



Planning & Urban Development Department

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Jeff Levine, Planning & Urban Development Director
Mary Davis, HCD Division Director
Tyler Norod, Housing Planner

DATED: January 11, 2017

RE: Short Term Rental (Airbnb) Regulation Framework

The Housing Committee last met to discuss potential short term rental (STR) regulations on December 14, 2016. There appeared to be consensus between Committee members related to some general regulatory framework covering registration and safety concerns. Some larger policy items remain open for discussion centered on registration fees and restrictions placed on the number of STR units.

The Committee requested several draft documents be included as part of their package for review including a memo from Corporation Counsel providing background information on how STRs relate to Portland's zoning ordinance, a draft primary residence affidavit, a pre-inspection checklist for hosts, and preliminary ordinance language. The pre-inspection checklist is already in use by the Housing Safety Office for long term landlords to complete at the time of registration. Because there are still some key issues up for discussion the attached draft ordinance language and other documents may need to be amended further following the Committee's vote.

Also attached as part of this package are updated regulatory frameworks and notes from Councilor Duson and Councilor Ray. These revised frameworks and notes are meant to help guide the Committee's discussion to reach a consensus on a final framework to recommend to the Council.

Attachments

Attachment A: Councilor Duson's Revised STR Framework 12.22.2016

Attachment B: Councilor Ray's Notes on Revised Framework

Attachment C: Councilor Duson's Comments on Councilor Ray's Notes

Attachment D: Draft STR Ordinance Language

Attachment E: Corporation Counsel's Memo

Attachment F: Draft Primary Residence Affidavit

Attachment G: Existing Owners Pre-Inspection Checklist

Attachment A

Councilor Duson's Revised STR Framework 12.22.2016

Discussion Draft STR Framework

(Councilor Duson Notes - Last Revised 12-31-16)

1. A Short Term Rental (STR) is a dwelling unit or rooming unit for transient guests for less than 30 days;
2. Property owners and their agents (Hosts) may not operate an STR without annually registering with the Housing Safety Office each unit or rooming unit;
3. The City will evaluate the STR policy annually to understand the STR market impact on Portland's housing stock and neighborhoods;
4. Only the owner of record may register a unit or units as an STR. It shall be permissible for a tenant to manage the unit they occupy as a STR with written permission from the property owner or landlord.
5. Should a property violate the Disorderly House Ordinance (DHO) the STR registration *may* be revoked and the property will not be eligible for registration for a minimum of 12 months following a violation.
 - a. The DHO regulates properties that disturb the surrounding community through any number of violations including loud noise, boisterous parties, sounds emanating from within the structure which are audible outside the building, fights (excluding domestic violence), tenants or invitees intoxicated in public ways in the vicinity of the building, and other similar activities in or outside the building.
 - b. The DHO is triggered when police document between 3-5 violations during a 30 day period. The number of violations triggering the DHO is based on the number of units in the building with buildings of 5 or fewer units only needing three violations to trigger the DHO.
 - c. Police documentation may include sworn affidavits by named citizens sufficient to create a reasonable suspicion illegal activity has occurred.
 - d. A copy of the DHO is attached to this document.
6. STR regulations would not apply to the Islands but all rentals on the islands should still continue to register with the City's Housing Safety Office;
 - a. The City may choose to look at the issue of island STRs at a separate time in the future;

The Committee also discussed a grandfathering provision for those in operation on a date certain, this together with a cap on the number of units citywide may resolve the island coverage concern.
7. These regulations are not intended to supersede condominium bylaws that restrict offering STR where the unit(s) in question would be otherwise eligible for STR registration in accordance city rules/ordinance.

8. STRs will be addressed similarly to all other applicable building and land use violations as described under Section 6.1 of the City Code and the Disorderly House Ordinance
- 9.
10. All registration fees and penalties shall support STR enforcement and contribute to the Housing Trust Fund. A minimum percentage of the associated revenue will be allocated to the Housing Trust Fund;
11. Property management firms found operating STR's without proper registration may be fined. These fines may be in addition to fines levied against the property owner;
12. Where applicable, hosts must sign an affidavit that the registered unit is their primary residence (or that they operated an active, licensed business within one unit of a multi-unit building in order to qualify for "owner occupied" status) and provide copies of documents approved by the City demonstrating compliance with this residency requirement, including government ID's, Homestead Exemption, voter registration, current business license, and/or any other documents deemed appropriate by City staff;
13. Hosts must complete a registration check list drafted by the City affirming that the STR unit is in compliance with specified safety codes including but not limited to having working smoke/CO detectors, proper egress, etc similar to the attached language in the *Owner's Pre-Inspection Checklist* currently in use for landlord registration by the Housing Safety Office;
14. As a condition of registration, STR's must allow on-site inspections, as well as upon request present their registration information, rental history and upcoming reservations;
15. A registration identification number will be given to each host per listing; this registration number shall be displayed in the STR unit and featured in ads;
16. Failure of hosts or their representatives to adequately respond to inquiries by the City within a 48 hour period shall be considered a violation of these regulations and be subject to penalties under Section 6.1.
17. STR guest occupancy will be limited to two guests per bedroom plus two more guests who may utilize other sleeping space in another area of the dwelling unit such as a pullout couch. For example, a one bedroom dwelling unit could be rented to four guests, whereas a two bedroom could be rented to six guests.

