April 12, 2023

Comments to Substitute Versions of 230267 and 230268.

As neighborhood leaders, the experience over the past seven-plus years in addressing issues with short-term rentals ("STR") has been a tremendous challenge and burden. Neighborhoods have been calling with a unified voice for relief from the problems we are experiencing—parties, parking issues, shootings, and other criminal activity. We have watched illegally operated STRs continue to ruin the quiet enjoyment of our neighborhoods. This is despite our numerous complaints to the City. The reality is that the City has consistently failed to enforce the current Ordinance 88-321.

And yet, the "solution" in the form of proposed Ordinances 230267 and 230268, completely eliminates all of the quality-of-life protections for neighborhoods currently in 88-321. These draft ordinances are unacceptable. Even if the City were to enforce these Ordinances as drafted, the nuisances cited above would not be eliminated. Conversely, the new Ordinances actually remove repercussions for the activities that are posing a danger to the community.

Any ordinance governing STRs raises a complex set of issues. Our neighborhood leaders have made great efforts to communicate our concerns to elected officials and City staff. We initially requested four weeks to allow for meetings and revisions to the first proposed Ordinances. However, on April 5, 2023, prior to the Easter holiday weekend, Mr. Decker delivered new substitute versions of the Ordinances. Under these time constraints, we have made our best efforts to assemble the volunteer neighborhood leaders for multiple meetings to wade through these drafts and attempt to prepare fulsome comments. We are concerned this process is being rushed when there is no reason to do so. We believe that given appropriate time, we can work with City staff and our elected officials to draft Ordinances that will serve Kansas City for years to come. We are concerned we will not have the opportunity to have those critical conversations with an April 19, 2023 hearing set. What we do know is that the current substitute versions do not resolve the issues with STR operations in Kansas City and also contain multiple drafting errors.[1]

I. 230268 Substitute Version

In examining the draft versions of 230268, the neighborhoods have questioned the decision behind deleting safeguards that exist in 88-321. We have not received sufficient explanation for those decisions. The neighborhoods believe there was good cause to include these safeguards in 88-321. They must be enforced to protect the safety and quality of life of neighbors and STR guests.

[1] For purposes of our discussion, we will provide comments on the substitute version provided on April 5, 2023 by Mr. Decker. (Attached as Exhibit 1). The comments should be applicable to the versions originally introduced, which were woefully inadequate.

With regard to the substitute version of 230268 (in order of the draft), we provide the following common-sense comments and safeguards:

- 88-321 contained a requirement that a resident STR must be "occupied by that person for a cumulative minimum of 270 days per calendar year." This should be included in the definition of "primary residence": "*Primary residence* means the place in which a person's habitation is fixed for the term of the registration, is occupied by that person for a cumulative minimum of 270 days per calendar year, and is the person's usual place of return. A person can have only one (1) primary residence."
- We believe that good operators should be encouraged. That is why we believe that allowing for relief from an annual re-registration requirement in the form of multi-year registrations and lower fees for re-registration is appropriate. We propose the following fee structure:

  Fee. A registration fee as follows:
  - Resident short-term rental registration fee:
    - Initial one year registration fee: $300.00
    - Renewal three-year registration fee: $150.00
  - Non-resident short-term rental registration fee:
    - Initial one year registration fee: $600.00
    - Renewal two-year registration fee: $300.00

- The deletion of the requirement for neighbor/owner signatures for non-resident STRs is the most egregious aspect of this draft ordinance. It categorically denies a voice to neighbors regarding commercial uses in a neighboring residential property. However, we believe a good compromise is the proposed substitute 230267 prohibiting STRs in R zoned properties. If, however, that fails, this ordinance must include a requirement for "notarized signatures of at least 55 percent of adjacent residential property owners (including those adjoining and immediately across the street) consenting to the non-resident short-term rental."[2] The notarization requirement will eliminate the concern expressed by City staff regarding operators forging neighbor signatures. Also, add as in 88-321, "For purposes of sending notices to and obtaining consents from adjacent property owners under this section, utilize owners' names and addresses as provided in current county tax assessors' records."
- The deletion of neighbor/owner signatures for non-resident STRs for non-R zoned properties raises the same concerns. However, we believe a good compromise is the zoning and density requirements as proposed. This would include the 1,000 feet radius requirement in structures with fewer than three dwelling units and the 12.5% cap in structures with three or more dwelling units. If, however, that zoning and density provision fails, this ordinance must include a requirement for "notarized signatures of at least 55 percent of adjacent residential property owners (including those adjoining and immediately across the street) consenting to the non-resident short-term rental." The notarization requirement will eliminate the concern expressed by City staff regarding operators forging

