



# JEFFERSON COUNTY, WEST VIRGINIA

## Office of Planning and Zoning

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### MEMO

**TO: Planning Commission**

**FROM: Alexandra Beaulieu, Zoning Administrator**

**DATE: October 5, 2021**

**RE: ZTA21-01, Short Term Rentals – 10-12-21 PC Public Hearing**

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On September 14, 2021 the Planning Commission reviewed the first draft of Zoning Ordinance Text Amendment File #ZTA21-01, which proposed incorporating minimum standards to allow short term rentals to process as a principal permitted use in any zoning district which allows a single family dwelling.

The Planning Commission expressed concerns related to a limitation on the number of occupants permitted in a short term rental and voted to eliminate reference to an occupancy limit from the proposed definition for a short term rental in Article 2. The Planning Commission also discussed the importance of ensuring that a state business license is obtained prior to operating a short term rental to ensure that appropriate taxes are collected by the state.

Several questions were raised during the September 14 meeting regarding the memo from the Health Department which stated that if a residence was not a primary dwelling, it would be subject to their lodging permit requirements. Following the meeting, Staff requested that the Health Department provide additional information to clarify when a permit would be required. A memo providing an overview of that process is attached.

#### **Proposed Text**

The purpose of the proposed text amendment is to create provisions to allow a property owner to rent out an entire house in a residentially zoned area (e.g. Rural, Residential Growth, and/or Village zoning districts) more frequently than on a weekly basis. These types of home sharing / vacation rental options are often perceived as being non-residential in nature, due to the absence of a permanent/long term resident or host on premises.

**\*Note:** As part of the proposed amendment, Staff is recommending that Appendix C be revised to reflect that Bed and Breakfast operations be listed as a Principal Permitted Use in the Residential-Light Industrial-Commercial zoning district (currently listed as Not Permitted).

#### **Overview of Current Ordinance in Effect**

Presently, the Ordinance defines Dwelling Unit as follows, “One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, **or rental or lease on a weekly, monthly, or longer basis, occupied by no more than one family**, and containing no more than one independent food preparation area together with facilities for sleeping and bathing.”

Based on this definition, a house or a room/rooms could be rented on a week-to-week basis and would still comply with the definition of dwelling unit.

In addition to the definition of Dwelling Unit listed above, the Ordinance includes provisions to allow Bed and Breakfast operations to be established in a single family dwelling unit by right in the Rural and Village zoning districts, **provided the property owner or a designated caretaker reside on premises while the bed and breakfast is occupied**. A Conditional Use Permit is required for Bed and Breakfast operations in the Residential Growth zoning district. A Bed and Breakfast is not permitted in the Residential-Light Industrial-Commercial (mixed use) zoning district.

Many short term rentals do not meet the definition of dwelling or Bed and Breakfast because property owners often prefer the option to rent the dwelling more frequently than on a weekly basis and do not typically reside on premises or have a designated caretaker residing on premises.

### **Additional Information**

The Health Department provided a copy of a memo that was drafted by the Office of Environmental Health Services on February 3, 2017, which includes a summary of their permitting requirements for lodging facilities (attached). Based on the memo, if the residence/facility is not the primary residence of the owner, then it is subject to Health Department approval as a lodging facility.

Other factors to consider during this amendment process include:

- Parking – is there sufficient off-street parking to ensure all visitors park on the rental property?
- Traffic concerns should be addressed by the Division of Highways or, if within a major subdivision, the Homeowners' Association (note: the County does not own or have jurisdiction over any roads).
- Noise is regulated by the County's noise ordinance and enforced by the Sheriff's Department.

### **Comprehensive Plan**

The Comprehensive Plan includes several recommendations related to supporting the rural economy and the tourism industry. Members of the Planning Commission previously acknowledged that short term rentals may contribute to a successful tourism industry in the County.

Short Term Rentals may not be specifically addressed in the Envision Jefferson 2035 Comprehensive Plan; however, Section 2.C of the Comprehensive Plan is the Tourism Component and includes several recommendations to support the tourism industry. Recommendation 9 states, "Support and promote rural and recreational tourism to help achieve the County's economic goals."

Short term rentals can contribute to a successful tourism industry and support the local economy by offering rental options in some of the more quaint, rural areas of the county.

### **Attachments:**

- Excerpts from Envision Jefferson 2035 Comprehensive Plan RE: Tourism
- ZTA21-01, Short Term Rental Provisions DRAFT – reflecting changes from 09/14/21.
- ZTA21-01, Short Term Rental Provisions DRAFT (subject to public hearing)
- Email from Gillian Beach, Jefferson County Health Department. Includes the following attachments:
  - Excerpts from the Health Department's General Sanitation Rule
  - 02-03-2017, Office of Environmental Health Services Memo RE lodging facilities.
- American Planning Association PAS QuickNotes No. 56 – Regulating Short-Term Rentals
- Public Comments submitted through 10/05/2021.

## 2.C. Tourism

Jefferson County is the gateway to West Virginia from surrounding states and hosts the most visitors in the state of West Virginia. Direct spending related to tourism in Jefferson County approached \$1 billion in 2012, the highest in the state, with Kanawha County the next closest at \$650 million. Jefferson County's proximity to the Washington, D.C. and Baltimore, MD Metropolitan Areas and to the Eastern Seaboard offers a large market to target visitors interested in the many activities and attractions to be found here. Local tourism and recreational opportunities draw in visitors of all ages, unlike other communities whose tourism options might be appealing to only one demographic.

### **Cultural, Rural, Horse Racing, and Gaming Tourism**

Jefferson County has a wide range of activities for visitors, including recreational, heritage and cultural tourism, local and regionally known restaurants, farmers' markets, flea markets, motor sports, horse racing, gambling, music, theater, festivals, and arts events. The County's inventory of significant historical and architectural sites, historical towns and villages, outdoor recreational activities, natural landscapes, and outdoor amenities offer visitors a variety of meaningful and high quality experiences.

The success of the County's tourism industry depends on the preservation and enhancement of the County's rural character, specifically its natural greenspaces and cultural amenities. Many of the attractions that draw tourists to the County are located in areas where the combination of historic and geographic resources enhances the sense of place and provides an authentic rural experience. Among the attractions are the historic communities with their restaurants, specialty shops, festivals, farm markets or direct to consumers on-site farm sales; wayside stands; outdoor recreational activities, and special events such as farm and ghost tours. Market expansion in the County's tourism industry would boost these grassroots ventures.

Numerous artisans and performers call the County home. This is particularly true in the Shepherdstown area where Shepherd University has facilities and established programs, such as the internationally acclaimed American Contemporary Theatre Festival, now in its 26<sup>th</sup> year, and in Harpers Ferry with the annual Don Redman Jazz Heritage concert now in its 11<sup>th</sup> year. Local venues for both performing and visual arts include three theaters and over 40 cultural non-profits that collaborate to sponsor a variety of festivals, fairs, and events where artisans and performers can showcase their talents and wares. The performances, festivals, fairs, and historic and farm tours boost revenue in the County and support a variety of local retail establishments.

In 2012, the three counties in the Eastern Panhandle drew over \$601 million in gambling revenue, representing nearly 54% of all casino and slot revenue in West Virginia. Nearly all of this revenue can be attributed to the Hollywood Casino at Charles Town Races, which provides thoroughbred horse racing and gaming opportunities in the form of table games and slots. In terms of its financial impact, the

Casino is the largest tourism attraction in the County. While there has been robust growth at this facility up to 2012, the recent opening and expansion of gaming facilities located closer to the Washington, D.C. and Baltimore, MD areas has led to a reduction in gaming revenue locally. Nevertheless, the Hollywood Casino at Charles Town Races continues to be an important stakeholder in the community. Thoroughbred horse racing, including the WV Breeders' Classics, has been a critical part of the County's history and continues to be vital to the County's future. Additionally, plans have been announced to develop a 2,500 seat performance venue as a part of the Casino facility. There is also interest in the County for an outdoor entertainment venue or performance center, which could host such things as the National Symphony Orchestra and other music or theatre events.

### **Heritage Tourism**

Jefferson County has played a role in many of the milestones of our Country's history dating back to the era when nomadic Native American tribes hunted and lived in the Eastern Panhandle and proceeding to the founding of our nation. The family of George Washington established 12 estates in the County, eight of which remain, and 75 members of the Washington family are buried in Charles Town cemeteries. In addition, several generals from the Revolutionary War resided here.

Harpers Ferry was established during the Presidency of George Washington as one of only two U.S. Federal armories. The Lewis and Clark expedition, funded under President Thomas Jefferson and which precipitated the westward expansion, was outfitted at the Harpers Ferry Armory. Later, prior to the Civil War, John Brown in 1859 attacked Harpers Ferry with hopes of securing a major munitions stockpile that would lead to a spontaneous uprising by slaves. He was unsuccessful. Brown and several of his associates were captured, tried, and convicted at the Jefferson County Courthouse in Charles Town and hanged a few blocks away on what is now South Samuel Street.

Harpers Ferry and the rest of Jefferson County were critical during the Civil War as they served as a main rail corridor between the eastern and western theatres of the War. The strategic value of the site led to the area changing hands between Union and Confederate forces many times during the war. Over 12,000 Union troops garrisoned at Harpers Ferry surrendered while under attack from Confederate forces led by General Stonewall Jackson. This was the largest surrender of troops on American soil. Without that surrender, the bloodiest battle of the Civil War, Antietam, may have never occurred. The battlefield at Shepherdstown has recently been studied by the National Park Service and was determined to have played an important role in the end stages of the battle of Antietam. In addition Jefferson County served as a staging area during the Shenandoah Valley campaign, which included battlefield sites at Summit Point and Middleway.

Harpers Ferry played a significant role in the African American community after the Civil War, with the establishment of what eventually became Storer College in 1865 as

one of the first public institutions of education for former slaves. Harpers Ferry was also the site of the second meeting of the Niagara Movement in 1906, which eventually led to the founding of the NAACP. Today, the town of Harpers Ferry is surrounded by the Harpers Ferry National Historical Park, a 3.7 square mile area with numerous rehabilitated and rebuilt structures dating from the Civil War era.

Charles Town played a role after the turn of the 20<sup>th</sup> century when the treason trials for coal miners affiliated with the United Mine Workers' West Virginia Coal Mine Wars were held at the same courthouse where John Brown's treason trial was held about 70 years earlier. The acquittal of the mine workers in 1922 was the culmination of two decades of strikes, gunfights, assassinations, and violence over working conditions that occurred in the southern coal fields of West Virginia.

Jefferson County is also a part of a larger historical and cultural landscape known as The Journey Through Hallowed Ground National Heritage Area, a 180-mile long, 75-mile wide area stretching from Gettysburg, PA to Monticello in Charlottesville, VA.

### **Recreational Tourism**

The County is home to a variety of outdoor recreational opportunities for visitors, such as fishing, hunting, hiking, bicycling, auto racing, a wide range of river activities, and other outdoor adventure activities.

Jefferson County is adjacent to the conjunction of two national trails. The first trail is the Appalachian National Scenic Trail, a 2,160-mile long footpath extending from Maine to Georgia, with Harpers Ferry at the midpoint. Additionally, the Chesapeake and Ohio (C&O) Canal National Historical Park, a linear bicycle and walking trail extending from Washington, D.C. to Cumberland, MD is accessible from Jefferson County near Harpers Ferry and Shepherdstown.

Outdoor recreation complements the County's natural, cultural, and built environments. It is anticipated that recreational tourism opportunities in Jefferson County will continue to expand in the coming years. This is particularly true in areas near the Potomac and Shenandoah Rivers, where the numerous outfitters and private outdoor recreation providers in the region are expanding their offerings to visitors and residents. The type and scale of new recreational development should be appropriate to the rural nature of Jefferson County.

The following recommendations support the expansion and enhancement of a variety of tourism activities in Jefferson County.

### Tourism Recommendations (Goal 9)

1.	Create a unique “brand” for the County for all promotional and marketing materials.
	a. Increase awareness of public and private recreational opportunities that are available to visitors and residents of Jefferson County.
	b. Coordinate with the Jefferson County Convention and Visitors Bureau (CVB) to maintain and promote a community calendar.
2.	Develop a robust arts and culture program in Jefferson County by identifying and utilizing a range of public and private funding sources.
3.	Create additional opportunities for arts, cultural, and heritage tourism programs and facilities in Jefferson County.
4.	Establish plans and funding strategies for a county cultural arts center that will incorporate a variety of facilities including studios, galleries, multiple performance spaces, educational and training facilities, and gathering areas.
5.	Use historic and agricultural structures to support tourism for traditional and non-traditional functions that promote preservation of cultural landscapes.
6.	Create a public art program that would encourage the installation of locally produced art in publicly owned facilities and sites.
7.	Coordinate with various local and regional heritage tourism entities to create a trail that connects historic and battlefield sites located in the County and neighboring counties and states.
	a. Collaborate with the Journey Through Hallowed Ground or the Canal Towns Partnership’s efforts.
8.	Coordinate with riverside property owners and river tourism service providers to identify and implement methods that would enhance recreation options along the County’s waterways, including public river access.
	a. When considering additional river recreation activities, rural landowners’ property rights and the quality of life of the individuals and families living along the waterways should be factored into proposed development plans.
	b. Encourage all river recreation activities to occur in a manner which supports the Chesapeake Bay Initiative.
9.	Support and promote rural and recreational tourism to help achieve the County’s economic goals.
10.	Use multi-media technologies to promote tourism, including tourist businesses and the tourism efforts of the incorporated Towns.
11.	Continue to support the Jefferson County Fair and encourage the continued upgrading of fair facilities.

