



Date May 18, 2020

RESOLUTION HOLDING HEARING ON PROPOSED AMENDMENTS TO SECTIONS 134-3.5.12, 134-6.4.8, AND 134-6.4.10 OF THE ZONING ORDINANCE

WHEREAS, on April 25, 2016, by Roll Call No. 16-0717, the City Council adopted the PlanDSM: Creating Our Tomorrow Plan as the comprehensive plan for the City of Des Moines; and

WHEREAS, on October 16, 2019, by Roll Call No. 19-1683, the City Council approved Ordinance No. 15,816 adopting the Zoning Ordinance effective December 15, 2019, which repealed and replaced previous Chapter 134 of the Des Moines Municipal Code and Article 5 of which repealed and replaced the City's Wireless Telecommunications Facility Policy adopted on April 8, 2019 by Roll Call No. 19-0580; and

WHEREAS, on December 16, 2019, by Roll Call No. 19-2044, and on February 10, 2020, by Roll Call No. 20-0282, the City Council approved Ordinance Nos. 15,844 and 15,865, respectively, amending the Zoning Ordinance, including amendments to the short-term commercial rental provisions set forth therein; and

WHEREAS, in early 2020, the City Manager and City staff received comments at a public meeting and drafted further amendments to Sections 134-3.5.12, 134-6.4.8 and 134-6.4.10 of the Zoning Ordinance, which amendments are intended to permit additional flexibility in assembly use and in reporting and residency requirements relating to short-term rental uses while addressing the needs of residential neighborhoods where short-term rental uses may occur, including the health, safety, morals, and general welfare of the community, the preservation of historically significant areas in the City, and the preservation and improvement of the peace, safety, health, welfare, comfort, and convenience of Des Moines residents; and

WHEREAS, on January 27, 2020, by Roll Call No. 20-0143, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on January 16, 2020, its members voted 12-1 in support of a motion to recommend **APPROVAL** of the proposed amendments to the Zoning Ordinance; and

WHEREAS, on January 27, 2020, by Roll Call No. 20-0143, it was duly resolved by the City Council that the proposed amendments to the Zoning Ordinance be set down for public hearing on February 24, 2020 at 5:00 p.m. in the City Council Chambers at City Hall; and

WHEREAS, on February 24, 2020, by Roll Call No. 20-0376, the City Council opened and continued the public hearing to May 18, 2020, and directed the City Manager to schedule a work session with the City Council regarding the amendments to the short-term commercial rental sections of the Zoning Ordinance; and

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on May 7, 2020, its members voted 11-1 in support of a motion to recommend **APPROVAL** of an update to the proposed amendments to the Zoning Ordinance including adding off-street parking



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requirements for short-term commercial rental uses, reinserting owner-occupancy or tenant-occupancy requirements for the NX2a zoning district which includes the Sherman Hill neighborhood, and adding separation distance requirements of 700 linear feet between short-term commercial rental uses for single-household structures and structures containing between two and nine households, subject to reduction of the limitation on duration of short-term commercial rental uses, as presented in the recommendation from the City Council workshop and from City staff, from ten years to five years from date of conditional use approval by decision and order of the board of adjustment with renewal option; and

WHEREAS, the proposed amendments to the Zoning Ordinance, as presented in the recommendation from the City Council workshop and from City staff, are on file in the office of the City Clerk and are available to the public for viewing electronically via the internet; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed amendments to the Zoning Ordinance; and

WHEREAS, in accordance with the notices published prior to the February 24, 2020 hearing and prior to the continuation thereof to May 18, 2020, respectively, those interested in the proposed amendments in form consistent with the recommendation of the City Council workshop and City staff, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that:

1. The communication from the Plan and Zoning Commission of its May 7, 2020 meeting is hereby received and filed.
2. Upon consideration of the facts, statements of interested persons and arguments of counsel, any and all objections to said proposed amendments to Sections 134-3.5.12, 134-6.4.8, and 134-6.4.10 of the Zoning Ordinance, be and the same are hereby overruled, and the hearing is closed.
3. The City Council hereby makes the following findings in support of the proposed amendments to Sections 134-3.5.12, 134-6.4.8, and 134-6.4.10 of the Zoning Ordinance:
 - a. Said amendments are necessary to protect and preserve the rights, privileges, and property of the city and of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents, for the reasons stated herein.
 - b. The amendments are further necessary to promote the health, safety, morals, and general welfare of the community and to preserve historically significant areas of the community.
 - c. Said amendments are consistent with PlanDSM: Creating Our Tomorrow Plan, the comprehensive plan for the City of Des Moines, and meet the multiple goals thereof including but not limited to the following:



