

**MEMORANDUM**

**TO:** District of Columbia Zoning Commission  
**FROM:** <sup>JLS</sup> Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation  
**DATE:** August 30, 2019  
**SUBJECT:** ZC Case 19-15 – Public Hearing Report for a Proposed Text Amendment to Subtitles B, H, K, and U to Authorize Short-Term Rentals.

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**I. BACKGROUND**

The Council of the District of Columbia (“Council”) voted on November 13, 2018 to approve Act 22-563 known as the, Short-Term Rental Regulation Act of 2018, effective April 25, 2019 (“Act”) under D.C. Law 22-307. This new law requires the Department of Consumer and Regulatory Affairs (“DCRA”) to license the operation of short-term rentals (“STR”) and requires STRs to comply with applicable Zoning Regulations. STRs as accessory uses in zones that permit residential uses are currently prohibited by the Zoning Regulations of 2016.

On July 29, 2019, the Council Chairman on behalf of Council filed a petition with the Office of Zoning proposing zoning text amendments consistent with the Council approved Act.

At its July 29, 2019 public meeting, the Zoning Commission voted to set down for a public hearing the proposed text amendments. The Notice of Public Hearing included the following slightly amended draft text prepared by the Office of Attorney General under authority granted by the Commission:

1. Revisions to Definitions (Subtitle B, Chapter 1) to create a new STR definition and to revise the Accessory Use definition.
2. Revisions to Use Categories (Subtitle B, Chapter 2) to revise both the lodging and residential use categories.
3. Revisions to Use Permissions (Subtitle H, Chapter 11) to permit an STR as an accessory use in Neighborhood Mixed-Use (NC) zones.
4. Revisions to Use Permissions (Subtitle K, Chapters 4, 6, 7, and 9) to permit an STR as an accessory use in specific Special Purpose zones.
5. Revisions to Use Permissions (Subtitle U, Chapter 2, 5, and 6) to permit an STR as an accessory use in zones which permit a residential use include R, RF, RA, MU, and D zones, the MU-11 zone, and on alley lots.

**II. RECOMMENDATION**

The Office of Planning recommends that the Zoning Commission approve the proposed text amendments.

### III. ANALYSIS

#### Proposed Amendments

The Zoning Regulations do not currently regulate or address STRs. To address this, the proposed text would create a new definition, Short-Term Rental, reflecting the definition contained in D.C. Law 22-307. The definition states that a STR operator must have a valid basic business license from DCRA. The proposed text would amend the use permission regulations in various zones to permit STRs as an accessory use in zones where residential is permitted. The Accessory Use definition is proposed to be amended to exempt STRs from being limited to 20 percent of the gross floor area of a principal use.

No other substantive changes are proposed to the zoning regulations, as this amendment is only proposed to permit STRs as an accessory use. All regulations and licensing requirements of STRs would be administered by DCRA in accordance with D.C. Law 22-307, which is separate and apart from zoning. Given this, should D.C. Law 22-307 be amended in the future, the proposed zoning text would not necessarily need to be amended.

#### Zoning Uses

Multiple STRs would be allowed concurrently at a property and would be allowed anywhere on the property. A property owner who receives a home occupation permit under the Zoning Regulations to operate a home-based business within a residential unit would also be allowed to have a basic business license to operate a STR concurrently. Likewise, a property with a permit to have an accessory unit on the property could operate an STR concurrently, and /or could operate the accessory apartment unit as an STR.

The proposed text would establish that a STR use is neither a residential use nor a lodging use, but instead would be a new accessory use to a residential use. For context, Table 1 below shows how STR use fits within existing residential and lodging uses.

Table 1

Type of Use	Type of Building	Length of Use	Exceptions
Lodging	Hotels; motels; inns; hostels; or bed & breakfasts	Temporary lodging for <b>less than 30 consecutive days</b> to transient guests. Reservations are typically made directly through the operator of the lodging use.	Residential uses; or short-term rental uses
Accessory Short-Term Rental	Single-family houses; accessory apartments; flats; or apartment buildings	Temporary lodging that is accessory to a residential use for <b>less than 30 consecutive days</b> to transient guests. Reservations must be made through a third-party booking service	Lodging uses; or residential uses
Residential	Single-family houses; accessory apartments; flats; or apartment buildings	Permanent housing provided on a continuous basis for <b>30 or more days</b> to renters or owners.	Lodging uses; or short-term rental uses

For context, Table 2 below shows how STR use fits within existing standards for boarders and Bed and Breakfast. Bed and Breakfast use is regulated by the number of sleeping rooms not by individual guests.

