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**STATEMENT
BEFORE THE ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
IN SUPPORT OF CASE NO. 19-15 (A TEXT AMENDMENT)
TO PERMIT SHORT TERM RENTALS IN RESIDENTIAL ZONES**

Introduction

Members of the Zoning Commission: Thank you for scheduling this hearing to consider Case No. 19-15, a text amendment case, to authorize short-term rentals in residential zone districts. Coincidentally, exactly one year ago – October 17, 2018, all 13 members of the Council wrote to the Commission asking that the Commission update its Zoning Regulations to permit short term rentals in residential zones. Our letter requested that the Commission initiate a text case, as well as emergency rulemaking, to permit homesharing.

Consistent with that request, on July 29th of this year I submitted an application for a text amendment, which is the case before you today.

Need

There are always many ways to look at an issue, but one view is that the matter before you is quite simple: to allow a discreet type of transient use – homesharing – in residential districts. Homesharing, commonly called short term rentals, have become very popular. Last fall the Council estimated that on a given day there are approximately 1,000 short term rentals advertising their availability on a web-based booking service platform such as Airbnb, Homeaway, and VRBO. In total there are an estimated 9,000 short term rentals operating in the District. When combined with the number of hotel rooms, the short term rental inventory represents¹ almost one-fourth the total number of transient units available in the District. And yet the city’s Chief Financial Officer estimates that “approximately 80 to 90 percent of short-term rentals occur in residential zones,” where the current Zoning Regulations prohibit them. Accordingly, Case 19-15 is about rendering legal the vast majority of short term rentals in the District.

¹These numbers come from the Council’s legislative report on Bill 22-92, (now D.C Law 23-307) the “Short Term Rental Regulation Act of 2018,” dated October 2, 2018.

Scope

The proposed zoning text provides that the definition of “short-term rental” is the same as the Council’s definition adopted in the law last fall. That is, “‘Short-term rental’ means paid lodging for transient guests with the host present, unless it is a vacation rental. A short-term rental is not a hotel, inn, motel, boarding house, rooming house, or bed and breakfast. A short-term rental operates within a portion of the host’s residential property, unless it is a vacation rental.” A vacation rental is essentially the same, except that the host is not expected to be present and a vacation rental, generally, is time-limited to 90 days.²

Importantly, the proposed zoning text also requires in the definition that a short-term rental must have a valid Basic Business License from the Department of Consumer and Regulatory Affairs with a “short-term rental” or “short term rental: vacation rental” endorsement. And, also importantly, the license law requires that the property at which the short-term rental is located shall be the host’s primary residence, and “primary residence” is defined as property eligible for the homestead deduction from real property tax.

Thus, we *really* are talking about homesharing – that is, a District resident who seeks to rent out a room or rooms in his or her house on a short term basis. We are not talking about investor units. We are not talking about absentee landlords. Because we are talking about a use in peoples’ houses, typically with the homeowner present, the character of these short-term rentals is different than most other transient uses. Indeed, given that there are thousands of these rentals already in existence in our residential neighborhoods – albeit illegally – we know that the character and impact of these rentals, generally speaking, is compatible with residential zone districts.

Yes, there have been complaints. Almost always the complaints have been related to investor units and party houses. Investor units are precluded under the proposed text amendment because the definition requires that the units have or be eligible for the homestead deduction. The chance for a party house is similarly reduced.

At the July 29th meeting where the Zoning Commission voted to set down this text case for public hearing, the Council was asked to consult with the Office of Planning and the Office of the Attorney General to revise and perfect the text. As a result, the proposed text would permit short-term rentals, as accessory uses, as a matter of right in zones where residential uses are permitted, including all R, MU, RA, RF, NC, and the zones for Hill East, Saint Elizabeths East Campus, Reed Cooke, and Walter Reed (HE, STE, RC, WR).

²“‘Vacation rental’ means a short-term rental that operates within a host’s residential property wherein a transient guest has exclusive use of the host’s property during the transient guest’s stay and the host is not present on the premises. A vacation rental is subject to additional restrictions...” D.C. Law 22-307

No other substantive change is proposed to the Zoning Regulations. The Office of Planning has issued a report supporting the text amendment, and the effect will be to permit as legal thousands of currently operating short term rentals.

