

**BOARD OF SUPERVISORS
BUSINESS MEETING
ACTION ITEM**

SUBJECT: Short Term Residential Rentals Work Plan

ELECTION DISTRICT(S): Countywide

CRITICAL ACTION DATE: October 19, 2017

STAFF CONTACT(S): David Street, County Administration
Gwen Kennedy, County Administration

PURPOSE: To present the Board of Supervisors (Board) with a work plan that addresses registration, taxation, zoning, and public safety implications of short term rentals of residential property (“Short Term Residential Rentals” or “STRR”).

RECOMMENDATION(S): Staff recommends that the Board approve staff’s work plan found in Attachment 1 to the October 19, 2017 action item.

BACKGROUND: Over the past several years, online platforms and apps offering rooms for short term rent in residential properties have gained prominence in the travel and hospitality markets. These rooms, typically found in private residences, have begun to compete with traditional lodging options and present regulatory challenges to local and state governments. During the 2016 session, the General Assembly passed SB 416, which preempted localities from adopting ordinances or zoning restrictions on short term residential rentals. Senate Bill (SB) 416 was passed with an enactment clause requiring it only be made effective if reenacted in the 2017 session. If reenacted, local authority to regulate short term residential rentals within their jurisdictions would have been substantially constrained. However, in the 2017 session, the General Assembly passed SB 1578 and added a new section, 15.2-983, to the Code of Virginia, which authorizes localities to adopt an ordinance to establish a short-term residential rental registry requiring the registration of operators offering short term rentals of rooms in residential property within the locality. While current code specifically addresses the creation and maintenance of ministerial registries, it does not limit a locality’s ability to regulate this type of activity through taxation, land use or zoning authority.

A short term residential rental (STRR) is defined in Va. Code §15.2-983 as “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.” The new section, §15.2-983, defines “Operator” as “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.”¹

According to Visit Loudoun, there is an inventory of 439 residential units listed on Airbnb, representing 932 sleeping rooms. Traditional bed and breakfasts account for 131 sleeping rooms in the County. This figure represents 16.3 percent of Loudoun County’s total hotel inventory of 5,700 sleeping rooms in 37 hotels and resorts. A recent internet search by staff returned over 300 results for rooms available for short term rental in Loudoun County; these rooms range in variety from suburban homes near Washington Dulles International Airport to rural retreats in western Loudoun. These figures do not necessarily capture all available rooms across the numerous STRR platforms available to consumers.

Localities throughout the Commonwealth are looking at crafting ordinances under the authority provided in the Virginia Code for short term residential rentals. Northern Virginia jurisdictions have met through a regional work group to discuss common elements for future ordinances in an effort to minimize differences across the jurisdictions. Staff from areas such as planning and zoning, Commissioner of the Revenue’s offices, and members of legislative teams have discussed items related to public safety, taxes, zoning, and registration. This group will continue to meet and share updates on each localities progress and efforts on their respective ordinances.

In response to enactment of new section 15.2-983 in 2017 and potential for the industry to return to the General Assembly during the 2018 Session for fixes to the current law, staff established a multi-departmental working group comprised of staff from the Departments of Planning and Zoning, Building and Development, County Administration, Loudoun County Fire and Rescue, and the Commissioner of the Revenue. Visit Loudoun has also contributed industry-expertise to the working group. The working group, in conjunction with a regional working group that includes many northern Virginia localities, has identified several key issues across four topic areas and developed a work plan (Attachment 1) that addresses registration, taxation, zoning, and public safety implications of STRRs.

ISSUES: Staff identified four topic areas associated with STRRs for the Board to consider: registration, taxation, public safety, and zoning. The staff recommended work plan (Attachment 1) proposes addressing these main topic areas in two phases; the first phase, anticipated to occur from mid-October 2017 to February or March 2018, focuses on registration and taxation issues while the second phase, anticipated to occur from the first quarter of 2018 through the third quarter of 2018, focuses on zoning and public safety.² The work plan is divided into two phases due to the likelihood of industry-supported legislation to limit local regulatory authority returning in the 2018 General Assembly session, the long time-horizon associated with zoning ordinance amendments

¹ <https://law.lis.virginia.gov/vacode/title15.2/chapter9/section15.2-983/> State code refers to “short term rentals,” this is a category that already exists in Loudoun County’s codified ordinances and in state code in reference to the short term rental of tangible personal property. Staff uses the terminology “short term residential rentals” for clarity while being as consistent as possible with the language in found in SB 1578 and Va. Code §15.2-983.

² The estimated timeline for phase two is dependent on the 2018 Zoning Ordinance Amendment Work Program anticipated to be adopted by the Board in early 2018.

