

Submitted by Paul Bulger 7/2/11b

Portland, Maine



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Director, Planning & Urban Development Department

TO: Councilor Donoghue, Chair
Members of the Housing and Community Development Committee

FROM: Jeff Levine, Director
Planning and Urban Development
Tyler Norod, Housing Planner
Housing and Community Development Division

DATE: October 9, 2015

SUBJECT: Consideration of potential regulation reform of short term rentals (STR's) for regulating lodging sites such as AirBnB, HomeAway, Flipkey, VRBO, Craigslist, and others.

I. SUMMARY OF ISSUE

Cities across the country have been struggling to adapt to new market forces brought about by the rise of the "sharing economy". Companies like Uber and Airbnb are often cited as being at the forefront of this web based movement revolutionizing commuting, shopping, and lodging. But these new models are also being scrutinized for their unintended consequences on existing businesses and communities. To date, governments have struggled to reign in these ever evolving markets to provide certainty, safety, and fairness. Given their quick ascension to prominence there has not been sufficient time for public entities to develop and evaluate best practices for how to effectively regulate these industries.

Short term rentals (STR's), such as AirBnB, have garnered significant attention in Portland and elsewhere for both their positive economic impact as well as concerns related to their effects on already tight local housing markets. Critics assert that STR's take apartments and homes out of the market limiting the supply of long term housing for local residents and in doing so increase the cost of housing. Unfortunately, it is a challenge to accurately substantiate these claims. It is difficult to understand how many units are actually being rented out and for how long. Recent surveys of online STR websites conducted during the peak tourist season such as have shown more than 250 STR's within Portland. These STR's offer an average price per night of about \$150. Each website offers its own listings but many STR units are listed on multiple sites making an accurate total count problematic.



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There is clear financial incentive for property owners to prefer STR's over traditional long term tenants or to even not sell a property as they move out of their owner occupied unit to another property. If each of these units were rented out 30 days a month the average unit would generate approximately \$4,500 per month. This figure is greatly in excess of the average monthly rent for the surrounding residential market. It is unclear whether or not the limited number of STR's in Portland have a significant impact on the overall housing stock and market. According to the STR research firm AirDnA, Portland has approximately 32,700 housing units. Given the more than 250 STR's being advertised approximately less than 1% of the City's housing stock is being offered as a STR. However, most of the units offered as STR's are limited to the Peninsula which may have a disproportionate impact on those neighborhoods.

Review of STR market trends shows that the majority of hosts are likely using these units part time to generate additional income to support a variety of expenses ranging from home repair, student loans, medical bills, taxes, child expenses, or simply additional discretionary income. In Portland, these may be long term residents who utilize STR's to enable them to stay in their homes and further participate in the local economy.

Unfortunately, some STR hosts have taken advantage of the market to buy up existing housing stock for the sole purpose of using it as an STR. These units effectively operate as unlicensed hotels or bed & breakfasts. Not only do these types of practices remove long term housing options from the City's supply but they also can increase the perceived value of real estate. Traditional buyers may now have to compete with individuals or companies who assume greater revenue capacity with STR's over long term rentals. Although difficult to confirm exact figures, recent reviews of online STR sites have shown at least four individuals or companies who have multiple properties apparently used exclusively as STR's.

II. REASON FOR SUBMISSION

The Committee requested that staff research STR's in Portland and examine what regulations currently exist that STR's may fall within and where these uses may be allowed.



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III. INTENDED RESULT

The intended result is to determine the best policy approach for Portland that balances the pros and cons of STR's with the housing and economic goals of the City.

IV. COMMITTEE GOAL/COUNCIL GOAL ADDRESSED

The potential regulation of STR's is in line with the Committee and Council's goals of providing additional housing options that are affordable to a variety of Portland residents. Potential regulation may also impact economic development goals of the City as they related to tourism.

V. FINANCIAL IMPACT

Depending on policy recommendations by the Committee there is the possibility that STR regulation could result in additional registration and penalty fees to the City. Potential regulation could also result in additional lodging tax revenue for the State although that would be difficult to achieve and may not happen for a significant period after regulations are put in place. Cooperation from the various STR enabling websites would be necessary to effectively recover these tax revenues. Potential regulations may also effect tourism related revenue in the City. Potential regulation efforts could inhibit, support, or not have any effect on tourism depending on future steps taken. It is difficult to assess the total economic effect of any regulations on this nimble and evolving market but economic development issues should be taken into consideration with any policy recommendations.

VI. STAFF ANALYSIS AND RECOMMENDATION

At the previous HCDC meeting on September 30, 2015, staff had researched how other states and cities were approaching the regulation of short term rental units. As mentioned above, this is a new and quickly evolving issue that makes evaluating time tested best practices difficult to come by. Committee members asked staff to examine local and state laws to provide the Committee with a better understanding of what is allowed within current regulations as well as the potential for these to be applied within the existing governing structure of the City.

