

**BOARD OF SUPERVISORS
BUSINESS MEETING
ACTION ITEM**

SUBJECT: Adoption of a New Chapter to the Codified Ordinances of Loudoun County - Short-term Residential Rental Registration Ordinance

ELECTION DISTRICT(S): Countywide

CRITICAL ACTION DATE: At the pleasure of the Board

STAFF CONTACT(S): David Street, County Administration
Caleb Weitz, County Administration

PURPOSE: To establish a new chapter of the codified ordinances of Loudoun County to require short-term residential rental registration.

RECOMMENDATION(S):

Staff: Staff recommends that the Board of Supervisors (Board) adopt the proposed new chapter to the Codified Ordinances of Loudoun County (Codified Ordinances) entitled short-term residential rental registration ordinance as drafted and advertised by staff and contained in Attachment 1.

UPDATE: At the Board Public Hearing on April 11, 2018, the Board forwarded (7-1-1: Meyer opposed; Saines absent) Item 4, Adoption of a New Chapter to the Codified Ordinances of Loudoun County - Short-term Residential Rental Registration Ordinance to the May 1, 2018 Business Meeting. At the Public Hearing, the Board's discussion touched on three main topics, to which staff have prepared additional responses for the May 1, 2018, Business Meeting Action Item:

1. Filing thresholds of the transient occupancy tax (TOT)

As currently defined in Chapter 878 of the Codified Ordinances, TOT is levied on "any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, motel, rooming house or other lodging place in the County, which offers lodging to any transient for compensation and which can lodge **four or more persons** at one time."¹ In short, TOT should be filed and remitted by any

¹ This filing requirement is separate from the Business, Professional, and Occupational License (BPOL) Tax requirement that sets the threshold at "every person operating a hotel or motel, renting **in excess of seven bedrooms** to transients or sojourners..."

business than meets that threshold, regardless of whether they call themselves a short-term residential rental, bed and breakfast, hotel, or motel. The Board does have the option to modify the tax thresholds for TOT, however, modifying those thresholds has the potential to have an impact beyond the short-term residential rental market. In the February 22, 2018 Board Business Meeting Action Item, staff recommended that more complete data regarding short-term residential rentals be gathered before modifying TOT thresholds, however, should the Board decide to explore this topic further, staff recommends that staff be directed to return to a future Finance/Government Operations and Economic Development Committee (FGOEDC) meeting with a more holistic report on the TOT. It is also important to note that the TOT requirements do not have any impact on the registration process proposed in the ordinance under consideration with this item.

2. Land-use and zoning

Pursuant to the direction included in the February 22, 2018 Board Business Meeting Action Item and the work plan attached to the October 19, 2017 Board Business Meeting Action Item, staff has begun work on the review of land-use and zoning issues related to short-term residential rentals. The Short-term Residential Rental Zoning Ordinance Amendment (ZOAM) was recently included in the 2018 ZOAM Work Plan adopted by the Board at its February 6, 2018 Business Meeting. Staff anticipates that the Resolution of Intent to Amend the Zoning Ordinance (ROIA) will be presented to the Board at a 2018 Business Meeting. Staff will continue the outreach and engagement processes for the zoning and public safety phase that began with the registration and taxation phase (e.g. online survey, webpage updates, etc.). Currently, staff plans to open a second survey to gauge the community's interest in and opinions about land use-specific issues to help inform the direction of a potential Zoning Ordinance Amendment. The registration requirement is not a permit to conduct this activity.

3. Intersection with private covenants

As noted in the land-use response above, the registration requirement is not a permit to conduct this activity. Operators of STRRs must comply with applicable zoning and safety regulations and any other provision applicable to this type of business, including private covenants resulting from home-owners or condominium owners associations. To that effect, the ordinance specifically states that nothing in therein supersedes or limits contracts or agreements between or among individuals or private entities related to the offering or use of a property, which includes home-owners and condo-owners associations.

BACKGROUND: At the Board Business Meeting on February 22, 2018, the Board approved (7-2: Meyer and Saines opposed) the short-term residential registration process recommended by staff and directed staff to draft and advertise a short-term residential rental (STRR) registration ordinance for advertisement and public hearing.

Staff's recommendations found in the February 22, 2018, Board Business Meeting Action Item were:

- Direct staff to draft and advertise an amendment to the Codified Ordinances of Loudoun County (Codified Ordinances) to include a short-term residential rental registration requirement and subsequently implement a short-term residential rental registration process, consistent with and implementing §15.2-983 of the Code of Virginia (Code).
- Maintain the current filing and remittance requirements for applicable locally administered taxes: the Business, Professional, and Occupational License Tax (BPOL), Business Personal Property Tax (BPPT), and Transient Occupancy Tax (TOT).
- Direct staff to continue into Phase II of the October 19, 2017, work plan and begin to evaluate zoning and public safety issues associated with short-term residential rentals.

