CITY OF SALEM

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Salem, OR 97301

Legislation Details (With Text)

File #:	17-127 **Version:** 1		
Type:	Ordinance First Reading	**Status:**	Second Reading
		In control:	City Council
On agenda:	4/10/2017	**Final action:**	
Title:	Proposed Amendments to the Salem Revised Code (SRC) to establish development standards and licensing requirements for short-term rentals and accessory short-term rentals and allowing those uses in the RA, RS, RD, RM-I, RM-II, RH, CN, CO, FMU, PM, and IG zones. Ward(s): All Wards Councilor(s): All Councilors Neighborhood(s): All Neighborhoods		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. Attachment 1 Ordinance Bill 5-17, 2. Attachment 2 Planning Commission Recommendation (March 7, 2017), 3. Attachment 3 Neighborhood Association Comments, 4. Attachment 4 Airbnb Comments		

Date	Ver.	Action By	Action	Result
4/10/2017	1	City Council	introduced on first reading	Pass

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Glenn W. Gross, Community Development Director

SUBJECT:

Proposed Amendments to the Salem Revised Code (SRC) to establish development standards and licensing requirements for short-term rentals and accessory short-term rentals and allowing those uses in the RA, RS, RD, RM-I, RM-II, RH, CN, CO, FMU, PM, and IG zones.

Ward(s): All Wards
Councilor(s): All Councilors
Neighborhood(s): All Neighborhoods

ISSUE:

Shall City Council schedule for public hearing Ordinance Bill No. 5-17, amending the SRC to establish development standards and licensing requirements for short-term rentals and accessory short-term rentals and allowing those uses in the RA, RS, RD, RM-I, RM-II, RH, CN, CO, FMU, PM, and IG zones?

RECOMMENDATION:

Schedule for public hearing Ordinance Bill No. 5-17, amending the SRC to establish development standards and licensing requirements for short-term rentals and accessory short-term rentals and allowing those uses in the RA, RS, RD, RM-I, RM-II, RH, CN, CO, FMU, PM, and IG zones.

SUMMARY AND BACKGROUND:

Home-sharing websites like Airbnb, FlipKey, and others, have made it easier and increasingly popular for individuals to rent homes, or individual rooms within homes, on a short-term basis. This form of short-term lodging affords individuals an opportunity to earn extra income and provides a different way for visitors to experience the City when they are here during their stay.

This form of short-term lodging can take place in a variety of dwelling types, such as single family detached and attached dwellings, duplexes, apartments, condominium units, accessory dwelling units, and guest houses, and can take a variety of forms, such as rental and sharing of guest rooms or space within dwelling units, rental of individual private guest rooms within dwelling units, or rental of entire dwelling units.

Because of the ease with which homes or rooms within homes can be listed, there is an increasing demand by residents to engage in this form of short-term commercial lodging.

In order to address this increasing demand and more specifically recognize this form of short-term commercial lodging in the City's development code, the City Council directed staff to prepare amendments to the Salem Revised Code (SRC) for how best to allow this form of short-term lodging to operate within the City.

The Ordinance Bill No. 5-17 **(Attachment 1)** updates both the Unified Development Code (UDC) and the City's licensing regulations (SRC Chapter 30) to make it easier to operate limited, small-scale, short-term commercial lodging while establishing development standards and licensing requirements to promote safety, neighborhood compatibility, and greater fairness between this newer form of short-term lodging and traditional hotels and motels.

FACTS AND FINDINGS:

Procedural Findings

1. Under SRC 300.1100, legislative land use proceedings include proposals to amend the City's land use regulations and involve the creation, revision, or implementation of broad public policy generally affecting a large number of individual properties. The final decision in a legislative land use proceeding is an ordinance enacted by City Council.

2. Pursuant to SRC 300.1110(a), legislative land use proceedings may be initiated by the City Council, Planning Commission, or staff. On February 7, 2017, staff requested the Planning Commission initiate the proposed amendments; the Planning Commission subsequently approved Resolution No. 17-04 initiating the proposed amendments pursuant to SRC 300.1110 (a)(2).

3. On March 7, 2017, the Planning Commission held a public hearing to receive public testimony and consider the proposed amendments. Subsequent to the close of the hearing the Planning

Commission voted to recommend that the City Council accept first reading of an ordinance bill for the purpose of amending the code, as recommended by staff, with two additional revisions pertaining to:

- The information that must be maintained by the short-term rental or accessory short-term rental operator in the required guest registry; and
- The required inspection period for accessory short-term rentals.

The Planning Commission's recommendation is included as **Attachment 2**.

Current Code Requirements

Under the current code, bed & breakfasts, hotels, motels, and other forms of short-term lodging are broadly classified as Short-Term Commercial Lodging per SRC 400.040(a). Short-term commercial lodging encompasses any use where temporary living accommodations are provided to guests for compensation. Whether or not short-term commercial lodging is allowed on a property is dependent on its zoning.