(ZOAM), and to provide an adequate amount of time to conduct outreach with the public and gather necessary information. Addressing registration and taxation before the end of the next General Assembly session will both demonstrate local progress on the issue and lay the groundwork for future public safety and zoning regulatory review processes.

Phase One: Registration and Taxation

Establishing a registry and annual registration process involves defining who qualifies for registration, housing the registration function in a county department, determining a reasonable fee related to the actual cost of establishing and maintaining a registry, and setting appropriate penalties for non-compliance. Many localities have pursued or are in the process of pursuing regulation of the STRR market through their land use and zoning authority. Establishing a registry apart from requiring a zoning permit has a few ancillary benefits: First, as a public document, it will allow interested parties (e.g. homeowners associations, neighbors, etc.) to determine if STRRs are operating in a specific area or at a specific property. Second, the point of registration may become a hub for information residents may find useful (e.g. reminders to confer with your HOA, insurance company, referrals to other county agencies, etc.). Third, a registry would likely help generate referrals to important public safety agencies (e.g. health, law enforcement, code compliance) and could act as a source of basic information for the Commissioner of the Revenue’s Office, so that the County can ensure that the appropriate taxes are being filed and paid or remitted.

As to taxation, staff will conduct a detailed review of the primary three locally administered taxes that likely impact STRR operators, i.e. the Business, Professional, and Occupational License tax (BPOL), the Business Personal Property tax (BPPT), and the Transient Occupancy tax (TOT). While the ordinances for BPOL and BPPT may be sufficient as currently written to capture STRR business activity, the TOT as currently written may exclude some STRR operators from being required to file and remit taxes on the rooms they rent.³

| Tax | Current Filing Requirement |
|------|---|
| BPOL | Some current STRR Operators (with annual gross receipts above four thousand dollars) are required to apply for a business license and pay annually a license fee of (\$30) or license tax (if gross revenue \$200,000 or above) under the “Hotels and Motels” category (if renting more than seven bedrooms). Depending on total gross revenue, the operator will be required to pay a \$30.00 license fee or a license tax calculated at a rate of \$0.23 per \$100.00 of gross revenue. |

³ The Commissioner of the Revenue does not assess BPOL or TOT on business activity located within the limits of Loudoun’s incorporated towns. The Commissioner assesses BPPT countywide.

| Tax | Current Filing Requirement |
|------------|--|
| BPPT | All business owners, including home based businesses, are required to file a business tangible personal property tax return and current asset list annually. All tangible personal property located in Loudoun County on January 1 and used or available for use in a business is taxable. This includes property owned by the business, property owned personally, property received as a gift, property that is leased or rented, and property that is fully depreciated or expensed for federal tax purposes, as long as it is used in the business on a full or part-time basis. |
| TOT | Some current STRR Operators must collect from transient and remit to the County the TOT (if the lodging establishment can accommodate four or more persons at one time). The County’s TOT levy is 5 percent of the total amount paid for the room rental, with 2 percent unrestricted and dedicated to the County’s General Fund, and three percent restricted to tourism and travel initiatives, e.g. Visit Loudoun. ⁴ |

To establish the registry and registration process and revise locally administered tax provisions, the Board must adopt revisions to the Codified Ordinances of Loudoun County (Codified Ordinances). The work plan (Attachment 1) anticipates conducting outreach between mid-October and December 2017 to provide information to public about the pending registry and tax requirements, as well as gather information from interested parties and residents. An outreach plan is included in the work plan (Attachment 1); The outreach effort includes three main elements, first, the development and launch of an informational web-page with an easy URL that will contain basic information about the STRR review process and links to applicable new legislation and Board items; second, an online survey designed to gauge general public opinion regarding STRRs; and third, a public input session designed to capture industry, operator, and resident input. A more detailed communications plan will be finalized based on Board direction at the October 19, 2017 Business Meeting.

Staff will return to the Board in January 2018 with recommendations for establishing a STRR registry and registration process to be included in the Codified Ordinances. Staff, including staff from the Commissioner of the Revenue’s Office, will also present to the Board its findings and recommendations based on review and evaluation of the three applicable locally administered taxes (BPOL, BPPT, and TOT). If in January 2018, the Board directs staff to draft and advertise an amendment to either of the three tax ordinances, staff will present the amendment to the Codified Ordinances as a companion to the STRR ordinance.

Should the Board proceed with the phased approach, staff anticipates establishing an annual registration process in the beginning months of 2018. For the first year, only STRR registration will be required. Taxes will be assessed as appropriate. Upon adoption of the ZOAM discussed below, STRRs would be required to be in conformance with the STRR Zoning Ordinance upon renewal of their annual registration. Information about the pending ZOAM and additional Zoning Ordinance requirements would be made available to all STRRs upon registration.

