



## **PLANNING COMMISSION**

AGENDA for November 9<sup>th</sup> 2021

AGENDA

### **REGULAR MEETING**

**Call to Order by Chairman and Roll Call**

**Public Comment**

**Review and Adoption of Minutes**

Minutes of October 12<sup>th</sup> meeting

**Report of Secretary**

**New Business**

None

**Old Business**

- 1) Discuss Residential Transient Occupancy Zoning text amendment

**Adjournment**

**Members and Term Expirations**

Dennis Hawes, Chairman, *7/31/2024*

Mike Ohleger, Vice-Chairman, *6/30/2022*

Justin Wiseman, *8/31/2025*

Marolyn Cash, *6/30/2024*

Lucy Ferrebee, *9/30/2023*

Melvin Henson, City Council Representative,  
*9/30/2023*

Kristie Gibbons, *12/31/2024*

Timothy Petrie, *12/31/2024*

Jason Tyree, Ex Officio member

**Staff**

Tom Roberts, Director of Community & Economic Development

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**Meetings**

Members of the Buena Vista Planning Commission meet in Council Chambers, 2039 Sycamore Avenue, at 7:00 p.m. on the 2<sup>nd</sup> Tuesday of each month, unless otherwise announced. Meetings may be held and business conducted without a quorum, but no votes may be taken unless a quorum is present. A majority of members constitutes a quorum. A motion passes with a majority vote; a tie constitutes defeat of the motion.



## PLANNING COMMISSION

MINUTES of October 12<sup>th</sup> 2021

Members of the Buena Vista Planning Commission met in Council Chambers at 7:00 PM on Tuesday, October 12<sup>th</sup>, 2021.

### **Members Present:**

Dennis Hawes, Chairman  
Michael Ohleger, Vice-Chairman  
Marolyn Cash  
Lucy Ferrebee  
Kristie Gibbons  
Melvin Henson, City Council Representative  
Justin Wiseman

### **Members Absent:**

Jason Tyree, Ex Officio member  
Timothy Petrie

### **Staff Present:**

Tom Roberts, Director of Community & Economic Development

Meeting is called into order and roll was called.

### **Minutes**

Mr. Ohleger moved to adopt the minutes of September 14<sup>th</sup> 2021 as presented. Mrs. Cash seconded, and all voted yes. Mr. Wiseman abstained.

### **Secretary's Report**

Mr. Roberts updated the Commission that Mountain Day went well.

### **Old Business**

#### *Residential Transient Occupancy Zoning Text Amendment*

Mr. Roberts reviewed the staff report with the Commission and went through the different types of Residential Transient Occupancy uses. He paused to go over the business license requirement. Since drafting the staff report, he no longer thinks we should require a business license for STRs. It was likely the intent of the General Assembly when authorizing locality STR registries that such a registry would be lieu of a business license, however, the City Attorney could not find an explicit prohibition on requiring a business license. Overall, requiring a business license in addition to registration for an STR would not add much value or revenue to the City, and may act as an obstacle or hoop to jump through for operators.

Mrs. Cash asked about how the City knows who the operators are. Mr. Roberts explained that all STR and B&B operators would have to register with the City, and enforcement would be

done by checking various platforms on an ongoing basis. Additionally, Mr. Roberts reported that a recent Code of Virginia update requires “accommodation intermediaries” will be required to remit lodging taxes to localities. This means that platforms like Airbnb should be collecting taxes and sending them to the City. Recently, the City has been discussing with staff in Lexington and Rockbridge County about Regional Tourism taking the lead on monitoring STRs, using a third-party monitoring software subscription. Tourism could then notify the City when a new STR started listing for us to make sure they are registered.

Mrs. Gibbons asked what downsides there might be to allowing STRs throughout the City. Mr. Roberts explained that the problems from STRs seen in other cities, such as neighborhoods converting to hotel blocks, or party houses, are not very likely in Buena Vista, and the CUP requirement would address the possibility of party houses.

