

Memorandum

FROM: Clifford Ashburner

November 11, 2015

TO: Members of the Louisville Metro Council

RE: Short Term Rentals

I am writing on behalf of a group of property owners that are and have been engaged in the short term rental of properties in Louisville Metro. These owners have sought the advice of local and state government officials about their operations and have attempted to abide by the law with regard to taxation and land use. With the reasonable belief that they were operating legally, they have invested hundreds of thousands of dollars purchasing and renovating properties and have remitted thousands of dollars in taxes to the state. But since the Louisville Metro Council took up the issue of short term rentals, my clients have been in a sort of limbo. This memo is intended to provide the perspective of these property owners and to suggest a way forward for Louisville's overall regulation of short term rentals.

The Louisville Metro Council has engaged in a lengthy debate about the proper way to allow, tax and regulate short term rentals. While there appears to be widespread agreement that all short term rental units that are properly subject to the transient room tax under KRS 142.400 should pay the tax and any local tax due, there continues to be much debate about whether and how to permit the use of property as short term rental property. We suggest using the existing Land Development Code ("LDC") while allowing owners who can demonstrate compliance with the tax laws for a period of at least twelve months to continue operating as non-conforming uses or, in the alternative, to be permitted as a use with special standards.

The short term rental industry is made up of several types of uses, not all of which merit the same regulation. There are uses that range from the rental of an entire house with no owner present to the rental of a spare bedroom with the owner present and serving food. So far, the Metro Council has discussed these uses as a block, perhaps because the discussion has focused on taxation. However, as a matter of land use, most of the activities characterized as short term rentals are already regulated by the LDC as a defined use.

Bed and Breakfast Inns are defined as follows:

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The use of a residential structure as a small inn which provides no more than nine (9) guest rooms for hire to short term guests in which the only meal served to guests is breakfast, unless the bed and breakfast inn has an additional food service license which allows other meals to be served. The innkeeper resides on the premises or property immediately adjacent to it during periods of occupancy, and the facility has a permit from the Kentucky Cabinet for Health Services to operate as a Bed and Breakfast Inn.

This definition clearly covers those short term rentals where the homeowner rents out a room in a home he or she is occupying at the same time to multiple independent tenants, while providing those tenants food. Short term rentals to multiple independent tenants where no food is provided could be considered Bed and Breakfast Inns or Boarding and Lodging Houses.

Boarding and Lodging House is defined as follows:

A dwelling unit where for compensation and by prearrangement rooms are provided for no more than eight people. Meals may or may not be provided, but there exists one common kitchen facility. This term does not include hotel, motel, extended stay lodging facilities, nursing home rooms, or assisted living units.

This definition appears to cover short term rentals where no food service is provided and there are multiple independent tenants.

The only type of short term rental that doesn't fit into an existing land use category is where an individual or group rents an entire dwelling unit and the owner is not present ("Whole Home Rentals"). Currently, the definition of "Dwelling Unit" in the Louisville Metro Land Development Code ("LDC") states that the room or group of rooms is "intended for occupancy for no less than thirty (30) consecutive days or more by one family, and providing complete independent living facilities..." This definition has been recently interpreted to prohibit any occupancy for less than 30 days, effectively prohibiting the rental of non-hotel, -motel or -bed and breakfast property for less than 30 days. The Dwelling Unit definition has four parts: (1) a room or group of rooms (2) intended for occupancy for over 30 days (3) by one family (4) and providing complete independent living facilities. A family is defined in the LDC as "one or more persons living as one housekeeping unit..." Complete, independent living facilities is commonly understood as sleeping room, a kitchen and a bathroom, accessed independently.

In the issue of Whole Home Rentals, parts 1, 3 and 4 are no different than any other dwelling. The only distinction between a permitted use and one that is not permitted under

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the current interpretation of "dwelling unit" is the phrase "intended for occupancy for no less than thirty (30) consecutive days or more..." The physical appearance of the property and the fixtures and furnishings found in the structure on the property are indistinguishable from one another.

As it relates to the individual property owners I represent, they sought to comply with the law, including consulting with the state and local revenue cabinet and with Louisville Metro Code Enforcement. At least one of the property owners received a verbal affirmation that Metro was not concerned with the length of rentals. Based on the reasonable belief they were acting within the law, they spent hundreds of thousands of dollars buying and renovating properties. Because there was no set rule prohibiting the short term rental of whole homes, and the property owners sought to comply with all state and local laws that apply, the Louisville Metro Council should affirmatively create a class of users that are considered non-conforming uses and let them continue. We suggest that owners who have registered with the state and have remitted the required transient occupancy tax for at least twelve months be considered legal non-conforming uses. But, if the Council determines that non-conforming status is not available, regulations concerning Whole Home Rentals should be crafted to be objective and easy to enforce.

Many of the more intense types of short term rentals are either relegated to commercial zones (hotels and motels) or allowed only by conditional use permit (bed and breakfast inns and boarding houses). Fully prohibiting Whole Home Rentals does not seem to make sense. These uses are the least intense, yet are subject to the most intense regulation--prohibition. Instead of a flat prohibition, we propose that Whole Home Rentals be a permitted use with special standards.

We propose the following be added to the LDC as Section 4.3.20:

Short Term Whole Home Rentals: The rental of a dwelling unit for 29 days or less shall be permitted, subject to the following conditions, which shall be verified by the office of Code Enforcement:

- A. The maximum occupancy for any dwelling unit shall be two (2) persons per bedroom, plus two (2) persons.
- B. The property owner must have registered with the Kentucky Revenue Cabinet and the Louisville Metro Revenue cabinet to remit required transient occupancy taxes. The granting of a taxpayer ID number shall be sufficient proof of said registration.
- C. The property may only be rented to a single tenant at a time, and no tenant shall be permitted to sublease the property.

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D. The owner must provide to Code Enforcement contact information, including a mobile telephone number, so that Code Enforcement can contact the owner in the event of a violation of this regulation or any other Louisville Metro Ordinance.

If you have any questions regarding the text of the proposed regulation, please do not hesitate to contact me.