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Barney S. Heath
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MEMORANDUM

DATE: February 10, 2017

TO: Councilor Ted Hess-Mahan, Chairman
Members of the Zoning and Planning Committee

FROM: Barney S. Heath, Director of Planning and Development
James Freas, Assistant Director of Planning and Development
Michael Gleba, Senior Planner

RE: Short Term Rental (STR) Zoning Regulations

MEETING DATE: February 13, 2017

CC: Donnalyn Khan, City Solicitor
John Lojek, ISD Commissioner
Planning and Development Board

As in many other municipalities, some concerns have been expressed in Newton regarding short term rentals (STRs), often referred to as “Airbnbs” after one of the more prominent online platforms that facilitate such rentals. The Planning Department has drafted this memorandum to identify general issues associated with such rentals as well as approaches the City and other municipalities have and/or are exploring to respond to such concerns.

ISD has indicated that it receives occasional STR-related complaints. Issues that have been raised include complaints regarding the rental of homes by large groups for parties, the increased presence of transients in residential neighborhoods and related increases in noise, on-street parking demand and trash generation, all of which may be exacerbated in the absence of an on-site property owner.

Background and Context

STRs are commonly defined as residential rentals of less than 30 days in duration. As they allow homeowners to realize income from their properties, they can be expected to gain support from those who would welcome off-setting some proportion of the costs of homeownership. Interest in STRs has also been demonstrated in some municipalities, especially larger and/or tourism focused cities, by property owners who operate multiple dwelling units as STRs. As such, important distinctions may be made between the rentals of entire units, portions thereof (i.e., one or more rooms), and even a single bed or couch used for sleeping, as well as between the different possible levels of presence, and involvement, of a property owner at an STR location.

Given that the use of space is exchanged for payment of a fee, when being used for STR purposes a dwelling can be seen as taking on aspects of a commercial use, and not dissimilar to a bed and breakfast or other tourist/transient use. The appeal of STRs is that they provide visitors with an experience akin to being a resident of a given place or neighborhood. Much like with a bed breakfast, the people who use this kind of service are frequently looking for more of a home-visit type experience.

Zoning-related concerns about STRs tend to be concentrated around their appropriateness in residential districts. These concerns include parking issues; disruptive behavior (noise, trash, etc.); and the presence of a “transient” population (i.e., in a cited example from Quincy, MA, neighbors complained about “strangers arriving with suitcases every few days”).

However, it should be noted while a hotel might have tens or hundreds of rooms in one location, STRs will tend to be distributed around a wide area, limiting their impact on any one block or neighborhood. Another often-discussed concern is whether the owners of the property are on- or off- site; when renters are in residence as it can be reasonably expected that on-site owners will be positioned to monitor and regulate renters’ behaviors.

Other issues of general municipal interest include:

- Whether the availability of STRs can enhance the city as a destination for visitors, including those with business in Boston and the surrounding municipalities.

- Whether STRs could impact revenue from the hotel/occupancy taxes collected from non-residents. A recent study cited in the Boston Globe found limited competition between hotels and STRs given the different market niches they typically serve (see above). The Massachusetts Legislature has been considering various legislative proposals that would require the collection of STR taxes for state and local governments.
- Whether local property tax assessments should reflect STRs as a quasi-commercial use (especially when not used primarily as a residential unit).
- Whether the operation of STRs could allow current residents to remain in their homes by providing them with revenue from their homes.
- Maintaining the integrity of zoning and building codes as some STRs may violate existing regulations on land use, parking, fire safety, building code, sanitary conditions, etc.
- How the costs and staff demands related to STR regulation would be managed and funded.

Existing approaches to STR regulation

Municipalities nationwide have been exploring and adopting a variety of regulations and policies in response to the growth of STRs. Examples of these approaches can be grouped in several general categories:

- a. Some jurisdictions have attempted to ban one or more type of STR-related activity. Examples include:
 - In New York, the advertisement of apartment rentals of less than 30 days can be subject to fines of up to \$7,500 (the rental of individual bedrooms and single-family homes are exempted);
 - Santa Monica, CA bars rentals of an entire residence for less than 30 days (so-called “home-sharing,” i.e. renting a couch or room with owner present, allowed with license).
- b. Some municipalities have created or modified zoning ordinance definitions to facilitate specific policy approaches to STRs. Examples include:

- Portland, OR created an “accessory short term rental” use category; where a dwelling unit’s resident rents bedrooms to overnight guests, the number of guests may not exceed the relevant “household” definition;
 - In San Francisco, a STR unit owner must be a “natural person (i.e., not a commercial entity); the definition of “dwelling unit” explicitly includes short term rentals.
- c. Municipalities have attempted to place some limits on the scope of STR activity, e.g., how many STRs can be located in one building; how many days per year a unit can be rented, etc. and how many days per year the “permanent resident” offering the STR must occupy the unit (e.g., San Francisco requires 275 days in a calendar year).
- d. Another approach is to require STRs to be registered with local governments and/or obtain certain licenses and/or permits. This can allow the collection of fees, facilitate monitoring and inspection, and distinguish between owner-occupied and non-owner occupied units. As examples:
- STR operators in San Francisco must obtain a business registration certificate;
 - In Boston, an annual lodging house license is required to rent to 4 or more persons not within 2nd degree of kinship and properties must be registered if they are occupied without an owner’s presence.
- e. Some municipalities have employed so-called “good neighbor” regulations, e.g., noise ordinances (incl. evening quiet hours); parking regulations and trash disposal guidelines to limit perceived possible negative impacts on surrounding neighborhoods.