**Article 2 – Definitions**

Short Term Rental – a dwelling unit intended to provide overnight accommodations to guests for periods of less than seven (7) consecutive days. ~~Occupancy shall be limited to not more than two (2) guests/occupants per bedroom.~~

**Article 8 – Section 8.16 – Short Term Rentals**

A Short Term Rental is permitted anywhere a single family dwelling is permitted. A short term rental shall have no more effect on adjacent properties than a typical residential use. All parking shall be off-street.

A short term rental shall not operate as a special event facility (unless approval through the special event facility provisions is granted) including large gatherings such as family reunions, birthday parties, weddings, business meetings, or other similar gatherings ~~which may include additional guests who are not included in the overnight stay.~~

All short term rentals shall obtain a Zoning Certificate to reflect compliance with the standards established herein. A sketch depicting that sufficient off-street parking exists for the maximum number of occupants shall be included. One sign not exceeding four (4) square feet in area, may be permitted and shall be included as part of the zoning certificate application. Additionally, as part of the Zoning Certificate application, a copy of the state business license, and documentation reflecting approval from the Health Department shall be submitted; ~~(if such approval is required) by said agency.~~

Jefferson County shall not enforce or become involved in the enforcement of deed restrictions, covenants, easements, or any other private agreement. It is the responsibility of the property owner to research any private covenants or restrictions relating to the subject property which may be enforced by the parties to the restriction.





Short Term Rental<sup>41</sup>

A dwelling unit intended to provide overnight accommodations to guests for periods of less than seven (7) consecutive days.

Shrub, Evergreen	A low growing, usually several stemmed, woody plant which has foliage that remains green and functional through more than one growing season.
Sign	Any object, device display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.
Sign, Animated	A sign with action or motion, flashing lights, or color change requiring electrical energy, electronic, or manufactured sources of supply, but not including wind actuated elements such as flags, banners, or pennants.
Sign, Billboard <sup>36</sup>	A structure on which is portrayed information which directs attention to a business commodity, service or entertainment not necessarily related to the other uses permitted on the premises upon which the structure is located.
Sign, Attached Business <sup>36</sup>	A sign attached to a building/structure which directs attention to a business or profession or to a commodity, service, or entertainment sold or offered upon the premises where the sign is located.
Sign, Electronic <sup>36</sup>	A sign utilizing lights that change to form a static message or graphic wherein the sequence of messages and rate of change is electronically programmed.
Sign, Freestanding Business <sup>36</sup>	A sign supported by a permanent structure, other than a building, that is affixed to the earth and placed on the same parcel of land on which the business commodity, service, or entertainment advertised by the sign is located.
Sign, Inflatable <sup>36</sup>	Any display capable of being expanded by air or other gas and used on a temporary or permanent basis to advertise a product or event.
Sign, Off Premises <sup>36</sup>	A sign structure which directs attention to a business, commodity, service, or entertainment not necessarily conducted, sold, or offered upon the premises where such sign is located.
Sign, Pylon <sup>36</sup>	A sign which advertises more than one land use on the premises where the sign is located.
Sign, Vehicle	A sign or advertising device which is painted, mounted, affixed or otherwise attached to a vehicle or trailer, which is used for the purpose of providing advertisements of products and services or directing people to a business or service or other activity on or off the premises or public right-of-way where such vehicle sign is located. This does not include identification signs on vehicles which are moved regularly and used in the normal, day-to-day operation of the business.

- B. An “Accessory Agricultural Dwelling Unit” for agricultural purposes is defined as a dwelling unit that is incidental and subordinate to the principal dwelling unit, which is located on the same lot as the principal building and meets all of the following criteria:<sup>32</sup>
- (a) is secondary in size to the principal dwelling unit, limited in size to a maximum of 1,700 heated square feet, gross floor area;<sup>32</sup>
  - (b) is located on a property for which the primary use is an agricultural use as defined by this ordinance;
  - (c) is located on a property of at least ten acres in area;
  - (d) is limited to use by a person (and family) who performs agricultural work on the property or acts as a caretaker for the property; and
  - (e) is approved by the Health Department.<sup>32</sup>

One of each type of Accessory Dwelling Unit as defined in this section may be permitted administratively for each property meeting the criteria of Section 8.15 on the effective date of this Amendment. Additional units may be permitted by Special Exception in accordance with Section 6.5.<sup>32, 35</sup>

RVs are prohibited as Accessory Dwelling Units.<sup>32</sup>

#### **Section 8.16 ~~Reserved~~<sup>32</sup> Short Term Rentals<sup>41</sup>**

A short term rental is permitted anywhere a single family dwelling is permitted. A short term rental shall have no more effect on adjacent properties than a typical residential use. All parking shall be off-street.

A short term rental shall not operate as a special event facility (unless approval through the special event facility provisions is granted) including large gatherings such as family reunions, birthday parties, weddings, business meetings, or other similar gatherings.

All short term rentals shall obtain a Zoning Certificate to reflect compliance with the standards established herein. A sketch depicting that sufficient off-street parking exists for the maximum number of occupants shall be included. One sign, not exceeding four (4) square feet in area, may be permitted and shall be included as part of the zoning certificate application. Additionally, as part of the Zoning Certificate application, a copy of the state business license and documentation reflecting approval from the Health Department shall be submitted (if such approval is required).

Jefferson County shall not enforce or become involved in the enforcement of deed restrictions, covenants, easements, or any other private agreement. It is the responsibility of the property owner to research any private covenants or restrictions relating to the subject property which may be enforced by the parties to the restriction.

#### **Section 8.17 Campgrounds<sup>31</sup>**

Campground facilities provide tourism related accommodations for visitors of Jefferson County. The level of amenities at these facilities can vary greatly in relation to the type of camping facility proposed. Campground facilities may include both commercial and non-profit operations. Campgrounds are identified as Principal Permitted Uses in Appendix C in the General Commercial (GC), Residential-Light Industrial-Commercial (RLIC), Industrial-Commercial (IC), and Rural (R) zoning districts.

- A. The following uses are identified as permitted uses within a campground:

Land Use	NC	GC	HC	LI	MI	PND <sup>1</sup>	OC	R	RG	RLIC	IC	V	Additional Standards
<b>Commercial Uses continued</b>													<b>Sec. 8.9</b>
Bar	P	P	P	P	NP	P	P	NP	NP	P	P	CU	
Barber/Beauty Shop, Limited	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Bed and Breakfast	P	NP	NP	NP	NP	NP	NP	P	CU	<del>NP</del>	NP	P	Sec. 8.3
Brewpub	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.5
Business Equipment Sales and Service	CU	P	P	P	CU	P	P	CU	CU	P	P	CU	
Building Maintenance Services	CU	P	P	P	P	P	P	CU	CU	P	P	CU	
Building Materials and Supplies	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Campground <sup>31</sup>	CU	P	NP	NP	NP	P	NP	P	CU	P	P	CU	Sec. 8.17
Car Wash	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Commercial Blood Plasma Center	NP	P	P	P	NP	CU	CU	CU	CU	CU	P	CU	
Commercial Uses	NP	NP	NP	NP	NP	NP	NP	NP	**	P	P	CU	Sec. 8.9
Contractor with No Outdoor Storage	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Contractor with Outdoor Storage	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Convenience Store, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Convenience Store	CU	P	P	P	CU	P	NP	CU	CU	CU	P	CU	Sec. 5.8C (RLIC only)
Country Inn	P	P	P	P	NP	P	P	CU	CU	P	P	P	
Crematorium, Pet <sup>37</sup>	NP	P	NP	P	NP	NP	NP	P	NP	P	P	CU	Sec. 8.19
Custom Manufacturing	P	P	P	P	P	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Dry cleaning and Laundry Facility	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Equipment Rental, Sales, or Service	NP	P	P	P	P	P	NP	CU	CU	P	P	CU	
Exterminating Services	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Florist	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Food Preparation	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Hotel/Motel	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Gambling Facilities	NP	NP	NP	NP	CU	NP	NP	NP	NP	NP	CU	CU	Sec. 4.4G
Gas Station, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gas Station	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Gas Station, Large	NP	CU	P	P	CU	CU	CU	CU	CU	P	P	CU	
Golf Course	NP	P	P	P	NP	P	P	CU	CU	P	P	CU	
Grocery Store	P	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Horse Racing Facility	NP	NP	NP	P	NP	NP	NP	CU	CU	P	P	CU	
Kennel	NP	P	P	P	CU	P	P	P	CU	P	P	CU	Sec. 8.4
Medical/Dental/Optical Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Medical/Dental/Optical Office	NP	P	P	P	CU	P	P	CU	CU	P	P	CU	
Mobile Home, Boat and Trailer Sales	NP	P	P	P	CU	P	NP	CU	CU	CU	P	CU	
Movie Theater	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Nightclub	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Non Profit Commercial Uses	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Non-Profit Community Centers	P	P	P	P	CU	P	CU	P	CU	P	P	CU	
Parking, Commercial Offsite Accessory	NP	P	P	P	P	P	P	CU	CU	P	P	CU	
Pawn Shop Services	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Personal Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Professional Office, Small	P	P	P	P	CU	P	P	CU	CU	P	P	P	
Professional Office	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Restaurant, Fast Food, Limited	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Restaurant, Fast Food	CU	P	P	P	CU	P	P	CU	CU	CU	P	CU	
Restaurant, Fast Food, Drive-Through <sup>40</sup>	NP	P	P	P	CU	CU	P	CU	CU	P	P	CU	

Land Use	NC	GC	HC	LI	MI	PND <sup>1</sup>	OC	R	RG	RLIC	IC	V	Additional Standards
<b>Commercial Uses continued</b>													<b>Sec. 8.9</b>
Restaurant	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Retail Sales Limited	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Retail Sales and Services, General	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Retail Store, Large	NP	CU	P	CU	NP	CU	NP	CU	CU	CU	CU	CU	
Shipping and Mailing Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
<u>Short Term Rental<sup>41</sup></u>	<u>CU</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>Sec. 8.16</u>
Special Event Facility	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.14
Storage, Commercial	NP	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Veterinary Services	P	P	P	P	CU	P	P	P	CU	P	P	CU	
Wireless Telecommunications Facilities	P	P	P	P	P	P	P	P	P	P	P	P	Art. 4B
<b>Agricultural Uses*</b>													
Agricultural Uses, as defined in Article 2	P	P	P	P	P	P	P	P	P	P	P	P	
Agricultural Repair Center	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Agricultural Tourism	P	P	P	P	P	P	P	P	P	P	P	P	
Crematorium, Livestock <sup>37</sup>	CU	CU	CU	CU	CU	CU	CU	P	CU	CU	CU	CU	Sec. 8.19
Farm Brewery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Winery or Distillery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Market	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.6
Farm Vacation Enterprise	P	P	P	P	P	P	P	P	P	P	P	P	
Farmer's Market	P	P	P	NP	NP	P	NP	P	CU	P	NP	CU	Sec. 8.6
Feed and/or Farm Supply Center	CU	P	P	P	P	P	P	P	CU	P	P	NP	
Horticultural Nurseries and Commercial Greenhouses	P	P	P	P	P	P	P	P	CU	P	P	NP	
Landscaping Business	P	P	P	P	P	P	P	P	CU	P	P	NP	
Rental of Existing Farm Building for Commercial Storage	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Structure must have existed for 5 years													
Special Event Facility, Agricultural	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.14
<b>Accessory Uses</b>													
Accessory Uses	P	P	P	P	P	P	P	P	P	P	P	P	

NC Neighborhood Commercial

GC General Commercial

HC Highway Commercial

LI Light Industrial

MI Major Industrial

PND Planned Neighborhood Development

P Permitted Uses

NP Not Permitted Uses

CU Conditional Uses (subject to requirements of district and/or other requirements of this Ordinance)

\*\* Accessory Use to a planned residential community, if permitted pursuant to Section 5.4 and processed as a CU

<sup>1</sup> The Planning Commission may amend the permitted uses for a development in the PND District per Article 5.

<sup>2</sup> Approval process is per the Salvage Yard Ordinance.

