

SHORT TERM RENTALS

Issue: A short-term rental is any occupancy of a dwelling for a period of less than thirty days. The Zoning Ordinance currently does not permit such uses in any dwelling unit and only allows short-term overnight stays as a hotel/motel or bed and breakfast, both of which could require a rezoning or special exception. The Code of Virginia was changed in 2017 to allow localities to require the registration of short-term rentals. In order to implement the registration, the Zoning Ordinance would need to be revised to specify the parameters under which short-term rentals could be allowed. As such, staff will be developing options for the Board's consideration and potential adoption.

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Additional Information:

The Zoning Administration Division has developed a specific website for short-term rentals, which can be found here: <http://www.fairfaxcounty.gov/dpz/short-term-rentals.htm>. This website includes a link to the survey results, the State Code provisions, a calendar of events and frequently asked questions. Staff will primarily use this website to provide you with the most current information regarding this topic.

Board Directive: The Board of Supervisors adopted the Zoning Ordinance Amendment Work Program for 2017 to include the following amendment:

8. State Code Changes

- a. Short-term/homestay rentals - Initiate an analysis of short-term/homestay rental business models in residential areas and develop regulations that balance the interests of entrepreneurs with those of the community, safeguard local revenue sources and mitigate land use impacts. The State Code changes grant considerable flexibility to allow localities to establish regulations for short-term/homestay rental business models.

RELEVANT PROVISIONS FROM THE CODE OF VIRGINIA

§ 15.2-110. Authority to require approval by common interest community association. (2016 H1146)

No locality shall require, prior to the issuance of any permit, certificate, or license, including a building permit or a license for a business, profession, or child care facility, that the governing board of an association subject to the Condominium Act (§ 55-79.39 et seq.), the Property Owners' Association Act (§ 55-508 et seq.), or the Virginia Real Estate Cooperative Act (§ 55-424 et seq.) consent to the activity for which the permit, certificate, or license is sought. The provisions of this section shall not be applied to limit or otherwise impinge upon the provisions of a condominium instrument as defined in § 55-79.41, the declaration of a common interest community as defined in § 55-528, or the declaration of a real estate cooperative as defined in § 55-426.

§ 15.2-983. Creation of registry for short-term rental of property. (2017 SB1758)

- A. As used in this section:

<http://www.fairfaxcounty.gov/dpz/short-term-rentals.htm>
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"Operator" means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity.

"Short-term rental" means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.

- B.
1. Notwithstanding any other provision of law, general or special, any locality may, by ordinance, establish a short-term rental registry and require operators within the locality to register annually. The registration shall be ministerial in nature and shall require the operator to provide the complete name of the operator and the address of each property in the locality offered for short-term rental by the operator. A locality may charge a reasonable fee for such registration related to the actual costs of establishing and maintaining the registry.
 2. No ordinance shall require a person to register pursuant to this section if such person is (i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.
- C.
1. If a locality adopts a registry ordinance pursuant to this section, such ordinance may include a penalty not to exceed \$500 per violation for an operator required to register who offers for short-term rental a property that is not registered with the locality. Such ordinance may provide that unless and until an operator pays the penalty and registers such property, the operator may not continue to offer such property for short-term rental. Upon repeated violations of a registry ordinance as it relates to a specific property, an operator may be prohibited from registering and offering that property for short-term rental.
 2. Such ordinance may further provide that an operator required to register may be prohibited from offering a specific property for short-term rental in the locality upon multiple violations on more than three occasions of applicable state and local laws, ordinances, and regulations, as they relate to the short-term rental.
- D. Except as provided in this section, nothing herein shall be construed to prohibit, limit, or otherwise supersede existing local authority to regulate the short-term rental of property through general land use and zoning authority. Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Condominium Act (§ 55-79.39 et seq.), the declaration of a common interest community as defined in § 55-528, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55-508 et seq.).