City of Detroit
CITY PLANNING COMMISSION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-6225 Fax: (313) 224-4336
e-mail: cpc@detroitmi.gov

June 21, 2019

HONORABLE CITY COUNCIL

RE: Repeal of the home occupations prohibition in Chapter 61 of the City Code (Zoning); and, amendments to Chapter 9 of the City Code (Buildings and Building Regulations) to define and establish provisions relative to Short Term Rentals

Background

Chapter 61 of the 1984 Detroit City Code, *Zoning*, is proposed to be amended at Article XII, *Use Regulations*, for consistency with proposed provisions to be added to Chapter 9, *Buildings and Building Regulations*, at Article I, *Detroit Property Maintenance Code*, Division 3, *Requirements for Rental Property*, Subdivision C, *Short Term Rentals*.

Scope of the *Zoning* Amendment, Chapter 61

When the CPC took up the Fifth General Text Amendment to the Zoning Ordinance in March and April 2017, one of the items addressed in the 209-page ordinance was "home occupations" in response to the request of the Boston-Edison association and concerns from other communities. The provision clarified that an Airbnb-type use (short term rental) could not be established under the guise of "home occupation," consistent with the spirit of the long-established prohibition of bed and breakfast inns on land zoned R1 and R2.

The proposed zoning amendment has the effect of repealing the "home occupations" prohibition that was established in the Fifth General Text Amendment (Sec. 61-12-392) for the purpose of consistency with and enabling of the proposed provisions to be added to Chapter 9.

Scope of the *Property Maintenance/Rental Code* Amendment, Chapter 9

The Chapter 9 ordinance is an outgrowth of inter-departmental working group deliberations. The Law Department has drafted and revised the proposed amendment, which is sponsored by Council Member Janee Ayers. Key provisions of the Chapter 9 "Short term rentals" ordinance include:

- *Definitions of terms*. Among them, "short term rental," means "any rental of a dwelling unit, or rooming unit in exchange for compensation or other consideration, as residential accommodations for at least one night, but no more than 90 cumulative days of the year" (Sec. 9-1-100.2).
- *Residency requirement*. Any property used as a short term rental must be the owner's principal residence (Sec. 9-1-100.3).

- *Registration required.* Any short term rental must be registered with the Buildings, Safety Engineering, and Environmental Department (BSEED) (Sec. 9-1-100.4).
- *Spacing between short term rentals.* A short term rental will not be registered if located within 1,000 feet (measured linearly) of another short term rental; BSEED has limited discretion to relax the 1,000-foot spacing (Sec. 9-1-100.4(d))
- *Limitation on groups.* A host may not rent to more than one group of guests under more than one reservation at any given time (Sec. 9-1-100.8(b)).
- *Limitation on number.* Not more than ten people may be accommodated at one time (Sec. 9-1-100.8(d)).
- *Limitation on rentals per year.* A short term rental unit may not be rented more than 90 days per calendar year (Sec. 9-1-100.8(e)).
- *Certificate.* The short term rental must post its certificate of registration in a conspicuous place on the property and provide it in electronic format to all guests (Sec. 9-1-100.8(f)).
- *Notification of neighbors.* Within 30 days of registration, a short term rental host must notify neighboring dwelling units within 300 feet of the property's approval for short term rentals and provide the phone number of the rental's local contact person (Sec. 9-1-100.8(g)(1)).
- *Violations and enforcement.* BSEED is responsible for enforcement of the ordinance; violations are subject to issuance of a blight violations; violators may be removed from the rental registry (Sec. 9-1-100.13).
- *Denials and appeals.* Where an applicant is denied registration or where BSEED determines a registration should be removed, the applicant is entitled to a hearing (Sec. 9-1-100.14).

Results of June 6, 2019 public hearing and public discussion

A public hearing and discussion was held on June 6, 2019. There was considerable discourse on the proposed ordinances involving Commissioners, CPC staff, the Law Department, thirteen members of the public and the Office of the Ombudsman.

No speaker suggested that short term rentals should not be subject to registration including those speakers who objected to various provisions of the proposed Chapter 9 ordinance. No speaker voiced objection to the requirement that the short term rental property be the primary residence of the owner although one speaker spoke positively of his short term rentals, one of which was his primary residence and two of which were his income properties. No speaker raised an issue over the 10-person maximum per short term rental nor over the 1-group maximum per night.

