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New Orleans City Council

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Thomas Mulligan
Deputy Chief Administrative Officer, OBES
City of New Orleans
1300 Perdido St.,
New Orleans, LA 70112
Via Email

Dear Mr. Mulligan:

Thank you for sharing your intended changes for short term rental adjudication. I appreciate the explanations you set forth but remain concerned about STR adjudication, especially considering the failed adjudication meetings earlier this month.

It is your opinion that City Attorneys do not need to be present at STR adjudication hearings. To support this position, you cite an unattributed quote that "we felt that it was asking too much of our non-lawyer staff to go up against attorneys." Your letter implies that the possibility of legal representation by an STR defendant is the principal reason the City would want, or should have, its own legal representation at the hearing. You then go on to compare STR adjudication to Code Enforcement hearings.

The idea that STR adjudication is analogous to Code Enforcement adjudication is, at best, misguided. STR enforcement is inherently nuanced. Inspectors need to catch property owners in the act, either online or in-person. In contrast, the length of grass at a property is an objective fact, so are missing window slashes, broken glass, trash, piles of debris. With Code Enforcement cases, either it is, or it is not, a violation. The evidence needed to substantiate the violation is typically straightforward: photographs.

In a STR adjudication, evidence can be tangible, circumstantial, or testimonial. Presenting a legally defensible adjudication using such varied and often nuanced evidence is best handled by an attorney. To this end, the City always contemplated heavy legal involvement in STR adjudication. Prior staffing recommendations for the STR Administration contemplated at least two, and sometimes three, dedicated City Attorney positions.

It's not just that STR enforcement is more nuanced, it's also under active litigation. Instead of acknowledging the inherent legal climate surrounding STRs, you appear to be systematically removing all attorney involvement.

First, you remove the STR Administration from the oversight of the Chief Zoning Official and place it under the Deputy Director. You claim this elevates the STR Administration. However, you removed the Administration from direct legal oversight. The Chief Zoning Official is a classified position that requires a Louisiana law license, the Deputy Director is an unclassified position currently held by a non-attorney.

Now, after removing the Administration from direct legal oversight, you are pushing to remove all legal oversight from its adjudication process. It is my understanding that the Law Department was not invited to the first round of STR hearings last week. It is also my understanding that many of those hearings had to be reset due to errors made by the City in bringing the cases to adjudication.

You insinuate that requiring a City Attorney to attend adjudication hearings stymied the STR Administration's ability to bring cases to adjudication. Your solution to this problem is to eliminate the City's legal representation at a legal hearing. Before you champion such a drastic approach, especially considering on-going federal court litigation, a more judicious solution would be to hire more attorneys. As I've already mentioned, since at least 2019, the City has always proposed at least two dedicated City Attorney positions for STR enforcement. Has any meaningful effort been made in the past five years to expand the number of City Attorneys dedicated to STR enforcement?

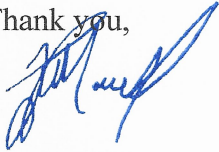
I am also concerned about the haste in which you are pushing adjudication hearings. Effective enforcement involves more than just bringing a violation to a hearing officer. The violation must be properly evidenced and supported. The required legal notices must be posted. When understaffed offices are forced to rush adjudications, mistakes are inevitable. There is a balance between quality and quantity of enforcement.

For example, after years of complaints from neighboring residents, 2616 Saint Ann, 24-02056-RENT, was scheduled for adjudication on July 9. Neighbors took the time out of their workday to attend the hearing. You can imagine their outrage when the City requested the hearing be reset to September due to a notice issue. Now, these same residents will need to take another day off work to attend a second hearing in two months and, in the meantime, continue to endure the disruption, noise, and trash generated by the unlicensed STR. The inability to see this case through to adjudication, on the first try, is an insult on top of injury for the neighbors.

Prior memos from the CAO's office state that with full staffing of 23 employees, STR Administration could handle 50 adjudication hearings per month. The Administration has 14 employees, as of May 31st, despite being budgeted for 26 positions. These 14 employees are now expected to handle 40 adjudication hearings in two weeks. The hearings are even scheduled while the Short Term Rental Administrator is out on leave. Not only is the current adjudication schedule more than twice the amount of work previously considered manageable by a full staff of 23 employees, but you are also now expecting overworked employees to perform adjudications without the support and involvement of the Law Department.

The Council will hold a joint Governmental Affairs and Quality of Life Committee meeting on Wednesday July 24 at 12 p.m. The enforcement of Short Term Rentals will be a primary topic on the agenda. Please plan to attend this meeting and be prepared to answer questions.

Thank you,



JP Morrell
Chair, Governmental Affairs Committee