Within many of the City's non-residential zones, Short-Term Commercial Lodging is currently allowed as an outright permitted use. In zones where Short-Term Commercial Lodging is permitted, any lodging activity that falls within the characteristics of short-term commercial lodging *(e.g. short-term rentals, bed & breakfasts, hotels, motels, etc.)* is allowed subject to the applicable standards of the zone and the SRC. This includes conforming to the applicable standards of the development code *(e.g. setbacks, height, lot coverage, parking, etc.)*, the building and fire codes, and the multi-family licensing requirements of the City's Housing Code (SRC Chapter 59) if three or more guest rooms will be rented.

Within the City's residential zones, short-term commercial lodging is currently restricted to allow only bed & breakfasts. A bed & breakfast is defined under SRC 111.010(a) as, "A single family dwelling where short-term commercial lodging and a morning meal are provided to travelers for compensation."

Under this definition, a bed and breakfast:

- Is limited to being operated within a single family dwelling;
- Must include the provision of a morning meal;
- Is not limited to a specific maximum number of guest rooms or guests; and
- Does not require the owner of the property to live there.

Within the City's higher density RM-I (Multiple Family Residential), RM-II (Multiple Family Residential), and RH (Multiple-Family High Rise Residential) zones, bed & breakfasts are currently allowed as an outright permitted use.

Within the City's lower density RA (Residential Agriculture), RS (Single Family Residential), and RD (Duplex Residential) zones, bed & breakfasts are further restricted to be allowed currently only with a conditional use permit. A conditional use permit includes a $2,721 application fee and requires public notice and a public hearing before the City's Hearings Officer. In order to be approved, the use must meet the applicable standards of the code and the applicant must also demonstrate the proposed

use conforms to the applicable conditional use approval criteria. Based on the nature and operation of the specific use proposed, conditions of approval, such as limits on the number of guest rooms, guests, etc., may be placed on the approval to help minimize potential impacts. If the nature and operation of the use is such that the approval criteria cannot be met, or there are no conditions that can be placed on the approval to minimize potential impacts, the conditional use permit can be denied.

Short-term rentals like those found on home-sharing websites such as Airbnb, FlipKey, and others are currently allowed to operate in the City within any zone where Short-Term Commercial Lodging is allowed broadly or where bed & breakfasts are allowed specifically. In order to operate in a zone where bed & breakfasts are specifically allowed, a short-term rental would have to function as a bed & breakfast per the current definition under SRC Chapter 111. As such, it would be limited to a single family dwelling, a morning meal would need to be provided, and, in the lower density RA, RS, or RD zones, a conditional use permit would need to be obtained.

Summary of Proposed Amendments

Ordinance Bill No. 5-17 amends the code to principally make it easier to operate small-scale short-term rentals in the City's lower density residential RA, RS, and RD zones without the need to obtain a conditional use permit. Establishments with a greater number of guestrooms, or establishments where a resident family does not live in the dwelling for the majority of the year as a host, will continue to require conditional use permit approval in the RA, RS, and RD zones, and will continue to be permitted in those higher density residential zones, and those non-residential zones, where bed & breakfasts, specifically, or Short-Term Commercial Lodging, broadly, is currently permitted.

In order to ensure this type of short-term commercial lodging will not impact the livability of surrounding neighborhoods, the proposed ordinance also establishes limits on the maximum number of guest rooms and guests, licensing and safety requirements, and additional standards.

A summary of the proposed amendments is provided below.

1. **New Uses Established.**

The proposed amendments establish two new types of short-term commercial lodging activities:

- Short-Term Rentals; and
- Accessory Short-Term Rentals.

Short-term rentals and accessory short-term rentals are intended to take the place of bed & breakfasts under the current code, as well as incorporate those other forms of short-term commercial lodging found on home-sharing websites where individual dwelling units, or guestrooms within dwelling units, are rented.

<u>Short-Term Rentals</u>

The proposed ordinance defines short-term rentals as, "Short-term commercial lodging where a single family dwelling unit, or guest room(s) within a single family dwelling unit, are rented to overnight guests on a daily or weekly basis for periods of less than 30 consecutive days. For purposes of this definition, a dwelling unit within a condominium is considered a single family dwelling unit."

Short-term rentals are intended to represent a potentially more intensive form of short-term rental activity when compared to an accessory short-term rental. Like bed & breakfasts under the current code, there is generally no limit on the maximum number of guestrooms or guests allowed, the property owner does not need to reside in the dwelling unit, and multiple properties can be owned by one owner. Unlike bed & breakfasts, however, a short-term rental is not required to provide a morning meal and instead of being allowed only in a single family dwelling, a short-term rental may also be located within a dwelling unit in a condominium.

Because of the potential for greater impacts, short-term rentals, like bed & breakfasts currently, will require conditional use permit approval in the lower density residential RA, RS, and RD zones. This ensures the ability for additional requirements and limitations to be placed on the proposed short-term rental through the public review process if such additional requirements and limitations are determined to be necessary.