The number of STR units that may be operated in a building and their associated registration fees will depend on whether or not the building is owner occupied as detailed in the chart below.

Type of Building	Limitations/Max # of STR	Registration Fee
Single Family Home: Owner-Occupied*	May offer rooms in home or—when owner is away—entire home as STR.	\$35 per unit
Single Family Home: Not Owner-Occupied	Non-Owner occupied single family homes <i>Option B for discussion: Non-Owner occupied single family homes shall not be used as STRs</i>	\$5,000 N/A
Multi-Unit Building: Owner-Occupied*	2 unit building – 1 STR 3 unit building – 2 STR 4 unit building – 3 STR 5+ unit building – 4 STR Owner may also offer rooms in primary unit or—when owner is away—entire primary unit as STR	Primary Residence: \$35 1 st Unit: \$250 2 nd Unit: \$500 3 rd Unit: \$1000 4 th Unit: \$2000 5 th Unit: \$4000 Each unit thereafter: \$8000**
Multi-Unit Building: Not Owner Occupied	2 unit building – 1 STR 3-5 unit building – 2 STR 6-9 unit building – 4 STR 10+ unit building – 5 STR	NOTE: Units may be spread across multiple properties.

*** Owner Occupied Buildings**

To qualify as owner-occupied, the building (or one unit of a multi-unit building) must be the owner's primary dwelling. A multi-unit building can also be considered owner-occupied if the owner uses at least one unit in the building as an office for their active, licensed business.

** The registration fee structure shall be cumulative. For example, at registration a host with three non-owner occupied units will be required to pay \$1,750.

CAP Discussion

Committee members also expressed interest at the previous meeting about exploring the possibility of requiring a cap on the number of non-owner occupied units in the City and a cap on the number of units any one host may register. Past analyses estimated between 150-190 non-owner occupied STRs currently operating in Portland. A cap of 300 non-owner occupied units was proposed which is approximately 1% of the City's housing stock. Some Committee members expressed an interest in a higher cap. The chart below provides two potential caps as a way to initiate a discussion on both types of caps.

Option 1		Option 2	
City Wide Cap	300	City Wide Cap	500
Units/Host Cap	5	Units/Host Cap	10

Attachment B

Councilor Ray's Notes on Revised Framework

Draft STR Regulatory Framework: Updated January 1, 2017

(Councilor Ray's Notes)

1. A Short Term Rental (STR) is a dwelling unit or rooming unit for transient guests for less than 30 days;
2. Property owners and their agents (Hosts) may not operate an STR without annually registering with the Housing Safety Office each unit or rooming unit;
3. The City will reevaluate the STR policy annually to understand the STR market impact on Portland's housing stock;
4. A cap of 300 units will be made available for all STR units that are not a host's primary residence. Once 300 units have been registered a wait list will be formed to help gauge market demand:
 - a. The City will reevaluate the STR policy annually to understand the STR market impact on Portland's housing stock and whether adjustments should be made to the cap;
5. An individual or corporate entity shall be able to register a maximum of 5 STR units in the city of Portland.
6. Due to accountability and effective enforcement concerns only property owners will be able to register STRs, with the following exception:
 - a. Renters may register their apartments provided that: a) the apartment is their primary dwelling; b) along with their registration application and fee they provide a copy of the city drafted landlord-tenant STR permission letter [need to create this] signed by their landlord. City letter, available online will include:
 - i. building owner's contact information;
 - ii. tenant's contact information;
 - iii. signed statement of permission by landlord allowing tenant to rent apartment as STR;
 - iv. signed statement of understanding of liability by landlord (disorderly house/sound complaints, etc. will come to landlord;
 - v. signed tenant statement that apartment is primary dwelling;
 - vi. anything else?
7. Should a property violate the Disorderly House Ordinance the STR registration will be immediately revoked and the property not reconsidered for to register again for a minimum of 12 months;
8. New STR regulations (except for those noted in a, b, and c below) would not apply to the Islands but all rentals on the islands should still continue to register with the City's Housing Safety Office;
 - a. Island rentals shall follow the tiered fee structure for owner-occupied multi-units: 1st Unit - \$35; 2nd Unit: \$250; 3rd Unit: \$500; 4th Unit: \$1000; 5th Unit: \$2000;
 - b. Island rentals that are not the host's primary residence shall count toward the citywide cap of 300.
 - c. Island rentals will count toward the individual cap of 5 STR operated by a single individual or entity.

