



## Planning and Zoning Commission Minutes

Tuesday, January 9, 2018 | 4:00 PM

City Hall, 200 Rusk Street, Gainesville TX, Council Chambers

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Chairperson Present:

Bill Williams

Commissioners Present:

Cal Koontz, Teresa McElreath, Lynn Monden, and Phil Neelley

Commissioners Absent:

Nathan Dempsey

Staff Present:

Fire Marshal Jason Botcher, Julie Smith, and Claire Barnes

Visitors Present:

Scott Dougherty, Kim Moss, and Trey Schalk

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### Item 1 – Call to order.

Chair Williams called the meeting to order at 4:01 PM.

### Item 2 – Consider approval of December 12, 2017, minutes.

Commissioner McElreath moved to approve the minutes. Commissioner Koontz seconded. All present voted AYE, and the motion passed unanimously.

### Item 3 – Hold a public hearing to receive comments regarding a proposed ordinance for the operation of Short-Term Rentals (also commonly referred to as Air Bed and Bath, Vacation Rental by Owner, Home Away, etc.). (SI7892120)

Commissioner Koontz moved to remove the discussion from December 12, 2017, from the table. Commissioner Monden seconded. All present voted AYE, and the motion passed unanimously.

Chairman Williams opened the public hearing at 4:03 PM.

Kim Moss, a real-estate agent, spoke before the Commission. She stated that she had listed her residence on AirBnB, but cancelled her listing when she found out she would have to permit it. She claimed that most small towns do not regulate AirBnBs at all. She stated that the amount of money the owners would need to invest would discourage people who are just looking to make extra income. She stated that many people use the money from STRs to improve their properties. She stated that she found the proposed regulations to be restrictive and arbitrary. She stated that AirBnB also ensures that taxes are paid. CSD Smith remarked that the City will collect the taxes regardless of the nature of the STR. Ms. Moss stated that she felt that limiting the amount to one STR per block is arbitrary. She emphasized that STRs have positive qualities, such as improved homes due to the extra income. Commissioner McElreath stated that the Commission is interested in also protecting the citizens of Gainesville. She stated that the Commission is trying to lay the groundwork for regulation and that they do not want to be too restrictive.

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Ms. Moss stated that most small towns “stand down” and do not regulate STRs. She stated that AirBnB allows for guests to be vetted. She stated that regulations should not require an owner to be near the residence, as many STRs can be managed by someone who does not own the property.

Chair Williams then closed the Public Hearing and returned to the Regular Meeting.

CSD Smith gave staff’s report. This report included the history of the issue. In addition, CSD Smith recommended using the term Short-Term Rental (STR) instead of Bed and Breakfast, AirBnB, etc. Using the one term helps to clarify the discussion. CSD Smith recommended visitors in attendance voice their thoughts and opinions on the matter.

CSD Smith offered the staff report. She referred the Commission to the chart they received in their packets as a starting point for the day’s discussion. The staff challenge for compiling these recommendations is that staff does not want to exclude anyone who already operating an STR in Gainesville but also wants to address the Commission’s concerns. Based on the Commission’s December meeting where Bed and Breakfast owner Trey Schalk supported the SUP process and the Commission concurred with the recommendation, the Special Use Permit (SUP) requirement is included in the proposal for all STRs. This requirement would mean that people wishing to run this sort of establishment would still need to go before the Commission and Council to obtain an SUP through a public hearing process. This allows for the businesses, its neighbors, and any adjacency concerns to be heard and addressed on a case by case basis. This permits different types of establishments to exist without limiting them too much in scope and function. If SUPs are no longer required, then STRS would be permitted by right in whatever zoning districts they would be allowed. There would no need to come before the Commission or the City Council.