OC Office / Commercial Mixed-Use

R Rural

RG Residential Growth District

RLIC Residential-Light Industrial-Commercial District

IC Industrial-Commercial District

V Village District

## Alexandra Beaulieu

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**From:** Beach, Gillian R  
**Sent:** Wednesday, October 6, 2021 11:17 AM  
**To:** Alexandra Beaulieu  
**Subject:** Fwd: Air B&Bs  
**Attachments:** H-25 Guidelines for Permitting and Inspecting Accommodations Made Through Lodging Reservation Web Sites.pdf; Memorandum on application of General Sanitation rule to rentals in homes - Final (002).pdf; General Sanitation Rule.doc

Also,

Here is a copy of the General Sanitation Rule if you would like to include this. For the purposes of our discussion about short-term rentals, we would only be concerned about the definitions for a hotel, motel, bed & breakfast, and lodging facility.

Sincerely,

[Gillian Beach, R.S.](#)  
Environmental Health Manager  
Jefferson County Health Department  
1948 Wiltshire Rd. Suite 1  
Kearneysville, WV 25430  
(304) 728-8416 ext 3033

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----- Forwarded message -----

**From:** Beach, Gillian R  
**Date:** Wed, Oct 6, 2021 at 11:08 AM  
**Subject:** Fwd: Air B&Bs  
**To:** Alexandra Beaulieu

Alex,

I am forwarding this email from Judy Vallandingham, the Director of Office of Environmental Health Services for the State. The legal interpretation is that if someone is providing lodging for a fee in a home that they do not reside in, then it meets the definition of a lodging establishment in our General Sanitation regulations. These short-term rentals or air bed and breakfasts would specifically meet the definition of a motel which I have copied below.

2.15. Motel - Every building constructed, designed, maintained, offered or used to furnish lodging to automobile transient guests or the traveling public. The term motel includes auto courts, motor courts, auto lodges, motor lodges, tourist cabins, tourist cottages and tourist courts.

Short term rentals are not required to obtain a permit if it is the residence of the owner and they do not also serve breakfast. Any residence that provides lodging and breakfast would fall under the definition of a Bed & Breakfast in our General Sanitation regulations. I have copied the definition below.

2.2. Bed and Breakfast Inn – An establishment providing lodging facilities in the form of sleeping accommodations and, at a minimum, a breakfast for a fee.

This is the information I will be presenting at tomorrow's meeting. Please let me know what time I should log on to the meeting.

Thank you,

[Gillian Beach, R.S.](#)  
Environmental Health Manager  
Jefferson County Health Department  
1948 Wiltshire Rd. Suite 1  
Kearneysville, WV 25430  
(304) 728-8416 ext 3033

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From: **Beach, Gillian R**  
Date: Fri, Aug 27, 2021 at 1:48 PM  
Subject: Fwd: Air B&Bs  
To: Pierce, Jennifer E, Stephenson, Mikala S, Richardson, Patti J  
Alexandra N Demastes  
Phillipson, Danielle R

FYI

[Gillian Beach, R.S.](#)  
Acting Administrator, Environmental Health Manager  
Jefferson County Health Department  
1948 Wiltshire Rd. Suite 1  
Kearneysville, WV 25430

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*strictly prohibited. If you have received this Email in error, please advise the sender by reply Email and then delete it and any attachment(s) from your system immediately.*  
(304) 728-8416 ext 3033

----- Forwarded message -----

From: **Vallandingham, Judy E**  
Date: Fri, Aug 6, 2021 at 11:38 AM  
Subject: Re: Air B&Bs  
To: Beach, Gillian R  
Cc: Stacy E King

Gillian,

The only time a LHD would not permit a property that is rented through a service like AirB&B is if the property is the primary residence of the owner. I have attached the Environmental Health Procedure and the legal opinion. Let me know if you have any questions.

*Respectfully,*

*Judy*

**Judith Vallandingham R.S.**

**Director**

**WV BPH/OEHS/Public Health Sanitation Division**





**TITLE 64**

**LEGISLATIVE RULE  
BUREAU FOR PUBLIC HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 18  
GENERAL SANITATION**

**'64-18-1. General.**

1.1. Scope. B This rule establishes the minimum public health sanitation requirements governing all institutions and schools, care facilities, lodging facilities, recreational facilities, and public restrooms.

1.2. Authority. -- W. Va. Code 16-1-4.

1.3. Filing Date. -- July 12, 2013.

1.4. Effective Date. -- August 12, 2013.

1.5. Applicability. -- This rule applies to every person who in any manner establishes, conducts, controls, manages, maintains, or operates a facility included under the scope of this rule.

1.6. Enforcement. -- This rule is enforced by the commissioner of the bureau for public health.

**'64-18-2. Definitions.**

2.1. Approved - A procedure of operation, installation or construction which is in accordance with the standards, specifications, and instructions established by the bureau for public health.

2.2. Bed and Breakfast Inn – An establishment providing lodging facilities in the form of sleeping accommodations and, at a minimum, a breakfast for a fee.

2.3. Campground - A tract of land established, maintained, and offered to the public for payment for the location or placement of two or more camping units.

2.4. Camping Unit - Any tent, camping vehicle, cabin, or similar vehicle or structure designed or intended to be used for camping purposes.

2.4.a. A “camping unit” means and includes, but is not limited to, tents, tent campers, fold down campers, pop up campers, travel trailers, camping vans, motor homes, pick up coach campers, or any other unit built or mounted on a vehicle or chassis and capable of being self-propelled or towed.

2.4.b. A “camping unit” shall not include any unit kept by its owner on land occupied by the owner in connection with his or her dwelling, or any unoccupied camping unit kept and stored at a location that has been reserved for storage within a campground.

2.5. Campsite - Any plot of land within a campground used or intended to be used for the location or placement of a camping unit.

2.6. Care Facilities – Include, but are not limited to, public or private halfway houses, adult day care facilities, residential care facilities (such as juvenile group homes and work release centers), and non-disaster shelters (such as homeless shelters and family violence protection shelters). The term does not include health care facilities licensed by the Office of Health Facilities Licensure and Certification in the Office of the Inspector General.

2.7. Commissioner – The commissioner of the bureau for public health or his or her lawful designee.

2.8. Construct - To install, establish, extend, alter or modify.

2.9. Health Officer - The commissioner of the bureau for public health who is also the State Health Officer or the executive officer of the local board of health or his or her lawful representative.

2.10. Hotel - Every building where food and lodging are furnished to guests and payment is required.

2.11. Institution - A public or private facility established by an organization or corporation for the purpose of providing higher education, care, training, rehabilitation or other similar services or functions. An “institution” includes public or private correctional facilities, colleges and universities, and primary and secondary educational facilities (pre-K through grade twelve).

2.12. Labor Camp - A labor camp includes any lumber, mining, agricultural, construction, or other industrial camp where ten or more persons are employed and housed in temporary quarters, such as cars, motor homes, camper vehicles, wagons, tents, cabins, buildings, or other similar enclosures.

2.13. Lodging Facilities – Include, but are not limited to, hotels, motels, labor camps and Bed and Breakfast Inns.

2.14. Mass Gathering - Any group of two hundred fifty (250) or more persons assembled together for a meeting, festival, social gathering, concert or other similar purpose. The term shall not include assembly in any permanent buildings or permanent structures designed, equipped and intended for use by large numbers of people. For the purposes of this subsection, Aequipped@ means supplied with adequate sanitary facilities for the intended use.


2.15. Motel - Every building constructed, designed, maintained, offered or used to furnish lodging to automobile transient guests or the traveling public. The term motel includes auto courts, motor courts, auto lodges, motor lodges, tourist cabins, tourist cottages and tourist courts.

2.16. Nuisance - An annoyance or anything which causes injury, inconvenience, damage, or which essentially interferes with the enjoyment of life or property, and includes, but is not limited to, inadequate or unsanitary sewage, water or plumbing facilities or other unsanitary conditions.

2.17. Occupant - A person utilizing a specific facility governed by this rule.

2.18. Operator - A person who has been granted a written permit, in accordance with this rule, to operate a facility governed by this rule.

2.19. Organized Camp - Any area, place, parcel or tract of land on which facilities are established or maintained to provide an outdoor group living experience for children or adults, or where one or more

		West Virginia Department of Health and Human Resources			
		MANUAL OF ENVIRONMENTAL HEALTH PROCEDURES			
Section	Housing and Institutions	Date	February 3, 2017	Procedure #	H-25
Subject	Guidelines for Permitting and Inspecting Accommodations Made Through Lodging Reservation Web Sites			Page	1 of 1

Attached hereto is a copy of an [Interoffice Memorandum](#) sent to Walt Ivey, Director, OEHS, from Brian J. Skinner, General Counsel. The Memorandum addresses the question of whether persons who list or rent short-term lodging in residential properties with the cost of such accommodation set by the property owner, to others using lodging reservation web sites (*i.e.* Airbnb, Inc.) are subject to the permit and inspection requirements of WV 64CSR18 (General Sanitation).

Legal Counsel's opinion is, "the language of the General Sanitation rule is circumscribed and cannot be read to include in the definition of a "lodging facility" persons who are providing accommodations, *in their home*, to others for a fee."

Also, "... as currently promulgated, the General Sanitation rule cannot be read to include in the definition of a "bed and breakfast inn" persons who are providing accommodations to others in their home for a fee, unless the host not only provides sleeping accommodations, but also a breakfast. However persons renting a house or apartment *that is not their residence* may be subject to the provisions of the General Sanitation rule, but only if the house or residence meets one of the definitions included in the general definition of a "lodging facility."

Questions concerning this memorandum should be directed to Walt Ivey, Director, Office of Environmental Health Services, 350 Capitol Street, Room 313 Charleston, WV 25301-1798, telephone: (304) 558-2981.

## References

## History

Attachments November 9, 2016 Interoffice Memorandum sent from Brian J. Skinner, General Counsel to Walt Ivey, Director, Office of Environmental Health Services




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INTEROFFICE MEMORANDUM

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**TO:** WALT IVEY, DIRECTOR, OEHS  
**FROM:** BRIAN J. SKINNER, GENERAL COUNSEL   
**SUBJECT:** AUTHORITY OF THE REGULATE PERSONS WHO RENT  
ACCOMADATIONS IN THEIR OWN HOMES.  
**DATE:** NOVEMBER 9, 2016  
**CC:** RAHUL GUPTA, COMMISSIONER & STATE HEALTH OFFICER  
BARB TAYLOR, DEPUTY COMMISSIONER

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It has recently come to the attention of Public Health Sanitation Division (PHS) of the Office of Environmental Health Services that accommodations for nightly rentals are being advertised on the website Airbnb.com. Airbnb, Inc. operates an online community marketplace for people to list, discover, and book accommodations worldwide online or from a mobile phone. Some of the rentals advertised are entire houses or apartments, others are rentals of a single room in a private residence.

A question has arisen about whether persons renting accommodations in their homes are subject to the provisions of *W.Va. Code R. 64-18-1 et seq.* (General Sanitation). The PHS staff is of the opinion that these rentals do meet the definition(s) and these rentals should be required to comply with the rule and obtain an operational permit from the local health department.

The PHS has requested a legal opinion on whether persons renting accommodations utilizing Airbnb.com are subject to the provisions of the General Sanitation rule, including rentals of a sleeping room in a private residence.

**QUESTION PRESENTED**

Whether persons who rent accommodations in their own homes to others using Airbnb, Inc. are subject to the permit and inspection requirements of *W.Va. Code R. §§ 64-18-1 et seq.* (General Sanitation)?

**SHORT ANSWER**

No, despite the Secretary's broad the authority to regulate "[t]he sanitary condition of [ ] all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption . . .", and "[t]he health and sanitary conditions of establishments commonly referred to as bed and breakfast inns", (*W.Va. Code* § 16-1-4 (b)) as currently promulgated, the General



Sanitation rule cannot be read to include in the definition of a “lodging facility”, persons who are providing accommodations to others in their home for a fee.

## FACTS

Airbnb, Inc. operates an online community marketplace for people to list, discover, and book accommodations worldwide online or from a mobile phone. The Airbnb website, application and services can be used to facilitate the listing and booking of accommodations. Airbnb makes available an online platform with related technology for guests and hosts to meet online and arrange for bookings of accommodations directly with each other. Airbnb is not an owner or operator of properties, nor is it a provider of properties, and Airbnb does not own, sell, resell, furnish, provide, rent, re-rent, manage and/or control properties. Airbnb’s responsibilities are generally limited to facilitating the availability of properties, including, but not limited to, hotel rooms, motel rooms, other lodgings or accommodations.

The Airbnb terms of service inform hosts that they should:

understand how the laws work in their respective cities. some cities have laws that restrict their ability to host paying guests for short periods. these laws are often part of a city’s zoning or administrative codes. in many cities, hosts must register, get a permit, or obtain a license before listing a property or accepting guests. certain types of short-term bookings may be prohibited altogether. local governments vary greatly in how they enforce these laws. penalties may include fines or other enforcement. hosts should review local laws before listing a space on Airbnb.

Airbnb assumes no responsibility for a host’s compliance with any agreements with or duties to third parties, applicable laws, rules and regulations. By agreeing to the Airbnb terms and conditions, hosts are indicating that they understand and agree that they are solely responsible for compliance with any and all laws, rules, regulations, and tax obligations that may apply to their use of the website, application, services and collective content.

