



County of Fairfax, Virginia

MEMORANDUM

DATE: December 6, 2017

TO: Board of Supervisors

FROM: Donna Pesto, Deputy Zoning Administrator
Lily Yegazu, Senior Assistant to the Zoning Administrator *LY*
Department of Planning and Zoning

SUBJECT: Short-Term Lodging Draft Strawman
December 12, 2017 Development Process Committee

Attached are two strawman proposals for potential Zoning Ordinance changes related to short-term lodging (STL) operations. As we've been discussing, an STL is the rental of all or part of a dwelling for periods of less than thirty days, with the arrangement of these lodging opportunities typically handled through online platforms such as Airbnb, Flipkey, Craigslist, and others. Currently, STLs are not a permitted use under the existing Zoning Ordinance provisions, except through approval of a Special Exception for a Bed and Breakfast.

The first attachment sets forth proposed provisions regarding the operation of STLs in rental multiple family dwelling unit developments. This is the first formal presentation of draft provisions to the Committee, so staff intends to present the information and then return to the Committee on January 30, 2018 to discuss the provisions in more detail.

The second attachment is the draft strawman related to STLs in all other unit types. The Committee was introduced to this amendment in July and was presented with a preliminary strawman in October. This version of the strawman includes comments received from the Committee and reflects input from stakeholders, as well as the Planning Commission. The Planning Commission held a workshop on November 1, 2017 to consider the proposal. The Planning Commission's comments are highlighted in yellow to reflect changes made since the Development Process Committee's October consideration of this proposal.

Staff will be present at the December 12, 2017 Development Process Committee to discuss these proposals in more detail.

Attachment: A/S

DRAFT STRAWMAN – Development Process Committee, December 12, 2017
ZONING ORDINANCE AMENDMENT FOR SHORT-TERM LODGING IN RENTAL
MULTIPLE FAMILY DWELLING UNIT DEVELOPMENTS

**PROPOSED SHORT-TERM LODGING PROVISIONS IN RENTAL MULTIPLE
FAMILY DWELLING UNIT DEVELOPMENTS**

(All proposed provisions under this section are new, but are not underlined for ease of reading.)

Short-term lodging is permitted in multiple family dwelling unit developments subject to the following:

**Permitted Short-Term Lodging Use in a Rental Multiple Family Dwelling Unit
Development with Property Management**

[In the event that the Board does not want to permit this use, this entire section will be deleted.]

1. In any rental multiple family dwelling unit development located in a Transit Station Area, as defined in the Comprehensive Plan, the Board may approve in conjunction with a Rezoning Application or as a Special Exception, short-term lodging use in a rental multiple family dwelling unit development subject to the following limitations:
 - A. The Board may approve, in conjunction with a Rezoning Application, rental of a maximum of **fifty (50)** percent of the units in any multiple family dwelling unit rental building, as short-term lodging in new multiple family dwelling unit developments during the lease-up period for a period not to exceed **two (2)** years.
[To be advertised to allow the Board to adopt a provision from 2 years to 5 years and rental of 50% to 100% of the units.]
 - B. The Board may approve a rezoning, amendment to a rezoning, or special exception to allow short-term lodging not to exceed a maximum of **ten (10)** percent of the total unit count in existing multiple family dwelling unit rental buildings.
[To be advertised to allow the Board to adopt a provision from 5% to 10% of the total unit count in existing multiple family dwelling unit rental buildings to be used as short-term lodging.]
2. Any multiple family dwelling unit offered for short-term lodging under the provisions of this chapter must meet the following minimum requirements:
 - A. All advertisements for short-term lodging must state whether a designated off-street parking space is available to the lodger during the term of the short-term lodging contract. If no off-street parking is provided, all advertisements must specify where lodgers are authorized to park.
 - B. The following life safety measures must be provided in any building where short-term lodging is offered:
 - i. Interconnected smoke detectors and carbon monoxide detectors, where applicable, must be installed in the units and corridors where short-term lodging is provided,

