

ACTION

MEMORANDUM

October 6, 2017

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst *JLZ*

SUBJECT: Action – Zoning Text Amendment 17-03, Accessory Residential Uses – Short-term Rental; and Bill 2-16, Transient Housing – Licensing and Registration

ZTA 17-03

On September 25, 2017, the Committee (3-0) recommended approval of ZTA 17-03 with revisions to Subsection 59.3.3.3.I.2.b and c as follows:

- b. The dwelling unit used as a Short-Term Rental must be the [[applicant's]] property owner's or owner-authorized resident's primary residence, regardless of dwelling unit type.
- c. If the [[applicant]] property owner or owner-authorized resident is not present in the residence, the property can be used as a Short-Term Residential Rental for a maximum of 90 days in a calendar year. If the [[applicant]] property owner or owner-authorized resident is physically present [[in]] and occupies the residence during the rental stay, there is no limitation on the number of days the property can be used as a Short-Term Residential Rental.

After the Committee meeting, a poll of Committee members indicated support for making the ZTA effective on July 1, 2018. The delay in the effective date will give the Department of Health and Human Services time to prepare to administer the licensing program under Bill 2-16.

The Committee in all other respects agreed with the Planning Board recommendation to include the following limitations on short-term residential rental:

- Allow only on sites without either a farm tenant dwelling or an accessory apartment.
- Allow only if the site is the primary residence of the applicant.
- Limit the maximum rentals in a calendar year to 90 days, counting only when the owner or authorized resident is absent.
- Limit the total number of adult overnight guests to six.
- Limit the total number of adult overnight guests per bedroom to two.

- Require one off-street parking space for each rental contract, unless the online listing indicates that vehicle parking is prohibited.

Background

Current code

Under the current code, the residential occupancy of a dwelling by a household is only allowed on a monthly or longer basis.¹ Shorter term residential living is prohibited. In 2015, the Council amended tax provisions to include any type of dwelling unit within the scope of hotel (transient lodging) taxes.² The result is the collection of transient lodging taxes from illegal uses.³

All transient lodging facilities are required to be licensed by the Department of Health and Human Services (HHS).⁴ The code treats all hostels, rooming houses, boardinghouses, and tourist homes the same as hotels. To date, only hotels and the Center for Leadership Excellence have applied for and received transient housing licenses.⁵ No licenses have been issued for short-term residential rental use.

The Department of Permitting Services (DPS) has received few complaints concerning short-term residential rentals. There are no ongoing enforcement actions by DPS. DPS refers complaints to HHS. HHS stopped one owner from renting short-term by court order and has not fined any owner for the short-term rental use of residential property.

ZTA History

Zoning Text Amendment (ZTA) 16-03, Land Use – Bed and Breakfast was introduced on February 2, 2016. It would have amended the definition of a Bed and Breakfast and allowed a Bed and Breakfast as a limited use in all residential and mixed-use (Commercial/Residential) zones. Councilmember Riemer was the lead sponsor of ZTA 16-03. On March 22, after a public hearing, the sponsor and the Chair of the Planning, Housing, and Economic Development Committee asked the Planning Board to reconsider the ZTA and allow for more public outreach. On May 11, 2017, the Planning Board approved revised recommendations to ZTA 16-03. Because the recommendations were significantly different from ZTA 16-03, Staff recommended a new ZTA (ZTA 17-03) to achieve the Planning Board's recommendations. In addition, many of the Board's recommendations more clearly fell under licensing requirements. To that end, Staff recommended revisions to Bill 2-16 to incorporate some of the Planning Board's recommendations.

¹ Section 59.3.3.1.A. This is a typical restriction in zoning. A bed and breakfast and hotel are generally allowed under separate provisions. ZTA 17-03 would create a new short-term residential rental use.

² Bill 14-15, amending Section 52-16(b). Taxes are being collected under an agreement with on-line host platform companies.

³ Average taxes collected from Airbnb has been \$34,000 per month, with an upward trend over the past 11 months. In May, \$48,631 was remitted. Taxing illegal income is well-established. Al Capone went to jail for tax evasion for not reporting illegal income. Even embezzled funds are subject to reporting and taxes (see *James v. United States*, 366 U.S. 213 (1961)).

⁴ Chapter 54.

⁵ Under section 54-17, licensed property must have a use and occupancy permit issued by DPS. Under Section 8-28, the Department must issue such a permit *if* (among other requirements) there is no violation of law. As transient lodging in a single dwelling unit is not allowed by zoning, the Department may not issue a use and occupancy permit, thus making it impossible to get licenses for transient housing outside of allowed hotels and bed and breakfast uses.

Public Hearing

On September 12, 2017, the Council conducted a public hearing. The positive tenor and tone of the public hearing is a credit to the Planning Department's work on this issue. Most testimony favored the Planning Board's proposed approach, with some relatively minor amendments.

Hosts and potential hosts want to take advantage of the sharing economy without harsh restrictions. In their opinion, short-term residential rentals can help make mortgage payments and property taxes affordable. Hosts cited positive social interaction with their guests. One speaker asked for the ability to have short-term rentals without constraints.

Home Owners Associations (HOAs) and condominiums wanted greater assurances that their rules apply. If an association bars rentals, then no license should be issued to allow the use, in their opinion. Some wanted the issuance of a license to be predicated on a statement from the appropriate association that the short-term rental was allowed. In addition, they request a provision to bar a license if HOA dues are in arrears.

Hotel owners do not want short-term residential rentals to have a competitive advantage. The hotel industry supported the proposed ZTA as offering a more even regulatory playing field. Hotels are currently subject to taxes, licensing, and inspections. Hotels would favor an additional requirement that any advertisement for a short-term residential rental include the owner's state and local license number.

The Apartment and Office Building Association (AOBA) requested the opportunity for landlords to rent some units on a short-term basis. The Association also asked for more enforcement authority for the administering department, including subpoena power, among other recommendations.

The most critical testimony came from people and civic organizations who thought that the current illegal status of short-term rentals was satisfactory. The testimony stated a concern that short-term residential rentals will:

- create nuisances (noise, traffic, underage drinking, litter, public urination, drugs, and other illegal activities);
- bring an influx of strangers to the neighborhood on a regular basis;
- be unsafe because they do not meet fire and safety standards;
- destabilize and disrupt communities by driving out long-term residents;
- reduce the availability of affordable housing;
- be an enforcement problem;
- turn into party houses;
- create parking problems; and
- be overconcentrated in unincorporated areas of the County.

Assuming the Council would approve ZTA 17-03, some civic associations wanted some way of getting contact information for the owner of the unit. These would want direct notice when a license is renewed, or at least on-line notice similar to DHCA's website on the location of accessory dwelling units.

The Town of Somerset wanted assurance that the town would not be affected by the proposed legalization.

Issues concerning ZTA 17-03

Why should the zoning code be changed at all?

By its enactment of Bill 14-15, the Council agreed with the County Executive's recommendation to tax short-term residential rentals.⁶ Although licensing is required by the code, such licenses may not be issued due to their illegal zoning status. The conflict between the licensing requirement and the zoning code should be resolved.

There are certainly reasons to make the use legal. There are on the order of 1,400 dwelling units in the County being offered and rented on-line. Short-term rentals offer an economic return for property owners. Between April of 2010 and July 2017, the County has only received 30 complaint calls that described the problem as transient housing.⁷

Tax collections for short-term rentals are averaging around \$35,000 a month.⁸ Licenses cannot be issued. There is no easy way to know who is undertaking this activity. The agreement between the County and Airbnb for the payment of taxes **does not** allow for an audit trail.⁹ Enforced licensing will at least allow the County to track the level of short-term rental interest, if not the activity. Licensing would also require the licensee to maintain activity records.

What problems can be avoided?

