



FAIRFAX
COUNTY

STAFF REPORT

VIRGINIA

PROPOSED ZONING ORDINANCE AMENDMENT

Articles 10, 18 and 20 of the Zoning Ordinance and
Chapter 4 of the Code of Fairfax County Regarding
Short-Term Lodging
(Residential Owner/Renter Operated Dwellings Only)

PUBLIC HEARING DATES

Planning Commission

May 3, 2018 at 7:30 p.m.

Board of Supervisors

June 19, 2018 at 4:00 p.m.

PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314

March 20, 2018

LY



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

STAFF COMMENT

In 2017, the General Assembly enacted Virginia Code § 15.2-983 (Attachment B), 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 this law, on March 14, 2017, the Board of Supervisors (Board) directed staff to form a workgroup to analyze the short-term rental of property in Fairfax County and recommend possible changes to the County Code and Zoning Ordinance. Staff from the Department of Planning and Zoning (DPZ), the Department of Code Compliance (DCC), the Department of Tax Administration (DTA), the County Attorney's Office (OCA), the County Executive's Office (CEO) and the Office of Public Affairs (OPA) comprised the County's workgroup.

Staff determined that there are different arrangements of transient housing offered by County businesses and residents. While staff may propose further ordinance changes, particularly with regard to transient occupancy in commercially managed multiple family rental developments **the Zoning Ordinance amendments presented in this Staff Report reflect only Short-Term Lodging (STL) conducted by an owner or renter in his or her permanent residence.**

These proposed amendments to the Zoning Ordinance and the County Code create regulations to address STL operations in terms of both zoning and taxation. Staff presented the general framework for the amendment to the Board's Development Process Committee (DPC) on July 18, October 3, and December 12, 2017, and to the Planning Commission's Land Use Process Review Committee (LUPRC) on June 22 and September 28, 2017. The Planning Commission held a public workshop November 1, 2017 to discuss that framework. Additionally, extensive public outreach has occurred, as discussed in more detail below.

Background

The rise in popularity of online hosting platforms such as AirBnB, Vacation Rental by Owner (VRBO), HomeAway, TripAdvisor, and FlipKey has encouraged many homeowners and renters to offer their homes for transient lodging. Individual rooms within a dwelling or entire dwellings are offered for a fee for periods of less than 30 days, and the search, booking, and fee collection components are typically handled by the hosting platform. This emerging economic model has presented regulatory challenges related to land use and other matters in many jurisdictions in Virginia and nationwide.

Existing STLs

Staff research indicates that there are more than 1,500 active STLs—that is, STLs that have been rented in the past year—currently operating in Fairfax County. Assuming there are 1,500 active STLs operating in the County, only 54, or less than 1%, have been the subject of complaints for the STL use. 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. At the time of preparation of this Staff Report, the Department of Code Compliance has 13 open cases under investigation and has issued 6 Notices of Violations (NOVs). Of those 6 NOVS, 4 have resulted in compliance, while 2 were appealed and heard by the Board of Zoning

Appeals (BZA) on November 29, 2017, and January 10, 2018. The BZA upheld the Zoning Administrator's determination that these two homeowners were operating illegal STLs.

Stakeholder outreach

Beginning in June of 2017, staff conducted extensive public outreach and solicited input on a potential amendment to the Zoning Ordinance using a variety of outreach tools. First, staff distributed an on-line survey from June through August of 2017 (which was promoted on the DPZ and general County websites, as well as in various newspapers and televised news reports). The survey generated 7,671 responses in total. Responses ranged from suggesting the County entirely prohibit STLs to suggesting the County allow unlimited STL use. The survey included a comment section where respondents could provide a summary of their concerns. The main concerns expressed included: impacts on the character of the neighborhood; introduction of commercial uses to residential areas; parking and increased traffic on local streets; safety and security in the neighborhood (particularly for children); noise and trash associated with rentals and events/parties; and the enforceability of any STL ordinance. The comments in favor of STLs noted that STLs generated additional income for homeowners, making homeownership more affordable; offered a cheaper and alternative rental option to hotels; provided opportunities for hosts to engage with travelers from other states and countries; and enhanced the County tax base. Proponents also shared their belief that lodgers are better stewards of a property than long-term renters and that County regulations should not infringe on what a homeowner does within a dwelling.

From the comments on the survey, staff identified a number of common areas of concern: character of the neighborhood, parking, trash, taxes, inspections/complaints, safety/security, noise/events, affordability of housing, and homeowner/condo association regulations. These topics became the basis for community meetings held throughout the County to discuss potential changes to the Zoning Ordinance. Four Countywide community meetings were held in the Community Centers in Reston, McLean, and Mount Vernon and at the Government Center. DPZ also held an open house.

In addition to the survey and community meetings, staff also participated in multiple individual meetings with residents, neighborhood and civic group representatives, homeowner and condominium association representatives, tourism-related professionals, realtors, the hotel industry, Airbnb representatives, and others. Staff has briefed the standing Zoning Ordinance Modernization (zMOD) Citizens Advisory Group, the Land Use Aides, and the Land Use Attorneys Group. Staff also developed a dedicated [website](#) for the amendment. The proposed regulations reflect consideration of all the input and feedback received from these various sources.

