DATE: September 21, 2020

TO: Board of Supervisors

FROM: Leslie B. Johnson
Zoning Administrator

SUBJECT: Status Update on Adopted Short-Term Lodging (STL) Zoning Ordinance Amendment (ZOA)

Introduction
This memorandum provides an update on the Short-Term Lodging (STL) Ordinance in response to the follow-on motion adopted by the Board on July 31, 2018, in conjunction with the adoption of the STL Zoning Ordinance Amendment (Attachment A). The follow-on motion requested that staff monitor and report back on the effectiveness of the STL regulations 18 months from the effective date of the ordinance (October 1, 2018, through March 31, 2020). Due to Covid-19 related challenges in obtaining information and other priorities, the reporting period was extended through July 31, 2020.

The Board’s adoption of the STL regulations was intended to allow limited STL operations in the County, balancing the interests of residents in protecting the character of their residential neighborhoods with the interests of residents who want to operate STLs in their homes, while also taking into consideration the concerns citizens and stakeholders voiced during the outreach process. The Board Agenda Item related to the STL Zoning Ordinance Amendment and full staff report are available on the County’s dedicated STL website for reference.

The Board requested monitoring and reporting on the following:

1. The number of STL permits issued and how that number compares to activity data provided by Host Compliance.
2. The amount of tax revenue received and how that number compares to the rental activity data provided by Host Compliance.
3. The number, nature, and disposition of complaints received related to STL uses.
4. Whether there should be a special permit or special exception process to expand the STL uses beyond what is provided for under these amended provisions.
5. Whether additional resources, enforcement mechanisms or protocols are needed to adequately address the permitting and enforcement of STL uses.
6. Whether any privacy-related concerns or incidences have been reported to County staff.
7. Comparison of the County Ordinance to surrounding jurisdictions, the number of rentals and the number/type of complaints received.
8. To explore the possibility of entering into an agreement with the major hosting platforms to remove non-compliant operators from those platforms.

The County departments implementing, monitoring, and reporting on the various aspects of the STL regulations include the departments of Planning and Development (DPD), Tax Administration (DTA) and Code Compliance (DCC) and the Office of the County Attorney (OCA). Staff from the four departments, as well as other departments, continue to meet quarterly to discuss STL-related issues.

**Background**

In 2017, the Virginia General Assembly (GA) enacted Virginia Code § 15.2-983, affirming a locality’s right to regulate the short-term rental of property through its general land use and zoning authority. As a result of the enacted GA bill, and after extensive public outreach by County staff and input from the public, the Board unanimously adopted ZO-18-473 on July 31, 2018, with a delayed effective date of October 1, 2018.

The Ordinance established provisions to allow STL in the County as an accessory use to the primary occupancy of a dwelling or mobile home, subject to the issuance of a two-year, $200 **STL permit** and subject to certain use limitations. Specifically, a dwelling or mobile home may be used for STL for no more than 60 nights per calendar year; the maximum number of lodgers per night may not exceed 6 adults, except where the Virginia Uniform Statewide Building Code requires fewer occupants; the maximum number of rental contracts per night is one; and, all lodgers occupying an STL must be associated with the same rental contract. The regulations also prohibit all events and activities—including luncheons, banquets, parties, weddings, meetings, fundraising, commercial or advertising activities, and any other gathering of persons other than the authorized lodgers, whether for direct or indirect compensation. Each rental is required to pay **Transient Occupancy Tax** (TOT) for each rental contract and STLs are not permitted in a detached accessory structure, accessory dwelling unit, temporary family health care structure, or affordable dwelling unit.

In addition to these requirements, the County’s regulations require the STL property to have one designated parking space, which the operator has the authority to reserve, available for STL purposes. The regulations also require that the operator be a permanent resident of the property hosting the STL. All advertisements for STL, posted on any platform online or in any other format, must include the STL permit number and identify the location of the required parking space and any other available parking or public transportation options. As part of the STL amendment, the Board also reduced the Special Exception fee for a Bed and Breakfast by approximately 50%.

