



Department Source: Community Development - Planning

To: City Council

From: City Manager & Staff

Council Meeting Date: November 16, 2020

Re: Report - Short-Term Rental Ordinance (B347-19A) Planning & Zoning Commission Review

Executive Summary

This report summarizes the Planning and Zoning Commission's discussion of its re-review of their March 5, 2020, vote on the amended Short-term Rental (STR) Ordinance (B347-19A) that is pending before City Council. The Commission, at Council's request, held two work sessions in October to provide more context as to why they voted 8-1 to deny the amended ordinance. Following discussion, the majority of Commissioners remained unsupportive of the amended ordinance for various reasons; however, principal concerns expressed disfavor the ordinance's complexity, permitting "un-hosted" STRs in residential zoning districts, the occupancy limits calculation, and possible loss of available affordable rental housing.

Discussion

The Planning and Zoning Commission held two work sessions (October 8 and 22) to discuss their March 5, 2020 vote on the amended Short-term Rental Ordinance (B347-19A). The amended ordinance was remanded back to the Commission following their October 10, 2019 tie (3-3) vote on the original Commission produced STR ordinance. Following the remand, the Commission voted 8-1 to deny the amended ordinance. In July 2020, the Council requested that the Commission review their action and provide correspondence on what issues within the amended ordinance resulted in the votes cast.

During the Commission's **October 8, 2020 work session**, staff presented the six (6) primary changes proposed within the amended ordinance. Following each amendment there was Commission discussion and a poll was taken on the Commissioner's support or lack of support on each amendment. The purpose of this exercise was to identify if there were substantial flaws in the existing provisions that could explain the votes cast. Below is the summary of the polling.

Amendment #1 - "Hosts" being present 100% of the time while a dwelling was being used as an STR.

Commissioners voted 6-1 to support the amendment subject to a single typographical error being corrected. The dissenting Commissioner was not supportive of the owner/host not being present.

Amendment #2 - Number of transient guests allowed per STR:

Two (2) supported text as amended, two (2) supported using square footage calculation of the Property Maintenance and Building Code, two (2) supported zoning district occupancy



limits (max. 3 in R-1 and max. 4 in R-2 & R-MF), and one (1) supported zoning district occupancy limits with additional occupancy by conditional use permit.

Amendment # 3 – Administrative approval of STRs in the M-C and M-DT districts.

Four (4) supported the text as amended and three (3) were not supportive.

There was significant discussion on this amendment which focused on conversion of entire residentially built structures to de-facto hotels without being constructed according to the commercial building code process. Most Commissioners stated this potential conversion went far beyond what the STR concept was all about. There was also concern expressed that without the previously imposed STR cap for multifamily building conversions, of 25%, the housing supply in downtown may be depleted. Commissioners further expressed a preference for a defined administrative and conditional use process in which administrative approval up to a “cap” was allowed. There was less concern about small-scale conversions of loft apartments in mixed use buildings and staff noted that hotels are permitted in the M-C and M-DT Districts.

Amendment # 4 – Administrative approval of an un-hosted STR adjacent to operator’s primary residence. (Please note: A late arriving Commissioner’s vote was added to the vote total beginning with this amendment).

Four (4) not supportive as proposed, one (1) supportive as proposed, one (1) supportive if intent cleaned up, and one (1) supportive if limited to either operator’s home or adjacent dwelling, but not both.

There was significant discussion on the amendment. Concerns were expressed about the possible density of STRs in neighborhoods or on a single street within neighborhoods. There was also discussion of the STR “model” and that allowing multiple STRs by a single property owner was deviating from the original intent of having an STR and renting out an “extra bedroom” (or a house during an owner’s vacation). There was discussion that the text of the amendment was not clear and it incorrectly stated that an STR needed to exist in the primary residence to authorize the adjoining property STR as “un-hosted”.

Amendment # 5 – Administrative approval of an un-hosted STR operated no more than 95 days per year and limited to only one per property owner (aka “The Investor” or “Kansas City” amendment). For the purposes of this amendment, “property owner” is defined as any single individual who is a member, manager, officer, director, trustee, shareholder, or has other ownership interest in a business entity who owns or operates an STR.

