

# ALBEMARLE COUNTY VIRGINIA



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## Details

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 Attachments: 1. [Attach. A, SB 1578](#), 2. [Attach.B Current Residential Transient Lodging Zoning Regs](#), 3. [Attach.D Resolution of Intent](#), 4. [Attach.C TransientLodgingPublicProcess](#)

Executive Summary

## AGENDA DATE: 5/3/2017

**TITLE:** Residential Transient Lodging Work Session and Resolution of Intent

**BY:**

**SUBJECT/PROPOSAL/REQUEST:** Work session to discuss Resolution of Intent to amend the Zoning Ordinance regulations pertaining to Residential Transient Lodging and consider issues related to the County Code regarding transient occupancy taxation.

**ITEM TYPE:** Regular Action Item

**STAFF CONTACT(S):** Walker, Kamptner, Blair, Herrick, Burrell, Graham, McCulley, Echols, Higgins, Ragsdale

**PRESENTER (S):** Rebecca Ragsdale, Bill Letteri

**LEGAL REVIEW:** Yes

**REVIEWED BY:** Douglas C. Walker

**BACKGROUND:** At its March 8, 2017 discussion of the Community Development Work Program, the Board expressed its desire to render all residential transient lodging a taxable activity in Albemarle County. With this objective in mind, the Board directed staff to accelerate the process of identifying and implementing any necessary changes to the County's Zoning Ordinance or tax code. While the tax component of this process is relatively straightforward, modification of the Zoning Ordinance would require additional steps outlined in Attachment C.

### STRATEGIC PLAN:

**Thriving Development Areas:** Attract quality employment, commercial, and high density residential uses into development areas by providing services and infrastructure that encourage redevelopment and private investment while protecting the quality of neighborhoods

**Rural Area Character:** Preserve the character of rural life with thriving farms and forests, traditional crossroad communities, and protected scenic areas, historic sites, and biodiversity

**Economic Prosperity:** Foster an environment that stimulates diversified job creation, capital investments, and tax revenues that support community goals.

### DISCUSSION:

In order for all providers to be subject to transient occupancy taxes, an amendment to the County's tax code will be required. This Executive Summary and actions required by the Board on May 3<sup>rd</sup> will involve initiation of the process to amend our Zoning Ordinance. Subsequent action of the Board will address changes to our tax code.

### Tax Code Amendment:

County Code § 8-616 subjects a number repair, personal, business and amusement services to the business, professions, and occupations licensing and tax ("BPOL") requirements. County Code § 8-619 subjects the renting of houses and other buildings and properties to the same requirements. In order to subject short-term rentals to BPOL, staff recommends that the Board consider amending County Code § 8-616(C) to add short-term rentals to the class of businesses that include hotels and other similar transient lodging, and to amend County Code § 8-619 to clarify that that section does not apply to short-term rentals.

County Code §15-900 et seq. provides regulations related to transient occupancy taxation. These regulations provide that the County can only require that a lodging provider collect transient occupancy tax on rental of rooms in a **hotel, motel, boarding house, or travel campground** for fewer than thirty(30) consecutive days of continuous occupancy. These regulations do not include other types of lodging such as BnBs or guestrooms. Amending County Code §15-900 et seq. to include all applicable types of lodging would enable the County to impose taxes on residential transient lodging.

If the Board decides to amend County Code §15-900 et seq., the Finance Department will proactively work to bring all purveyors of residential transient lodging into compliance with the amended tax requirements. In order to facilitate the County's collection of these taxes, staff suggests the development of a registry, enabled by the new senate bill [SB1578](http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+SB1578ER+hil) (Attachment A - the "Airbnb" bill). Staff further recommends that any County Code amendment should include other provisions enabled by SB1578, such as prohibiting an operator who has been found guilty of three or more violations of state and local short-term rental regulations from offering their property for rent. A zoning text amendment is not required to adopt amendments to the County's Tax Code or to require a registry of operators.

### Zoning Text Amendment:

The Zoning Ordinance does currently provide for accessory tourist lodging (ATL) in the Development Areas and bed and breakfast (BnB) lodging in the Rural Area. (Attachment B provides more information on current regulations.) Assuming the Board desires to amend the County's BPOL and transient occupancy tax regulations to include short-term rentals, those current operators who are not now in compliance will have to come into compliance with applicable zoning regulations and secure the required permits. The exact number of transient lodging operators who potentially affected by these changes is unknown.

