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TO: City Planning Commission

FROM: M. Rory Bolger, Staff
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RE: **Short Term Rental Ordinances (Chapter 61, Chapter 9)
(RECOMMEND APPROVAL with modifications)**

DATE: June 14, 2019

Following the public hearing and public discussion of June 6, 2019, the City Planning Commission (CPC) will be considering the proposed amendments to Chapter 61 and Chapter 9 of the Detroit City Code relative to “Short Term Rentals” at the regular meeting of June 20, 2019. Staff submits the following report and recommendation to assist in those deliberations.

Background

Chapter 61 of the 1984 Detroit City Code, *Zoning*, is proposed to be amended at Article XII, *Use Regulations*, for consistency with proposed provisions to be added to Chapter 9, *Buildings and Building Regulations*, at Article I, *Detroit Property Maintenance Code*, Division 3, *Requirements for Rental Property*, Subdivision C, *Short Term Rentals*.

Scope of the Zoning Amendment, Chapter 61

When the CPC took up the Fifth General Text Amendment to the Zoning Ordinance in March and April 2017, one of the items addressed in the 209-page ordinance was “home occupations” in response to the request of the Boston-Edison association. The provision clarified that an Airbnb-type use (short term rental) could not be established under the guise of “home occupation,” consistent with the spirit of the long-established prohibition of bed and breakfast inns on land zoned R1 and R2.

The proposed Zoning amendment that was the subject of the June 6th public hearing would have the effect of repealing the “home occupations” prohibition that was established in the Fifth General Text Amendment (Sec. 61-12-392). It also newly asserts that “short term rental of a residential use shall be considered an accessory use of a dwelling unit where operating in compliance with the provisions of Chapter 9, Article I, Division 3, Subdivision C of the 1984 Detroit City Code” (Sec. 61-12-375).

Scope of the *Property Maintenance/Rental Code Amendment, Chapter 9*

The Chapter 9 ordinance that was the subject of the June 6th public discussion is an outgrowth of inter-departmental working group deliberations; the Law Department has drafted and revised the proposed amendment, which is sponsored by Council Member Janee Ayers. Key provisions of the Chapter 9 “Short term rentals” ordinance include:

- *Definitions of terms.* Among them, “short term rental,” means “any rental of a dwelling unit, or rooming unit in exchange for compensation or other consideration, as residential accommodations for at least one night, but no more than 90 cumulative days of the year” (Sec. 9-1-100.2).
- *Residency requirement.* Any property used as a short term rental must be the owner’s principal residence (Sec. 9-1-100.3).
- *Registration required.* Any short term rental must be registered with the Buildings, Safety Engineering, and Environmental Department (BSEED) (Sec. 9-1-100.4).
- *Spacing between short term rentals.* A short term rental will not be registered if located within 1,000 feet (measured linearly) of another short term rental; BSEED has limited discretion to relax the 1,000-foot spacing (Sec. 9-1-100.4(d)).
- *Limitation on groups.* A host may not rent to more than one group of guests under more than one reservation at any given time (Sec. 9-1-100.8(b)).
- *Limitation on number.* Not more than ten people may be accommodated at one time (Sec. 9-1-100.8(d)).
- *Limitation on rentals per year.* A short term rental unit may not be rented more than 90 days per calendar year (Sec. 9-1-100.8(e)).
- *Certificate.* The short term rental must post its certificate of registration in a conspicuous place on the property and provide it in electronic format to all guests (Sec. 9-1-100.8(f)).
- *Notification of neighbors.* Within 30 days of registration, a short term rental host must notify neighboring dwelling units within 300 feet of the property’s approval for short term rentals and provide the phone number of the rental’s local contact person (Sec. 9-1-100.8(g)(1)).
- *Violations and enforcement.* BSEED is responsible for enforcement of the ordinance; violations are subject to issuance of a blight violations; violators may be removed from the rental registry (Sec. 9-1-100.13).
- *Denials and appeals.* Where an applicant is denied registration or where BSEED determines a registration should be removed, the applicant is entitled to a hearing (Sec. 9-1-100.14).

Results of June 6, 2019 public hearing and public discussion

There was considerable discussion of the proposed ordinances involving Commissioners, CPC staff, the Law Department, which had prepared the draft ordinance on behalf of Council Member Janee Ayers, and thirteen members of the public and the Office of the Ombudsman.