Two (2) not supportive due to a belief that federal courts would not support the length of tenancy and it would be subject to reversal, three (3) not supportive due to un-hosted being allowed in residential districts, one (1) supported if concept redrafted to be less problematic and did not disagree there may be future legal challenges, and one (1) not supportive of time limit.



Amendment # 6 – Increased transient guest occupancy via issuance of a conditional use permit (CUP).

Three (3) not supportive as written and five (5) supportive of CUP process if standards were revised.

Commissioners expressed concerns about allowing increased occupancy and abuses by bad operators. Concern was also expressed about allowing increases in un-hosted STRs. Commissioners supporting the amendment indicated such support was due to the fact that the CUP process would allow case-by-case review and increases could be supportable based on specific facts.

During the Commission's **October 22 work session**, Commissioners further discussed their principal concerns with the proposed STR regulations, both the original PZC and Council amended versions. During this work session there were several reoccurring themes that emerged:

1. There was support (8-1) to have hosted STRs in residential districts with conditions. The dissenting Commissioner wanted occupancy based on the zoning code and was generally unresponsive of STRs in any residential district.
2. There was limited support for un-hosted STRs (5-3) in residential districts given they were believed commercial in nature. Of the 3 supporting un-hosted STRs it was noted that their support was based upon what conditions and regulations would be established based on the scale of the business model. The majority of Commissioners agreed un-hosted STRs should be more heavily regulated.
3. There was support (6-2) for un-hosted STRs in mixed-use districts (M-OF, M-N, M-DT, M-C) subject to conditions.
4. There was a desire to streamline the ordinance to address the "mom & pop" STRs and those being operated as a business venture. Commissioners suggested re-writing the ordinance in two steps. Step one addressing hosted STRs and step two addressing un-hosted STRs.
5. There were concerns expressed about taxing small operators who followed the traditional STR "model" and support for taxing operators of STRs operated as a business.
6. There were concerns expressed about meeting health and safety regulations relating to the conversion of existing residential structures in the transient lodging establishments.

Staff Observations –

Given the Commission discussion it appears there are still divergent viewpoints on the zoning of short-term rentals. This is especially true of where STRs should be permitted and under what conditions they could be operated (hosted or un-hosted). There is also significant concern relating to how maximum occupancy should be handled.



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Commissioners have stated that they believe if the ordinance is modified to address “mom and pop” versus “investor/business” operators several of their concerns may be more easily resolved. They conclude that such a restructured ordinance would better establish guidance on how to regulate STRs within the community with those following the “traditional STR” model being permitted via less onerous regulations.

While staff can appreciate the perspective of the Commissioners, it has concerns that an ordinance prepared and/or implemented in multiple steps could create opportunities for uneven application and possible grounds for legal challenge. Furthermore, staff is concerned that such a process may not adequately address the underlying issues with STRs being operated as a business venture throughout the community.

It would appear, at this time, Council has the following options:

1. Approve the amended ordinance as prepared; or
2. Deny the amended ordinance and direct the Commission to prepare a new ordinance for Council’s consideration; or
3. Amend the amended ordinance to address comments offered by the Commission; or
4. Amend the amended ordinance such that it establishes the zoning districts in which STRs may be an authorized use, subject to registration/licensing/taxation and compliance with the provisions of the Rental Conversation Code (Chapter 22) and inclusive of maximum occupancy limits prescribed by the International Property Maintenance Code (IPMC).

Attached is a copy of the amended short-term rental ordinance (B347-19A) on which the Planning Commission’s review was based.

Fiscal Impact

Short-Term Impact: N/A

Long-Term Impact: N/A

Strategic & Comprehensive Plan Impact

[Strategic Plan Impacts:](#)

Primary Impact: Not Applicable, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

[Comprehensive Plan Impacts:](#)

Primary Impact: Not Applicable, Secondary Impact: Not applicable, Tertiary Impact: Not Applicable



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Legislative History

Date	Action
N/A	N/A

Suggested Council Action

This report has been provided for information and discussion purposes. The short-term rental ordinances, as amended and tabled from March, are scheduled to appear on Old Business on the City Council December 7, 2020 agenda.