

**City of Salem Planning Board and City Council
JOINT MEETING
Minutes
Monday, September 17, 2018**

A joint meeting of the Salem Planning Board and the City Council was held on Monday, September 17, 2018 at City Hall Chambers, 93 Washington Street, Salem, Massachusetts.

Ben J. Anderson, Chair

AN ORDINANCE AMENDING ZONING RELATIVE TO SEC. 3.0 – TABLE OF PRINCIPAL AND ACCESSORY USES AND SEC. 10.0 DEFINITIONS – RELATING TO SHORT-TERM RENTALS

An Ordinance to amend an Ordinance relative to Zoning

Be it ordained by the City Council of the City of Salem, as follows:

Section 3.0 Table of Principal and Accessory Uses

Amend *Section 3.0 Table of Principal and Accessory Uses* to include the following new uses:

The following uses shall be permitted as set forth in the Table of Principal and Accessory Use Regulations.

Non-Owner Occupied Short- Term Rentals	RC	R1	R2	R3	B1	B2	B4	B5	I	PBD	NRCC
	N	N	BA	BA	BA	BA	BA	BA	N	N	

(Note: N = not allowed; BA = allowed only by special permit by the Zoning Board of Appeal)

Section 10.0 Definitions

Amend *Section 10.0 Definitions* to include the following new definitions:

Non-Owner-Occupied Short-Term Rental: A dwelling unit where the owner does not live in either the unit, the building, or otherwise on the property and which was being used as a Short-Term Rental prior to the date the general ordinance, Chapter 15 Short-Term Rentals, was filed with the City Clerk for consideration by the City Council.

Short-Term Rental: A Short-Term Rental is the use of a dwelling unit for residential occupancy for a period of fewer than thirty (30) consecutive calendar days for a fee. A Short-Term Rental may or may not be facilitated through an online booking agent.

The proposed Zoning Amendments and/or Maps are on file and available for review during normal business hours at the City Clerk's Office, Room 1, City Hall, 93 Washington Street, Salem, MA or at the Department of Planning & Community Development, 98 Washington Street, 2nd floor, Salem, MA.

Beth Gerard, presiding, opens the meeting at 6:39PM, and outlines procedures.

I. ROLL CALL

Planning Board Members present: Chair Ben Anderson, Kirt Rieder, Carole Hamilton, Helen Sides, Matt Veno, Kirt Rieder, Matt Smith, Noah Koretz

Planning Board Members Absent: Bill Griset, Noah Koretz, DJ Napolitano

City Council Members Present:

Arthur C. Sargent II, Councilor At Large

Thomas H. Furey, Councilor At Large

Domingo J. Dominguez, Councilor At Large
Robert K. McCarthy, Ward 1 Councilor
Christine W. Madore, Ward 2 Councilor
Lisa JB Peterson, Ward 3 Councilor
Timothy G. Flynn, Ward 4 Councilor
Josh H. Turiel, Ward 5 Councilor
Beth Gerard, Ward 6 Councilor – Presiding
Stephen G. Dibble, Ward 7 Councilor

Absent: Elaine Milo, Councilor At Large

Also in attendance: Dominic Pangallo, Chief of Staff; Ashley Green, Staff Planner; Vicky Caldwell, Assistant City Solicitor

Ms. Caldwell outlines the changes. This is a companion to the first passage last week of an ordinance amendment regarding permitting and regulating of short term rentals (STRs). What is before the City Council and Planning Board tonight is for the grandfathering of specific Existing Non-Owner Occupied STRs. They could remain subject to the process detailed in this zoning ordinance amendment. The desire is to balance the needs of the City with the desires of those already renting out units. The Special Permit Process would allow neighborhoods to vet such rentals.

Such rentals must not be detrimental to the neighborhood. This is a balanced, if not perfect, approach to take into account the interests of the community. This applies only to Non-Owner Occupied STRs in existence as of July. Boston has eliminated all Short Term Rentals. In an R1 district in Salem, rooming houses are not allowed, so there is no grandfathering of STRs there.

Councilor McCarthy comments that grandfathering only applies to those in zones where BA (Zoning Board Approval) is required, who can maintain their STRs if so desired as it would be allowed, and they have 60 days to seek a Special Permit.