A review of 120 listings found during an online search of residential transient lodging facilities in the County revealed 33 ATLs in the Development Areas and 87 BnBs in the Rural Area. Two-thirds of the facilities listed appear to be able to meet County zoning requirements for the number of bedrooms and the location of those bedrooms, of the remaining one third of facilities, most would not be in compliance with the County's zoning regulations due to periodically renting the entire house or apartment for transient lodging.

**Other identified issues of noncompliance:**

- renting accessory units (in the Development Areas);
- lack of a resident manager (in both the Development Areas and Rural Area);
- regular hosting of special events; or exceeding the number of guest rooms allowed.

For ATLs and BnBs without a zoning permit, it is unknown how many meet fire safety and parking requirements.

While staff is not recommending wholesale changes to the ATL and BnB zoning regulations, potential changes to two areas may be advantageous to bring operators into conformity with relative ease. Staff proposes consideration of:

- Expanding zoning regulations to include allowance of transient lodging in attached dwellings such as townhomes and condominiums.
- Amendments to deal with periodic whole house/apartment rentals

Staff notes that amendments to County Code regulations regarding transient occupancy tax and the proposed registration requirement would require, at a minimum, a public hearing prior to adoption. Changes to the Zoning Ordinance would likely require more extensive public participation. Public engagement can take place at a Planning Commission work session, CAC meetings, or other venues prior to a Board public hearing on the ZTA. Attachment C contains a potential timeline for public input on both the tax regulations and the ZTA. For the ZTA, the schedule may be ambitious if proposed changes are contentious or if complex issues arise that staff has not anticipated

**BUDGET IMPACTS:** Amending the County Code to capture transient occupancy tax and to more broadly allow transient lodging use would result in increased revenue. Staff is unable to project at this time the amount of increased revenue and what resources would be required to collect the additional revenue and bring operators into conformity.

**RECOMMENDATION:**

If the Board wishes to pursue a Zoning Text Amendment to amend the County's Residential Transient Lodging regulations at this time, staff recommends that the Board adopt the attached Resolution of Intent (Attachment D) and endorse the public process provided as Attachment C.

If the Board wishes to pursue changes to County Code §§ 8-616(C), 8-619, and 15-900 et seq. to impose short-term rental license and taxation requirements, staff will schedule for further consideration at a meeting in June with possible action at that time to schedule a Public Hearing for July or other subsequent regular meeting.

**ATTACHMENTS:**

- A. SB 1578
- B. Existing Zoning Ordinance Provisions for Transient Lodging
- C. Tentative Public Process to Consider Amending Zoning Ordinance Provisions for Residential Transient Lodging
- D. Resolution of Intent for ZTA to amend Residential Transient Lodging Regulations

3. The manufacture, sale and delivery or shipment by persons authorized under existing laws to engage in such business of any medicinal preparations manufactured in accordance with formulas prescribed by the United States pharmacopoeia; national formulary, patent and proprietary preparations; and other bona fide medicinal and technical preparations; which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations, and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, and which are manufactured and sold to be used exclusively as medicine and not as beverages.

4. The manufacture, sale and delivery or shipment of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages.

5. The manufacture and sale of food products known as flavoring extracts which are manufactured and sold for cooking and culinary purposes only and not sold as beverages.

6. Any person who manufactures at his residence or at a gourmet brewing shop for domestic consumption at his residence, but not to be sold, dispensed or given away, except as hereinafter provided, wine or beer or both, in an amount not to exceed the limits permitted by federal law.

Any person who manufactures wine or beer in accordance with this subdivision may remove from his residence an amount not to exceed fifty liters of such wine or fifteen gallons of such beer on any one occasion for (i) personal or family use, provided such use does not violate the provisions of this title or Board regulations; (ii) giving to any person to whom wine or beer may be lawfully sold an amount not to exceed (a) one liter of wine per person per year or (b) seventy-two ounces of beer per person per year, provided such gift is for noncommercial purposes; or (iii) giving to any person to whom beer may lawfully be sold a sample of such wine or beer, not to exceed (a) one ounce of wine by volume or (b) two ounces of beer by volume for on-premises consumption at events organized for judging or exhibiting such wine or beer, including events held on the premises of a retail licensee. Nothing in this paragraph shall be construed to authorize the sale of such wine or beer.

The provision of this subdivision shall not apply to any person who resides on property on which a winery, farm winery, or brewery is located.