There was some discussion of converting from an STR to a bed & breakfast, the difference between them, and multiple transient occupancy types in one structure. Mr. Roberts noted that he added a provision in the draft text (714.03-8) that allows multiple RTOs on the same property. The intention was to allow something like the White Tree Inn, which is a boarding house that has long-term tenants (>30 days) and transient occupants. However, this language may need to be tweaked to properly allow this.

Mr. Hawes asked about the off-street parking requirements. Mr. Roberts explained that the two-space requirement for Type B STRs is the same as single family house, and the 3 space requirement for the Type A STR is based on the logic that a guest would be in addition to the resident family. The Commission agreed that we should give more flexibility to count on-street parking spaces because of the layout of existing houses and neighborhoods.

Mr. Ohleger asked about boardinghouses. Mr. Roberts responded that he proposed updating the definition of a boardinghouse to be exclusively long-term occupancy (more than 30 days). This clarifies they are not in the mix of RTOs. One could have both a boardinghouse and a bed & breakfast or STR.

Mr. Hawes suggested that we allow residential tenants operate Type A STRs, rather than limiting it to property owners. Mr. Roberts also pointed out that the text allows us to require documentation that operators are the owner.

To a question about what the consequences of violation would be, Mr. Roberts explained that after 3 substantiated complaints, then the operator could no longer operate an STR. If he or she did, then it would be a zoning violation, which is punishable as a misdemeanor crime. Building code health and safety violations could be enforced through separate mechanisms.

Mr. Hawes suggested that all RTOs be allowed to have signs.

Mr. Hawes asked about the principal guest requirement. Mr. Roberts explained that those regulations were common, and that it is not requiring that anybody contact the City every time the unit is occupied. Instead, it is a requirement that if there is a problem, it is clear who police or City officials can speak to.

Mr. Roberts commented that he had not finished with the enforcement section. He also pointed out the phase-in approach to give people running STRs right now a few months to get registered.

Mr. Roberts also commented that the definition section is not finished. He did not define “host” but actually needs to define “operator” since that is the term he used in the text. He added that he wanted to take this opportunity to clarify the definition of “accessory building”.

Mr. Hawes commented that he does not want to rush this amendment, and would prefer to do a public hearing in 2022.

**Adjournment 8:00 PM**

Approved: \_\_\_\_\_





## **PLANNING COMMISSION Staff Report**

Zoning Text Amendment  
Transient Occupancy Regulations  
11/4/2021

### **Synopsis**

Consolidate regulations of all transient occupancy uses, including modern short-term rentals.

### **Analysis**

#### **Changes since October 12<sup>th</sup> 2021 Draft**

- Type A and B STRs do NOT have to obtain a business license, only register with the City pursuant to 15.2-983.
- I removed the licensure and taxation rows from the table because they are covered in the text.
- I replaced the word “operator” with the word “host” for consistency, and defined the word “host” as the owner and operator of an RTO.
- Revised 714.03-8 about RTOs in combination with other uses. I said only one RTO is allowed per dwelling unit. This would prohibit you from having both a bed & breakfast homestay + a Type A STR in the same house because that would result in a lot more people. You can still combine an RTO with other uses like a boardinghouse.
- Added a provision that says you can count up to 3 on-street parking spaces toward your required minimum.
- Revised language about licensure and taxation to clarify that hosts may use a 3<sup>rd</sup> party to report, collect, or remit some or all of their lodging tax. This makes it clear that it’s OK for Homeaway or AirBnB to collect tax on your behalf.

#### **Other Items**

One suggestion at the October meeting was to allow residential leaseholders to act as hosts for Type A STRs. For example, if Joe was renting a house on an annual lease, he could put a bedroom on AirBnB. The draft text currently requires that all hosts be owner-occupants. While allowing residential leaseholders to be hosts would give more flexibility, it also opens the door to complexity in monitoring and enforcement. The following are potential problems:

- The property owner does not know that the leaseholder is subletting his house.
  - This could be addressed by requiring that STR registrants provide a notarized affidavit from the property owner. However, this is another step and another form for the city to collect and track. And how does the City know if the owner withdraws permission?
- The City would have to collect and review the lease between the owner and the leaseholder to know the term of the lease and as proof that it truly is the residence of the STR host.