Councilor Turiel has received a comment from a resident in his ward, who owns 2 properties, one of which he rents. He owns a 2 family, and lives in one condo, while the other is a Long Term Rental. The other property is a 3 family, which his brother and sister in law rent, and it also includes both a long term and short turn rental unit. Thus it is not directly owner occupied but his family is there, so he is wondering where that property fits. If a multi family is in an R3 or R2 district, he could get a special permit for a non-owner occupied Short Term Rental.

Christine Madore asks why the NRCC (North River Canal Corridor) was not included.

This is because the NRCC is not included in the use table; it is a separate section of the Zoning Ordinance. There are issues around having NRCC entirely redone, but Councilor Dibble asked us to advertise and put in here, so if he wants to allow for it we could do that.

Kirt Rieder inquires about an estimate of the number of Non-Owner Occupied STRs in zones R2 and R3. The host compliance company estimates that there are 200 total in the City, but is not sure how that breaks down by neighborhood. Kirt Rieder asks if Boston had a sunset for such properties. They enacted this in June, and such properties were allowed to stay temporarily, but the date is unclear. Our Council on Thursday put in an April 15 date for enactment, in effect a sunset.

Chair Ben Anderson asks about the allowance of Owner Occupied properties in the districts in question. A General Ordinance was passed on Thursday, and Owner Occupied STRs are allowed; the Planning Board will be given a

copy of that Ordinance. If a property is a primary residence for 6 months or more per year, it may be rented out. An Owner-Adjacent unit, for example a two family home, can rent out the second unit on a short term basis. If a single family, Owner Occupied dwelling, the owner can rent up to two rooms on a short term basis as a limited share unit, i.e., to tourists. The concept behind the Ordinance was to create a scheme to preserve neighborhoods, favoring short term uses where the owner is there so if there are issues with the neighborhood, the owner can address them.

What was already passed (first passage) is a General Ordinance, not a Zoning Ordinance.

Matt Venio asks if the relative of an owner living in a property in question qualifies. Relatives are not owners. Matt Venio comments that it is difficult to consider the zoning ordinance amendment before them without the context of the General Ordinance that was passed.

Councilor McCarthy comments that, even though it is the owner's family living in the building, it would still be considered a Non-Owner Occupied use, but if in R2 they can apply for a special permit without changing the ownership of the building.

Matt Smith wonders why R1 cannot be grandfathered; R1 is not set up to have that sort of housing, and the City wants to preserve character of those areas.

Councilor Peterson asks if the following scenario was considered: An owner living in an R1 zone is elderly and enters a nursing home but hopes to return. Can they have family members move in to preserve the property? If the renter has the permission of the owner to do a limited share, this is allowed.

Councilor Turiel comments that the difference is renting a room out of a unit as a short term rental rather than renting the unit. So if elderly homeowner goes into extended care, they cannot take a single family home and list on Air BnB while in rehab.

Matt Venio comments that the definition of Short Term Rental is included in the Zoning Ordinance amendment before them; he wonders what the reference is. In this amendment we are not creating any requirements, so does the Zoning Ordinance address STRs outside of this amendment? If not, why include a definition if it is no practical importance? Is there another reference to STRs in the Zoning Ordinance that is not part of this amendment?

Councilor Dibble notes that the 5th paragraph of p. 2 of the other ordinance, there is discussion of STRs. Matt Venio clarifies, that that is in the Code of Ordinances, not the Zoning Ordinance.

Councilor Dibble appreciates the addition of the NRCC to the table, but since a note is not added, he feels it should be with Board Approval (BA). If one property is grandfathered, a neighboring property coming late to process can't benefit from it. He asks if wording can be clarified on "Non-Owner Occupied Short Term Rental." Also the date the Ordinance was adopted should be added. Presiding Councilor Gerard also feels it should follow with R2 and R3.

Kirt Rieder asks if it would it help clarify by adding where an STR is and is not allowable. Different types of STRs would have to be laid out. Matt Venio comments that, absent that addition to the Zoning Ordinance, it is unclear whether an STR other than Non-Owner Occupied is an allowed use anywhere in the City. It does not exist anywhere else in zoning, but it is considered a residential use so is allowed in Owner Occupied and Owner Adjacent properties. It is not treated any differently than a residential use if Owner Occupied.

Chair Anderson disagrees with Kirt Rieder and Matt Venio. This will go in the definition section of the Zoning Ordinance. This tells us it is a rental of unit for less than 30 days, a definitive statement, not Owner Occupied or Non-Owner Occupied. Matt Venio asks why it is defined if there are no requirements. Chair Anderson replies that

that's what this is, but the requirements refer to the City's Ordinance. At issue is the City's Ordinance vs. the Zoning Ordinance.