7. Any person who keeps and possesses lawfully acquired alcoholic beverages in his residence for his personal use or that of his family. However, such alcoholic beverages may be served or given to guests in such residence by such person, his family or servants when (i) such guests are 21 years of age or older or are accompanied by a parent, guardian, or spouse who is 21 years of age or older, (ii) the consumption or possession of such alcoholic beverages by family members or such guests occurs only in such residence where the alcoholic beverages are allowed to be served or given pursuant to this subdivision, and (iii) such service or gift is in no way a shift or device to evade the provisions of this title. *The provisions of this subdivision shall not apply when a person serves or provides alcoholic beverages to a guest occupying the residence as the lessee of a short-term rental, as that term is defined in § 15.2-983, regardless of whether the person who permanently resides in the residence is present during the short-term rental.*

8. Any person who manufactures and sells cider to distillery licensees, or any person who manufactures wine from grapes grown by such person and sells it to winery licensees.

9. The sale of wine and beer in or through canteens or post exchanges on United States reservations when permitted by the proper authority of the United States.

10. The keeping and consumption of any lawfully acquired alcoholic beverages at a private meeting or private party limited in attendance to members and guests of a particular group, association or organization at a banquet or similar affair, or at a special event, if a banquet license has been granted. However, no banquet license shall be required for private meetings or private parties limited in attendance to the members of a common interest community as defined in § 54.1-2345 and their guests, provided (i) the alcoholic beverages shall not be sold or charged for in any way, (ii) the premises where the alcoholic beverages are consumed is limited to the common area regularly occupied and utilized for such private meetings or private parties, and (iii) such meetings or parties are not open to the public.

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

A. As used in this section:

"Operator" means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity.

"Short-term rental" means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.

B. 1. Notwithstanding any other provision of law, general or special, any locality may, by ordinance, establish a short-term rental registry and require operators within the locality to register annually. The registration shall be ministerial in nature and shall require the operator to provide the complete name of the operator and the address of each property in the locality offered for short-term rental by the

operator. A locality may charge a reasonable fee for such registration related to the actual costs of establishing and maintaining the registry.

2. No ordinance shall require a person to register pursuant to this section if such person is (i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.

C. 1. If a locality adopts a registry ordinance pursuant to this section, such ordinance may include a penalty not to exceed \$500 per violation for an operator required to register who offers for short-term rental a property that is not registered with the locality. Such ordinance may provide that unless and until an operator pays the penalty and registers such property, the operator may not continue to offer such property for short-term rental. Upon repeated violations of a registry ordinance as it relates to a specific property, an operator may be prohibited from registering and offering that property for short-term rental.

2. Such ordinance may further provide that an operator required to register may be prohibited from offering a specific property for short-term rental in the locality upon multiple violations on more than three occasions of applicable state and local laws, ordinances, and regulations, as they relate to the short-term rental.

D. Except as provided in this section, nothing herein shall be construed to prohibit, limit, or otherwise supersede existing local authority to regulate the short-term rental of property through general land use and zoning authority. Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Condominium Act (§ 55-79.39 et seq.), the declaration of a common interest community as defined in § 55-528, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55-508 et seq.).

## Attachment A

### Summary of Current Zoning Ordinance Regulations for Residential Transient Lodging

Use Category & Districts Permitted	Accessory Tourist Lodging (Residential Districts, PRD, PUD, NMD where authorized in Code of Development)	Bed and Breakfast (Rural Area Districts only)
Dwelling Unit Type	Single Family Detached Dwelling	Single Family Detached Dwelling or accessory structures
Number of guest rooms	5 guest rooms within the single family dwelling	5 guest rooms within a single family dwelling or accessory structures  Up to two BNBs may be located on one parcel
Occupancy by Owner/Manager of Structures Used	The owner or manager must reside within the single family dwelling in which the guest rooms are located	Owner or manager must reside on the parcel
Parking	2 spaces/ single family + 1/ guest room	2 spaces/ single family + 1/ guest room
Application and fee	Zoning Clearance \$108 fee	Zoning Clearance \$108 fee
Other agency reviews and permit requirements	Building Official (Electrical Permit if smoke detectors need to be brought up to code)  Fire Marshal (\$50 fee)  Health Department (\$40 fee+ application)	Building Official (Electrical Permit if smoke detectors need to be brought up to code)  Fire Marshal (\$50 fee)  Health Department (\$40 fee+ application)

#### **Zoning Ordinance definitions:**

***Bed and breakfast:*** A use composed of transient lodging provided within a single family dwelling and/or one or more structures that are accessory to the single family dwelling, having not more than five (5) guest rooms in the aggregate, and which also may include rooms for dining and for meetings for use by transient lodging guests of the bed and breakfast provided that the dining and meeting rooms are accessory to the bed and breakfast use. (Added 6-6-12)

***Transient lodging:*** Lodging in which guest rooms are occupied for less than thirty (30) consecutive days. (Added 6-6-12)

***Guest room:*** A room which is intended, arranged or designed to be occupied, or which is occupied by one (1) or more guests paying direct or indirect compensation therefor, but in which no provision is made for cooking.