To enhance enforcement efforts, the County contracted with an outside consultant, Host Compliance, which tracks the addresses and rental activity of STLs across multiple online platforms and provides screenshots of listings and contact information of STL operators. The initial term of the contract was from July 31, 2018, through June 30, 2020, at a rate of $52,000 per year. DPD funded the first year and the second year was equally funded by DCC, DPD,
and DTA. The contract has been extended for an additional two-year period through June 30, 2022, for a total amount of $58,682 per year shared equally by the three departments mentioned above.

To encourage operators to obtain an STL permit and legalize their STL operations, DPD sent approximately 840 letters to operators that were identified on the Host Compliance dashboard on September 7, 2018, before the effective date of October 1, 2018. Additionally, DTA sent two rounds of letters to residential operators identified through the Host Compliance dashboard, in September and November 2018, reminding them that, as owners of establishments offering temporary lodging for transient guests, they are each required to file a monthly return and remit the applicable TOT.

**STL Status Update**
1. **The number of STL permits issued and how that number compares to activity data provided by Host Compliance**

As of July 31, 2020, the County has issued 143 permits and collected $28,600 in application fees. The social distancing and travel restrictions due to Covid-19 have substantially reduced STL activities in the County and worldwide. Hotel and short-term rental platforms such as Airbnb have seen an enormous loss in their revenues due to the decrease in demand for transient accommodations. This decrease in activity is reflected in the County’s STL permit activity. After the issuance of the statewide stay-at-home order in March, there were no STL applications received or issued by the County in April, May, and June. Only one permit was issued in July.

![Monthly status report](image1)

The Host Compliance dashboard (Figure 1) indicates approximately 1,159 listings advertised in the County as of August 2, 2020. This number has gone down by 137 listings from 1,296 listings to 1,159 listings or approximately 11% since April 2020. The August Host Compliance dashboard identified the addresses of 676 properties, which are 58% of the 1,159 STL active listings. Furthermore, of the 676 identified listings, 543 or 80% are listings related to
individual operators while the remaining 133 or 20% are listings of hotels and other commercial operators. The number of permits issued through July 31, 2020, is approximately 26% of the 543 active residential listings whose addresses were identified; this equates to approximately one in four operators having secured an STL permit. A map of the County depicting the location of all STL permits issued is provided in Figure 2.

The Providence District has the highest number of permits issued at 25 permits or 17% of the 143 permits issued, followed by 22 permits or 15% of the permits issued for properties in the Mount Vernon District and 18 permits or 13% of the permits issued for properties in the Mason District. A breakdown of the number of permits issued per Magisterial District is provided in Figure 3 below.
In addition, of the 143 total permits issued, 98 permits or 69% of the permits were issued for STLs in detached single-family homes, 39 permits or 27% of the permits were issued for STLs in townhomes, and six permits or 4% of the permits were issued for STLs in multifamily homes including condominiums as indicated in Figure 4.
Lastly, although STL permits were issued in almost all residential Zoning Districts, the majority of STL permits were issued for properties in the R-3 District at 25 permits or 18% of the permits, followed by the R-2 and PDH Districts at 22 permits each or 15% of the permits issued, as indicated in Figure 5.

![COUNT OF STL PERMITS ISSUED BY ZONING DISTRICT](image)

**Figure 5: Permits Issued by Zoning District as of July 31, 2020**

2. The amount of tax revenue received and how that number compares to the rental activity data provided by Host Compliance

The amount of tax revenue collected from residential STL operators from the effective date of the Ordinance through July 31, 2020, is $127,090\(^2\) and the total amount including the tax revenue collected from commercial operators is $204,403. A breakdown of the monthly TOT amount received from both residential and commercial operators is provided in Table 1. STLs are subject to TOT at a rate of 6% of gross rental income received. TOT is required to be paid by operators for each rental contract, and operators are required to file a monthly return and remit the TOT due to DTA on or before the last day of the month following the reporting month. A monthly return is required to be filed even if no taxes are due. Additionally, if gross receipts exceed $10,000 per calendar year, a Business Professional and Occupational License (BPOL) is required.

Unlike neighboring jurisdictions, such as Loudoun County and the City of Alexandria, Fairfax County chose not to enter into a voluntary collection agreement (VCA) with Airbnb. Under a

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1 Staff notes that one STL permit was issued for a property in the C-8 District that is developed with a detached single family dwelling, a nonconforming residential use that predates the current Zoning Ordinance.