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- i. Land Use (LU) Goal 1: Develop new land development regulations consistent with this Comprehensive Plan, include development standards, provide for a mixture of land uses, mandate protection of natural resources, and promote flexible approaches to implementing the Plan.
 - LU1.3: Ensure new zoning and land use regulations promote development and redevelopment that is compatible with the neighborhood character and reduces negative impacts between incompatible uses.
 - ii. Land Use (LU) Goal 4: Continue to embrace the distinct character of Des Moines' neighborhoods while allowing for new development and redevelopment.
 - LU 4.25: Require new development and redevelopment to be compatible with the existing neighborhood character.
 - iii. Housing (H) Goal 1: Provide a diversity of housing options to accommodate residents of all ages, income levels, household sizes, and cultural backgrounds.
 - H1: Ensure an adequate supply of housing through a mix of new development, infill development, and redevelopment of existing properties.
 - H4: Promote accessible, affordable, and age-friendly housing alternatives in all neighborhoods to accommodate persons with disabilities and allow seniors to age in place, in proximity to known services, and with easily accessible quality open space.
 - H5: Address availability and affordability of housing options for all families.
 - iv. Housing (H) Goal 2: Preserve, maintain, and improve the existing inventory of single-family and multi-family housing.
 - H16: Streamline permit and development processes to encourage development in accordance with applicable regulations.
 - v. Housing (H) Goal 4: Support development of and access to quality housing affordable to all income level households.
 - H23: Support and promote a regional approach to provision of affordable housing.
 - vi. Community Character and Neighborhoods (CCN) Goal 1: Embrace the distinct character offered in each of Des Moines' neighborhoods.
 - CCN2: Ensure a diverse mix of housing types, styles, scales, density, and affordability that complement existing neighborhood character.
 - CCN5: Ensure infill development is sensitive to the existing character of the neighborhood.
 - vii. Community Character and Neighborhoods (CCN) Goal 2: Further Des Moines' revitalization efforts to improve the strength, stability, and vitality of all neighborhoods.
4. The proposed amendments to Sections 134-3.5.12, 134-6.4.8, and 134-6.4.10 of the Zoning Ordinance, in form on file in the office of the City Clerk, are hereby approved, subject to final passage of the respective enacting ordinances.

 **Roll Call Number**

Agenda Item Number

53

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MOVED by _____ to adopt.

FORM APPROVED:

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

(10-2020-5.02)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED		APPROVED		
_____ Mayor				

CERTIFICATE

I, P. KAY CMELIK, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk



May 12, 2020

Honorable Mayor and City Council
City of Des Moines, Iowa

Date May 18, 2020
Agenda Item 53
Roll Call # _____

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held May 5, 2020 the following action was taken regarding a City initiated public hearing regarding proposed adoption of amendments to the approved Zoning Ordinance in Chapter 134 of the City Code relating to Lodging – Short-Term Commercial Rental uses.

COMMISSION ACTION:

After public hearing, the members voted 11-1-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles				X
Abby Chungath	X			
Jacqueline Easley	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Lisa Howard	X			
Carolyn Jenison	X			
Greg Jones	X			
William Page	X			
Rocky Sposato		X		
Steve Wallace	X			
Greg Wattier	X			
Emily Webb	X			

APPROVAL of the proposed amendments to the approved Zoning Ordinance with the exception that any short-term rental shall be limited in duration to 5 years from the date that a conditional use is approved by decision and order of the board of adjustment, with the option to apply to the board of adjustment for renewal.

(10-2020-5.02)

RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the proposed amendments to the approved Zoning Ordinance.

STAFF REPORT TO THE PLANNING COMMISSION

The proposed ordinance to amend the approved Zoning Ordinance (City Code Chapter 134) is attached.

On October 16, 2019, the Des Moines City Council approved final consideration of Ordinance #15,816 (Chapter 134 - Zoning Ordinance. This ordinance became effective on December 15, 2019.

At a City Council workshop on October 16, 2019, Staff was directed to draft revisions to the short-term rental regulations that are contained in the City's new Zoning Ordinance.

On January 16, 2020, the Plan & Zoning Commission reviewed proposed amendments relating to Short-Term Commercial Rental Lodging use in Section 134-3.5.12 [C] that included the following:

- Allow a Short Term Commercial Rental Lodging use to be utilized for assembly use only if approved by the Zoning Board of Adjustment.
- Require a Short Term Commercial Rental Lodging use owner or manager that resides outside of Polk County or any county contiguous to Polk County to designate an authorized management agent who is at least 18 years of age who and a resident of Polk County or any county contiguous to Polk County.
- Revise the required guest registration information that must be provided to the City upon request.
- Eliminate requirements for a minimum number of days that the Short Term Commercial Rental Lodging use must be occupied by the owner.
- Eliminate requirements on the total maximum number of days a Short Term Commercial Rental Lodging use can be rented annually.
- Clarify that one short term rental is allowed per single-household detached structure or structure containing between 2 and 9 households.
- Clarify that the rounding provisions for calculating the percentage of units in multi-household exclude the whole number "0".

On February 24, 2020, the City Council received the Plan & Zoning Commission's recommendation, but deferred the public hearing on the proposed amendments to May 18, 2020. At that time, Council directed City Staff to draft additional revisions. The additional revisions proposed to Section 134-3.5.12 [C] at this time include the following:

- Requires that a short-term rental have an owner that resides in Polk County or any county contiguous thereto, or have a manager, managing member, director or similar representative resides in Polk County or any county contiguous thereto in the event that the owner is a company or corporate entity.
- Requires that a minimum of one off-street parking space, compliant with chapter 135 of this code, shall be provided and assigned onsite by the owner or authorized

management agent of each short-term rental for each bedroom or sleeping area contained in the short-term rental.