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- 1 ii. A multi-purpose fire extinguisher must be installed in each unit used for short-
2 term lodging,
3
4 iii. Low level exit signs must be installed in all areas used for short-term lodging, and
5
6 iv. A diagram depicting two evacuation routes must be posted on or immediately
7 adjacent to every required egress door from each unit used for short-term lodging
8
9 C. The provisions of this Ordinance do not abrogate, nullify, or replace any private
10 regulations applicable to the dwelling unit or development in which located. It is wholly
11 the responsibility of the Operator to determine whether the dwelling or development is
12 subject to any regulations outside this Ordinance, including but not limited to, regulations
13 imposed by a condominium, cooperative, common interest community, property owners’
14 association, mortgage lender, or insurance provider. County staff will not review private
15 regulations or agreements to determine their applicability to a particular dwelling or
16 development.
17
18 3. Limitations:
19
20 A. The Aggregate Unit Operator must keep a record of all overnight lodgers, and the records
21 must be available upon request to any County official, employee or agent.
22
23 B. The Aggregate Unit Operator must comply with all applicable federal, state, and local
24 laws, ordinances and regulations. Operators must remit a Transit Occupancy Tax (TOT),
25 and must obtain a Business, Professional and Occupational License (BPOL), if
26 applicable, under the provisions of Chapter 4 of the Code of Fairfax County.
27
28 4. Hosting of commercial or group activities, events, or other gatherings, within the units
29 offered for short-term lodging is prohibited. Such activities, events or other gatherings
30 include, but are not limited to, luncheons, group meetings, educational events, recreational
31 events, tours, chef provided meals, reunions, banquets, house concerts, parties, weddings,
32 meetings, charitable fund raising, and commercial or advertising activities, regardless of
33 whether there is any form of compensation (direct or indirect) for the activity, event, or
34 gathering.
35

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ZONING ORDINANCE AMENDMENT FOR SHORT-TERM LODGING

PROPOSED SHORT-TERM LODGING PROVISIONS

(All proposed provisions under this section are new, but are not underlined for ease of reading.)

Short-term lodging is permitted as an accessory use in any dwelling or mobile home subject to approval by the Zoning Administrator in accordance with the following:

Definitions

For purposes of this section, the following definitions apply:

AUTHORIZED AGENT: A person at least 18 years of age available to address any issues that may arise related to the SHORT-TERM LODGING use.¹

OPERATOR: The proprietor and permanent resident, at least 18 years of age, of any DWELLING or MOBILE HOME offered for short-term lodging, whether as owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other possessory capacity.

PERMANENT RESIDENT: A person who occupies the DWELLING or MOBILE HOME for a minimum of one hundred eighty-five (185) days out of the calendar year with the intent to establish the DWELLING or MOBILE HOME as that person’s primary residence.

SHORT-TERM LODGING: The provision of a room or space that is suitable or intended for occupancy for sleeping or lodging purposes, for a period less than thirty (30) consecutive days, in exchange for a charge for the occupancy. Such use does not include ACCESSORY DWELLING UNIT, BED AND BREAKFAST, or HOTEL/MOTEL.

TRANSIENT OCCUPANCY: Use of a DWELLING or part of a DWELLING for occupancy for less than thirty (30) consecutive days.

Short-Term Lodging Use Requirements

Upon issuance of a Short-Term Lodging Permit, short-term lodging is permitted as an accessory use in any zoning district that permits residential uses and may be provided in any type of dwelling or mobile home provided the following requirements are met.

- A. All advertisements for short-term lodging must state whether a designated off-street parking space is available to the lodger during the term of the short-term lodging contract. **If no off-street parking is provided, all advertisements must specify where lodgers are authorized to park.**

¹ Additions and/or revisions to the draft strawman presented to the Planning Commission (PC) on November 1, 2017, based on feedback provided by the PC and comments received from the public, are shown with **yellow highlight**.

