

November 13, 2018

FOR YOUR INFORMATION

To: Mayor and Members of Council

From: Patrick A. Duhaney, Acting City Manager *PAD*

Subject: Short Term Rental Program

201801692

Please see the attached memorandum from the Department of Buildings and Inspections regarding the implementation of a Short Term Rental program. The report outlines how the City would administer this program including anticipated procedures, keys to operation, and potential costs related to the management of the program.

Please let me know if you have any questions.

Attachment

cc: Art Dahlberg, Director, Department of Buildings and Inspections

November 9, 2018

To: Patrick A. Duhaney, Acting City Manager
From: Art Dahlberg, Director of Buildings & Inspections
Subject: **FYI: Considerations for Management of Short Term Rentals**

This memorandum has been prepared to provide initial information as to how a Short Term Rental program, would be managed given the current draft legislation dated October 11, 2018. Below is a potential outline the program administration, anticipated procedures, keys to the operation, and the potential costs for administering the program.

As presented, the program distinguishes between Hosted and Unhosted Short Term Rental Units. The key distinction lies in the Hosted unit is typically occupied by a permanent resident as an Operator, defined as one who limits the offering of a short term rental unit to Transient Guests for up to 90 days per calendar year. Units offered 91 days or greater per year are considered Unhosted Short Term Rental units. This proposed distinction is critical on two fronts: Hosted Units, with a resident Operator onsite, are often familiar with the unit and neighborhood, and establish a "house guest" relationship with the Transient Guests. The resident Operator often provides direct supervision and assistance during emergency and nuisance situations. Unhosted Units, which by state law and building codes must comprise of 5 or less rentable units within a structure or be defined as a Hotel, in fact, function more like a hotel than a dwelling. As such, Unhosted Units need to have key life safety features constructed in the building that dwellings do not typically require. These necessary features will vary based on the building type and specific property constraints of each individual Unhosted Unit and require a design professional's analysis. Additionally, Unhosted Units, often utilizing property managers and not onsite management, precipitate the need for clear nuisance management parameters to discourage inappropriate behavior of Transient Guests.

Because of these distinctions noted above, the program requires registration for all Short Term Rental Units, and licensing, with additional requirements, for only the Unhosted Units. As proposed, the distinctions between both are as follows:

Universal Short Term Rental Registration: Key Points

- 1) Annualized registration and renewal to maintain an accurate record of Operator and Responsible Person information, and establish basic requirements for operation with the Operator. Costs will be established that reflect the increased costs of administrative and inspection staff in Buildings & Inspections to support the enforcement, preliminarily estimated between \$100-\$250/year for registration and renewal.
- 2) Minimum contact information for management and emergency situations, available to the City, public and the occupant. A registration ID is required on all hosting platform listings and displayed onsite to the public at all times, as well as an online registry. A good example of a registry can be viewed by the City of New Orleans.
<https://nola.gov/short-term-rentals/>

- 3) Verification that the Operator has property owner permission, including when applicable, landlord, condominium, and homeowners' association permissions.
- 4) The Operator shall certify compliance with Building, Zoning, Housing and Fire Codes and maximum occupancy of the unit, adequacy of parking, and life safety issues. If desired, Operators may utilize existing B&I Services such as Courtesy Inspections to establish these certifications.
- 5) Verification of law compliance, tax payment and prohibition of discrimination.
- 6) Responsibility of posting on the property of the registration status and the Transient Guests of their responsibilities while lodging onsite.

Licensing of Unhosted Units: Key Additional Points

- 1) Certifications listed in Item 4 must be sealed by a registered architect or engineer to insure the design of the unit meets all requirements. This will be administered through existing B&I services, anticipated to be application for Certificate of Occupancy, and when building code updates necessitated, appropriate building permits.
- 2) Proof of liability insurance, beyond homeowners insurance; likely \$1,000,000 minimum.
- 3) Licensure is good for three (3) years and is renewable. However, contact information and management practices are reviewed annually in the registration renewal.
- 4) Random Inspection, per the Periodic Property Inspection Program, Sec. 1104-44, will ensure the property is maintained. Operators are provided 72-hour notice of inspection and the costs are included in the licensing fee.