The recommendations noted above resulted from staff's analysis and public outreach process for two separate issues: 1) a potential STRR registration requirement, and 2) a review of three locally administered taxes as they pertain to STRRs (the Business Professional, and Occupational License, Business Personal Property, and Transient Occupancy taxes).² The analyses referenced above are the result of a work plan (Attachment 2) approved on October 19, 2017, that proposed to analyze four topic areas related to STRRs across two phases; registration and taxation in phase 1 and zoning and public safety in phase 2. Board action on the proposed amendment to the Codified Ordinances found in the April 11, 2018, Public Hearing Staff Report will conclude phase 1 of the work plan for STRRs approved by the Board on October 19, 2017.³ Phase 2 of the work plan is currently underway and includes the development of a draft ZOAM to address zoning and land-use issues associated with STRRs. A review of applicable public safety-related requirements will be conducted congruently with the ZOAM.

ISSUES: The proposed short-term residential rental ordinance is consistent with and implements §15.2-983 of the Code of Virginia (Code). The ordinance recommended by staff (Attachment 1) includes:

- Establishment of a free, annual registration requirement.
- Exemptions required by the Code.
 - Exemptions from the annual registration requirement include: real estate professionals licensed by the Commonwealth of Virginia Real Estate Board, property owners represented by real estate professionals licensed by the Commonwealth of Virginia Real Estate Board, individuals registered pursuant to the Virginia Real Estate Time-Share Act, individuals licensed or registered with the Commonwealth of Virginia Department of Health related to provision of a room or space for lodging, and individuals already licensed or registered with the County of Loudoun, related to the rental or management of real estate, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.
- Penalties for non-compliance.

² The full [February 22, 2018, Board Business Meeting Action Item](#) can be found online.

³ The full [October 19, 2017, Board Business Meeting Action Item](#) can be found online.

- This chapter establishes several penalties for non-compliance with the registration requirement that are consistent with the Code of Virginia. Penalties include a \$500 penalty for offering or using a property as a STRR without registration, up to a total of \$5,000; a prohibition from registration and offering or using such property as a STRR for one year for two or more violations of the registration requirement; and a prohibition from registration and offering or using such property as a STRR for one year for more than three violations of applicable state and local laws, ordinances, or regulations. The Director of Building and Development has leeway to waive or reduce fees or rescind prohibitions for good cause or in certain circumstances, e.g. if the failure to register was due to no fault of the operator.
- Instructions for administration.
 - Administration of STRRs is inherently a multi-departmental effort to be coordinated by and housed in the Department of Building and Development. For ease of administration, the Director of Building and Development (or designee) is responsible for administering, interpreting and enforcing the provisions of this ordinance. This section also establishes that communications regarding STRRs are to be sent to both the operator and the property owner if different, to the mailing address of record of the property being offered or used as short-term residential rental, as such mailing address is listed in the real estate records of the Commissioner of the Revenue.
- Private covenants.
 - Establishes that nothing in this chapter shall be construed to prohibit, limit, or otherwise supersede existing Loudoun County ordinances and regulations that regulate short-term residential rental of property through general land use and Loudoun County's zoning ordinance.
 - Establishes that nothing in this chapter shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the offering or use of a property, including recorded declarations and covenants; the provisions of condominium instruments of a condominium created pursuant to the Condominium Act of the Code of Virginia; the declaration of a common interest community as defined in the Code of Virginia; the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act; or any declaration of a property owners' association created pursuant to the Property Owners' Association Act.
- Establishment of a July 1, 2018 effective date.
 - A July 1, 2018 effective date will allow staff sufficient time to 1) finalize an online registration form and process and 2) conduct a public information campaign to notify STRR operators of new requirements.

FISCAL IMPACT: There is no fiscal impact to adopting a short-term residential rental registration ordinance. The Department of Building and Development has sufficient resources to absorb the cost of establishing and maintaining a STRR registry.

ALTERNATIVES:

1. Adopt the short-term residential registration ordinance as proposed by staff.
2. Do not adopt the short-term residential registration ordinance as proposed by staff and direct staff on how to proceed.

DRAFT MOTIONS:

1. I move that the Board of Supervisors approve the ordinance to establish a new chapter of the Codified Ordinances of Loudoun County, Short-term Residential Rental Registration, provided as Attachment 1 to the May 1, 2018, Board of Supervisors Business Meeting Action Item.