Beyond the RA, RS, and RD zones, short-term rentals, like bed and breakfasts currently, will be allowed as Permitted Uses in the higher density residential RM-I, RM-II, and RH zones, and in those non-residential zones where either bed & breakfasts, specifically, or Short-Term Commercial Lodging, broadly, is permitted. Short-term rentals are also proposed to be allowed in the CN (Neighborhood Commercial) and IG (General Industrial) zones where bed & breakfasts and Short-Term Commercial Lodging are not currently allowed, but where single family dwellings are currently allowed. The allowance of short-term rentals in these zones provides property owners with additional flexibility in terms of how their single family dwellings can be used.

Accessory Short-Term Rentals

The proposed ordinance defines accessory short-term rentals as, “A type of short-term rental which is operated as an accessory use to a Household Living use where a resident family rents guestrooms within their dwelling unit, when they are present as hosts, or rents their entire dwelling unit, during periods of time when they are away, to overnight guests on a daily or weekly basis for periods of less than 30 consecutive days.”

Accessory short-term rentals are intended to be a smaller-scale form of short-term rental that is less intensive, more compatible, and better suited to operate in the City’s lower density residential RA, RS, and RD zones. Like short-term rentals, accessory short-term rentals may be operated in single family dwelling units and dwelling units within condominiums. Accessory short-term term rentals may also be operated in two family dwellings such as duplexes.

Because of their smaller scale and greater potential for neighborhood compatibility, accessory short-term rentals are proposed to be allowed as a Special Use, rather than a Conditional Use, within the RA, RS, and RD zones, as well as in the PM (Capitol Mall) zone and the LI (Low Intensity) subarea of the FMU (Fairview Mixed-Use) zone.

Outside of these zones, accessory short-term rentals are instead classified as short-term rentals subject to the development standards and license requirements applicable to short-term rentals, and allowed in those zones where short-term rentals are proposed to be allowed.

In order to ensure accessory short-term rentals are operated in a manner which is compatible to existing residential neighborhoods without the need for a conditional use permit in the RA, RS, RD,

FMU, and PM zones, specific additional Special Use standards are proposed. The additional Special Use standards are included under SRC 700.006 and address the following:

Operated by Resident Family *(SRC 700.006(a))*. Accessory short-term rentals are required to be operated by the resident family who resides in the dwelling unit. The resident family must be the owner of the dwelling unit, or a renter or lessee with the written permission from the owner. The resident family must live in the dwelling unit for a minimum of 270 days during each calendar year.

Allowed Structure Types *(SRC 700.006(b))*. Accessory short-term rentals are required to be located within lawfully built fully enclosed single family or two family dwelling units that meet building code requirements. Accessory short-term rental are not allowed in accessory dwelling units (ADUs), guest houses, or any structures not intended for ongoing human occupancy.

Relationship to Other Accessory Uses on the Lot *(SRC 700.006(c))*. In order to minimize the cumulative impacts of multiple accessory uses on one lot, an accessory short-term rental is not allowed if there is an accessory dwelling unit (ADU) on the lot or if the resident family is currently already taking boarders or leasing rooms to individuals on a long-term basis.

Maximum Number of Guestrooms & Guests *(SRC 700.006(d) & (e))*. A maximum of two guestrooms may be rented when the resident family is present as host. When the resident family is temporarily away, the entire dwelling unit may be rented with no limit on the number of guest rooms. The maximum number of guests allowed is 2 persons per guestroom. Children under 12 are not counted as guests.

Maximum Length of Stay *(SRC 700.006(f))*. The maximum length of stay for any guest within an accessory short-term rental cannot exceed 29 consecutive calendar days.

Booking Limits *(SRC 700.006(g))*. An accessory short-term rental cannot be rented for more than a total of 95 days during the calendar without the resident family present as a host. When the resident family is not hosting, multiple bookings at any giving time by more than one group of guests are not allowed.

When the resident family is present as host, there is no limit on the maximum number of days the accessory short-term rental may be rented within the calendar year and multiple bookings at any given time by more than one group of guests is allowed.

Allowed Activities *(SRC 700.006(h))*. Accessory short-term rentals are limited to the provision lodging. Activities other than lodging, such as events, gatherings, parties, or similar activities are not allowed.

2. License Requirements.

The proposed ordinance also includes license requirements for both short-term rentals and accessory short term rentals that are included in SRC Chapter 30 (Licenses). The license standards for short-term rentals are included under SRC 30.1105. The license standards for accessory short-term rentals are included under SRC 30.1005. License requirements generally include:

License Duration. Licenses are valid for one year and may be renewed.

Local Contact. Local contact required when dwelling unit is being rented while resident family is away or if the owner does not live in the area.

Guest Registry. A guest registry is required to be maintained documenting the rental activity occurring on the property. The guest registry must available for inspection by the Director upon request. A copy of the registry must be submitted at time of license renewal.

Transient Occupancy Tax. An operator must register to pay transient occupancy tax (TOT).

Liability Insurance. Proof of liability insurance required demonstrating the dwelling unit is covered for use as a short-term rental or accessory short-term rental.

Advertising. The City issued license number is required to be included in any advertisement or listing to rent the dwelling unit.

Safety Requirements. The safety requirements of the City's Housing Code (SRC Chapter 59) must be met.

