



Short-Term Rental Regulations

Analysis of Board Bills 33 and 34

July 10, 2023

INTRODUCTION

St. Louis REALTORS® reviewed Board Bill No. 33 (“Bill 33”) and Board Bill No. 34 (“Bill 34”) proposed for the City of St. Louis (the “City”). Collectively, Bill 33 and Bill 34 are referred to as the “STR Bills.”

Bill 34 would add a new Chapter 26.76 to the St. Louis Zoning Code (the “Zoning Code”)¹ defining the term “Short-Term Rental” and several related terms. It also states that it would establish “Short-Term Rental” as a permitted use in every zoning district. It would not become effective unless and until the City passes legislation establishing a permit process and regulations for short-term rentals (“STRs”).² Bill 34 proposes to establish two types of STRs: (1) Non-Occupied Short-Term Rental, which is defined as an STR that is *not* used as a principal residence by the owner or tenant; and (2) Occupied Short-Term Rental, which is defined as a STR that *is* used as the principal residence by the owner or tenant.³

Bill 33 would add a new Chapter 25.57 to the City’s Code of Ordinances (the “City Code”),⁴ titled “City of St. Louis Short-Term Rental Ordinance.”⁵ It would require property owners to obtain a short-term rental permit (“STR Permit”) from the Building Division before renting a dwelling unit as a short-term rental unit. Applicants would be limited to a maximum of four (4) Non-Occupied STR Permits. Bill 33 would also regulate short-term rental “intermediaries” and “platforms” that facilitate or assist an STR owner with advertising and/or booking of short-term rental tenancies, including a requirement that STR intermediaries and STR platforms obtain a “permit” from the City before conducting any STR advertising and/or booking operations in the City.

PART I

POLICY ISSUES REGARDING SHORT-TERM RENTAL REGULATION

St. Louis REALTORS® supports the regulation of short-term rentals by the City. The details of how it regulates it, however, are critically important.

Short-term rentals are important to the City for a variety of reasons. They bring in tax revenue, they support tourism and economic development, and they bring investment to properties in the City when the City is struggling with thousands of vacant properties. It’s critical that the regulations are crafted in way that continues to support investment in the City of St. Louis and does not intentionally or unintentionally lead to disinvestment in properties in the City.

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1. The Zoning Code is available online at: https://library.municode.com/mo/st._louis/codes/code_of_ordinances?nodeId=TIT26ZO.
 2. See Bill 34 preamble.
 3. See Bill 34 §§ 3(D); 3(E).
 4. The City Code is available online at: https://library.municode.com/mo/st._louis/codes/code_of_ordinances?nodeId=16330.
 5. The St. Louis, Missouri, Code of Ordinances is available online at: https://library.municode.com/mo/st._louis/codes/code_of_ordinances?nodeId=16330.

St. Louis REALTORS® advocates to protect private property rights. Among the core rights that a property owner has is the right to lease or rent the property on a temporary basis to another party.⁶ The Missouri Court of Appeals has recognized that “the right to disposition of property is a fundamental attribute” of private property ownership.⁷

Based on the conversation at the Transportation and Commerce Committee meeting in June 2023, the goal of the legislation is to create a legal framework for short-term rentals to operate and a process by which bad actors can be punished. With that goal, compliance for good faith actors should avoid being onerous. For example, by requiring a license and a permit, the City is putting up barriers to compliance when just a permit would suffice. With a new Red Tape Committee getting underway, the Board of Aldermen may want to consider a streamlined process in any new legislation as well.

In speaking with short-term rental operators, two of the most frequent concerns that have come up surround the limit of four properties and the lack of clarity around occupancy limits.

PART II

ISSUES RAISED BY THE STR BILLS

POINT 1: Bill 34 appears not to do what it purports to do – namely, make short-term rentals a permitted use in all zoning districts.

