



PLANNING COMMISSION Staff Report
Zoning Text Amendment
Residential Transient Occupancy Regulations
12/20/2021

Synopsis

Updated and new regulations for all types of transient occupancy uses.

Summary:

- Group bed & breakfasts and short-term rentals under category called “residential transient occupancy” uses
- Propose permissive approach—allowing whole-house and room rentals anywhere residential uses are allowed, no cap on nights per year
- Propose some occupancy limits
- Registration and licensure would allow City to monitor and enforce if there are nuisance complaints, as well as tax

Acronyms

RTO means Residential Transient Occupancy use
STR means Short Term Rental

Analysis

Background

Regulation of short term rentals (STRs) like those through the Airbnb platform has been an evolving issue over the last ten years, but the landscape is stabilizing some now. The draft text represents work by a City intern several years ago, staff work, and Planning Commission discussion this fall.

The purpose of regulating STRs is to prevent neighborhood nuisance problems such as overcrowding, “party houses,” parking problems; and to capture lodging taxes in a fair and consistent way across different transient occupancy types (hotels, bed & breakfasts, STRs).

Current Approach

Currently, the City has a “hands-off” approach to regulating STRs. We do not regulate, register, track, or tax STRs. The only exception is that, when asked, we inform hosts of the occupancy limit for residences—the zoning definition of “family” which essentially is four unrelated people. The City has an established code for regulating bed & breakfast establishments, which share some attributes of STRs, but are not the same.

There are currently about a dozen STRs in Buena Vista listed on AirBnB. I am not aware of any resident complaints about occupants of an STR in the past.

Framework

To define STRs, we have to distinguish how they are different from other similar uses, such as bed & breakfasts or boarding houses or hotels. The included tables show current regulations and the proposed changes. To draft this new section, I created the term “residential transient occupancy” as a category that includes both bed and breakfast establishments and short term rentals.

Transient occupancy, per code of Virginia, is 30 days or less. Residential occupancy is more than 30 days. I propose keeping the existing use types of Bed & Breakfast Homestay and Inn, and adding Type A and Type B Short Term Rentals. Many localities use this division of Type A and B to distinguish whether it is a room rental or a whole-dwelling unit rental.

The key difference between Bed & Breakfasts (both homestays and inns) and STRs is that Bed & Breakfasts may serve meals, and are typically permitted by the Virginia Department of Health. In contrast, STRs may not serve meals, are not permitted or inspected by VDH, and are subject to registration requirements per Code of Virginia.

Key Requirements in New Text

- All Residential Transient Occupancy (RTO) uses must remit lodging tax. Bed & breakfasts must obtain business licenses; STRs must register as an STR.
- Occupancy for Type A STRs (room rentals where owner is present) may be the residents of the unit plus a “family” as the zoning code defines it
- Occupancy for a Type B STR (whole-house rental where owner is not present) may be the building code occupancy of all the bedrooms in the unit. The building code formula is basically 70 sq ft for the first occupant + 50 sq ft for each additional occupant, so a 150 sq ft bedroom may have two occupants.
- Flexible off-street parking requirements for all uses
- Events, parties, weddings, etc. would only be permitted at an RTO with a Conditional Use Permit.
- All RTOs must go through the Rental Inspection Program and are subject to the terms of that program.

Related Changes

- “*Boarding Houses*” would continue to be permitted uses, but they would be limited to residential occupancy (long-term room rental) not transient. If a boarding house wished to offer rooms for less than 30 days, it would have to meet requirements for either a hotel or a STR (either Type A or B).
- “*Tourist Homes*” would be eliminated as a distinct use and replaced with Type B STRs. There are two reasons for this change. It clarifies that these establishments must register as STRs pursuant to Code of Virginia 58.1-3510.5. It also reduces confusion with Virginia Department of Health regulation of lodging establishments, because the term “tourist home” is included in the definition of “hotel” to which VDH licensure and inspection requirements apply.

- “Cabins/cottages” would be eliminated as a distinct use in the Recreation zone. Cabins/cottages are defined solely in the Recreation zone (bad practice anyway), and replacing them with Type B STRs will eliminate any confusion.

Potential Scenarios

Type A STR (Room Rental)

- 3 bedroom house occupied by two SVU students on year-round leases, one room is rented out on Airbnb to short term guests.
- 3 bedroom house has a large basement finished with a full bath & kitchen, but it is not legally a second dwelling unit. The upper levels of the house are occupied permanently by a family of four, and the basement is an STR which is booked by groups as large as a five-person family.

Type B STR (Whole House)

- 3 bedroom house in residential neighborhood is rented out during the school year to SVU students, then during the summer is a whole-house Airbnb for people vacationing in the area.
- Studio apartment in upper floor of mixed-use building downtown is an STR frequently booked on weekends by vacationers or hikers.
- Large 5 bedroom Victorian with large yard obtains a Conditional Use Permit for STR hosting up to 10 people, and is advertised on Airbnb as good for large groups or events.

Enforcement and Taxation

The Regional Tourism office will begin tracking all short-term rental accommodations in the Rockbridge area beginning this spring in collaboration with locality staff. Tourism is procuring a software subscription to AirDNA, a service that tracks and reports short term rentals. This way, Tourism will be able to flag new accommodations that have not yet been licensed and contact the localities. They will also be able to run reports on total nights stayed, gross revenues, etc.

I am working with the Finance Department, the Commissioner of Revenue, and the Treasurer to straighten out how lodging tax would be collected and tracked. Due to a recent Virginia law, in many cases the STR platform (e.g. AirBnB, Vrbo) must collect the lodging tax and remit it to the locality.

The Community Development department will track STR registrations using existing permit software.