2 The number of residential operators that file TOT taxes is 251 and exceeds the number of STL permits issued, which is 143. State law does not allow DTA to share taxpayer information with other departments.
VCA, Airbnb would collect and remit TOT to the jurisdiction where the STL is located on behalf of the operator. However, payments are submitted without any detailed information on the booking transaction from which the tax amount is derived and without producing personally identifiable information relating to any hosts or guests, limiting the duty of jurisdictions to ensure the tax reported is correct and removing the capability to perform the constitutional requirement of uniformity in all assessment of taxes.

At the time the Zoning Ordinance amendment was considered, it was anticipated the TOT revenues received from STL operators would be approximately $428,268 annually. Of this amount, $249,823 would have gone to the General Fund, and the remainder would have been used to support tourism and regional transportation as required by state law. The difference between the tax revenue collected and the data provided by Host Compliance is attributable to the following:

- Initial revenue projection assumed 100% collection on active listings; in reality, only approximately 58% of the listings could be identified by Host Compliance. Furthermore, only 46% of the residential operators are remitting tax payments.
- While the County has implemented an STL permit process, the absence of a penalty for not having a permit may result in non-compliance.
- Hotels are now listing vacancies in the various STL platforms, so some of the 58% identified by Host Compliance are hotels. STL revenues from hotels may be included in their monthly TOT filings, but DTA cannot confirm this in the absence of an audit program.
- DTA is developing a new computer system and a compliance program to ensure better compliance. The new tracking system is in development and implementation is scheduled for October 2020. This system will improve all discovery and compliance efforts.

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*Table 1: Breakdown of TOT Revenue Received*
3. The number, nature, and disposition of complaints received related to STL uses

DCC primarily leads the STL enforcement efforts in the County and handles complaints according to the County’s established procedures like any other zoning violation. When a complaint is received, DCC staff will investigate and follow standard enforcement protocol. If an investigation identifies a violation, the first step taken by DCC investigators is to educate and provide information on how to bring the violation into compliance. In the case of an STL violation, compliance typically is achieved by obtaining an STL permit. If it is determined that the property or operator is not eligible to operate an STL, ceasing the STL operation and removing the listing from hosting platforms will resolve the complaint and result in compliance. If a violation is not corrected, a Notice of Violation (NOV) is issued requiring the violation be brought into compliance within a set amount of time. DCC investigators have access to the Host Compliance dashboard, which aids in their investigation and assists with the enforcement of the STL regulations.

Between the time that the STL regulations became effective on October 1, 2018, and through July 31, 2020, DCC has received a total of 112\(^3\) STL-related complaints at 104 different properties, of which:

- One case was administratively closed because the property was in the Town of Herndon.
- 26 cases are still open and under investigation.
- 54 cases were closed due to lack of evidence that a violation existed.

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\(^3\) Three properties were inaccessible to DCC investigators and the cases were subsequently closed.
• 28 were brought into compliance, with 17 securing a permit and the remaining removing their listings from the various platforms or changing to a long-term rental (30 days or more).

Similar to the number of permits issued, the Providence District has the highest number of complaints received at 21 complaints or approximately 18% of the 112 complaints received, followed by 19 complaints or approximately 17% of the complaints received for properties in the Mason District and 14 complaints or approximately 12% of the complaints received for properties in the Mount Vernon District. A breakdown of the number of complaints received per Magisterial District is provided in Figure 7 below.

![Figure 7: Number of Complaints Received by Magisterial District as of July 31, 2020](image)

Nineteen NOVs were issued for STL related violations during the reporting period. Five of the cases are still open, four were closed due to lack of evidence of violation, three were brought into compliance by securing a permit, three were brought into compliance by ceasing STL operations and removing their listings from the platforms, and four were brought into compliance by changing the operation from a short-term (less than 30 days) to a long-term rental (30 days or more) and advertising a 30-day minimum stay.