Inspection. Inspections are required.

3. Off-Street Parking.

Proposed off-street parking requirements for short-term rentals and accessory short-term rentals are included under SRC Chapter 806 (Off-Street Parking, Loading, and Driveways), specifically Table 806-1.

Because short-term rentals fall under the Short-Term Commercial Lodging use category, the minimum off-street parking requirement for a short-term rental is a minimum of one space per guestroom or suite. This parking requirement is the same as is currently required for bed & breakfasts and other forms of Short-Term Commercial Lodging.

For accessory short-term rentals in the RA, RS, and RD zones, no minimum off-street parking is proposed to be required in order to ensure that residents in older areas of the City that may have been developed without off-street parking are not precluded from operating accessory short-term rentals. These areas are often located closer to the downtown and provide an ideal location for visitors to stay based on their location to services and attractions.

Because accessory short-term rentals are limited in scale to no more than two guestrooms, potential impacts resulting from the operation of the accessory short-term rental will be minimized. In addition, because accessory short-term rentals are intended to be operated as an accessory use to a Single Family or Two Family use, requiring parking beyond that of a single family dwelling or two family dwelling has the potential to result in larger parking areas needing to be developed which could have the potential of detracting from the residential character of neighborhoods.

As proposed, accessory short-term rentals will not be the only use allowed in a residential zone without a minimum off-street parking requirement. Currently a similar use, the taking of boarders and leasing of rooms by a resident family, is allowed in the City's residential zones. The use is allowed provided that the number of boarders or roomers does not exceed two in any dwelling unit. As is the case with accessory short-term rentals, because the taking of boarders and leasing of rooms by a resident family is intended to be accessory to the main residential use of the property, no additional off-street parking spaces are required to be provided.

Additional Revisions

On March 7, 2017, the Planning Commission voted to make the following revisions to the proposed amendment:

1. Guest Registry. Delete the requirement that the guest registry for short-term rentals and accessory short-term rentals include the name and addresses of the person who made the registrations; and

2. Accessory Short-Term Rental Inspections. Add language to require the inspection of accessory-short term rentals take place once every 5 years instead of every year.

The Planning Commission's changes, and additional needed revisions subsequently identified by the City Attorney to further clarify and simplify the proposed language and establish consistency with other sections of the code, have been incorporated into the ordinance bill.

The City Attorney's modifications are intended to clarify, but not change the substantive effect, of the language recommended by the Planning Commission. The most significant change relates to the requirement for a "local representative" for both types of rentals. The intent behind that section is to require the operator, either personally, or through a qualified representative, to be able to respond promptly to issues that may arise during a rental. The language reviewed by the Planning Commission was ambiguous and required the local representative to live within 10 miles of the Urban Growth Boundary. The current language simply states that the local representative promptly respond to the property at all times when issues arise.

Testimony Received

Public comments received express a variety of opinions in favor and against the proposed amendments.

Comments in favor generally indicated that allowing short-term rentals in residential zones helps individuals to stay in their homes, provides an important source of supplemental income for residents, and provides an alternative and more affordable way for visitors to stay in and experience the City. Of the comments submitted in favor, several indicated that the owner or resident needs to live there to ensure accountability and help maintain the residential character of neighborhoods.

Comments in opposition generally expressed concern about allowing this form of non-residential activity within residential zones and the impacts it will have regarding parking, congestion, noise, crime, safety, property values, property maintenance, increased insurance liability, and disruption to established neighborhood character resulting from absentee ownership and a constant influx of visitors with no ties or investment in the neighborhood.

In addition to the comments received from the public, comments and testimony were also provided by the SCAN, SWAN, and Sunnyslope Neighborhood Associations, as well as from Airbnb.

Comments provided from the SCAN Neighborhood Association opposed allowing short-term rentals in residential zones due to the negative impacts on neighbors and the effects on housing supply. They indicated support, however, for allowing accessory short-term rentals subject to several additional requirements beyond the standards proposed in the ordinance. Comments from the SCAN

Neighborhood Association are included as **Attachment 3**. Additional recommended accessory short-term rental standards from SCAN include:

1. Off-Street Parking. SCAN recommends requiring a minimum of one off-street parking space to meet the required parking need.

   Response: No minimum off-street parking is currently proposed for accessory short-term rentals in order to ensure that residents in older areas of the City that may have been developed without off-street parking are not precluded from operating accessory short-term rentals. Because accessory short-term rentals are intended to be operated as an accessory use to a Single Family or Two Family use, requiring parking beyond that of a single family dwelling or two family dwelling has the potential to result in larger parking areas needing to be developed which could have the potential of detracting from the residential character of neighborhoods.

2. Display of License and Representative Contact Information. SCAN recommends that the license and local representative contact information be displayed on the residence so it can be seen by the public. They explain that local representative contact information needs to be displayed so neighbors have a contact for complaints when the resident is not there as a host.

   Response: The proposed ordinance requires a local representative contact to be identified but does not require the license and representative contact information to be posted on the residence. That information would, however, be on file with the City and available to anyone upon request.

