



County of Fairfax, Virginia

MEMORANDUM

DATE: October 26, 2017

TO: Planning Commission

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

SUBJECT: Short-Term Lodging Draft Strawman
Planning Commission Workshop – November 1, 2017, 7:00-9:00 PM

Attached is a draft strawman of Zoning Ordinance changes related to short-term lodging operations in dwelling units. Short-term lodging is the rental of all or part of a dwelling for periods of less than 30-days. This kind of rentals is typically offered for rent through online platforms such as Airbnb, Flipkey, Craigslist, and others. Currently, short-term lodging is not a permitted use under the existing Zoning Ordinance provisions.

The draft strawman introduces new definitions and provisions related to short-term lodging and identifies changes that are needed to certain existing provisions. The proposed provisions would regulate who can operate short-term lodging, impose limits on the operation and develop a permit process for seeking approval of short-term lodging as an accessory use to the occupancy of a dwelling.

Staff is continuing to gather input and develop regulations pertaining to short-term lodging, so you will note certain provisions are “placeholders” for further development. These are presented as concepts for the Planning Commission to consider at the Workshop.

Attachment: A/S

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ZONING ORDINANCE AMENDMENT FOR SHORT-TERM LODGING

NEW AND AMENDED DEFINITIONS

(Proposed text changes are identified by underlining or strikethrough.)

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3
4 BED AND BREAKFAST: A single family detached dwelling unit which is owner or manager
5 occupied, in which five (5) or fewer guest rooms without cooking facilities are rented to transient
6 visitors for a period ~~not to exceed~~ of less than thirty (30) days.

7
8 DWELLING: A building or portion thereof, but not a MOBILE HOME, designed or used for
9 residential occupancy. The term 'dwelling' ~~shall is not be~~ construed to mean a motel, rooming
10 house, hospital, or other accommodation used for more or less transient occupancy, except as
11 may be permitted in accordance with an approved SHORT-TERM LODGING Permit.

12
13 DWELLING, MOBILE HOME: A single family residential unit with all of the following
14 characteristics: (a) designed for long-term occupancy, and containing sleeping accommodations,
15 a flush toilet, a tub or shower bath and kitchen facilities with plumbing and electrical connections
16 provided for attachment to outside systems; (b) designed to be transported after fabrication on its
17 own wheels or on a flat bed or other trailer or detachable wheels; (c) arriving at the site where it
18 is to be occupied as a dwelling complete, conventionally designed to include major appliances,
19 and ready for occupancy except for minor and incidental unpacking and assembly operations,
20 location on foundation supports, connection to utilities, and the like; (d) designed for removal to
21 and installation or erection on other sites. A mobile home may not be used for transient
22 occupancy, except as may be permitted in accordance with an approved SHORT-TERM
23 LODGING Permit.

24 A mobile home may include one (1) or more units, separately towable, which when joined
25 together ~~shall~~ must have the characteristics as described above. For the purpose of this
26 Ordinance, a mobile home ~~shall is not be~~ deemed a SINGLE FAMILY DETACHED
27 DWELLING.

28
29 SHORT-TERM LODGING: The provision of a room or space that is suitable or intended for
30 occupancy for sleeping or lodging purposes, for a period less than thirty (30) consecutive days,
31 in exchange for a charge for the occupancy. Such use does not include ACCESSORY
32 DWELLING UNIT, BED AND BREAKFAST, or HOTEL/MOTEL.

33
34 TRANSIENT OCCUPANCY: Use of a dwelling or part of a dwelling for occupancy for less
35 than thirty (30) consecutive days.