Analysis of other jurisdictions' regulations

As a result of Virginia Code § 15.2-983, many jurisdictions throughout Virginia have been working toward amending their regulations regarding STLs. County staff participated in a multi-jurisdictional workgroup comprised of Fairfax County, Arlington County, City of Alexandria, Loudoun County, Tidewater area jurisdictions, the Virginia Association of Counties, and the Virginia Municipal League. Staff has also researched and reviewed the regulations of local jurisdictions in Virginia, as well as jurisdictions outside of Virginia. Brief descriptions of some of the regulations adopted by various jurisdictions are provided below with a more detailed summary table provided as Attachment C. While not exhaustive, it demonstrates the variety of regulatory mechanisms used throughout Virginia and the rest of the United States.

- Arlington County, VA:
 - Defines use as “Accessory Homestay”, a type of home occupation use
 - Requires primary residency (defined as living in unit a minimum of 185 days per year)
 - Can be operated by owner and renter
 - Maximum occupancy is limited to the larger of 6 guests or 2 guests/bedroom
 - All occupancy must comply with the applicable Building Code
 - Commercial uses such as parties, weddings, meetings, etc. are prohibited
 - Annual permit with a \$63 filing fee
 - Revocation of permit for 3 or more violations

- Montgomery County, MD:
 - Defines use as “Short-Term Residential Rentals”
 - Requires primary residency
 - Can be operated by owner or renter
 - Maximum occupancy is limited to 2 adults/bedroom and a maximum of 6 adults/unit
 - No limit on the number of rentals per year when operator is on-site
 - Limited to 90 days if the operator is not on-site
 - Must keep and make available a record of all overnight visitors
 - One off-street parking space per contract required or ad needs to prohibit vehicle parking

- City & County of San Francisco, CA:
 - Defines use as “Short Term Rentals”
 - Requires permanent residency (defined as living in unit at least 275 days/year)
 - Can be operated by owner or renter
 - Maximum occupancy is limited to 2 guests/unit
 - Requires registration with the Office of Short-Term Rental’s Registry
 - No limit on rentals when operator is on-site
 - Maximum of 90 days if operator is not on-site
 - Submittal of quarterly reports of rental activity required
 - Liability insurance >\$500,000 is required by owner or hosting platform
 - Registration is valid for two years with application fee of \$250

Current Zoning Ordinance Provisions

Short-term lodging is not a currently defined use in the Zoning Ordinance; however, the use is understood to apply to the transient occupancy of a dwelling or a portion of a dwelling. Transient occupancy is also not currently defined in the Zoning Ordinance, but it is the Zoning Administrator’s longstanding determination that transient occupancy means occupancy for less than 30 days. This is now consistent with the definition of “short-term rental” in Virginia Code § 15.2-983. The Zoning Ordinance definition of “dwelling” prohibits transient occupancy:

DWELLING: A building or portion thereof, but not a MOBILE HOME, designed or used for residential occupancy. The term ‘dwelling’ shall not be construed to mean a motel, rooming house, hospital, or other accommodation used for more or less transient occupancy” (Emphasis added).

Zoning Ordinance Sect. 10-302, Par. 7 also limits transient occupancy. It allows “the letting for hire

of not more than two rooms for rooming or boarding use for not more than two persons, neither of whom is a transient.” Transient occupancy of a dwelling is currently only permitted as a Bed and Breakfast, which is a Category 5 Special Exception use permitted on residential properties located within the R-A through R-2, PDH, and PRC Zoning Districts. The only other form of transient occupancy permitted under the provisions of the Zoning Ordinance is hotel/motel uses, which are commercial uses that are not permitted in a dwelling.

Proposed Zoning Ordinance Amendments

The proposed regulations are intended to allow limited STL operations, balancing the interests of residents in protecting the character of their neighborhoods with the interest of residents who want to operate STLs in their residences. In crafting the restrictions on STL use, staff took into consideration the particular concerns citizens and stakeholders voiced during the outreach process. A summary of how the proposed amendments specifically address these concerns follows.

Neighborhood character

Staff received multiple comments during the public outreach efforts from residents who had concerns related to the impacts of STLs on the existing neighborhood character and residential feel of their community. Residents indicated that a neighborhood made up of owners or long-term tenants has a very different character than a neighborhood frequented by short-term or transient occupants who may not have a vested interest in maintaining the quality of life of their neighbors. Residents consistently expressed that they did not want investors acquiring multiple properties to operate full-time, hotel-type commercial uses within residential neighborhoods. Staff believe the ordinance addresses preserving neighborhood character in a number of ways:

- **Accessory use:** The proposed amendment adds Short-Term Lodging as a permitted accessory use in any zoning district that permits residential uses, and in any type of dwelling or in a mobile home, except that STLs may not be conducted in workforce or affordable housing units, detached accessory structures, accessory dwelling units, or temporary family health care structures. These excluded structures are specifically intended for other purposes, such as an on-site unit for an aged parent or a unit equipped for providing medical care to a family member. In the case of a detached accessory structure, staff believes the use of such structures for lodging purposes could easily convert these structures into permanent second dwelling units, which is not generally permitted. Staff believes the operation of STLs within the main structure of the principal building on the property will help limit the impacts of the use on surrounding properties.
- **Permanent residents as STL Operators:** STL uses are proposed to be operated by a permanent resident of a dwelling or mobile home to dispel the concern that non-resident operators could negatively impact neighborhood character by having little or no interaction with the community and by not being consistently present to address issues of community concern. Two forms of verification—like a driver’s license, vehicle registration, passport, or utility bill—are required to demonstrate permanent residency. This information will be reviewed and noted by staff at the time of application, but sensitive information will not be retained in the public records for security reasons.
- **Operator Presence/Authorized Agent:** Having the operator on-site may decrease the likelihood of issues arising with the STL use. Research and community input indicate, however, that many