After the adoption of the STL regulations in July 2018 and before the effective date in October 2018, DPD staff mailed informational letters and flyers to operators. As a result, some operators ceased their STLs or changed their listing to a long-term rental. Complaints received before the effective date of the STL regulations that were not resolved by the time the Ordinance became effective were closed to give STL operators an opportunity to bring their properties into compliance. DCC still retains the property history that will inform new investigations if a complaint is received again.
Most of the complaints received relate to illegal or unpermitted STL operations, but each complaint typically contains alleged violations of one or more STL limitations. A summary breakdown of complaints received is provided below:

- Possible operation of STL at a property (mentioned in 32 separate complaints).
- Operating without a permit or listing of STL on online platforms without including the County’s STL permit number (mentioned in 23 separate complaints).
- STL operation in violation of the County’s rules and regulations (mentioned in 20 separate complaints).
- STL rental periods longer than the County’s maximum 60 nights per calendar year (mentioned in 18 separate complaints).
- The operator or owner does not live in the property violating the County’s permanent residency requirement (mentioned in 16 separate complaints).
- Over occupancy, resulting in the creation of a boarding house or STL guests exceeding the STL maximum occupancy limit of 6 adults (mentioned in 16 separate complaints).
- Operating multiple STL units or operating STLs out of detached structures or basements without appropriate second means of egress (mentioned in 15 separate complaints).
- Multiple vehicles parked on driveway or illegal parking on the wrong side of the curb, blocking neighbor’s driveways, or taking up street parking that serves the neighborhood (mentioned in 11 separate complaints).
- Designated parking space not provided, or no parking information provided on listings (mentioned in 9 separate complaints).
- Advertising or allowing multiple contracts per night in violation of the County’s maximum of one contract per night limit (mentioned in 6 separate complaints).
- Noise related to parties or other commercial activities (mentioned in 6 separate complaints)

STL cases are time-sensitive due to the additional research investigators must conduct to collect the evidence necessary to take enforcement action during the rental period and while the violation is active. As of July 31, 2020, DCC had received 112 complaints or approximately 10% of the 1,159 active STLs or 21% of the 543 identified residential STLs operating in the County. While these numbers do not discredit the concerns raised, they do reflect that there may be a significant number of STLs currently operating without any negative impacts on their communities. The staff work group has looked at options that could potentially help further reduce the number of violations as detailed below in Item 5.

4. Whether there should be a special permit or special exception process to expand the STL uses beyond what is provided for under the amended provisions

Staff has continually received feedback from operators and inquiries from would-be operators on the existing STL regulations. The two most common comments received relate to the limitation on the number of nights allowed to operate STLs per calendar year (60 nights) and the permanent residency requirement. Specifically, the concerns indicate that the limit on the number of nights is too restrictive and that most operators use up the 60 nights within the first several months of the year. Operators also stated that the revenue generated from the 60 nights’ rental does not cover the renovation and upkeep expenses of their STL units. In terms of the primary residency requirement, operators have indicated that it is too restrictive, because
property owners that have more than one property are precluded from operating STLs in one or more of their properties. Additionally, operators that live half the year but less than 185 days per year in a residence or have jobs that require them to live elsewhere are penalized by the primary residency requirement.

The staff working group has considered different options that may allow expanding opportunities for operating an STL beyond the 60-nights-per-year limit with no changes to most of the current use limitations or permit process including:

- Allowing more than 60 nights by right while still requiring the operator to be present during the rental period. This may encourage more unpermitted STL operators that currently advertise on the platforms and operate illegally to apply for a permit. The limitation on the number of rental nights is identified as one of the main reasons for not filing a permit; or
- Allowing an increase in the number of nights with either special permit approval by the Board of Zoning Appeals or special exception approval by the Board of Supervisors up to 180 nights; or
- A combination of the first two bullets—allowing more than 60 nights by-right and requiring special permit or special exception approval beyond the number of nights permitted by right, up to a maximum of 180 nights per year.

Another option for consideration would be to allow operation of STLs when the operator is not a permanent resident either by-right with a limitation on the number of nights or with approval of a Special Exception or a Special Permit at the same fee as is charged for a Bed & Breakfast fee. As mentioned previously, the Board reduced the Special Exception fee for a Bed and Breakfast by approximately 50%. This was done with the intention of offering additional opportunities for transient lodging in the County for properties that would not otherwise qualify to operate a STL. However, a Bed and Breakfast use is only permitted in a dwelling that is in the R-A through R-2, PDH and PRC Zoning Districts and excludes properties in other zoning districts, including the R-3 Zoning District, where the majority of the STL permits are currently issued. This option could provide a way to operate an STL beyond the current limitation to operators that do not qualify to operate a Bed and Breakfast.