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- 1 B. The following life safety measures must be provided in any building where short-term
2 lodging is offered:
3
4 i. **Interconnected** smoke detectors and carbon monoxide detectors, where applicable,
5 must be installed in the units **where short-term lodging is provided**,
6
7 ii. **A multi-purpose** fire extinguisher must be installed in each unit used for short-
8 term lodging, and
9
10 iii. An emergency exit plan showing the path to the nearest exit from the area of the
11 dwelling or mobile home used for short-term lodging must be posted within the
12 area used for short-term lodging.
13
14 C. The Operator must maintain a log identifying all overnight lodgers, and the log must be
15 available upon request to any County official, employee or agent.
16
17 D. The Operator must comply with all applicable federal, state, and local laws, ordinances
18 and regulations. Operators must remit a Transient Occupancy Tax (TOT), and must
19 obtain a Business, Professional and Occupational License (BPOL), if applicable, under
20 the provisions of Chapter 4 of the Code of Fairfax County.
21
22 E. **A copy of the permit shall be posted prominently at the entrance to the dwelling and must**
23 **include the contact information of the Authorized Agent.**
24
25 F. The Operator must include the Short-Term Lodging Permit Number, as issued by the
26 Zoning Administrator in any and all advertisements including, but not limited to, any
27 online platforms or printed materials.
28

29 **Short-Term Lodging Use Limitations and Prohibitions**

- 30
31 A. **A short-term lodging operation is not permitted in an accessory dwelling unit, a detached**
32 **accessory structure, affordable dwelling unit, workforce dwelling unit or a temporary**
33 **family health care structure, as such uses are defined in Article 10 or 20, as applicable.**
34
35 B. Short-term lodging is limited to overnight rentals of not more than **ninety (90)** calendar
36 days per year with the Operator present. *[Note: To be advertised with flexibility to*
37 *allow the Board to consider a range of rental nights of up to 180 days. In the event that*
38 *the Board prefers an unlimited number of nights, this paragraph will be deleted and the*
39 *subsequent paragraphs renumbered accordingly.]*
40
41 C. Short-term lodging is limited to overnight rentals of not more than **thirty (30) to ninety**
42 **(90)** calendar days per year without the Operator present. *[Note: To be advertised with*
43 *flexibility to allow up to 180 days where the Operator is not present during a short-term*
44 *lodging.*

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- 1 D. **OPTION** – allows short-term lodgings without the Operator present. Short-term lodging
2 is allowed with no limit on the number of days and the Operator is not required to be
3 present during the rental period, however, an Authorized Agent that will respond to any
4 issued that may arise will be required. *If the Board chooses not to impose a limit on the*
5 *number of nights a unit can be rented without the Operator present, the maximum*
6 *number of days the unit could be rented without an Operator present will still be 180.*
7 *This is because of the requirement that an Operator be a permanent resident of the*
8 *dwelling/mobile home, which requires that the Operator be present in the home 185 days*
9 *of the year.)*
- 10
- 11 E. The maximum number of overnight lodgers is **six (6)**. *[Note: To be advertised with*
12 *flexibility that will allow the Board to consider a maximum total number of occupants*
13 *from 4 to unlimited, but in no event to exceed the maximum allowable by the Virginia*
14 *Uniform Statewide Building Code.]*
- 15
- 16 F. Only **one (1)** rental contract is permitted per night, and all lodgers staying in the dwelling
17 or mobile home must be associated with the same short-term lodging rental contract.
18 *[Note: To be advertised with flexibility to permit up to three contracts on any given*
19 *night. This provision will be modified accordingly to address the plural if the Board*
20 *adopts a standard that allows more than one contract per night.]*
- 21
- 22 G. Only lodgers registered under a rental contract and identified in the Operator’s log, and
23 any minors associated with the registered lodgers, are permitted on-site during the short-
24 term lodging contract period.
- 25
- 26 H. Hosting of commercial or group activities, events, or other gatherings, in connection with
27 the short-term lodging is prohibited. Such activities, events or other gatherings include,
28 but are not limited to, luncheons, group meetings, educational events, recreational events,
29 tours, chef provided meals, reunions, banquets, house concerts, parties, weddings,
30 meetings, charitable fund raising, and commercial or advertising activities, regardless of
31 whether there is any form of compensation (direct or indirect) for the activity, event, or
32 gathering.
- 33
- 34 I. The provisions of this Ordinance do not abrogate, nullify, or replace any private
35 regulations applicable to the dwelling or mobile home. It is wholly the responsibility of
36 the Operator to determine whether the dwelling or mobile home is subject to any private
37 regulations outside this Ordinance, including but not limited to, regulations imposed by a
38 condominium, cooperative, common interest community, property owners’ association,
39 mortgage lender, or insurance provider. County staff will not review private regulations
40 or agreements to determine their applicability to a particular dwelling, mobile home,
41 community, or lot.
- 42 J. The offering of a dwelling or mobile home, in whole or in part, for Short-Term Lodging
43 without an approved Short-Term Lodging Permit is prohibited.
- 44