## *State Law*

*W. Va. Code* § 16-1-4 (b) authorizes the Cabinet Secretary to regulate “[t]he sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, *all other places open to the general public and inviting public patronage* or public assembly, or *tendering to the public any item for human consumption . . .*” (emphasis added), and “[t]he health and sanitary conditions of establishments commonly referred to as bed and breakfast inns. Bed and breakfast inn is defined as an establishment providing sleeping accommodations and,

at a minimum, a breakfast for a fee.<sup>1</sup> *W.Va. Code* § 16-1-6(m) empowers the Commissioner to “inspect and enforce rules to control the sanitary conditions of and license . . . all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption . . .”

The Secretary’s legislative rule-making authority provides the authority for *W.Va. Code R.* §§ 64-18-1 *et seq.* (General Sanitation). The rule establishes the minimum public health sanitation requirements governing all institutions and schools, care facilities, lodging facilities, recreational facilities, and public restrooms and is applicable to every person who in any manner establishes, conducts, controls, manages, maintains, or operates a facility included under the scope of [the] rule. *W.Va. Code R.* §§ 64-18-1.1 & 5. The rule is applicable to lodging facilities, which include, but are not limited to, bed and breakfast inns<sup>2</sup>, hotel<sup>3</sup>, labor camps<sup>4</sup>, and motels<sup>5</sup>. *W.Va. Code R.* § 64-18- 2.13.

### *General Sanitation Rule*

Whenever a facility governed under the scope of this rule<sup>6</sup> is constructed or extensively remodeled, and whenever an existing structure is converted to use as one of the facilities governed by the rule, the owner or operator must submit plans and specifications for the construction, remodeling, or conversion to the health officer<sup>7</sup> for review and

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<sup>1</sup> The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility. The secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

<sup>2</sup> Defined as an establishment providing lodging facilities in the form of sleeping accommodations and, at a minimum, a breakfast for a fee. *W.Va. Code R.* § 64-18-2.2.

<sup>3</sup> Defined as every building where food and lodging are furnished to guests and payment is required. *W.Va. Code R.* § 64-18-2.10

<sup>4</sup> Defined as any lumber, mining, agricultural, construction, or other industrial camp where ten or more persons are employed and housed in temporary quarters, such as cars, motor homes, camper vehicles, wagons, tents cabins, buildings, or other similar enclosures. *W.Va. Code R.* § 64-18-2.12.

<sup>5</sup> Defined as every building constructed, designed, maintained, offered or used to furnish lodging to automobile transient guests or the traveling public. The term motel includes auto courts, motor courts, auto lodges, motor lodges, tourist cabins, tourist cottages and tourist courts. *W.Va. Code R.* § 64-18-2.15

<sup>6</sup> Colleges and universities, and public restrooms, unless the public restroom is included as part of a facility governed under this rule, are exempt from the plan review and permitting provisions of the rule.

<sup>7</sup> Health Officer is defined by the rule as either the Commissioner or a local health officer. *See W.Va. Code R.* § 64-18-2.9

approval at least forty-five (45) days before construction, remodeling, or conversion is begun. *W.Va. Code R. § 64-18-3.1.a.*

Anyone operating a facility governed by the rule must possess a valid permit issued by the health officer. *W.Va. Code R. § 64-18-3.2.a.* Application for a permit to operate a facility must be submitted at least 15 days before the actual or proposed operation of the facility. *W.Va. Code R. § 64-18-3.2.c.* Prior to the approval of an application for a permit, the health officer must inspect the proposed facility to determine compliance with the rule. *W.Va. Code R. § 64-18-3.2.d.*

The health officer must inspect a facility governed by the rule at least once a year.<sup>8</sup> *W.Va. Code R. §§ 64-18-4.1.* The health officer must make additional inspections as necessary to determine satisfactory compliance with the provisions of this rule or any orders, notices, instructions or specifications issued pursuant to this rule. *W.Va. Code R. § 64-18-4.2.*

Whenever the health officer makes an inspection of a facility and discovers that any of the provisions of this rule have been violated, he or she shall notify the operator of the violations by means of an inspection report form or other written notice. *§ 3.3.a.* Whenever the health officer finds that any facility governed by this rule constitutes an imminent hazard to public health, he or she may, without notice or hearing, issue a written order to the operator or person in charge citing the existence of the condition and requiring action to be taken to remedy the condition, including the suspension of the permit to operate. *W.Va. Code R. §§ 64-18-3.3.b.* Any person to whom the order is directed shall comply with the order immediately, but upon written petition to the health officer will be afforded an administrative hearing. *W.Va. Code R. § 64-18-3.3.b.1.*

## DISCUSSION

It is well-established that the Cabinet Secretary has the authority to regulate, and the Commissioner to enforce, regulation regarding the sanitary condition of “places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption . . .”, including bed and breakfast inns. *W.Va. Code § 16-1-4(b)* & *W.Va. Code § 16-1-6(m)*.

As noted above, a bed and breakfast inn is defined as an establishment providing sleeping accommodations and, *at a minimum, a breakfast* for a fee. *See W.Va. Code § 16-1-4(b)(7)*. This definition is problematic in the present case, since it requires that hosts who

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<sup>8</sup> Colleges and universities and public restrooms which are not part of a facility governed by this rule may be inspected on a complaint basis only. Schools shall be inspected at least once every two years. *W.Va. Code R. §§ 64-18-4.1.a & b.*



provide accommodations must also provide breakfast. Accommodations booked via Airbnb.com, do not require a host to provide breakfast.

However, given the breadth of the Secretary's regulatory authority over "all places open to the general public and inviting public patronage", it may be unnecessary to determine whether the bed and breakfast definition is applicable. Persons advertising sleeping accommodations in their home on an online public marketplace, may be included within the Secretary and Commissioner's regulatory authority, since advertising accommodations on the Airbnb website or application is evidence of (1) an invitation for the public patronage, and (2) an intention to make a room(s) available to the general public. *See W. Va. Code* § 16-1-4(b).

Consequently, it appears that the Secretary's statutory authority may be broad enough to include the regulation of persons who provide sleeping accommodations in their homes. However, the next question that must be considered is whether the provisions of *W. Va. Code R.* §§ 64-18-1 *et seq.* can be read to include such accommodations?

As discussed above, the General Sanitation rule applies to lodging facilities. Lodging facilities, include, but are not limited to, bed and breakfast inns, hotels, labor camps, and motels. *W. Va. Code R.* § 64-18-2.13. A person offering accommodations in their own home for a fee, does not fit neatly into any of the categories contained in the definition of "lodging facilities." First, in each case, the primary purpose of the lodging facility is to provide sleeping accommodations. Bed and breakfast inns, hotels, labor camps and motels are business establishments, the primary purpose of which, is to provide sleeping accommodations, and in some cases food. This cannot be said of all accommodations advertised on Airbnb, many of which are persons offering accommodations in their own homes. This is not to say that all accommodations advertised on Airbnb are in private homes, however those that meet the General Sanitation rule's definition of a lodging facility, are clearly subject to the requirements contained in the rule.

Thus, the question then becomes, whether the "include, but are not limited to" clause contained in the definition of a "lodging facility" can be used to include persons who host others in their private residence for a fee? In deciding the meaning of a statutory provision<sup>9</sup>, courts will "look first to the statute's language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed." *Appalachian Power Co. v. State Tax Dep't*, 195 W.Va. 573, 587, 466 S.E.2d

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<sup>9</sup> A rule "proposed by an agency and approved by the Legislature is a 'legislative rule' as defined by the State Administrative Procedures Act, *W. Va. Code*, 29A-1-2(d), and such a legislative rule has the force and effect of law." *Syl. Pt. 5, Smith v. West Virginia Human Rights Comm'n*, 216 W.Va. 2, 602 S.E.2d 445 (2004).

424, 438 (1995). *See also Syl. pt. 2, Crockett v. Andrews*, 153 W.Va. 714, 172 S.E.2d 384 (1970) (“[w]here the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.”); *Syl. pt. 2, State v. Epperly*, 135 W.Va. 877, 65 S.E.2d 488 (1951) (“[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.”).

In West Virginia “[a] statute is open to construction only where the language used requires interpretation because of ambiguity which renders it susceptible of two or more constructions or of such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning.” *Sizemore v. State Farm Gen. Ins. Co.*, 202 W.Va. 591, 596, 505 S.E.2d 654, 659 (1998) (*internal quotations and citation omitted*).

With regard to the use of the phrase “include, but not limited to” the West Virginia Supreme Court of Appeals has recognized that “[t]he term ‘includ[es]’ in a statute is to be dealt with as a word of enlargement and this is especially so where ... such word is followed by ‘but not limited to’ the illustrations given.” *State Human Rights Comm’n v. Pauley*, 158 W.Va. 495, 501, 212 S.E.2d 77, 80 (1975) (citations omitted). However, the Court has also recognized that “[i]n the interpretation of statutory provisions the familiar *maxim expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, applies.” *Syllabus Point 3, Manchin v. Dunfee*, 174 W.Va. 532, 327 S.E.2d 710 (1984). *See also, State ex rel. Riffle v. Ranson*, 195 W.Va. 121, 128, 464 S.E.2d 763, 770 (1995) (“*Expressio unius est exclusio alterius* (express mention of one thing implies exclusion of all others) is a well-accepted canon of statutory construction.”) (*citing Brockway Glass Co. Inc., Glassware Div. v. Caryl*, 183 W.Va. 122, 394 S.E.2d 524 (1990); *Dotts v. Taressa J.A.*, 182 W.Va. 586, 591, 390 S.E.2d 568, 573 (1990)). The *expressio unius maxim* is premised upon an assumption that certain omissions from a statute by the Legislature are intentional. As the Court explained in *Riffle*, “[i]f the Legislature explicitly limits application of a doctrine or rule to one specific factual situation and omits to apply the doctrine to any other situation, courts should assume the omission was intentional; courts should infer the Legislature intended the limited rule would not apply to any other situation.” 195 W.Va. at 128, 464 S.E.2d at 770.

Here, as indicated above, the list of establishments contained in the definition of “lodging facility” are those in which the primary function of the establishment is to provide sleeping accommodations. Certainly, that may not be said of a person who is renting a room in their home or renting an entire house or apartment that serves as a residence. Secondly, the Legislature specifically defined a “bed and breakfast inn” as an establishment providing lodging facilities in the form of sleeping accommodations and, *at a minimum*, a breakfast for a fee. *W. Va. Code* § 16-1-4(b)(7). By making it necessary that an establishment provide breakfast as prerequisite to it meeting the definition, it appears that the Legislature intended to limit the application of the Secretary’s regulatory authority to a specific factual situation. Consequently, if a host does not provide breakfast as a part of the

accommodations subject to a fee, than the host is not a bed and breakfast inn subject to the provisions of the General Sanitation rule.

Consequently, as currently promulgated, the General Sanitation rule cannot be read to include in the definition of a “bed and breakfast inn” persons who are providing accommodations to others in their home for a fee, unless the host not only provides sleeping accommodations, but also breakfast. However, persons renting a house or apartment that is not their residence may be subject to the provisions of the General Sanitation rule, but only if the house or residence meets one of the definitions included in the general definition of a “lodging facility.”

## CONCLUSION

Airbnb, Inc. has become a virtual marketplace for people to list, discover, and book accommodations worldwide online or from a mobile phone. However, many rentals advertised are single rooms in a private residence. The recent upsurge of accommodations for nightly rentals being advertised on the website Airbnb.com, has led to the question of whether the Bureau’s General Sanitation rule applies to persons who rent rooms in their private residence.

While the Cabinet Secretary given broad the authority to regulate “[t]he sanitary condition of [ ] all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption . . .”, and “[t]he health and sanitary conditions of establishments commonly referred to as bed and breakfast inns”, (*W. Va. Code* § 16-1-4 (b)), the language of the General Sanitation rule is circumscribed and cannot be read to include in the definition of a “lodging facility” persons who are providing accommodations, in their home, to others for a fee.

Consequently, the Bureau may consider requesting that that Secretary consider proposing to the Legislature for promulgation, amendments to the General Sanitation legislative to expand its scope to include rule persons who rent sleeping accommodation in their homes.



# QUICKNOTES

## Regulating Short-Term Rentals

The concept of renting rooms or homes on a short-term basis is not new. Many cities have boarding houses that rent rooms by the week or month, just as many small towns and rural areas host bed and breakfasts. And in some tourist hotspots, dedicated vacation rentals are common. However, new online services that facilitate short-term rentals have led to a rapid proliferation of home sharing as an alternative to more traditional visitor lodging arrangements in communities across the country. In many places, this trend has sparked debates about whether or not new regulatory or enforcement mechanisms are necessary to mitigate potential effects on host communities. While different localities are likely to draw varying conclusions about the necessity of new standards or procedures, the following sections provide some context and recommendations for local policy.