Three members of the public objected to the proposed 1,000-foot linear spacing requirement as being too restrictive. A Commissioner also expressed concern over the spacing requirement

One speaker, a short term rental owner/operator, felt that a 90-day maximum per calendar year was too restrictive and that registered short term rentals should be able to operate more than that.

A speaker from the Boston-Edison neighborhood spoke of considerable negative experience toward the neighbors from an existing short term rental. A Boston-Edison block club president noted responsible operation at one short term rental but bad experiences with a different short term rental. A third speaker from Boston-Edison objected on the grounds that the proposed 90-day maximum on short term rental operations would still allow operation most weekends of the year.

A speaker in support of the proposed ordinances, believed that short term rentals take units off the market and raise rents elsewhere.

An advocate for short term rentals portrayed them as a healthy aspect of the sharing economy and that registration of the properties was appropriate.

Two speakers and a CPC member questioned the lack of an "inspection" requirement; the $250 application fee was viewed as too little; a more significant fee was thought to be appropriate to cover the cost of inspections.

Two speakers questioned the appropriateness of the proposed "1st come-1st served" approach to reviewing and approving applications for short term rentals in light of the 1,000-foot spacing requirement. Renewals of registered short term rentals involved a lesser fee than for the initial application; one speaker questioned whether a lesser fee was warranted.

Problems that were voiced over existing short term rentals suggested a connection between the non-resident status of the operator and the trouble experienced. Speakers who were concerned about short term rentals mentioned their experience with parking problems, noisy parties and gatherings, disrespect to the neighbors, uncut grass, lack of snow removal, trash, neglected dumpsters, and the existence of a business in the residential neighborhood.

A speaker questioned whether it mightn't be appropriate to exempt the least active short term rentals from the registration requirement, suggesting 14 days as a threshold for being subject to the ordinance.

A letter submitted by a Woodbridge homeowner in support of the proposed ordinances observed that nearby single-family homes had been bought up at bargain rates and then turned into a short term rental business, replacing neighbors with strangers.

CPC staff and the Law Department had conflicting understandings of a two-family dwelling or apartment building unit's eligibility for a short term rental. Clarification was offered that such residential uses would be ineligible for short term rental except for the actual space or unit occupied by the owner of the building.

A Commissioner raised a concern over the Chapter 9 ordinance's discretion afforded BSEED, noting that the application of discretion often results in a favorable outcome to those with higher socio-economic status. Another Commissioner suggested that the ordinance require three, rather than two, pieces of identification to document the owner's proof of residency in the unit to be rented for short term and that neighborhood associations also be notified of registered short-term rentals in their community.

Analysis

At the conclusion of public testimony and discussion among Commissioners, the chairperson directed staff to return at the June 20th meeting after further examining several issues, as discussed below.

> ***Spacing***. The sponsor of the Chapter 9 ordinance included the 1,000-foot linear spacing requirement as a way of avoiding an over-concentration of short term rentals in any one neighborhood. Speakers at the public hearing documented nuisances arising from existing short term rentals and their belief that long-term residents better ensured and protected the character of their neighborhood than did transient guests.
>
> CPC staff felt that a spacing requirement that would have the effect of generally limiting short term rentals to not more than one short term rental per block would respond to the

sponsor's and concerned speakers' concerns. In many communities, a typical block might be 1/8th of a mile long—660 feet. Staff wanted to test whether a lesser spacing requirement might effectively protect Detroit neighborhood's from more than one short term rental per block.

Staff measured the lengths of 40 blocks in randomly selected areas of the city and found block length to vary from 250 feet to 1,000. Half of the blocks measured were 760 feet in length, half were longer. If the spacing were reduced from 1,000 to 660 feet, we project that only 28% of the blocks in the city would be protected from more than one short term rental. If the spacing were reduced to 800 feet, only 55% would be so protected. With a 900-foot spacing requirement, 93% of the blocks would only be able to host one short term rental. Staff concludes that the proposed 1,000 foot linear spacing is the most appropriate measurement to prevent more than one short term rental per block.