[2] With regard to neighbor/owner signatures from adjacent properties, it should be observed that this should exclude adjacent properties owned by the same operator. Operators should not be able to amass a block of STRs simply because they own adjacent properties. The City recognizes this is improper and doesn't allow this in other instances, for example, when obtaining consents for liquor licenses.

neighbor signatures. Also, add as in 88-321, "For purposes of sending notices to and obtaining consents from adjacent property owners under this section, utilize owners' names and addresses as provided in current county tax assessors' records."

- With regard to the safety, legal, and tax requirements, there are several safeguards and provisions that need to be included or revised:
    - Registrants and owners should be required to certify that they have not been barred or banned from STR operation in any jurisdiction. (And if they have, they should be prohibited from obtaining a registration.)
    - The proposed language, "No more than eight persons shall occupy the dwelling unit at any given time," does not meet the neighborhood concerns and appears to have been lost in translation in prior communications. The neighborhoods requested the inclusion of the language from 88-321, "No more than two persons per each bedroom being rented plus one additional person per dwelling unit, not to exceed eight guests per dwelling unit, may occupy the dwelling unit." The concern is an excessive number of guests, a flat limit of eight would be completely inappropriate for a one-bedroom apartment, for example.
    - STRs should have an inspection requirement of not less than once per registration period in order to ensure a safe and healthy environment. "Registrant and owner will allow inspection of the short-term rental dwelling unit not less than once per registration period and upon request by the city for fire, public safety, health/sanitation and other city code compliance purposes upon reasonable prior notice (which may be oral or electronic) at times that such unit is not occupied by a short term-rental guest."
    - Per the above comments in 230267, this may be the appropriate location for the carriage house and accessory building requirements.
- Operators that are known to have been a problem and barred in other jurisdictions, should be prohibited from obtaining a registration: "*Prohibition for short*-term rentals registered, operated, or owned by a person or entity that has been barred or banned from operating short-term rentals in another jurisdiction. No registrant or owner that has been barred or banned from operating a short-term rental in another jurisdiction shall be eligible for registration as a short-term rental."
- Operators who are found to be in repeated violation of this Code (or were found to be in violation of Chapter 88), or who have had incidents resulting in arrest, property damage, or physical harm or death to a person should be prohibited from obtaining a registration.
- With regard to Deregistration:
    - It is unclear why section (a) only focuses on non-resident STRs and there is no deregistration section for resident STRs who fail to comply with the Code. This may have been a drafting error. However, clearly, <u>ANY</u> STR that fails to comply with the Code should be eligible for deregistration. "*Short-term rental Code*

violation. A short-term rental registered under this article may be deregistered under this article when, in the determination of the director, such short-term rental fails to comply with the requirements of this article or any other provision of this Code."

- Again, an operator that is found to have been barred in another jurisdiction should be eligible for deregistration. "*Ban or bar from operation of a short*-term rental in any jurisdiction. Any registrant or owner that has been barred or banned from operating a short-term rental in any jurisdiction may be deregistered under this article when, in the determination of the director, such ban or bar is due to a disregard of the laws of the jurisdiction or demonstrates a disregard for the health, welfare, and safety of short-term rental guests and the surrounding community."
- An operator that has provided false or fraudulent information should be eligible for deregistration. "*Providing False or Fraudulent Information.* A short-term rental registered under this article may be deregistered under this article when, in the determination of the director, the registrant or owner provided false or fraudulent information under Sections 56-803, 56-806, 56-807, or 56-808."
- The effect of deregistration should carry adequate consequences and time to remedy violations of the Code. In the instance where expiry of the registration period is shortly after the deregistration, the deregistration has little to no effect. Thus, it should be "shall not be eligible to register again with the City until after the short-term rental's registration period would have otherwise expired had it not been deregistered or one-year, whichever period is greater."
- The key to stopping unregistered STRs from operation is removal from the booking platform. Deregistration alone does not accomplish that without a requirement that the Director notify the booking platform of a deregistration. And that notification should occur in a timely manner. The current draft is devoid of any requirement that the Director notify the booking platform of a deregistration. This requirement was in 88-321-04A(2) and should be included in the new ordinance. "The director shall also notify all booking service providers of the deregistration within five business days of deregistration and advise the booking service providers to remove the deregistered short-term rental from its platform and advertising and to disallow any payment pursuant to Section 56-807."