⁴ An additional 2 percent is dedicated to the Northern Virginia Transportation Authority for a total tax of 7 percent.

Phase Two: Zoning and Public Safety

Staff anticipates that if the work plan (Attachment 1) is approved, a ZOAM for STRRs will be added to the 2018 ZOAM Work Program and that an amendment to the Codified Ordinances addressing public safety will be evaluated concurrently by staff. Staff will consider various issues and topics, especially in the categories of enforcement/compliance and regulations related to establishing a STRR use for a residential property and develop a Resolution of Intent to Amend for the Board's approval. While the target date for the beginning of this phase isn't until the first quarter of 2018, staff has identified some key issues below for the Board's consideration.

Specific use considerations staff anticipate evaluating include:

- The maximum number of rooms allowed for rent; the maximum number of guests allowed per room; and/or the maximum number of guests allowed per night.
- The maximum number of days per year that a residential property is allowed to be used as a short term rental; and whether STRRs should be permitted to hold special events (weddings, parties, etc.).
- Whether STRRs would be required to be owner-occupied; if multiple properties per operator are permitted; and if the use of accessory dwellings or secondary units of a residential property to will be permitted to be used for short term rental.
- Parking standards.

Specific enforcement/compliance considerations staff anticipates evaluating include:

- The types of rooms that can be rented to guests; conformity with the Virginia Maintenance Code (VMC) for egress, e.g. the use of legally defined bedrooms;
- For properties on septic systems, appropriate referral review by the Health Department;
- The right of access for inspections for Uniform Statewide Building Code (USBC) and local zoning requirements;

Specific public safety considerations staff anticipates evaluating include:

- Ability to ensure compliance with the Statewide Fire Prevention Code;
- Ability of Fire Marshals to inspect;
- Collection of information on the property for use when responding to calls;
- Knowledge of premises for first responders; access to structures; property accessibility; compliance with fire lanes.

Staff anticipates developing and integrating a second public outreach process focused on proposed STRR regulations into the development of the ZOAM. This process will include public outreach meetings, potential Planning Commission public hearings, potential Board public hearings, as well as ongoing updates of the web-page established in Phase One.

FISCAL IMPACT: There is no fiscal impact to approving staff's recommended work plan. Staff has sufficient resources to implement the work plan as described in Attachment 1.

ALTERNATIVES:

1. Approve staff's recommended work plan found in Attachment 1 of the October 19, 2017 action item.

OR

2. Do not approve staff's recommended work plan found in Attachment 1 of the October 19, 2017 action item and direct staff how to proceed.

DRAFT MOTIONS:

1. I move that the Board of Supervisors approve the staff recommended work plan found in Attachment 1 of the October 19, 2017, Board of Supervisors Business Meeting Item.

OR

2. I move an alternate motion.

ATTACHMENT(S):

1. Short Term Residential Rentals Work Plan

Draft Work Plan for Ordinances and Amendments regarding the Registration of Short Term Rental of Residential Property

| | | | |
|--|--|--|---|
| Phase One: Registration Ordinance and Taxation Review | Work Plan Component | | Target Completion Date |
| | Component 1: Develop and execute a public engagement process | | December 31, 2017 |
| | Staff will gather information from residents and interested groups on potential standards for short term rental of residential property (short term residential rentals (STRR) in Loudoun County. In addition to County residents, interested groups will include industry professionals, local businesses and organizations, home and property associations, STRR proprietors, and other interested parties. Feedback from this process will help inform the recommendations that staff anticipates bringing to the Board of Supervisors (Board) in January 2018. | | |
| | Deliverables for Component 1 | Summary | Target Completion Date |
| | Launch informational web page | Staff will create and maintain an informational web page designed to communicate key information to the public about the STRR registration review process. This page will feature links for surveys, applicable Board items, and other useful information for residents and other stakeholders. | Mid/Late October 2017 |
| | Create and conduct an online survey | Staff will create and advertise an online survey designed to collect information about the public's views and opinions on short term residential rental activity and potential registration, tax, and regulatory requirements. The survey will be available via the County's website and promoted via the marketing campaign noted below. | Through December 2017 Results by December 31 |
| | Community outreach meeting | Staff will hold a community outreach meeting designed to gather information from residents and other interested groups on potential regulation. | By December 2017 |
| | Component 2: Conduct staff review and develop recommendations for Board consideration | | January 2018 |
| | Staff will conduct a detailed review and return to the Board in January 2018 with recommendations on how to proceed. Staff anticipates these recommendations will include the development and implementation of a short term residential rental registration process (Registration Ordinance) to be included in the Codified Ordinances of Loudoun County (Codified Ordinances); the review and development of amendments to Part Eight Title Four of the Codified Ordinances for taxation, specifically the transient occupancy tax (TOT); recommendations regarding the addition of a zoning ordinance amendment (ZOAM) to the 2018 ZOAM Work Program to amend the Revised 1993 Loudoun County Zoning Ordinance (Zoning Ordinance); and a potential companion amendment to the Codified Ordinances regarding public safety topics. | | |
| | Deliverables for Component 2 | Summary | Target Completion Date |
| Develop recommendations for STRR registration. | Staff will develop recommendations and request Board direction on a proposed Registration Ordinance. Staff will request Board direction to draft and advertise Codified Ordinances amendments for public hearing and adoption. | January 2018 | |