The preamble to Bill 34 states that it is “an ordinance ... enacting a new Chapter 26.76 on the subject of Short-Term Rental, with definitions and establishing Short-Term Rental as a permitted use in all Zones of the City of St. Louis.” However, no provision of Bill 34 appears to amend the Zoning Code in a way that would actually make STRs a permitted use in all zoning districts. Sections One and Three would add new definitions for Chapter 26.08 (Zoning Definitions) and a new proposed Chapter 26.76, while Section Two would declare the “Purpose” of Chapter 26.76. Section Four of Bill 34, which presumably is the provision that the drafters believe would permit STRs in every zoning district, states:

This ordinance does not become effective unless and until the City, by and through its Board of Aldermen, passes legislation that provides for a permit process and regulation of Short-Term Rentals, and such legislation becomes law. *Should such legislation become law, the Short-Term Rental as defined here will be permitted in every Zoning District.*⁸

While the text of this provision says that STRs “will be permitted in every Zoning District,” Section Four does not, on its face, amend the existing use regulations or any other provision of the Zoning Code to permit STRs in every zoning district.

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6. See J.E. Penner, *The “Bundle of Rights” Picture of Property*, 43 UCLA L. REV. 711 (1996) (noting that conventional “bundle of rights” formulation and various views of the “bundle of rights”).
 7. *Mullin v. Trolinger*, 179 S.W.2d 484, 490 (Mo. Ct. App. 1944).
 8. Bill 34 § 4 (emphasis added).

Section 26.16.10 (Uses Prohibited) of the Zoning Code states: “No structure or land shall be used for a use other than those permitted in the district in which such premises are located unless such use is permitted by other provisions of the Zoning Code.” This language suggests that the language of Bill 34, Section Four is not sufficient to accomplish its stated purpose. Rather, it appears that the Zoning Code would have to be amended in a way that expressly permits STRs in every zoning district (e.g., by amending the use regulations to include STRs as a permitted use in every zoning district). For example, in February 2023 the Board of Aldermen passed Ordinance 71633, which amended the Zoning Code to permit and regulate medical marijuana facilities, marijuana facilities, and other marijuana related uses in certain zoning districts.⁹ That ordinance created a new Section 26.70.030 (“Use Regulations for Marijuana Facilities”) that classifies each type of marijuana facility as a use that is either permitted, requires a conditional use permit, or is prohibited in each zoning district. By contrast, Bill 34 contains no provision that amends the text of the Zoning Code by adding STRs as a permitted use in every zoning district, raising the question whether the bill actually does what it purports to do.

POINT 2: The requirement that STR Permit applicants submit written rules acknowledging and agreeing that a violation of the STR Bills “may result in immediate termination ... and eviction” raises several concerns.

Bill 33, Section 5(A) requires short-term rental permit applicants to provide “written rules” to be posted in the STR that must include, among other things, an “*acknowledgment and agreement* that violations of [the STR regulations] may result in immediate termination of the agreement and eviction from the [STR] by the [STR Owner or Agent], as well as potential liability for fines levied by the City.”¹⁰ This provision raises several concerns from the standpoint of STR Permit holders as well as short-term renters.

First, there is no apparent basis for such an “acknowledgment and agreement.” Neither Bill 33 nor the existing City Code contains a provision requiring that short-term rental leases provide for possible termination and eviction for violations of Bill 33. Unless a particular short-term rental agreement itself establishes those as grounds for termination and eviction anyway (which would negate the need to have separate “written rules” in that case), what exactly would short-term renters or owners be acknowledging and agreeing to?

The intent of this provision may be to require that all short-term rental leases be subject to immediate termination and eviction of the tenants in the event of a violation, but Section 5(A) does not contain language saying that. Moreover, the City should not insert itself into lease negotiations between private parties. The grounds for which a short-term rental lease may immediately be terminated, and the tenants evicted should be determined by the parties to the agreement, not by City mandate.

9. See St. Louis Ordinance No. 71633 (<https://www.stlouis-mo.gov/government/city-laws/ordinances/ordinance.cfm?ord=71633>).