Councilor Turiel explains that the logic in defining STRs in the Zoning Ordinance is that it is a simple definition, plus we may at some point amend the table further. Defining "Non-Owner Occupied STR" is being explored, but "Owner Occupied" is covered by the General Ordinance. We are defining STR in general, specifically those that are Non-Owner Occupied, and these build on one another though presented in reverse order. As of now the table only refers to Non-Owner Occupied, not Owner Occupied, since there are no changes to that table

President Gerard opens to public comment.

Brian Burns of 64 Gardner St., Peabody, owns 5 Salem Air BnB units in Salem. He is not generally in favor of Air BnB regulation, as STRs are one of the best uses for his building in the particular location. It is a part of the City where permanent residents want tourists to be and tourists want to be there, so he appreciates the consideration and possible grandfathering of existing Non-Owner Occupied STR units.

Susan MaToula of Lemon St. Lives next door to a Non-Owner Occupied rental, and has had many issues. The property in question is a two-family dwelling but typically has three sets of tenants; the owners are unresponsive to complaints. Gerard notes we are discussing grandfathering or not – is she in favor? She does NOT want STRs that are abusive and excessive.

Darlene Melias of 113 Federal St. asks about the difference between an Air BnB and a rooming house; this is defined in General Laws and licensing requirements, as outlined by the Assistant City Solicitor.

Emily Gooders of 105 Derby St. now rents her property on Air BnB. She feels they are responsible owners as they are at the property every week, and supports Non-Owner Occupied STRs in general.

Mary Kay Johnson of Bay View Ave asks about how R1 Non-Owner Occupied STRs will be notified of the changes, especially if there is no way to track who is operating these STRs. Vicky Caldwell notes that if an owner is renting out a property, a Certificate of Fitness is required. Those who obtained one would be notified, and would then work with the compliance firm. This is an enforcement issue.

Dick Broderick of 7 Sutton Ave. is opposed, citing his concerns that to allow Non-Owner Occupied STRs in an R1 neighborhood would change its character.

Presiding Councilor Gerard discusses the different options moving forward.

Mrs. Mary Roderick of 7 Sutton Ave. is also opposed and does not feel the R1 properties that have STRs should be grandfathered.

Kathy McComb lives in the Willows and feels that Owner Occupied STRs can work well, but not Non-Owner Occupied STRs. She feels the grandfathering to the April 15 date is important.

Jeff Cohen of 12 Hancock St. comments on the context: Bed and Breakfasts are exempt because the zoning that applies to them entails that they must adhere to certain rules, including the provision of one off street parking spot for each unit. They pay their own trash, fire equipment and commercial taxes. He is not in favor of grandfathering beyond April because Boston spent two years researching this issue, and found 2000+ units converted from Long Term to STRs. The most recent Ordinance passed 11-2, grandfathering until Sept 2019. Boston passed their Ordinance due to diminished rental stock. People who work here should be able to live here, but it is difficult.

Converting units from LTR to STR reduces the number of rentals available. He is only in favor of grandfathering Non Owner Operated units until April because this is a working class town built on neighborhoods.

Chair Anderson asks for clarification regarding parking and the number of units, if it is defined under existing use and zoning districts. This is only referred to in the General Ordinance; but that only states that landlords must provide information regarding allowable off street and on street rules, regulations, fines to tenants. This would remain unchanged.

Councilor Turiel comments that parking would be taken up via a special permit process.

Councilor Dibble comments on parking and Vicky Caldwell reiterates that there is no parking requirement for STRs. If a Special Permit is required, the parking issue could be part of that application process. The General Ordinance says if rules about parking, trash, etc. are violated, landlords can be eliminated from being able to run STRs under the General Ordinance. Councilor Dibble does not understand how the grandfathering works. It is in the definitions as applied to the table. There is no special permit process for anything other than Non-Owner Occupied.

Councilor McCarthy moves to close the public hearing, and the matter carries.

Councilor McCarthy moves to refer the matter to the Planning Board, and the matter carries.

Councilor Furey motions to adjourn, and the motion carries.

The meeting ends at 7:41PM

Respectfully submitted,
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 10/18/2018

Know your rights under the Open Meeting Law M.G.L. c. 30A § 18-25 and City Ordinance § 2-2028 through § 2-2033.