

Short-term Rentals Benchmarking and Key Issues Report

At the direction of the City Manager, staff has reviewed existing code and researched benchmark cities for current practices related to short-term rentals. Short-term rentals fall into several categories, ranging from the rental of a single bedroom, to several bedrooms, to an entire home. The level of supervision of the property also varies, depending on the situation.

Changes in the way the city of Wilmington deals with short-term rentals have potentially broad implications. A full understanding of these implications requires an analysis of the Land Development Code, including key definitions that affect a myriad of legal and local government administrative issues.

1. Background

Many communities around the country have recently implemented or are considering some form of short-term rental regulation. According to a national study completed by the National Association of Realtors, the most common reasons municipalities regulate short-term rental include:

- a. **Residential character of the neighborhood.** There may be concerns about what impact short term rentals may have on the residential character of a neighborhood.
- b. **Property Maintenance.** There may be concerns that, in some instances, short term rentals with no owner-occupant present will be less cared for than permanent residences.
- c. **Revenue.** For some communities, particularly those with a robust tourist industry, short-term rentals may represent a significant source of tax revenue. Communities may require registration or licensing of short-term rentals as a means of identifying such properties, in part, for the collection of occupancy taxes.
- d. **Fairer competition with licensed lodging.** Short-term rental regulation may also be viewed as a way to level the playing field between these properties and competing hotels, motels, and bed and breakfasts that are regulated under state or local law.
- e. **Protection and Safety.** Short-term rental regulations may include operational restrictions and inspection requirements to ensure that proper health and safety standards are maintained.

2. Summary of research and national trends

Sixteen cities were examined for benchmarking purposes. Key factors examined include: definition of use, duration of stay, property supervision, use or type of activity on the property, and enforcement scenarios. Following is a list of trends based on this research.

- a. **Several cities studied include the definition of “short-term rental” as a residential dwelling rented for the purpose of transient lodging for a period of time not to exceed 30 consecutive days.** Some cities also regulate the total number of days per year each property is rented.

- b. **The level of rental property supervision varies.** While the majority of cities do not specify that the owner be onsite during the short-term rental, some cities regulate whether an owner or manager is required to be present during the time of the rental.
- c. **The majority of cities employ complaint-based enforcement.** Only two of the 16 cities use proactive enforcement by enforcement officers dedicated to this task.
- d. **A registration process for a permit or license for short-term rentals is typically used to track their locations, perform health and life safety inspections, and to allow for the collection of occupancy taxes.**
- e. **Short-term rentals are addressed in a variety of ways across the United States.** There are no commonly supported rules for regulating this use. The use has rapidly become more prevalent with the onset of the sharing economy¹ and is fostered by the ease of internet transactions.
- f. **A balanced approach to address concerns on both sides of the issue is the trend.** Neither outright prohibition, nor absence of regulation are typically used as a means of addressing this use by any of the benchmarked cities. The trend is generally a type of compromise with oversight by local government.

3. Current Application of City Code

Short-term rentals are not directly addressed in the city of Wilmington Land Development Code (LDC). Rather, the city must apply the current code language as written some time ago, when short-term rentals were not as prevalent. Because there is no specific definition of short-term rental in the LDC, the two existing LDC definitions applied to this use are *housing unit* and *family*. Whether the entire house or only a single room is rented, the required rental period must be at least seven days and the total number of occupants, including the primary tenant, if applicable, must meet the definition of *family*, namely, not more than three unrelated persons. The full definitions of these terms, as employed in the LDC, are provided as follows:

Housing unit

“one or more rooms together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly or longer basis, and physically separated from any other housing unit which may be in the same structure, and containing independent cooking and sleeping facilities for not more than one family.”

Family

“one or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit in a dwelling unit. For purposes of this chapter, a number of persons not exceeding two separate from and in addition to the persons related by blood, adoption, or marriage, may live and cook together as a single housekeeping unit in a dwelling unit although

¹ The sharing economy refers to the peer-to-peer-based sharing of access to goods and services, coordinated through community-based online services.

they are not all related by blood, adoption, or marriage and shall be deemed to constitute a family.”

Staff notes that the LDC does not include a definition for “**housekeeping unit.**”

There are also a few other uses defined in the ordinance that, while appearing to be applicable to short-term rentals, do not quite fit.

The current definition of **guest lodging**, for example, reads:

“a premises in which rooms are rented, with or without board, on a fee basis to permanent or transient guests, provided all accessory services such as dining rooms, shall be available to such guests only and not open to the general public.”

Further review of the applicable prerequisites (Sec. 18-277) reveals that *guest lodging* is actually more of a group home or single-room occupancy (SRO) type of use, as a floor plan for 24-hour supervision, along with residential quarters provided as a principle residence, are required.