### Background

In many communities, home sharing is one facet of a larger trend commonly referred to as the “sharing economy.” This phrase often encompasses a wide range of transactions mediated by websites or mobile technology related to sharing property or services. Because home sharing has the potential to change the character of established residential areas, many communities are taking a closer look at how best to accommodate the demand for new types of lodging without undermining goals related to housing, land use, or transportation.

There are three basic varieties of short-term rentals: (1) hosted sharing, where the primary occupants of a residence remain on-site with guests; (2) unhosted sharing, where the primary occupants of a residence vacate the unit while it is rented to short-term guests; and (3) dedicated vacation rentals, where there are no primary occupants. Home sharing and vacation rental services can provide residents and landlords an easy way to make some extra income and, in some cases, offering residences exclusively as short-term rentals can be far more lucrative than traditional leases. Meanwhile, the properties marketed through home sharing and vacation rental sites often appeal to travelers looking for a more authentic local experience or affordable alternatives to downtown hotels and motels.

For communities with a mature short-term rental market, new regulations or enforcement mechanisms may seem unnecessary. Many of these cities and counties either already have standards and procedures addressing short-term rentals on the books or have decided, based on experience, that such provisions are unnecessary. Similarly, communities with an abundance of affordable rental housing and relatively inelastic demand for conventional short-term lodging space may not feel the need to add new standards or procedures to their codes. This is because home sharing is unlikely to create housing shortages or provide direct competition for hotels and motels. However, in places with a surge in home sharing combined with a shortage of affordable rental housing or unmet demand for rooms in hotels or motels, new standards and procedures may be appropriate.

### Clarify Use Definitions

Many localities explicitly prohibit the rental of rooms or dwelling units for periods shorter than one month, unless owners comply with all applicable local regulations for boarding houses, hotels, motels, or bed and breakfasts. Meanwhile, many other cities and counties explicitly permit the short-term rental of dwelling units, subject to specific operational or location restrictions. However, few localities address short-term rentals in instances where a unit is occupied as a primary residence for the majority of the year. Often this means hosted or unhosted home sharing is either explicitly or implicitly prohibited. Given the prevalence of home sharing, it may make sense to consider adding new definitions for different types of sharing situations, such as hosted or unhosted accessory home sharing and vacation rentals as a primary use.



*In some communities with especially high demand for short-term rentals, landlords may be tempted to take units out of the long-term rental market.*



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## Identify Appropriate Locations

Some cities and counties with mature short-term rental markets permit full-time sharing in zoning districts that include a mix of primary residences and vacation rentals. Others restrict vacation rentals to tourist-oriented districts. One potential risk of permitting home sharing in residential districts is that it may incentivize landlords to take rental properties off the market, creating a shortage of affordable rental housing. Another potential risk is that frequent unhosted sharing and vacation rentals may lead to increased complaints related to noise, traffic, or parking. In areas with high concentrations of home-sharing or vacation rentals, there is also a chance that the fundamental character may change from residential to quasi-commercial.

## Consider New Zoning or Licensing Standards

While some cities and counties have elected to explicitly prohibit home sharing altogether, several others have made recent code amendments to accommodate short-term rentals in residential districts, subject to specific zoning or licensing standards intended to mitigate community impacts. These standards address topics such as registration and record keeping, advertising, fees or taxes, annual limits on the total number of short-term rental nights, spatial concentration, inspections, and insurance coverage.

For example, San Francisco prohibits dedicated vacation rentals and requires residents or landlords to register all hosted and unhosted short-term rental units. It limits unhosted rentals to 90 days per year and requires registrants to pay hotel taxes and carry liability insurance for claims up to \$500,000 (\$41A.5.g).

Meanwhile, Portland, Oregon, recently added new standards for accessory short-term rentals to address hosted and unhosted home sharing. For units where no more than two bedrooms are offered as short-term rentals, residents or landlords must obtain an administrative permit and limit unhosted sharing to a maximum of 95 days per year. Accessory short-term rentals offering more than two bedrooms are subject to a conditional use approval process. In both cases, no more than 25 percent of units in multifamily buildings can be used as short-term rentals (§33.207).

In Aspen, Colorado, short-term vacation rentals are permitted by right in most residential districts, provided owners obtain a business license and a vacation rental permit, designate a local property manager, notify any affected home owners association, and pay sales and lodging taxes (§26.575.220).

## Evaluate Enforcement Alternatives

Without data from home-sharing and vacation rental services, communities may be dependent on complaint-driven enforcement of regulations for short-term rentals. Instead, cities and counties may find it beneficial to establish a proactive enforcement system to ensure that registered properties are complying with applicable standards. This may involve routine monitoring of listings on home-sharing service websites. In communities with short-term rental regulations, violators are typically subject to fines or the revocation of registrations or permits.

## Summary

Home-sharing and vacation rental services are growing trends that show no sign of slowing down. While some communities may ultimately decide that short-term rentals do not have a place in established residential districts, there may be no effective enforcement mechanism for a blanket prohibition. Practically speaking, the key is making regulations that are clear, easily enforced, and do not make residents or landlords out to be scofflaws unnecessarily.

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## FURTHER READING

### 1. Published by the American Planning Association

Hutchinson, Nate. 2002. "Short-Term Vacation Rentals: Residential or Commercial Use?" *Zoning News*, March.

### 2. Other Resources

*City Policies for Short-Term Rentals*. 2015. Oakland, California: Sustainable Economies Law Center. Available at [theselc.org/str\\_discussion](http://theselc.org/str_discussion).

Garvin, Elizabeth. 2015. "RMLUI Corner: Thinking About Regulating the Sharing Economy." *Western Planner*, February. Available at <http://tinyurl.com/q4x3zhq>.

National Association of Realtors. 2015. "Field Guide to Short-Term Rental Restrictions." Available at <http://tinyurl.com/pxcdwwc>.

## **Public Comments Received for 10-12-221 Public Hearing on ZTA21-01**

1. Annette Gavin Bates, CEO Jefferson County CVB – 09-14-2021
2. Richard Deal, 09-15-2021

## Planning Department

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**From:** Annette Gavin Bates <annette.gavin@jccvb.com>  
**Sent:** Tuesday, September 14, 2021 5:18 PM  
**To:** Planning Department  
**Subject:** Short term rental ordinance

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good afternoon,

I am writing in reference to the ordinance regarding short term rentals. The JCCVB supported the legislation that passed last session requiring the marketplace facilitator to charge, collect and remit all appropriate taxes including sales tax and local taxes. As we expressed many times, this bill was not only a funding issue but also a fairness issue. Therefore, it is our position that all short term rentals must charge, collect and remit any applicable sales and local taxes.

Sent from my iPhone

*Annette Gavin Bates*  
*CEO, Jefferson County CVB*  
Cell 304-279-3637  
[37 Washington Court](#)  
[Harpers Ferry, WV 25425](#)  
[Annette.gavin@jccvb.com](mailto:Annette.gavin@jccvb.com)  
[www.discoveritallwv.com](http://www.discoveritallwv.com)



## Planning Department

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**From:** Richard Deal  
**Sent:** Wednesday, September 15, 2021 10:22 AM  
**To:** Planning Department  
**Subject:** Re: proposed Short term rental comments

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Yes previous message should be included and this can be as well.

It is my understanding that IF the STR is the residence of the owner or staff and that they provide any food then it is an Actual Bed & Breakfast which requires health and safety inspections and certificates, and would have to be zoned and licensed as a Bed & breakfast. However airbnbs generally do not provide prepared food. There are a few Bed&breakfasts lodgings that cross by also listing on AirBnB just like there are hotels that list on AirBnB but these would be licensed and registered as Bed & breakfasts and/or hotels. An AirBnB can be one of 4 things :

A hotel or Bed & breakfasts

A entire place or vacation rental (entire place)

A private room (rent just a room in a home)

A shared room (rent just a bed in a home).

[Types of places to stay - Airbnb Help Center](#)



VRBO, TripAdvisor, and Booking.com only have the first two options.

The Shared room is rather uncommon in rural areas as well, and I don't know of any in the county or even region.

So for this since Hotels and Bed&Breakfasts are already covered by other zoning and licensing we are effectively only talking about the middle two options (vacation homes, and private rooms).

An entire vacation home does not have any provided prepared food (owners may provided prepackaged store bought snacks in a welcome basket but this is not the same as owner prepared unpackaged food, and is usually things like snack bars and/or bottled water). Thus there should not be any Health and safety requirements for vacation homes. Room rentals should be the same way and hosts should be required to not provide prepared food or to get a bed&breakfast license if they do want to provide prepared food.

As for Tax. The state passed a law requiring all online marketplaces (as defined AirBnB, VRBO, Tripadvisor, and Booking.com all meet this definition) to collect and remit directly (without host interaction or participation, state and local sales & use tax. All of the main players above do currently collect and remit the sales tax. There was a bill passed more recently that would also require them to collect and remit occupancy tax, however the governor vetoed this bill due to some wording problems in the bill having to do with logistics. This is being worked on at the state level and will come around again soon with corrected language. In the mean time state law does require the HOST to collect and remit occupancy tax which most of the hosts do at this time. I have worked with many to help them configure airbnb, VRBO etc, to collect the occupancy tax to to fill out the rather simple county form monthly. It is simple and does not require a business license:  
<http://www.jeffersoncountywv.org/>

Here is an article about the WV state law requiring online market places like AirBnB VRBO, etc to collect and remit sales tax: [https://wvohoa.org/wp-content/uploads/2019/06/2019-0614\\_WilliamsonDailyNews.pdf](https://wvohoa.org/wp-content/uploads/2019/06/2019-0614_WilliamsonDailyNews.pdf)

[http://www.wvlegislature.gov/Bill\\_Status/bills\\_history.cfm?INPUT=2813&year=2019&sessiontype=rs](http://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2813&year=2019&sessiontype=rs)

Again hosts or owners are still required by law to handle the occupancy tax in the county

As for the health and safety rules, I am not sure they are reading this correctly.  
For a room rental where no breakfast is served it seems that no health and safety inspection is required:

Also, "... as currently promulgated, the General Sanitation rule cannot be read to include in the definition of a "bed and breakfast inn" persons who are providing accommodations to others in their home for a fee, unless the host not only provides sleeping accommodations, but also a breakfast.

This indicates that it "cannot" unless they are providing breakfast.

As for entire place it also seems there is no health and safety unless:

persons renting a house or apartment that is not their residence may be subject to the provisions of the General Sanitation rule, but only if the house or residence meets one of the definitions included in the general definition of a "lodging facility."

so only if it meets one of the definitions of a "lodging Facility", which an entire house does not seem to meet (Boarding house, hotel, Bed&Breakfast, etc).

On Wednesday, September 15, 2021, 09:15:16 AM EDT, Planning Department  
<planningdepartment@jeffersoncountywv.org> wrote:

Good morning,

Thank you for this information. Would you like your email included in the PC packet next month? I think the information is helpful in clarifying some of the discussion that occurred last night.

The individual who spoke last night was Planning Commission member Matt Knott. He also stated that when he contacted the Health Department back in 2010 (I think he said 2010) they did not require a permit. I was under the impression a permit was not required, but when I contacted the Health Department they told me that the Office of Environmental Health Services (OEHS) has to get legal interpretations of their regulations to determine whether Airbnb and other similar short term rentals met the definition of a lodging facility. I was told that the interpretation was that if the residence/facility was not the primary residence of the owner, then the rental was subject to Health Department regulations because it meets the definition of lodging facility. They provided the memo that was in the agenda packet (see pages 13 & 14 of my memo [attached]).

I followed up with the Health Department this morning to request additional information since you and Commissioner Knott were not the first to state that the Health Department did not have any approval process for STRs. Perhaps the distinction is specific to whether or not the lodging facility/STR provides food services. I will let you know what I find out from the Health Department and will also include any additional information received from them in the next meeting agenda packet.

As you probably heard, the Planning Commission scheduled a Public Hearing for their next regular meeting, which is October 12, 2021. Note: the Public Hearing will be to receive input on their revised draft and not the first draft that was in their packet last night.

Thank you again for your feedback.

Sincerely,

Alex

Alexandra Beaulieu

Zoning Administrator

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**From:** Richard Deal <ButchDeal@yahoo.com>  
**Sent:** Tuesday, September 14, 2021 8:59 PM  
**To:** Richard Deal <butchdeal@yahoo.com>; Planning Department <PlanningDepartment@jeffersoncountywv.org>  
**Subject:** RE: proposed Short term rental comments

I would like to correct somethings that were miss statements by a person on the call from another state. He stated that VRBO does not collect and remit sales tax. By state law ALL online marketing systems (including VRBO) must collect and remit sales tax to the state. My listings are on VRBO and VRBO definitely does (as well as AirBnB, and Booking.com, and all other services ) collect and remit state sales tax.