Commissioner McElreath asked for confirmation that the SUP process provides oversight that straight zoning would not. CSD Smith confirmed her understanding. Commissioner Neelley asked if CSD Smith was referring to special events. CSD Smith stated that the SUP went to simply operating an STR. Events would be addressed in a separate section of the ordinance and were not subject to a separate SUP. SUPs were developed to help communities address uses that were unusual and could cause adjacency issues. The most common example is probably determining where alcohol sales would be permitted, since most communities did not want these near churches or schools. SUPs allow the City to examine each application on a case by case basis. Therefore, the City can look at the vicinity and use of the venue in comparison to nearby places, such as parks and homes. The SUP process in Gainesville is also used for purposes such as daycares and solar arrays. Also, the SUP process includes acquiring a Certificate of Occupancy (CO). For SUPs/COs, the Fire Inspector and Building Inspector inspect the property to make sure it meets City codes and is safe for its designated use. The Fire Marshal and the Community Services Director then sign the CO and the business may open.

Commissioner Koontz asked whether zoning was irrelevant for the SUP process. CSD Smith stated that they work hand in hand; SUPs can be limited to specific zoning districts. The chart provided recommends zoning districts for each category of STR. The chart is simply a suggestion, and the Commission can alter it as they see fit.

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The first category listed on the chart discusses owner-occupied STRs. This category would be for establishments, like Mr. Schalk's, where the owner resides in the house when guests are there. There is less concern for this sort of establishment because the owner is on-site and can exercise direct control of the property. Therefore, the Commission may want to minimize the regulations required for this type.

The second category encompasses residences that are not owner-occupied, but the owner resides within one mile of the STR. The "five minutes away" rule suggested at the December hearing would be difficult to enforce. As Mr. Russell pointed out, if you get caught by a train it could take longer to arrive even if you live close by. A geographic designation would be easier for the City to identify. The suggested one mile concept is somewhat arbitrary and could be changed to a different distance. Staff started with one mile believing that equated to approximately "five minutes away."

The third category addresses establishments owned by persons or companies located farther away than one mile. For instance, in San Antonio there are entire neighborhood blocks that have been purchased for the distinct purpose of STRs. These purchasers are often out-of-town and out-of-state owners. The not owner-occupied category anticipates uses more commonly found with AirBnBs. While Gainesville does not face the same pressure as San Antonio, the vicinity to the WinStar Casino, for instance, means that there is some demand for AirBnBs. Rent from STRs is far higher per night than from long-term rentals, so investors find it more attractive.

One way this "AirBnB takeover" has been addressed in other cities is to limit the number of STRs permitted in a certain area. CSD Smith then showed an aerial map of Gainesville. She explained how Gainesville, for the most part, is laid out in a Euclidean grid. This design allows for the City to use geography – city streets, railroads, and rivers - as a simple way to regulate the amount of STRs in an area. For instance, STRs could be limited to only one per City block with a City block defined as being bordered by streets, railroads, and/or rivers. This would also result in some large blocks while others were smaller, but, overall, the basis would be definable, enforceable, and relatively equitable.

Commissioner Monden asked if by block CSD meant the square or street. CSD Smith stated it would be by the square.

Commissioner McElreath mentioned that two STRs could be across the street from each other. CSD Smith confirmed that was true.

Commissioner Neelley asked if other cities had regulated STRs in this way. CSD Smith responded that Austin's regulations were based on census data, while San Antonio's regulations are similar but are based on feet distance so more than one could be on a block.

Commissioner Neelley stated that this sort of regulation meant that someone could register and be the sole AirBnB on their block without ever renting their property and, therefore, exclude any other owners from registering. CSD Smith acknowledged that the abuse could occur. She noted that other cities limit the amount of days that a property can be

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rented and the same could occur in reverse. For instance, the property might only be allowed to be rented for 180 days at most for the year but must be rented a minimum of 30 days per year. The 180 days used by most municipal ordinance reflects that these operations are something less than hotels that operate year round and are subject to far more regulations. In other words, since they are operated less than half of the year, they should not be subjected to the same rules and regulations as hotels. She thought it would be reasonable for the Commission to recommend a minimum rental period, too.

Mr. Schalk remarked that he had spent \$7,000 for his property to meet the Fire Code. This amount was only part of his financial responsibility for the SUP. Given the investment, it is probably unlikely that anyone would spend that much money just to prevent anyone from operating an STR.