36
37
38 **PROPOSED SHORT-TERM LODGING PROVISIONS**

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

40
41 Short-term lodging is permitted as an accessory use in any dwelling or mobile home subject to
42 approval by the Zoning Administrator in accordance with the following:
43

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1 **Permitted Short-Term Lodging**

- 2
- 3 1. Short-term lodging may be conducted only by a registered Operator in possession of an
- 4 approved Short-Term Lodging Permit.
- 5
- 6 A. For purposes of this section, an “Operator” is defined as the proprietor of any dwelling,
- 7 sleeping or lodging accommodations offered for short-term lodging, whether as owner,
- 8 lessee, sub-lessee, mortgagee in possession, licensee, or any other possessory capacity.
- 9
- 10 B. An Operator must be a permanent resident of the dwelling or mobile home identified on
- 11 the Short-Term Lodging Permit and must be at least eighteen (18) years of age. A
- 12 permanent resident is a person who occupies the dwelling or mobile home for a
- 13 minimum of one hundred eighty-five (185) days out of the calendar year with the intent
- 14 to establish the dwelling or mobile home as that person’s primary residence.
- 15
- 16 2. Any dwelling or mobile home offered for short-term lodging must meet the following
- 17 minimum requirements:
- 18
- 19 A. All advertisements for short-term lodging must state whether a designated off-street
- 20 parking space is available to the lodger during the term of the short-term lodging
- 21 contract.
- 22
- 23 B. A working fire extinguisher, smoke detector, and carbon monoxide detector must be
- 24 provided within the area of the dwelling or mobile home used for short-term lodging.
- 25 *[NOTE: staff is working with the Building Officials to determine if there are any Code*
- 26 *requirements applicable to these devices.]* Additionally, an emergency exit plan
- 27 showing the path to the nearest exit from the area of the dwelling or mobile home used
- 28 for short-term lodging must be posted within each bedroom used for short-term
- 29 lodging.
- 30
- 31 C. *[NOTE: staff is working with the Building Officials to determine the best way to codify*
- 32 *that rooms used for sleeping during a short-term lodging contract meet certain*
- 33 *minimum safety standards. For example, for the conversion of a space to a bedroom*
- 34 *(such as in a basement), staff wants to ensure that adequate egress is provided in the*
- 35 *event of an emergency. Additional information will be provided when available.]*
- 36
- 37 D. The provisions of this Ordinance do not abrogate, nullify, or replace any private
- 38 regulations applicable to the dwelling or mobile home. It is wholly the responsibility of
- 39 the Operator to determine whether the dwelling or mobile home is subject to any
- 40 regulations outside this Ordinance, including but not limited to, regulations imposed by
- 41 a condominium, cooperative, common interest community, property owners’
- 42 association, mortgage lender, or insurance provider. County staff will not review
- 43 private regulations or agreements to determine their applicability to a particular
- 44 dwelling, mobile home, community, or lot.

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1
2 E. The maximum number of adult occupants per bedroom used for short-term lodging is
3 two (2), for a maximum of not more than six (6) adults per overnight stay. *[Note: To*
4 *be advertised with flexibility.]*
5

6 3. Limitations:
7

8 A. Upon issuance of a Short-Term Lodging Permit, short-term lodging is permitted as an
9 accessory use in any zoning district that permits residential uses and may be conducted
10 in any type of dwelling or mobile home.
11

12 B. Short-term lodging is limited to overnight rentals of not more than *[30-180]* calendar
13 days per year. *[Note: To be advertised with flexibility.]*
14

15 C. The Operator must be present in the dwelling or mobile home during all overnight
16 lodging periods, except that for a maximum of *[14-60 days]*, the unit may be rented
17 without the Operator present. *[Note: To be advertised with flexibility.]*
18

19 D. Only one rental contract is permitted per night, and all persons staying in the dwelling
20 or mobile home must be associated with the same rental contract. *[Note: To be*
21 *advertised with flexibility. If more than one contract will be allowed, an alternative*
22 *provision is required.]*
23

24 E. The Operator must maintain a log identifying all overnight adult guests, and the log
25 must be available upon request to any County official, employee or agent. Only guests
26 registered under a rental contract and identified in the Operator's log, and any minors
27 associated with the registered guests, are permitted on-site during the short-term
28 lodging contract period.
29