Residential hotel is defined generally as a collection of suites:

“a building or group of buildings providing lodging for persons, with or without meals, and intended and used for the accommodation of transient lodgers in suites designed in such a fashion that reflects the intended use for transient lodgers and not for permanent residential accommodation. Suites may have one or more rooms in addition to bathrooms, water closet compartment, laundry, pantry, foyer, communicating corridor, closets, or any dining alcove. Kitchen area separate from the living or sleeping areas shall be provided and cooking may be done only in the kitchen area. The definition of residential hotels shall not include housing units as defined in this section, but may include services ordinarily provided by hotels, such as maid, desk, and laundry service.”

Bed and breakfast is specifically defined as:

“a type of, but a use separate from, that of home occupations. Bed and breakfasts are a form of guest lodging in which bedrooms are rented and breakfast is served. The term is intended to describe the offerings of temporary lodging in a private home having architectural and historic interest, rather than the provision of food service or the offering of facilities for long-term occupancy. The only functions permitted are the renting of guest rooms and serving of breakfasts.”

The incomplete, or inapplicable standards, definitions, and gaps in regulations highlight the need to explore potential changes in all of these areas of the city’s code.

The following table summarizes how each of the above referenced uses are addressed in several zoning districts of the city’s land development code:

Zoning District	Housing Unit	Guest Lodging	Hotel/Motel	Bed & Breakfast	Residential Hotel
R-20–R-10	Permitted				
R-7	Permitted			Permitted in HD-O	
R-5, R-3	Permitted				
MF	Permitted				
HD	Permitted	By SUP		Accessory use	
HDMU	Permitted	By SUP		Accessory use	
HDR	Permitted			Accessory use	
CBD	MF permitted, SF by SUP	Permitted	Permitted	Permitted	Permitted
UMX	Permitted	Permitted	Permitted	Accessory use	Permitted
RO	Permitted	By SUP			

4. Impact on Enforcement

Enforcement of short-term rentals in the city of Wilmington is handled on a complaint-driven basis. Staff is currently processing seven open cases, and a total of 12 were processed in 2015. Proactive enforcement presents several challenges:

- a. Identification of potential violations – Based on preliminary staff research, there are likely more than 100 short-term rentals, either entire dwelling units or private or shared bedrooms, in operation within the city. It appears that the majority of these units are not in compliance with the minimum seven-day rental period. There is no registration required for these units. Some of the units are readily identifiable; the majority are not.
- b. Initial enforcement – Based on staff’s current understanding of the number of properties in active use as short-term rentals, it is estimated that proactive enforcement would take approximately six months of a full-time zoning enforcement officer’s time to investigate and explore compliance issues. It would also require approximately 15-20 hours per week of administrative staff time to processes violations once identified. These estimates could change following an accurate inventory of active short-term rentals in the city.
- c. Ongoing enforcement - Upon completion of an accurate inventory and subsequent enforcement procedures, it is expected that ongoing proactive enforcement would require a minimum of one-half of a full-time equivalent position to monitor and enforce short-term rentals, plus additional administrative support.

Proactive enforcement would require additional staff resources or a substantial diversion of staff from other zoning compliance issues, including permit review, zoning inspections, preconstruction meetings, tree preservation, code enforcement (to include enforcement of any violation under the land development code), and customer inquiries.

5. Alternatives for Council Consideration

- a. **Enforce the current code on a complaint-driven basis.** Continue to enforce the current code on a complaint basis. Investigate when notified that a short-term rental owner or operator is reportedly violating the current code by renting for periods of less than one week, or to more than three unrelated persons.
- b. **Proactively enforce the current code.** Enforce the current code on a proactive basis, by first conducting an inventory of short-term rentals, (to the extent that on-line sites and other methods allow) and dedicating appropriate staff resources to the task. The same code standards as under (a.) above would apply.
- c. **Amend and enforce an updated code with revised standards.** Conduct a public input process and prepare amendments to applicable code sections. Issues to be considered include: defining short-term rentals, registration and licensing, location/zoning districts in which short-term rentals may be permitted, length of stay, health and life safety, neighborhood impacts (parking, noise, residential character, permitted uses, etc.), and level of supervision.
- d. **Amend the code to allow short-term rentals to go unregulated.** In contrast to alternative (c.) above, amend the code to exempt short-term rentals altogether from specific regulation. This likely would require a public input process and preparation of language to define the type(s) of rental housing to be exempted from specific regulation.

Assuming Council discusses this report at their agenda briefing on February 1, and If Council chooses to amend the code, a suggested schedule could be as follows:

- March 2016: initial public input meeting
- April 2016: follow-up public input meeting to present proposed changes
- May 2016: staff update to City Council
- July 2016: Planning Commission review of proposed amendment
- August 2016: City Council consideration of proposed amendment

Benchmarking information from the 16 cities studied for this report begins on the following page. Please note that each city's approach to the regulation of short-term rentals can be complex and all vary widely.