- We support the change in the registration section making registrations non-transferrable to new owners or registrants. However, it does not address those permitted under Chapter 88. If a Chapter 88 permitted STR changes ownership or registrant, it must also be required to undergo reregistration under Sec. 56-808. In addition, change in ownership or registrant should end any Chapter 88 exclusions under the density or any other provision in Chapter 56. For example, if a Chapter 88 permitted STR sells to a new owner, that property should lose <u>all</u> exemptions under Chapter 88 and only be reregistered if it meets the full requirements of Chapter 56, including the zoning and density requirements.
- Some guests and hosts circumvent payment on booking platforms by connecting on those platforms but then conducting communication and payment outside those platforms. So,

again, it is critical that booking platforms remove any properties that are not registered. The prohibition against unlawful transactions isn't sufficient to encourage removal. Thus, language should be used that captures the facilitation of transactions. "*Unlawful transactions.* It shall be a violation of this article for any booking service provider to facilitate a transaction between a prospective guest and a person or entity offering a short-term rental or receive payment, directly or indirectly, for a short-term rental located in the city that is not registered pursuant to this article. The provisions of this subsection (d) are entirely strict liability in nature."

- Key to protecting the safety and welfare of guests and the community is an awareness of complaints and problems associated with STRs. This was appropriately recognized in 88-321-04B, which required record keeping of complaints by operators and booking platforms. Yet this requirement is inexplicably omitted from the draft Ordinance. Proposed 56-808 Sections (a) and (b) should include a provision requiring record keeping of "Any complaints received from guests, local residents, or others regarding any actual or alleged nuisance activity, violation of the safety, legal, or tax requirements of this article, or sanitary, health, or life safety conditions observed on the property."
- This draft Ordinance also repeatedly exempts "properly registered STRs pursuant to Chapter 88." However, it does not provide any guidance as to when or if that exemption expires. And as raised above, if the entirety of current Chapter 88 is deleted, it appears to leave those permitted under Chapter 88 subject to no rules.
    - What is the intention here? If the permit under Chapter 88 reaches its expiry, does the operator then reregister under Chapter 56 going forward? That was what City staff led us to understand but the Ordinance does not appear to reflect that. It states that a properly registered STR pursuant to Chapter 88 is exempted from the registration requirements. More clarification is needed here. (See, e.g., Sec. 56-803 Annual STR registration. "The requirements stated in this section shall not apply to a properly registered short-term rental pursuant to Chapter 88 of this Code. Unless exempted from this section, beginning May 15, 2023, each dwelling unit, before being offered, provided or operated as a short-term rental in the city, shall have its registrant submit the following to the director…."
    - Later, in the zoning and density requirements, non-resident STRs permitted under Chapter 88 are excluded. The neighborhoods believe it is reasonable to exclude non-resident STRs currently properly permitted by obtaining signatures from the new density requirements. However, does that apply to those that received Special Use Permits over the objection of neighbors? The definitions seem to suggest as much, but the neighborhoods believe that there should be a difference between currently permitted non-resident STRs that obtained neighbor consent and those that required SUPs.
    - When it comes to unlawful acts under Sec. 56-807, there's just a blanket exemption for Chapter 88 STRs. Is that simply until the Chapter 88 permit expires? Otherwise, how can enforcement occur? Certainly, registered under whatever

Chapter, the unlawful acts outlined in Sec. 56-807 are important and should not be tolerated from any STR.

