











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.

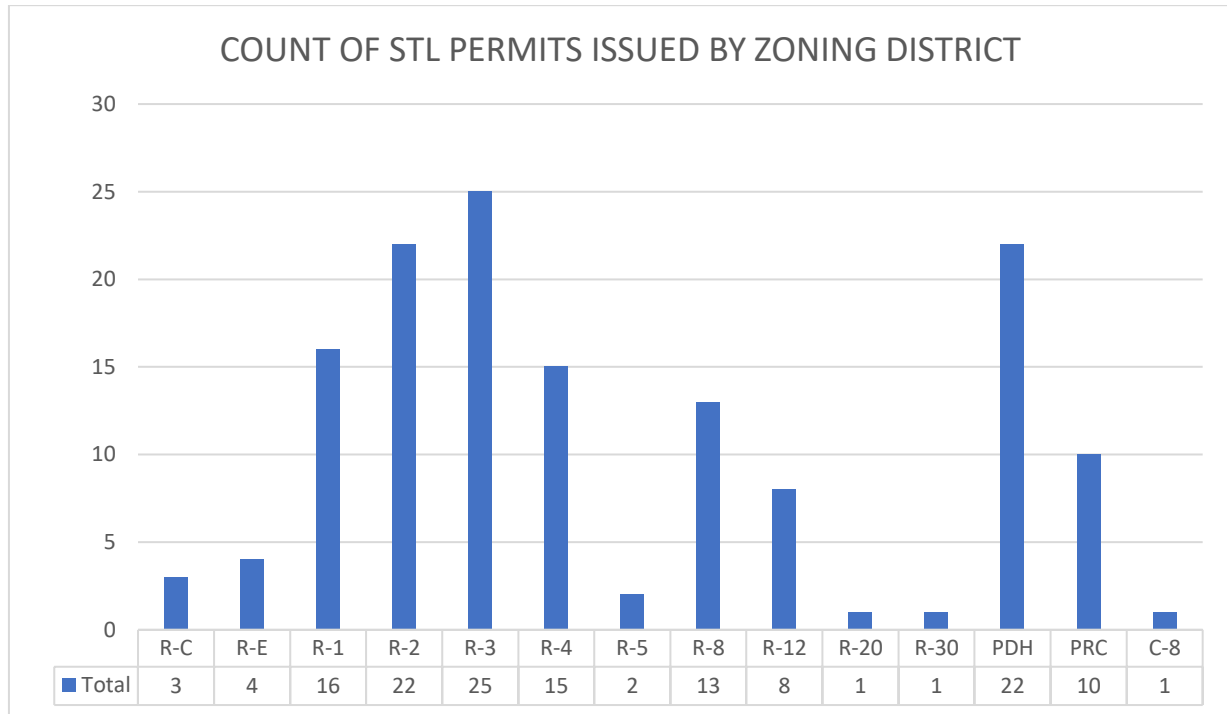


Figure 5: Permits Issued<sup>1</sup> by Zoning District as of July 31, 2020

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<sup>2</sup> 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

<sup>1</sup> 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.

<sup>2</sup> 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.