Parking. During the June 6th deliberations, CPC staff questioned the appropriateness of requiring the short term rental applicant to disclose the amount of parking available even though the proposed ordinance specifies no requirement or expectation for parking to be provided. Staff continues to believe that, lacking a parking requirement, the applicant should not be required to disclose the availability or non-availability of parking. If parking availability is meant to be a factor in BSEED's decision to approve or deny a short term rental application, then a specific standard should be stated to avoid vagueness or abuse of discretion.

CPC staff also notes that the reference in the Chapter 9 ordinance to parking governed by Chapter 55 refers to the "permit parking" provisions. Although we recommend removing the language related to "parking," if it is retained, a fuller cross-reference should be incorporated with title to article and division within Chapter 55 that contains the "permit parking" provisions; presumably, short term rental guests would enjoy no special advantage or suffer any greater detriment in a "permit parking" area than would any other visitor.

Renewals. Staff believes the ordinance would benefit from a fuller treatment of registration renewals. The term, renewal, seems to imply that a registered short term rental with a clean record can expect renewal upon payment of the appropriate fee, as is the case for holders of vending licenses. That seems to conflict with the 1st come-1st served application process.

If a registration certificate holder is not meant to have any expectation of approval over a competing, new applicant whose property is within the 1,000-foot spacing area, then the term, renewal, should not be used and the ordinance should be explicit in clarifying that new applicants and existing registrants compete on an equal footing.

Equity/discretion. The proposed ordinance provides for BSEED to apply discretion in considering approval of a second or subsequent short term rental property within the same 1,000-foot spacing area. Unbridled discretion could well favor those with higher socio-economic standing, however the proposed ordinance ties BSEED's hands to consider waivers of spacing only from applicants whose properties would be less at least 900 feet from an approved short term rental. This discretion mimics the 10% "Administrative Adjustment" that has been a feature of the Zoning Ordinance since 2005.

Conclusions and Recommendation

CPC staff, the Law Department and staff from Council Member Ayers office sat in review and discussion of the various comments and suggestions for the proposed Chapter 9 language. Additional review and consideration was conducted by the Council Member's office and the Law Department to develop specific responses. Subsequently, these items were presented and discussed with the City Planning Commission at the regular meeting of June 20th with Council Member Ayers joining them at the table. The following modifications resulted:

1. Language was added to include "utility bill" as one of the documents and showing both the owner's name and address as a means of corroborating residency.
2. Language was added to address possible confusion between required parking provisions of the Zoning Ordinance and the provisions of the newly adopted Resident Permit Parking Ordinance.
3. Language was added to address concerns for the timing, processing and administration of short term rental registration and renewal by the BSEED.
4. Language was added to require the registration certificate holder to notify not only BSEED but also the neighbors within 300 feet of the change of "local contact."

Additionally, and outside of the ordinance provisions, the suggestion was made that a webpage be created listing and mapping the locations of registered Short Term Rental locations for general public awareness, which could also be used by City Council Members and other City agencies to notify specific groups such as neighborhood associations.

With the above understanding, the City Planning Commission recommended approval of the attached ordinance amending Chapter 61 and the forthcoming ordinance amending Chapter 9 of the Detroit City Code in support of the regulation of Short Term Rentals.

Respectfully submitted,

ALTON JAMES, CHAIRPERSON

Marcell R. Todd Jr.

Marcell R. Todd, Jr., Director

M. Rory Bolger, Staff
Kathryn Lynch Underwood, Staff
Marcel Hurt, Esq., Legislative Policy Division

Attachment

City of Detroit
Law Department

Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 500
Detroit, Michigan 48226-3437
Phone 313•224•4550
Fax 313•224•5505
www.detroitmi.gov

January 24, 2019

Detroit City Council
1340 Coleman A. Young Municipal Center
Detroit, Michigan 48226

Re: Amendment To Chapter 61, *Zoning*, of the 1984 Detroit City Code, Article XII, *Use Regulations*, Section 61-12-392, *Prohibited uses and activities*.

Honorable City Council:

The Law Department has prepared an ordinance which amends a portion of the Zoning Code, specifically Chapter 61 of the 1984 Detroit City Code, *Zoning*; by amending Article XII, *Use Regulations*, by removing a portion of the language in Section 61-12-392, *Prohibited uses and activities*, to bring this section into compliance with Chapter 9, *Buildings and Building Regulations*, Article I, *Detroit Property Maintenance Code*, Division 3, *Requirements for Rental Property*, Subdivision C, *Short Term Rentals*. A copy of the ordinance, which has been approved as to form, is attached for your consideration.