5. Whether additional resources, enforcement mechanisms or protocols are needed to adequately address the permitting and enforcement of STL uses

Enforcement of STLs continues to be difficult as illegal operators are becoming more creative in their quest to maintain their STL operation, which includes removing photos that show the property frontage and other exterior identifying features from the hosting platform and providing photos of the interior only. This has made it difficult for Host Compliance and DCC to identify the specific addresses of active STLs.

As noted previously, only 58% of the active residential listings are identified by Host Compliance and only 143 properties or 26% of active residential listings have secured STL permits. This indicates there are a significant number of operators within the County that are operating illegally. Additionally, the complaints that relate to illegal or unpermitted STL
operations are higher than the complaints related to violation of the various aspects of the STL limitations, such as exceeding the number of allowable nights, exceeding the occupancy limit, inadequate parking or noise related to parties or other commercial activities.

The staff work group considered lessons learned from other jurisdictions in reviewing the non-compliance rate and STL operation-related complaints. Some options for consideration include issuing NOVs based on information found on the Host Compliance platform without a reported complaint or imposing a penalty for non-compliance with the permitting requirements instead of issuing an NOV. These changes could help bring more illegal STL operators into compliance without potentially requiring additional resources and at the same time generate additional revenue to help offset the Host Compliance service fee.

Host Compliance provides additional services that the County did not purchase, such as a web-based tax and enforcement fee collection mechanism on behalf of a jurisdiction; ongoing monitoring of STLs for compliance by sending up to two letters; providing reports and analysis to support tax audits and support STL-related investigation; and a 24/7 telephone and email hotline for complaints and other non-emergency problems related to STLs. Staff believes the current services provided in the contract are sufficient and meet the needs of the three departments utilizing the dashboard. Although the addresses of illegal rentals are difficult to accurately report, staff still uses the services of Host Compliance to confirm reported STL uses that have not secured an STL permit.

6. Whether any privacy-related concerns or incidences have been reported to County staff

Staff did not receive any privacy-related concerns and there were no such incidences reported as of the date of the preparation of this memorandum.

7. Comparison of the County Ordinance to surrounding jurisdictions, the number of rentals and the number/type of complaints received

A comparison of the County’s STL Ordinance to jurisdictions that were able to share their information with staff is provided in Attachment B. Information from some jurisdictions was not available due to lack of access to staff as a result of Covid-19.

Staff notes that the difference between the number of permits issued and the number of unpermitted listings for the City of Santa Monica is very low. As fully detailed in Section 8 below, this is due to a settlement agreement between the City of Santa Monica and Airbnb that requires Airbnb to conduct a sweep of unlicensed listings and remove them from its platform twice a year. As a result, there are only a few illegal listings found on Airbnb, the number one platform advertising in the City.

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4 Some jurisdictions are governed by the laws of their respective states and are not subject to Virginia’s specific Dillon Rule requirements.
8. Consider possibility of entering into an agreement with the major hosting platforms to remove non-compliant operators from those platforms

The major platforms that advertise in Fairfax County are Airbnb and VRBO (HomeAway). Additional platforms such as FlipKey (TripAdvisor) and other smaller platforms and property management companies also advertise in the County. Staff has attempted to reach out to Airbnb to start a dialogue, with no success. In researching other jurisdictions, staff learned that Airbnb has entered into agreements with jurisdictions to remove unpermitted listings only after the jurisdictions successfully defended challenges to their ordinances brought by AirBnB under the federal Communications Decency Act and the First Amendment. Some jurisdictions—including the City of Santa Monica; City and County of San Francisco; and New York City—have enacted ordinances that make hosting platforms responsible for collecting and remitting transient occupancy taxes, for providing detailed host information to the jurisdiction, and for removing listings that are not properly registered with the jurisdiction. Staff notes that each of the three jurisdictions mentioned above has a much higher number of STL operators in their communities than the County.