In some cities, apartment buildings have been purchased for the purpose of renting out every unit as a short-term rental. The result was a de facto hotel and the loss of long-term living options for households. In suburban areas, it has been reported that some single-family dwellings have been purchased by investors for the same purpose. ZTA 17-03 as introduced requires that the dwelling unit used as a short-term rental must be the applicant's primary residence, regardless of dwelling unit type. (See lines 36-37.) This provision would limit the number of units any individual may use for short-term rentals to one.¹⁰

Residents want the opportunity to know their neighbors.¹¹ This is next to impossible when their neighbors change every day. The Planning Board recommends that if the primary resident is not present in the residence, the property can be used as a short-term residential rental for a maximum of 90 days in a calendar year. (See lines 38-40.) This reduces, but does not eliminate, the concern. The Planning Board did not recommend limiting the duration of rentals when the primary resident is present in the dwelling. (See lines 40-43.)

⁶ Any dwelling unit that offers, for compensation, sleeping accommodations in the County was made subject to the hotel tax.

⁷ A complaint for a specific reason such as noise or trash would only be counted as a short-term rental complaint if the complainer indicated that the source of the problem was a short-term rental.

⁸ It is impossible to determine if all the taxes owed by short-term residential rentals are being collected.

⁹ Testimony asserted that the County is the only jurisdiction in Maryland that has reached a payment agreement. It has been said that the State has refused any similar type of agreement because it does not allow a means to audit remissions.

¹⁰ The Apartment and Office Building Association did ask for the ability of landlords to profit from short-term rentals, but that would run counter to the restrictions recommended by the Planning Board. The Committee did not recommend the Association's requested revision.

¹¹ The neighbors whom residents may or may not know are the folk who want to use their property for short-term residential rentals. "The Bible tells us to love our neighbors, and also to love our enemies; probably because generally they are the same people." G.K. Chesterton.

Some testimony suggested that 90 days of rental with an absent owner was too long, while other testimony suggested that it was too short. The Greater Colesville Civic Association recommended a 45-day limit. The proposed 90-day requirement is the same duration as San Francisco's.¹² The City of New Orleans allows a maximum of 90 days of short-term rental without regard to the presence of an owner.¹³ The cities of Boulder, CO and Austin, TX have no limit.¹⁴ Washington, D.C. is considering a 15-day limit.

The issue is a balancing act between neighbors' rights of cohesion and private property rights. **The Committee recommended approval of the proposed 90-day limit when the owner or owner-authority tenant was absent from the property.**

Is the provision for on-site supervision adequate?

As introduced, ZTA 17-03 includes the following provision:

If the applicant is not present in the residence, the property can be used as a Short-Term Residential Rental for a maximum of 90 days in a calendar year. If the applicant is present in the residence during the rental stay, there is no limitation on the number of days the property can be used as a Short-Term Residential Rental.¹⁵

Testimony suggested clarifying this provision to state that "the property owner or an owner-authorized resident of the property must be physically present and occupy the property during the short-term stay" instead of using the term "applicant" and "present". **The Committee agreed with this clarification.**

Are too many people allowed in a short-term rental?

Under ZTA 17-03 as introduced, the maximum number of occupants is limited by housing code health standards; however, the total number of overnight guests in the short-term residential rental who are 18 years or older is limited to 6, and the total number of overnight guests over 18 years of age per bedroom is limited to 2. Under this provision, a 3-bedroom house could have 6 adults.

This is different from the definition of a household in the current code, where there is a numeric limit for the number of unrelated individuals in a dwelling unit:

Household: A person living alone, or any one of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:

1. any number of people related by blood, marriage, adoption, or guardianship;
2. up to 5 unrelated people; or
3. 2 unrelated people and any children, parents, siblings, or other persons related to either of them by blood, adoption, or guardianship.

Household does not include any society, club, fraternity, sorority, association, lodge, federation, or like organization; any group of individuals whose association is seasonal in nature; or any group of individuals who are in a group living arrangement as a result of criminal offenses.

¹² http://sfist.com/2016/11/16/sf_supes_approve_60-day_cap_on_rent.php

¹³ <https://www.nola.gov/short-term-rentals/str-zoning-restrictions/>

¹⁴ <https://bouldercolorado.gov/plan-develop/short-term-rentals>,

https://www.austintexas.gov/sites/default/files/files/Code_Compliance/STRs/Revised_Ordinance.pdf

¹⁵ Lines 38-43.

If the definition of household were to be applicable to short-term residential rental property, any household with 6 members must be related. **The Committee did not recommend changing the Planning Board proposed limits.**

Does the ZTA adequately address on-site parking?

As introduced, ZTA 17-03 would require one off-street parking space for each rental contract **unless** the online listing indicates that vehicle parking is prohibited. This provision does not require any off-site parking spaces if the landlord indicates that parking is prohibited. This is not likely to reduce parking demand.¹⁶ Zoning has different on-site parking requirements, ranging from zero to 2 spaces per dwelling unit. Having one off-street parking space may not meet minimum zoning requirements, depending upon when the unit was constructed.

The Planning Board proposal will not prevent parking problems. The Council may wish to limit licenses to locations that provide off-street parking. The Council also could vary the parking required based on transit availability, as suggested in testimony. **The Committee did not recommend changing the Planning Board proposed limits.**

Should ZTA 17-03 be amended to allow a bed and breakfast for more than 5 guest rooms and allow for additional meal service under certain circumstances?

ZTA 17-03 was described in the public hearing advertisement as:

An amendment to the Montgomery County Zoning Ordinance to:

- modify the definition of “Household Living”;
- define “Short-Term Residential Rental”;
- establish limited use standards for short-term residential rental; and
- generally amend provisions allowing for short-term residential rentals.

It created a new use (short-term rentals). Its only connection to a bed and breakfast was to exclude a short-term rental from the definition of a bed and breakfast. Staff expressed the belief that the requested amendment was beyond the scope of the ZTA’s advertisement. **The Committee recommended introducing a separate ZTA (ZTA 17-08) to address this issue.**

BILL 2-16

On September 25, 2017, the Committee recommended amending Bill 2-16 as follows:

1. Make a violation of any provision of Article II or Article III a class A violation (lines 165-166).
2. Require a license applicant to certify that:
 - a. the applicant is the owner or owner-authorized agent of the facility (line 457);
 - b. the applicant has provided notice to any applicable home owner association, condominium, housing cooperative, and the owner of the unit or the owner’s rental agent, if the applicant is not the owner (lines 471-474);

¹⁶ “The more things are forbidden, the more popular they become.” Mark Twain

- c. the short-term rental is not prohibited by any home owner association, condominium document or rental lease (lines 475-476);
 - d. the applicant is current on dues owed to any home owner association, condominium (lines 477-478);
 - e. the applicant will have the license number and State Sales and Use Tax registration number on any on-line listing (lines 481-482).
2. Licenses and license renewal require the Director to find compliance with applicable laws and the certification required by the licensee (line 495-496).
 3. Allow challenges to occur for short-term rental licenses (line 501).
 4. Allow municipalities, condominium associations, and housing cooperatives to challenge a license (lines 506-509).
 5. Revise the text on a license suspension to define the reason to suspend a license as a violation of the license certifications or of the County Code; three violations within any 12-month period would warrant suspension of the license (lines 519-520).

After the Committee meeting, a poll of Committee members indicated support for making the Bill effective on July 1, 2018. The delay in the effective date will give the Department of Health and Human Services time to prepare to administer the licensing program.

Background

This Bill anticipates the approval of ZTA 17-03, which will make Bed and Breakfast a limited use in most residential and mixed-use zones.

Short-term residential licensing in the attached draft of Bill 2-16 would require:

- Compliance with zoning
- Maximum occupancy consistent with zoning
- Limiting rentals to habitable rooms
- A carbon dioxide detector for units with natural gas
- No code violations in the past year (for new licenses)
- Operating sanitation facilities
- Paid taxes
- Site of the rental is the primary residence of the applicant
- The applicant is the owner or is authorized by the owner to apply
- Posted rules and posted contact information for a designated representative
- A record of guests
- Notice to neighbors of the application request
- Certification that the rental is allowed by the HOA, or condominium restrictions if applicable
- Licenses issued for a one-year term.