ATTACHMENT 1

| | | |
|---|--|---|
| Develop recommendations regarding locally administered taxes. | Staff will evaluate BPOL, BPPT, TOT, and other applicable locally administered taxes and make recommendations on amendments, if necessary. If the Board directs staff to draft and advertise amendments to Part Eight Title Four of the Codified Ordinances (BPOL, BPPT or TOT), staff will proceed with a companion amendment to the STRR Registration Ordinance. | January 2018 |
| Develop preliminary recommendations regarding amendments to the Zoning Ordinance and companion amendments to the public safety requirements of the Codified Ordinances. | Staff anticipates that if a ZOAM is recommended, it will be integrated into the 2018 ZOAM Work Program approved annually by the Board. If recommended, staff will begin Phase Two of this work plan, which focuses on the ZOAM process and review of a companion Codified Ordinance amendment to address public safety issues. | Anticipated January 2018; see below for further dates |
| Component 3: Adopt a STRR Registration Ordinance and companion Codified Ordinances amendment for taxation, if applicable | | February 2018 |
| Staff will draft, advertise, and bring to the Board a STRR ordinance and companion amendment to the Codified Ordinances for taxation for consideration and adoption. | | |
| Deliverables for Component 3 | Summary | Target Date |
| Draft and advertise STRR Registration Ordinance and companion Codified Ordinances amendment for taxation. | Per Board direction, staff will draft, advertise, and schedule for public hearing the proposed registration ordinances for STRR and amendments to the Codified Ordinances for taxation thereof, if necessary. | February/March 2018 Public Hearing |
| Adopt STRR Registration Ordinance and companion Codified Ordinance amendment for taxation. | | February or March 2018 Public Hearing or Business Meeting |

| | | | |
|--|---|---|---|
| Phase Two: Zoning Ordinance Amendment and Public Safety Review | Work Plan Component | | Target Completion Date |
| | Adopt a ZOAM for Short Term Residential Rentals and amendments to the Codified Ordinances for Public Safety, as needed. | | 3 rd Quarter 2018 ¹ |
| | Using issues, staff recommendations, and Board direction gathered in Phase One, staff will develop a ZOAM for consideration by the Board. This part of the work plan is estimated based on the ZOAM legislative process and assumes the STRR ZOAM is added to the 2018 ZOAM Work Program and commences during the first quarter of 2018. Staff will incorporate the review of public safety requirements into the ZOAM schedule and provide applicable updates to the Board through items consistent with the schedule noted below. | | |
| | Legislative Process Steps | | Target Completion Date |
| | Step One | Begin ZOAM Legislative Process & Resolution of Intent to Amend (ROIA) <ul style="list-style-type: none"> Determine content of the ZOAM based on professional and industry standards, comparable jurisdictions, information gathered and reviewed in Phase One of this work plan, and Board direction. Resolution of Intent to Amend (ROIA) to Board, possible referral to and review by Transportation and Land Use Committee (TLUC). Board approves ROIA and staff proceeds with step two. | 1 st Quarter 2018 |
| | Step Two | Ordinance Draft Review Process <ul style="list-style-type: none"> Staff to draft ZOAM and refer to applicable county departments for review. Revise draft ZOAM language based on referral review. Staff to conduct public outreach meetings to gather feedback on the draft ZOAM language. Revise zoning ordinance draft language based on public outreach. | 2 nd Quarter 2018 |
| | Step Three | Public Hearing Process and Adoption of ZOAM <ul style="list-style-type: none"> Planning Commission Public Hearing Possible Planning Commission Work Session Planning Commission to make recommendation to Board Board of Supervisors Public Hearing Possible review by TLUC Board of Supervisors Business Meeting | 3 rd Quarter 2018 |

¹ These target dates are variable depending on when the ZOAM is added to the work program and where it is placed on that program.