Commissioner Neelley stated that he does not see the demand for STRs growing substantially in the next decade, and limiting one per City block seemed restrictive. CSD Smith stated that these regulations are to safeguard neighborhoods for the future. If one block had two or three STRs that rented close to the maximum number of days per year, the feel of the neighborhood would change. Commissioner Neelley stated that he understands the need for regulating the number of STRs, however these limitations could also hurt other potential applicants. Commissioner Monden added that one cannot simply open one, legally and quickly, on a whim. CSD Smith stated that there could be revocation measures established. For instance, if the establishment fails to rent for 30 days a year, then the SUP could be revoked so that other property owners on the block could then apply.

Commissioner Neelley remarked that the 180 days is a great deal of time, but if you are only renting out your own home while you are on vacation then the number of days could be significantly less. CSD Smith responded that the parameters are up to the Commission to ultimately determine.

Commissioner McElreath stated that most who rent their homes for only a short time would most likely do it illegally. Commissioner Monden mentioned that the average person should be considered when trying to craft the ordinance. CSD Smith stated that the Commission could implement a 14 days or less category.

Commissioner Neelley mentioned that the trade days will bring in visitors. Vendors may want to rent houses instead of staying in hotels. CSD Smith mentioned that there is nothing prohibiting them from doing so. Commissioner Neelley responded that the limit of one per block could limit them. CSD Smith asked how the City could prevent neighborhoods from becoming majority not-owner occupied STRs. Commissioner Neelley asked what other cities and HOAs do to regulate this, and how does the Staff recommendation accommodate residences that feature weekend managers who oversee the business while the owner is away. CSD Smith stated that these would fall under the not owner-occupied (greater than 1 mile). Traditionally, Bed and Breakfasts close from late December to mid-January, so that the owner can enjoy the holidays. The rest of the year, the Bed and Breakfasts are open. This means that there are no guests at the establishment while the owner is away. Staff has been asked to accommodate people who want to rent their homes, but

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also to protect neighborhoods from negative impacts of STRs. These somewhat competing interests pose the policy challenge and are what the Commission and Council must balance.

Commissioner Neelley mentioned that more scenarios will likely arise. When thinking about the proposed ordinance in the long-term, the Commission needs to be smart but not overly restrictive.

CSD Smith then asked the Commission to provide direction with respect to the parking requirements. The chart indicates that owner-occupied scenarios require onsite parking to limit parking up and down the street and to reflect the current bed and breakfast ordinance. In Central Area (CA) zoning, the parking would be on-street parking, which is already available due to the nature of the zoning. Commissioner Koontz asked how many not-owner occupied there would be. CSD Smith stated that she had received at least one inquiry, but was unsure how many there eventually might be. CSD Smith stated that not-owner occupied, as proposed on the chart, would not be permitted in SF-2. If a fourth category for 14 Days or Less was created for owners who rent their homes while on vacation, they would be an exception. Commissioner Koontz clarified that owners would need to go to the City in order to legally open an STR. CSD Smith stated that the SUP process would require a permit from the City and approval from the Commission and Council.

Scott Dougherty, a Gainesville citizen who had previously operated an AirBnB, asked for clarification on the parking issue. He would not have enough space to park all of his guest rooms. The parking would pose a problem for those with large, multiple-bedroom homes. CSD Smith stated that the City's current Bed and Breakfast ordinance limits residences to two people per bedroom, which for most houses could be accommodated with onsite parking. Mr. Dougherty stated that those regulations could discourage owners who occupy the house and have small driveways as they would have nowhere for their guests to park. Commissioner Neelley stated that if they are owner-occupied then parking in the street should be fine. CSD Smith stated that parking in SF-2 zoning could be taken into consideration.

Chair Williams stated that controls are needed for neighborhoods; STRs can't be given a carte blanche. He stated that most rules seem arbitrary, but they are there for the benefit of the community. Once the rationale for the rules are understood, their importance is understood, too.

Ms. Moss stated that Carrollton attempted to regulate STRs by requiring COs for not owner-occupied residences. She stated that in the end, the City dropped the issue for financial reasons. Instead, according to Ms. Moss, the City used the money to investigate suspicious situations.