Further there is no need for a business license for STRs for the state, or for county occupancy tax. County occupancy tax is done with a county form and monthly checks to the county treasurer / sheriff. The state is also working on an amendment to require online marketers to collect and remit occupancy tax in a similar fashion to the sales tax law.

I was not able to hear the suggestion on the health department certificate, but when I checked it was not required for a whole house rental that does not offer food services.

Thank you

Richard

The following correspondence was submitted prior to the Planning Commission scheduling a Public Hearing. These were submitted on or before the 09/14/21 meeting and are being included for the Planning Commission's information.

1. Richard Deal, 09-12-2021
2. Amy Bowman, 09-13-21
3. Rockhaven Bed and Breakfast, 09-13-21
4. Bryan Gray, 09-13-21
5. Carrie Gauthier, 09-13-21
6. Cathy Gray, Potomac Adventure, 09-13-21
7. Thomas Knott, 09-13-21
8. Thomas Knott, 09-14-21
9. Eddie Love, 09-14-21
10. Amy Bowman, 09-14-21

## Planning Department

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**From:** Richard Deal <butchdeal@yahoo.com>  
**Sent:** Sunday, September 12, 2021 4:04 PM  
**To:** Richard Deal; Planning Department; Zoning  
**Subject:** Re: proposed Short term rental comments

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Also I would like to comment about the letter included in the document complaining about AirBnBs. In particularly this comment:

"not truly bringing in money to the county by saying tourism. They don't employ staff they don't bring money to restaurant and shops"

This is patently false. ALL the AirBnBs pay directly to the county tourism tax via the occupancy tax. But further the guests do regularly and often quite extensively shop and eat at local shops. I can send numerous examples of comments by guests but I will send just the most recent review by a guest as example (I highlighted some mentions of local shops) :

The house is beautiful. The decorations are cute and comfortable. Host provides all the amenities we needed to have a comfortable stay, and a generous amount of information about the area. The kitchen is stocked with everything you need to cook. Pots, pans, utensils, BBQ brushes and tongs, etc. Wifi is satellite, so be prepared for that. It's a great place to unplug. The house is right across the road from the river, with easy access to it. The fire pit is great, with chairs and a table right there. We had a wonderful time sitting in our tube on the river. Shepherdstown is right down the road, and we were able to easily access the grocery store and some great coffee and local food/spirits. Here are my recommendations: **Lost Dog Coffee**: amazing espresso from a fun and eccentric store front. They also have great off the wall drinks and blended coffee shakes. We went twice and everything we had was great. **The Green Pineapple**: good Korean food right in town. The line was long, but the food (we got bowls since the ramen menu was being redone) was great. Fairly simple and tasty. About 15-20 min away is a new-ish distillery called **Devil's Due**. We drove over there on a whim and the owners were great. We got a tasting and had a great time. They have awesome flavored moonshine in addition to their whiskey and vodka. All in all, a comfortable stay with great access to surrounding attractions.

and here is another:

Sent from my iPad

On Sep 12, 2021, at 2:17 PM, Richard Deal <butchdeal@yahoo.com> wrote:

I operate several STRs in the county. One in a historic home which like many historic homes does not have hallways with access to rooms through other rooms. Thus the house has two livingrooms, the one upstairs has a pull out couch with queen bed.

The Recommendations for STRs suggests only two guests per bedroom, in My case this living room with pull out bed should count for two additional guests. Further many families with small children and infants stay with the small child staying in a portable crib, the two guests per bedroom would also prevent this. We also have a tiny house with no bedroom at all (an efficiency style) this should be allowed with two guests in the queen bed in the main (efficiency style) room. There is a tree house and other similar homes as well and other homes with bedrooms with two bunk beds, thus sleeping 4 per

bedroom. Though there should be limitations for occupancy, 2 people per bedroom seems overly restrictive.

Another part of the suggestion is limiting to a hard rule of NO additional guests at the STR. Many guests like to meet a local couple, have a dinner for local parents/family, or just enjoy the property with others. There needs to be a distinction between a large party, and a few people over. In my listings, I generally allow the guest to allow over (for day only visits, not over night) an equal number or less to the number that are booked. Thus if 3 people are booked, then they can have an additional 3 or less people over during the day to visit. One example of a situation is a bride books before the wedding, and she wants some maids to come over to help her prepare for the wedding, this would be acceptable but not a large bridal party with drinking dancers, etc.

As for off street parking, there are areas with only street parking now for Long Term. Shouldn't this be the same as long term parking. if the owner has secured street parking permits for the guests, this should cover the parking issue. Also what is sufficient parking? I have seen 4 or more guests come in a single car, as well as 4 come in 4 separate cars (rare but happens), so how do you define sufficient parking?

**All short term rentals shall obtain a Zoning Certificate to reflect compliance with the standards established herein.**

Another concern is the zoning certificate, how is this to be administered? what is to be inspected? The STRs are the same as residences and thus should have no more inspection than a residence, which is currently only part of permits for alterations. Is this per property or per listing, or per house?

**Additionally, as part of the Zoning Certificate application, documentation reflecting approval from the Health Department shall be submitted, if such approval is required by said agency.**

I don't think the health department has any approval for a rental, much less a short term rental. Few areas in the US do.

There should be only a health department certificate only if the host is providing prepared food to the guests, like a Bed & Breakfast would. There is not a health department inspection for a residence on a long term lease.

The definition of Short Term Rental seems to only cover an entire building, but there are room Share, as well as Shared room, and entire homes as part of the STR industry. Here is a definition from AirBnB of the different types of STRs: <https://www.airbnb.com/help/article/5/types-of-places-to-stay>

How does this cover yurts, tree houses, tiny house, etc?

Richard Deal

304-283-4927

## Planning Department

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**From:** Amy Bowman <amywrites@yahoo.com>  
**Sent:** Monday, September 13, 2021 11:50 AM  
**To:** Zoning; Planning Department  
**Subject:** Comments on the Proposed Text Changes re: Short-Term Rentals

Planning Commissioners:

Thank you for your efforts to clarify short-term rentals (STR) in Jefferson County. I own two STRs, one in the county on Knott Road in Shepherdstown and one in Corporate Shepherdstown.

I am concerned that the proposed text amendment will turn STR owners into second-class property owners. These suggested ordinances will restrict our most basic property rights:

1. The proposed text limits the number of occupants based on the number of bedrooms, regardless of square footage or intent. This will negatively impact our use and enjoyment of our property relative to our neighbors, who are allowed practically unrestricted occupancy. You see this on Knott Road where large families are stuffed into tiny cottages and unrelated college revelers have set up a group house not dissimilar to Delta Tau Chi fraternity in "Animal House."
2. STR occupants will not be allowed to park on the street. Given that STR owners pay significantly higher tax rates than residents, I do not believe that the county can enjoin our guests from street parking. This does not impact our STRs, incidentally. I am speaking of the principle in a broad manner.
3. Restricting our guests from having friends visit, holding a birthday party or business meeting violates our freedom of assembly. For instance, the proposal states, "gatherings such as family reunions, birthday parties, weddings, business meetings, or other similar gatherings which may include additional guests who are not included in the overnight stay": This is an unenforceable measure, and this pernicious and vague language will be used as a cudgel by those who seek to drive us out of business.

I hope that the Commission will consider the positive monetary contributions STR have made to our community and choose to uphold our property rights and not relegate us to second-class citizenship.

Thank you,

Amy Bowman  
Resident of Shepherdstown



## Planning Department

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**From:** Rockhaven B&B <info@rockhavenbnb.com>  
**Sent:** Monday, September 13, 2021 10:48 AM  
**To:** Planning Department  
**Subject:** Proposed text amendment language for Short-Term Rentals

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

TO: Jefferson County Planning Commission

Thank you very much for considering clarification and amendments to the County regulations for short-term rentals. We appreciate the work you are doing to keep our county a great place to live, work, and visit.

We live within the Corporation of Harpers Ferry and have hosted B&B and short-term rental units on our own property for 4 years now. We also own a cabin on Knott Road (up the road *outside* either the Happy Hollow or McShane's Landing sections along the river). We do everything we can to make sure our guests are responsible, and we have never been made aware of any problem with guests staying in our cabin. We have always provided information to guests about private property boundaries in the neighborhood. We expect our guests to be respectful of our neighbors, and to our knowledge, they have been.

I also serve as the new B&B representative on the Jefferson County Convention & Visitors Bureau Board of Directors, which has worked with the state to promote fairness in tax collection for short-term rental stays. As a result, the WV Legislature has ensured that there is a level playing field across the industry.

My husband Christian and I have the following concerns about the new proposed short-term rental language for your consideration. These concerns stem from the strident limitations on guests that make our county short-term rentals a much less amenable place to stay. I think a better compromise can be made that respects surrounding residents yet does not present an inhospitable situation for potential visitors that is inconsistent with their needs.

1. The proposed language is confusing as to how exactly a bedroom is defined in non-traditional vacation accommodations – such as a cabin with a loft, a large open-concept-style room layout, or a unique accommodation style, like a school bus, for example. Visitors are looking for unique stay experiences, which is why they are often choosing short-term rentals over hotels/motels. The county language needs to avoid treating vacation rentals like traditional homes or hotels.

Our cabin, for example, which does not have a full kitchen and has NEVER been a permanent dwelling, is a 730-square foot unit with an open-concept main floor and a loft with low ceiling. A queen bed is set up on the main floor with two twin beds in the loft. We allow a maximum of four adults to stay, but usually it's children staying in the loft. Would a set-up like this be considered to have two "bedrooms"?

Also, we have occasionally hosted a family with 3 small children, who easily fit in this space with their two parents. The 2-person per bedroom regulation will be extremely limiting in other short-term rentals, as well, where bunk beds may be set up for 2-4 young children. **We request that you change the language to limit bedroom occupancy to "two adults" or "two guests 15 years (?) and older" rather than set an absolute "two guest/occupants per bedroom" limit. We also request a broader definition of "bedroom" that takes into account non-traditional settings.**

2. The language of the amendment seems to assume that the only people booking short-term rentals are vacationers whose prime goal is to party. We have never found that to be the case with our guests. Our guests

have included couples celebrating a quiet 50<sup>th</sup> anniversary, couples with small children, grandparents in the area to visit family, employees who want to work remotely in isolation, and clergy persons on a meditation retreat. A stay limit of *less than 7* consecutive days is not consistent with the common 1-week vacation length, nor does it allow for remote workers to stay for longer periods, nor will it allow workers in the area temporarily for needed medical or emergency services. There are many reasons people might need lodging in a comfortable home for more than 6 days, and this limit is out of sync with the current trends in travel for both work and leisure. Few people prefer to stay in a hotel for a multi-week stay – yet few accommodations allow a temporary stay of 30 days or less, other than hotels and vacation rentals. *Longer stays would also reduce the amount of guest turnover that worries some residents in neighborhoods surrounding short-term rentals.* **We request that guest stays be limited to “no more than 30 days.”**

3. We understand prohibiting parties and large events in short-term rentals without additional permitting, but the language prohibiting any daytime guests at all in a short-term rental is ambiguous to the point of being untenable. Again, there are many innocent circumstances where a small number of guests coming in for less than a day would harm no one – such as a bride needing a hairdresser and a couple of bridesmaids to help her prepare on the morning of her wedding – or grandparents having their grandchildren over for dinner. We require our guests to request our permission before having anyone else on our property, but most of the time the circumstances are reasonable, and we say yes. **We request that this language about additional guests who not staying overnight be clarified so that some number maximum of daytime visitors is clearly allowed.**
4. **We request that the County provides guidance to the Health Department that recognizes the capital limitations of owners of a single short-term rental unit.** We have no objection to safety inspections in general, but small businesses that host one or two short-term rentals, for example, do not have the same financial resources as hotels/motels, and requirements for safety modifications should take this factor into account in the permitting process.

Each of these items concern us, not only because they are unfriendly to visitors and inconsistent with the experiences they want to have, but they could be constraining enough to make the short-term rental business unprofitable for small business owners. If too many guests choose another location to visit because of limitations here, then short-term rentals lose the ability to earn revenue. We already pay higher property taxes to the county, as well as commercial insurance rates, etc. The county has a low inventory of accommodations, which I know from my work with the JCCVB board. If we are not left with enough net income to maintain the properties and support our financial needs, then LOCAL short-term rental owners have little incentive to stay in business. Either way, the county is left with fewer lodging accommodations – especially the type in high demand by today’s visitors – to serve the desired tourism industry.

All the best to you as you sort out the competing concerns surrounding this matter.

Lynn Pechuekonis  
Rockhaven B&B/Harpers Ferry Glamping  
900 Fillmore St.  
Harpers Ferry, WV 25425

## Planning Department

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**From:** Bryan Gray <4bryangray@gmail.com>  
**Sent:** Monday, September 13, 2021 5:17 PM  
**To:** Planning Department  
**Subject:** Draft of proposed short-term rental zoning amendment

**To the members of the Jefferson County Planning Commission:**

**RE: First draft of proposed zoning text amendment to create provisions to allow short term rentals**

I own vacation rental property in Jefferson County and I support much of the 1st draft proposed zoning amendment. The proposal contains common-sense regulations that will put to rest much of the confusion regarding the rights of all property owners in the county.