Table 2

Type	Limits		How Permitted	Home Occupation Permit Required?
Boarders	2 persons		Matter of Right	No
Short Term Rental	Greater of: • 8 guests; or • 2 guests per bedroom	<i>Limit is based on individual guests</i>	Matter of Right	No
Lodging -Bed and Breakfast	2 Sleeping Rooms	<i>Limit is based on number of sleeping rooms and not by individual guests.</i>	Matter of Right	Yes
	4 Sleeping Rooms		Special Exception	Yes
	6 Sleeping Rooms In Historic districts		Special Exception	Yes

Summary of D.C. Law 22-307

The proposed text amendment would permit the STR use in all zones, but the regulations of a STR would be governed by D.C. Law 22-307 when it becomes effective. Below is a summary of how the law would regulate and license STRs:

- A short-term rental would require a valid basic business license with a "Short-Term Rental" endorsement, in addition to any other license required by law. A vacation rental shall require a valid basic business license with a "Short-Term Rental: Vacation Rental" endorsement, in addition to any other license required by law;
- A STR use would be allowed anywhere in the city and would be allowed to operate in single family homes, residential flats, accessory apartments, and in co-op or condo buildings, if permitted by the homeowner’s association;
- The host must be the property owner and the subject property must be the host’s primary residence – i.e. an STR would not be licensed as a standalone property without the owner residing onsite;
- The host of the STR would need to be eligible for the Homestead Deduction;
- STRs would not be subject to additional parking requirements than what is already prescribed for single family houses, flats, and apartment buildings;
- Multiple STRs would be allowed concurrently at the host’s property and would be allowed anywhere on the property – within the residential unit or in an accessory building;
- Occupancy in a STR would be limited to a maximum of 8 transient guests, or 2 guests per bedroom, whichever is greater;

- The host would need to reside at the property during the duration of the STR. However, a host would be permitted to rent out their full residential unit for up to 90 cumulative nights as a vacation rental without being present; and
- There would also be an exemption, to be approved by DCRA, to the 90-night limit for host’s demonstrating that their employer requires work to be performed outside of the District for more than 90 nights cumulatively, or for a host that must leave the District for medical treatment or to care for a family member with a serious health condition for more than 90 nights cumulatively.

Table 3: Summary Survey of Maximum Number of Guests Permitted in Other Jurisdictions:

Municipality or County	Guest or Room Limit	Time Limit
DC – Proposed in 19-15	Greater of 8 guests total, or 2 per bedroom	None when owner is resident on-site; 90 days max. if owner is not resident on-site
Arlington County, VA	6 guests total or 2 guests per bedroom whichever is greater per dwelling unit.	Not regulated in zoning
Montgomery County, MD	6 guests total and no more than 2 adults per bedroom.	Not regulated if owner resides on-site; 120 days max. if owner is not on-site
Prince George’s County, MD -	8 guests total and no more than 3 guests per bedroom.	180 days max. if owner resides on-site; 90 days max. if owner does not reside on-site
Baltimore, MD	Not regulated	Does not appear to be regulated.
Philadelphia, PA	No more than 3 guests (including owner and lodgers) who are unrelated.	180 days / year max.
Portland, OR	2 bedrooms max. or 5 bedrooms max. per dwelling unit depending on whether if it’s a Type A or B rental.  A multi-dwelling structure or triplex is limited to 1 unit or 25 percent of total number of units in the structure, whichever is greater.	Not regulated
San Francisco, CA	No limit	Not regulated if host is resident on-site; 90 days max. if host is not resident
San Jose, CA	When host is resident on the property: 3 guests – one-family dwelling 2 guests in each dwelling unit – two-family or multiple family dwellings  When the host is not resident: 2 people in a studio unit, 3 people in a one bedroom unit and 2 people per bedroom for each bedroom in excess of one bedroom, but not to exceed 10 persons total.	Not regulated
Seattle, WA	8 people total in a dwelling unit	Not regulated

## **IV. PLANNING CONTEXT**

### **COMPREHENSIVE PLAN WRITTEN ELEMENTS**

#### **Citywide Elements:**

##### **Land Use Element**

###### ***Policy LU-2.3.1: Managing Non-Residential Uses in Residential Areas***

*Maintain zoning regulations and development review procedures that: (a) prevent the encroachment of inappropriate commercial uses in residential areas; and (b) limit the scale and extent of non-residential uses that are generally compatible with residential uses, but present the potential for conflicts when they are excessively concentrated or out of scale with the neighborhood. 311.3*