10. Emphasis added.

Lastly, it is unclear from the text of Section 5(A)(a) whose violation ostensibly could result in termination of an STR lease and eviction of the tenants. Is it only a violation committed by the renters of the STR property that could result in lease termination and eviction? Or would a violation committed by the STR owner (e.g., failing to obtain an STR Permit) also create the possibility that the City would force the landlord to immediately terminate the short term rental and evict the tenant because the STR use itself was unlawful? The latter interpretation is especially troublesome in that it could result in short-term renters having to vacate their rental home during the middle of a vacation or business trip, through no fault of their own.

POINT 3: It is unclear what Bill 33 would require STR agents to do to “handle” a problem arising from a short-term rental property.

Section 6 of Bill 33 would require an STR owner to designate a “Short-Term Rental Agent” who will “be available to handle any problems at all time[s] arising from the use of the Short-Term Rental Unit during the entire period of the rental.”¹¹ Neither Section 6 nor any other provision of Bill 33 specifies what a short-term rental agent must do to “handle” a short-term rental problem. In particular, it is unclear whether Section 6(1) would require an STR agent to respond in-person to complaints about a short-term rental property. Doing so could place the agent at risk of suffering physical harm and incurring potential liability if they are confronted with a badly behaving tenant or guest, who may be angry, irrational, or under the influence of alcohol or other substances. Requiring the short-term rental agent to respond on-site may also expose the City to claims of liability if the risk of physical harm is realized and a designated short-term rental agent is injured while on the premises at the City’s behest.

POINT 4: The proposed “Short-Term Rental Intermediary” and “Short-Term Rental Platform” regulations could apply to REALTORS® who offer residential units for short-term rental.

Bill 33 defines “Short-Term Rental Intermediary” and “Short-Term Rental Platform” as follows:

“Short Term Rental Intermediary” means a person or company who for compensation or a fee uses an internet platform to connect guests with Short-Term rental providers.

“Short Term Rental Platform” means a person or company who for compensation or a fee uses an internet platform to primarily list property rentals including Short-Term Rentals as defined in this Chapter.¹²

11. Bill 33 § 6(1).

12. Bill 33 § 9.

These definitions raise at least two concerns. First, the definitions are very similar, leaving it unclear precisely what the difference is between an STR Intermediary and an STR Platform. Given this similarity, it is questionable whether both terms are necessary, particularly because all of the requirements and restrictions that would apply to STR Intermediaries apparently would also apply to STR Platforms.

Second, because the definitions are very broad, the STR Intermediary and STR Platform requirements of Bill 33 would appear to apply to local real estate agencies that list short-term rentals on their websites. It is not clear whether the drafters intended to capture local real estate agencies along with online hosting platforms like Airbnb and VRBO in the definitions of STR Intermediary and/or STR Platform. Regardless, doing so would impose additional burdens on real estate agencies, many of which are small businesses. Bill 33's additional requirements might discourage some agencies and brokers from listing short-term rental opportunities. For example, the permit requirement in Section 9(A) would apparently extend to a real estate broker who lists short-term rentals for rent. Section 9(D) would also apparently require a real estate broker who lists short-term rentals on their website to refrain from booking any transaction for any residential property unless it is listed on the City's STR registry. As a practical matter, this would require the broker to regularly monitor the City's website listing of short-term rentals.

POINT 5: Proposed Section 8 raises several questions and concerns regarding how Bill 33 would be enforced by the City.

Section 8 of Bill 33 contains several provisions addressing enforcement of the bill and the penalties for violation, including revocation provisions. These raise the following questions and concerns:

- **Section 8(B)(1):** Proposed Section 8(B)(1) is a revocation provision that states, in relevant part:

When a Short-Term Rental Agent has accumulated three violations for the same property, the City shall revoke any pending licenses and reject all applications for Short-Term Rental License for that particular property for a period of twelve (12) consecutive months. Any additional properties with the same owner that do not have three (3) consecutive violations within a twelve (12) month period shall remain valid, and the Short-Term Rental Agent may continue to serve as the Agent if and until the underlying permit has been revoked.

