

BRIEFING NOTES

NAME OF GROUP:	PLANNING COMMISSION
DATE, TIME AND PLACE OF MEETING:	Wednesday, January 22, 2020, 1:45 p.m. Council Chambers, County-City Building, 555 South 10 th Street, Lincoln, Nebraska.
MEMBERS IN ATTENDANCE:	Shams Al-Badry, Tom Beckius, Dick Campbell, Tracy Corr, Tracy Edgerton, Cristy Joy, Deane Finnegan, Dennis Scheer and Cindy Ryman Yost.
OTHERS IN ATTENDANCE:	David Cary and Steve Henrichsen of the Planning Department; and other interested citizens.
STATED PURPOSE:	Briefing on “The Short Term Rentals Discussion Draft and Public Input Process.”

Chair Tracy Corr called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

The Short Term Rentals Discussion Draft and Public Input Process:

Presented by David Cary, Planning Department Director.

Cary stated this is about “Short-Term Rentals”, and making sure that the Commissioners are up to date on the most current information for this topic. Last night, there was a public meeting on this subject with a good turnout. He explained that Rachel Jones is the primary planner on this subject, and has gathered the majority of this information.

Cary stated based on the State Legislation from the last session, they need to specifically address short-term rentals in the zoning code, because there is not a specific definition for this in the zoning code. These types of rentals are referring to at Airbnb, VRBO and HomeAway. A short-term rental is a temporary rental of residential rooms or homes. This includes rental of an entire house, apartment, or rooms within a dwelling. These types of rentals are residential activities that are typically 30 days or less.

Cary stated this would be a new use to best define policies and regulations to address this type of use. For a residence, whether it is a rental or an ownership, it is meant for long-term use, which is more than 30 days. A hotel is for commercial activity; it may be short-term residential, but it is a commercial transaction and typically in commercial zoning. A short-term rental falls

somewhere between a long-term residence and commercial hotel activity, and this is what needs to be define.

Today, short-term residential is allowed under home occupation in Residential zoning districts. When using this zoning code, the operator must reside on-premises during the rental period. There is also a maximum of 20% of floor area devoted to rental and a maximum of 2 square feet sign area. With the current code, using the entire house as a short-term rental is not addressed.

Finnegan asked where a Bed and Breakfast like “The Rogers House” would fall in the current code. Cary stated that a Bed and Breakfast is a particular version of this and is allowed by a special permit. The Historic Preservation Commission would typically do this, although there are not many of them.

Corr inquired if there was a specific definition already in the code for a Bed and Breakfast. **Steve Henrichsen, Planning Department**, said no.

Campbell inquired about hotels and if they were for the short-term rentals, why had FEMA stayed in some for up to a year, and further asked if that was covered by something different in the zoning code. Cary explained that the assumption is that they are operating in a hotel in a commercial zoned area, which is different from a residential short-term rental.

Finnegan stated that her insurance company had put her and her husband in a hotel and it was longer than 30 days. Henrichsen stated that you can go to a hotel and stay more than 30 days, but if you were to do this in a residential area, it would be considered your residence. Legally today, a homeowner could rent out their house for 30 days or more and it would be considered a residence and not a short-term rental or hotel.

Campbell asked if the homeowner needs to be on the premises. Henrichsen stated if it is for 30 days or over the homeowner would not need to be there.

Cary stated that the Nebraska Legislature approved Legislative Bill (LB) 57 March 2019. This prevents municipalities from banning short-term rentals. There have been discussions on what that means and where the line is. The reason for today’s discussion is to bring clarity to this topic. There has already been a wide variety of reactions to this. Some complaints have been made from neighbors that do not like this activity in their neighborhoods. There is not a formal proposal yet, and today’s meeting is not a formal proposal--it is for discussion. With the passing of LB 57, and the limitations of the current code in addressing this topic, the Planning Department does need to come forward with a proposal.

Corr asked if they could be more specific on the types of complaints they have received. Henrichsen stated that in August 2012, they began getting complaints with game day rentals. He shared there are some companies that do just game day rentals. They go to college towns specifically for game day rentals and see who would be willing to rent out their home on a game day weekend. The complaints received have to do with large parties, parking, and one party after another and saying this is not a residential use.

Cary stated there has been research done on how other cities address short-term rentals. In Madison, Denver and Fort Collins, the dwelling must be the host's primary residency, which will help with some of the party house complaints and the maintenance concerns. This is one of the primary focuses and is still under consideration. There was a public meeting last night and another one is scheduled for next week. Rachel Jones is receiving quite a bit of input now and that is what we are wanting. All the information received will be compiled and used to create a proposal, which should be sometime in the first half of this year.

For discussion purposes, this has been broken down into three areas, zoning, licensing and taxes. The working definition for zoning is that the length of stay per guest is no more than 30 consecutive days. This is the differential between the long and short-term stays and this use is not meant to be an event space for a party house. Even if whole house rentals are allowed without it being their primary residency, the event space will not be allowed. It will need to be a residential activity. It will be required that this will be the operator's primary residency at least 6 months of the year. An Accessory Dwelling Unit (ADU) could also be used for this use. Henrichsen stated that the ADU would have to meet all of the other conditions.