STLs operate without the operator present, e.g., an owner may offer their home while away on vacation for a week. To address the absence concern, the proposed amendments require that the STL operator identify an Authorized Agent who will consent and agree to the proposed regulations and who will be available and responsible to address issues or emergencies in the absence of the STL Operator. *(The amendment has been advertised to also allow consideration of requiring the STL Operator to be on-site; and to require additional restrictions on the physical proximity and response time of the Authorized Agent to the STL. The requirement for the Authorized Agent is not contingent on operator presence.)*

- **Limitation on number of nights a STL use is permitted:** To keep the use truly accessory, staff proposes a maximum of 90 calendar days for STL use per year, or approximately 25% of a year. *(The amendment has been advertised to allow consideration of a maximum number of rental nights of up to 180 without an operator present or unlimited nights with an operator present.)*
- **Occupancy limitations:** The proposed amendment recommends not more than six adults per dwelling per night. This allows for families or groups of friends or colleagues to rent an STL and is consistent with other jurisdictions that have adopted provisions for an occupancy limit. Staff considered establishing a maximum number of persons per bedroom, but such a restriction would be virtually impossible to enforce, as it requires specific observation of the number of people in a bedroom. The Virginia Uniform Statewide Building Code further limits occupancy: as the proposed amendments reflect, it may impose stricter limits depending on the space being offered. *(The amendment is advertised to allow for any limit on occupancy, up to the maximums the Virginia Uniform Statewide Building Code imposes.)*
- **Limited contracts:** Staff propose restricting STL use to one contract; all persons lodging in the dwelling at one time must be associated with the same rental contract. This does not preclude a group of related/associated individuals from working out individual payment plans or having different durations of stay, but it will preclude the STL Operator from making the home available to multiple, unrelated/associated individuals, which would make the STL use more like a traditional hotel/motel. Additionally, parking, traffic on local streets, and the potential for negative interaction among lodgers are all issues that could be exacerbated by allowing multiple, unrelated groups or individuals to lodge at the same time. *(The amendment is advertised to allow flexibility to consider 1 to 5 contracts per night, with staff recommending one.)*

Safety

Safety measures to protect lodgers are important, as they would not be particularly familiar with the layout or safety features of a dwelling/mobile home in the event of an emergency. The proposed amendments require that dwellings used for STLs meet all applicable requirements related to building code or manufactured home safety regulations. The age of the structure generally determines what provisions are applicable.

- **Sleeping rooms:** Converting basements or other non-traditional spaces to sleeping rooms requires compliance with the most current building code, which would require a second means of egress from the room, such as an emergency egress window in an existing basement.
- **Safety Equipment:** The amendment proposes that a working fire extinguisher, interconnected smoke detectors, and interconnected carbon monoxide detectors (if there is a fireplace and/or gas service is provided to the home) must be present in every dwelling offering STL use. If these features are not present in the home due to the age of the structure, they must be added before

beginning an STL operation.

- **Exit plan:** Like hotels, STLs must have an exit plan posted on the door to each bedroom or sleeping space to outline a pathway out of the home in the event of an emergency.

Commercial event use

It is the Zoning Administrator's longstanding position that hosting events (e.g., parties, weddings, catered dinners) at a dwelling is prohibited except when the activity is directly hosted by the principal residents of the dwelling. For example, an owner could host a backyard wedding for their son or daughter, but could not make the property available as a wedding venue. The provisions prohibit all events and activities for persons other than authorized lodgers staying in the dwelling regardless of whether there is direct or indirect compensation for the event or activity.

Parking

Citizens claimed STL users often park vehicles in reserved spaces, block access to driveways and mailboxes, or use all the available public parking. In evaluating whether the ordinance should therefore require STL operators to provide parking, staff considered that home child care, home offices, and a variety of other home occupations are currently permitted under the Zoning Ordinance without a requirement for an additional off-street parking space. Staff also recognized that many visitors may opt to use public transport, taxis or ride-sharing services and would not need a parking space. In addition, staff could not draft the ordinance to place a blanket limitation on otherwise publicly available parking. Furthermore, most existing developments already have in place or have the ability to manage parking located on private streets and parking garages within the developments. Lastly, none of the other Virginia jurisdictions that specifically provide for short-term lodging uses in their regulations require that STL operators provide parking. Accordingly, staff does not currently believe a designated parking space is warranted.

To ensure that parking is managed appropriately, however, the amendment proposes to require all advertisements for STLs to indicate if and where on-site parking is available for the dwelling offering STL. If there is no on-site parking available, the advertisements must so state. This information will help lodgers manage their expectations and plan for their transportation needs. *(The amendment is advertised to allow flexibility to consider requiring 1 to 2 off-street parking spaces per contract, with staff recommending none.)*

Impact on Property Owners Associations

Staff understands the concerns of communities who, collectively, do not want STL operations in their development. However, Virginia Code § 15.2-110 prohibits the County from requiring consent from an HOA/COA prior to the issuance of any permit, certificate or license. HOA/COA covenants, bylaws and other regulations remain intact, even when a Zoning Ordinance has been amended, so if there is a current provision in an association's documents that would restrict the use of any homes for STL purposes, the proposed amendments will not negate those restrictions. The proposed amendments expressly state that they do not abrogate, nullify or invalidate any provisions applicable to the structure or use of the property. The STL operator is therefore on notice that his or her STL operation must comply with any restrictive covenants on his or her property.