30 F. The Operator must comply with all applicable federal, state, and local laws, ordinances
31 and regulations. Operators must remit a Transit Occupancy Tax (TOT), and must
32 obtain a Business, Professional and Occupational License (BPOL), if applicable, under
33 the provisions of Chapter 4 of the Code of Fairfax County.
34

35 G. All advertisements, including online platforms, printed materials, and all other types of
36 advertisements, must include the Short-Term Lodging Permit Number, as issued by the
37 Zoning Administrator.
38

39 H. A Short-Term Lodging Permit is valid for one (1) year from the date of issuance, unless
40 revoked or terminated earlier. The Operator is responsible for renewing the Short-Term
41 Lodging Permit annually. A Short-Term Lodging Permit is valid for only the original
42 Operator and is not transferable to any other resident, Operator, or address. *[Note: To*
43 *be advertised with flexibility.]*
44
45

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- 1 4. To obtain a Short-Term Lodging Permit, an Operator must submit the following:
2
3 A. A completed Short-Term Lodging Permit Application Form.
4
5 B. Written consent from the legal owner or authorized agent of the owner of the dwelling
6 or mobile home if the Operator is not the owner of the dwelling or mobile home.
7
8 C. Proof of permanent residency established by providing copies of two (2) of the
9 following documents: motor vehicle registration; driver's license; voter registration or
10 U.S. passport showing the address of the subject property; most recent tax return; pay
11 stub; utility bill; or other document(s) deemed acceptable by the Zoning Administrator
12 as proof of permanent residency.
13
14 D. Short-Term Lodging Permit application fee, as set forth in Article 18.
15
16 5. *[NOTE: Staff is currently considering provisions that would allow commercially-operated*
17 *multiple family rental properties to include a small percentage (10%) of the units for short-*
18 *term lodging, potentially as accessory to the long-term rental of the units within the*
19 *building. Staff has been working with stakeholders on this topic and will continue to work*
20 *toward development of appropriate regulations. This placeholder is included to facilitate*
21 *Planning Commission discussion of this topic.]*
22
23

24 **Prohibitions Related to Short-Term Lodging**
25

- 26 1. A short-term lodging operation is not permitted in an accessory dwelling or a temporary
27 family health care structure, as such uses are defined in Article 20.
28
29 2. Hosting of commercial or group activities, events, or other gatherings, in connection with
30 the short-term lodging is prohibited. Such activities, events or other gatherings include, but
31 are not limited to, luncheons, group meetings, educational events, recreational events,
32 tours, chef provided meals, reunions, banquets, house concerts, parties, weddings,
33 meetings, charitable fund raising, and commercial or advertising activities, regardless of
34 whether there is any form of compensation (direct or indirect) for the activity, event, or
35 gathering.
36
37 3. The offering of a dwelling or mobile home, in whole or in part, without first obtaining an
38 approved Short-Term Lodging Permit is prohibited.
39
40 4. Upon violations on more than three occasions of applicable state and local laws,
41 ordinances, or regulations as they relate to the short-term lodging use, an Operator may be
42 prohibited from obtaining or renewing a Short-Term Lodging Permit.
43

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PROPOSED FEES

1. Establish a new Short-Term Lodging Permit fee of **\$60-150**. *[Note: To be advertised with flexibility, including whether permit is approved annually or every two years.]*
2. Adjust existing Category 5 Special Exception fee for Bed and Breakfast from \$16,375 to \$8,180 and keep other Category 5 use fees at the current rate of \$16,375. *[Note: To be advertised with flexibility.]*

VIOLATIONS, PENALTIES AND ENFORCEMENT

Under the applicable provisions of the State Code, failure to register a short-term lodging with the local jurisdiction is a violation punishable by a civil penalty of \$500. Staff proposes to include the required registration, as set forth in the State Code, as part of the Short-Term Lodging Permit.

[NOTE: Zoning Administration, Code Compliance, County Attorney, Tax Administration, and Procurement and Materials Management staff are working to identify resources for obtaining data regarding short-term lodging operations. We may be able to secure information pertaining to the location of these operations, owners/operators, and possibly information identifying rental frequency through a contract with a “data mining” company.]