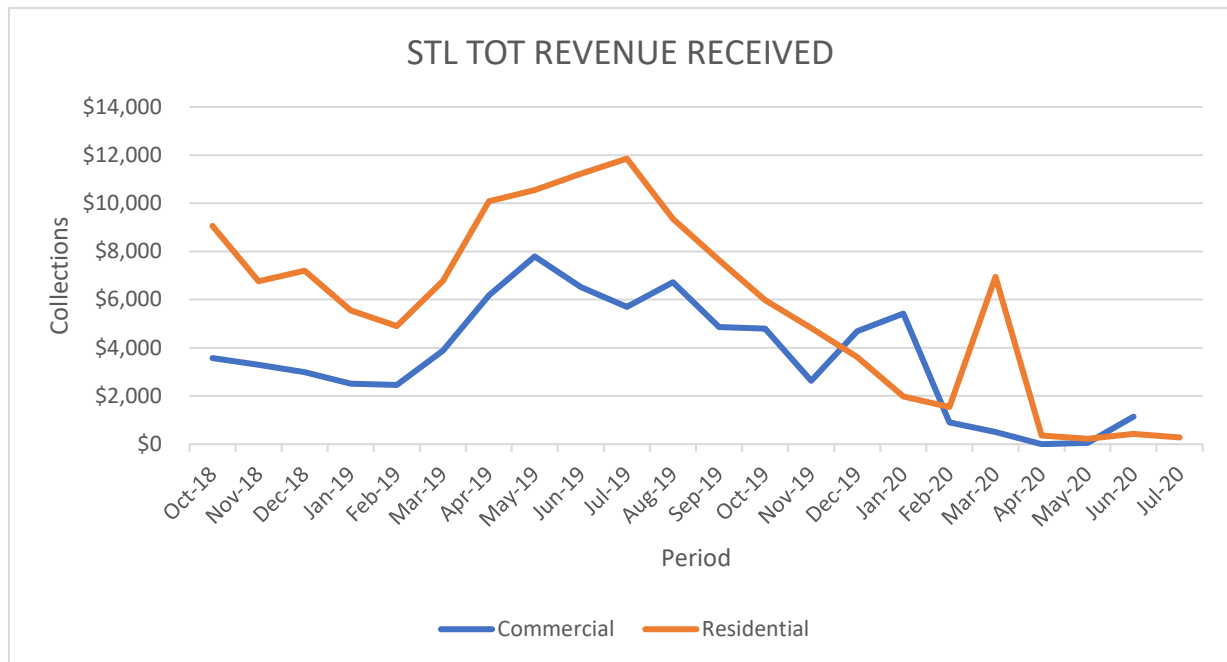


Figure 6: STL TOT Revenue Received as of July 31, 2020

### 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<sup>3</sup> 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.

<sup>3</sup> Three properties were inaccessible to DCC investigators and the cases were subsequently closed.









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<sup>4</sup>. 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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<sup>4</sup> Some jurisdictions are governed by the laws of their respective states and are not subject to Virginia's specific Dillon Rule requirements.