- It would be very difficult for the city to know, much less accurately track, when a leaseholder registered as an STR host ends his residential lease and moves out (could be at the end of the lease term, might not be). The next residential leaseholder would have to register separately for an STR. Renters come and go very easily.
- If there were violations of STR rules or property maintenance regulations, enforcement ultimately falls back on the property owner. Inserting a third party (the tenant) makes this more complicated. If the City were to cite the property for a violation, we would go directly to the owner.
- The leaseholder rents a bedroom, transient occupants “trash” the house, then the leaseholder skips town. The property owner is left holding the bag.
- Why would an owner let a leaseholder collect profits from subletting, while bearing most if not all the risk of property damage etc.?





## Section 714 Residential Transient Occupancy

DRAFT text

10/5/2021

### Section 714. Residential Transient Occupancy

714.01 Purpose. The intent of this section is to regulate the operation of establishments which provide short-term accommodations. The objectives of this regulations are the following:

714.01-1 To ensure the health and safety of guests

714.01-2 To ensure adequate provision of infrastructure to guest accommodations, including utilities and vehicular access and parking

714.01-3 To encourage tourism and the visitor experience of Buena Vista

714.01-4 To maintain and enhance the quality and character of commercial and residential neighborhoods

### 714.02 Table of Residential Transient Occupancy Use Regulations

Type	Bed & Breakfast	Bed & Breakfast	STR Type A	STR Type B
Subtype	Homestay	Inn (CUP required)	Room Rental	Whole-unit
Duration	Less than 30 days	Less than 30 days	Less than 30 days	Less than 30 days
Host present?	Yes	Yes	Yes	No
Occupancy	1 to 2 guest rooms	3 to 5 guest rooms	Residents plus <i>family</i> (as defined herein) by right, or per CUP	Building code occupancy of all bedrooms, or per CUP
Cooking facilities in rooms?	No	No	Yes or No	Yes or No
Meals provided?	Yes	Yes	No	No
Parking Requirements	1 space per guest room	1 space per guest room	2 spaces for dwelling + 1 for STR	2 spaces, or per CUP

### 714.03 Residential Transient Occupancy uses Generally

714.03-1 *Registration*. The host shall comply with all registration, filing and taxation requirements with applicable City departments prior to offering guest accommodations.

714.03-2 *Authorization to enter premises*. By submitting an application for a Residential Transient Occupancy use, an applicant authorizes the Administrator or designee to enter the subject property, upon reasonable advance written notice to the applicant, at least one time during the calendar year to verify that the transient occupancy use is being operated in accordance with the regulations set forth within this section.

714.03-3 *Building code compliance*. Prior to offering guest accommodation, all Residential Transient Occupancy units shall meet applicable building and property maintenance codes. Property owners shall obtain a Rental Inspection Certificate, and are subject to the requirements and remedies of the Rental Inspection Program.

714.03-4 *Fire safety*. A fire extinguisher shall be provided and visible in all kitchen and cooking areas; smoke detectors shall be installed in all locations as identified in the Uniform Statewide Building Code; and a carbon monoxide detector must be installed on each floor in every dwelling.

714.03-5 *Integration into neighborhood*. Residential Transient Occupancy uses typically occur in single-family homes in existing neighborhoods. No alterations to the house to accommodate the transient occupancy use are permitted which would compromise the residential character of the property.

714.03-6 *Limitations of use*. Residential Transient Occupancy establishments are permitted solely to provide lodging and, if applicable, meals. Additional activities including receptions, parties and other events are not permitted unless specifically authorized by a conditional use permit. Authorization for additional activities will be based on the suitability of the house and property for hosting such events. Specific consideration will be given to the floor plan of the house, the proximity of the house to neighboring houses, the size of the lot, provisions to buffer the effects of such activities from adjacent property and the ability to provide parking for such events.