Current Local Approaches

Newton currently applies pre-existing rules on boarding and lodging houses on STRs. Under current provisions of the zoning ordinance, up to three persons who are not members of the housekeeping unit may, including in exchange for rent, occupy space (not inclusive of cooking facilities) for living and sleeping purposes. A dwelling with four or more such persons would be considered a “boarding house” and would be allowed in any residential district only by special permit. Boarding houses are

allowed in most Business or Mixed Use districts, either by right or by special permit, as a “residential Use” on or above a ground floor.

ISD staff has indicated that enforcement is complaint-driven and that any violations relating to STR activity has often been resolved at given locations in response to contact from department staff informing the owners of the concerns.

Examples of how other area municipalities approach the STR issue include:

a) Brookline

Brookline attempted to address some concerns related to STRs in 2014 by adopting new lodging house regulations. Homeowners are permitted to have up to three lodgers, defined as persons who rent space for “living or sleeping purposes and is not within the second degree of kinship to the lessor.” A dwelling with more than three lodgers is considered a “Lodging House,” defined as dwelling structure in which sleeping accommodations without individual cooking facilities (exclusive of dormitories, fraternities, or sororities) let for compensation to four or more persons not within the second degree of kinship to the owner or operator. Such lodging houses are required to be licensed by the town subject to applicable regulations.

(Notably, Lodging Houses may have individual cooking facilities, subject to applicable codes, laws and regulations, if the use is subject to deed restriction that the rented rooms be rented, under one year leases, to lodgers with incomes less than or equal to 80% of area median income consistent with the provisions of M.G.L. Chapter 40B.)

b) Cambridge

Cambridge reportedly hosts the highest concentration of short term rentals (per acre) in Greater Boston with more than 600 Airbnb listings citywide. The Cambridge Zoning Ordinance treats an STR as a "Tourist house in an existing dwelling." Such use is generally allowed by right in denser residential and business districts but not allowed in lower density residential and business districts. They are permitted in certain other business and industrial districts by special permits from the Zoning Board of Appeals or the Planning Board.

Some of the conversation about STRs in Cambridge includes (a) whether they are commercial rather than residential uses and (b) that some condominium conversions are being done to create full-time STRs. In late 2016 the City Council considered a zoning ordinance provision that would allow short term rentals in all districts in which residential uses are allowed, so long as they fell into one of two allowed categories:

- a) "owner-occupied units," defined as dwellings unit that are the owner's primary dwelling unit or occupied by a primary lease holder; or
- b) "owner-adjacent units," defined as units in a residential building with four or fewer units where all units are owned by the same person or entity and one of the units is the owner's primary place of business.

All STR operators would be required to register with the City's Inspectional Services Department. "Owner-adjacent units" would be inspected for fire, building and sanitation code violations before they could be rented. Furthermore, an STR operator could not have more than one "owner-occupied unit" and one "owner adjacent unit." Suggested modifications to the proposed provision included requirements that STRs:

- be "accessory and secondary" to the use of a dwelling used for residential household living;
- not result in changes and/or adverse impacts to the "residential character of the neighborhood," i.e.:
 - separate entrances for the sole use of an STR visible from the street would not be allowed
 - effects that "unreasonably interfere with any person's enjoyment of his or her residence." (e.g., noise, vibration, glare, odors, etc.) would not be permitted.

Other proposed modifications included:

- the STR use of any one residence be limiting to 180 days per year;
- "owner-adjacent units" could only be rented out as "whole units;"
- the number of STRs in an owner-occupied unit shall be limited by the number of bedrooms, not the number of unrelated residents; and
- STR fees and taxes would be directed to the City's Affordable Housing Trust.

The Cambridge City Council has yet to act on STR regulation to date.

c) Somerville

Somerville's current STR rules are based on preexisting zoning provisions as applied to this issue.

While the Somerville Zoning Ordinance does not allow the short-term rental of entire dwelling units, it does, however, allow short term room rentals within residential buildings in Somerville in two circumstances:

- 1) as a "Tourist Home Accessory Use" within an owner occupied principal residences (i.e., renters cannot sublet rooms or spaces in their units as short term rentals), and
- 2) in a Historic Bed & Breakfast with an on-site operator.

Further, while the city's building code requires additional safety measures when space is converted to transient use, including STRs, exceptions are made for single- and two-or 2 family homes where the number of transient renters does not exceed 10 at any one time.

Somerville is currently considering zoning provisions that would permit the STR rental of entire units in a multi-family owner-occupied home, but Indications are that the issue remains a component of the city' comprehensive zoning overhaul efforts (as well as concerns about safety inspections, fees and taxation) and is unlikely to be included in the current round of zoning reforms.