- d. The City may choose to look at the issue of island STRs at a separate time in the future;
9. For clarity, the City's STR regulations will not supersede condominium bylaws pertaining to subletting or offering STR and each condominium association may enforce its own STR restrictions as the association deems appropriate;
10. STR will be addressed similarly to all other applicable building and land use violations as described under Section 6.1 of the City Code and the Disorderly House Ordinance;
11. All registration fees and penalties shall be contributed towards administrative costs and the Housing Trust Fund;
12. Property management firms found operating STR's without proper registration may be fined. These fines may be in addition to fines levied against the property owner;
13. Where applicable, hosts must sign an affidavit that the registered unit is their primary residence (or that they operate an active, licensed business within one unit of a multi-unit building in order to qualify for "owner occupied" status) and provide copies of documents approved by the City demonstrating compliance with this residency requirement, including government ID's, Homestead Exemption, voter registration, current business license, and/or any other documents deemed appropriate by City staff;
14. Hosts must sign an affidavit drafted by the City that the STR unit has ~~is up to date on all safety codes including but not limited to having~~ working smoke/CO detectors, proper egress, etc; [City should make list with links to ordinance where applicable, i.e., photovoltaic smoke alarms; host must be in compliance with all items listed]
15. As a condition of registration, STR's must allow on - site inspection
present their registration information, rental history and upcoming reservations;
16. A registration identification number will be given to each host per listing; this registration number shall be displayed in the STR unit and featured in ads;
17. Failure of hosts or their representatives to adequately respond to inquiries by the City within a 48 hour period shall be considered a violation of these regulations and be subject to penalties under Section 6.1.
18. The number of STR units that may be operated in a building and their associated registration fees will depend on whether or not the building is owner occupied as further detailed in the chart on the next page.

Type of Building	Limitations/Max # of STR	Registration Fee
Single Family Home: Owner-Occupied*	May offer rooms in home as STR. When owner is away, may offer entire home as STR.	<u>\$35 for first unit; additional units \$100 each</u>
Single Family Home: Not Owner-Occupied	Can only register one with the city	\$5000
Multi-Unit Building: Owner-Occupied	2 unit building – 2 STR 3 unit building – 3 STR 4 unit building – 4 STR 5+ unit building – 5 STR	1 st Unit: \$35 <u>2nd Unit: \$250</u> <u>3rd Unit: \$500</u> <u>4th Unit: \$1000</u> <u>5th Unit: \$2000</u>
Multi-Unit Buildings: Not Owner Occupied	2 unit building – 1 STR 3-5 unit building – 2 STR 6-9 unit building – 4 STR 10+ unit building – 5 STR	<u>1st Unit: \$500</u> <u>2nd Unit: \$1000</u> <u>3rd Unit: \$2000</u> <u>4th Unit: \$4000</u> <u>5th Unit: \$8000</u> <u>NOTE: Fees escalate with additional units whether they are in the same building or spread across multiple properties.</u>

*** Owner Occupied Buildings**

To qualify as owner-occupied, the building (or one unit of a multi-unit building) must be the owner's primary dwelling. A multi-unit building can also be considered owner-occupied if the owner uses at least one unit in the building as an office for an active, licensed business.

Acceptable proof that a building is owner occupied is outlined in #13, above.

Final considerations to hammer out (feel free to add to this list!!):

1. Single Family Home – Not Owner Occupied: Do we want to allow this? If so, is it enough to limit registration to one per person/entity? What should fee be? Is \$5,000 too high? It's meant to discourage the practice, but if we want to discourage the practice, perhaps we shouldn't allow it at all...
2. Conversion of office space to STR – in commercial property with multiple units vs. commercial property that is a single unit
 - a. in multi-unit building (like “Commercial Street example”), what will rules be to convert a single office space to an STR?
 - b. in single-unit building not currently used for housing (think “RE/Max By the Bay” – this is a former single family home that was converted to an office use several years ago); if someone wanted to convert an office space like the “RE/Max By the Bay” building to an STR, what rules would apply?
 - i. Do we need a subsection: “not owner occupied commercial properties”?
 - ii. STR could be a conditional use in that space; must apply for Change of Use—how would permitting and inspections determine if an STR is an acceptable use?
3. Can a long-term unit which is registered with the city be used as a STR between leases? If so, what are the rules around that?
 - a. Suggestion: allow this with temporary permit? Permit would need to be able to be issued quickly, though, since this would presumably be a small window

Attachment C

Councilor Duson's Comments on Councilor Ray's Notes

Draft STR Regulatory Framework: Updated January 1, 2017 (bsr)

Councilor Duson's Notes: added 1/1/17, --- Print for 1/11/meeting

1. A Short Term Rental (STR) is a dwelling unit or rooming unit for transient guests for less than 30 days;
2. Property owners and their agents (Hosts) may not operate an STR without annually registering with the Housing Safety Office each unit or rooming unit;
3. The City will reevaluate the STR policy annually to understand the STR market impact on Portland's housing stock;
4. A cap of 300 units will be made available for all STR units that are not a host's primary residence. Once 300 units have been registered a wait list will be formed to help gauge market demand;
 - a. The City will reevaluate the STR policy annually to understand the STR market impact on Portland's housing stock and whether adjustments should be made to the cap;
5. An individual or corporate entity shall be able to register a maximum of 5 STR units in the city of Portland.
6. Due to accountability and effective enforcement concerns only property owners will be able to register STRs, with the following exception:
 - a. Renters may register their apartments provided that: a) the apartment is their primary dwelling; b) along with their registration application and fee they provide a copy of the city drafted landlord-tenant STR permission letter [need to create this] signed by their landlord. City letter, available online will include:
 - i. building owner's contact information;
 - ii. tenant's contact information;
 - iii. signed statement of permission by landlord allowing tenant to rent apartment as STR;
 - iv. signed statement of understanding of liability by landlord (disorderly house/sound complaints, etc. will come to landlord;
 - v. signed tenant statement that apartment is primary dwelling;
 - vi. anything else?
7. Should a property violate the Disorderly House Ordinance the STR registration will be immediately revoked and the property not reconsidered for to register again for a minimum of 12 months;
8. New STR regulations (except for those noted in a and b below) would not apply to the Islands but all rentals on the islands should still continue to register with the City's Housing Safety Office;
 - a. The new fee structure for STR will apply to island rentals
 - b. Island rentals that are not the host's primary residence shall count toward the cap