714.03-7 *Maximum duration of stay*. The maximum stay for a Residential Transient Occupancy unit is 30 days. Any dwelling unit offering guest accommodations for more than 30 consecutive days shall be considered a residential use and shall comply with all applicable zoning regulations, including occupancy restrictions.

714.03-8 *Concurrent Residential Transient Occupancy uses*. Only one Residential Transient Occupancy use shall be permitted within a single dwelling unit.

714.03-9 *Parking*. Hosts should provide off-street parking spaces if possible. No more than three on-street public parking spaces may count toward the required number of spaces.

#### 714.04 Bed and Breakfast Homestay additional regulations

714.04-1 *Description*. A Bed and Breakfast Homestay is a single-family dwelling unit occupied by the owner which is used and regulated primarily as a private residence, but which provides up to five bedroom accommodations and meals to transients.

714.04-2 *Residency*. The host of a Bed and Breakfast Homestay shall only be an owner who utilizes and resides at the dwelling as his or her primary residence. The host may be required to submit acceptable proof to the Zoning Administrator that the dwelling is the host's primary residence. Acceptable proof of permanent residence may include: applicant's driver's license, voter registration card, or United States passport showing the address of the property, or other document(s) which the Administrator determines provides proof of permanent residence by the host.

714.04-3 *Licensure and taxation*. The host shall hold a valid business license from the city and a permit from the Virginia Department of Health, and shall report all registrations to the Commissioner of Revenue for the collection of transient lodging tax. Hosts may utilize a third party to report, collect, and remit some or all transient lodging tax in accordance with Code of Virginia and other applicable laws.

714.04-4 *Registration book*. A registration log must be maintained for one year and be made available for review by the city upon request.

714.04-5 *Landscaping*. Landscaping, buffers and/or fences may be required as a permit condition in order to mitigate potentially negative impacts on adjoining properties and to maintain the appearance of the district.

714.04-6 *Cooking facilities*. Guestrooms in bed and breakfast establishments shall not have cooking facilities.

714.04-9 *Signage*. No on-premise signage advertising the Bed and breakfast homestay is permitted.

#### 714.05 Bed and Breakfast Inn additional regulations

714.04-1 *Description*. A Bed and Breakfast Inn is a single-family dwelling unit occupied by the owner which is used and regulated primarily as a private residence, but which provides more than two, but no more than five bedroom accommodations and meals to transients.

714.04-2 *Residency*. The host of a Bed and Breakfast Inn shall only be an owner who utilizes and resides at the dwelling as his or her primary residence. The host may be required to submit acceptable proof to the Zoning Administrator that the dwelling is the host's primary residence. Acceptable proof of permanent residence may include: applicant's driver's license, voter registration card, or United States passport showing the address of the property, or other document(s) which the Administrator determines provides proof of permanent residence by the host.

714.04-3 *Licensure and taxation*. The host shall hold a valid business license from the city and a permit from the Virginia Department of Health, and shall report all registrations to the Commissioner of Revenue for the collection of transient lodging tax. Hosts may utilize a third party to report, collect, and remit some or all transient lodging tax in accordance with Code of Virginia and other applicable laws.

714.04-4 *Registration book*. A registration log must be maintained for one year and be made available for review by the city upon request.

714.04-5 *Landscaping*. Landscaping, buffers and/or fences may be required as a permit condition in order to mitigate potentially negative impacts on adjoining properties and to maintain the appearance of the district.

714.04-6 *Cooking facilities*. Guestrooms in bed and breakfast establishments shall not have cooking facilities.

#### 714.06 Type A Short Term Rental additional regulations

714.06-1 *Description*. A Type A Short Term Rental is a portion of a single-family dwelling unit where the host is the permanent resident of the dwelling, and the host is present during the short term rental.

714.06-2 *Residency*. The host of a Type A Short Term Rental shall only be an owner who utilizes and resides at the dwelling as his or her primary residence. The host may be required to submit acceptable proof to the Zoning Administrator that the dwelling is the host's primary residence. Acceptable proof of permanent residence may include: applicant's driver's license, voter registration card, or United States passport showing the address of the property, or other document(s) which the Administrator determines provides proof of permanent residence by the host.

