DEPARTMENT OF SAFETY AND PERMITS

CITY OF NEW ORLEANS

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MEMORANDUM

FROM: ASHLEY J. BECNEL, CHIEF ZONING OFFICIAL
DEPARTMENT OF SAFETY AND PERMITS

DATE: NOVEMBER 4, 2022

RE: RSTR PERMIT STATUS AND PROCESSES AS OF NOVEMBER 4, 2022

Given the recent developments in the law related to residential short-term rental permits (RSTRs), the Department is issuing this memorandum to provide its interpretation of the current situation for RSTR permits in order to provide clarity for Departmental staff, council offices, and the general public. Questions that are not answered by this memorandum may be directed to str@nola.gov for additional review.

Below is a timeline of relevant events related to RSTRs:

- August 22, 2022: The United States Court of Appeals for the Fifth Circuit issues a ruling in *Hignell-Stark v. City of New Orleans*, Case No. 21-30643. In that ruling, the Court reaches two critical holdings:
  - The City's requirement that applicants possess a homestead exemption on the property they seek to short-term ren in residential areas violates the dormant commerce clause of the U.S. Constitution;
  - The City has a legitimate local interest in regulating short-term rentals.
- August 29, 2022: The City Council passes M-22-382 which creates an interim zoning district prohibiting RSTRs in all districts of the City. That IZD also extended existing RSTR permits through March 1, 2023.
- October 20, 2022: The City Council passes M-22-467 which supersedes M-22-382 and prohibits RSTRs in all districts of the City. M-22-382 also creates an appeal process. The City Council also introduces two ordinances on first reading:
  - Cal. No. 33,949: Removes RSTRs from the City Code and creates a special appeal permit, Type A- Special Appeal Permit.
  - Cal. No. 33,951: Revokes all existing RSTR permits.
- November 3, 2022: The City Council passes M-22-485, which directs the City Planning Commission to begin the process to amend the text of the Comprehensive Zoning Ordinance (CZO) as it relates to short-term rentals. The Council also withdraws Cal. No. 33,951 and defers Cal. No. 33,949 to the meeting of November 17, 2022.

Copies of all referenced instruments are attached hereto.

Given this shifting legislative ground, the Department hereby clarifies its interpretation of the current state of the law as it pertains to RSTRs:

1. The Department will not accept any new applications for licenses or permits for RSTRs in accordance with the terms of M-22-467.
2. Existing permitholders may apply as a legally non-conforming use for renewal of their licenses provided that they meet the qualifications for legally non-conforming uses as set forth in the CZO. The burden of proof for such determinations rests on the applicant (CZO 25.2.D.). In accordance with Department practice, uses will be presumed to be legally non-conforming if all of the following criteria are met:
    a. The dwelling unit was properly licensed as a residential short-term rental before August 29, 2022, the date of M-22-382, which first prohibited the use;
    b. All dwelling units used as residential short-term rentals have maintained valid RSTR licenses since before August 29, 2022, or, if there has been any lapse in licensure, the lapse lasted no longer than 180 days; and
    c. There are no outstanding STR violations for any STR use located on the lot.

    Properties which do not meet all of these criteria may apply for individual consideration as a legal non-conforming use by emailing str@nola.gov.
3. The IZD may be appealed by application to the Executive Director of the City Planning Commission. More information about that process may be requested from cpcinfo@nola.gov.

M-22-485 started the text amendment process. Public feedback related to changing STR laws may be sent to the City Planning Commission at cpcinfo@nola.gov and to the City Council. The Council directory can be found at https://council.nola.gov/directory/ .

This memorandum will be updated if the law changes in any way that affects the above. Any changes to the law, whether through Council action or court ruling, may change the interpretation of this Department.