What is the fiscal impact of Bill 2-16?

The Executive estimates that the licensing program envisioned under Bill 2-16 would require total expenditures of \$213,947 in FY18 and \$211,094 every year thereafter. The Bill calls for on-line filing and self-certification. The first-year operating cost for Information Technology is estimated at \$157,500 in FY18 and \$102,500 every year after FY18.

There would be revenues from licensing fees available to offset expenditures. The Executive assumed an annual fee of \$100 per license. At that fee, and with 100% compliance, total annual revenue would be \$140,000 per year. On an annual basis, the Executive would anticipate a net cost of Bill 2-16 of \$71,094 (\$211,094 minus \$140,000).

This expenditure estimate is based on traditional complaint-based enforcement. More funds will be required for proactive enforcement.

Who should enforce short-term residential licensing?

The Planning Board suggested that the Council consider having one agency responsible for both short-term and long-term rentals. The current code splits that responsibility between HHS (transient/short-term rentals) and DHCA (long-term rentals). The Apartment and Office Building Association recommended enforcement by DHCA; the Department already has subpoena power.¹⁷

The current code requires the licensing of all transient rental units; however, the focus of HHS in this area has been on hotels. DHCA licenses long-term residential rental and administers approval of accessory dwelling units.

Staff asked Executive staff about changing the jurisdiction of non-hotel transient housing to DHCA, but Executive staff continues to believe that HHS is the more appropriate administrator. This will result in two agencies issuing rental licenses of various types. In Staff's opinion, the issues concerning short-term rentals are more like the issues surrounding accessory dwelling units than hotels. Staff, if asked, would recommend assigning DHCA this responsibility. **The Committee supported the Executive's recommendation to retain HHS responsibility for short-term housing.** This division of responsibility would retain DHCA's focus on long-term housing.

Should there be proactive enforcement of licensing requirements?

There are many activities in the County that go unnoticed. Short-term residential rentals are different in that listings are posted (without street addresses) on relatively few on-line web platforms. There are third-party resources who, for a fee, would match valid licenses against on-line postings. The purpose would be to assure compliance with the requirement to obtain a license.

Enforcement, or lack thereof, is critical if the County wants any regulatory control of short-term rentals. Generally, enforcement issues are left to the Executive. **The Committee recommends leaving all issues of enforcement up to HHS.**

Should on-site inspections be required before licensing?

As proposed, licensing would be issued based on an on-line self-certification process. As proposed, it would be easy, efficient, and inexpensive. Some testimony suggested that public safety inspections are warranted before the issuance of a license. Such inspections are being considered in the District of Columbia.¹⁸

¹⁷ Montgomery Code §29-6(e).

¹⁸ <http://www.nbcwashington.com/news/local/Should-Every-Airbnb-Unit-Be-Inspected-DC-Bill-Would-Require-It-431620733.html>

Inspections would involve time and expense. It would likely lead to fewer licenses, but not fewer short-term rental units.

The Apartment and Office Building Association suggested County verification of elements certified in the application. This too is inconsistent with an easy, efficient, and inexpensive process. **The Committee did not recommend pre-licensing inspections.**

Are the noticing requirements sufficient?

As proposed, neighbors must be given notice of a short-term residential license application. Testimony suggested that notice also be given to any non-applicant owner (which would be a landlord), HOAs, condominium associations, and municipalities.¹⁹ Testimony also suggests that the content of a notice include the emergency contact information.

Testimony indicated that the outcome of the licensing process should be noticed and include challenges and renewals to a license.

At some point, the burdens of noticing are greater than the benefits. This is a balancing act for the Council. **The Committee did not recommend requiring notice for license renewals.**

Would the requirement for action on a license or a license renewal within 15 days result in the issuance of a license if the time limit is not met?

The intent for the time limit was to provoke action. It was not to imply that an application was approved unless disapproved within that time period. If the Council wants a process of approval unless disapproved, it should state that intent. **The Committee did not recommend revisions.**

Should the provision for compliance with HOA or condominium restrictions be revised?

Under the proposed licensing requirements, the applicant must certify that:

the application is permitted by any Home Owner's Association or condominium document, or a rental lease...²⁰

Testimony suggested revising this provision to read: "the use [proposed] is not prohibited by any Home Owner's Association or condominium document or a rental lease including an occupancy agreement of a housing co-operative."

The general rule for legislative drafting is to express ideas in the positive form. It is the general rule of the English language to avoid double negatives. Is something that is "not prohibited", allowed? The answer is yes...but is it easier to directly find a prohibition. **The Committee agreed with changing "is permitted" to "is not prohibited".**

¹⁹ Testimony suggested adding that notice be sent to "the representative of the common ownership community designated in the annual registration filed with the Montgomery County Commission on Common Ownership Communities pursuant to Montgomery County Code, Section 10B-7(a)". Staff does not believe that this is necessary in code and can be addressed in guidelines or regulations.

²⁰ Line 471-472.

The Apartment and Office Building Association would have the license applicant attach the applicable language in a lease, condominium, or home owner association document to the application. This request seems extreme and was not recommended by the Committee.

The Association would further want a new provision that the license does not supersede any contracts among individuals. This seems redundant to the provision that would not allow a license if it is prohibited by such contracts. The Committee did not recommend this revision.

Should there be a requirement for current HOA dues paid?

Licensed rental housing, excluding transient housing, is subject to licensing under Chapter 29 of the Code. Those licensing provisions prohibit the issuance of a license for a dwelling unit in a common ownership community unless the owner certifies that the common ownership community fees for the dwelling unit are no more than 30 days past due.²¹

Common ownership communities request an identical provision for any short-term rental license. **The Committee recommended changes to this provision to be consistent with the long-term rental license provision.**

Should a licensee be required to post their license number and the state license number of their on-line listing?

Enforcement will be easier if there is a requirement to post the County license number with the on-line listing. Testimony also suggested requiring the host's State Vendor Identification number on any on-line listing.²² This requirement was not included in Bill 2-16 as proposed. **The Committee recommended this additional requirement.**

Are the challenges to an existing or proposed license adequate?

There is an intent to allow challenges to both bed and breakfast and short-term residential rentals. As drafted, challenges to licenses may be limited to bed and breakfast establishments. **The Committee recommends deleting the words "bed and breakfast" in lines 493 and 495 and replacing with the word "license".**

Municipalities, condominium associations, and housing cooperatives may want the opportunity to challenge a license or a license renewal. That provision is not currently allowed in the draft Bill. **The Committee recommends including these entities in the list of parties that file a challenge (line 495).**

Should the County require short-term residential rental platforms to do anything through legislation?

Testimony requested the County to require any on-line rental platform to provide a monthly listing of units and to remove unlicensed units. Other testimony requested that on-line platforms give notice to property managers regarding rentals at their property. The Apartment and Office Building Association requested that platforms be required to provide a landlord with information on upcoming trip activity and a summary year-to-date of activity at the property.

²¹ Sec. 29-19. Licensing procedures.

²² The state has a 6% sales tax.

The ZTA and the Bill put requirements on the party with local property connections. **The Committee did not make recommendations to impose obligations on short-term rental platforms but retained the obligations of a licensee to provide information on their on-line advertisements.**

Are the provisions for the suspension of a license adequate?

As proposed, Bill 2-16 includes the following provision:

The license must be suspended for any applicant receiving at least three verified complaints within a calendar year.²³

Staff intended that verified complaint mean any action found to be a violation of the license or any other aspect of County code. Noise and trash violations would be within the intended scope of a verified complaint. Testimony suggested that a single verified complaint should warrant the suspension of a license.

The provision used the term “within a calendar year”. Testimony suggested that it would be better to say within any 12-month period.

