

CITY COMMISSION AGENDA MEMO
June 29, 2021

FROM: **Katie Jackson, City Attorney**
 Chad Bunger, AICP, CFM, Assistant Director of
 Community Development

MEETING: **July 20, 2021**

SUBJECT: **Discussion: Short Term Rentals**

PRESENTERS: **Katie Jackson, City Attorney**
 Chad Bunger, AICP, CFM, Assistant Director of
 Community Development

BACKGROUND

Short-term rentals (“STRs”) are the rental, or offering of rent, of all or part of a dwelling unit, to another person for compensation for a period of less than 30 days. STRs existed for decades as “vacation rentals,” but the STR industry grew rapidly through the access provided by online platforms that facilitate the listing, booking and payment for STRs. STRs exist in the City of Manhattan. As of the date of this memo, there are approximately 120 listings on the main online platforms.

State laws and City ordinances were not written with the STR use in mind. Rather, state laws and City ordinances anticipate a low number of properties in residential districts that may be used as bed and breakfast uses with state and local oversight and controlled impacts on the neighborhood. STRs technically fall within the City’s B&B framework, but the fast growth and different nature of the STR use make application difficult. Under the current Manhattan Zoning Regulations, most STRs meet the definition of Bed & Breakfast Home or Bed & Breakfast Inn (B&Bs), both of which require the BZA to issue conditional use permits (CUP) in the RS, R, R-1 and R-2, low density residential districts, and the R-M, Four-Family Residential District. In the denser R-3, Multiple-Family district, B&B Homes are permitted uses, but B&B Inns are still a conditional use. However, most of the STRs in R-1 and R-2 districts do not have CUPs, creating an inconsistency between entities doing business as B&Bs with CUPs and homeowners offering similar services without CUPs.

STRs are also covered in the City’s building code, which regulates residential uses by grouping them in occupancy classifications. The code requirements for the dwelling unit are based upon the occupancy classification, such as means of egress, fire and life safety systems, allowable building size, etc. If an STR’s occupancy is limited to one family, then the typical residential code requirements apply to the dwelling. If an STR’s occupancy

exceeds one family, then the occupancy classification changes and additional life and safety code requirements apply. If an STR's use includes use as a venue, then other code requirements may also apply.

Certain transient residential uses – hotels, motels and B&Bs – must also be licensed and inspected by the Kansas Department of Agriculture (KDA). A lodging license is required for any rented home for 8 or more guests (4 or more sleeping rooms), but no license is needed for a structure for 7 or fewer guests (3 or fewer rooms). However, the KDA is not routinely licensing STRs that are not holding themselves out as B&B's, such as the homeowner who offers their property as an STR only part of the year. Also, there is a disincentive for an STR to pursue KDA licensure because it may trigger additional building code requirements. A KDA food establishment license is not required if the STR only serves food to overnight guests. The food establishment license is required only if the STR offers food to the general public. The end result is that most STRs in the city of Manhattan are not licensed or inspected by the State of Kansas.

One concern about STRs has been that they are not collecting transient guest tax or other taxes. During this past legislative session, the Legislature overrode the Governor's veto of Senate Bill 50 and adopted an internet sales tax requirement. The bill requires collection and remittance of sales and compensating use tax by most "marketplace facilitators" beginning July 1, 2021. The marketplace facilitator must have sales sourced in Kansas in excess of \$100,000 to be subject to the requirement. SB 50 also requires marketplace facilitators to begin collecting and remitting local transient guest tax on January 1, 2022. The new law gives the Kansas Department of Revenue (KDOR) the authority to require large-scale marketplace facilitators such as VRBO and AirBNB to provide documentation to KDOR to implement the program, including documentation of sales. This law provides accountability between the online platforms and the State of Kansas, but does address the individual STR owner, who wouldn't meet the definition of a marketplace facilitator.

DISCUSSION

The online STR platforms have existed for more than 15 years, and the way that cities regulate STRs differs depending upon the number of STRs in the city and the positive and negative impacts of STRs in the city.

STRs offer the benefits of providing additional lodging options for guests that may be more affordable, have desired amenities, or allow a tourist to experience a community like a local. STRs also provide an income source for the property owner. If STRs encourage more tourism by offering a unique lodging location or experience, then local economies may also benefit.

STRs also create challenges in communities. Recent studies evaluate the "AirBnB effect", which posits that STRs reduce affordable housing due to the conversion of long-term rentals to short-term rentals, the overall reduction of housing stock, and the increase in property values and taxes. In addition, STRs may impact the residential character of the

neighborhoods, creating complaints of “commercial” uses next door, parking issues, and additional trash, noise, pop-up event spaces, trespass on adjacent property, and crime caused by transient guests who are not invested or accountable in the neighborhood. Finally, in some communities, the hotels, motels and B&Bs want STRs to be on a “level playing field” with them from a regulatory perspective due to the similarity of the uses.