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	Fairfax County, VA	Arlington County, VA	Town of Blacksburg, VA	City of Charlottesville, VA	Montgomery County, MD	City of Santa Monica CA
Eff. Date of Ord.	October 1, 2018	December 31, 2016, Rev. January 28, 2017	December 13, 2020		July 1, 2018	June 12, 2015, Rev. September 24, 2019
# of Permits	143 permits issued as of July 31, 2020	143 permits issued to date	214 permits issued to date		Approximately 400 permits issued to date	Approximately 480 permits issued to date
# of Identified Listings	543 residential listings	Not available (At the time of the County's consideration of their Accessory Homestay ordinance, a 3rd party company (AirDNA) identified approximately 986 properties listed in September, and 651 listed in November 2016)	Not available		Approximately 1,006 listings	Approximately 689 listings
# of Complaints Since Eff. Date of Ord.	112 complaints	Approximately 12 complaints	2 complaints		Approximately 242 complaints	Approximately 530 complaints
Definitions	<b>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.</b>	<b>Accessory Homestay:</b> A home occupation in which an owner(s) or tenant(s) of a dwelling unit who uses such dwelling unit as his/her primary residence, rents to a lodger, either such dwelling unit, or any portion thereof. <b>Responsible party:</b> The owner or tenant, or an individual or business entity designated by the owner or tenant, of a dwelling unit in which an accessory homestay is permitted, who is available 24 hours a day, 7 days a week to respond to and resolve issues and complaints that arise during all times in which the dwelling unit is being used for an accessory homestay, so that a reasonably prompt, in-person response can be made at the accessory homestay when necessary.	<b>Homestay:</b> accessory or secondary use of a residential dwelling unit or a portion thereof by a host to provide room or space that is intended for a short term transient rental purposes in exchange for a charge for the occupancy. The primary use of the homestay unit shall remain residential. For each booking transaction, all applicable taxes must be collected and remitted to the town as required by Chapter 22 by either the host or the associated hosting platform. Such accessory or secondary use shall not create a landlord/tenant relationship.	<b>Bed and Breakfast (Homestay):</b> a temporary lodging facility operated within a single family residence which is owner occupied and managed; having no more than two (2) guest rooms; and wherein food service shall be limited to breakfast and light fare for guests only. <b>Responsible Party:</b> Individual or business entity located within 30 miles who will be available 24 hours a day, 7 days a week, to respond to resolve issues and complaints (in person, if necessary) that arise during the period of time in which the dwelling is being used as a homestay.	<b>Short-Term Residential Rental:</b> the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days. Short-Term Residential Rental is not a Bed and Breakfast (record of all overnight visitors must be maintained and readily available for inspection)	<b>Short-Term Rental:</b> Any rental of any living accommodation that is 30 consecutive days or less, including hotels, motels, bed and breakfasts, home-sharing and vacation rentals. <b>Home-Sharing:</b> The rental of a person's private residence while the primary occupant is present during the rental and whereby the person is hosting the visitor. PERMITTED CITYWIDE. <b>Vacation Rental:</b> The exclusive rental of a private residence for transient use. In such cases the resident is either not present or there is no full time resident that lives in the unit. PROHIBITED CITYWIDE.
Primary residency	Required and established with minimum of 185 days/year	Required and established with minimum of 185 days/year	Required	Required and established with minimum of 180 days/year	Required	Required (a host may not have more than one residence within the city of Santa Monica)
Tenancy of operator	Both owners and renters can participate provided primary residency is established	Both owners and renters can participate provided primary residency is established	Only owner that lives at the homestay can participate provided primary residency is established	Owner or resident manager provided primary residency is established	Both owners and owner-authorized residents can participate provided primary residency is established	Both owners and renters can participate provided primary residency is established
Authorized Agent	Required	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)	Responsible party located not more than 30 miles from rental unit required	Required when primary resident is not present and must reside within 15 miles of the unit (contact information of authorized agent must be posted inside the unit along with rules and regulations)	N/A (operator required to be on-site at all times)
Guest Log	Required		N/A	N/A	Record of all overnight visitors required to be maintained and be readily available for inspection	N/A
Dwelling types	Allowed in all dwelling types except affordable dwelling unit or health care structures	Allowed in all dwelling types	Allowed in all dwelling types	Allowed in all dwelling types	Prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Apartment	Allowed in all dwelling types except Rent Control Bootleg Units
Life safety measures	Smoke detectors, fire extinguishers and carbon monoxide detectors (where applicable) required	Smoke detectors, fire extinguishers and carbon monoxide detectors (where applicable) required	Smoke and carbon monoxide detectors in all sleeping areas, in every room in the path of the means of egress from sleeping area and in each story including basements and second means of egress in each sleeping area required	Working smoke and carbon monoxide detectors and fire extinguishers required	Working smoke and carbon monoxide detectors and fire extinguishers required	Emergency exist route information required to be provided
Permit type	Bi-annually renewable STL Permit (only one permit per host allowed) and revocable for non-compliance by ZA	Annually renewable Accessory Homestay Permit (revocable for 3 or more violations, non-compliance or failure to allow inspections) and a business license	Annually renewable Homestay Permit (only one permit per host allowed) and revocable for 3 or more substantiated complaints, non-compliance and failure to allow inspections	Annually renewable Home Occupation Provisional Use Permit / Homestay (revocable for 3 or more substantiated complaints within a calendar year)	Annually renewable license	Home-Sharing Permit and business license
Application fee	\$200 (permit fee)	\$63 (permit fee)	N/A	\$100 (permit fee)	\$44 (license fee)	N/A (only business license fee applies)
TOT remittance	Required	Required	Required	Required	Required	Required
Limit on # of days per year	60 days maximum per year	N/A	Type A: 90 days/year with host present Type B: 30 days out of 90 days total without host present	14 days in any 30-day period	No limit with host present 120 days/year without host present	No limit when host present. Not permitted without host present.
Events & commercial activities	Prohibited	Prohibited	N/A	N/A	N/A	Prohibited
Limit on # of contracts per day	One per night	One per night	N/A	N/A	N/A	N/A
Limit on # of bedrooms available for rent per day	N/A	Determined by limits on occupants	Type A: 2 bedrooms maximum Type B: No limit	N/A	N/A	N/A
Limit on occupancy	No more than 6 adults total per night per unit (no limit on children)	Larger of either 6 guests or 2 guests/bedroom (not to exceed that allowed by Building Code)	No more than 6 guests total per night per unit	No more than 6 adults per night per tax map parcel	2 adults (over 18 years old) per bedroom, and a maximum of 6 adults per night per unit	N/A
Adjacent property notification	N/A	N/A	Required	N/A	Required	N/A
Parking	One designated parking space available for lodgers, which the Operator has the authority to reserve for STL purposes	N/A	N/A	N/A	One off-street parking space per contract unless the online listing indicates that vehicle parking is prohibited	N/A
Include license/permit number on advertisement	Must include the STL permit number and identify the location of the required parking space and any other available parking or public transportation options	N/A	N/A	N/A	Required	Required