- c. The City may choose to look at the issue of island STRs at a separate time in the future;
9. *These regulations are not intended to supersede condominium bylaws that restrict offering STR where the unit(s) in question would be otherwise eligible for STR registration in accordance city rules/ordinance.*
 10. STR will be addressed similarly to all other applicable building and land use violations as described under Section 6.1 of the City Code and the Disorderly House Ordinance;
 11. All registration fees and penalties shall be contributed towards administrative costs and the Housing Trust Fund

All registration fees and penalties shall support STR enforcement and contribute to the Housing Trust Fund. A minimum percentage of the associated revenue will be allocated to the Housing Trust Fund;
 12. Property management firms found operating STR's without proper registration may be fined. These fines may be in addition to fines levied against the property owner;
 13. Where applicable, hosts must sign an affidavit that the registered unit is their primary residence (or that they operate an active, licensed business within one unit of a multi-unit building in order to qualify for "owner occupied" status) and provide copies of documents approved by the City demonstrating compliance with this residency requirement, including government ID's, Homestead Exemption, voter registration, current business license, and/or any other documents deemed appropriate by City staff;
 14. Hosts must sign an affidavit drafted by the City that the STR unit has ~~is up to date on all safety codes including but not limited to having~~ working smoke/CO detectors, proper egress, etc; [City should make list with links to ordinance where applicable, i.e., photovoltaic smoke alarms; host must be in compliance with all items listed]

Hosts must complete a registration check list drafted by the City affirming that the STR unit is in compliance with specified safety codes including but not limited to having working smoke/CO detectors, proper egress, etc similar to the attached language in the Owner's Pre-Inspection Checklist currently in use for landlord registration by the Housing Safety Office;
 15. As a condition of registration, STR's must allow on ~~site inspections~~ upon request present their registration information, rental history and upcoming reservations;
 16. A registration identification number will be given to each host per listing; this registration number shall be displayed in the STR unit and featured in ads;
 17. Failure of hosts or their representatives to adequately respond to inquiries by the City within a 48 hour period shall be considered a violation of these regulations and be subject to penalties under Section 6.1.

18. The number of STR units that may be operated in a building and their associated registration fees will depend on whether or not the building is owner occupied as further detailed in the chart on the next page.

Type of Building	Limitations/Max # of STR	Registration Fee
Single Family Home: Owner-Occupied*	May offer rooms in home as STR. When owner is away, may offer entire home as STR.	<u>\$35 for first unit; additional units \$100 each</u>
Single Family Home: Not Owner-Occupied	Can only register one with the city Option B for discussion: Not allowed	\$5,000 _\$5000
Multi-Unit Building: Owner-Occupied	2 unit building – 1 2 STR 3 unit building – 2 3 STR 4 unit building – 3 4 STR 5+ unit building – 4 5 STR	1 st Unit: \$35 <u>2nd Unit: \$250</u> <u>3rd Unit: \$500</u> <u>4th Unit: \$1000</u> <u>5th Unit: \$2000</u>
Multi-Unit Buildings: Not Owner Occupied	2 unit building – 1 STR 3-5 unit building – 2 STR 6-9 unit building – 4 STR 10+ unit building – 5 STR	<u>1st Unit: \$500</u> <u>2nd Unit: \$1000</u> <u>3rd Unit: \$2000</u> <u>4th Unit: \$4000</u> <u>5th Unit: \$8000</u> <u>NOTE: Fees escalate with additional units whether they are in the same building or spread across multiple properties.</u>

* Owner Occupied Buildings

To qualify as owner-occupied, the building (or one unit of a multi-unit building) must be the owner's primary dwelling. A multi-unit building can also be considered owner-occupied if the owner uses at least one unit in the building as an office for an active, licensed business.

Acceptable proof that a building is owner occupied is outlined in #13, above.

Final considerations to hammer out (feel free to add to this list!!):

1. Single Family Home – Not Owner Occupied: Do we want to allow this? - *Jcd: I would prefer not to allow.* If so, is it enough to limit registration to one per person/entity? What should fee be? Is \$5,000 too high? It's meant to discourage the practice, but if we want to discourage the practice, perhaps we shouldn't allow it at all...
2. Conversion of office space to STR – in commercial property with multiple units vs. commercial property that is a single unit
 - a. in multi-unit building (like “Commercial Street example”), what will rules be to convert a single office space to an STR?
 - b. in single-unit building not currently used for housing (think “RE/Max By the Bay” – this is a former single family home that was converted to an office use several years ago); if someone wanted to convert an office space like the “RE/Max By the Bay” building to an STR, what rules would apply?
 - i. Do we need a subsection: “not owner occupied commercial properties”?
 - ii. STR could be a conditional use in that space; must apply for Change of Use—how would permitting and inspections determine if an STR is an acceptable use?
3. Can a long-term unit which is registered with the city be used as a STR between leases? If so, what are the rules around that?
 - a. Suggestion: allow this with temporary permit? Permit would need to be able to be issued quickly, though, since this would presumably be a small window

Attachment D
Draft STR Ordinance Language

Potential Code Changes for STR Regulations

Chapter 14

Sec. 14-47 Definitions

Primary Residence

The dwelling in which a person resides in as their legal residence for a majority of the year and register as their address for tax reasons and government ID purposes.

