



JEFFERSON COUNTY, WEST VIRGINIA

Office of Planning and Zoning

116 East Washington Street, 2nd Floor

P.O. Box 716

Charles Town, WV25414

www.jeffersoncountywv.org

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

MEMO

TO: County Commission

FROM: Alexandra Beaulieu, Zoning Administrator

DATE: October 28, 2021

RE: ZTA21-01, Short Term Rentals – 11-04-21 CC Meeting

Below is a summary of the timeline for the proposed text amendment:

- June 8, 2021: Two separate requests to draft short term rental regulations were presented to the Planning Commission. One request to allow short term rentals (STR) to occur on a daily basis with no occupancy limits; and another request to regulate the frequency and location of STRs to ensure that residential neighborhoods are protected. The Planning Commission voted to include as part of their work plan an update to the Zoning Ordinance which would allow STRs by right and directed Staff to draft text.
- September 14, 2021: The Planning Commission reviewed the first draft of the Zoning Ordinance Text Amendment (File #ZTA21-01), which included minimum standards to allow STRs to process as a principal permitted use (by right) in any zoning district which allows a single family dwelling. The Planning Commission made minor revisions, including the elimination of any occupancy limitations and the addition of a requirement to provide a copy of the state business license to ensure that appropriate taxes are collected by the state.
- October 12, 2021: The Planning Commission held a public hearing on the draft text amendment and minor revisions to the proposed text. The Planning Commission voted to send the draft text amendment to the County Commission with a recommendation that the proposed text is consistent with the Envision Jefferson 2035 Comprehensive Plan.
 - During the 10-12-21 meeting, Gillian Beach with the Health Department was present to address questions related to the Health Department's permitting requirements. Ms. Beach confirmed that short term rentals which are not the primary residence of the property owner require a General Sanitation Permit for a lodging facility [[click here for Health Department's General Sanitation Forms](#)].
 - It is important to note that while Health Department permitting requirements were a key point of discussion during the Planning Commission's review process, the subject text amendment does not pertain to the Health Department's regulations. Any questions or concerns related to the Health Department's permitting requirements will need to be addressed by the Board of Health.

Overview of Current Ordinance in Effect

Presently, the Zoning 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. Provisions to allow short term rentals to process in the unincorporated areas of the County do not currently exist in the Zoning Ordinance; therefore, pursuant to Section 1.3D of the Zoning Ordinance, short term rentals are not permitted.

Overview of the Proposed Text (File #ZTA21-01)

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 recommended 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). The Planning Commission concurred with this recommendation and added that the Planned Neighborhood Development zoning district should also list Bed and Breakfast operations as a Principal Permitted Use (currently listed as Not Permitted).

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 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
- 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

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 26th year, and in Harpers Ferry with the annual Don Redman Jazz Heritage concert now in its 11th 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 20th 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.

Short Term Rental⁴¹

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, Billboard³⁶

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 Business³⁶

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, Electronic³⁶

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 Business³⁶

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, Inflatable³⁶

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 Premises³⁶

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, Pylon³⁶

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:³²
- (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;³²
 - (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.³²

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.^{32, 35}

RVs are prohibited as Accessory Dwelling Units.³²

Section 8.16 ~~Reserved~~³² Short Term Rentals⁴¹

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 or other designated parking area 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. Signs within the Residential-Light Industrial-Commercial zoning district may utilize the commercial sign provisions in Article 10. 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 Campgrounds³¹

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 ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
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	NP	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 ³¹	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 ³⁷	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 ⁴⁰	NP	P	P	P	CU	CU	P	CU	CU	P	P	CU	

Land Use	NC	GC	HC	LI	MI	PND ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
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 Rental⁴¹</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
Agricultural Uses*													
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 ³⁷	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 Structure must have existed for 5 years	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Special Event Facility, Agricultural	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.14
Accessory Uses													
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

¹ The Planning Commission may amend the permitted uses for a development in the PND District per Article 5.² 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

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

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.
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----- 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

INTEROFFICE MEMORANDUM

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

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.¹ *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 inns², hotel³, labor camps⁴, and motels⁵. *W.Va. Code R.* § 64-18- 2.13.

General Sanitation Rule

Whenever a facility governed under the scope of this rule⁶ 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 officer⁷ for review and

¹ 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;

² 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.

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

⁴ 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.

⁵ 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

⁶ 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.

⁷ 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.⁸ *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

⁸ 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 provision⁹, 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

⁹ 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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Making Great Communities Happen

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.

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