The Community Association Institute requested a provision to immediately suspend a license if the governing body of a common ownership community submits proof of unpaid common ownership fees. Staff expressed the belief that this situation may be efficiently handled by challenging at renewal. The proposed provision states that each license “must be issued for a term of one year, renewable for additional one-year terms, subject to payment of the license fee and compliance with all applicable laws”.²⁴

The Committee recommended adding a requirement that renewals comply with certification requirements and the 3-violation rule would count violations within any 12-month period (lines 518-519).

Can HHS address violations under the Bill?

HHS staff noticed that the proposed Bill before the Committee on September 18 failed to make violations of the new Article concerning short-term residential rental licensing subject to Class A violations. **The Committee corrected that oversight by making Class A violations apply to Articles II and III** (lines 165-166). HHS was satisfied with this solution and did not believe that repeating the provision as suggested in testimony was necessary. The Department also did not recommend specific subpoena authority as a requirement for their enforcement.

Should the Bill be amended to require HHS to provide information of short-term rental licenses?

Staff suggested that the regulating Department could post maps and contact information of licensees and their status.

The Committee did not recommend that the Bill be amended to require HHS to provide maps and data (as on DHCA’s site) on accessory dwelling units.

²³ Lines 505-506.

²⁴ Lines 486-488.

Can municipalities opt out of the proposed regulatory scheme?

Except for Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove, all municipalities are subject to the County's zoning code. The Town of Somerset has requested an exemption for and change to the illegal status of short-term residential rental. Staff knows of no municipal exemptions in the current code.

Chapter 54 of the code is different from zoning. Municipalities may opt out by their own action. The towns of Chevy Chase View, Chevy Chase, Gaithersburg, Garrett Park, Glen Echo, Laytonsville, Poolesville, Rockville, Somerset, and Washington Grove are NOT subject to the provisions of Chapter 54.

ZTA 17-03 requires any short-term rental to have a license under Chapter 54. Any municipality that opts out of Chapter 54 could not have licenses approved by the County within its jurisdiction. Under these circumstances and under the proposed text, the Zoning Ordinance would not allow a legal short-term rental in a municipality that that opts out of Chapter 54.

This Packet Contains

ZTA 17-03 revised per PHED recommendations

Bill 2-16 revised per PHED recommendations

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Zoning Text Amendment No.: 17-03
Concerning: Accessory Residential
Uses – Short-Term Rental
Draft No. & Date: 2 – 9/19/17
Introduced: June 13, 2017
Public Hearing: September 12, 2017
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- modify the definition of “Household Living”;
- define “Short-Term Residential Rental”;
- establish limited use standards for short-term residential rental; and
- generally amend provisions allowing for short-term residential rentals

By amending the following sections of the Montgomery County Zoning Ordinance,
Chapter 59 of the Montgomery County Code:

DIVISION 59.1.4.	“Defined Terms”
Section 59.1.4.2.	“Specific Terms and Phrases Defined”
DIVISION 59-3.1.	“Use Table”
Section 59-3.1.6.	“Use Table”
DIVISION 59.3.3.	“Residential Uses
Section 59.3.3.3.	“Accessory Residential Uses”
DIVISION 59-3.5.	“Commercial Uses”
Section 59-3.5.6.	“Lodging”
DIVISION 8.2.	“Residential Floating Zones”
Section 8.2.3.	“Use Table for the RT and R-H Zones”
DIVISION 8.3.	“Planned Unit Development Zones”
Section 8.3.2.	“PD Zone”

And adding the following section:

Section 3.3.3.I. “Short-Term Residential Rental”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment No. 17-03 was introduced on June 13, 2017 to allow for short-term residential rental under certain circumstances, including a requirement for a short-term rental license under Bill 2-16.

In its report to the Council, the Montgomery County Planning Board recommended approval as introduced with the approval of Bill 2-16 as revised.

The County Council held a public hearing on September 19, 2017 to receive testimony concerning the proposed text amendment. Some wanted the issuance of a license to be predicated on a statement from the appropriate association that the short-term rental was allowed. In addition, they request a provision to bar a license if HOA dues are in arrears.

Hotel owners do not want short-term residential rentals to have a competitive advantage. The hotel industry supported the proposed ZTA as offering a more even regulatory playing field. Hotels are currently subject to taxes, licensing, and inspections. Hotels would favor an additional requirement that any advertisement for a short-term residential rental include the owner's state and local license number.

The Apartment and Office Building Association (AOBA) requested the opportunity for landlords to rent some units on a short-term basis. The Association also asked for more enforcement authority for the administering department, including subpoena power among other recommendations.

The most critical testimony came from people and civic organizations who thought that the current illegal status of short-term rentals was satisfactory. The testimony stated a concern that short-term residential rentals will:

- create nuisances (noise, traffic, underage drinking, litter, public urination, drugs, and other illegal activities);
- bring an influx of strangers to the neighborhood on a regular basis;
- be unsafe because they do not meet fire and safety standards;
- destabilize and disrupt communities by driving out long-term residents;

- reduce the availability of affordable housing;
- be an enforcement problem;
- turn into party houses;
- create parking problems; and
- be overconcentrated in unincorporated areas of the County.

The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions on September 18, 2017 and September 25, 2017 to review the text amendment. On September 25, 2017, the Committee (3-0) recommended approval of ZTA 17-03 with revisions to Subsection 59.3.3.3.I.2.b and c as follows:

- b. The dwelling unit used as a Short-Term Rental must be the [[applicant's]] property owner's or owner-authorized resident's primary residence, regardless of dwelling unit type.
- c. If the [[applicant]] property owner or owner-authorized resident is not present in the residence, the property can be used as a Short-Term Residential Rental for a maximum of 90 days in a calendar year. If the [[applicant]] property owner or owner-authorized resident is physically present [[in]] and occupies the residence during the rental stay, there is no limitation on the number of days the property can be used as a Short-Term Residential Rental.

The Committee in all other respects agreed with the Planning Board recommendation to include the following limitations on short-term residential rental:

- Allow only on sites without either a farm tenant dwelling or an accessory apartment.
- Allow only if the site is the primary resident of the applicant.
- Limit the maximum rentals in a calendar year to 90 days, counting only when the owner or authorized resident is absent.
- Limit the total number of adult overnight guests to six.
- Limit the total number of adult overnight guests per bedroom to two.
- Require one off-street parking space for each rental contract, unless the online listing indicates that vehicle parking is prohibited.

The District Council reviewed Zoning Text Amendment No. 17-03 at a worksession held on October 10, 2017. The Council agreed with the Committee's recommendation to approve ZTA 17-03 as amended.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 17-03 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59.1.4 is amended as follows:

Division 59.1.4. Defined Terms

* * *

Section 59.1.4.2. Specific Terms and Phrases Defined

In this Chapter, terms that are not specifically defined have their ordinary meaning.

The following words and phrases have the meanings indicated.

* * *

Shooting Range (Outdoor): See Section 3.5.10.J.1

Short-Term Residential Rental: See Section 3.3.3.I

* * *

Sec. 2. DIVISION 59-3.1 is amended as follows:

* * *

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential		Residential															Commercial/Residential			Employment				***
					Residential Detached								Residential Townhouse			Residential Multi-Unit											
			AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	
* * *																											
RESIDENTIAL																											
* * *																											
ACCESSORY RESIDENTIAL USES	3.3.3.																										
* * *																											
<u>Short-Term Residential Rental</u>	<u>3.3.3.1</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	
* * *																											

17

18 **Sec. 3. DIVISION 59.3.3 is amended as follows:**

19 **DIVISION 59.3.3. Residential Uses**

20 **Section 3.3.1. Household Living**

21 **A. Defined, In General**

22 Household Living means the residential occupancy of a dwelling unit by a
 23 household [on a monthly or longer basis] for 30 consecutive days or longer.

24 * * *

25 **Section 59-3.3.3. Accessory Residential Uses**

26 * * *

27 **I. Short-Term Residential Rental**

28 **1. Defined**

Short-Term Residential Rental means the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days. Short-Term Residential Rental is not a Bed and Breakfast.

