

Memorandum

To: Chair Susan Albright and members of the Zoning and Planning Committee

From: Councilor Lisle Baker

Subject: Short-term rentals docket nos. 128-19 and 136-19

Date: July 12, 2019

Cc: City Council, Planning, Inspectional Services and Law Departments; Mayor's Office

I appreciate the willingness of the members of the Zoning and Planning Committee to look again at the short-term rental ordinances. At its meeting on July 25, the Committee made improvements in some provisions of the proposed ordinance.

- Annual registration and notice to abutters.
- Posting with the City the house rules when annual registrations are done.
- Requiring owner or primary tenant occupancy as a condition of short-term rentals.

At the same time, the ordinance will benefit from further shaping to make it fit into the overall zoning scheme of other accessory residential uses and providing enough protections to make sure that these short-term rentals are truly accessory to the main residential use and not a commercial use in a residential neighborhood or otherwise inconsistent with the quiet enjoyment of those neighborhoods. In that light here is some background information which I hope will be helpful to our deliberations.

Under current Newton zoning, short term rentals are not now permitted accessory residential uses under Sec. 6.7 as they not a listed use. Mr. Temple of the Law Department sent me two recent court decisions from other municipalities where it was determined that short term rentals are not permitted under their local zoning, primarily because they are not accessory to a residential use. A similar decision, though limited to its facts, occurred in the Newton Zoning Board of Appeals upholding an enforcement action by the Inspectional Services Department that two properties on Dudley Road used for short-term rental were in violation of Newton's zoning ordinances as not being allowed accessory uses. These cases provide a context for our decision-making here in Newton about what we recommend to the full City Council on what our Zoning Rules should be. (I will bring copies of the cases to the meeting on the 15th and provide one of them in the packet as an example.)

Generally, we clarify when something is as of right or requires a special permit altogether. At one end of this spectrum hotel uses are not a permitted use in residential zones and they are defined in Newton zoning as having six or more sleeping rooms for guests. (Sec. 6.4.17). Also, short term rentals are not permitted for Accessory Apartments, which also have a limit on the total number of occupants and require a special permit for an accessory apartment in a separate structure. (Sec. 6.7.1) Home businesses that are clearly incidental are as of right, but no more than 30 per cent of the ground floor area, not use separate structures, and provide additional parking, unless such limits are exceeded by special permit. (Sec. 6.7.3). Even long-term non-family use requires a special permit, such as for an association of persons five or more

unrelated people living in a common dwelling (6.7.6). Lodging houses for four or more lodgers require a special permit and are not allowed for rent less than 30 days. (Sec. 6.2.7).

With that in mind, I have been working with Mr. Freas, Mr. Temple and Ms. Lawlor on specific amendments to the short-term rental items for the Committee meeting on July 15. They will echo some of our existing zoning, as well as involve 90-day limits on the total number of days that can be short-term rented and a limit of 3 bedrooms, a special permit for use of a separate structure, and a special permit for more bedrooms or more time as a bed and breakfast, as well as some technical edits to the general ordinance, including a later effective date. This language is included with the Planning Department memo and explained more on Monday evening.

One clarification may be important. My understanding of the prior discussion in the Zoning and Planning Committee was the importance of a host presence during the short-term rental. In other words, it is important that a property with a short-term rental, like a home with lodgers, be required to have someone on site to be responsible. Mr. Freas pointed out that the Durango, Colorado, ordinance has clarifying language as follows, with the word “operator” substituted for owner as the proposed Newton ordinance refers to operator to include resident owner or long-term lessee:

“The resident operator of the short-term rental must be present on-site during the rental period.”

I view this as an important protection for the neighbors as well as assuring that the use is truly accessory rather than commercial, as the Lynnfield case, provided separately, I hope makes clear. I want to be clear that it is not that the operator has to be physically present all the time, for example, if they go out to dinner (though the contact number should be available). It is designed to make sure that the property functions like a traditional bed and breakfast (even without breakfast) as an accessory to the dominant residential use.

Thank you.