9. Update on Litigation Related to County’s STL Regulations and the Virginia Legal Landscape

Since the adoption of the STL ordinance, there were four separate lawsuits filed by STL operators - Ms. Abdelhalim, the Galeys, the McEwans, and the Ratcliffs - in response to the BZA upholding the Zoning Administrator’s determination that STLs were illegal. The Fairfax County Circuit Court upheld the Zoning Administrator’s determination in the suit filed by the McEwans, and the Virginia Supreme Court rejected the McEwans’ petition for appeal. The Circuit Court recently rejected the McEwans’ plea in bar. As part of that decision, the Judge found that the amendments to the Ordinance did not cure the violations caused by the McEwans’ unpermitted use of their home as an STL, the use has “always been a use not permitted by the regulations for the district”, and the use is a violation of the Zoning Ordinance.

Although the Circuit Court found against the County in the Ratcliffs’ case, that decision was vacated as moot by the Virginia Supreme Court. Additionally, approximately 36 operators, including the McEwans and the Ratcliffs, filed a separate lawsuit to invalidate the County’s STL ordinance. The Circuit Court upheld the County’s STL regulations in that lawsuit, and the decision has been appealed the Virginia Supreme Court.

The Abdelhalim case is stayed pending a decision in the Virginia Supreme Court appeal of the STL regulation, and the Galeys recently filed an appeal to the BZA decision in Circuit Court.

Bills that could have potentially altered the County’s STL regulations were also introduced at the 2019 and 2020 General Assembly sessions. SB 1701 introduced in 2019 proposed to increase the number of rental nights to a minimum of 180 days and to allow owners of multiple properties to operate STL from their primary as well as their secondary homes. HB 1685 introduced in 2020 would have required jurisdictions to establish an STL registry that would exempt certain groups from registering or getting a permit. Neither bill was adopted.
Summary
As mentioned above, before and after the County’s STL regulations became effective, DPD and DTA contacted hundreds of operators identified on the Host Compliance dashboard. Specifically, operators were advised of the new regulations and the permit requirements and were provided a timeline of the effective date to submit their permit application. Since then, 143 STL permits have been issued and a total of $28,600 has been collected from application fees. DTA has also received a total of $127,090 in TOT revenue from residential operators. In coordination with the Office of the County Attorney, DCC has issued 19 NOVs and continues to investigate complaints and issue NOVs, as necessary.

DCC continues to face challenges in fully enforcing the law as hosts are becoming more creative in their efforts to maintain their illegal STLs. However, the County has achieved some notable successes, including four appeals that were upheld by the BZA, the Circuit Court’s favorable findings in the McEwan case, two pending STL enforcement cases against Ms. Abdelhalim and the McEwans, the Virginia Supreme Court decisions in favor of the County and the County’s victory in the lawsuit contesting the County’s STL regulations.

Next Steps
Members of the staff work group are available to discuss this topic in more detail and present possible options for consideration at an upcoming Land Use Policy Committee meeting. Please feel free to contact me, Lily Yegazu, Senior Planner (DPD), or any of the following members of the staff work group if you have questions: Jack W. Weyant, Director (DCC), Juan Rengel, Director, Personal Property & Business Division (DTA) and Wemi Peters, Assistant County Attorney (OCA).

ATTACHMENTS: A/S

cc: Bryan J. Hill, County Executive
    Rachel Flynn, Deputy County Executive
    Joseph Mondoro, Chief Financial Officer
    Elizabeth D. Teare, County Attorney
    Claudia Arko, Legislative Director
    Barbara Byron, Director, Department of Planning and Development
    Jack W. Weyant, Director, Department of Code Compliance
    Jay Doshi, Director, Department of Tax Administration
    Jill Cooper, Director, Department of Clerk Services
    David Stoner, Deputy County Attorney, OCA
    Laura Gori, Senior Assistant County Attorney, OCA
    Daniel Robinson, Assistant County Attorney, OCA
    Wemi Peters, Assistant County Attorney, OCA
    Juan B. Rengel, Division Director, DTA
    Adrian Joye, Environmental Health Program Manager, Health Department
    Crystal Santos, Public Information Officer III, OPA
    Jeffrey Yarbrough, Second Lieutenant, PD
    William Mayland, Deputy Zoning Administrator, DPD
    Lily Yegazu, Senior Planner, DPD
6. That the effective date of these provisions is 12:01 A.M. on October 1, 2018, to allow time to finalize the necessary permit forms and database systems and to give Operators time to prepare for implementation of these provisions.