The first sentence of this provision is problematic in that it has no set time period in which the three violations would have to occur in order for an STR Permit to be revoked. While the second sentence of Section 8(B)(1) sets a standard of three-violations in a twelve-month period, that language appears to apply only to "additional properties [owned by] the same owner" as the property for which the STR Permit was revoked. The lack of a twelve-month time period in the first sentence might be a drafting error that the City needs to correct. However, as currently written, Section 8(B)(1) would require that an STR Permit be revoked upon a third violation for a particular property, regardless of the violations occur over a period of ten months or ten years. To be fair, if the City is going to take a "three strikes and you're out" approach to STR violations, it should do so only if the three violations occur within a reasonable period of time (e.g., twelve months).

The intent of the qualifying language “when a *Short-Term Rental Agent* has *accumulated* three violations for the same property”¹³ in Section 8(B)(1) is also unclear. Does this language mean that a violation only counts towards permit revocation under Section 8(B)(1) if it is committed by the short-term rental agent? Or does it mean that an STR Permit must be revoked if Saint Louis Metropolitan Police Department has notified the agent of a third instance of “nuisance behavior” on a particular STR property, as Section 8(B) appears to require? Or does the language have a different meaning?

- **Section 8(C):** Bill 33, Section 8(C) states, in relevant part:

Except as provided herein, any person violating provisions of *the Code* shall be prosecuted as provided *in this Chapter*.¹⁴

Read literally, this provision appears to require that *any violation of any provision of the City Code*¹⁵ be prosecuted according to the regulations of Chapter 26.76 (i.e., Bill 33). That makes no sense. Assuming the intent of this provision is that any violation of Bill 33 will be prosecuted in accordance with Section 8, then Section 8(C) should be revised to say that.

- **Section 8(D):** Section 8(D) states, in relevant part:

The Building Commissioner has the power to initiate revocation of the license of a permit holder whose subject property is not being operated in compliance with the Short-Term Rental Operating Requirements set forth under this ordinance; and also to initiate revocation in the interest of the public welfare.

This provision appears to give the Building Commissioner unbridled discretion to initiate the revocation of an STR Permit for any violation of the STR operating requirements or “in the interest of the public welfare.” On what basis would the Building Commissioner decide whether a particular violation of the operating standards (presumably meaning those in Section 8(A)) should result in revocation of the property’s STR Permit? And how would the Building Commissioner determine whether the revocation of an STR Permit is “in the interest of the public welfare”? Notably, the language authorizing the Building Commissioner to “initiate revocation in the interest of the public welfare” does not appear to require that there be any violation of any law or regulation whatsoever, including the requirements of Bill 33. The lack of standards to guide the Building Commissioner in deciding whether to initiate revocation proceedings for a violation of the operating requirements or “in the interest of the public welfare” leaves Section 8(D) vulnerable to unfair and arbitrary decision-making, which may expose the City to claims based on the constitutional rights to due process and equal protection.¹⁶

13. Emphasis added.

14. Emphasis added.

15. City Code § 1.08.060 states: “‘The Code’ or ‘this Code,’ unless it shall be otherwise expressly provided, means the Revised Code of the City.”

16. See BRIAN W. BLAESSER, DISCRETIONARY LAND USE CONTROLS: AVOIDING INVITATIONS TO ABUSE OF DISCRETION §§ 1:44, 1:55 (THOMSON-REUTERS 2019).

POINT 6: There are internal inconsistencies and apparent drafting errors.

Bill 33 contains internal inconsistencies and other apparent drafting errors that should be remedied before adoption. The following is not an exhaustive list but is provided as an illustration of the problem.