Regulatory Choices

Undoubtedly you will hear testimony or receive statements that, at their essence, seek to relitigate issues that the Council resolved through its licensing decisions. The Council made choices when it adopted Bill 22-92 (D.C. Law 22-307) pursuant to our authority over licensing law. The choices we made include the following:

- Short term rentals must have a license to operate.
- In order to advertise through a booking service, a host must provide and advertise his or her short term rental license number. This ensures that the District will receive all applicable taxes, including the hotel occupancy tax. It also means that hosts will no longer be able to evade the Zoning Regulations.
- A license can be issued only for owner-occupied property that is the host's primary residence. Thus, short term rentals are limited to homesharing.
- A host may offer multiple short-term rentals at a single property, subject to all applicable occupancy limits contained in the DC Municipal Regulations (the greater of 8 guests or 2 guests per bedroom).
- A host must stay at the residence unless he or she has a vacation rental endorsement, and vacation rentals are limited generally to 90 days, cumulatively, per year.

You may hear testimony that argues for investor-owned short term rentals, or against the 90-day limit on vacation rentals. Witnesses may cite different limits in other cities. I urge the Commission to resist the temptation, if there is any, to revisit these issues. While the Zoning Commission of course has exclusive jurisdiction over the Zoning Regulations, our licensing law precludes these changes.

Nonetheless, let me take a moment to survey what other jurisdictions have done. The technology that enables short-term rental platforms such as Airbnb is fairly new. As a result, only in the last few years have cities and counties adopted regulations. Comparatively, Washington DC has been a bit slow.

Limiting short term rentals to a host's primary residence is not uncommon. In our region, Montgomery County, Prince George's County, Fairfax County, and Arlington County restrict short term rentals to the primary residence. The 90-day limit is also not an outlier: while Arlington has no limit and Montgomery County has a 120-day limit, Prince Georges has a 90-day limit and Fairfax has a 60-day limit.

Housing Impact

You will receive testimony or statements making varied arguments about the effect of this case on housing, and the cost of housing, in the District. The District is in the midst of a housing crisis. Our population growth has far outpaced housing production, and the resulting shortage has increased housing costs, exacerbating the situation. This crisis encourages controversy over what government action will help or hurt. I believe the text case before you will unequivocally help.

Prohibiting investor-owned short term rentals means more housing units will be available for long-term leases or home ownership. Indeed, over the last several years Attorney General Karl Racine has filed lawsuits against investor operators for illegally converting apartment buildings into Airbnb hotels.

On the other hand, requiring that short term rental hosts are limited to their primary residence enables these District homeowners to realize extra income from their property. Clearly, this helps with housing affordability. It helps the senior on fixed income. It helps the single mother struggling to make ends meet. It helps the young couple wanting to grow their savings.

Some critics may argue that short term rentals will drive up the cost of housing – just like adding an English Basement to one’s rowhouse may increase the value of their house. I do not think this is certain. Regardless, English Basements require a level of physical alteration that short term rentals do not. A host may short-term rental his guest bedroom, or short term rental his or her basement only a couple of times a month – very different scenarios than a long-term lease for an English Basement. The upward impact of short term rentals on property valuation is nebulous at best.

Thus, the effect of the Council’s licensing law and the text case before you is to (1) preserve more investor-owned housing for long term leases; (2) enable homeowners to supplement their income, which will help with their housing costs; and (3) have minimal effect, if any, on real property valuations.

Emergency Action

When all 13 Councilmembers wrote to you one year ago, we requested not only this text case, but urged emergency rulemaking. I renew that request now. There are three reasons for this.

First, Law 22-307 is now fully effective. With the September 30th revenue estimates, the city’s Chief Financial Officer determined that the financial cost of the law, which had been adopted subject to appropriation, is fully funded.

Second, under the law, hosts must now have a license. Licenses cannot be issued if in violation of zoning. The Chief Financial Officer estimates that 80 to 90 percent of short-term rentals occur in residential zones, where they are prohibited. So thousands of short term rentals cannot legally operate – and now the rental platforms may no longer advertise them – until the Zoning Commission acts.

Third, I estimated last year that enforcement of the *current* Zoning Regulations could cost the District government something like \$18 million a year in taxes. Until the Zoning Commission acts, significant revenue will be lost.

Conclusion

The text case before you is the final step needed to permit homesharing in the District. Thousands of units, and thousands of homeowners are at stake. The proposal before you is consistent with legislation adopted unanimously by the Council. The text has been vetted by the Office of Planning and land use attorneys at the Office of the Attorney General. Adoption will enable the District to join ranks with our surrounding jurisdictions and cities throughout the country that regulate the relatively new phenomenon of short term rentals reserved through Internet platforms. I urge the Zoning Commission to adopt the proposed text expeditiously.

I thank you for this opportunity to speak on behalf of the Council. I look forward to our continuing cooperation.