Short-term rental

Any dwelling, dwelling unit, rooming unit, room or portion of any dwelling unit, rooming unit, room rented or leased for valuable consideration for periods of time less than thirty days, but excludes commercial hotels, motels, inns, and bed and breakfasts. A short-term rental is a use that is accessory to such dwelling, dwelling unit, rooming unit, or room.

Sec. 14-404 Accessory Use

(e) Short Term Rental, provided that the application and registration requirements of Chapter 6, Buildings and Regulations, have been met.

Chapter 6

Sec. 6-1. Penalties.

Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who violates any of the provisions set forth in Chapter 6 is liable for the penalties set forth in this section. For purposes of this Chapter, the Director of Permitting and Inspections is the *building authority*.

- (a) *Penalties.* Except for paragraph g., monetary penalties shall be assessed on a per-day basis for each day on which a violation exists:
1. The minimum penalty for starting construction or undertaking a land use activity without a required permit is one hundred dollars (\$100.00) per day, and the maximum penalty is two thousand five hundred dollars (\$2,500.00) per day.
 2. The minimum penalty for a specific violation is two hundred dollars (\$200.00) per day, and the maximum penalty is two thousand five hundred dollars (\$2,500.00) per day. The minimum penalty for failure to correct

such significant code violation after written notice by the city to do so is five hundred (\$500.00) per day, and the maximum penalty is five thousand dollars (\$5,000.00) per day. The minimum penalty for failure to correct such significant code violation after a second written notice by the city is one thousand five hundred dollars (\$1,500.00) per day, and the maximum penalty is ten thousand dollars (\$10,000.00) per day. As used in this section, “significant code violation” means any of the following:

- a. Inadequate or blocked ingress or egress;
- b. Overcrowded conditions as described in section 6-110;
- c. Unsanitary conditions as described in section 6-109, including but not limited to vermin infestation;
- d. Inadequate or defective smoke or fire detection systems;
- e. Inadequate or defective plumbing or electrical systems;
- f. Substantially damaged or defective structural elements; and
- g. Intentional denial of heat or electricity to the legal occupant of a dwelling unit by the owner of the dwelling unit.

As used in this section, the terms “occupant”, “dwelling unit” and “owner” have the same meanings as provided in section 6-106.

3. The minimum penalty for a specific violation other than a violation described in paragraph 2 is one hundred dollars (\$100.00) per day, and the maximum penalty is two thousand five hundred dollars (\$2,500.00) per day.
4. The violator may be ordered to correct or abate the violations. When the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction results in:
 - a. A threat or hazard to public health or safety;
 - b. Substantial environmental damage; or
 - c. A substantial injustice.

Notwithstanding paragraph 4, for violations of this chapter that occur in a shoreland area as defined in section 14-447, the violator shall be ordered to correct or mitigate the violation unless the correction or mitigation results in:

- a. A threat or hazard to public health or safety;
 - b. Substantial environmental damage; or
 - c. A substantial injustice.
5. If the city is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.
6. In setting a penalty, the court shall consider, but is not limited to, the following:
 - a. Prior violations by the same party;
 - b. The degree of environmental damage that cannot be abated or corrected;
 - c. The extent to which the violation continued following a city order to stop; and
 - d. The extent to which the city contributed to the violation by providing the violator with incorrect information or by failing to take timely action.
7. The maximum penalty may exceed the limits described in paragraphs 1, 2 and 3, but may not exceed twenty-five thousand dollars (\$25,000.00) per day, when it is shown that there has been a previous judgment against the same party within the past two (2) years for a violation of the same law or ordinance.
8. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum penalties may be increased. The maximum penalty under this paragraph may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements.
9. In addition to the other penalties in this section, the building authority or a housing safety official designated by the city manager may suspend a contractor's, owner's, or developer's right to obtain building permits or work on any project in the city if the building authority or a housing safety official designated by the city manager determines that a contractor's, owner's, or

developer's violation or violations of any provision in articles II, III, or IV of this chapter create such a threat to life or safety that a structure must be posted against occupancy or that the violation or violations render a structure uninhabitable. The suspension authorized by this subparagraph 8 shall be lifted when the building authority or a housing safety official designated by the city manager determines that the violation or violations have been fixed.

(b) *Proceedings brought for benefit of municipality.* All fines resulting from these proceedings shall be paid to the city.

(Ord. No. 120-97, § 1, 10-20-97; Ord. No. 240-98, § 1, 4-6-98; Ord. No. 60-06/07, 10-16-06; Ord. 298-14/15, 7-6-2015; Ord. No. 165-15/16, 3-7-2016)

Sec. 6-106 Definitions

Primary Residence (see above)

Short-term rental (see above)

Sec. 6-129. Exception for island properties.