Chairman Bulova seconded the motion.

Following discussion on the proposed amendments, Supervisor Cook asked to amend the motion to change Paragraph 4.B. of new Section 10-105 to read:

- “4.B. – at all times, when a property is used in accordance with the Short Term Lodging provisions, occupancy is limited to the number of people provided for in Section 2-502, except where the Virginia Uniformed Statewide Building Code allows for fewer occupants, and all areas used for sleeping must be in compliance with all applicable provisions of Virginia Uniformed Statewide Building Code or the Virginia Manufactured Homes Safety Regulations, particularly with regard to the requirements for adequate ingress/egress from such sleeping areas including basements.”

Supervisor Herrity seconded the motion, and it FAILED by a recorded vote of two, Supervisor Foust, Supervisor Gross, Supervisor Hudgins, Supervisor McKay, Supervisor K. Smith, Supervisor Storck, and Chairman Bulova voting “NAY,” Supervisor L. Smyth abstaining.

Discussion ensued, with input from Leslie Johnson, Zoning Administrator, Department of Planning and Zoning, Elizabeth Teare, County Attorney, and Sarah Hensley, Assistant County Attorney, regarding the process for enforcement.

In response to a question raised by Chairman Bulova, Ms. Johnson described community outreach efforts.

The question was called on the main motion and it CARRIED by a recorded vote of seven, Supervisor Foust, Supervisor Gross, Supervisor Hudgins, Supervisor McKay, Supervisor K. Smith, Supervisor Storck, and Chairman Bulova voting “AYE,” Supervisor Cook, Supervisor L. Smyth, and Supervisor Herrity voting “NAY.”

Regarding the permit application, Supervisor K. Smith moved that the Board direct staff to include in the permit application a statement from the Operator that the information provided on the permit is true and correct.

Regarding the hosting platforms (such as Airbnb and others), Supervisor K. Smith moved that the Board direct staff to explore the possibility of entering into an agreement with the major hosting platforms to remove non-compliant Operators from those platforms.
Regarding the monitoring and reporting on the effectiveness of these changes, Supervisor K. Smith moved that the Board direct staff to report to the Development Process Committee in approximately 18 months from the effective date of these amendments on the effectiveness of these amendments. Staff’s report should address, at minimum:

1. The number of Short-Term Lodging Permits issued and how that number compares to activity data provided by Host Compliance.

2. The amount of tax revenue received and how that number compares to the rental activity data provided by Host Compliance.

3. The number, nature, and disposition of complaints received related to Short-Term Lodging uses.

4. Whether there should be a special permit or special exception process to expand the Short-Term Lodging uses beyond what is provided for under these amended provisions.

5. Whether additional resources, enforcement mechanisms or protocols are needed to adequately address the permitting and enforcement of Short-Term Lodging uses.

6. Whether any privacy-related concerns or incidences have been reported to County staff.

Chairman Bulova seconded the motion.

Supervisor Herrity asked to amend the motion to direct staff to add:

7. Comparison of the County Ordinance to surrounding jurisdictions, the number of rentals and the number/type of complaints received.

This was accepted.

Discussion ensued, with input from Jack W. Weyant, Director, Department of Code Compliance, and Ms. Johnson, regarding the process for compiling data on complaint logs and the costs of enforcement.

The question was called on the motion, as amended, and it carried by unanimous vote.

Supervisor K. Smith moved adoption of the proposed amendments to the Code of the County of Fairfax, Chapter 4 (Taxation and Finance) relating to Business, Professional and Occupational License Tax and Transient Occupancy Tax as set forth in Attachment D of the staff report dated March 20, 2018, with a delayed effective date of 12:01 a.m. October 1, 2018. Chairman Bulova seconded the
motion and it carried by unanimous vote, Supervisor Cook, Supervisor Foust, Supervisor Gross, Supervisor Herrity, Supervisor Hudgins, Supervisor McKay, Supervisor K. Smith, Supervisor L. Smyth, Supervisor Storck, and Chairman Bulova voting “AYE.”

Ms. Johnson announced that staff is preparing a flyer to provide more information to the community to educate them on the process and timeline for enforcement.

81. **BOARD ADJOURNMENT** (8:34 p.m.)