However, I believe the following two elements of the draft proposal are unnecessary as they are already addressed by current ordinances. They also place limitations on a limited subset of homeowners creating a distinction that is sure to have legal repercussions.

1. **Proposed regulation:** Occupancy limited to two persons per bedroom.
  - Occupancy regulations based on septic and well capacity are already in place and provide the adequate protections against over-crowded residential dwellings. These regulations apply to EVERY homeowner.
2. **Proposed regulation:** No additional guests who are not included in the overnight stay.
  - If the goal is to prevent excessive noise and public disturbance, and the homeowner or guests (paying or not) are disturbing the peace or being a public nuisance, there are ordinances already in place to remedy the situation.

It is possible to achieve the same results without diminishing the rights of only one group of homeowners. All homeowners should be held to the same standard in maintaining a community's quality of life and there are laws already in place designed to achieve that goal.

These two parts of the proposal are also unenforceable unless they are applied to EVERY homeowner equally since no one can reasonably know whether the people in my home are family and friends or paying guests. It's simply impossible to say that I'm allowed to invite as many guests as I'd like to my home as long as they're NOT paying, but enforce an arbitrary limit if my guests ARE paying.

**A recommendation**

There is one important rule—not included in the draft—that I believe would be an effective measure to minimize potential problems with short-term rental properties. The rule would require that the homeowner or designated manager be available at all times and able to respond to a disturbance in no less than 30 minutes.

Respectfully,  
Bryan Gray

## Planning Department

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**From:** Carrie Gauthier <carriegauthier7@gmail.com>  
**Sent:** Monday, September 13, 2021 6:10 PM  
**To:** Planning Department  
**Subject:** Support for Short Term Rentals

To Whom It May Concern:

I believe that the regulations currently in place regarding short term rentals are sufficient. We currently do not have enough places for visitors to stay in this county. Please remember that these rentals also provide housing for traveling nurses, border patrol, construction workers, and those seeking to move to Jefferson County. I would like to see evidence that there have been negative effects on the quality of life for neighbors. I hate to see us legislate without the need. It seems intrusive to legislate how many guests can sleep in one room or if a short term rental guest can invite a visitor. Short term rentals seem to be easy to monitor because of the process of online review of the premises. Unsafe or unwelcoming homes do not generate return guests. Please don't go down a slippery slope of overregulation that cannot be enforced. I am sure that occasionally guests show exuberance at being in such a beautiful area, but most of us do this all the time. West Virginia is wild and wonderful and should be shared!

--

Carrie Ellen Gauthier  
REALTOR  
304-582-2443

## Planning Department

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**From:** Info@potomacadventure.com  
**Sent:** Monday, September 13, 2021 1:58 PM  
**To:** Planning Department  
**Subject:** Short Term Rentals

We would like to express our support for responsible and reasonable ordinances for Short Term Rentals.

The proposed changes to the ordinances currently in place are helpful in defining the regulations currently governing Short Term Rentals in Jefferson County.

We are in agreement with all except the occupancy restrictions which do not take into consideration young families with children. We feel re-wording this to state the number of “adults”, allowed and realizing that some platforms do not have the ability to separate adults from children.

We also are not in agreement with a “no guest” rule as our properties are sometimes used for a family dinner or a place for a bride to dress before going to a wedding venue. We do not allow weddings or large parties.

Parking and noise have never been an issue at our rentals. We reside about 15 minutes away from all our properties and utilize exterior cameras to assure compliance with our rules and regulations.

We have never had a documented issue at any of our properties. We do not appreciate the hostility from the “Happy Hollow” community and want something done to stop this immediately. Our guests have stated that THEY feel unsafe from the aggressive behavior from some of the residents and from the signs in yards.

We have rights and have been excellent neighbors.

Sincerely  
Cathy Gray  
Potomac Adventure

## Planning Department

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**From:** Tom Knott <user801828@aol.com>  
**Sent:** Monday, September 13, 2021 4:22 PM  
**To:** Planning Department  
**Subject:** Re: Auto Housing STR

Dear Commissioners:

The revelation that Ruthlee Holler is providing short-term-rental space with her automobile along the shack-infested strip previously known as Unhappy Hollow is disturbing.

As Mrs. Holler writes in an email, dated August 9, 2021: "I have had someone sleeping in my car in my driveway."

I do not know the amount Mrs. Holler charges for her repurposed auto STR. Or if she pays taxes on the stays. Or if she provides guests with pillows and blankets.

But I do know it is difficult to compete against a repurposed auto, while we are charging upwards to \$200-plus a night in a three-bedroom home.

Mrs. Holler makes another excellent point: There are "no fire departments within three miles and no fire hydrants" along the shack-infested strip.

The puke-green shack next to our property appears to be abandoned and in a fitful state of decline.

If you're thinking what I'm thinking, and I'm thinking you are, the puke-green shack probably could use a visit from a building inspector, if only to allay fears that it is a fire waiting to happen.

As Mrs. Holler notes, with no easy way to douse a quick-moving fire, perhaps the county should send a building inspector to the area to do a thorough once-over of all the properties along the shack-infested strip previously known as Unhappy Hollow.

Just to be safe.

Just to save lives.

If we can save one life, then all the rules, regulations, codes, ordinances and white-glove inspections will have been worth it.

Sincerely,  
Thomas Knott  
202-445-7740

## Planning Department

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**From:** Tom Knott <user801828@aol.com>  
**Sent:** Tuesday, September 14, 2021 3:12 PM  
**To:** Planning Department  
**Cc:** Zoning  
**Subject:** Re: Funny-looking fellow

Dear Commissioners:

The following is intended to be put into the public record, as part of the discord emanating from the short-term-rental dust-up: Matt Knott owns the boat launch that snakes between Unhappy Hollow and McShane's Landing to the Potomac River.

There are no ifs, ands or the funny-looking fellow about it.

Mr. Knott is the sole owner of the boat launch, despite claims to the contrary by the funny-looking fellow who maintains a 24-hour vigil by the entryway.

The funny-looking fellow issues proclamations, decrees and all manner of admonishments to those who venture near the boat launch, starting with the guests of the short-term rentals.

Guests find this unsettling, naive as they are, unaware that the funny-looking fellow celebrates Halloween 365 days a year.

A question before the commissioners, and specifically Mr. Knott: Is the funny-looking fellow in your employ, the lonely sentry in costume, empowered to preserve the sanctity of life at the boat launch?

Or is he merely a powerless funny-looking fellow in a get-up, fright wig every which way, trying to find his way in an uncertain world, playing pretend?

Sincerely,

Thomas Knott



## Planning Department

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**To:** Eddie Love  
**Subject:** RE: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

**From:** Eddie Love <eddie@mountainmamahomes.com>  
**Sent:** Tuesday, September 14, 2021 9:23 AM  
**To:** Planning Department <PlanningDepartment@jeffersoncountywv.org>  
**Subject:** Re: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

Thank you. I understand there is no public comment as part of tonight's meeting, but thought it best to offer my thoughts sooner rather than later. I'm hoping my letter might make it into the supplementary material for the public hearing (whenever that is scheduled).

Is it possible to attend in person or is the meeting strictly over Zoom?

Eddie Love  
**Mountain Mama Vacation Homes**  
833-MTN-MAMA (833-686-6262)  
[www.mountainmamahomes.com](http://www.mountainmamahomes.com)



On Tue, Sep 14, 2021 at 9:09 AM Planning Department <[PlanningDepartment@jeffersoncountywv.org](mailto:PlanningDepartment@jeffersoncountywv.org)> wrote:

Good morning,

This email is to confirm that our Office is in receipt of your submission. Please be advised, the purpose of tonight's meeting is for the Planning Commission to review and discuss the first draft of the proposed text amendment. If you would like to listen to the discussion tonight, please refer to the information at the top of the meeting agenda to access the URL and/or phone number to join the virtual ZOOM meeting.

The Planning Commission will hold a Public Hearing at a future date [TBD], during which the public will be encouraged to provide public input on the proposed text.

Sincerely,

Alexandra Beaulieu  
Zoning Administrator

**From:** Eddie Love <[eddie@mountainmamahomes.com](mailto:eddie@mountainmamahomes.com)>  
**Sent:** Monday, September 13, 2021 10:26 PM  
**To:** Planning Department <[PlanningDepartment@jeffersoncountywv.org](mailto:PlanningDepartment@jeffersoncountywv.org)>  
**Cc:** Zoning <[Zoning@jeffersoncountywv.org](mailto:Zoning@jeffersoncountywv.org)>  
**Subject:** Re: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

Please see the attached letter. Thank you in advance for your consideration!

Eddie Love

**Mountain Mama Vacation Homes**

833-MTN-MAMA (833-686-6262)

[www.mountainmamahomes.com](http://www.mountainmamahomes.com)





September 13, 2021

To: Jefferson County Departments of Planning and Zoning

From: Eddie Love, Mountain Mama Vacation Homes

Re: ZTA21-01, Short Term Rentals – 09-14-21 PC Meeting

To Whom It May Concern,

I'm writing with what I hope will be helpful feedback as the County considers regulation for short-term rentals ("STR"). I am a professional manager of vacation rentals in the Harpers Ferry area, with several rentals in Jefferson County. We both own rentals ourselves and manage them on behalf of other homeowners.

First off, I want to say thank you for proposing new ordinances to address STRs! This will bring much-needed clarity to an essential part of the tourism industry in Jefferson County. Fair regulation will help STR managers/owners and citizens of the County work together to make Jefferson County a wonderful place both to live and to visit. We have a great opportunity here to create fair regulation, and I appreciate that the County is considering all stakeholders and perspectives. The ordinances just proposed by the County are quite sensible and will help mitigate the worst problems posed by unregulated STRs. It is in the spirit of cooperation with County officials and the broader community that I offer a few suggestions below, based on my years of experience managing vacation rentals and conversations with other STR owners and neighbors of STRs.

STRs come with certain risks that should be carefully mitigated, and fair regulation is one way of doing so. Many people have heard horror stories from other parts of the county where unscrupulous homeowners set up "party houses" that are unsafe for guests and a nuisance for neighbors. No reasonable person wants that in Jefferson County. Even well-intentioned owners/managers, however, may have complaints from their neighbors from time to time, especially around the issues of noise, trash, and parking. While building our management company we have been very careful to ensure that our neighbors' quality of life is not negatively impacted by the STRs we manage. In fact, every time a neighbor has a reasonable concern about a property generally or a guest group in particular, we make it a policy to side with our neighbor and address his or her concern, even if that means a less-than-perfect experience for a guest.

## How We Protect Our Communities from Bad Guests

There are many means by which our company ensures we have the right guests staying in our properties: guests who will care for the home and treat our neighbors and our communities with respect.

First, we have effective policies in place that are clearly communicated through our listings (see Appendix A for sample language from our property listings). Every guest who reserves our property must be at least 25 years old, and the guest who reserves the property must stay on site themselves (for example, a parent could not reserve the property for a college-aged child unless the parent is also staying at the property).

We also limit the number of guests at the property to the number of guests stated on the reservation, which can never be higher than the maximum we establish for the property. We regularly receive requests from potential guests asking to have a small gathering of people at the property during the day which would exceed the number of people on the reservation; in every case, we apologize that we cannot allow that and refer them to a larger property, if possible.

We also provide in our listings information about the County's noise ordinance and we explain our no-tolerance policy for violations of the noise ordinance. The way we explain our expectations has the salutary effect of scaring off would-be partiers because they know we will catch any violations and their stay will be ended early and without refund. All the "house rules" above (and more) are agreed to in a contract that the guest e-signs upon booking.

Second, we rigorously screen guests during the booking process. There are a number of signs that indicate a guest may not be respectful of neighbors or the property. For example, a group of eight unrelated 25-30 year old friends pose a greater risk than two families of four (also eight people total) vacationing together. With the former, we follow up explicitly making clear our house rules and expectations and either the guest confirms they understand the rules and intend to follow them or the reservation is cancelled.

Third, we use technology on-site to quickly identify potential problems so we can take action swiftly. All our properties have cameras near the front door that point toward the front doorstep and/or the driveway. This allows us to remotely monitor the number of guests using the property and the number of cars in the driveway. If it ever appears that the number of guests exceeds what is on the reservation, we contact the guest and seek resolution. If the number of guests exceeds the *maximum* we have set for the property then we quickly move toward terminating the stay.

We also use noise monitoring devices at all our properties. The devices do not record audio, thus respecting the privacy of guests, and instead just monitor decibel levels. If noise levels exceed the threshold we have set then guests receive a text message letting them know that the noise levels are too high and that they need to quiet down. If noise does not come down to

an appropriate level within five to ten minutes we call the guests on the phone. If the guest does not answer or does not reduce noise levels then we go to the property to notify the guest in person and, if necessary, send them home early for violating house rules. Because we are painfully clear about our expectations of guests, and because they know they will be caught if they break the rules about noise, in practice it is virtually never necessary to escalate beyond a simple text message reminder about noise.