Scheer stated the owner would need to live at the residence for 6 out of a 12-month period. Cary said correct. This will distinguish this activity from commercial hotel activity. He shared that there are arguments on both sides of this and, for now, they are starting with trying to be cautious. Not all neighborhoods will want to have this type of activity, without the owner there the majority of the time.

Cary explained that what this means is that they could rent a bedroom or bedrooms in a house. They could even rent an entire house, but it could not be used as an event or party space.

Corr asked if at her current residence, if she could rent out space for a shower, with the way the code reads now. Cary said no, with family yes, but you cannot rent while you live there legally. Even if full house rentals were allowed, they would only be able to use the house for residential activities and not parties.

Henrichsen stated that the difficulty they will have would be them stating that it is not listed as an event space, that they just have a large living room and the renter will do what they want to do. Cary stated that this issue is why the City needs to be clear.

With licensing, all operators would be required to obtain a license for the Building & Safety Department for each dwelling being rented. They would be required to renew their license annually, which could be revoked in the event of multiple violations. The operator must affirm that the dwelling meets the basic life safety requirement before their license would be issued.

Corr stated what if the homeowner of the rental is out of town and they have rented their property, and then asked if it could be included on the form that there be a local contact for the property. Cary stated that this can be part of it, but they have not gotten that far in the details to say that is how it would be handled. Corr stated that if there were problems, they would want to have the ability to contact someone local. Cary stated that the challenge is how much can the City truly enforce and how much oversight is there really going to be. Mostly, it is handled by a complaint basis already and this would very likely be the same.

Ryman Yost inquired if there were other legal options for parties, mentioning maybe disturbing the peace would be one. Cary stated that would be the most and straight forward. Henrichsen stated if they were in violation of the home occupation ordinance, and that is if the person did not live on the property and was operating a short-term rental. Then, it could be turned into Building & Safety for a zoning ordinance violation. Cary stated this does need addressed and, as of right now, the zoning code is set up to allow it through the home occupation.

Campbell stated that he is concerned about the maximum two per bedroom sleeping, and asked if adding the word adult in the wording would take care of the concerns. Cary explained they would be discussing the number per room, because they have heard that comment from others. The idea is to some way limit the number of people that can be in any particular structure, so that there is not 30 people having a party there. They will be working with Building & Safety on this question.

Finnegan inquired if they have worked with Lincoln Police Department on this, because they have a unique way of looking at things. Henrichsen stated that it has been routed to all departments, because this discussion draft has been going on for almost a year. Cary stated that the Law Dept. has been involved in this since the beginning.

Scheer shared that he was unsure of how to state his question, but it sounds like a major concern on how to protect the neighborhoods from unsupervised daycare (house rental) with someone not there. He shared when his firm gets involved in an adult daycare project, there are guidelines, and he is not saying that you would apply those guidelines to adults, but their set up might be a good example for capacity. There might be some parallels between the two that could help with capacity and safety. Cary stated that it was a good way to look at this.

Corr wondered about the maximum occupancy for the fire code. Henrichsen stated that the building code requires 70 square feet per bedroom for the first person and an additional 50 square feet for an additional person, and a standard bedroom should only have two people in it.

Finnegan asked if there was a generational divide with this type of establishment. Cary stated that he does not see that there is an age or generational divide.

Henrichsen stated a company called "Host Compliance" that a City can hire to monitor these sites, making sure they are in compliance. The challenge is going to be that the property owners will say that they purchased their house, fixed it up and go there daily to do the yard and their Airbnb is great. With the regulations in place, you will have owners that figure out how to get around them. Therefore, this needs to be set up for those who do not follow the rules and rather than having a different set of standards.

Ryman Yost stated that in other cities where there have been challenges, like Minneapolis, that have had problems with affordable housing. One challenge they are having, is apartment building are being built and essentially becoming short-term rentals and operating like a hotel, and asked if this was a concern. Beckius stated that they are not proposing a cap at this time, and asked if that was correct. Cary stated not at this time. He further stated that this is something that they are aware of and the issue was brought up at the Mayor's Round Table meeting. Henrichsen stated they had heard there were several long-term rentals that switched to short-term rentals for a variety of reasons.

Cary stated the primary residency is particularly addressing the snowbirds condition and the way that this is being discussed is a perfect way to handle something like short-term rentals. This does not address those that would want an investment property used strictly for short-term rentals.

Beckius stated they want to ensure things that are considered more of a commercial use do not adversely affect neighborhoods, and he asked about requiring the primary residency to obtain this license. Cary stated that if someone were a snowbird, this would fit his or her needs perfectly, under that condition. What this does is limits the amount of year-round activity of a full-house rental in a residential area. Beckius asked why that is important, from the staff's point of view. Cary stated they have heard this issue during the some of the public conversations with some residents in neighborhoods. Henrichsen stated when guests are only staying for a few days it is a commercial use.