- Some big picture questions also remain:
    - Enforcement has been non-existent. How are neighborhoods guaranteed that the Unlawful Acts will be prosecuted? Why does the director not have the discretion to issue fines? The fines will not be a deterrent if there's no commitment to prosecution.
    - Moving registrations and enforcement to Chapter 56 appears to completely take the role and voice of neighborhoods out of the picture. There is no current provision regarding neighborhoods' input in registration or deregistration decisions. This needs to be revisited, as the community should have a voice. Under Chapter 88, there were many opportunities for neighbors and neighborhoods to participate—signatures, the SUP process. Here, neighbors are denied a voice.
    - How do we prevent sex offenders from renting units where they would by law be prohibited from residing? We know the booking platforms are not screening for this issue based on information provided from operators who participated in this analysis.

II. 230267 Substitute Version

The City has proposed moving the STR enforcement to Section 56 of the Code in order to transfer enforcement to the Neighborhoods Division. But there are significant questions that have not been addressed by either 230267 or 230268.

For example, if 230267 completely replaces 88-321, what regulations are applicable to STRs that are permitted under 88-321 but exempted from 230268 until the current permit expires? What, if anything is "grandfathered" in for those properties with a valid 88-321 permit?

There are certain aspects of zoning that must be addressed, even if enforcement is moved to Chapter 56. More specifically (in order of the draft):

- We strongly support the prohibition of non-resident STRs in R zoned properties. The primary source of problems surrounding STRs stems from non-resident STRs in residential neighborhoods.
    - **Crime in the short term.** Neighbors have reported violent and large parties, domestic violence, public drunkenness and urination, drug dealing, theft, excessive noise, trash, and strangers entering or demanding entry to the wrong property.
        - For example, in the summer of 2022, a loud, two-day party took place in Columbus Park on Harrison Street. As the homes are close together, neighbors could not sleep and the music was audible blocks away. The operator could not be reached until the second night. By that time, news of the party was spread on social media; guests were charging at the door to let others in. It broke up after a knife fight in the street. The following weekend, neighbors chased off numerous individuals attempting auto theft.

        - This property was once a duplex and is now a single-unit, non-resident STR without a permit. The owner is a real estate agent and landlord with several STR properties.
        - The displaced tenants struggled to find affordable housing. Many long-term residents had to leave Columbus Park due to lack of affordability and inventory.
        - Prior to this event, the Airbnb listing specified this property as a "party house." It's now described as a "fun house."
    - Just like other cities, Kansas City and its neighborhoods have endured shootings[3], sex trafficking, drug trafficking, and the filming of pornography. The relative anonymity offers an appealing location for criminals and Airbnb takes care to minimize the publicity.
    - The third-party platforms do not perform background checks on guests. Police don't have the staff or time to deal with nuisances.
    - Corrective measures are only reactive; after the damage is done. It's impossible for even the best host to control guest behavior when they are not there to do it.
- **Crime in the long term.** According to a study, the ongoing presence of strangers led to an increase in *violent crime* because the community lost a primary method to maintain security: familiarity with neighbors and a sense of community. Out of all the problems, this loss may be the greatest, yet hardest to quantify. It is of utmost concern that the neighborhood is evolving to serve investors and strangers while residents are expected to adapt. Non-resident STRs in neighborhoods present no benefits, only challenges. Resident STRs are enough.

> *The paper builds on existing sociological theories of social organization: the idea that a community of close-knit neighbors who know and trust each other establishes and enforces its own social norms, reducing crime.* ***Essentially, the researchers found that what's behind the increase in violence is not the presence of tourists or visitors, but the absence of long-term residents who are integrated in the community****.*[4]

- **Housing shortages and rising costs.** Non-resident STRs have displaced tenants and contribute to rising rental costs as inventory shrinks. Cash buyers for homes outbid prospective home buyers. People need places to live more than tourists need an alternative to a hotel.
- **Community as commodity.** The trend to utilize real estate as a large-scale investment is accelerating. The wholesome days of mom-and-pop guest rooms for rent are shrinking, replaced by global firms treating shelter as a commodity.