I look forward to discussing this important legislation with this Honorable Body.

Respectfully Submitted,

Mary Parisien

Mary Parisien
Assistant Corporation Counsel
City of Detroit
Municipal Law Section

CITY CLERK 2019 JAN 24 PM 1:59

SUMMARY

AN ORDINANCE to amend Chapter 61 of the 1984 Detroit City Code, *Zoning*; by amending Article XII, *Use Regulations*, by removing a portion of the language in Section 61-12-392, *Prohibited uses and activities,* to bring this section into compliance with Chapter 9, *Buildings and Building Regulations*, Article I, *Detroit Property Maintenance Code*, Division 3, *Requirements for Rental Property*, Subdivision C, *Short Term Rentals*.

BY COUNCIL MEMBER _____:

AN ORDINANCE to amend Chapter 61 of the 1984 Detroit City Code, *Zoning*; by amending Article XII, *Use Regulations*, by removing a portion of the language in Section 61-12-392, *Prohibited uses and activities,* to bring this section into compliance with Chapter 9, *Buildings and Building Regulations*, Article I, *Detroit Property Maintenance Code*, Division 3, *Requirements for Rental Property*, Subdivision C, *Short Term Rentals.*

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

Section 1. Chapter 61 of the 1984 Detroit City Code, *Zoning*; Article XII, *Use Regulations*, by amending Section 61-12-392, *Prohibited uses and activities*, to read as follows:

CHAPTER 61. ZONING

ARTICLE XII. USE REGULATIONS

Sec. 61-12-392. Prohibited uses and activities.

Any sale of fireworks, any firearms dealership, any materials or service characterized by an emphasis on "specified anatomical areas" or "specified sexual activities" as defined in Sec. 61-16-174 of this Code, and any type of repair or assembly of vehicles or equipment with internal combustion engines, such as automobiles, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, chain saws, and other small engines, are prohibited. Any other work related to automobiles and their parts, that is not conducted as a home occupation and is merely incidental and accessory to the principal use, is subject to the provisions of Sec. 61-8-27 of this Code.

In addition, no home occupation may use, store, handle, or manage "significant quantities" of hazardous substances as defined in Sec. 61-16-101 of this Code. For purposes of this provision, "significant quantities" shall mean amounts exceeding those commonly used for typical residential or office purposes. However, this does not include gasoline, oil, or other vehicle fluids that are contained in vehicles traversing or parked at a property for individual use or on a short-term basis.

Further, those land uses specified in Sec. 61-12-11 of this Code, the "Group Living" use category, being adult foster care facility, assisted living facility, convalescent, nursing, or rest home, emergency shelter, fraternity or sorority house, religious residential facility, residential substance abuse service facility, rooming house, and shelter for victims of domestic violence, and in Sec. 61-12-13 of this Code, the "Institutional Living" use category, being boarding school, dormitory, child caring institution, penal or correctional institution, detention facility, and pre-release adjustment center, may only be permitted as principal uses of the land in those zoning districts where such uses are permitted. In no instance shall such uses be considered as a home occupation accessory to a single-family dwelling, two-family dwelling, multiple-family dwelling, town house, or loft.

~~Use of a dwelling to accommodate paid overnight guests is prohibited as a home occupation; notwithstanding this regulation, public accommodations, including bed and breakfast inns outside the R1 and R2 Districts, are permitted as provided in Sec. 61-12-46 of this Code.~~

Section 2. This ordinance is hereby declared necessary to preserve the public peace, health, safety, and welfare of the People of the City of Detroit.

Section 3. All ordinances, or parts of ordinances, that conflict with this ordinance are repealed.

Section 4. In the event this ordinance is passed by two-thirds (2/3) majority of City Council Members serving, it shall be given immediate effect and become effective upon publication in accordance with Section 4-118 of the 2012 Detroit City Charter. Where this ordinance is passed by less than a two-thirds (2/3) majority of City Council Members serving, it shall become effective on the thirtieth (30) day after enactment, or on the first business day thereafter, in accordance with Section 4-118 of the 2012 Detroit City Charter.

Approved as to form:

Lawrence T. García
Corporation Counsel