Enforcement

Because this is a use that operates within a home, enforcement will pose difficulties particularly regarding the 90-night limit and 6-lodger limitations. Staff believes the proposed regulations have been crafted in a way to minimize (but not eliminate) enforcement challenges. The following tools and requirements will assist compliance staff with complaint investigations:

- **Permit:** STL operations will require a permit issued by the Zoning Administrator and valid for a period of two years. Home occupation uses generally require only an initial permit; however, staff believes requiring permit renewal will ensure STLs are operating in conformance with the use limitations. To help the Code Compliance Inspectors determine which STLs may be illegally operating, STL Operators will be required to include their permit number in their online listings. The Zoning Administrator may revoke a permit for failure to comply with the STL regulations. *(Advertised to allow a one- or two-year period of permit validity.)*
- **Guest Log:** STL Operators must maintain a record of lodgers and lodgers' contact information, and make available upon request to appropriate County staff. This will help staff ensure compliance with the limitations on number of nights of use and occupancy, as well as allow staff to contact lodgers if that becomes necessary during a complaint investigation.
- **Owner Consent:** The proposed amendment requires consent of the property owner if the STL Operator is a long-term tenant. Because property owners are ultimately responsible for any violations occurring on property they own and for any fines or penalties associated with those violations, staff considers this a critical requirement.
- **Outside Consultant:** To enhance enforcement efforts, staff proposes to use the services of an outside consultant. Other Virginia jurisdictions have contracted with Host Compliance LLC, which can track the exact address and rental activity of STLs across multiple online platforms, as well as provide screenshots of listings and contact information for operators. The County can enter into a purchase order based on the existing contract with the other Virginia jurisdictions for the next year or two.
- **Inspection:** Oftentimes, the biggest hurdle for DCC is the inability to gain access to a property to investigate a complaint of noncompliance. The proposed provisions are intended to eliminate that hurdle by requiring STL Operators to consent to inspection by County personnel during reasonable hours.

Changes and Additions to Ordinance Definitions

As noted, the Zoning Ordinance currently does not define transient occupancy or STL. The proposed regulations will introduce these as new definitions and will modify the "Dwelling" and "Dwelling, Mobile Home" definitions in Chapter 20 to accommodate the STL use. In addition, the proposed amendments introduce and define the STL-use specific terms "Authorized Agent," "Permanent Resident," and "Short-Term Lodging Operator," which apply only to STL use provisions.

Proposed Fees

Virginia Code § 15.2-2286(A)(6) provides that a Zoning Ordinance may include reasonable provisions for the collection of fees to cover the costs of making inspections, issuing permits, advertising notices, and other expenses incident to its administration. To keep fees in line with other permits/certifications staff proposes a \$200/2-year permit application fee for STLs.

As part of this amendment, staff also proposes to reduce the special exception application fee for Bed and Breakfast use by 50%, from \$16,375 to \$8,180, but will advertise a fee ranging from \$4,085 to the current fee of \$16,375. Staff believes the high application fee may account for the fact that there are no approved Bed and Breakfasts currently operating in the County. The only Bed and Breakfast approved in the last two decades ceased operating. Unlike the STLs, Bed and Breakfasts may be operated by non-permanent residents and may be operated year-round. Staff believes that the Bed and Breakfast provisions may offer an additional business opportunity for some of the County's lodging entrepreneurs. No other changes are proposed to the Bed and Breakfast provisions regarding their location and other use limitations.

Fiscal Impacts and Tax Provisions of the County Code

The operation of STL in the County constitutes a transient occupancy use that is subject to a Transient Occupancy Tax or TOT. It is estimated that there are approximately 1,500 active listings in the County based on research and specific data provided by a third-party data collection company who provided information related to Airbnb listings. Airbnb representatives have confirmed this approximate number. The estimates obtained from the third-party data collection company also indicate that the average days of rental in the County are 64 days and the average income per night for the STL Operator is \$72. Using these average assumptions of 64 rentals per year per STL Operator and a \$72 per night, staff estimates collecting \$428,268 in annual Transient Occupancy Tax (TOT) revenue. The total TOT in Fairfax County is calculated at the rate of 6 percent (2 percent for general transient occupancy tax + 2 percent for tourism + 2 percent for regional transportation) on the gross room rental charged for overnight stays related to transient occupancy. As required by state legislation, of the revenue generated by the 2 percent for tourism, one quarter is designated to the Fairfax County Convention and Visitors' Center, and the rest is used by the County to promote tourism. As a result, of the total projected \$428,268, \$142,756 will be allocated for regional transportation, \$35,689 to Fairfax County Convention and Visitors' Center, and \$249,823 to the County's General Fund. Additionally, based on the proposed \$200 STL permit fee, estimated revenue of approximately \$150,000 could be generated annually.

Given these average rental night and rate figures, the revenue from the Business, Professional, and Occupations License tax (BPOL) is not likely to result in meaningful revenue, since gross receipts under \$100,000 per year are subject to a license/tax of \$50 or less and in instances of revenue of less than \$10,000 the BPOL is zero. The average annual income for an STL host is estimated at less than \$5,000 per year, and BPOL is not applicable at this level. As such, staff does not believe that a significant amount of income will be derived from the BPOL.

This amendment includes a companion amendment to Chapter 4 of the County Code. Those changes are set forth and described in Attachment D.