2. Use Standards

Where Short-Term Residential Rental is allowed as a limited use, it must satisfy the following standards:

- a. Short-Term Residential Rental is prohibited in a Farm Tenant Dwelling or on a site that includes an Accessory Apartment.
- b. The dwelling unit used as a Short-Term Rental must be the [[applicant's]] property owner's or owner-authorized resident's primary residence, regardless of dwelling unit type.
- c. If the [[applicant]] property owner or owner-authorized resident is not present in the residence, the property can be used as a Short-Term Residential Rental for a maximum of 90 days in a calendar year. If the [[applicant]] property owner or owner-authorized resident is physically present [[in]] and occupies the residence during the rental stay, there is no limitation on the number of days the property can be used as a Short-Term Residential Rental.
- d. The use must be licensed under Chapter 54.
- e. The maximum number of occupants is limited by Chapter 26, Section 5; however, the total number of overnight guests in the Short-Term Residential Rental who are 18 years or older is limited to six, and the total number of overnight guests over 18 years of age per bedroom is limited to two.

f. One off-street parking space must be provided for each rental contract unless the online listing indicates that vehicle parking is prohibited.

* * *

Sec. 4. DIVISION 59-3.5 is amended as follows:

Division 3.5. Commercial Uses

* * *

Section 3.5.6. Lodging

A. Defined, In General

Lodging means a building, dwelling unit, or a portion of a dwelling unit used for the short-term overnight accommodation of paying guests.

B. Bed and Breakfast

1. Defined

Bed and Breakfast means a detached house that is owner-occupied with no more than 5 guest rooms for rent and customarily serves breakfasts to guests. A Bed and Breakfast is not a Short-Term Residential Rental.

* * *

Sec. 5. DIVISION 59-8.2 is amended as follows:

Division 8.2. Residential Floating Zones

* * *

Section 8.2.3. Use Table for the RT and R-H zones

A. Section 3.1.1 through Section 3.1.4 apply to the Use Table in Section 8.2.3.

B. The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	RT-6.0	RT-8.0	RT-10.0	RT-12.5	RT-15.0	R-H
* * *							
RESIDENTIAL							
* * *							
Accessory Residential Uses	3.3.3						
* * *							
<u>Short-Term Residential Rental</u>	<u>3.3.3.I</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>
* * *							

79

80 **Sec. 6. DIVISION 59-8.3 is amended as follows:**

81 **Division 8.3. Planned Unit Development Zones**

82 * * *

83 **Section 8.3.2. PD Zone**

84 * * *

85 **B. Uses**

86 **1. Residential Uses**

87 * * *

88 c. Short-Term Residential Rental is allowed as a limited use under
89 Section 3.3.3.I.

90 * * *

91 **Sec. 7. Effective date.** This ordinance becomes effective on July 1, 2018.

92

93 This is a correct copy of Council action.

94

95

96 Linda M. Lauer, Clerk of the Council

Bill No. 2-16
Concerning: Transient Housing -
Licensing and registration
Revised: 9/25/17 Draft No. 8
Introduced: February 2, 2016
Expires: August 2, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Riemer
Co-Sponsor: Councilmember Rice

AN ACT to:

- (1) define a bed and breakfast and hotel establishment;
- (2) limit the transient housing allowed to a bed and breakfast and a hotel;
- (3) require only hotels to comply with most current licensing provisions for transient housing;
- (4) revise the requirement for resident hotel management;
- (5) delete the requirement for annual hotel inspections;
- (6) add a requirement for hotel inspections upon complaint;
- (7) establish a licensing system for bed and breakfast establishments;
- (8) amend provisions to make them more precise, concise, and decisive; and
- (9) generally amend Chapter 54 of the County Code.

By amending

Montgomery County Code

Chapter 54, Transient Lodging Facilities

Sections 54-1, 54-2, 54-3, 54-4, 54-5, 54-6, 54-7, 54-8, 54-9, 54-10, 54-11, 54-12, 54-13, 54-14, 54-15, 54-16, 54-17, 54-18, 54-19, 54-20, 54-21, 54-22, 54-23, 54-24, 54-25, 54-26, 54-27, 54-28, 54-29, 54-30, 54-31, 54-32, 54-33, 54-34, 54-35, 54-36, 54-37, 54-38, 54-39, 54-40, and 54-41

By adding:

Montgomery County Code

Chapter 54, Transient Lodging Facilities

Sections 54-22A, 54-42, 54-43, 54-44, 54-45, 54-46, 54-47, 54-48, and 54-49

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 54-1, 54-2, 54-3, 54-4, 54-5, 54-6, 54-7, 54-8, 54-9, 54-10, 54-**
 2 **11, 54-12, 54-13, 54-14, 54-15, 54-16, 54-17, 54-18, 54-19, 54-20, 54-21, 54-22, 54-**
 3 **23, 54-24, 54-25, 54-26, 54-27, 54-28, 54-29, 54-30, 54-31, 54-32, 54-33, 54-34, 54-**
 4 **35, 54-36, 54-37, 54-38, 54-39, 54-40, and 54-41 are amended as follows:**

5 **54-1. Definitions.**

6 For the purposes of this Chapter, unless the language or context clearly
 7 indicates that a different meaning is intended, the following words and phrases
 8 have the following meanings:

9 Average lot grade means the arithmetic average of the highest and lowest
 10 elevations of the ground contiguous to the building.

11 Basement [: That] means that portion of any building [which is] located below
 12 grade [; provided, however, that] when at least one-half of the vertical height
 13 extends above the average lot grade. [Average lot grade, for this purpose, shall
 14 mean the arithmetic average of the highest and lowest elevations of the ground
 15 contiguous to the house.]

16 [Boardinghouse: A dwelling in which, for compensation, lodging, or lodging
 17 and meals, are provided or offered to not more than 5 transient visitors.]

18 Bed and Breakfast means a [dwelling unit or part of a dwelling that is available
 19 to overnight guests for compensation. Overnight guests on any night must
 20 satisfy the definition of one household. A guest must stay at a Bed and
 21 Breakfast for no more than 30 days in any one visit. Meals may be provided
 22 to overnight guests. Bed and Breakfast means a] detached house that is
 23 owner-occupied with no more than 5 guest rooms for rent and customarily
 24 serves breakfast to guests and allowed under Section 59-3.5.6.B of this Code.

25 Cellar [:That] means that portion of any building which is located below grade
 26 and whose vertical height extends less than one-half above the average lot
 27 grade.

Director [and Department: The term "Director"] means the Director of the Department of Health and Human Services, or the Director's designee[, and the term "Department" means the Department of Health and Human Services].

Department means the Department of Health and Human Services.

Establishment [: Every hostel, tourist home, boardinghouse, rooming house and guestrooms in an apartment hotel which, for compensation, provides or offers lodging or lodging and meals to transient visitors.] means a hotel or Bed and Breakfast or Short-term Residential Rental regulated under this chapter.

Fire Code [: The] means the Fire Prevention Code [set forth] in Chapter 22 [of this Code, and any amendments thereto] as amended.

Habitable room [: Any] means a room in which people normally congregate or sleep with a minimum ceiling height of 7 feet. [This shall not include bathrooms,] Bathrooms, closets, porches, decks, toilet rooms, storage rooms, kitchens, [or] and pantries are not habitable rooms.

[Hostel] Hotel [: Any] means a building or portion [thereof or any group of buildings] of a building where, for compensation, lodging or lodging and meals are provided or offered to 3 or more transient visitors [, including hotels, motels, tourist courts, motor courts, tourist camps and similar establishments such as apartment hotels]. Hotel includes a motel, but not a bed and breakfast.

Household means a person living alone, or any one of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:

1. any number of people related by blood, marriage, adoption, or guardianship;
2. up to 5 unrelated people; or

3. 2 unrelated people and any children, parents, siblings, or other persons related to either of them by blood, adoption, or guardianship.