###### ***Policy LU-2.3.9: Transient Accommodations in Residential Zones***

*Continue to distinguish between transient uses—such as hotels, bed and breakfasts, and inns—and permanent residential uses such as homes and apartments in the District’s Zoning Regulations. The development of new hotels on residentially-zoned land should continue to be prohibited, incentives for hotels (such as the existing Hotel Overlay Zone) should continue to be provided on commercially zoned land, and owner-occupancy should continue to be required for transient accommodations in residential zones (10A DCMR 311.311).*

###### ***Policy LU-2.3.10: Conversion of Housing to Guest Houses and Other Transient Uses***

*Control the conversion of residences to guest houses, bed and breakfast establishments, clinics, and other non-residential or transient uses. Zoning regulations should continue to allow larger bed and breakfasts and small inns within residential zones through the Special Exception process, with care taken to avoid the proliferation of such uses in any one neighborhood (10A DCMR 311.312).*

###### ***Policy LU-2.3.11: Home Occupations***

*Maintain appropriate regulations (including licensing requirements) to address the growing trend toward home occupations, accommodating such uses but ensuring that they do not negatively impact residential neighborhoods (10A DCMR 311.313).*

##### **Housing Element**

###### ***Policy H-2.2.1: Housing Conversion***

*Discourage the conversion of viable, quality housing units to nonresidential uses such as offices and hotels. Ensure that zoning regulations provide sufficient protection to avoid the loss of housing in this manner. 510.3*

##### **Economic Development Element**

###### ***Policy ED-2.3.1: Growing the Hospitality Industry***

*Develop an increasingly robust tourism and convention industry, which is underpinned by a broad base of arts, entertainment, restaurant, lodging, cultural and government amenities. Strive to increase: (a) the total number of visitors to Washington; (b) the number of visitors staying in the District (rather than in suburban hotels); and (c) longer visitor stays in Washington. Promote the District not only as the preferred base for exploring the city’s attractions but also the preferred overnight base for visiting regional attractions (10A DCMR 709.5).*

***Policy ED-2.3.4: Lodging and Accommodation***

*Support the development of a diverse range of hotel types, serving travelers with varying needs, tastes, and budgets. New hotels should be encouraged both within Central Washington and in outlying commercial areas of the city, particularly in areas which presently lack quality accommodation (10A DCMR 709.8).*

**V. SUMMARY**

On balance, the proposed text amendments to permit STRs in all zone districts would not be inconsistent with the Comprehensive Plan. The amendments further efforts to support tourism, they further distinguish between transient uses, and provide more flexible short-term stay options for areas in the city currently underserved by the hotel industry, allowing guests to support local businesses and get a better appreciation for DC as a city of unique and vibrant neighborhoods. STRs also allow for homeowners to earn income in their home.

“Ensuring housing affordability” is identified as one of the “critical housing issues facing the District of Columbia” in the Housing Element of the Comprehensive Plan (page 5-1). Many homeowners in the District host short-term rentals for income that allows them to make ends meet and to continue to afford to live here. This supplemental income may assist with offsetting the mortgage, property tax, and/or maintenance costs of properties, making homeownership more attainable to District residents, or allowing residents to remain in their home by using underutilized space.

As advertised in the hearing notice, the text includes references to D.C. Law 22-308; OP notes that the Short-term Rental law is D.C. Law 22-307. The text will be adjusted to reference the D.C. Code instead of the law once the law and the zoning become effective. As the text amendment will link to the DC Code definitions and licensing requirements, any future changes to the D.C. Code would not result in a need to revisit and make changes to the zoning text.

Deferring to the code is important given that app-based short-term rentals are novel and continue to evolve. Policymakers have ongoing policy discussions around the country and here in the District about the most effective and equitable ways to regulate them. In the District, the main policy and legislative issues that are still in contention relate to the obligations of hosts and the implementation of a new regulatory regime.

Two current statutory requirements of hosts have been raised as problematic. First, the law requires that a host may only rent their primary residence, though an allowance for one additional premise to be eligible as a short-term rental would not be unreasonably permissive. Second, the law limits hosts not physically present on the short-term rental premises to 90 days per year of rental availability, which is more restrictive than regulations imposed on some nearby jurisdictions, as illustrated in Table 3 above.

These and other requirements of the short-term rental law create novel regulatory requirements around both land use and licensing, which will be difficult for the Department of Consumer and Regulatory Affairs to administer and enforce. For example, the Office of the Zoning Administrator is not set up to monitor or investigate compliance with zoning regulations outside of an application-based process.

For these reasons the Office of Planning recommends the Zoning Commission approve regulations that allow zoning code changes governing short-term rentals to be flexible and defer policy to the D.C. Code in case of future legislative changes.