Implementation of Proposed Changes

Staff is developing an implementation plan to assist with the smooth initiation of the STL permit process. While not part of the Zoning Ordinance text, a new permit application form and STL permit will be developed in conjunction with this amendment. If the proposed amendment is adopted, staff is considering sending notification letters to the owners of addresses identified by the third-party

data collection company as currently advertising the availability of an STL in the County. Such notice would provide the new regulations and advise of the permit requirement and process. Staff also believes that the volume of potential STL applications that could be received warrants a delayed implementation to allow operators to obtain approval. This is similar to the grace period that was granted when the home child care amendment was adopted, in which existing operators were given a period of time to come into compliance by obtaining the require approval. Delayed implementation is also warranted because of the change in TOT remittance from a quarterly option to a monthly requirement. This change will impact current hotel operators as well as the new STLs and a delayed implementation will allow those hotels that currently remit the tax on a quarterly basis time to prepare for a monthly remittance process. Staff is recommending an effective date of October 1, 2018, which is the first day after the July quarter.

The proposed regulations are intended to achieve a balance between allowing STLs while maintaining the overall character of residential neighborhoods. As such, staff recommends approval of the proposed amendments with an effective date of 12:01 a.m. on the day following adoption, provided, however that STL Operators will have a grace period of between 90 and 120 days from the date of adoption to obtain approval of an STL permit.

Conclusion

The changes staff propose are intended to facilitate a limited STL use for the County's entrepreneurs, while preserving the character of the County's communities and safety of its residents. Because STL regulation is relatively new, not only in Fairfax County but nationwide, staff believe it appropriate to revisit these regulations in eighteen months and make any necessary regulatory changes. This, of course, does not limit the Board's ability to revisit this amendment sooner, should it see fit to do so.

Attachments:

- A. Proposed Zoning Ordinance Amendments
- B. Virginia Code § 15.2-983
- C. Summary Table of Other Jurisdictions' Regulations
- D. Amendment to Chapter 4 of the County Code

ATTACHMENT A

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of March 20, 2018. There may be other proposed amendments that could affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment. If any such other amendment is adopted before this amendment, any necessary renumbering or editorial revisions will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

1 **Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, by**
 2 **revising the current definition of DWELLING and DWELLING, MOBILE HOME and to add**
 3 **new definitions for SHORT-TERM LODGING and TRANSIENT OCCUPANCY to read as**
 4 **follows:**

5
 6 DWELLING: A building or portion thereof, but not a MOBILE HOME, designed or used for
 7 residential occupancy. The term ‘dwelling’ ~~shall not be construed to~~ does not mean a motel, rooming
 8 house, hospital, or other accommodation used for more or less ~~transient occupancy~~ TRANSIENT
 9 OCCUPANCY, except a dwelling may be used for SHORT-TERM LODGING.

10
 11 DWELLING, MOBILE HOME: A single family residential unit with all of the following
 12 characteristics: (a) designed for long-term occupancy, and containing sleeping accommodations, a
 13 flush toilet, a tub or shower bath and kitchen facilities with plumbing and electrical connections
 14 provided for attachment to outside systems; (b) designed to be transported after fabrication on its own
 15 wheels or on a flat bed or other trailer or detachable wheels; (c) arriving at the site where it is to be
 16 occupied as a dwelling complete, conventionally designed to include major appliance, and ready for
 17 occupancy except for minor and incidental unpacking and assembly operations, location on foundation
 18 supports, connection to utilities, and the like; (d) designed for removal to and installation or erection
 19 on other sites.

20
 21 A mobile home may include one ~~(1)~~ or more units, separately towable, which when joined
 22 together shall have the characteristics as described above. For the purposes of this Ordinance, a mobile
 23 home shall not be deemed a SINGLE FAMILY DETACHED DWELLING. A MOBILE HOME does
 24 not include TRANSIENT OCCUPANCY, except a mobile home may be used for SHORT-TERM
 25 LODGING.

26
 27 SHORT-TERM LODGING: The provision of a room or space that is suitable or intended for transient
 28 occupancy, in exchange for a charge for the lodging. Such use does not include ACCESSORY
 29 DWELLING UNIT, BED AND BREAKFAST, HOTEL/MOTEL, or TEMPORARY FAMILY
 30 HEALTH CARE STRUCTURE.

31

1 TRANSIENT OCCUPANCY: Use of a DWELLING or MOBILE HOME, or part thereof, for sleeping
 2 or lodging purposes for fewer than 30 consecutive nights.

3
 4 **Amend Article 10, Accessory Uses, Accessory Service Uses and Home Occupations, as follows:**

- 5
 6 - **Amend Sect. 10-102, Permitted Accessory Uses by revising the lead-in paragraph and adding**
 7 **a new Par. 35, as follows:**

8
 9 Accessory uses and structures ~~shall~~ may include, but are not limited to, the following uses and
 10 structures; ~~provided that~~ any such use or structure ~~shall~~ must be in accordance with the definition
 11 of Accessory Use contained in Article 20.

12
 13 35. Short-Term Lodging, limited by the provisions of Sect. 105 below.

- 14
 15 - **Add a new Sect. 10-105, Short-Term Lodging, to read as follows:**

16
 17 **10-105 Short-Term Lodging**

18
 19 Short-Term Lodging, as defined in Article 20, is permitted in a dwelling or mobile
 20 home only upon the Zoning Administrator's issuance of a permit and is subject to the
 21 following limitations:

- 22
 23 1. For the purposes of this section, the following definitions apply:

24
 25 A. Authorized Agent: an adult designated by a Short-Term Lodging Operator who
 26 consents to be available to address issues or emergencies that may arise during
 27 any Short-Term Lodging stay.

28
 29 B. Permanent Resident: a person who occupies or intends to occupy a dwelling or
 30 mobile home for at least 185 days out of the calendar year for the purposes of
 31 establishing the dwelling or mobile home as that person's primary residence. A
 32 person may have only one permanent residence.