- Each of the following terms are capitalized in various provisions of Bill 33, which typically indicates that they are defined terms: “Affidavit,” “Long-Term Rental,” “Application,” and “Short-Term Rental Operating Requirements.”¹⁷
Comment: These terms are not defined by Bill 33 or the existing Zoning Code.
- Bill 33 contains several terms that appear to be shortened versions of a defined term or variations of other terms. Some examples include: (1) “Non-Owner-Occupied Short-Term Rentals” vs. “Owner-Occupied Dwelling Unit” vs. “Owner-Occupied;” (2) “Short-Term Rental Unit Agent” vs. “Agent” vs. “Short-Term Rental Unit Agent;” (3) “Short-Term Rental License” vs. “Short-Term Rental Operator Permit;” and (4) “Short-Term Rental Platform” and “Short-Term Rental Intermediary vs. “Platform” and “Intermediary.”¹⁸ **Comment:** The inconsistent use of terminology causes confusion and makes it difficult to understand the meaning of provisions that use these terms.
- **Section 8(A)(a)(i)** refers to the “*license* number” of a short-term rental permit. **Section 8(B)(1)** refers in the same paragraph to “Short Term Rental *License*” and “Short Term Rental Permits.” **Section 8(D)** states that the Building Commission “has the power to initiate revocation of the *license* of a permit holder.” **Comment:** Bill 33 defines and requires STR owners or agents to obtain an STR Permit, not a license. References in Bill 33 to a license or license number appear to be erroneous.
- **Section Numbering Problems.** Several sections and subsections of Bill 33 appear to be misnumbered. For example, the bill has a Section 9 and a Section 11, but no Section 10. Section 9 is titled “Taxes,” but most of it addresses other matters. In Section 5, the subsections are marked with lowercase lettering, while all other sections of the bill appear to use uppercase letters for subsections. The numbering of Section 5 is also irregular, among other issues in this regard, it contains a sub-list level “A”¹⁹ that appears to be followed by a “2”²⁰ rather than a “B”.

17. Bill 33 §§ 4(A) 5; 5(b); 8(D).

18. Bill 33 §§ 3(G); 5; 5(g); 8(A)(b); 8(B); 8(B)(1); 9(B).

19. See Bill 33 at page 8, line 7.

20. See Bill 33 at page 9, line 19.

PART III

ISSUES RAISED BY SPECIFIC PROVISIONS OF THE STR BILLS

This part of the analysis focuses on concerns raised by specific provisions of the STR Bills. Each problematic provision listed below is followed by comments and recommendations. For ease of reference, where a provision has problematic terms or phrases, those are highlighted in *italics*.

- **Bill 33, Section 5(i)** states that “any Non-Owner-Occupied Short-Term Rental applicant may be issued permits for no more than four (4) Short-Term Rental Units in the City of St. Louis.”
- **Bill 33, Section 3(G)** defines “Short-Term Rental Permit” as “the permit issued by the Building Division of the City of St. Louis to the Short-Term Rental Owner or the designated Short-Term Rental Agent.”

Comment: Under proposed Section 5(i), the proposed cap on STR Permits would apply to the “applicant,” not the property owner. The definition of “Short-Term Rental Permit” states an applicant can be either the property owner or the designated short-term rental agent. The rationale for imposing an STR Permit cap on “applicants” is unclear. If the intent of the cap is to prevent an individual or a business from buying a large quantity of homes and converting them to short-term rentals (thereby reducing the City’s supply of long-term housing units), imposing an STR Permit cap on applicants would not further that goal. A person who owns eight dwelling units in the City, for example, could evade the cap by simply having two short-term rental agents each apply for four STR Permits. Imposing a four-permit cap on applicants could also have a negative impact on licensed real estate brokers or salespersons who currently serve as the short-term rental agent for more than four property owners, or wish to do so in the future. As a practical matter, many STR owners, particularly second-home owners, hire an agent to manage all aspects of a short-term rental property, including the filing of any necessary license or permit applications. There arguably is no good reason for the City to have an STR Permit cap that would prevent a licensed real estate broker or salesperson from serving as the applicant for more than four STR properties.