CURRENT

Type	Hotel (incl. motels)	Boarding House	Bed & Breakfast	Bed & Breakfast	Short Term Rental	Tourist Home	Residential Rental
Subtype	n/a	n/a	Homestay	Inn	n/a	Owner Not Present (Whole-House)	Rooms or whole unit
Biz License?	Yes	No	Yes	Yes	Unregulated	Yes	No
Where permitted	Commercial & Mixed Use areas, by right	Mixed Use areas & R4, by right	All zones where residential uses allowed, by right	All zones where residential uses allowed, with CUP	Unregulated	Mixed Use & Institutional zones	All zones where residential uses allowed
Duration	"primarily less than one week..."	"Length of stay usually exceeds one week..." (Transient OR residential)	< 14 days	< 14 days	Unregulated	Transient OR Residential	Residential (more than 30 days)
Owner present?	No	Optional	Yes	Yes	Unregulated	No	Optional
Occupancy	No restrictions	3 to 10 persons	Up to 2 rooms for guests	3 to 5 rooms for guests	Unregulated	Up to 5 people	<i>Family</i> or requires a CUP
Cooking facilities in rooms?	Yes or No	No	No	No	Unregulated	Yes or No	Yes or No
Meals provided?	Yes or No	Yes or No	Yes	Yes	Unregulated	No	Yes or No
Parking Requirements	1 space per bedroom + 1 space per 2 employees	1 space per bedroom	None	None	Unregulated	None	2 spaces for house

PROPOSED

Type	Hotel (incl. motels)	Boarding House	Bed & Breakfast	STR Type A	STR Type B	Long-Term Residential Rental
Subtype	n/a	n/a	Homestay and Inn	Room Rental	Whole-unit	Rooms or whole unit
Licensure	Biz + VDH	None	Biz + VDH	STR	STR	None
Taxation	Biz + Lodging	None	Biz + Lodging	Lodging	Lodging	None
Where permitted	Commercial & Mixed Use areas	Mixed Use areas	All zones where residential uses allowed	All zones where residential uses allowed	All zones where residential uses allowed	All zones where residential uses allowed
Duration	Transient	Residential	Transient	Transient	Transient	Residential
Owner present?	Optional	Optional	Yes	Yes	No	Optional
Occupancy			Up to 2 rooms by right, 3-5 rooms with CUP	Residents + <i>family</i> by right, or per CUP	Building code occupancy of bedrooms, or per CUP	<i>Family</i> or requires a CUP
Cooking facilities in rooms?	Yes or No	No	No	Yes or No	Yes or No	Yes or No
Meals provided?	Yes or No	Yes or No	Yes	No (or trigger VDH req)	No (or trigger VDH req)	No
Parking Requirements	1 space per bedroom + 1 space per 2 employees	1 space per bedroom	1 space per guest room	2 spaces for dwelling + 1 for STR	2 spaces, or per CUP	2 spaces for dwelling

Potential Scenarios

Type A STR (Room Rental)

- 3 bedroom house occupied by two SVU students on year-round leases, one room is rented out on Airbnb to short term guests.
- 3 bedroom house has a large basement finished with a full bath & kitchen, but it is not legally a second dwelling unit. The upper levels of the house are occupied permanently by a family of four, and the basement is an STR which is booked by groups as large as a five-person family.

Type B STR (Whole House)

- 3 bedroom house in residential neighborhood is rented out during the school year to SVU students, then during the summer is a whole-house Airbnb for people vacationing in the area.
- Studio apartment in upper floor of mixed-use building downtown is an STR frequently booked on weekends by vacationers or hikers.
- Large 5 bedroom Victorian with large yard obtains a Conditional Use Permit for STR hosting up to 10 people, and is advertised on Airbnb as good for large groups or events.

Next Steps

Staff have reached out to existing STR operators in Buena Vista and the region for input, as well as other relevant stakeholders. We have received a little bit of feedback. Staff anticipate additional public feedback in the Planning Commission public hearing (January) to shape the final draft for City Council in February.



Section 714 Residential Transient Occupancy

DRAFT text

12/20/2021

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. In this section, acronyms used shall have the following meanings:

RTO shall mean Residential Transient Occupancy

STR shall mean Short-Term Rental

CUP shall mean Conditional Use Permit

VDH shall mean Virginia Department of Health

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
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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 City 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.

714.05 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 City 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, or where the permanent resident of the dwelling is not present during the guest stay.

714.07-2 *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.

714.07-2 *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:

714.09-1.1 Failure to collect and/or remit the transient occupancy tax

714.09-1.2 Three (3) or more substantiated complaints (including, but not limited to, parking on grass, noise, excess trash) within a twelve-month period

714.09-1.3 The failure of any Type A Short Term Rental host to maintain his or her principal place of residence or domicile at the dwelling unit

714.09-1.4 The violation of any other provision of the zoning code, or of the Nuisance and Public Health and Safety Code found in Chapter 14 of the City code,

714.09-2. Before any suspension or cancellation can be effective, the Zoning Administrator shall give written notice to the property owner. The notice of suspension or cancellation issued under the provisions of this chapter shall contain: A description of the violation(s) constituting the basis of the suspension or cancellation; If applicable, a statement of acts necessary to correct the violation; and a statement that if no written response by the host is received by the City within thirty (30) days from the date of the notice, the registration will be suspended or cancelled.

714.09-3. The notice shall be sent to the address of record by regular mail, and by e-mail or phone to the addresses in the registration form.

714.09-4. A copy of the notice will be provided to other relevant City departments 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 a 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 March 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 June 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 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 registered or licensed as a Residential Transient Occupancy use pursuant to Section 714. 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 for a period of 30 days or less in the context of guest accommodation unit, 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, or where the permanent resident of the dwelling is not present during the guest stay.

~~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.~~