33
 34 C. Short-Term Lodging Operator: an owner or tenant of a property who offers that
 35 property for Short-Term Lodging.

- 36
 37 2. A dwelling or mobile home used for Short-Term Lodging must:

38
 39 A. Be open, upon request, for inspection by County personnel during reasonable
 40 hours; and

41
 42 B. Comply with the requirements of the applicable version of the Virginia Uniform
 43 Statewide Building or Virginia Manufactured Home Safety Regulations, as
 44 determined by the Building Official; and

- 1 C. Have a working multi-purpose fire extinguisher and interconnected smoke
2 detectors and carbon monoxide detectors (when required for a fireplace or gas
3 service); and
4
5 D. Have a plan posted inside the door to each sleeping room showing the exit
6 pathway from the sleeping room to the nearest exit from the dwelling or mobile
7 home.

8
9 3. A Short-Term Lodging Operator must:

- 10
11 A. Be a permanent resident of the property hosting the Short-Term Lodging Use.
12 Permanent residency must be demonstrated at the time of application for a
13 permit to operate Short-Term Lodging; and
14
15 B. Obtain written consent from the owner of the property for the Short-Term
16 Lodging Use; and
17
18 C. Assume responsibility for determining whether any regulations, prohibitions,
19 and covenants applicable to the dwelling or mobile home prohibit Short-Term
20 Lodging; and
21
22 D. Designate at least one person who consents to serve as an Authorized Agent for
23 the Short-Term Lodging Operator. Contact information (name, address,
24 telephone, and email address) for the Authorized Agent(s) must be provided on
25 the application for a Short-Term Lodging permit, posted in a prominent location
26 within the area made available for Short-Term Lodging, and provided in any
27 written material given to lodgers during their overnight stay. [Additionally
28 advertised to allow the Board to require the Short-Term Lodging Operator to
29 be present during any rental for transient occupancy; or to establish
30 additional requirements related to the Authorized Agent's physical proximity
31 and response time to any issues or emergencies that may arise at the STL
32 when the Operator is not present.]

33
34 4. The Short-Term Lodging Use is subject to the following use limitations:

- 35
36 A. A dwelling or mobile home may be used for Short-Term Lodging for no more
37 than 90 nights per calendar year. [Advertised to permit the Board to consider
38 a maximum of 180 nights per year that a dwelling/mobile home could be used
39 as an STL. Additionally, the advertisement allows the Board to consider any
40 number of nights in which the STL Operator must to be present during an
41 STL rental from 0 to 180 per year.]
42
43 B. The maximum number of lodgers per night may not exceed 6 adults, except
44 where the Virginia Uniform Statewide Building Code allows fewer occupants.
45 [Advertised to permit the Board to consider any occupancy limit up to an

1 *unlimited number of people, except as limited by the Virginia Uniform*
 2 *Statewide Building Code.]*

3
 4 C. All lodgers occupying a Short-Term Lodging must be associated with the same
 5 rental contract. The maximum number of rental contracts per night is one.
 6 *[Advertised to permit the Board to consider a range on the number of*
 7 *contracts per night from 1 to 5.]*

8
 9 D. Events and activities—including luncheons, banquets, parties, weddings,
 10 meetings, fund raising, commercial or advertising activities, and any other
 11 gathering of persons other than the authorized lodgers, whether for direct or
 12 indirect compensation—are prohibited in association with any Short-Term
 13 Lodging.

14
 15 E. All advertisements for Short-Term Lodging, posted on any platform online or
 16 in any other format, must (i) include the Short-Term Lodging permit number
 17 and (ii) identify where lodgers can legally park or state that parking is not
 18 available. [Advertised to allow the Board to consider requiring 1 to 2 parking
 19 space per contract, with staff recommending none.]

20
 21 F. A Short-Term Lodging Operator must maintain a guest log including the name,
 22 address and telephone number of all overnight lodgers. The guest log must be
 23 made available upon request to any County employee or agent tasked with
 24 enforcing the Zoning Ordinance or other applicable part of the County Code.

25
 26 G. Short-Term Lodging is prohibited in a detached accessory structure, accessory
 27 dwelling unit, temporary family health care structure, affordable dwelling unit
 28 or workforce dwelling unit.

29
 30 H. The Zoning Administrator’s issuance of a permit does not abrogate, nullify, or
 31 invalidate any other provision of federal, state, or local law; any restrictive
 32 covenant; or any property owners association by-law.

33
 34 5. Permit Required

35
 36 A. An application for a Short-Term Lodging permit must be submitted to the
 37 Zoning Administrator on a form furnished by the County along with a filing fee
 38 of \$200.

39
 40 B. The permit will be valid for two years from the date of issuance. [Advertised to
 41 allow the Board to consider any permit fee from \$50 to \$250 and a range of
 42 permit validity from 1 to 2 years.]

43
 44 C. A permit for Short-Term Lodging may be revoked by the Zoning Administrator
 45 because of the failure of the Short-Term Lodging Operator to comply with all
 46 applicable regulations set forth in this Section or elsewhere in the Zoning

Ordinance. The Zoning Administrator will give notice of any such revocation by letter to the Short-Term Lodging Operator and the property owner, where applicable, setting forth the grounds upon which the permit was revoked, the date and time when the revocation is effective, and the appeals procedure. These provisions do not preclude the Zoning Administrator’s use of any other remedy prescribed by law with respect to violations of this Ordinance.