The building authority or a housing safety official designated by the city manager may permit the use of buildings located on the islands for dwelling purposes which do not meet the minimum standards set forth in this article when he or she finds that it is not feasible or practicable to provide such minimum standards and the health, safety or general welfare of the occupants or the public will not be adversely affected.

(Code 1968, § 307.23; Ord. 298-14/15, 7-6-2015)

Comment: We may not need to change this.

Sec. 6-151. Registration required.

(a) For purposes of this Article, a *rental unit* is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a *rental unit*. Any portion of a Single-Family Home, Condominium, or Apartment that is rented to or available to be rented to an individual or individuals who are not the owner or owners is a *rental unit*. *Dwelling units, rooming units, and short-term rentals* as defined in §6-106 are, without limitation, *rental units*.

...

(b) *Registration of ownership.* The owner or owners of all buildings containing one (1) or

more rental units within the city shall register their ownership interest, address, telephone number, and e-mail address, as well as the name, address and telephone number of the person or entity responsible for managing the property with a housing safety official designated by the city manager as provided in section 6-152 by January 1, 2016 or within thirty (30) days of purchase of the property and/or building, whichever occurs later.

[STR Registration](#)
[Caps Here](#)
[Tenants ability to rent](#)

(c) *Fee for Registration.* The owner or owners shall pay to a housing safety official designated by the city manager a fee of \$35 per rental unit at the time of registration. Failure to pay this fee by January 1, 2016 shall constitute a violation pursuant to section 6-153.

[Add STR fee structure here](#)

(d) *Annual Renewal and Fee.* The owner or owners shall renew their registration annually by updating the information provided in their initial registration and by payment to the City through a housing safety official designated by the City Manager of a fee of \$35 per rental unit. Failure to update information or pay the annual renewal fee by January 1 shall constitute a violation pursuant to section 6-153.

(e) *Registration of management companies.* Any individual, firm, corporation or purchaser under a land installment contract pursuant to Title 13 M.R.S.A. § 481 et seq. as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the building authority its management responsibility by January 1, 2016 or within thirty (30) days of assuming management responsibility. Any filing shall be updated, at least annually, if there are any changes whatsoever with regard to the information supplied. Failure to register management responsibility or update the information supplied regarding such management responsibility shall constitute a violation pursuant to section 6-153.

(f) *Registration and Renewal Fee Discounts.* In recognition that there are certain actions that owners of rental units may take that reduce the safety risk and decrease the financial burden upon the City, the following discounts to the registration fee and renewal fee are available:

- (1) \$10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance contract, which shall be provided at the time of registration and upon each renewal;
- (2) \$7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each renewal;
- (3) \$5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection

within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each renewal;

- (4) \$10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each renewal;
- (5) \$2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each renewal. The existence of and enforcement of such provision may also be verified through inspections or upon spot checks of the rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed \$20.00, and the minimum annual fee for registration or renewal shall be \$15.00 per unit.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. No. 246-97, 4-9-97; Ord. 298-14/15, 7-6-2015; Ord. 69-15/16, 10/5/2015)

Sec. 6-152. Registration form; information.

A housing safety official designated by the city manager shall provide forms to be completed by the owners and managers of properties subject to registration under this article and shall maintain a file containing all registrations made under this article.

- (a) The registration form for owners shall include, at a minimum, the following:
 - 1. The street address of the building;
 - 2. The assessor's chart, block and lot of the property on which the building is located;
 - 3. The names, addresses, telephone numbers, and e-mail addresses of all individual persons having any ownership interest in the property including, without limitation, all partners, all officers or trustees of any real estate trusts; and including the residential street address, e-mail address and home phone number of at least one (1) such individual person;
 - 4. The name, address and telephone number of the manager of the property or the person or persons responsible for its regular maintenance or repair;
 - 5. The name, address, and e-mail address of a person designated as the agent of the owner or owners for the service of notices and civil process by the

city. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners designating that person in any litigation pertaining to the premises.

- (b) The registration form for managers of property shall include, at a minimum, the following:
 - 1. The name, address, e-mail address and local telephone number of the management company and of at least one (1) such individual, including the residential street address, e-mail address and home telephone number of that individual; and
 - 2. A list of all buildings for which the person or firm is responsible, including the street address and chart, block and lot description of the property and the name of the owner of that building.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

Sec. 6-153. Violations.

- (a) Any person business entity or other organization failing to timely file the required registration or failing to timely pay, in full, the registration fee or annual renewal fee, or failing to timely file any required update to the registration shall be in violation of this Article for which a fine of \$100.00 per day each day the violation continues shall be assessed.
- (b) Any person providing false information with respect to registration shall be in violation of this article for which a fine of \$1,000.00 shall be assessed.
- (c) It shall be a violation of this article for which a fine of \$100.00 per day each day the violation continues shall be assessed for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises.
- (d) No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015)

DRAFT

Attachment E
Corporation Counsel's STR Memo

MEMORANDUM

TO: CHAIR DUSON AND MEMBERS OF THE HOUSING COMMITTEE
RE: **SHORT TERM RENTAL ENFORCEMENT**
FROM: VICTORIA MORALES, ASSOCIATE CORPORATION COUNSEL
DATE: JANUARY 4, 2017

As requested, this memorandum will address the extent of the City's discretion, if any, regarding short-term rental enforcement.