The Board adjourned.
### Jurisdiction List

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Location</th>
<th>prioritized regulations</th>
<th># of Permits</th>
<th># of identified Listings</th>
<th># of Complaints/State Lift Date of Ord.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arlington County, VA</td>
<td>Arlington, VA</td>
<td>Rules governing the operation of a homestay facility</td>
<td>143 permits</td>
<td>543 residential listings</td>
<td>N/A</td>
</tr>
<tr>
<td>Charlottesville, VA</td>
<td>Charlottesville, VA</td>
<td>Regulations regarding the operation of a residential homestay</td>
<td>145 permits</td>
<td>N/A</td>
<td>122 complaints</td>
</tr>
<tr>
<td>Montgomery County, MD</td>
<td>College Park, MD</td>
<td>Ordinance governing the operation of a residential homestay</td>
<td>138 permits</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Santa Monica, CA</td>
<td>Santa Monica, CA</td>
<td>Ordinance governing the operation of a Residential Homestay</td>
<td>123 permits</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Virginia Beach, VA</td>
<td>Virginia Beach, VA</td>
<td>Regulations governing the operation of a homestay facility</td>
<td>150 permits</td>
<td>N/A</td>
<td>142 complaints</td>
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</tbody>
</table>

### Definitions

**SHORT-TERM LODGING:** The provision of a room or space that is suitable or intended for transient occupancy, in exchange for a charge for the lodging.

**Accessory Homestay:** A home-occupancy in which an owner(s) or tenant(s) of a dwelling unit who owns such dwelling unit as his/her primary residence, rents to a lodger, who is a 24 hours a day, 7 days a week to respond to resolve issues and complaints that arise during the time in which the dwelling unit is used for temporary or short-term use.

**Guest Log:** A record of all overnight visitors that is maintained by the owner(s) or tenant(s) of a dwelling unit or a portion thereof by a host to provide room and board for a short term transient rental purpose in exchange for a charge for the occupancy.

**Authorized Agent:** Required and established with minimum of 180 days/year.

**Prohibited:** Any rental of any living situation whereby the primary occupant is present during the rental and thereby the property is hosting the visitor. PERMITTED CITYWIDE.

**Required:** The exclusive rental of a private residence for transient use. In such cases the resident is either not present or resides in a full time residense that is not the unit. PROHIBITED CITYWIDE.

### Primary Residency

**Required and established with minimum of 185 days/year:**

- Authorized Agent: Required

- Net income: Required and established with minimum of 180 days/year.

- Net income: Required and established with minimum of 180 days/year.

### Tenancy of Operator

**Both owners and renters can participate provided primary residency is established:**

- Owner(s) or tenant(s) of a dwelling unit who uses such dwelling unit as his/her primary residence, rents to a lodger, who is a 24 hours a day, 7 days a week to respond to resolve issues and complaints that arise during the time in which the dwelling unit is used for temporary or short-term use.

### Authorized Agent

**Required and established with minimum of 185 days/year:**

- Authorized Agent: Required

### Guest Log

**Required:**

- N/A (during each stay, a principal guest is required to be designated as the contact person to respond to issues at the unit).

### Dwelling types

- Allowed in all dwelling types except affordable dwelling unit or health care services.

### Life safety measures

- Smoke detectors, fire extinguishers and carbon monoxide detectors (where applicable) required.

### Permit type

- Exclusively renewable STL Permit (any lease permit permissible and resceivable for compliance by ZA only).

### Application for

- DCA 200 permit fee

### Events & commercial activities

- Prohibited

### Parking

- One designated parking space available for lodgers, which the Operator has the authority to reserve for STL purposes.

### Initial and permit numbers on all brochures

- Must include the STL permit number and identify the location of the required parking space and any available parking or public transportation options.

### Jurisdictional List: City of Somona CA

- Jurisdiction: The rental of a person's private residence for short term transient use, including hotels, motels, bed and breakfast, homesharing and vacation rentals.

- Home-Sharing: The rental of a person's private residence where the primary occupant is present during the rental and thereby the property is hosting the visitor. PERMITTED CITYWIDE.

- Vacation Rental: The exclusive rental of a private residence for transient use. In such cases the resident is either not present or resides in a full time residence that is not the unit. PROHIBITED CITYWIDE.