Amend Article 18, Administration, Amendments, Violations and Penalties, by amending Part 1, Administration, Sect. 106, Application and Zoning Compliance Letter Fees, to modify the Category 5 Special Exception fees in Par. 1, and to amend Par. 5, as follows:

1. Application for a variance, appeal, special permit or special exception:

Category 5 special exception	\$16375
• <u>Bed and Breakfast</u>	<u>\$8180.</u> <i>[Advertised to permit the Board to consider any application fee from \$4085 to \$16375.]</i>
• <u>All other uses</u>	<u>\$16375</u>

5. Fees for food trucks, small cell facilities, home occupations, short-term lodging, sign permits and site plans shall be as specified in Articles 2, 10, 12 and 17, ~~respectively~~ as applicable.

§ 15.2-983. Creation of registry for short-term rental of property.

A. As used in this section:

"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.).

SUMMARY TABLE OF OTHER JURISDICTIONS' REGULATIONS

Jurisdiction	Arlington County, VA	Town of Blacksburg, VA
Definitions	<p>Accessory Homestay: 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.</p> <p>Responsible party: 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.</p>	<p>Homestay: 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.</p>
Primary residency	Required and established with minimum of 185 days/year	Required
Tenancy of operator	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
Authorized Agent	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)
Guest Log		N/A
Allowable dwelling type	All dwelling types	All dwelling types
Life safety measures	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

Jurisdiction	Arlington County, VA	Town of Blacksburg, VA
Permit type	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
Application fee	\$63 (permit fee)	N/A
TOT remittance	Required	Required
Limit on # of days per year	N/A	Type A: 90 days/year with host present Type B: 30 days out of 90 days total without host present
Events & commercial activities	Prohibited	N/A
Limit on # of contracts per day	One/night	N/A
Limit on # of bedrooms available for rent per day	Determined by limits on occupants	Type A: 2 bedrooms maximum Type B: No limit
Limit on occupancy	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
Adjacent property notification	N/A	Required
Parking	N/A	N/A
Include license/permit number on advertisement	N/A	N/A

Jurisdiction	City of Charlottesville, VA	Montgomery County, MD
Definitions	<p>Bed and Breakfast (Homestay): 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.</p> <p>Responsible Party: 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.</p>	<p>Short-Term Residential Rental: 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)</p>
Primary residency	Required and established with minimum of 180 days/year	Required
Tenancy of operator	Owner or resident manager provided primary residency is established	Both owners and owner-authorized residents can participate provided primary residency is established
Authorized Agent	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)
Guest Log	N/A	Record of all overnight visitors required to be maintained and be readily available for inspection
Allowable dwelling type	All dwelling types	Prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Apartment
Life safety measures	Working smoke and carbon monoxide detectors and fire extinguishers required	Working smoke and carbon monoxide detectors and fire extinguishers required

Jurisdiction	City of Charlottesville, VA	Montgomery County, MD
Permit type	Annually renewable Home Occupation Provisional Use Permit / Homestay (revocable for 3 or more substantiated complaints within a calendar year)	Annually renewable license
Application fee	\$100 permit fee	\$44 (license fee)
TOT remittance	Required	Required
Limit on # of days per year	14 days in any 30-day period	No limit with host present 120 days/year without host present
Events & commercial activities	N/A	N/A
Limit on # of contracts per day	N/A	N/A
Limit on # of bedrooms available for rent per day	N/A	N/A
Limit on occupancy	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
Adjacent property notification	N/A	Required
Parking	N/A	One off-street parking space per contract unless the online listing indicates that vehicle parking is prohibited
Include license/permit number on advertisement	N/A	Required

Jurisdiction	City of Santa Monica CA	City & County of San Francisco CA
Definitions	<p>Short-Term Rental: Any rental of any living accommodation that is 30 consecutive days or less, including hotels, motels, bed and breakfasts, home- sharing and vacation rentals.</p> <p>Home-Sharing: 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.</p> <p>Vacation Rental: 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.</p>	<p>Short-Term Residential Rental: A Tourist or Transient Use where all of the following conditions are met:</p> <p>(a) the Residential Unit is offered for Tourist or Transient Use by the Permanent Resident of the Residential Unit;</p> <p>(b) the Permanent Resident is a natural person;</p> <p>(c) the Permanent Resident has registered the Residential Unit and maintains good standing on the Department's Short-Term Residential Rental Registry; and</p> <p>(d) the Residential Unit: is not subject to the Inclusionary Affordable Housing Program.</p>
Primary residency	Required (a host may not have more than one residence within the city of Santa Monica)	Required and established with minimum of 275 days/year (new residents must have occupied the unit for at least 60 consecutive days prior to application.)
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
Authorized Agent	N/A (operator required to be on-site at all times)	N/A
Guest Log	N/A	N/A
Allowable dwelling type	All dwelling types except Rent Control Bootleg Units	All dwelling types where residential use is permitted except in RV, Camper Vans, temporary structures, commercial or industrial buildings
Life safety measures	Emergency exist route information required to be provided	Unit must not have any outstanding Planning, Building, Housing, Fire, Health, Police, or other applicable City code violations

Jurisdiction	City of Santa Monica CA	City & County of San Francisco CA
Permit type	Home-Sharing Permit and business license	Registration and Certifications as a Host by the Office of STR every two years (submittal of a quarterly report affirming compliance required)
Application fee	N/A (only business license fee applies)	\$250 every two years
TOT remittance	Required	Required.
Limit on # of days per year	No limit when host present. Not permitted without host present.	No limit with host present 90 days/year without host present
Events & commercial activities	Prohibited	Prohibited
Limit on # of contracts per day	N/A	Maximum of five/night
Limit on # of bedrooms available for rent per day	N/A	N/A
Limit on occupancy	N/A	Not more than 5 guests per unit
Adjacent property notification	N/A	N/A
Parking	N/A	N/A
Include license/permit number on advertisement	Required	Required