No speaker suggested that short term rentals should not be subject to registration including those speakers who objected to various provisions of the proposed Chapter 9 ordinance. No speaker voiced objection to the requirement that the short term rental property be the primary residence of the owner although one speaker spoke positively of his short term rentals, one of which was

his primary residence and two of which were his income properties. No speaker raised an issue over the 10-person maximum per short term rental nor over the 1-group maximum per night.

Three members of the public objected to the proposed 1,000-foot linear spacing requirement as being too restrictive. A Commissioner also expressed concern over the spacing requirement

One speaker, a short term rental owner/operator, felt that a 90-day maximum per calendar year was too restrictive and that registered short term rentals should be able to operate more than that.

A speaker from the Boston-Edison neighborhood spoke of considerable negative experience toward the neighbors from an existing short term rental. A Boston-Edison block club president noted responsible operation at one short term rental but bad experiences with a different short term rental. A third speaker from Boston-Edison objected on the grounds that the proposed 90-day maximum on short term rental operations would still allow operation most weekends of the year.

A speaker in support of the proposed ordinances, believed that short term rentals take units off the market and raise rents elsewhere.

An advocate for short term rentals portrayed them as a healthy aspect of the sharing economy and that registration of the properties was appropriate.

Two speakers and a CPC member questioned the lack of an “inspection” requirement; the \$250 application fee was viewed as too little; a more significant fee was thought to be appropriate to cover the cost of inspections.

Two speakers questioned the appropriateness of the proposed “1st come-1st served” approach to reviewing and approving applications for short term rentals in light of the 1,000-foot spacing requirement. Renewals of registered short term rentals involved a lesser fee than for the initial application; one speaker questioned whether a lesser fee was warranted.

Problems that were voiced over existing short term rentals suggested a connection between the non-resident status of the operator and the trouble experienced. Speakers who were concerned about short term rentals mentioned their experience with parking problems, noisy parties and gatherings, disrespect to the neighbors, uncut grass, lack of snow removal, trash, neglected dumpsters, and the existence of a business in the residential neighborhood.

A speaker questioned whether it mightn’t be appropriate to exempt the least active short term rentals from the registration requirement, suggesting 14 days as a threshold for being subject to the ordinance.

A letter submitted by a Woodbridge homeowner in support of the proposed ordinances observed that nearby single-family homes had been bought up at bargain rates and then turned into a short term rental business, replacing neighbors with strangers.

CPC staff and the Law Department had conflicting understandings of a two-family dwelling or apartment building unit’s eligibility for a short term rental. Clarification was offered that such residential uses would be ineligible for short term rental except for the actual space or unit occupied by the owner of the building.

A Commissioner raised a concern over the Chapter 9 ordinance's discretion afforded BSEED, noting that the application of discretion often results in a favorable outcome to those with higher socio-economic status. Another Commissioner suggested that the ordinance require three, rather than two, pieces of identification to document the owner's proof of residency in the unit to be rented for short term and that neighborhood associations also be notified of registered short-term rentals in their community.

Relative to the Zoning amendment's proposed provision to identify short term rentals as permissible accessory uses to a dwelling where operating consistent with the Chapter 9 ordinance, the Law Department counseled against the inclusion of the provision (Sec. 61-12-375). CPC staff explained its inclusion so as to avoid confusion with principal land uses that require a separate land use permit.

Staff analysis

At the conclusion of public testimony and discussion among Commissioners, the chairperson directed staff to return at the June 20th meeting after further examining several issues, as discussed below.

Spacing. The sponsor of the Chapter 9 ordinance included the 1,000-foot linear spacing requirement as a way of avoiding an over-concentration of short term rentals in any one neighborhood. Speakers at the public hearing documented nuisances arising from existing short term rentals and their belief that long-term residents better ensured and protected the character of their neighborhood than did transient guests.

CPC staff felt that a spacing requirement that would have the effect of generally limiting short term rentals to not more than one short term rental per block would respond to the sponsor's and concerned speakers' concerns. In many communities, a typical block might be 1/8th of a mile long—660 feet. Staff wanted to test whether a lesser spacing requirement might effectively protect Detroit neighborhood's from more than one short term rental per block.