[*Liquid wastes:* Human excreta, bath water, wash water, laundry wastes, dishwater and any other liquid wastes resulting from cleaning operations. Gasoline and explosive or inflammable liquids are not included.]

Lodging [: The] means the short-term overnight accommodation of a paying guest.

Plumbing Code [: The] means the Plumbing Code [in effect within the jurisdiction of] adopted by the Washington Suburban Sanitary Commission, [and any other jurisdictions in the County having or subsequently adopting a Plumbing Code, and any changes or revisions thereof] as amended.

[*Rooming house:* In a residential zone, shall mean a dwelling in which, for compensation, lodging is provided or offered to 3 or more but not exceeding 9 guests.]

Short-Term Residential Rental means the residential occupancy of a dwelling unit for a fee for less than 30 consecutive days as allowed under Section 59-3.3.3.I of this Code.

Solid wastes [:] means garbage, trash, sweepings, animal refuse and dead animals.

[*Tourist home:* A dwelling in which, for compensation, lodging or lodging and meals are provided or offered to not more than 12 transient visitors.]

Transient visitor [: A] means a person who [obtains] purchases lodging, [or lodging and] with or without meals, [upon payment or promise of payment therefor at the same premises] for a continuous period of [not more than] 6 months or less.

54-2. Authority of [county executive] Executive to regulate and license.

The [county executive] Executive [in order to implement the health standards and regulations of this chapter, is hereby authorized by law to] may adopt [such] regulations, under method (3) [of section 2A-15 of this Code], concerning the operation, maintenance [and], conduct, licensing, and license fees for [of] a [any of the types of establishments] hotel or bed and breakfast [referred to in this chapter, including provision of such licenses and license fees for such establishments as he may deem appropriate].

54-3. Guest register - Required [to be kept by hotels, tourist homes, etc.; information to be shown].

Any person who owns or operates a hotel, [rooming house, tourist home, motel, or tourist cabin park] in the County must maintain on the premises a permanent register [in which must be inscribed in ink in legible writing] containing:

- (a) the name of each visitor;
- (b) the residence address of each visitor, including state, city or town, street and street number or rural mail delivery route number;
- (c) the number of the room or facility occupied by each visitor; and
- (d) the date and time of registration and checkout of each visitor.

[In tourist homes, motels, and tourist cabin parks the] The register must include a record of the license plate numbers and state of registration of any automobiles or trailers [in or with which the guests are traveling] that guests are using. The owner or operator of the establishment must see that the license plate and automobile or trailer registration information is correct. A person must not occupy any room [or facility] until [after] the registration required under this section is provided. The permanent register may be in a bound book, looseleaf book, or cards. If a looseleaf book or cards are used, the pages or cards must be numbered consecutively before use and all numbered pages

or cards must be kept even though they are not used. The register [provided for] required by this section must be kept for at least 3 years and must be open to inspection upon the request of the Director or of any law enforcement officer of the county or the state.

54-4. Same-Giving or permitting false information to be given prohibited.

[It shall be unlawful for any] A person must not knowingly [to inscribe] write any false or incorrect name or address or license plate number in any such register. [It shall be unlawful for the] The owner, [or] manager, or employee of [any type of establishment or any employee thereof] a hotel must not [to] knowingly [to] permit any person to [inscribe] write any false name or address or license plate number in any such register.

Article II. [Hostels, Rooming Houses, Boardinghouses and Tourist Homes]

Hotels.

54-5. Numbering of rooms.

Every [establishment shall] hotel must have a unique number on the corridor side of the door to each guest room [and no two (2) doors shall bear the same number].

54-6. Limitation on admission of visitors.

[No establishment shall] A hotel must not admit more visitors than the number for which it is licensed.

54-7. Inspection of register by county officials.

Registers kept [in accordance with] under section 54-3 [shall] must always be available at the [establishment] hotel for inspection by the [director] Director, the fire marshal, the [county] police chief and [such other officials as may be designated by the above named officials] their designees. The licensee may request the official to present [Presentation of] proper credentials or proof of identity [may be requested by the licensee].

54-8. Owner, operator or manager to reside on premises.

The owner, operator, or a responsible manager appointed by the owner or operator [shall reside on the premises of] must be on-site at all times at each [establishment] hotel.

54-9. Parking facilities.

Every [establishment shall] hotel must provide off-street automobile parking for visitors as [is set forth in the zoning ordinance] required by chapter 59 of [the Montgomery County] this Code, as amended. [No license shall be issued by the director unless he finds the required parking facilities have been provided.]

54-10. Administration and enforcement of article generally.

The [director is hereby authorized and directed to] Director must administer and enforce [the provisions of] this chapter with the assistance of other County departments, as necessary. [All department heads in the county government are hereby authorized and directed to provide such assistance as may be required by the director for the purpose of enforcing this article.]

54-11. Right of entry of county officials.

[For the purpose of enforcing this article, the director] The Director, the fire marshal, the [county] police chief and [such other officials as may be designated by the above named county officials shall] their designee, upon exhibiting the proper credentials or proof of identity, [have the right to] may enter any [establishment for the purpose of making] hotel to make any necessary inspection [they may deem necessary at any time] during business or operating hours [, and at such]. Inspections may also occur at other times [as] if the county officials find [may be necessary in the public interest] it necessary to protect the health and safety of any person.

54-12. Responsibility for compliance with article.

The owner or operator of [an establishment] a hotel, and [his] the hotel's agent or manager, [shall be] are responsible for [conforming to the provisions of] complying with this article.

54-13. Violation of article; penalties [and injunctive, etc., relief].

[Any person who violates] A violation of any provision of Article II or Article III of this [[article]] [shall be] Chapter is [subject to punishment for] a class A violation [as set forth in section 1-19 of chapter 1 of the County Code]. [Each day such violation shall continue shall be deemed a separate offense.]

54-14. License required [Required].

[No] Any building [or premises shall be] occupied or used as a [hostel, rooming house, boardinghouse or tourist home] hotel within the county [unless a license shall have been issued] must be licensed for such occupancy and use by the [director, nor shall any] Director. An operator of a [such building or premises be so occupied and used] hotel must cease operating immediately after [such] the license has expired, or has been revoked or suspended.

54-15. Application.

Before the Director issues an annual license for any [establishment shall be issued by the director] hotel under this [division, an application shall be filed by] Division, the owner or operator, or [his duly] their authorized agent, [in accordance with] must file an application that satisfies the regulations [prescribed] approved by the [county executive] Executive under method (3) of [[section]] Section 2A-15 of this Code.

54-16. Compliance with Code, [etc., prior to] before issuance.

[No license shall be issued to] The Director must not issue a license to any [establishment] hotel [to] under this [division] Division unless [such] the

proposed [establishment is in conformance] hotel conforms with the applicable provisions of this Code [and other ordinances of the county].

54-17. Certificates to be filed [prior to] before issuance.

The Director must not issue an initial [annual] license or license renewal under this Division unless the applicant files [the following certificates have been filed] with the Department a certificate:

- (a) [A certificate] of use and occupancy from the Department of Permitting Services[.];
- (b) [A certificate] from the fire marshal stating that the building [is in compliance with] complies with the fire prevention code[.]; and
- (c) [A certificate] from the Director stating that the building or buildings and rooms to be occupied or used by the guests of the [establishment] hotel, and the premises on which such buildings are located, [are in compliance with] comply with the standards and regulations of the County and State Boards of Health.

54-18. Separate license required for each establishment.

[Each individual establishment] The Director must require each hotel, [although] operated by the same management, [shall be required] to obtain a separate license under this [division] Division.

54-19. Fees.

The Executive must establish annual fees for licenses under this [division shall be of such amount as may be established by the county executive] Division by [written] regulation adopted under method (3) of [[section]] Section 2A-15 of this Code. [and shall] Fees must not exceed an amount necessary to defray the costs of administering this [chapter] Chapter.