BACKGROUND INFORMATION

Since 2015, the City of Portland, through its Zoning Administrator, has determined on three separate occasions that the short-term rental of a dwelling to transient guests is not permitted in the R-4 and R-6 residential zones.¹ The working definition of a short-term rental thus far, is the rental of a dwelling for a period of less than 30 days.

The Code analysis begins with the prohibition provision in all zones, which states that "uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited."

Pursuant to City Code § 14-47, living and lodging opportunities are categorized in two distinct ways: 1) families living in dwellings, and 2) transient guests or temporary occupants occupying a building.

In the first category, the Code provides for the lodging of families in dwellings. A dwelling is defined as a residential occupancy of a property. Dwellings include one-family, two-family, and multi-family buildings. A dwelling unit has, one or more rooms, with private bath and kitchen facilities. It is important to note that dwellings house families, which are not limited by ancestry, and includes "[n]ot more than 16 individuals living together as a single nonprofit housing unit." Equally important is that the definition of dwelling specifically excludes traditional transient guest lodgings such as hotels, lodging houses, or tourist homes.

In the second category, the Code provides for the lodging of short-term guests, referring to them as 1) transient guests, or 2) individuals with a temporary occupancy. A transient guest is defined 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." A transient guest, for example, is permitted by Code to occupy a bed and breakfast, a hostel, or a tourist home. Similarly, an individual may temporarily occupy an inn or a hotel.

By separating the two living and lodging categories into longer-term occupancy for families and short-term guests, the Code draws a distinction, with legal significance, between tenants and

¹ See attached example notices.

licensees. Families renting dwellings are tenants, and temporary guests are licensees.² Benham v. Morton & Furbish Agency, 2007 ME 83, ¶¶ 15-19, 929 A.2d 471, 475. Although the legal distinction between tenants and licensees is not entirely dispositive on the issue, it reinforces the Code’s different regulatory approach for families and temporary guests.

The take away from this analysis is that temporary guests are not permitted to rent dwellings. Because individuals utilizing short-term rentals are most aptly characterized as transient guests under City Code, they are not permitted in dwellings in any zone.

It should be noted that under the City’s analysis, most short-term rentals do not fit within the lodging house category. Under the Code, such a house is defined as a building renting two or more rooming units (bedrooms with shared bath and kitchen privileges) for at least a week or monthly term. Lodging houses are regulated at the application level in regards to dimensional standards and density (cannot be located within 500 feet of another lodging house), and are permitted in zones: R-5 (by conditional use approval), R-6, R-6a, B-1, B-1b, B-2b, B-3, B-3b, B-3c, B-4, B-5, and B-7. There are currently fifteen (15) registered lodging houses in Portland containing anywhere from 2-44 rooming units.

Finally, and notably, the Code also defines a tourist home. A tourist home is “a building in which more than one (1) but not more than nine (9 guest) rooms are used to provide or offer overnight accommodations for transient guests.” Tourist homes, however, are not allowed currently in any zone in the City.

Therefore, in a one sentence summary, because the Code distinguishes between dwellings and short-term rental uses, and does not expressly permit short-term rentals in dwellings, the City has determined, to date, that short-term rentals are prohibited in one-family, two-family, and multi-family dwelling units throughout the City.

DISCRETION TO ENFORCE CITY CODE VIOLATIONS

Title 30-A M.R.S. § 4552(1) and (5)(G) provides municipalities with the authority to enforce, among other things, its land use ordinances.

1. Enforcement. A municipal official, such as a municipal code enforcement officer, local plumbing inspection or building official, who is designated by ordinance or law with the responsibility to enforce a particular law or ordinance set forth in subsection 5, 6, or 7, **may**:

...

² The Maine Supreme Judicial Court held that those renting vacation rentals for short-term stays merely hold a license to use the property, similar to guests of hotels and inns. Benham c. Morton & Furbish Agency, 2007 ME 83, ¶¶ 15-19, 929 A.2d 471, 475. Tenants, on the other hand, are awarded significant legal protections, such as the right to the possession and exclusive occupancy of the premises, a warranty of habitability, and a notice process for evictions, to name a few. Id.; Sawyer v. Congress Square Hotel Co., 157 Me. 111, 115, 170 A.2d 645, 647 (1961) (hotel guest is not entitled to notice of eviction).

B. Issue a summons to any person who violates a law or ordinance, which the official is authorized to enforce.

30-A M.R.S. § 4552(1)(subsection 5(G) includes local and use ordinances)(emphasis added).

By the use of the permissive word “may” above, the Legislature rejected mandating enforcement and instead chose to provide municipalities with discretion when deciding whether or not to enforce ordinance violations.

Consistent with section 4552, the Maine Supreme Judicial Court has held that municipalities have the discretion to enforce or not enforce ordinance violations. Orr v. Town of Standish, 2012 Me. Unpubl. LEXIS 138; Mem 12-140; Herrle v. Town of Waterboro, 2001 ME 1, ¶P 10-11. 783 A.2d 1159; see Town of Freeport v. Ocean Farms, 633 A.2d 396, 1993 Me. LEXIS 203 (Me. 1993)(by providing for attorney fees for a prevailing municipality, section 4552 is designed to encourage the enforcement of land use laws).