1 AN ORDINANCE AMENDING
2 ARTICLES 7.2 AND 13 OF CHAPTER 4 OF THE FAIRFAX COUNTY CODE,
3 RELATING TO BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE TAX
4 AND TRANSIENT OCCUPANCY TAX
5

6 Draft of February 16, 2018
7

8 AN ORDINANCE to amend the Fairfax County Code by amending and
9 readopting Sections 4-7.2-25, 4-13-1, 4-13-2 and 4-13-5, relating to
10 Business, Professional and Occupational License Tax and Transient
11 Occupancy Tax.
12

13 Be it ordained by the Board of Supervisors of Fairfax County:

- 14 1. That Sections 4-7.2-25, 4-13-1, 4-13-2 and 4-13-5 are amended and readopted as
15 follows:

16 Article 7.2 – Business, Professional and Occupational License Tax.

17 Section 4-7.2-25. – Hotels and motels; license tax rate.

18 Every person operating a hotel ~~or motel~~ as defined in Section ~~4-13-1~~ ~~4-17-1~~ of the Fairfax
19 County Code or similar business which rents rooms or space to transients shall pay an annual
20 business license tax of Twenty-six Cents for each One Hundred Dollars of gross receipts.

21 Article 13. – Transient Occupancy Tax.
22

23 Section 4-13-1. -Definitions.

24 The following words and phrases when used in this Article shall, for the purposes of this
25 Article, have the meanings respectively ascribed to them in this Section, except in those instances
26 where the context clearly indicates a different meaning:

27 *County* means the County of Fairfax, Virginia.

28 *Director* means Director of the Department of Tax Administration or any of duly authorized
29 deputies or agents of the Director.

30 *Hotel* means any public or private hotel, inn, apartment hotel, hostelry, tourist home or house,
31 motel, rooming house, any place that offers Short-Term Lodging as defined in Article 20, Part 3
32 of the Fairfax County Zoning Ordinance, or other lodging place within the County offering lodging
33 for ~~onefour~~ or more persons at any one time, and the owner and operator thereof, who, for
34 compensation, furnishes lodging to any transients as hereinafter defined.

1 *Person* means individuals, firms, partnerships, associations, corporations, persons acting in
2 representative capacity and combinations of individuals of whatever form and character.

3 *Room rental* means the total charge made by any such hotel for lodging and/or space furnished
4 any such transient. If the charge made by such hotel to such transient includes any charge for
5 services or accommodations in addition to that of lodging and/or the use of space, then such portion
6 of the total charge as represents only room and/or space rental shall be distinctly set out and billed
7 to such transient by such hotel as a separate item.

8 *Transient* means any person who, for any period of ~~less~~~~not more~~ than thirty consecutive days
9 either at his own expense or at the expense of another, obtains lodging or the use of any space in
10 any hotel as hereinabove defined, for which lodging or use of space a charge is made.

11 **Section 4-13-2. – Levy; amount of tax.**

12 ~~(a)A-~~ Pursuant to Virginia Code § 58.1-3819, in addition to all other taxes, there is hereby
13 imposed and levied on each and every transient a tax equivalent to two percent of the total amount
14 paid for room rental by or for any such transient to any hotel; provided however, that the tax
15 imposed by this subsection shall not be imposed on any transient occupancy in any hotel that is
16 located within any town that has imposed a tax on transient occupancy.

17
18 ~~(b)B-~~ Pursuant to Virginia Code § 58.1-3824, and in addition to the tax imposed by subsection
19 A of this Section, in addition to all other taxes, there is hereby imposed and levied on each and
20 every transient a tax equivalent to two percent of the total amount paid for room rental by or for
21 any such transient to any hotel regardless of whether the hotel is located within any town that has
22 imposed a tax on transient occupancy. The tax imposed pursuant to this subsection shall be
23 collected and appropriated for those purposes set forth in ~~Virginia Code § 58.1-3825~~ Virginia
24 Code § 58.1-3824.

25
26 **Section 4-13-5. - Report and remittance of tax.**

27 (a) The person collecting any such tax shall make out a report on such forms and setting forth
28 such information as the Director may prescribe and require, showing the amount of room rental
29 charges collected, and the tax required to be collected, and shall sign and deliver the same to the
30 Director with a remittance of such tax.

31
32 (b) Such reports and remittances shall be made monthly on or before the last day of the month
33 ~~following each quarter~~ and covering the amount of tax collected during the preceding
34 ~~month quarter. Such quarterly reports and remittances shall be made on or before the last day of~~
35 ~~April, July, October and January in each year.~~ If the remittance is by check or money order, it
36 shall be payable to the County and all remittances received hereunder by the Director shall be
37 promptly delivered to the Director of the Department of Finance. ~~Any person operating a hotel~~
38 ~~may make reports and remittances on a monthly basis in lieu of the quarterly basis hereinbefore~~
39 ~~provided.~~

40
41 **2. That the provisions of this ordinance are severable, and if any provision of this**
42 **ordinance or any application thereof is held invalid, that invalidity shall not affect the other**

1 **provisions or applications of this ordinance that can be given effect without the invalid**
2 **provision or application.**

3
4 **3. That this Ordinance will become effective on October 1, 2018.**

5
6
7 GIVEN under my hand this _____ day of _____, 2018

8
9 _____

10
11 Clerk to the Board of Supervisors