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1 **Short-Term Lodging Permit Requirements**

- 2
- 3 A. A completed Short-Term Lodging Permit Application Form
- 4
- 5 B. Written acknowledgement by the Authorized Agent(s) that the Authorized Agent(s)'
- 6 contact information is correct, and that the Authorized Agent will be available to respond
- 7 to any to complaints regarding the condition, operation, or conduct of occupants of the
- 8 Short-Term Lodging use and take remedial action to resolve any such complaints in the
- 9 absence of the Operator.
- 10
- 11 C. Written consent from the legal owner or legal representative of the owner of the dwelling
- 12 or mobile home if the Operator is not the owner of the dwelling or mobile home.
- 13
- 14 D. Proof of permanent residency established by providing copies of two (2) of the following
- 15 documents: motor vehicle registration; driver's license; voter registration or U.S. passport
- 16 showing the address of the subject property; most recent tax return; pay stub; utility bill;
- 17 or other document(s) deemed acceptable by the Zoning Administrator as proof of
- 18 permanent residency.
- 19
- 20 E. Short-Term Lodging Permit application fee, as set forth in Article 18.

21

22 **Short-Term Lodging Permit Validity**

- 23
- 24 A. A Short-Term Lodging Permit is valid for **two (2) years** from the date of issuance, unless
- 25 revoked or terminated earlier. A Short-Term Lodging Permit is valid for only the
- 26 original Operator and is not transferable to any other resident, Operator, or address. The
- 27 Operator is responsible for renewing the Short-Term Lodging Permit prior to its
- 28 expiration. [*Note: To be advertised with flexibility to allow the Board to consider a one*
- 29 *or two year permit validity.*]
- 30
- 31 B. A Short-Term Lodging Permit is revocable by the Zoning Administrator because of the
- 32 **failure of the Operator to comply with any provision of this ordinance, or any other local**
- 33 **ordinance, state or federal law or regulation** related to short-term rental use.
- 34

35 **PROPOSED FEES**

- 36
- 37 1. Establish a new Short-Term Lodging Permit fee of **\$200** for a two-year permit. [*Note: To be*
- 38 *advertised with flexibility, including whether permit is approved annually or every 2 years*
- 39 *and for a fee that is equivalent to \$60 to \$250/year.*]
- 40
- 41 2. Adjust existing Category 5 Special Exception fee for Bed and Breakfast from \$16,375 to
- 42 \$8,180 and keep other Category 5 use fees at the current rate of \$16,375. [*Note: To be*
- 43 *advertised with flexibility to allow the Board to consider any fee from \$4,090 to \$16,375.*]
- 44