714.06-3 *Licensure and taxation*. The host shall register with the Department of Community and Economic Development pursuant to Code of Virginia 15.2-983, and shall report all registrations to the City of Buena Vista for the collection of transient lodging tax. Hosts may utilize a third party to report, collect, and remit some or all transient lodging tax in accordance with Code of Virginia and other applicable laws.

714.06-4 *Registration book*. A registration log must be maintained for one year and be made available for review by the city upon request.

714.06-5 *Meals*. No food shall be prepared for or served to guests.

#### 714.07 Type B Short Term Rental additional regulation

714.07-1 *Description*. A Type B Short Term Rental is a single-family dwelling unit where the host is not the permanent resident of the dwelling.

714.07-2 *Licensure and taxation*. The host shall hold a valid business license from the city and register with the Department of Community and Economic Development pursuant to Code of Virginia 15.2-983, and shall report all registrations to the City of Buena Vista for the collection of transient lodging tax. Hosts may utilize a third party to report, collect, and remit some or all transient lodging tax in accordance with Code of Virginia and other applicable laws.

714.07-2 *Meals*. No food shall be prepared for or served to guests.

714.07-2 *Waste*. The dates and information for trash collection shall be posted prominently in the short term rental unit.

714.07-2 *Principal guest*. During each stay at the short term rental unit, a principal guest at least 18 years of age shall be designated as the contact person for City officials in the

event of safety or behavioral issues at the unit. The host shall provide this information upon request to authorized City officials.

714.07-2 *Host contact*. The name and telephone number of the host or the host's designee shall be conspicuously posted within the short term rental unit. The host shall answer calls twenty-four (24) hours a day, seven (7) days a week for the duration of each short term rental to address any problems associated with the short term rental unit.

#### 714.08 Conditional Use Permit.

714.08-1 The following uses are permitted by Conditional Use Permit:

714.08-1.1 Bed and Breakfast Inns

714.08-1.2 Type A or Type B Short Term Rental with an occupancy greater than the maximum occupancy listed in the table in 714.02.

714.08-1.3 Uses accessory to a Residential Transient Occupancy, including but not limited to receptions, weddings, meetings, or concerts.

714.08-2 In reviewing an application for a conditional use permit, the Planning Commission and the governing body may consider the following factors for Residential Transient Occupancy uses:

714.08-2.1 On- and off-street parking available

714.08-2.2 Suitability of the buildings and grounds for the proposed use

714.08-2.3 Impact of vehicular and pedestrian traffic

714.08-2.4 Impact on visual and functional character of the neighborhood

714.08-2.5 Availability of similar establishments in the neighborhood and the area

#### 714.09 Enforcement

714.09-1. A registration may be suspended or cancelled for the following reasons: a. Failure to collect and/or remit the transient occupancy tax. b. Three (3) or more substantiated complaints (including, but not limited to, parking on grass, noise, excess trash) within a twelve-month period. c. The failure of any short term rental host to maintain his or her principal place of residence or domicile at the dwelling unit (as required in the residential zoning districts) used as a limited residential lodging.

714.09-2. Before any suspension or cancellation can be effective, the Zoning Administrator shall give written notice to the short term rental host. The notice of suspension or cancellation issued under the provisions of this chapter shall contain: a. A description of the violation(s) constituting the basis of the suspension or cancellation; b. If applicable, a statement of acts necessary to correct the violation; and c. A statement that if no written response by the host is received by the Planning Department within

thirty (30) days from the date of the notice, the registration will be suspended or cancelled.

714.09-3. The notice shall be given to the host by delivering a copy of the notice in person. If the host cannot be found, such notice shall be sent to the address of record by: a. Certified mail or e-mail to the addresses in the registration form; and b. A copy of the notice shall be posted in a conspicuous place on the premises.