54-20. Denial where operator has been convicted of certain state law violations.

The Director may deny an initial [or annual] license or license renewal to operate [an establishment] a hotel under this Division if the Director finds the owner or operator of the proposed [establishment has been] hotel was convicted of violating the following provisions of the Criminal Law Article of the Maryland Code:

(a) Section 10-202 (keeping disorderly house);

(b) Title 12 (gaming);

(c) Title 5 (controlled dangerous substances, prescriptions, and other substances); or

(d) Section 10-201 (disturbing the public peace and disorderly conduct).

The Director may deny an initial [or annual license] or license renewal if the owner or operator [has been] was convicted of any similar offense outside Maryland.

54-21. Procedure for issuance or denial.

(a) [Upon receipt of] When an application for [an annual] a license under this [division] Division, or [for renewal of a] when a previously issued license is in the renewal process, the [director shall make or cause to be made] Director or the Director's designee must conduct all investigations and inspections required by this article. The [director shall act upon] Director must approve or deny the application within [ninety (90)] 90 days after the date of filing, or as soon thereafter as practicable. [In cases in which an application] Applications for renewal of [an annual] a license [has been] filed on or before October 1 [as provided in section] under Section 54-25 and [has] that have not been [neither] approved or [disapproved] denied by the [director prior to] Director before the following January 1, [the current license shall remain] remain in [full

force and] effect until approved or denied by the Director [[the application]] [has been acted upon by the director].

(b) If, [upon the completion of] after all investigations and inspections are completed, the [director] Director finds that the [establishment] hotel for which a license under this [division] Division is requested does not [comply with the provisions] satisfy the requirements of this chapter, [he shall] the Director must, within [ten (10)] 10 days after making such a finding, [cause to be served upon the applicant written] transmit notice of such finding to the applicant [and shall in such]. The notice must advise the applicant of the necessary corrective measures to be taken before [a license will be issued] the Director will issue the license. The [director] Director may [, in such notice,] direct the applicant to appear [before him] within [ten (10)] 10 days from the date of service of the notice to show cause why the license should not be denied. If the applicant [shall fail] fails to show cause as directed in such notice, or [shall fail] fails to take the necessary corrective action [specified therein], the [director shall refuse to issue or renew such license] Director may deny the application.

(c) [All] The Director must send all of the Director's orders and notices [issued by the director hereunder shall be served upon] to the applicant either by registered mail or by personal delivery at the address shown on the application. If the applicant cannot be found in the [county] County, service by personal delivery [shall] must be made [upon] to the person who is [at the time] in charge of the [establishment] hotel.

54-22. Display.

[Each] The applicant must prominently display each license issued under this
 [division shall be prominently displayed] Division in the [establishment] hotel
 for which it was issued.

54-22A. Complaints

(a) The Director must investigate any ~~[[complaints]]~~ complaint that a licensee
is in violation of this Article within 30 days of receiving the
complaint~~[[/s./s]]~~.

(b) If a violation is found, the Director must issue written notice of the
violation to the owner or operator requiring that the violation be corrected
immediately.

(c) If the violation is not corrected immediately, the Director may revoke or
suspend the license under Section 54-26.

54-23. Change of location of establishment; transfer.

(a) Whenever [an establishment] a hotel changes its location, the current
 license held by such owner or operator under this [division shall
 automatically become] Division is void.

(b) The [director] Director may [, in his discretion,] authorize the transfer of
 a license issued under this [division] Division to a new owner or operator
 upon an application for transfer of the license and payment of a transfer
 fee [which shall be established by the county executive]. The Executive
must establish the transfer fee by [written] regulation adopted under
 method (3) of ~~[[section]]~~ Section 2A-15 of this Code.

54-24. Expiration.

All [annual] licenses issued under this [division shall] Division expire on
 December 31 of the year for which they are issued, unless sooner revoked or
 suspended [as provided in] under this [article] Article.

54-25. Renewal.

[Every establishment shall, on] On or before July 1 of each year, every hotel must make application to the department for renewal of the [annual] license required by this [division] Division. Before [an annual] a license for any [establishment shall be] hotel is renewed by the [director, the director shall have received] Director, the Director must receive, [within ninety (90) days prior to renewing any such license,] certificates as [prescribed in section] required by Section 54-17 [, which shall indicate thereon that the premises have been inspected within ninety (90) days prior to the expiration of the license]. The Director must renew the license after receiving the certificates, completing any outstanding complaint investigations, and finding that the application satisfies this Article.

54-26. Revocation or suspension generally.

- (a) The [director] Director may revoke or suspend any license issued under this [division upon finding] Division if the Director finds that the owner or operator of any [establishment] hotel is in violation of any provision of this [article] Article. Any such revocation or suspension [shall] must be by written order directed to [and served upon] the owner or operator of [[such establishment]] [in the manner prescribed in subsection (c) of section 54-21] the hotel under the procedures of subsection 54-21(c). Any such notice of revocation or suspension [shall] must require the holder of the license to appear before the [director] Director and show cause why the license should not be revoked or suspended [in the manner provided above].
- (b) The Director may revoke or suspend any license issued under this Division if the Director finds that the [establishment] hotel is disruptive to the general peaceful enjoyment, dangerous to the health and safety, of the community or a nuisance because of noise or indecent or immoral

activity by any guest, owner, operator or employee. The Director may also revoke or suspend any license issued under this Chapter if the owner or operator of the [establishment] hotel has, while operating the [[establishment]] hotel, been convicted of violating:

- (1) the provisions of the Criminal Law Article of the Maryland Code [listed] in [[section]] Section 54-20; or
- (2) the drunkenness and disorderly conduct provisions of Section 10-201 of the Criminal Law Article of the Maryland Code while on the licensed premises.

Revocation or suspension of a license under this subsection must follow the procedures in Section 54-21(b).

54-27. Appeals from denial, revocation or suspension.

Any person aggrieved by the denial, revocation or suspension of a license under this [division] Division may appeal from the action of the [director] Director to the [county board of appeals] Board of Appeals. Such person [shall] must file a [written] notice of appeal with the clerk of the [board of appeals] Board of Appeals within [twenty (20)] 20 days after service of notice of such action. Upon receiving such appeal, the [board of appeals shall] Board of Appeals must hold a hearing [thereon] within [thirty (30)] 30 days after the notice of appeal has been filed, and [shall] must act upon [such] the appeal within [thirty (30)] 30 days after the hearing. [The council may, by resolution entered on its minutes, extend such periods of time.]

Division 3. Health Standards and Regulations.

54-28. Water and sewer facilities.

Water and sewer facilities in every [establishment] hotel must be connected to public lines where such lines are available. [In the event no] When public sewer lines are not available, the [sewage must be collected, treated and

disposed of in an independent sewerage system which complies with the standards of the excreta disposal laws of the State and of] private sewage system must satisfy Chapter 45 of this Code. [In the event no] When public water lines are not available, [no] only a water supply [may be used by an establishment unless it has been] approved by the Director [of the Department of Health and Human Services] may be used.

54-29. Plumbing facilities.

[All plumbing facilities in establishments shall be constructed, installed and maintained so as to prevent sanitary hazards.] Toilet and bath facilities [shall be provided in accordance with] must satisfy the plumbing code for the Washington Suburban Sanitary Commission [and any amendments thereto] as amended.

54-30. Disposal of solid waste.

All solid waste [at establishments shall] must be stored in covered metal receptacles [which shall be]. These receptacles must be removed from the premises and cleaned at least once a week or as often as [prescribed by the director] the Director requires. All such waste [shall be burned, buried or otherwise] must be disposed of in [such] a manner [as] that does not [to] constitute a nuisance [or to be accessible to animals or flies].

54-31. [Screens.] Insects.

[All outside doors, windows and other outside openings in establishments shall be adequately screened against flies, mosquitoes and other insects. If the establishment is completely air-conditioned, screening shall not be required.] All interior spaces must be maintained free of all insects. Any infestation must be immediately addressed by management.

