "no short-term rental is subject to more than one contract at a time". He said it seems misplaced in this part of the ordinance and he would like to remove this and include it in the zoning discussion. Edwards said this was meant to be included as more of a minimum safety standard. He explained the one contract at a time requirement is meant to ensure that individuals or groups who are unrelated are not booked in the same residence at the same time over the same nights so strangers are not being roomed with one another.

A motion by Gibbs to amend the draft ordinance for the Complete Review of Short-Term Rentals, removing the line on page 14 in the packet, in Section. 13-79 "duties of the host (b) no short term rental is subject to more than one contract at a time", seconded by Reynolds, the motion passed with a 5 - 2 vote (Yes: McCurn, Gibbs, Lamb, Bledsoe, Reynolds, No: J. Brown, Worley). Ellinger Recused. Plomin was absent for the vote).

Worley asked if this is already a restriction in our code of ordinances and Edwards said that language is not required by other statutes or ordinances so it can be removed. Gibbs said he is not advocating to get rid of this entirely, but it should be included in a larger discussion of the usage of short-term rentals because it does not fit with today's discussion.

Lamb commented on the language that says "no short-term rental is subject to more than one contract at a time." She said she interprets this to mean if there are two separate rooms in a dwelling unit with two separate listings, that there can't be more than one contract on one room. She said if this is correct, she would not be able to support the motion. Edwards said if you look at Section 1 in the draft ordinance, there is a definition of short-term rental which we talked about earlier. He said this includes the 30- day limit and states that a short-term rental is a dwelling unit that is rented, leased, or otherwise assigned. He said the interpretation from the Law Department is that this applies to the entire building, not individual rooms.

McCurn asked for the clarification to be repeated. Edwards said the draft ordinance defines short-term rental as a dwelling unit so by saying "a short-term rental shall not be subject to more than one contract at a time", the ordinance is saying that each individual building may not be subject to more than one contract at a time. McCurn asked if there were four units in that building, if that would be the case. Edwards clarified and said yes. He referenced a duplex as an example and said each of those distinctive apartments would be treated as its own dwelling unit. If you were talking about a stand-alone house that had four bedrooms, each bedroom would not be a dwelling unit. McCurn said he would support removing this.

Lamb suggested a change to the language that would address the number of listings within the dwelling unit rather than the entire dwelling unit. She said it doesn't seem fair that individuals who rent one room, but have three other rooms available, cannot rent those other rooms.

(At this point in the discussion, a vote was taken on the motion made by Gibbs).

Bledsoe commented on the 52 unique rentals per year. She said this has always been the case and three years ago when she investigated this, it was the same conversation. She said most people with short-term rentals are probably unaware that they are in violation of this regulation. She said you cannot have two rooms rented out at the same time if you are only allowed one per week. Duncan confirmed that the 52 unique rentals per year requirement is already in place. He said there is not a definition of “short-term rental” in the zoning ordinance so this is derived from dwelling unit which says a unit can be rented on a weekly, monthly, or longer basis, but that does not necessarily specify short-term rentals. He said the best we can do is to apply that same standard to short-term rentals because these are in residential zones. He said to the extent that zoning enforcement is able, we have been trying to enforce this but we are limited in our ability to go into people’s homes for more information.

McCurn asked how we are going to regulate the number of rooms being rented. Cook explained Airbnb files the transient room tax form monthly which states the amount of revenue that was collected on behalf of each host. McCurn asked about the companies that do not operate this way. Cook said if the company doesn't file, then the hosts are responsible.

Lamb said Airbnb complies with filing taxes, but there are many other organizations who do not. She said we are trying to bring the non-compliant platforms to the table so we can locate the short-term rentals in our city and collect the proper taxes. She said we need to address the dwelling unit and the 52 bookings per year restriction before moving forward and she doesn't want to vote on something that has unintended consequences.

J. Brown said this the first step and there are several issues we need to discuss but it is difficult to determine at what level to address the issues without knowing how many short-term rentals there are. He said the legislation today meets somewhere in the middle and helps us create accountability and compliance for short-term rentals. He said we don’t want to do anything to hurt the industry because there are benefits to it. But also, we don’t want leave things unchecked that will impact our community.

Worley said this particular draft ordinance addresses the issue before us but the other issues pertain to the zoning ordinance or code enforcement. He said this draft ordinance is appropriate at this time and it gives us the framework for licensing and taxing.

A motion by Worley to approve the *Complete Review of Short-Term Rentals* item and move it forward to the full council, seconded by McCurn, the motion passed with a 5 - 2 vote (as amended) (Yes: J. Brown, McCurn, Gibbs, Worley, and Bledsoe, No: Lamb and Reynolds. Ellinger Recused. Plomin was absent for the vote).

III. Comprehensive Review of Code Enforcement

Due to time constraints, this item was postponed to the April 21, 2020 Planning and Public Safety Committee meeting.

A motion by Ellinger to adjourn, seconded by Bledsoe, the motion passed without dissent.

The meeting adjourned at 2:50 p.m.