Scheer asked if frequency of use with the residence was the primary concern. Cary explained they have heard is a range of issues with this like, not liking the turn over, parties, problems with noise, parking. There are several concerns with this.

Beckius asked what other cities are requiring when this does not need to be their primary residence. Henrichsen said they have other licensing requirements and some of them require that they have a maximum number of days that they can rent the residence. Beckius shared he feels this type of use can function well within existing neighborhoods, as long as they can control the negative commercial component with it. This is for a commercial purpose, although the use itself is not dramatically different from the neighbor that rents their house for a year. If the commercial component were controlled, he would be willing to see what it looks like without having the primary residence component attached.

Campbell stated that he knows people that do this with their property and it is not their primary residence, although it was in the past. Cary stated that the majority of the attendees to last night's meeting were people that are actively doing this. Campbell stated that he feels that there is a real enforcement problem with these.

Cary stated that taxes is a big part of this, and with the approval of LB 57 last year, hotel industry lobbied to make sure that the local municipality could impose those occupation taxes to these activities. Some of these businesses did not know that it was an option before and are already paying the occupation tax.

Ryman Yost asked if they knew how much was received last year from this tax. Cary said no. Henrichsen said that they could find out the amount from finance.

Cary stated that there would be another public meeting next week. The process is to get people informed and to get their reactions. There will then be discussions with the Mayor's Office and different departments to come up with a proposal. The website for this is under the keyword: "short term rental" and there is also a flyer on this subject.

Henrichsen stated that the most common short-term rental is one person that has fixed up a house and is doing the rental. There are also national companies that go in and purchase several homes and they are a conglomeration, and companies that are assisting apartment complexes that are rented out as short-term rentals. This is something that could happen in an older R-5 area. This is also something that could be done as a cheap place to stay, and they may not care as much about the condition of the rental. Homeowner Associations (HOA) wanted to know if they could ban this in their neighborhoods, and others said that it was not fair for the neighborhoods that do not have a HOA or a covenant. You might find that all of the short-term rentals are going to older neighborhoods because the newer neighborhoods could ban them. There is also a lot of confusion on LB57, which is only a couple of pages. Multiple people think that LB57 means that communities cannot ban short-term rentals. The Planning Department's view is with the appropriate conditions they are allowed, because it clearly states that municipalities shall apply an ordinance allowing short-term rentals that takes into account residential use and other zoning matters.

Finnegan asked when this might be before the Planning Commission. Cary stated that he was unsure of when, as they are still gathering information-- it might be a couple of months before it comes to Planning Commission. Henrichsen said that this is just the discussion draft, although they will be sending out a proposal before this comes to the Planning Commission. Cary stated especially if it were to have some significant differences in it, they would need to go through this process again and give everyone the opportunity to comment on it, to be fair.

Corr asked if there have been discussions about the insurance implications of liability and she asked if this is something that homeowners' insurance will cover. Cary stated that he does not know the ends and outs of how that works. Corr stated that it might be something to consider. Beckius stated that some communities require \$1 million in liability insurance. Henrichsen stated that some communities require that they just show proof of insurance.

Corr stated that she has concerns with the use of ADU's and does not want them built just to do short-term rentals. Beckius stated if they are trying to encourage ADU's for increased density in neighborhoods, which will allow the use of them in this fashion. Cary stated there would need to be a discussion about this.

Corr inquired why it was decided to go this route instead of having a task force. Cary stated that staff can handle this topic and in some ways, a task force can be unwieldy and time consuming for participants and staff. This is something that can be handled on a staff level and they are taking the time that is needed to have a full discussion on this topic. Corr stated that part of the reason that she was asking is because there were several people that had commented that they were not on the CAFO task force, and they were not represented on the task force. If someone were to come forward and say they were not involved and it might be easier for Planning Commission to be able to say that there were meetings that you could have gone too. Henrichsen stated that he does not feel that a task force would work, because he has just heard that it is a business use. There are polar opposites with this and a task force coming together and agreeing on one thing could be impossible. Corr stated this means that not every issue will have a task force and that some might have a public input process depending instead, depending on the situation. Cary said that is correct, that it takes a lot of staff time either way, and he further stated that he is not against task forces, although he does not feel that there needs to be one every time. Scheer stated it is important for the public to know that whether there is a task force or not, there is public input process. Cary said correct.

Cary stated that over a year ago, there were 300 short-term rentals listed in Lincoln and once regulations are in place and they are allowed legally, that number would go up. Part of the reason for hiring "Host Compliance" who is a company that does this for many cities, and they would monitor compliance for an efficient cost. Beckius stated if Lincoln is hiring a company to

do this, it could be a hot button issue. Cary said it could be but, for regulatory reasons, it is very cost effective.

There being no further business, the meeting was adjourned at 2:54 p.m.

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