54-32. Minimum size of rooms.

(a) [No] Any habitable room [shall be occupied at] in

[an establishment unless it contains] a hotel must be at least [seventy (70)] 70 square feet in floor area and there must be at least [fifty (50)] 50 square feet of floor area for each person. Children under [twelve (12)] 12 years of age [shall be] are counted as one-half person. Children under [one (1)] 1 year of age [shall not be] are not counted as a person for the purpose of this requirement.

(b) At least one-half of the floor area of every habitable room [shall] must have a ceiling height of at least [seven (7)] 7 feet, and the floor area of that part of any room where the ceiling height is less than [five (5)] 5 feet [shall] is not [be] considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy [thereof] of the room.

54-33. Heating and ventilation.

All rooms in [establishments shall] hotels must be adequately heated and ventilated. Every habitable room [shall] must have at least one [(1)] easily opened window or skylight [which can easily be opened], or such other device [as will] that adequately [ventilate] ventilates the room. Every [establishment shall] hotel must have a heating [facilities which are] system. The heating system must be properly installed and maintained in safe and good working condition [. Such heating facilities shall be] capable of safely and adequately heating all habitable rooms, bathrooms and water closet compartments to a temperature of at least [seventy (70)] 70 degrees Fahrenheit at a distance of [three (3)] 3 feet above floor level under ordinary minimum winter conditions.

54-34. Lighting.

All rooms in [establishments shall] hotels must be adequately lighted [by either natural or artificial light and additional] including light [shall be provided] for reading [purposes].

54-35. Basement rooms.

[No habitable room shall be in the basement of an establishment unless the]
Only when basement floors and walls are constructed of material impervious
to water, may a habitable room be located in a basement.

54-36. Cellar rooms.

A room in a cellar [shall not be considered] is not a habitable room [and shall
not be used by any establishment for habitation].

54-37. Bedding and linen.

(a) All mattresses, blankets and other bedding used at [establishments shall]
hotels must be kept clean and free of bedbugs.

(b) Clean sheets and pillow slips [shall] must be provided in
[establishments] hotels at least once each week and after each
succeeding guest.

[(c) Two (2) clean towels shall be provided for each establishment guest at
least twice each week and after each succeeding guest.]

54-38. [Drinking glasses.] Reserved.

[Drinking glasses used in any establishment shall be sterilized at least after
each succeeding guest and common drinking glasses shall be prohibited.]

54-39. Food, dining rooms and kitchens.

Food, public dining rooms and kitchens in each [establishment shall comply
with the provisions of chapter] hotel must satisfy Chapter 15 of this Code [and
any amendments thereto] as amended.

54-40. Maintenance of premises.

Every owner or operator of [an establishment shall be] a hotel is responsible
for maintaining all parts of the [[establishment]] hotel, in a clean and sanitary
condition [all parts of the establishment], including the land on which the

[establishment] hotel is located. Every owner or operator [shall be] is responsible for maintaining the [establishment] hotel in good repair.

54-41. Inspections and report of violations of article.

The Department [of Health and Human Services] is responsible for making all necessary inspections [of the establishments] regulated under this Article and must report to the Director any violations of this Division.

Article III. [Reserved] Bed and Breakfast and Short Term Residential Rental.

54-42. License required.

A person must not operate a bed and breakfast or short term residential rental in the County without a license issued by the Director. After the initial issuance of a license, the license must be renewed once a year.

54-43. Certification for a License.

An application for a bed and breakfast license or short term residential rental or a license renewal for either use must be signed by the applicant. The applicant must certify that:

- (a) the building in which the bed and breakfast or short term residential rental is located complies with all applicable zoning standards under Chapter 59 of this Code;
- (b) [[the overnight occupants of each dwelling unit will satisfy the definition of one household]] the total number of overnight guests in the short term residential rental who are 18 years or older is limited to 6, and the total number of overnight guests over 18 years of age per bedroom is limited to 2.
- (c) only habitable rooms will be used by guests;
- (d) smoke detectors in all units and carbon dioxide detectors in all units using natural gas operate as designed;
- (e) sanitation facilities operate as designed;

- (f) the applicant has not been found guilty of a violation of this Chapter in the past 12 months;
- (g) all local taxes and required fees are paid in full;
- (h) the dwelling unit where the bed and breakfast or short term residential rental is located is the primary residence of the applicant; [[and]]
- (i) the applicant is the owner or owner-authorized agent of the facility;
- (j) the applicant posted rules and regulations inside the rental, including contact information for a representative designated for emergency purposes;
- (k) the designated representative resides within 15 miles of the unit and be accessible for the entirety of any contract where the primary resident is not present;
- (l) a record of all overnight visitors will be maintained and readily available for inspection;
- (m) where applicable, the following parties were notified:
in a single-unit or attached unit, abutting and confronting neighbors,
in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant's unit,
the municipality in which the residence is located,
any applicable home owner association, condominium, housing cooperative, and the owner of the unit or the owner's rental agent, if the applicant is not the owner;
- (n) the application is not prohibited by any Home Owner's Association or condominium document, or a rental lease;
- (o) the common ownership community fees for the dwelling unit are no more than 30 days past due;

(p) except for persons visiting the primary resident, only registered guests will be allowed on the property; and

(q) any on-listing rental listing will include the short-term residential rental license number and State Sales and Use Tax registration number.

54-44. Applications.

The Director must establish an electronic method of submitting, issuing, renewing, denying, and revoking an application for a license through the internet.

54-45. License Approval and Renewal.

The Director must:

(a) accept the self-certification of the applicant after verifying compliance by reviewing available records; [[and]]

(b) approve or deny a license or a license renewal within 15 working days after receipt of the application and all required fees unless the Director receives a challenge to the certifications under Section 54-47[.]; and

(c) issue the license for a term of one year, renewable for additional one-year terms, subject to payment of the license fee and compliance with all applicable laws and certifications required for the license.

54-46. Challenge to Certifications.

(a) A challenge to any required certification made by the applicant may be filed with the Director within 30 days after the application is filed by:

(1) a resident or owner of real property located within 300 feet of a licensed or proposed [[bed and breakfast]] license;

(2) [[a civic or homeowner's association comprised of property owners located within 300 feet of a licensed or proposed bed and breakfast]] the municipality in which the residence is located,

(3) any applicable homeowners association, condominium, housing cooperative, or

(4) the owner of the unit or the owner's rental agent, if the applicant is not the owner.

(b) The Director must, within 60 days after receipt of the challenge:

(1) provide notice of the challenge to the applicant;

(2) provide an opportunity for the applicant to respond to the challenge;

(3) investigate the question of fact raised by the challenge; and

(4) revoke or deny the license if the Director finds that one or more facts certified by the applicant is false.

54-47. Suspension

(a) The license must be suspended for any applicant receiving at least three complaints that are verified as a violation of the license or of the County Code within any 12-month period.

(b) Renewal or reinstatement of licenses must follow procedures established by the Director.

54-48. Appeals.

Any person aggrieved by an approval, denial, revocation or suspension of a bed and breakfast license may appeal the decision to the Board of Appeals. The Board of Appeals must hold a hearing on the appeal within 30 days after the notice of appeal has been filed, and must act on the appeal within 30 days after the hearing.

[[54-48.]] 54-49. Effect of a revocation.

For a period of 3 years after a license is revoked, the Director must not issue a bed and breakfast or short-term residential rental license to:

(a) the former licensee or a member of the former licensee's household; or

531 (b) any applicant for a license to use the same dwelling unit where the license
532 was revoked.

533 **Sec. 2. Effective date.**

534 This Bill becomes effective on July 1, 2018.

535 *Approved:*

536 _____
Roger Berliner, President, County Council Date

537 *Approved:*

538 _____
Isiah Leggett, County Executive Date

539 *This is a correct copy of Council action.*

540 _____
Linda M. Lauer, Clerk of the Council Date