OR

2. I move an alternate motion.

ATTACHMENT(S):

1. Short-term Residential Rental Registration Ordinance
2. Short-term Residential Rental Work Plan

CHAPTER XXX

SHORT-TERM RESIDENTIAL RENTAL REGISTRATION

XXX.01	Definitions.
XXX.02	Registry of property offered as short-term residential rental. Duty to register.
XXX.03	Registration exemptions.
XXX.04	Penalties.
XXX.05	Administration and enforcement.
XXX.06	Other Provisions. Private covenants.
XXX.07	Effective date

CROSS REFERENCES

Creating a registry for short-term residential rental. Va. Code §15.2-983

XXX.01 DEFINITIONS.

As used in this chapter:

- a) The term “Operator” means the proprietor of any dwelling, lodging, or sleeping accommodation offered or used as a short-term residential rental, whether in the capacity of owner, lessee, sub-lessee, mortgagee in possession, licensee, or any other possessory capacity.
- b) The term “Short-term residential 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.
- c) The term “Property(s)” means a real estate offered by an operator as a short-term residential rental.

XXX.02 REGISTRY OF PROPERTY OFFERED AS SHORT-TERM RESIDENTIAL RENTAL. DUTY TO REGISTER.

There is hereby established a short-term residential rental registry for operators with property offered or used as short-term residential rental within the County and outside of any incorporated towns within the County. An operator offering or using a property as a short-term residential rental shall annually register such property in the short-term residential rental registry maintained by the Loudoun County Department of Building and Development. The operator of each property offered as a short-term residential rental must annually provide to the County the complete name and contact information of the operator and the address of each property in the county offered as a short-term residential rental by such operator. Contact information shall include mailing address, telephone numbers and email address. The County will not impose a registration fee.

XXX.03 REGISTRATION EXEMPTIONS.

The following persons are exempt from the registration requirement contained in section XXX.02: (i) a real estate professional licensed by the Commonwealth of Virginia Real Estate Board, (ii) a property owner who is represented by a real estate professional licensed by the Commonwealth of Virginia Real Estate Board; (iii) a person registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) of the Code of Virginia, 1950, as amended; (iv) a person licensed or registered with the Commonwealth of Virginia Department of Health, related to the provision of room or space for lodging; or (iv) a person licensed or registered with the County of Loudoun, related to the rental or management of real estate, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.

XXX.04 PENALTIES.

a) Upon written notice, an operator required to annually register a property pursuant to section XXX.02 who offers or uses such property without being registered in the short-term residential rental registry is subject to a penalty in the amount of \$500 per violation up to a total of \$5,000. A separate offense shall be deemed committed each day during or on which a property is offered or used as a short-term residential rental without registration after written notice of violation. Such operator may not offer or use, or continue to offer or use such property for short-term residential rental, unless and until the penalty is paid and the property is properly registered. The Director of Building and Development or his or her designee may, at his or her own discretion, waive such penalty if the failure to register was due to no fault of the operator.

b) Upon written notice, of two or more violations of the registration requirement as it relates to a specific property, the operator of such property may be prohibited from registering said property and from offering or using such property as a short-term residential rental for one calendar year from the date of last notification of violation. Such prohibition may be rescinded for good cause by the Director of Building and Development or his or her designee.

c) Upon written notice of more than three violations of applicable state and local laws, ordinances and regulations applicable to a property offered or used as short-term residential rental, an operator required to register such property may be prohibited from offering such specific property as a short-term residential rental within the County for one year from the date of last notification of violation. Such prohibition may be rescinded for good cause by the Director of Building and Development or his or her designee.

XXX.05 ADMINISTRATION AND ENFORCEMENT.

a) It shall be the responsibility of the Director of Building and Development or his or her designee to administer, interpret and enforce the provisions of this Ordinance, who may be assisted by other officials of Loudoun County, Virginia, pursuant to their respective fields. The Director of Building and Development or his or her designee will send the written notices indicated in this section to the operator, and property owner if different, by mail to the mailing

address of record of the property being offered or used as short-term residential rental, as such mailing address is listed in the real estate records of the Commissioner of the Revenue.

XXX.06 OTHER PROVISIONS. PRIVATE COVENANTS.

Nothing in this chapter shall be construed to prohibit, limit, or otherwise supersede existing Loudoun County ordinances and regulations that regulate short-term residential rental of property through general land use and Loudoun County's zoning ordinance. Nothing in this chapter shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the offering or use of a 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.) of the Code of Virginia, 1950, as amended; the declaration of a common interest community as defined in § 55-528 of the Code of Virginia, 1950, as amended; the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.) of the Code of Virginia, 1950, as amended; or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55-508 et seq.).

XXX.07 EFFECTIVE DATE

The effective date of this ordinance is July 1, 2018

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	
Develop recommendations regarding locally administered taxes.	Staff will evaluate BPOL, BPPT, TOT, and other applicable locally administered taxes and make recommendations on amendments, if	January 2018	

ATTACHMENT 2

	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.	
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.