Staff measured the lengths of 40 blocks in randomly selected areas of the city and found block length to vary from 250 feet to 1,000. Half of the blocks measured were 760 feet in length, half were longer. If the spacing were reduced from 1,000 to 660 feet, we project that only 28% of the blocks in the city would be protected from more than one short term rental. If the spacing were reduced to 800 feet, only 55% would be so protected. With a 900-foot spacing requirement, 93% of the blocks would only be able to host one short term rental. Staff concludes that the proposed 1,000 foot linear spacing is the most appropriate measurement to prevent more than one short term rental per block.

Parking. During the June 6th deliberations, CPC staff questioned the appropriateness of requiring the short term rental applicant to disclose the amount of parking available even though the proposed ordinance specifies no requirement or expectation for parking to be provided. Staff continues to believe that, lacking a parking requirement, the applicant should not be required to disclose the availability or non-availability of parking. If parking availability is meant to be a factor in BSEED's decision to approve or deny a short term rental application, then a specific standard should be stated to avoid vagueness or abuse of discretion.

CPC staff also notes that the reference in the Chapter 9 ordinance to parking governed by Chapter 55 refers to the “permit parking” provisions. Although we recommend removing the language related to “parking,” if it is retained, a fuller cross-reference should be incorporated with title to article and division within Chapter 55 that contains the “permit parking” provisions; presumably, short term rental guests would enjoy no special advantage or suffer any greater detriment in a “permit parking” area than would any other visitor.

Renewals. Staff believes the ordinance would benefit from a fuller treatment of registration renewals. The term, renewal, seems to imply that a registered short term rental with a clean record can expect renewal upon payment of the appropriate fee, as is the case for holders of vending licenses. That seems to conflict with the 1st come-1st served application process.

If a registration certificate holder is not meant to have any expectation of approval over a competing, new applicant whose property is within the 1,000-foot spacing area, then the term, renewal, should not be used and the ordinance should be explicit in clarifying that new applicants and existing registrants compete on an equal footing.

Equity/discretion. The proposed ordinance provides for BSEED to apply discretion in considering approval of a second or subsequent short term rental property within the same 1,000-foot spacing area. Unbridled discretion could well favor those with higher socio-economic standing, however the proposed ordinance ties BSEED’s hands to consider waivers of spacing only from applicants whose properties would be less at least 900 feet from an approved short term rental. This discretion mimics the 10% “Administrative Adjustment” that has been a feature of the Zoning Ordinance since 2005.

Conclusion Recommendation

CPC staff respectfully recommends approval of the Chapter 61 and Chapter 9 ordinances with the following modifications, suggesting that separate action should be taken on each chapter.

1. Deletion of Sec. 61-12-375 in the Chapter 61 Zoning amendment relative to **accessory uses**. While retention of the provision would be helpful in distinguishing short term rentals, which require no permit, from a principal use of the land, which requires a permit, its deletion per the sponsor’s request and original desire will not alter the effect of short term rental regulation.
2. Alter Sec. 9-1-100.2, the **definition** of the term, short term rental, to change the minimum nights of operation from one to fifteen; this would exempt short term rentals from the registration requirements that operate not more than fourteen days per year. Such an exemption recognizes that some near-downtown neighborhoods are more popular than others for out of town guests and as a way to accommodate those owners who only choose to host guests when there is a major event in town, such as the Movement Festival or Jazz Festival, rather than as a more regular activity.
3. Amend and expand Sec. 9-1-100.4(b)(2)(b) by requiring three rather than two **documents** to corroborate residency and add a subsection Sec. 9-1-100.4(b)(2)(b)(6) to include “utility bill” as one of the documents showing the owner’s address.

4. Delete Sec. 9-1-100.4(b)(4), which requires disclosure of the amount of **parking** provided, since the ordinance provides no requirement for any parking and because disapproval of an application on the grounds of a non-specified standard is problematic.
5. A new section should be drafted to address the rules and logistics of **renewals**. Although Sec. 9-1-100.6(c) stipulates the amount of a renewal fee as \$100, the ordinance does not explicitly discuss whether renewal of the registration is presumed for a registrant in good standing or whether the end of the 1-year registration period has the effect of erasing the 1,000-foot spacing area and opening up that area for competitive applications.
6. Expand Sec. 9-1-100.8(g)(1) to require notification of **neighborhood associations** as well as neighbors within 300 feet of a short term rental and its local contact.
7. Expand Sec. 9-1-100.10(c) to require the registration certificate holder to **notify** not only BSEED but also the neighbors within 300 feet of the change of “local contact.”