3. Notification to Neighborhood. SCAN recommends that notification to neighborhood associations should be required for both the initial license and any subsequent renewal in order to afford neighborhood associations an opportunity to comment in a manner similar to what is done for liquor license applications.

   Response: The proposed ordinance does not currently require notification to surrounding property owners or affected neighborhood associations. Accessory short-term rentals are proposed to be allowed as a special use. Special uses are basically permitted uses that must meet certain additional development standards in order to be allowed in the zone. If the use meets the special use standards and the applicable requirements of the zone, it is allowed without the need for additional special notice or review.

   There are other jurisdictions that do require notice. Portland, for example, requires the resident/operator to provide notification, but the notification is not for the purpose of soliciting comments. A copy of the letter provided, along with the names and addresses of the individuals/organizations who received it, is required to be submitted as part of the permit approval.

   In order to make it easier to operate accessory short-term rentals, staff does not recommend requiring notice and public comment. Doing so would result in the use being reviewed as more of a limited land use decision which add time and complexity to the review process, including the possibility for appeal.

4. Revocation and Suspension of License. SCAN recommends that grounds for revoking, suspending, and not renewing a licenses be added.
   Response: The City's license chapter (SRC Chapter 30) currently includes requirements for license revocation, suspension, and denial of renewal that apply generally to all licenses issued under the chapter. Criteria for the renewal of licenses are contained under SRC 30.055 (d), provisions for the revocation of licenses are included under SRC 30.060, and provisions for the suspension of licenses are included under SRC 30.065. Because the code currently includes these requirements, a special set of provisions specifically for accessory short-term rentals is not recommended.

5. Maximum Guest Limit for Non-Hosted Rental. SCAN recommends a maximum limit of 10 guest be established for those times when the resident family is not present as a host.

   Response: Accessory short-term rentals are required to be operated by the resident family who lives in the dwelling unit. When the resident family is present as host, a maximum of two guestrooms may be rented with a maximum of 2 guests per guestroom. When the resident family is away while their home is being rented, there is no maximum limit on the number of guestrooms that may be rented, but the maximum of two guests per guestroom still applies.

   The proposed ordinance does not currently establish a set limit on the maximum number of guests allowed when the home is being rented while the resident family is away because the number of guestrooms in the home will inherently establish a corresponding maximum based on the 2 guests per guestroom standard, and the requirement prohibiting multiple bookings at the same time by more than one group of guests will also help to limit the overall number of guests.

The Sunnyslope Neighborhood provided testimony at the March 7, 2017, Planning Commission public hearing. They indicated that they recognize the opportunities short-term rentals can provide to individuals, but are also concerned about the nature of their neighborhoods, particularly in residential areas. They indicated that the owner should be required to be on site, adequate parking should be required so as to not impact neighbors more than necessary, and insurance requirements should be maintained at the owner level rather than by an organization that may not operate in the State and that may be difficult to contact if the need arises.

Comments provided from the SWAN Neighborhood Association opposed allowing short-term rentals in residential neighborhoods, in summary, due to the negative impacts to neighborhoods, the effects on the City's long-term housing supply, and the difficulty of enforcement with the current number of code enforcement officers. Comments from the SWAN Neighborhood Association are included as **Attachment 3.**

Response: The proposed amendments will not result in greater impact to residential neighborhoods because bed & breakfasts are currently allowed in the City's residential zones and bed & breakfasts under the current code are similar to short-term rentals. The proposed amendments essentially replace bed & breakfasts with short-term rentals and accessory short-term rentals and establish additional development standards and license requirements to promote safety and greater compatibility. It is not the intent of this amendment to remove uses that are currently allowed either as a permitted or conditional use.

In the City's higher density residential RM-I, RM-II, and RH zones, bed & breakfasts are allowed as an outright permit use. In the lower density residential RA, RS, and RD zones, bed & breakfasts are allowed as a conditional use.

In the higher density residential zones, short-term rentals are proposed to be allowed as a permitted use like bed & breakfasts are in those zones today. Similarly, in the lower density residential zones, short-term rentals are proposed to be a conditional use like bed & breakfasts are in those zones today.

The amendments do propose to make it easier to operate the smaller-scale accessory short-term rental without a conditional use permit, but additional standards are established for this use to help to minimize any potential impact. Comments from Airbnb are included as **Attachment 4**. Their comments identify several recommended revisions to the proposed ordinance relating to:

1. Accessory Dwelling Units (ADUs). Comments from Airbnb recommend that short-term rentals be allowed in accessory dwelling units because these units help homeowners stay in their homes by defraying the cost of mortgages/ property taxes and improve affordability by adding new units to the long-term housing stock even when used for short-term rentals initially or periodically.

   Response: While not currently allowed, a separate code amendment project is underway to consider allowing accessory dwelling units (ADUs) to help meet the City's needed housing supply. Short-term rentals and accessory short-term rentals are not proposed to be allowed in ADUs in order reserve them for the long-term housing needs of the City. Allowing short-term rentals and accessory short-term rentals within ADUs would discourage the City's efforts to allow this type of dwelling as an additional form of housing. As such, no change is recommended to the ordinance.