714.09-4. A copy of the notice will be provided to the Commissioner of Revenue to advise the registration may be revoked.

714.09-5. Any determination made by the Zoning Administrator may be appealed to the Board of Zoning Appeals.

714.09-6. Penalty. It shall be unlawful to operate a short term rental:

714.09-6.1. without obtaining a registration as required by this article,

714.09-6.2. after a registration has been suspended or cancelled, or

714.09-6.3. in violation of any other requirement of this article.

714.09-6.4. The penalty shall be a fine of five hundred dollars (\$500.00) per occurrence in accordance with Sec. 15.2-983 of the Code of Virginia for an host required to register who offers for short-term rental a property that is not registered.

714.09-7 Phased Effective Date. For any Residential Transient Occupancy use which was not in operation at any point in 2021 and which begins operation on or after January 1 2022, this section shall apply immediately. For any Residential Transient Occupancy use which was in operation at any point in 2021 and which continues operation on or after January 1 2022, this section shall apply beginning March 1 2022.

## Definitions

~~302.01-1: Accessory use means or building means a structure subordinate or incidental to the principal structure on a lot in square footage and primary use. Accessory structures and uses include detached garages, storage buildings, pool houses, swimming pools, storage bins and material storage areas.-A~~ a use that is incidental and subordinate to that of the main building or use of land and that is located on the same lot and under the same ownership in all respects.

~~302.02-5 Building, accessory~~ means a subordinate building located on the same lot as the main building, the use of which is incidental and accessory to that of the main building or use. No such accessory structure shall be used for housekeeping purposes as a dwelling unit.

~~302.02-3: Boarding house (rooming house)~~ means a building or part thereof, other than a hotel, motel, or restaurant, where meals and/or residential lodging are provided for compensation for three to ten unrelated persons and where no cooking or dining facilities are provided in individual rooms. If the duration of stay of any guest is less than thirty (30) days, then the establishment must be licensed as a Short Term Rental pursuant to Section XXX. ~~And in which the length of stay usually exceeds one week in duration. A lodging house is also included in this definition.~~

*Bed and breakfast homestay* means a single-family dwelling unit occupied by the owner which is used and regulated primarily as a private residence, but which provides up to two bedroom accommodations and meals to transients.

*Bed and breakfast inn* means a single-family dwelling occupied by the owner which provides more than two, but no more than five bedroom accommodations and meals to transients.

*Bed and breakfast establishment* [means] a bed and breakfast homestay or inn.

*Short-term rental* means a dwelling, or portion of a dwelling, used or advertised for transient rental in increments of 30 or fewer consecutive days. This use type does not include bed and-breakfast establishments and does not apply to month to month extensions following completion of a year's lease.

*Host* means the person who is owner and operator of the Residential Transient Occupancy premises.

*Transient* means a for a period of 30 days or less in the context of guest accommodation, or means a person occupying such a unit.

*Residential Transient Occupancy* means a Bed and Breakfast Homestay, a Bed and Breakfast Inn, a Type A Short Term Rental, or a Type B Short Term Rental. The term does not include hotels.

*Type A Short Term Rental* means a short term rental where the host is the permanent resident of the dwelling, and the host is present during the short term rental.

*Type B Short Term Rental* means a short term rental where the host is not the permanent resident of the dwelling.

~~302.21.2: [Repealed]—Tourist court, auto court, motel, hotel, cabin or motor lodge means building or buildings containing individual sleeping rooms, designed for, or used temporarily by, automobile tourists or transients, with garage or parking space conveniently located to each unit. Cooking facilities may be provided for each unit.~~

~~302.21-3:—[Repealed]—Tourist home means a dwelling where only lodging is provided for compensation for up to five persons (in contrast to hotels and boarding houses) and open to transients.~~

~~613.03-2.1:—[Repealed]—Cabins/cottages. For definition purposes for this section: Cabins/cottages is a building or a group of buildings, whether detached or in connected units, designed primarily for transient travelers catering to the needs of the traveling public by furnishing sleeping accommodations with or without supplying food.~~