> ***Investors hunting for returns in the frenzied U.S. real estate market are tapping a new strategy: building massive portfolios of houses to rent out on Airbnb.***

[3] Hyde Park: https://www.kshb.com/news/local-news/midtown-neighbors-want-airbnb-shut-down-after-shooting
[4] *Sidney Fussel, "Why do some crimes increase when Airbnbs come to town?"*

A recent filing reveals that Dublin, Ohio-based ReAlpha is seeking to spend as much as $1.5 billion, including debt, to buy short-term rentals at an unprecedented scale. The money would be enough to purchase roughly 5,000 homes….[5]

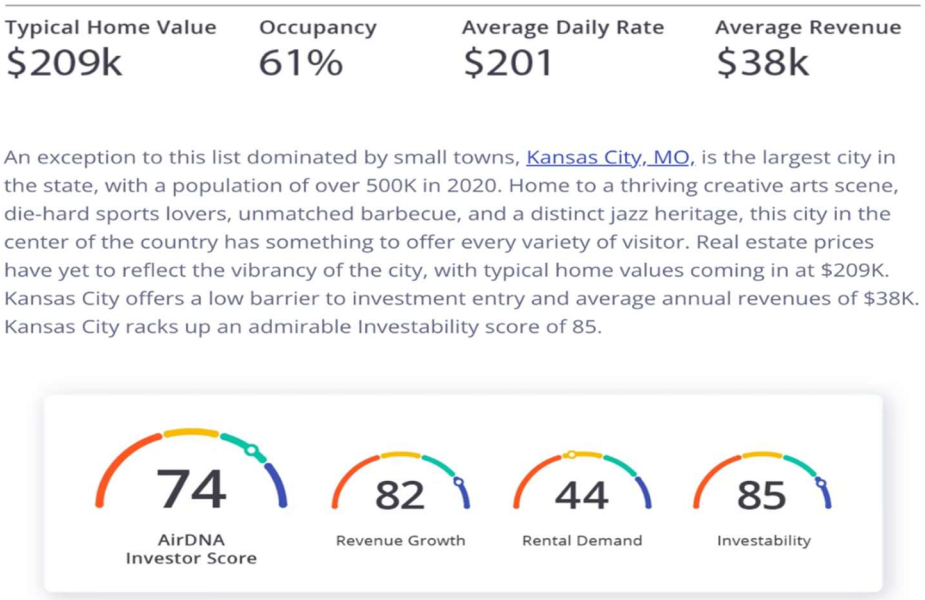
- The mass purchase of homes can have serious consequences for housing because the properties may not be maintained. Cincinnati was forced to buy homes to save them:

Brunner said the Port outbid 13 other investors for the Hamilton County portfolio of homes. The homes are appealing because property values here are low relative to the rents owners can charge, Brunner said, a situation that makes Cincinnati a target for investors with few ties to the community.

"These investors typically look to purchase homes in some of the county's most disinvested neighborhoods, leaving many renters vulnerable to eviction," Brunner said Wednesday. "Very simply, these investors are more concerned with profits than they are with people."

She said the Port's goal in acquiring the homes is to keep them from falling into disrepair or demolition, saving them for future homeowners.[6]

Figure 1: According to investor site AirDNA, Kansas City, MO, is in the top 20 recommended locations to investors.



[5] *Patrick Clark, "Who's buying the houses? Investors amassing thousands of Airbnb rentals," Orange County Register, June 25, 2021. (See also: "Blackstone expands further into rental housing in the United States" and "Blackstone is becoming a real estate power house.")*

[6] *Dan Horn, "Port buys almost 200 family homes for $14.5 million from struggling out-of-town landlord." Cincinnati Enquirer, Dec. 8, 2021. (See also: "Report: Texas leads the nation with nearly a third of homes sold to investors" and "American Dream For Rent: Investors elbow out individual home buyers Metro Atlanta is ground zero for corporate purchases, locking families into renting" and "Neighborhoods are being bought up by out-of-state investors with little to no interest beyond making money.")*

- **Disruptive industries like Airbnb are increasing in type and number.** Renting out a home for visitors is only the beginning. Swimply rents out private swimming pools for parties. GarageTime rents out garages to others for car repair. KinkBnb is self-explanatory.