### STRs Are a Critical Part of the Tourism Industry in Jefferson County

While the popularity of vacation rentals has surged in the recent years, especially during the COVID-19 pandemic, Jefferson County has a long history as a destination for city dwellers to get some fresh air and recharge. The surge in STR popularity is being driven by demand from guests. More and more people are being exposed to vacation rentals and finding that they are superior in many instances to hotels or B&Bs. The chance to have a full-sized kitchen to cook meals, a large dining table to gather around, beautiful spaces and views to enjoy without leaving your accommodation, and increased privacy are the features that attract people to vacation rentals over other lodging options. They are often the best places to disconnect from phones and computers and reconnect with each other.

Given all they have to offer and the fact that they are often more affordable than hotels (on a per person basis), it's easy to see the appeal of vacation rentals. Their popularity will only continue to grow. Vacation rentals appeal especially to families, and that is especially important since Jefferson County has so much to offer family travelers. Families visit the County to play in our rivers, hike our trails, visit our farms and battlefields, and more. These families overwhelmingly prefer vacation rentals, and since that's the case we must be careful not to inadvertently turn away family travelers by the way we regulate STRs (see more below).

The point has been made repeatedly so I won't belabor it, but the guests who stay at STRs spend their money here. We actively encourage our guests to support our local small businesses over chain restaurants and stores, and I know they take our advice because they tell us about their experiences and thank us for our recommendations. We refer guests looking for outdoor adventure to River Riders. We stock our rentals with coffee beans from Black Dog, Sibling, and Joan + Joe, and we leave welcome gifts of Mountaineer Popcorn. We create local jobs for the cleaners and contractors who service our STRs. In these and so many other ways we actively work to keep as much money in our local economy as we can.

### There Are Good Ideas in the Proposed Ordinances

A zoning certificate is another reasonable expectation for owners of short-term rentals. In fact, I think the proposed registration requirements do not go far enough (I elaborate below). The process described for applying for a zoning certificate seems reasonable, assuming that all homeowners who meet the described requirements are approved for a certificate and there

are no caps being proposed on the number of short-term rentals in the County. The process for obtaining Health Department approval is not well described, though. That leaves me to wonder what the Health Department would require and just how onerous the requirements and the process for obtaining approval would be. The County should wait to codify ordinances until the Health Department process has been described and carefully considered by all stakeholders. As for parking, there is an argument to be made that since owners of short-term rentals (like owners of long-term rentals) pay twice as much in property taxes as do owner occupants, then their guests ought to have as much of a right to street parking as any other property owner. That said, the provision of off-street parking is not unreasonable, and most vacation rental owners would be happy to go “above and beyond” by providing off-street parking for their guests.

#### Language Governing Special Events and Maximum Guest Counts Should be Clarified

Requiring properties that host events to apply as a special event facility is a good idea. Hosting large groups and/or events poses unique challenges that don’t apply to most vacation rentals. Forbidding extra guests from joining during the day when that would put the total guest count over the property’s maximum guest count is also a good idea. As I explained above, that is our policy and it does help to prevent gatherings that are too large for a given space. When, for example, a group of 18 has a gathering at a house that sleeps just 8 the gathering is practically forced outdoors (since the indoors are too small for a group that size), and this increases the risk that the group could be a nuisance to neighbors.

As written, though, the ordinance language forbidding guest counts from exceeding the maximum for a property is too vague and subject to misinterpretation. For example, the proposed language could be misconstrued to forbid the celebration of a “birthday party” for 8 guests (complete with cake and ice cream) at a rental that sleeps 8 or more guests. The following language might be clearer:

*A short-term rental shall not operate as a special event facility unless approval through the special event facility provisions is granted. Each short-term rental shall have an advertised maximum guest count, and at no point during a guest’s stay may the total number of guests exceed the maximum number of guests advertised for the rental. Every person on premises at the rental at any given time is counted as a guest for purposes of the guest count, regardless of whether that individual stays overnight at the rental.*

## Proposed Occupancy Limits Should Be Reconsidered

The main aspect of the proposed ordinance that should be reconsidered is the limiting of occupancy to two guests per bedroom. The proposed occupancy limit begs the question, what problem is the County trying to solve with that ordinance? If the problem is one of noise, then an occupancy limit does not directly address the issue. There are better ways to address noise directly, some of which were explained above in our own business practices (policies, guest screening, technology, etc.).

The concern I have is that a per-bedroom limit does not adequately capture the capacity of a home to sleep guests comfortably and safely. On the one hand, I have seen three-bedroom homes that comfortably and safely sleep just six guests. On the other hand, I have seen homes that might technically have just two bedrooms but can comfortably and safely sleep eight or more guests. Everything comes down to the home's layout and how efficiently space is used.

The proposed limit of two guests per bedroom is particularly problematic for homes that have cathedral ceilings with large lofts, since the lofts might not technically be considered a bedroom, though they might sleep four people or more. This may sound like a far-fetched problem, or one that applies only to a small subset of homes, but this kind of layout is used disproportionately in vacation homes and will be found more commonly amongst vacation homes than primary residences.

Another disadvantage of an occupancy limit based on bedroom count is that it does not differentiate between adults and children. In our experience, families, including nuclear families, extended families, and groups of families, are more respectful of their vacation rentals and the neighbors around them than are groups of young adults without children. This is one reason why Mountain Mama has positioned itself to cater to families above all else, even when we could potentially charge higher prices and make more money by having looser policies and guest screening, and catering to groups of young adults. A group of eight young adults is much more likely to be a nuisance to neighbors than a group consisting of two families of five (four adults and six children). Even though the latter group is larger by two guests, it's easy to see how they might fit into the home just as easily as the former group, while being much less of a nuisance risk to neighbors.

If an occupancy limit is deemed absolutely necessary, there are better measures of a home's sleeping capacity than bedroom count. The best metric would be bed count, whereby a standard is established for the number of people who can sleep in a bed (e.g. one person in a twin bed, two people in a queen bed) and the maximum occupancy for the property is then established by the number of beds in the house. For example, a three-bedroom house with two queen beds and four twin beds would be allowed to sleep eight guests at most. This would allow owners/managers some flexibility in establishing the layouts of their homes, but would prevent rogue hosts from providing nothing but sleeping bags or cots for their guests so as to cram as many people as possible into a space. This standard would not be any more difficult to



enforce than a standard based on bedroom count since information regarding bed counts and sizes are publicly available in online STR listings, as is the maximum occupancy.

Finally, I still need to research more to confirm this, but I don't believe the neighboring counties of Washington (MD), Clarke (VA), Warren (VA), or Berkeley (WV) have occupancy limits for their short-term rentals. If that is true, STR occupancy limits in Jefferson County threaten to put vacation rental owners at a disadvantage to neighboring counties, driving tourists who might have otherwise chosen Jefferson County for their getaway to look toward our neighbors instead. That seems like an unnecessary price to pay if occupancy limits do not directly address neighbors' concerns.

### Public Register of Short-Term Rentals with Local Points of Contact

As I indicated above, a zoning certificate is a good start, but it does not go quite far enough—what the County needs is a short-term rental registry. This would be a publicly available list of the active STRs in the County that lists the address of the property and contact info (phone number, email address, mailing address) for a designated point of contact. This would ensure that if any neighbors of an STR have a complaint to raise about the property in general or a particular group of guests they are easily able to reach whomever is able to resolve their problem. This would facilitate neighbors solving problems with each other directly, rather than unnecessarily pulling in other parties.

Another important aspect is that every STR should have a designated local point of contact. There are different ways of measuring how “local” the point of contact must be, but one test might be that the contact is able to be on-site within 30 minutes any time an emergency or guest nuisance complaint should arise. It's critical that locals be involved in managing STRs within the County. Not only is a local able to arrive on-site quickly whenever necessary, locals are more invested in the community because they live here themselves. Requiring local participation in every short-term rental lessens the risk of faraway corporations or faceless investors owning vacation rentals in the County but remaining unreachable when their cooperation is needed most.

### Conclusion

I explained above some of the different ways in which we work to stimulate our local economy and help our local businesses to prosper. We do this all because we love Jefferson County and the people and businesses that also call it home. One of Mountain Mama's four core values is to “Love What's Local,” and it's this love for our mutual home that makes us delight in sharing it with our guests. I live in Harpers Ferry with my wife and two young children, and while we didn't grow up in this area, we love it all the more for having consciously chosen to make it our home.

Thank you again for working to bring clarity to short-term rental regulation in the County and doing your best to ensure STRs only add to the quality of life here. I hope you will consider my suggestions and you are welcome to include this letter in any future Planning Commission packets. I am available at any time to discuss these ordinances and I look forward to the opportunity to provide public comment when the time comes.

Sincerely,

Eddie Love  
Mountain Mama Vacation Homes

## **Appendix A – Representative Language From Property Listings**

*We are committed to Rent Responsibly standards. This means we follow best-in-class guidelines to ensure you have a peaceful, safe and memorable stay with us. We care a lot about maintaining good relationships with our community, so we appreciate you following these "house rules" during your stay.*

*AGE 25 OR OLDER TO BOOK: The guest booking the property must be 25 years of age or older. We reserve the right to request a photo or scan of a government-issued photo ID. The guest who books must stay at the property--you may not book for others if you do not intend to stay at the property.*

*QUIET HOURS START AT 10 PM: Our property's quiet hours of 10 pm to 6 am are required by county ordinance and enforced by local police. If the police respond to a noise complaint, every individual on the property may face a misdemeanor criminal charge and be subject to a fine by the county of \$300. Failure to abide by the county noise ordinance will result in the immediate termination of the stay without refund. We use NoiseAware, smart home devices that measure volume levels throughout the property, like a smoke detector but for noise. NoiseAware is 100% privacy compliant and allows us to respond to noise nuisances before the police are called.*

*Past noise complaints have always come from groups of 20-somethings. If you are booking for a group of people in their twenties and you think your group may want to play loud music at any time then do not book this property or cancel your reservation if you have already booked. Find another place for your trip so you do not have your trip terminated early and without refund.*

*NO MUSIC OUTDOORS: This is a quiet, family-friendly lake community, not a place to party. Residents and guests alike come here to relax amid the peace and quiet of the lake. Because of this, and because sound carries so easily across the lake, we do not allow guests to play any music outdoors. Other reasonable noise, from children playing outside, for example, is no problem.*

## Planning Department

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**From:** Amy Bowman <amywrites@yahoo.com>  
**Sent:** Tuesday, September 14, 2021 10:24 AM  
**To:** Planning Department; Zoning  
**Subject:** New STR Ordinances = Second-Class Property

Planning Commissioners:

I am writing to ask the Commissioners to consider the constitutional impact of the short-term rental (STR) ordinances that have been proposed and if these ordinances create a second-class of property owners in Jefferson County.

The right to rent property is a fundamental privilege of private-property ownership. Do STR hosts not deserve equal protection under the law? These proposed ordinances unlawfully creates two separate distinctions between three similarly situated classes--STR hosts, long-term rental landlords, and freeholders.

Most of the new ordinances under consideration focus on the operational aspects of renting. These types of operational restrictions are only proposed for STR under the assumption that STR is more disruptive than long-term rental. (Ask Martinsburg's lawmakers about that theory.)

However, I have not seen evidence that STRs are more disruptive to neighborhoods in Jefferson County. If the argument for restricting STRs is that they are a threat to public safety, I would like to know if there has been an increase in illegal activity in neighborhoods with STRs. Have there been citations issued for noise, trash and parking violations?

Have the number of occupants at a STR adversely impacted public health? I would argue that the proposed ordinances are not rationally related to the protection of public health, safety, or welfare are is unduly burdensome when considering the county's interests. The maximum cap on unrelated adults is arbitrary and unreasonable.

Those who wish to restrict our private property rights told a Spirit of Jefferson reporter that they do not like "strangers" or those people who "do not understand our traditions." Does their xenophobia give them the right to strip us of our constitutional right to rent our property, to gather freely, and our right to economic liberty?

As governing body, do you feel that these regulatory "takings" are in the spirit of our state and federal constitution? Or even our state motto: "Mountaineers are always free."

These proposals also will restrict our guests' freedom to assemble on private property with the permission of the owner. The Texas Supreme Court v. Austin recently found freedom to assemble is "just as strong, if not stronger, when exercised on private property with the permission of the owner, thereby creating a nexus with property and privacy rights." The Texas court held that the city's goal of limiting party houses and reducing possible strain on neighborhoods did not qualify as compelling interests in a constitutional sense. Further, the law banned nearly all types of assemblies on private property "without regard to the peacefulness of or reasons for the assembly." The court suggested that the city's regulatory goals could be achieved by less intrusive means, including the enforcement of existing nuisance ordinances.

Are West Virginians less free than the citizens of Texas? I would hope not.

Sincerely,

Amy Bowman  
Shepherdstown, WV