- Requires each lot line of a lot containing a short-term rental use for which a conditional use application has been filed with the community development director after August 30, 2020, must be separated by at least 700 linear feet from any lot line of any other lot containing a short-term rental use. This does not apply to short-term rentals within a multiple-household residential structure that contains more than 9 household units.
- Requires any short-term rental in a NX2a district shall be owner-occupied or associated with an owner-occupied principal residential structure, or tenant-occupied or associated with a tenant-occupied principal residential. This does not apply to short-term rentals within a multiple-household residential structure that contains more than 9 household units.

Requires that any short-term rental shall be limited in duration to 10 years from the date that a conditional use is approved by decision and order of the board of adjustment, with the option to apply to the board of adjustment for renewal.

SUMMARY OF DISCUSSION

SuAnn Donovan presented staff report and recommendation.

Jacqueline Easley asked what Council's discussion was around Sherman Hill being the only neighborhood that requires owner occupancy of the short-term rental unit.

SuAnn Donovan stated Council discussed if Sherman Hill should be treated differently by the ordinance and have every unit in that district be owner occupied. Council did direct staff to place that provision in the ordinance based upon support by the neighborhood association.

Jacqueline Easley asked if any other neighborhood requested that?

SuAnn Donovan stated she isn't aware of any other request besides Sherman Hill.

Mike Ludwig asked if the 700-foot separation requirement applies to anything with 9 or fewer units?

SuAnn Donovan stated that is correct.

Will Page asked if 1 off street parking spot is required for each room within the unit?

SuAnn Donovan stated correct.

Will Page asked how they will handle the compliance of that?

SuAnn Donovan stated most compliance is handled through complaints but they will be required to show that off street parking spot on the site plan when they are in front of the Zoning Board of Adjustment.

CHAIRPERSON OPENED THE PUBLIC HEARING

Diane Graham, 635 46th Street read submitted letter verbatim in opposition to the proposed revisions to the short term rental ordinance.

Jacqueline Easley asked if a formal request from the Ingersoll Neighborhood had been submitted to require owner occupied short term rental units?

Diane Graham stated no as the Ingersoll Neighborhood board hasn't met in a long time.

Carlie Hamilton, 678 45th Street read submitted letter verbatim in opposition to the proposed revisions to the short term rental ordinance.

David Schlarmann, 1503 Center Street stated he is part of Sherman Hill Board of Directors and they strongly support short-term rentals if they are owner-occupied units. They do not see a reason for placing a 700-foot separation requirement on owner-occupied units but would like that placed on non-owner-occupied units.

CHAIRPERSON CLOSED THE PUBLIC HEARING

SuAnn Donovan stated the guidelines before the Commission tonight were presented to Council and was the direction staff was given. She doesn't have any further comments but would take any questions the Commission may have.

Jann Freed stated she would like to see the renewal period be less than 10 years and does understand the concern around the 90-day grace period.

SuAnn Donovan stated there are some short-term commercial rentals that have been in business and are doing a good job. They may be within that 700-foot separation and should be given the chance to come in within the 90-day grace period without seeking a use variance. It would be difficult for staff to manage the amount people coming in for a conditional use approval from an equity standpoint. In regard to the 10-year renewal process, Council thought that amount of time was sufficient for the owner to get a return on their mortgage investment before returning it to an owner-occupied status. That doesn't mean the Board of Adjustment wouldn't take a second look if the property was to become a problem.

Abby Chungath asked what type of violations lead to revoking the condition use permit and what makes an illegal short-term rental.

SuAnn Donovan stated before December 16, 2019 no short-term rentals were legal in the City of Des Moines. It has led us to where we are tonight once we started discussion on how to manage these short-term rentals. Regarding violations, it comes down to building a case that is strong enough to stand up in court.

Will Page stated a 10 year approval period is a long time. He believes it would be better for surrounding property owners to reduce it to 5 years.

Jann Freed stated she tends to agree with Will. 10 years is too long for an approval period.

Abby Chungath stated 5 years would be a good medium ground.

John "Jack" Hilmes stated he doesn't understand the 90-day amnesty period.

SuAnn Donovan stated during the 90-day amnesty period, they will not need to worry about the variance of separation but that doesn't mean the Board of Adjustment will automatically grant the condition use approval. Also, issues the neighbors raise will still be relevant to the Board.

Jann Freed asked for clarification around density requirements.

SuAnn Donovan stated Short-Term Commercial rental properties can drive up the cost of rent in communities. This is a way to put a cap on rental prices and preserve low income and rental market.

COMMISSION ACTION:

Will Page made a motion for approval of the proposed amendments to the approved Zoning Ordinance with the exception that any short-term rental shall be limited in duration to 5 years from the date that a conditional use is approved by decision and order of the board of adjustment, with the option to apply to the board of adjustment for renewal.

Motion passed: 11-1-0

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:tjh
Attachments