- **Bill 33, Section 3(G)** includes the following limitation in the definition of “Short-Term Rental Permit” when it states “Short Term Rental Permits shall only be issued to natural persons, and *not to business entities*.”
- **Bill 33, Section 4(A)** states “No person or entity shall rent, lease or otherwise exchange for compensation all or any portion of a Dwelling Unit as a Short-Term Rental Unit ... without first obtaining a Short-Term Rental Permit.”

Comment: These provisions are inconsistent in that the language of Section 4(A) suggests that an entity *can* obtain an STR Permit, while Section 3(G) explicitly states that STR Permits *cannot* be issued to “business entities.”

- **Bill 33, Section 5(j)** states that STRs “shall be made available to only the occupancy load to be determined by the Building Commissioner.”

Comment: Section 5(j) states that the Building Commissioner will determine the maximum occupancy for the short-term rental, but it does not state how or on what basis the Building Commissioner will make that determination. While the intent might be to set the maximum occupancy in accordance with the City's Residential Code,²¹ Section 5(j) of Bill 33 does not say that.

- **Bill 33, Section 5(A)(a)** requires that STR Permit applicants provide “notification via certified United States mail to *each property immediately adjacent*, as may be defined by the Building Commissioner, of their intent to secure a Short-Term Rental Permit.”

Comment: It is unclear how this requirement would be applied to multi-unit properties. If an immediately adjacent property is an apartment building, would the notice have to be sent to the property owner? Or would notice have to be given to the tenants of every apartment on the property? If the adjacent property is a multi-unit residential condominium building, would each unit owner have to receive notice, or would notice delivered to the HOA suffice?

- **Bill 33, Section 9(A)** states that permit applications for STR Intermediaries and STR Platforms must include an “Affidavit of a local contact person who will be available to address issues at a property listed by the permit applicant or holder under this section” and “a written plan with requirements for property owners whose property is listed on the permit holder’s platform to comply with.”

Comment #1: It is not clear why an STR Platform or STR Intermediary would have to submit an affidavit from a local contact person when Section 6 already requires that all STR properties have a short-term rental agent who is available to address issues arising from the STR unit.

Comment #2: It is unclear what is meant by the requirement that STR intermediaries and platforms submit “a written plan with requirements for property owners whose property is listed on the permit holder’s platform to comply with.” Does it mean the contract terms between the STR owner and the STR Platform or STR Intermediary? If not, what exactly does it mean?

- **Bill 33, Section 9(F)** states that the Building Commissioner may revoke permits issued to an STR Platform or STR Intermediary for violations of Bill 33.

Comment: This provision does not establish or incorporate by reference an existing set of standards or procedures for revocation of a permit.

- **Bill 33, Section 5** states “applicants for a Short-Term Rental permit for an *Owner-Occupied Dwelling Unit* [sic] shall submit, on an annual basis, an application for a Short-Term Rental Permit to the Building Division. The application shall be accompanied by a non-refundable fee in the amount of \$150.00.” The provision goes on to state that these applications (presumably referring to applications for Occupied Short-Term Rental permits) will be subject to an inspection by the Building Division.²²

21. See Chapter 25.11 (Residential Code) of the City Code.

22. Bill 33 § 5.

Comment: Section 5 is confusingly worded and unclear as to whether annual permit renewal requirement, \$150 application fee, and Building Division inspection requirements apply only to Occupied Short-Term Rentals or to Non-Occupied Short-Term Rentals as well. Section 5(h) states that “applicants for a Non-Owner-Occupied Short-Term Rental must provide a. through g. above,” but the permit renewal, fee, and inspection requirements are not included in sections (a) through (g).

- **Bill 33, Section 5(h)** states “Short-Term Rental permit applicants for a *Non-Owner-Occupied* Short-Term Rental must provide a. through g. above.”
- **Bill 33, Section 5(g)** states “An application for Short-Term Rental permit that will be *Owner-Occupied* will be accompanied by a notarized Affidavit, on a form provided by the City, which will require the applicant to *affirm that the property to be used as a Short-Term Rental is Owner-Occupied* by an owner who occupies the property as their primary residence.”

