



COUNCIL OF THE DISTRICT OF COLUMBIA
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October 22, 2019

Mr. Anthony Hood, Chairman
Zoning Commission of the District of Columbia
441 4th Street, NW 2nd Floor
Washington, DC 20001

RE: Case 19-15

Dear Chairman Hood and Members of the Commission:

At the conclusion of the October 17th public hearing, the Commission requested that I file supplemental comments supporting the request for emergency rulemaking. At the outset, I note that when all 13 councilmembers wrote the Commission one year ago about changing the Zoning Regulations, their letter included a request -- *at that time* -- for emergency rulemaking. I renewed that request at last week's hearing. There are multiple justifications for the Zoning Commission acting on an emergency basis to adopt text changes to permit short term rentals in residential zones.

First, thousands of short term rental hosts and all of the short term Internet platforms are currently in an untenable position that emergency rulemaking can resolve immediately. As you know, short term rentals are operating illegally throughout the District. The Chief Financial Officer estimates that 80-90 percent of short-term rentals occur in residential zones. Their pervasiveness suggests a high level of public acceptance. Under D.C. Law 23-307, adopted a year ago, hosts must now have a license. They cannot advertise without one, and the platforms are required to post a license number with each rental. But no licenses will be issued if in violation of zoning. The Zoning Commission must act. It makes sense to do so immediately. Otherwise thousands of homesharing rentals, which are not objectionable, will remain illegal while awaiting the regular process.

Second, DCRA is waiting for the Zoning Commission to act before proceeding to implement the new licensing law. My staff and I spoke twice last week with the DCRA Director about this. To proceed with implementation, DCRA must first issue its own emergency and proposed rulemaking. The expectation is that there will be a change to the Zoning Regulations, and this, of course, will have a substantive effect on licensing. It makes sense, then, that DCRA is waiting for the Zoning Commission to act. The sooner the Commission acts, the sooner DCRA will act. Emergency rulemaking is necessary for DCRA to act this Fall.

Third, last year I estimated that enforcement of the *current* Zoning Regulations could cost the District government something like \$18 million a year in taxes. Enforcement of the current zoning regulations through the new licensing law will mean the closure of thousands of short term rentals. Changing the zoning regulations will allow most of these short term rentals to stay open, home-

sharing to thrive, and the city to collect taxes. The sooner the Zoning Commission acts, the sooner the city gets this revenue. Emergency rulemaking could be worth millions of dollars.

Fourth, D.C. Law 22-307 is now fully effective as a result of the September 30th revenue estimates. When the Council this law on November 13, 2018 to regulate the licensing of short term rentals, it contemplated an applicability date of October 1, 2019. Everyone -- the platforms, hosts, and interested members of the public -- expected that homesharing could begin, legally, throughout the District on or about October 1. Obviously we have missed that, but waiting for the regular process of rulemaking to run its course means substantially more delay than the Council intended or the public expects.

Fifth, the issues in this case are not that complicated. Yes, there has been controversy about short term rentals, but as I testified last week the Council has made the necessary choices through the licensing law -- e.g., whether to permit "plus-one" (investor) rentals, whether to have a time limit, etc. So what is left is whether short term rentals should be allowed in residential zones. This narrowing of the issue augurs for emergency action. The text was drafted in consultation with OZ and OAG land use counsel; the public has had ample time to consider the case; the testimony at the public hearing was broadly supportive.

Finally, the status quo is unacceptable, unpopular, and unsustainable. The alternative -- the proposed text case -- is within our reach. Emergency rulemaking legitimizes thousands of hosts, enables the platforms to thrive legitimately, removes the final barrier to last year's law, and protects millions of dollars for the public treasury. This outweighs any public benefit from waiting to adopt rulemaking. For all of these reasons the Councilmembers requested emergency rulemaking.

Thank you for hearing the case and giving me this opportunity to provide additional comments.

Sincerely,



Phil Mendelson
Chairman