It is also important to note that courts around the country are currently opining on the legality of short-term rentals under ordinances written before the recent onset of this form of lodging. The outcomes are varied and uncertain, and are largely fact specific depending on the ordinance language. Because of this, and the fact that the Housing Committee has been exploring a policy around short term rentals, the City has decided to exercise its discretion to not move forward with enforcement in this area until it has a clear policy directive.

I will be available to answer any questions about this memo at the next Housing Committee Meeting on January 11, 2017.

Attachment F
Draft Primary Residence Affidavit

City of Portland

Short Term Rental Primary Residence Affidavit

All residential properties in Portland utilized as Short Term Rentals (STRs) must be registered with the Building Inspections Department of the City pursuant to City Code Chapter 6, Article VI, prior to leasing any portion of a dwelling, a room and/or a unit, to another person for a period of less than 30 days.

Principle Residence

Primary residency is defined as the dwelling unit in which a person resides for more than one half of the year.

Proof of Primary Residence

The applicant is required to provide at least **two forms** of proof of primary residence demonstrating that the applicant meets the definition of primary residency above.

Proof of primary residency shall be a driver's license, vehicle registration, voter registration, Maine Homestead Exemption, or another approved form sufficient to demonstrate primary residency.

Staff will not accept documentation such as utility bills, cable bills, mortgage payments, etc., that do not necessarily show evidence of primary residence.

At any time, staff may request additional information from the applicant.

By signing below, I, _____ (Printed Name), swear under the penalty of perjury that I am the owner or beneficiary of the property located at _____ (Address) and that this property constitutes my primary residence. I understand that my STR registration may be revoked if, at any time, I have provided false information with respect to this or any application, or to not be in compliance with City Code Chapter 6, Article VI.

I have carefully reviewed the contents of this Affidavit before signing. I affirm that the contents are true, to the best of my knowledge.

Printed Name: _____

Signature: _____

Date: _____

Attachment G

Existing Owners Pre-Inspection Checklist



CITY OF PORTLAND HOUSING SAFETY OFFICE

www.portlandmaine.gov/housingsafety
 housingsafety@portlandmaine.gov

Portland City Hall, Room 26
 389 Congress Street
 Portland Maine 04101
 (P) 207-756-8131 (F) 207-756-8150

**OWNER'S
 PRE-INSPECTION CHECKLIST**

Revised
 6-22-2016

Page 3 of 3

This pre-inspection checklist will help prepare you for your initial basic life safety rental housing safety inspection.

Complete this checklist and return it with your Rental Housing Registration Form.

BUILDING INFORMATION		
Street Number	Street	CBL- Chart, Block, Lot Number (e.g. 001A __ A001001)

LIFE SAFETY CHECKLIST		YES	NO	NA	Comments
1.1	Is there a working smoke alarm (detector):				
	a. On each level of the building and dwelling unit and in the vicinity of each bedroom, including the basement?				
	b. In each bedroom?				
1.2	Is there a working carbon monoxide (CO) alarm (detector) on each level of the building and dwelling unit including the basement?				
1.3	Does each dwelling unit have two separate ways out?				
1.4	Are all ways out of the building:				
	a. Free of obstructions?				
	b. In buildings with 3 or more dwelling units, automatically or permanently lighted?				
	c. In buildings with 3 or more dwelling units, have doors that are fire-rated, self-closing, easily opened, and able to be used?				
	d. Discharged to the ground level?				
1.5	Do all exit stairways have handrails that are securely mounted?				
1.6	If there is only one way out of a dwelling unit, does each bedroom have a window that can be easily opened and is large enough for emergency rescue or escape?				

NA – not applicable

CODE REFERENCE (NFPA 101 (2009), City Code of Ordinances Chapter 6 and 10 (June, 2016))	
Question	Code Explanation
1.1	There must be a working smoke alarm (detector) on each level of the building and dwelling unit including the basement and in the immediate vicinity of each bedroom or room used for sleeping as well as in each bedroom.
1.2	There must be a working carbon monoxide (CO) alarm (detector) on each level of the building and dwelling unit.
1.3	Each dwelling unit must have access to at least 2 separate ways out of the building that are not located close together unless the unit has an exit door opening to the outside at ground level, an enclosed stair used only by that unit opening to the outside at ground level, or access to an outside stair that serves no more than 2 units.
1.4	The way out of the building cannot be used for storage or trash containers. The way out of a building must be permanently lighted or by lighted by automatic means. Doors leading from a dwelling unit to a stairwell must be self-closing and fire rated. Locks or door hardware must be easy to use when leaving the building. Exits must lead to the ground level, not the basement.
1.5	All stairs must have handrails that are easy to grasp and that are securely mounted at a height between 34" and 38" measured from the leading edge of all treads, vertically to the handrail.
1.6	Each bedroom must have a window that can be opened without using tools or special knowledge. The opening of the window must be at least 20" wide and 24" high and provide an opening of 5.7 square feet. The bottom of the opening must be less than 44" above the floor.