2. Transient Occupancy Tax. Comments from Airbnb recommend that the ordinance include a clause that would allow a booking platform to collect and remit taxes on behalf of hosts as they do in Portland and over 230 jurisdictions worldwide.

   Response: Under SRC Chapter 37 (Transient Occupancy Tax) and State law, transient occupancy tax is required to be paid by an operator to the City regardless of whether an agreement is in place between a booking platform and the City. Likewise, nothing in the proposed amendments would preclude the City and a booking platform from entering into an agreement to allow a booking platform to collect and remit taxes on behalf of hosts. As such, no change is recommended to the ordinance.

3. Insurance. Comments from Airbnb recommend the ordinance include a clause stating that an operator may satisfy the proposed insurance requirement via a booking service. Airbnb explains that they offer two overlapping $1 million insurance policies that protect hosts, guests, and neighbors in the event of injury or theft.

   Response: The proposed ordinance requires the operator of a short-term rental or accessory short-term rental to maintain liability insurance. The insurance is required to be in effect during the entire term the license is valid. As part of the approval of the initial license, or any subsequent renewal, the applicant is required to provide proof of the required insurance. As

currently proposed, the ordinance requires insurance to be provided but does not specify who must provide the insurance. As such, insurance could be provided by either the operator or a booking company and still satisfy the requirement; no change is recommended to the ordinance.

4. Owner Authorization. Comments from Airbnb indicate that all Salem residents, whether apartment renters or homeowners, should be allowed to share their home and not be required to receive formal permission from landlords. They recommend that instead of requiring renters or lessees to submit written authorization from the property owner if they wish to rent the home they are renting or leasing, that the ordinance should be revised to reiterate that nothing in the ordinance supersedes lease agreements between landlords and tenants.

   Response: Where permitted, the proposed ordinance allows tenants to operate short-term rentals and accessory short-term rentals within the dwelling units they rent or lease. If the dwelling unit is being operated as an accessory short-term rental, the proposed licensing requirements under SRC Chapter 30 require that the tenant provide written authorization from the property owner. Requiring property owner authorization is a means of promoting accountability and ensuring that the property owner is aware of the intended use of the property and has no objections. As such, no change is recommended to the ordinance.

5. Maximum Number of Rental Days Allowed Without Host. Comments from Airbnb indicate that the maximum 95-day limit for non-hosted rentals applicable to accessory short-term rentals is stricter than many regulations they've seen across the country. They recommend the maximum limit should be closer to 180 days.

   They also recommend the requirements for accessory short-term rentals be amended to require the resident family to live in the dwelling unit for a minimum of 200 days, rather than 270 days proposed, in order to be consistent with the definition of "resident" under State law.

   Response: Staff researched the requirements of various other jurisdictions to help formulate the proposed amendments. The proposed 95-day maximum limit on non-hosted rentals is a requirement the City of Portland has also incorporated into their short-term rental regulations.

   Comments received from public outreach and during the public hearing before the Planning Commission expressed the importance of requiring the operator to live in the dwelling unit being rented in order to promote accountability. The proposed ordinance does this by requiring accessory short-term rentals to be operated by the resident family who lives in the dwelling unit being rented. The resident family may be the owner of the dwelling unit, or a tenant with the owner's approval, and must live in the dwelling unit for a minimum of 270 days during the calendar year.

   The proposed 95-day limit on non-hosted rentals within accessory short-term rentals is intended to maintain the primary use of the dwelling unit as a residence while also allowing a reasonable amount of time *(approximately 3 months)* for individuals to be away from their home and still make it available for rent. Increasing the maximum limit to 180 days *(approximately 6 months or half of the year)* would begin to undermine the intent of maintaining the main use of the property as a residence and bring with it the potential problems associated with not having a resident present for accountability.

The accessory short-term rental requirement that the resident family reside in the dwelling unit for a minimum of 270 days out of the calendar year coincides with the maximum 95-day limit on non-hosted rentals. How “resident” is defined under State law is not pertinent in this case to the purpose of the proposed standard, which is to ensure that the primary use of the property is maintained as a residence.

No changes are recommended to the ordinance.

6. Inspections. Comments from Airbnb indicate that as with any housing unit, the City has the right to inspect short-term rentals for code violations, but requiring every unit to be inspected as part of the registration process will create an onerous burden on both residents and regulations. They recommend that hosts should be able to affirm that their homes are in accordance with the Housing Code and have the required parking.

   Response: As part of the approval of an initial license, and any subsequent renewal, applicants are required to submit written certification, on a form provided by the Director, attesting to conformance with applicable parking requirements and the safety requirements of the City’s Housing Code (SRC Chapter 59).

   In addition to the written certification, inspections are also required to verify the number of guest rooms, required off-street parking, and conformance with the safety requirements. The amendments as originally proposed prior to the Planning Commission public hearing did not specify when required inspections needed to occur, but the intent was that they would occur once a year based on staff time and availability.