Comment: Requiring an applicant for a *Non-Owner-Occupied* Short-Term Rental permit to submit “a notarized Affidavit ... which will require the applicant to affirm that the property ... is *Owner-Occupied* by an owner who occupies the property as their primary residence” makes no sense and is an obvious error. Section 5(h) should be revised to exclude Section 5(g) from the list of requirements for Non-Occupied Short-Term Rental permit applications.

- **Bill 33, Section 5** states that Occupied Short-Term Rental Permit applications “shall require *the following information*, to be collected on a form provided by the Building Division.” This provision is followed by a sub-list, labeled “a.” through “n.”
- **Bill 33, Sections 5(i) through 5(n)** state the following:
 - i. Any Non-Owner-Occupied Short-Term Rental applicant may be issued permits for no more than four (4) Short Term Rental Units in the City of St. Louis.
 - j. Short-Term Rental shall be made available to only the occupancy load to be determined by the Building Commissioner, and that shall be the limit of persons that may occupy the Dwelling Unit being rented.
 - k. The permit holder of a Short-Term Rental unit may not enter into a contract with more than one (1) party during any given rental period.

l. The Short-Term Rental unit may not be rented or offered for use as reception space, party space, meeting space, or for other similar events.

m. No food service may be provided by the permit holder of the Short-Term Rental; pre-packaged foods and beverages may be provided in the Short-Term Rental Unit and will not violate this provision.

n. No exterior evidence that the property is being used as a Short-Term Rental shall be allowed, including signs, with the exception of a marker limited to one (1) foot by one (1) foot in size issued by the City of St. Louis.

Comment: Items “i” through “n” arguably do not belong in Section 5 (or at least not in this part of Section 5, which as discussed above, is poorly organized and misnumbered) because they are not “information” that an applicant would be able to provide on a “form provided by the Building Division.” Instead, items “l” through “n” appear to be operational restrictions for STRs, while items “i” through “k” are requirements and restrictions on the issuance of STR Permits.

Part IV

BROADER ISSUE

ISSUE 1: The regulation of short-term rentals as a “use” arguably is not within the scope of the City’s zoning authority.

Bill 34 purports to amend the Zoning Code by “establishing Short-Term Rental as a permitted use” in all zoning districts.²³ This regulatory approach is problematic because regulating short-term rentals arguably is not within the scope of the City’s zoning authority.

A key characteristic of local zoning power is the well-recognized principle that “zoning deals with land use, not the owner, operator, or occupant of the land.”²⁴ Zoning inherently pertains to land rather than to the landowner – it “deals basically with land use and not with the person who owns or occupies it.”²⁵ The purpose of zoning is to separate incompatible land uses, and to provide for an orderly and comprehensive scheme of land development within the community that facilitates the adequate provision of infrastructure resources and the overall comfort, convenience, and welfare of the community.²⁶

Neither the form of one’s interest in property (i.e., owner or renter) nor the duration of the occupancy (e.g., short-term vs. long-term) is relevant to the issue of use. As a general principle of zoning law, therefore, whether a dwelling unit is occupied by an owner or renter, and whether the occupancy is long-term or short-term, the use of the home is the same – it is for living purposes. Therefore, it can reasonably be argued that any ordinance that regulates dwelling units differently based solely on the occupant’s interest in property (owner or renter) or the duration of the occupancy (short-term vs. long-term), as Bill 34 would do, is contrary to the fundamental principle that zoning regulates on the basis of land use, not on the basis of who the user of the land is.²⁷

23. See Bill 34 preamble.

24. RATHKOPF’S THE LAW OF ZONING AND PLANNING § 2:16 (Zoning regulates the use of land—Identity or status of land users) (hereinafter “RATHKOPF”) (citing cases in Connecticut, Iowa, Louisiana, Maryland, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, and Washington) (emphasis added).

25. See FGL & L Prop. Corp. v. City of Rye, 485 N.E. 986,989 (N.Y. 1985).

26. RATHKOPF § 1:12.

27. See RATHKOPF § 2:16.