Commissioner Monden asked how the Commission could be picky about STR guests parking in the streets when homeowners already park in the streets. CSD Smith stated that the proposed parking rule mirrors the current City ordinance for Bed and Breakfasts. CSD Smith noted the Commission had expressed some concerns over street congestion. Commissioner McElreath suggested permitting an additional allowance of one car on the street.

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Ms. Moss remarked that the cost of this venture needed to be addressed. Chair Williams stated that regulations were being considered so that Gainesville could manage STRs. He stated that he appreciated Ms. Moss's thoughts but that the Commission needed to hear the rest of Staff's presentation as time was limited.

CSD Smith asked Mr. Schalk his opinion on not owner-occupied residences. Mr. Schalk stated that he understood the category was about making sure there was someone responsible available. CSD Smith stated that regulations could be tailored to the different zoning districts. The CA and Loft Overlay District would be ideal, because the adjacency issues (no neighborhoods) and parking concerns (on-street parking) are minimized or nonexistent. CSD Smith recommended not permitting STRs in multifamily housing zones where people just rent out a room as this could cause more difficult enforcement problems (such as the apartment collapse that occurred in Denton).

Commissioner McElreath asked about the 180-day maximum for rentals. Commissioner Neelley asked if this sort of regulation was normal. CSD Smith stated staff research found it was common, and that many places also limit one guest to 30 days, maximum. Commissioner McElreath mentioned that she knows people who have used STRs for 30 days due to work. Mr. Dougherty stated that he had a guest stay at his home for three months due to a work commitment. This would have affected his allotted time. However, in establishments like Mr. Schalk's Bed and Breakfast, 180 days might be restrictive. CSD Smith stated that it becomes problematic if the establishment is rented for more than 180 days, because then it may be a motel and subject to far more regulations. Mr. Schalk stated that his typical rental was 1-2 days and asked how the City would track the rental days. Commissioner McElreath stated that enforcement of the rules, especially revocation of an SUP, would likely only occur if issues arose. Commissioner Neelley stated that there would need to be a compromise and that exceptions would likely occur. He stated that the 180-day limit made sense for Gainesville's needs.

The Fire Marshal addressed the assembly (events) issue. Fires can be a liability issue for the City, and the fire protection regulations for STRs stem from this liability issue. The occupancy load derives from the square footage of occupied space, not including bedrooms. Fire Marshal Botcher stated that residential houses are not designed for assemblies. In order to meet both needs (provide venues for small events and ensure fire safety), the City looked at occupant load based on what part of the structure (how many square feet) was being used in a residential manner (bedrooms and bathrooms) and how much for assemblies (living rooms, dining rooms). The latter occupancy requires 15 square feet per person to ensure that people will be able to get into and out of the house in the event of a fire. Mr. Schalk's house, for example, could host a gathering of about 30-32 people. This size of event could work for small weddings or baby showers. For assemblies (50+ people), fire requirements, including sprinkler systems, would need to be met. This would be a matter of public safety. Commissioner Koontz asked if an owner could host assemblies if they abided the Code. Fire Marshal Botcher stated that fire sprinklers are required.

Commissioner Neelley asked about using AirBnB for events. Fire Marshal Botcher responded that a large house would be required to accommodate all attendees safely. Commissioner Neelley clarified that the City would require a sprinkler for properties that would host 50+ people events. Commissioner McElreath stated that the Fire Marshal's stance with

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regards to the safety regulations is also her stance. Commissioner Monden stated that this is a safety issue. Chairman Williams stated that this a liability issue, so that if an incident occurs the City is legally protected.

CSD Smith asked the Commission to send Staff suggestions and let Staff know if the ideas on the chart met the Commission's requirements for a starting point.

**Item 4 – Consider and make a recommendation to City Council for a proposed ordinance for the operation of Short-Term Rentals (also commonly referred to as Air Bed and Bath, Vacation Rental by Owner, Home Away, etc.). (SI7892120)**

Commissioner Monden moved to table the discussion in order to continue working on the issue before proposing the ordinance. Commissioner McElreath seconded. All present voted AYE, and the motion passed unanimously.

**Item 5 – Adjourn.**

The meeting adjourned at 5:01 PM.

Signature of Chairman:

Date 2/13/18

Signature of Secretary:

Date 02/13/18