   At the March 7, 2017, Planning Commission public hearing, inspection requirements were discussed and the Planning Commission subsequently voted to recommend the inspection requirements for accessory short-term rentals be clarified to require an inspection once every five years instead of every year. The inspection requirements for short-term rentals were not changed.

7. Exemption from License Requirements. Comments from Airbnb indicate that requiring all short-term rental and accessory short-term hosts to obtain a license is onerous for those individuals who only occasionally rent their own homes or spare bedrooms within their home. They explain that other Cities have chosen to exempt these individuals from licensing and inspection requirements and provide examples from Philadelphia, Pennsylvania and Jersey City, New Jersey, of such exemptions.

   Response: The license and inspection requirements included in the proposed ordinance are an important element to ensure safety and accountability, and to promote greater fairness between this newer form of short-term commercial lodging and traditional hotels, motels, and bed & breakfasts.

   The proposed amendments are intended to achieve a balance between providing additional flexibility through allowing appropriately scaled short-term rentals in residential zones while also establishing reasonable development standards and licensing requirements to ensure safety and promote neighborhood compatibility.

The license and inspection requirements are not intended to be onerous and while requiring more than some jurisdictions, they require less than others. As such, no changes are recommended to the ordinance.

8. Privacy and Guest Registry. Comments from Airbnb indicate privacy is important for hosts and guests alike. They explain that while they agree hosts should maintain records of bookings, they do not believe these records should be turned over to the City as a matter of course during re-registration.

   Response: The licensing requirements of the proposed ordinance require operators of short-term rentals and accessory short-term rentals to maintain a guest registry that records data about the dates rented, number of guestrooms rented, number of guests, whether the rental was hosted or non-hosted, what booking service the rental was made through, etc. The guest registry must be continually maintained and available for inspection by the Director upon request. A copy of the guest registry for the preceding year is required to be submitted to the City at the time of license renewal.

   The amendments, as originally proposed before the Planning Commission public hearing, included a requirement that the guest registry needed to include the name and address of the person who made the reservation. At the March 7, 2017, Planning Commission public hearing, this requirement was discussed and the Planning Commission subsequently voted to recommend this requirement be removed based on privacy concerns.

   With the elimination of the requirement to maintain the names and addresses of people who made reservations, the guest registry will no longer include any personal information. It will instead only include information about the operation of the rental; thereby addressing any potential privacy concerns.

   The purpose of the guest registry is to promote accountability and to serve as a resource for transient occupancy tax collection auditing and for enforcement. It is important the guest registry be maintained and provided to the City for these purposes. As such, no changes are recommended to the ordinance.

Code Amendment Approval Criteria

SRC 110.085(b) establishes the following approval criteria which must be met in order for a code amendment to be approved:

(1) The amendment is in the best interest of the public health, safety, and welfare of the City; and

(2) The amendment conforms with the Salem Area Comprehensive Plan, applicable Statewide Planning Goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.

Analysis of Code Amendment Approval Criteria

(1) The amendment is in the best interest of the public health, safety, and welfare of the City.

Finding: The proposed amendment is in the best interest of the public health, safety, and welfare of the City because it recognizes a form of short-term commercial lodging that has been made easier and more popular with the advent of home-sharing websites like Airbnb, FlipKey, HomeAway, and others. Rather than going through the time and expense of obtaining Conditional Use Permit approval in the RA, RS, and RD zones, property owners are choosing to instead rent their homes without the necessary approvals and without the benefit of any review or inspection for safety, or any limits on the operation of the rental. The proposed amendments address this issue by providing an easier path to operate small-scale short-term rentals legally in the City's RA, RS, and RD zones with less time, expense, and potential uncertainty than is associated with obtaining conditional use approval. Making the review and approval process easier will facilitate more property owners choosing to operate legally rather than operating illegally and running the risk of enforcement and costly fines.

The proposed amendments help to promote health and safety by subjecting short-term rentals and accessory short-term rentals to licensing requirements and safety inspections, based on the requirements of the City's Housing Code (SRC Chapter 59). This ensures that guest rooms and dwelling units rented will be safe for occupancy by guests.

The proposed amendments help to promote the welfare of the City by requiring short-term rentals to pay their share of the transient occupancy tax (TOT). This in turn helps to establish greater equity in regulation of short-term rentals and traditional hotels, motels, and bed & breakfasts and increases the funds available to support programs that benefit the community and promote the City as destination to visit, which helps support the local economy.

The proposed amendments also help to strengthen the community by providing property owners an easier way to legally and safely make their homes, or guestrooms within their homes, available for rent on a short-term basis while also providing helpful supplemental income for owners which in some cases allows them to stay in their homes.

By making it easier to operate small-scale short-term rentals and retaining the conditional use approval process for larger-scale short-term rentals, and by establishing license and safety requirements for all short-term rentals, the proposed amendments will allow for greater compliance with the code, promote increased safety, increase TOT tax revenue, and afford property owners the flexibility to make their homes available for rent in a manner that does not impact the character of surrounding neighborhoods. All of these factors support the best interest of, and contribute to, the public health, safety, and welfare of the City.

(2) The amendment conforms with the Salem Area Comprehensive Plan, applicable Statewide Planning Goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.