Summary of Benchmark Cities

Alexandria, VA Short-term rentals are not regulated.

Annapolis, MD Short-term rental regulations were adopted in 2011. These uses are defined as the rental of an entire dwelling unit without the necessity of a sublease; the rental of individual bedrooms, as per a boarding house, is not permitted. Units may be leased out for no more than six months per year, and there is no minimum rental period. A license must be obtained for each unit being rented, and life safety elements are required in each unit. Short-term rentals for specific uses, such as the Naval Academy graduation, are exempt from the registration requirements. All short-term rentals are required to comply with the regulations and grandfathering of non-conforming uses is not permitted. Enforcement is on a complaint-driven basis.

Asheville, NC Asheville began researching the issue of short-term rentals in August 2013, and regulations were adopted in November 2015. *Homestay* is the definition used, meaning a private, resident occupied dwelling, with up to two guest rooms where overnight lodging accommodations are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building. A homestay is considered a “lodging” use under the code. This means that a homestay is considered a commercial activity that is occurring in a residential structure. Short-term rentals are permitted by-right in non-residential districts and are not permitted in any residential districts. There is no grandfathering of non-conforming uses, with the exception of 11 historic vacation rental cottages built in the 1940s that have been in continual operation and allowed to continue as non-conforming uses. A full-time staff position was added to handle homestay regulation and short-term rental compliance, with some proactive regulation and enforcement activity. Fines for illegal rentals were recently increased to \$500/day after an initial 30-day grace period in which offenders are given the opportunity to comply. Asheville’s regulations are currently being considered for additional amendments to expand homestays to allow the use of accessory dwelling units as part of a homestay operation.

Carolina Beach, NC Short-term rentals are not regulated. The town acts under good faith that owners are reporting short-term rental businesses to the county tax assessor.

Chapel Hill, NC Short-term rentals are not specifically regulated; however, the definition of “dwelling unit” provides the basis for duration of stay for one week or longer.

Charleston, SC Discussion of short-term rental regulation began in early 2011. A “bed and breakfast ordinance” and a “short-term rental overlay district” were adopted in January 2012. Short term rentals are defined as a distinct type of accommodations use consisting of a limited number of fully functioning private dwelling units that are rented to families for periods of between one day and 29 days. To receive the approval of the Zoning Division, the short term rental must be located within the Short Term Rental Overlay Zone and be commercially zoned. A business license is required. Short-term rentals are allowed only on the peninsula. Beyond the peninsula (north of Highway 17), short-term rentals are not permitted. Enforcement is by citizen complaint and carried out via a letter or the issuance of a Municipal Summons for Livability Court.

Charlotte, NC Short-term rentals are not regulated.

Chattanooga, TN Short-term vacation rentals were identified a permitted use in 2009. These rentals are defined as “a single-family detached dwelling unit that is rented in part or its entirety on a daily or weekly basis for not more than thirty (30) days for overnight stay where a permanent residence is not established (mailing address, vehicle registration, etc.) and are generally advertised or otherwise held out to the public.” These rental units are only permitted in the R-2 and R-4 zoning districts in single family structures. Weddings and events are prohibited and no more than five sleeping rooms are allowed. Short-term vacation rentals do not include hotels, motels, or bed and breakfast establishments. There are no grandfathered uses. There is currently no mechanism in place to regulate short-term rentals in Chattanooga. Amendments are under consideration that would allow property in every zoning district to apply for a permit. The intent of the amendment is to make it easier to implement a revocable permitting and tracking process. There would be no term limit for the permit and a one-time application would be required. Enforcement is by complaint only.

Durham, NC Short-term rentals are not specifically regulated. The city’s adopted definition of “family” provides that no more than three unrelated people may live in a dwelling unit, which is the basis for enforcement. Durham city officials indicated that this definition is intended to prevent short term rentals. Visits to Airbnb and VRBO websites indicated that substantial numbers of short term rental properties are operating in that city. Enforcement of this issue is by complaint only.

New Bern, NC Short-term rentals are not regulated.

Raleigh The city first began the process of developing short-term rental regulations in mid-2014. While proposed regulations have been drafted, they remain under consideration/study. If approved as proposed, short-term rentals in residential districts would be permitted differently from short-term rentals in non-residential districts. Residential rentals would be subject to occupancy limits, parking regulations, and use restrictions that ban special events or business transactions from taking place in rental spaces. A zoning permit would be required for rentals of one or two rooms, while a special use permit would be required for three or more rooms or an entire dwelling unit. Enforcement of the rules would be carried out on a complaint-driven basis. The city does not yet plan to hire additional staff for this issue. All short-term rentals would be required to conform and grandfathering of uses would not be permitted.