- The substitute version of 230267 contains Table 110-1, where the modifications under Lodging for STRs are not listed in a manner consistent with any other use in the chart—containing verbiage rather than a -, S, or P, for each R district.
- Proposed revisions to 88-260-03 and 04 regarding UR and MPD districts. UR and MPD districts pose a unique issue because they re-zone properties for development and can change an R-zoned property to UR or MPH. First, is it odd that the introductory sentence of both these proposals is different. Second, we believe it provides too broad of a rule for non-resident STRs. Unless the project is exclusively residential, non-resident STRs would be allowed by this proposal. However, neighborhoods are benefitting from mixed-use developments that contain a small percentage of nonresidential uses; for instance, apartment buildings with commercial space on the first floor of development. We believe that there should be a formula whereby if the majority of the use is residential, non-resident STRs are not allowed.
- 88-321: Shouldn't it state that the current provisions would continue to apply to permits in place as of passage of 230267 until those permits expire and then renewal would be according to Chapter 56, rather than delete the current Ordinance completely?
- 88-321-01 (proposed): same comments regarding UR and MPD as above 88-260-03 and 04.
- Retain this section of 88-321: "A carriage house, as defined in 88-810-280 and permitted in accordance with 88-305-05, may be approved as short-term rental owner occupied if the principal building for such property is owner occupied," either here or in Chapter 56, whichever is most appropriate.
- Retain this section of 88-321: "The unit must be located within the principal building on the property and may not be located within an accessory building," either here or in Chapter 56, whichever is most appropriate.

III. Most of These Common-Sense Solutions Benefit Currently Permitted Operators And They Agree.

We want to address arguments we are hearing from current STR operators. The problems neighbors and neighborhoods are experiencing are most often associated with non-resident STRs that allow activities ranging from criminal to disruptive activities that are prohibited under the ordinance in place, but were absent from the earliest drafts of 230268. We have requested those prohibitions be put back in place, with some additional common-sense measures that address the root of the problems.

The most critical solution to making STRs an asset to our community is the ability to remove them from booking platforms once they are deregistered or when they are discovered to have failed to

register. Without that, bad actors will continue to allow activities at their properties that negatively impact those neighbors that have invested in and live in Kansas City.

So, let's look at what the STR operators are saying and why the common-sense requests made by neighborhoods are actually in alignment with the interest of those operators who claim to be law-abiding, "good" operators[7]:

- *We aren't currently permitted, but [insert excuse here]; We need an amnesty period because we have been operating without a permit*: Those who are operating without a license, for whatever reason, should not be given full faith and credit. They have shown a comfort and willingness to ignore the law and should be held accountable. Also, the new ordinance's registration requirements are much simpler than the previous one and it is confounding that operators don't recognize that. For example, many claim the requirement for neighbor signatures in Chapter 88 is untenable, and yet, now they are requesting amnesty to try (again?) to obtain permits pursuant to Chapter 88 when they claim they could not before? This doesn't make much sense.
- 1000 feet is too big a distance: First, the existing properties of all "good" operators that have current permits in place are excluded from this requirement, so it will not harm their operations in any way. As for their ability to expand, having this density limitation both preserves the quality of life of neighbors and guarantees a safe and nice environment in which their guests may enjoy any new properties they add to their portfolio. 1000 feet would essentially allow for approximately one STR per block. The operators propose 500 feet, which is more likely two on each block. This is too great a burden on our neighborhood blocks, where the presence of transient residents in multiple STRs reduces the number of neighbors committed to and invested in long term safety, maintenance, and political involvement for the benefit of our community. Second, this density requirement only applies to non-resident STRs.

And, keep in mind, the STR operators and neighborhoods agree on many things[8]:

- There is no dispute over the need for density requirements, only the appropriate distance.
- There is no dispute that a STR should not be advertised unless it is registered.
- There is no dispute there should be increased fines/imprisonment for violating the Ordinance.
- There is no dispute every registered STR should have a local contact.
- No group is calling for a complete ban of non-resident STRs.
- There is no dispute that better enforcement is needed.
- There is no dispute that the limit on guest numbers and parties/events is already part of the current ordinance and they are able to operate successfully-there are no calls to allow parties/events or excessive numbers of guests.

[7] Sources include "Position Statement of KC Short Term Rental Alliance" by Susan Brown, March 24, 2023; https://www.marei.org/legislative-update-kansas-city-short-term-rental-registration/, last viewed April 11, 2023.
[8] See FN7 above.