

**MOTION
(AS AMENDED)
NO. M-22-485**

CITY HALL: November 3, 2022

BY: COUNCILMEMBERS MORRELL, MORENO AND HARRIS

WHEREAS, the Council of the City of New Orleans adopted Ordinance Nos. 28,156 M.C.S. and 28,157 M.C.S. to define, categorize, and regulate Short-Term Rentals (STR), which became effective December 1, 2019; and

WHEREAS, those ordinances were adopted pursuant to the City's police power to preserve the City's permanent housing stock, balance the economic opportunity created by STRs with the need to maintain a supply of long-term rental housing stock available at a range of prices, reduce any indirect negative effects on the availability of affordable housing that results from the dedication of long-term housing stock to STR use, create a level playing field for all parties engaged in the business of providing lodging, ensure the sufficient collection of tax revenue, mitigate the disruptive effects that unmonitored STRs can have on neighborhoods, and protect the livability and quality of life of the City's residential neighborhoods; and

WHEREAS, in its recent ruling in *Hignell-Stark v. City of New Orleans*, Case No. 21-30643, the United States Court of Appeals for the Fifth Circuit determined that the City's residential short-term rental permit laws violate the Dormant Commerce Clause of the United States Constitution by differentially treating properties based on homestead exemption status; and

WHEREAS, the Council desires to continue its efforts to prevent nuisances, promote affordable housing, and protect neighborhoods' residential character, which were recognized as legitimate local purposes by the courts, while removing any distinctions regarding the ability to operate an STR based on a property's homestead exemption status; and

WHEREAS, motivated by this interest, the Council enacted the *Residential Short-Term Rental Interim Zoning District* (“IZD”) – first by Motion No. M-22-382 then by M-22-467, superseding the former motion – to temporarily prohibit all residential short-term rental types citywide; and

WHEREAS, during the pendency of this IZD, the Council is working with all due haste to revise its STR regulations in a way that complies with the *Hignell-Stark* decision while safeguarding the City’s public health, safety, and welfare; and

WHEREAS, any update to the Comprehensive Zoning Ordinance (“CZO”), which houses all STR regulations pertaining to land use, requires action by the City Planning Commission and City Council, as prescribed in Article 4 of the CZO and Home Rule Charter Section 3-112; and

WHEREAS, pursuant to these provisions, the process to fully adopt a CZO text amendment takes several months; and

WHEREAS, the earliest possible date at which the Council can adopt an ordinance approving the text amendment proposed herein, or a modified version of such, is at its March 9, 2023 meeting; and

WHEREAS, the Council is actively working toward lifting the IZD and resuming the issuance of residential STR permits as soon as new regulations compliant with *Hignell-Stark* are adopted, and desires to begin that process without delay; **NOW THEREFORE**

BE IT MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the City Planning Commission is hereby directed to conduct a public hearing to consider amendments to Ordinance No. 4264 M.C.S., as amended by Ordinance No. 26,413 M.C.S. (as amended from time to time, the “Comprehensive Zoning Ordinance”) to update any and all relevant Articles governing the zoning and use standards for short-term rentals (both commercial and residential) in

a manner that is both compliant with the holding of the U.S. Court of Appeals for the Fifth Circuit in *Hignell-Stark v. City of New Orleans*, Case No. 21-30643, and continues to safeguard the City's health, safety, and welfare. In the course of this study, the City Planning Commission is directed to consider the Council's desire to continue its efforts to prevent nuisances, promote affordable housing, and protect neighborhoods' residential character, which were recognized as legitimate local purposes by the courts, while removing any distinctions regarding the ability to operate an STR based on a property's homestead exemption status; and

BE IT FURTHER MOVED, That the Council requests that the City Planning Commission review data, including but not limited to, data on the administration, use, and impacts of the STR program, both citywide and by neighborhood, and regulations from both New Orleans and similarly situated cities to guide potential amendments to the Comprehensive Zoning Ordinance, including, but not limited to, the following considerations:

- Additional/new prohibitions, including capping measures such as limiting the number of licenses held by a property owner, limiting the number of STRs an operator can operate, or creating restrictions based on block-face and/or neighborhood caps, spacing, or census tract;
- Adjusting oversight responsibilities currently applicable to owners and operators, including the possible shift to an on-site host requirement or allowance for an on-site operator in lieu of owner;
- Applicable regulations that may be available relative to the internet platforms that provide STR listings, including platform accountability;
- Changes to the existing STR categories and license types;
- Compliance standards;

- Requiring platforms to collect data;
- Enforcement mechanisms and penalties including the revocation of licenses and prevention of applicants' ability to apply for new licenses due to historical quality of life violations;
- Mechanisms to leverage STRs to produce and/or maintain affordable housing units;
- Possible remedies to the illegal operation of STRs;
- Removal of all references to a homestead exemption requirement for STRs;
- Whether or not all owners and/or operators be natural persons at least 18 years in age;
- Revisions to zoning districts, definitions, use permissions, and standards applicable to traditional bed and breakfasts for consistency with STRs;
- Revisions to definitions, use permissions, and standards applicable to all transient lodging for consistency with applicable zoning interpretation memoranda of the Director of the Department of Safety and Permits;
- Updates to the fee structure, including those fees applicable to guests and those applicable to STR owners and operators;
- Whether STRs are fundamentally a commercial use and should be treated in zoning as such; and
- Zoning districts where STR use is appropriate, and its designation as a prohibited, permitted, or conditional use, including the possibility of adopting total bans by zoning district, by neighborhood, or citywide.

BE IT FURTHER MOVED, That in the process of studying and reviewing this request the City Planning Commission and staff are directed and granted the flexibility to expand the scope of the study to consider all related policies not made explicit herein, and to make any and all legal and appropriate recommendations to the Comprehensive Zoning Ordinance and the City Code as

deemed necessary in light of study, review, and public testimony resulting from this motion. CPC is also granted the flexibility to make the appropriate adjustments to clarify any ambiguities or mistakes within this motion and the corresponding text of the Comprehensive Zoning Ordinance; and

BE IT FURTHER MOVED, That the Council hereby waives the Project Neighborhood Participation Program requirement, fee, and application otherwise required for this text amendment request.

THE FOREGOING MOTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION OF THEREOF, AND RESULTED AS FOLLOWS:

YEAS: Giarrusso, Green, King, Moreno, Morrell, Thomas - 6

NAYS: 0

ABSENT: Harris - 1

AND THE MOTION, AS AMENDED, WAS ADOPTED.

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