Finding: The Salem Area Comprehensive Plan (SACP) is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meet the needs of present and future residents of the Salem urban area.

Because the proposed amendment primarily revises the code to make it easier to operate small-scale short-term rentals in the RA, RS, and RD zones, the goals and policies of the Salem Area

Comprehensive Plan for Residential Development are primarily applicable to the proposed amendment.

The proposed amendment has been reviewed for conformance with the applicable goals and policies.

Residential Development Goal: *To promote a variety of housing opportunities for all income levels and an adequate supply of developable land to support such housing. In meeting this goal, residential development shall:*

a. Encourage the efficient use of developable residential land;
b. Provide housing opportunities for Salem's diverse population; and
c. Encourage residential development that maximizes investment in public services.

The proposed amendment will not impact the variety of housing opportunities available to residents within the City or the supply of land to support such housing.

Within the RA, RS, and RD zones, the proposed amendments will allow smaller-scale accessory short-term rentals as a Special Use. The special use standards applicable to accessory short-term rentals included under proposed SRC 700.006(a) specifically require accessory short-term rentals to be operated as an accessory use to a Single Family or Two Family use. In order to qualify as an accessory use, the accessory short-term rental must be operated by the resident family who lives in the dwelling unit.

Requiring accessory short-term rentals in the RA, RS, and RD zones to be operated by the owner or renter of the dwelling unit ensures that the primary use of the dwelling remains for residential, rather than short-term rental, purposes. Larger-scale short-term rentals, or those smaller-scale short-term rentals where the owner does not reside in the dwelling, will continue to require Conditional Use approval in the RA, RS, and RD zones as is currently required in these zones for bed & breakfasts. As such, the allowance of short-term rentals and accessory short-term rentals within the RA, RS, and RD zones will not affect residential housing supply in these zones beyond what is currently allowed.

In the City's multiple family residential zones (RM-I, RM-II, and RH), bed & breakfasts are currently allowed as an outright permitted use. Under the proposed amendment, bed & breakfasts within the multiple family zones are replaced by short-term rentals. The only principle differences between a bed & breakfast and a short-term rental is that a short-term rental does not require a morning meal and a short-term rental can be located in a single family dwelling unit and a condominium unit. Within the RM-I, RM-II, and RH zones, short-term rentals, like bed & breakfasts currently, will continue to be allowed as an outright permitted use in these zones. Because the proposed amendment does not make any significant changes in how short-term rentals are currently allowed in the RM-I, RM-II, and RH zones, the amendment will not affect residential housing supply in these zones beyond what is currently allowed.

Because the proposed amendment will not affect residential housing supply in residential zones beyond what is currently allowed under the code, the proposed amendment conforms to this comprehensive plan goal.

The proposed amendment was also reviewed for conformance with the applicable statewide

planning goals and administrative rules adopted by the Department of Land Conservation and Development. The following goals are applicable to the proposed amendment:

Goal 1 - Citizen Involvement: *To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.*

The proposed amendments conform to this goal because the process associated with the adoption of the proposed amendment requires public notice and affords the public an opportunity to review, comment, and take part in the adoption process.

In addition to required public notices, a community open house was held on February 1, 2017, to present the proposed amendments and gather public input; a project website was created to provide information on the amendments; and a project email list of more than 150 people has been maintained providing updates.

Goal 10 - Housing: *To provide for the housing needs of citizens of the state.*

As is identified in the findings establishing the proposed amendments' conformance with the residential development goal of the Salem Area Comprehensive Plan, the proposed amendment will not impact the City's residential housing supply beyond what is currently allowed.

Under the current code, bed & breakfasts are allowed as a Conditional Use in the RA, RS, and RD zones, and are a permitted use in the RM-I, RM-II, and RH zones. Under the proposed amendments, bed & breakfasts are replaced by short-term rentals and accessory short-term rentals. Within the multiple family zones, short-term rentals, like bed & breakfasts currently, will continue to be permitted uses. Within the RA, RS, and RD zones, accessory short-term rentals will be allowed as a Special Use and short-term rentals, like bed & breakfasts currently, will be allowed as a Conditional Use.

The most significant change included in the proposed amendments is the allowance of accessory short-term rentals as a Special Use in the RA, RS, and RD zones. This change will not, however, result in any increase in impacts on the City's housing supply because in order to qualify as an accessory short-term rental in the RA, RS, and RD zones, the rental must be operated by a resident family who lives in the dwelling unit. Because the resident family must live there, the dwelling unit will retain its principal use as a residence rather than a short-term rental.

ALTERNATIVES:

The City Council may:

1. Schedule a public hearing on Ordinance Bill No. 5-17;
2. Advance Ordinance Bill No. 5-17 to second reading for enactment;
3. Refer the proposal back to the Planning Commission for additional deliberation; or
4. Take no action.

Bryce Bishop
Planner II

Attachments:

1. Ordinance Bill No. 5-17.
2. Planning Commission Recommendation (March 7, 2017).
3. Neighborhood Association Comments.
4. Airbnb Comments.