STR-specific regulations or bans are very common across the United States. Communities that have prohibited STRs tend to be vacation destinations or large cities with high costs of living. Most cities have some form of regulation that accommodates STRs in certain areas as lodging and income-producing options, while protecting the life/safety of renters, affordable housing, and the residential character of neighborhoods.

In Kansas, some cities have few or no STRs, so there is no need for STR-specific regulations. Attached to this Agenda Memo is a chart with the STR regulations of the 10 largest first-class cities in Kansas. Manhattan is included, but the takeaways (below) on typical STR regulation components do not include Manhattan or Wichita. Wichita is not included because it completely prohibits any residential rental for a period of 7 days or less. Wichita regulates rentals of longer terms pursuant to its zoning regulations, but it is exploring STR-specific regulations following a fatal shooting at an STR rented for a house party in April 2021.

- License/permit: required in 6 of 8 cities. Mission and Olathe do not require licenses/permits, but both noted that they do not have many STRs.
 - Term: Three are 1-year licenses, three are 2-year licenses
 - Fees: vary from \$17/year to \$365/application fee. (See chart)
- Occupancy: All 8 cities limit occupancy to the same as the dwelling unit: i.e. meeting their definition of family or 3-4 unrelated individuals.
- Interior inspection: 1 of 8 cities (Lawrence)
- Exterior inspection: 4 of 8 cities
- Events/parties: 8 of 8 cities either prohibit use of STRs for event spaces or regulate events similar to other residential uses
- Zoning districts: 2 of 8 cities prohibit STRs in certain districts; 2 of 8 cities have additional permit requirements for low-density districts; 8 of 8 cities permit STRs in higher-density residential and commercial districts.

This discussion issue is before the City Commission now because STRs are existing uses that are therefore incorporated into the forthcoming Manhattan Development Code, and this effort attempts to modernize the City’s approach to STRs. In the past, the City has received questions or complaints about STRs. There have been complaints about STR renters trespassing onto neighboring properties because they are unfamiliar with the boundaries of the STR they rented. There have been occasional neighborhood impact complaints related to overcrowding, noise, trash and parking related to large gatherings or events held at STRs. The City has also received comments from hotels and B&Bs that STRs are offering the same services but are not subject to the same rules, such as being required to obtain licenses, submit to inspections and pay the same taxes.

City Administration is seeking feedback on whether the City Commission wants to adopt an STR-specific license or permit. If so, then input on the primary components would be helpful to return with a draft ordinance for the City Commission's future consideration. The attached chart shows a proposed STR framework. Although it's hard to predict whether the existing STRs would continue if a license is required, the estimated impact is 100 properties. City Administration has discussed creating one consolidated license for multi-family dwellings like apartment buildings. A license provides an educational framework for STR safety and compliance, an administrative process to respond to violations, and an enhancement to accountability.

If the City Commission chooses not to adopt an STR-specific license or permit, the use will continue to be regulated pursuant to the Manhattan Development Code and the building codes. In the draft Manhattan Development Code, the STR use is similar to B&Bs. This approach is not significantly different from the current approach, and would not resolve the code and other regulatory disparities between STRs and hotels, motels and B&Bs. A violation would be enforced through citation and prosecution in the Manhattan Municipal Court.

FINANCING

Not applicable as this is a discussion item.

ALTERNATIVE

Not applicable as this is a discussion item.

RECOMMENDATION

Provide comments and feedback on the regulation of short-term rentals in Manhattan.

POSSIBLE MOTION

As this is a discussion item, no motion is necessary.

Enclosure:

1. Chart of Kansas Cities

Short-Term Rental Regulations 10 largest first class Kansas cities

City	License/Permit	Term	Fee	Occupancy	Add'l Property Maintenance for STRs	Events/Parties/meetings	Zoning Districts	Misc. Regs	Misc. Regs Recent Action
Lawrence	STR License for owner occupied & non owner occupied (B&B's in low-density residential districts need SUP, but are permitted uses with regs in high density residential and in commercial districts)	1 yr	\$17/yr license \$50/inspection fee Add'l \$50 fee if no show for inspection Add'l \$50 fee for any follow up inspections FINES for conviction: Min \$500, Max \$2500	Max 3 unrelated: Single family districts Max 4 unrelated: multi-family districts Other districts 3-4 depending (minor children not counted)	Interior and exterior inspection req'd prior to first license and thereafter biennially	No specific rules, but any violation of the STR rules or any other City code violation (noise, trash, zoning, PM) can be used for suspension and remediation, or for revocation of license for the property if 3 violations occur	Prohibited in single family districts and within planned development districts Permitted in all other zoning districts	Each licensee can only hold up to 3 licenses/yr Owner or agent must be w/in 40 miles of City Anti-discrimination must be included STR license can be suspended or revoked for 3 or more violations (habitual violator)	City license must be displayed on the online rental platforms and should be maintained in STR 1 pkg spot/bedroom for non-owner occupied Any person violating rules (renters) can be cited Updated Oct. 2020
Lenexa	STRs must obtain Residential Rental License (same with long-term rentals)	1 yr	\$75 first dwelling, +\$20 dwelling in same structure	Family or up to 4 unrelated	Exterior inspection prior to permit issuance Interior inspection upon request; 3 code violation notices in 12 months; or emergency	Same rules that apply to residences apply, plus some private property special events require registration or licensure and must follow regs	Permitted within any residential zone, if in compliance with zoning regs	Tenants must agree to crime-resistant addendum Licensee must live in state or have in-state agent	N/A
Mission	Not STR specific, zoning/code regs for dwellings apply to STRs	N/A	N/A	Family or up to 3 unrelated	N/A	Noise in residential districts can't "violate residential character or destroy livability" or exceed 50 dcb		Zoning processes for group homes, boarding houses, etc	Will likely address STRs in upcoming new comp plan; added that they have very few STRs (2-5)
Olathe	Not STR specific, zoning/code regs for dwellings apply to STRs	N/A	N/A	Family or up to 4 unrelated	N/A	Same rules that apply to residences apply	B&Bs are special uses in R; permitted in commercial	SUPs (\$375) for B&B, group homes, boarding houses, etc	Olathe stated it doesn't have many STRs in the city and uses PD/code/zoning to deal with issues
Overland Park	STRs must obtain Residential Rental License (same with long-term rentals)	2 yr	\$120	Family or up to 4 unrelated	Exterior inspection prior to issuance & renewal	Same rules that apply to residences apply, plus some outdoor events in residential events require City permits and must follow regs	Residential districts	Licensee must live in state or have in-state agent	Party/shooting at STR in May 2021; OP is looking at stricter STR rules now

City	License/Permit	Term	Fee	Occupancy	Add'l Property Maintenance for STRs	Events/Parties/meetings	Zoning Districts	Misc. Regs	Misc. Regs Recent Action
Manhattan (Proposed Regs)	Low-density R: B&B homes and STRs need CUP and license All other districts: B&Bs and STRs need license and are limited or permitted uses (no CUP)	2 yr	\$120 (same as CUP for B&Bs, etc)	STR: Family or up to 4 unrelated	N/A	No events permitted in STRs Events permitted for B&Bs per zoning	Permitted in all districts that allows residential uses	No separate exterior entrances In low-density R districts, non-owner occupied STRs must be at least 500 ft apart	Ad must post license # and occupancy limit Apt bldg. can get 1 license for multiple units, but no more than 10% of units can be STRs to avoid code requirements changes License includes verification taxes paid
Shawnee	Owner-occupied must get home occupation license Non-owner occupied must get apartment property license	1 yr	\$50/year for owner occupied \$.006/square foot of leasable space for non-owner occupied	Owner-occupied: 1 other person max	N/A	Same rules that apply to residences apply, plus some private property special events require registration or licensure and must follow regs	Residential districts	Vehicles must be parked off street No separate exterior entrances	N/A
Topeka	Type 1: owner occupied admin permit; no permit for 3 multifam zones Type 2: non-owner occupied: admin permit; no permit for 3 multifam zones Type 3: 6+ beds admin permit and/or CUP	2 yrs	\$75/permit \$150/permit if caught operating w/o permit	STR: Family or up to 4 unrelated	No interior inspections; complaint based exterior: residential character must be maintained	Types 1 & 2: No large parties, weddings, meetings or events allowed; no use can cause noise nuisance or disturb reasonable person Type 3: allowed per CUP; events must be arranged in advance w/contract; held btw 9 a.m. – 11 p.m., must meet parking requirements	Type 1 & 2: all zones except manufactured homes & university Type 3: no permit in certain zones; permit req'd for 2 commercial zones; CUP req'd for all residential	After 3/2021, Type 2 must be at least 500 feet apart from another Type 2 or Type 3 Parking regs apply No separate exterior entrances	New adoption eliminated zoning terms for B&B home and B&B inn and Type 3 permit addresses those uses Adopted March 2021
Unified Govt (KCK/WyCo)	Special Use Permit through Planning Commission (SUP similar to MHK's CUP) Occupancy Tax of \$2/bed/year	2 yrs	\$365/application fee \$125/ordinance publication fee if SUP approved	UG establishes max occupancy in SUP	SUP	SUP requires STR to provide manual/welcome packet to each guest, including "No parties" rule. STR must inform guests that UG will enforce and must include Host Compliance contact number	Special Use Permit req'd n all districts	Neighborhood mtg req'd Contact Info, ordinance & permit must be posted inside STR	Must pay occupation tax & current KS lodging tax receipt STR owners must provide contact info to neighbors w/in 200 feet
Wichita	Prohibits all rentals for fewer than 7 days rentals		Fine: up to \$500						Following April 2021 house party/shooting, exploring STR-specific rules