After additional research it appears that there are some provisions within state and local regulations that have the potential to be applied to STR's. Section 14-404(e)



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of the City's zoning ordinance allows for the letting of up to two rooms within an existing dwelling unit. Section 14-404(e) is allowed in every major residential zone in the City. There is no mention of the length of stay as this provision was likely written prior to the wide spread use of STR's through online platforms. Reforms could be directed at this section depending on the goals of the City. At the state level private homes shall not be deemed or considered lodging places and thus subject to a license where not more than three rooms are let. The state also considers Guest Homes to be allowed but the definition lacks details on the specific applicable regulations. Guest Homes must be licensed by the state. However, the issuance of a state license does not provide exemption from other local laws, ordinances, or regulations.

There is also the potential for the newly created Housing Safety Office or the Inspections Division to play a role in the enforcement of any STR policy. However, given staff constraints within the Inspection Division and the timing for the new Housing Safety Office it would be difficult to implement significant reforms quickly. Depending on the direction of the City the Landlord Registration Form and process may be able to accommodate STR registration as well but other reforms and enforcement would likely be needed to enable a well-designed STR oversight system.

The housing definitions within the existing zoning code provides a variety of lodging types including hostels, bed & breakfasts, lodging houses, tourist homes, motels, hotels, and inns. Some of these definitions, such as tourist homes, are no longer allowed within the current zoning ordinance. Most other lodging types are limited to certain zones such as the B-2 and R-6 zones. The lodging types typically stipulate that proponents must register their use with the City and prove their compliance with the various requirements of each use, including parking. Associated parking requirements may make some of these difficult to comply with for the average urban STR. Of the existing definitions in use within the zoning ordinance, lodging houses, hostels, and bed & breakfasts most closely resemble the STR structure currently being used through sites like AirBnB. However, these require state licenses and most have nuances that would not fit the modern STR business model. For example, lodging houses have a minimum rental of one week or a month. Many STR's offer nightly or weekend stays. Hostels and Bed & Breakfasts require an owner or operator to live on-site. Bed & breakfasts require that breakfast be provided. In short, it would be difficult to revise the existing uses to accommodate for the still evolving STR market without significantly altering the intention behind regulations for these already existing uses.

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Additional information related to lodging definitions and a zoning chart identifying where various lodging uses are allowed within the existing code are included in this package as Attachment A and Attachment B.

Attachment A: Housing Definitions

Lodging House

A house, building or portion thereof, containing two (2) or more rooming units and providing such units, with or without meals, to individuals on not less than a weekly or monthly basis for compensation. A lodging house, except for lodging houses located in the IR-2, IR-3, and I-B zones shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

Hostel

An overnight lodging facility for transient guests that provides sleeping rooms and common areas for cooking. A hostel shall not be used as an emergency shelter. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

Hostels typically require site plan and operations plan review demonstrating compliance with the following conditions:

- a) No more than 10 or 20 overnight transient guests (depending on the zone) shall be permitted in the facility at any one time.
- b) All applicable provisions of Article V of the ordinance shall be met.
- c) Parking shall be provided in compliance with Division 20.
- d) No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
- e) The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty (60) day period.
- f) An owner, manager or operator shall live in the building as a permanent resident.

- g) The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the City.

Bed & Breakfasts

A building in which more than two (2) but not more than nine (9) guest rooms are used to provide or offer overnight accommodations for transient guests. An owner, manager, or operator shall live in the building as a permanent resident. No cooking facilities shall be permitted in any of the guest rooms. The only meal which may be offered is breakfast, which shall be offered only to overnight guests. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

Transient Guest

Section 14-47 defines Transient guest as "A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than fifteen (15) days out of any sixty-day period". Bed and breakfasts, hostels, hotels, motels, and tourist homes all are for transient guests. A lodging house allows the rental of rooming units on not less than a weekly or monthly basis.

Attachment B: Short Term Rental Zoning Chart

Zone	Section 14-404(e)	Lodging House	Hostel	B&B
R-1	Allowed	No	No	No
R-2	Allowed	No	No	No
R-3	Allowed	No	No	No
R-4	Allowed	No	No	No
R-5	Allowed	No	No	No
R-6	Allowed	Allowed	Allowed/Conditional Depending on Size	Allowed
R-6A	Allowed	Allowed	Allowed/Conditional Depending on Size	Allowed
R-7	Allowed	Allowed	Allowed/Conditional Depending on Size	Allowed
FH	No	No	No	No
B-1	No	Allowed	Allowed	Allowed
B-2	No	Allowed	Allowed	Allowed
B-3	No	Allowed	Allowed	Allowed
B-4	No	Allowed	No	No
B-5	No	Allowed	Allowed	No
B-6	No	No	No	No
B-7	No	Allowed	Allowed	Allowed