Lastly, it should be noted that the general public may assume that most Short Term Rental Units are established in Single Dwelling Units, occupied as one dwelling, and to be rented as one dwelling. However, a minority of operators do at times desire to rent Rooming Units within a structure, typically understood as a bedroom with or without a shared bath. It needs to be understood that city Building and Zoning Codes currently define Rooming Houses as providing 3-5 Rooming Units for rent and Hotels as providing 6 or more Rooming Units or Dwelling Units for rent on a transient basis. If any of these types of structures were to request registration/licensure, they may be prohibited by the current short term rental ordinance and additionally may not be a permitted use in many of our zoning districts. Further, they would have to conform to the required commercial building code requirements.

Compliance and Management of Nuisance

Compliance for program participation will rely upon citizen complaint as well as registration verification through cross referencing of required Hosting Platform data submissions and independent validation. The proposed nuisance management metric relies on a 'three strikes' principle; if three documented instances of nuisance behavior(s) are verified during an annual registration period, a registration or license will be revoked. Suspensions of registration and licenses can occur if any requests for compliance are not achieved in seven days, while revocation of a license can occur if any requests for compliance are not achieved in 30 days. A short term rental unit shall not be permitted to reregister for 12 months upon revocation and its Operator may not apply for new registrations or licenses during the revocation period. Additionally, many forms of noncompliance, including failure to register, payment the excise tax or falsifying Hosted rental status, may also incur Civil Fines, in addition to suspension and revocation remedy above.

General Management

It is envisioned the registration and licensing intake for Short Term Rental Units shall occur with Buildings & Inspections; as most compliance concerns are related to life safety issues concerning the building. This responsibility will include the intake functions, management of

applications, collection of all registration and licensing fees, verification functions by Zoning and Building Plan Examiners; including any necessary building permits associated with the registration/licensing. Building Inspectors will ensure that any construction required as part of the registration procedure is code compliant. Upon satisfactory registration/licensing, management of the operation will occur jointly within Zoning Administration and Property Maintenance Code Enforcement divisions. Citations, and appeals to citations, will be routed to the Office of Administrative Hearings. Management of the Registry website shall reside with Customer Service and Zoning.

Upon receiving approval of the Registration/License, Treasury will be notified of all newly registered and licensed units. Treasury will manage the collection of the Excise Tax referenced in Chapter 315 from Operators, as well as all data and excise tax payments provided by the Hosting Platforms. Treasury and B&I will collaborate during renewal periods by informing B&I of tax compliance status and assisting in the review of Hosting Platform records to ensure all known Unhosted Units have compliant licensing.

Current assumptions for implementation are that the selected Hosting Platforms are intended to be a significant contributor toward regulatory compliance. However, it cannot be assumed such information shall be made available to the city in a manner necessary. Thus, it appears that independent compliance monitoring of all the regulations would be necessary to insure success of the program. However, knowing Hosting Platforms have partnered on information and excise tax collections in other cities, we would anticipate similar support here. Additionally, B&I will work with Operators, Community Councils and the public at large to inform them of the compulsory registration/licensing program and will continue to offer Operator's assistance through open houses, certification assistance, etc. to achieve maximum registration compliance.

Establishing Capacity to Launch

In regard to management capacity, the framework of the proposed legislation creates additional staffing costs, demands on capacity and initial review leads us to believe additional management tools are needed to implement the program. At present, staff levels currently approved in the budget should allow us sufficient capacity to absorb this program. However, it is anticipated that the following is required for successful implementation that were not anticipated in the department's approved budget for Fiscal 2019:

- Proposed Fee Schedule – The fee structure shall account for all the costs incurred to administer the program. The Ordinance allows the City Manager to establish the fees without additional council action. A final proposal shall be advanced prior to adoption of the ordinance.
- Management Software - Currently B&I and OPDA are reviewing several platform options to implement and manage the program. We believe that an existing platform and contract might be able expanded to deliver the registration service (OpenCounter) and we are reviewing other vendors including Accela the vendor our permitting system will be converted to. Additionally, we are reviewing the merits of compliance management software that is readily available. Seeing most software is based on the quantity of units in the market, an initial estimate of a year ago would place annualized costs between \$30,000-\$50,000. B&I does not have resources presently in our budget to purchase these necessary components.
- Delayed Launch - B&I requests that the Ordinance establish a registration launch date approximately 90 days after the effective date of the ordinance. We presently assume approximately a March 1, 2019 launch date. This Registration launch date should probably differ from the date of any collection of information from the Hosting Platforms, such as January 1, 2019 and/or the launch date for excise tax collection.