*Tourist lodging:* A use composed of transient lodging provided within a single family dwelling having not more than five (5) guest rooms, where the single family dwelling is actually used as such and the guest rooms are secondary to the single-family use, whether or not the guest rooms are used in conjunction with other portions of the dwelling. (Amended 6-6-12)

#### **Supplemental Regulations:**

##### **5.1.17 TOURIST LODGING**

Before the zoning administrator approves a zoning clearance for a tourist lodging use under section 31.5, the owner of the parcel shall obtain approvals of the use from the building official, the fire official and the Virginia Department of Health, and shall satisfy all other applicable requirements of this chapter. (§ 5.1.17, 12-10-80; Ord. 01-18(6), 10-3-01; Ord. 12-18(3), 6-6-12)

##### **5.1.48 BED AND BREAKFAST**

Each bed and breakfast shall be subject to the following:

- a. *Residency.* The owner of the parcel or a manager of the bed and breakfast shall reside on the parcel.
- b. *Number of bed and breakfast uses.* Any parcel may have up to two (2) bed and breakfast uses.
- c. *Required development rights, density and limitation.* Each single family dwelling to which a bed and breakfast use is accessory shall comply with the following: (i) on any parcel less than twenty-one (21) acres in size, the single family dwelling shall be authorized by a development right as provided in section 10.3; (ii) on any parcel, regardless of size, the single family dwelling shall comply with the permitted density; and (iii) no single family dwelling shall have more than one bed and breakfast use accessory to it.
- d. *Minimum yards.* Any accessory structure used for a bed and breakfast use shall comply either with the applicable minimum yard requirements for a primary structure or a lesser yard approved by the zoning administrator that is not less than the minimum yard required for an accessory structure that would otherwise be applicable, if the zoning administrator finds that: (i) the distance between the accessory structure and the closest primary structure on the closest abutting parcel is greater than the applicable minimum yard requirement for a primary structure; and (ii) written consent has been provided by the owner of the abutting lot consenting to the alternative minimum yard. The minimum yard for any parking area shall be twenty-five (25) feet.
- e. *Parking.* In addition to the parking required for a single family dwelling, the number of off-street parking spaces required by section 4.12.6 shall be provided.
- f. *Information and sketch plan to be submitted with request for zoning clearance.* The owner of the parcel or a manager of the bed and breakfast shall submit the following to the zoning administrator with each request for a zoning clearance under section 31.5:
  1. *Information.* Information pertaining to the following: (i) the proposed use; (ii) the maximum number of guest rooms; (iii) the provision of on-site parking; and (iv) the location, height and lumens of outdoor lighting.
  2. *Sketch plan.* A sketch plan, which shall be a schematic drawing of the premises with notes in a form and of a scale approved by the zoning administrator depicting: (i) all structures that would be used for the bed and breakfast; (ii) the locations of all guest rooms; and (iii) how access, on-site parking, outdoor lighting, signage and minimum yards will be provided in compliance with this chapter.
- g. *Building code, fire and health approvals.* Before the zoning administrator approves a zoning clearance under section 31.5, the owner of the parcel or a manager of the bed and breakfast shall obtain approval of the use from the building official, the fire official, and the Virginia Department of Health.
- h. *Uses prohibited.* Restaurants are prohibited as a use accessory to a bed and breakfast use.

## **Attachment A**

### **Tentative Public Process to Consider Amending Zoning Ordinance Provisions for Residential Transient Lodging**

- May -- May 3 Board of Supervisors Work Session:  
Resolution of Intent to Consider Limited Zoning Ordinance Changes to Accessory Tourist Lodging
- Public Engagement begins once Board endorses proposed outline and concepts:
- Update County Website with Residential Transient Lodging Information
  - Send A-mail and Social Media updates on Transient Lodging Zoning Text Amendment Concepts
  - Update Community Advisory Councils
  - Reach out to Stakeholders in lodging industry, hosting platforms, future and past tourist lodging applicants
- June Request Board to schedule Public Hearing on a proposed ordinance amendment to impose short-term rental license and taxation requirements, including a short-term rental registry
- Planning Commission Work Session on Zoning Text Amendment Concepts with Public Comment and summary of Stakeholder input received to-date
- July Board of Supervisors Public Hearing to consider adoption of a proposed ordinance amendment to impose short-term rental license and taxation requirements, including a short-term rental registry
- July Planning Commission Public Hearing Zoning Text Amendments
- August Board of Supervisors Public Hearing-Zoning Text Amendments