St. Augustine, FL Short-term rental regulations were adopted in 2010. These uses are defined as a one- or two-family dwelling that is rented more than four times per year for a period of one week or more, but less than three months. These uses are permitted in two residential zoning districts and registration is required. Large gatherings are prohibited. All short-term rentals are required to comply with the regulations and grandfathering of non-conforming uses was not permitted. The city has enforcement staff specifically dedicated to short-term rentals.

San Francisco, CA The city began studying the issue in 2011 and adopted regulations in 2014 with an effective date of February 2015. A short-term residential rental is defined as a rental of all or a portion of a residential unit for periods of less than 30 nights. Only permanent residents of the city (owners and tenants who spend at least 275 days per year in the subject property) are eligible to rent their units as short-term rentals. Registration and life safety inspections are required. All short-term rentals were required to come into compliance and grandfathering of non-conforming uses was not permitted. Enforcement is both proactive and complaint-based. Online hosting platforms are required to collect and remit transient occupancy taxes and the city has established penalties for noncompliance. The city created an Office of Short-term Rentals to support the program, which is staffed by six employees.

Santa Fe, NM The city began studying the issue of short-term rentals in 2006. An ordinance was adopted in 2009, which allows short-term rentals of dwelling in commercial districts and residential resort districts by right. Short-term rentals are allowed within certain residential districts with the issuance of a permit (a unit may be rented up to two times per year without this permit). The number of permits city-wide is capped at 350; however, this cap is currently being considered for amendment, with the possibility of raising the cap to 1,000. The permits allow units to be rented for a minimum of seven days for a total of 17 rental periods per year. The permit application also requires notification of property owners within 200 feet of the property for which the permit is requested. The grandfathering of nonconforming uses was not permitted; all short-term rentals had 90 days to come into compliance with the regulations. One staff person is dedicated to collection of permit applications and enforcement. If the proposed changes are passed, the revised fee schedule associated with the permit structure would fund additional staff to support administration and enforcement.

Savannah, GA In 2014, the City of Savannah approved a zoning text amendment defining short-term vacation rentals and specific conditions associated with the use. A short-term vacation rental is defined as an accommodation for transient guests where, in exchange for compensation, a residential dwelling unit is provided for lodging for a period of no more than 30 consecutive days. Such use may include an on-site manager. A residential dwelling includes all housing types and excludes group living or other lodging uses. An ordinance was also adopted to better manage short-term vacation rentals by providing standards for life-safety and building codes, clarifying compliance with occupancy tax requirements and assuring protection of neighborhoods. It requires owners of short-term vacation rentals to obtain a certificate if they wish to rent their dwelling. As a type of lodging establishments, owners are subject to all applicable state and local taxes to include the hotel/motel tax. There is no grandfathering of short-term rentals in this process; all operators of short-term rentals are required to comply with the new regulations. The zoning department is proactively enforcing non-compliant uses. Non-compliant properties are turned over to Recorders' Court and issued a \$500 fine.

Wrightsville Beach, NC Short-term rentals are not regulated. The town acts under good faith that owners are reporting short-term rental businesses to the county tax assessor.

Benchmarking Summary

	City	Allowed	Defined	Min. rental period	Max. rental period	Enforcement	Registration/ License required	Safety inspection required	Dedicated staff resources	Nonconformities	Initial study	Effective date
1	Alexandria, VA	Not regulated	No									
2	Annapolis, MD	Yes	Yes	No	No max stay; annual cap 6 months/year	Complaint based	Yes	Yes	No	Not allowed after 6 months	2011	2011
3	Asheville	Yes	Yes	No	No	Proactive	Yes	Yes	Yes	No	2013	2015
4	Carolina Beach	Not regulated										
5	Chapel Hill	Yes	No	7 days	No	Complaint based	No	No	No	No		
6	Charleston, SC	Yes	Yes	No	29 days	Complaint based	Yes	No	No	No	2011	2012
7	Charlotte	Not regulated	No									
8	Chattanooga, TN	Yes	Yes	No	No	Complaint based	No	No	No	No	2009	2009
9	Durham	Yes	No	No	No	Complaint based	No	No	No	No		
10	New Bern	Not regulated	No									
11	Raleigh	Under review	Yes	No	No	Complaint based	No	No	No	No	2014	Pending
12	St. Augustine, FL	Yes	Yes	1 week	<3 months	Complaint based	Yes		Yes	No	2010	2010
13	San Francisco, CA	Yes	Yes	No	<30 nights (resident must spend 275 days/yr on property)	Complaint based and proactive	Yes	Yes	Yes	No	2012	2015
14	Santé Fe, NM	Yes	Yes	7 days	No max stay; 17 rental periods/year	Complaint based	Yes	yes	Yes	No - 90 days to come into compliance	2006	2008
15	Savannah, GA	Yes	Yes	No	≤ 30 days	Proactive	Yes	Yes	Yes	No	2015	2015
16	Wrightsville Beach	Not regulated										