



CONTINUED PUBLIC HEARING: LAND USE MANAGEMENT ORDINANCE TEXT AMENDMENTS - PROPOSED CHANGES TO ARTICLES 3, 4, 6, AND APPENDIX A RELATED TO SHORT-TERM RENTALS

STAFF REPORT

TOWN OF CHAPEL HILL PLANNING DEPARTMENT
 Colleen Willger, Director
 Judy Johnson, Assistant Director
 Anya Grahn, Senior Planner

AMENDMENT REQUEST	DATE	APPLICANT
Amend the Land Use Management Ordinance (LUMO) to provide regulations related short-term rentals (STRs).	June 16, 2021	Planning Department

STAFF'S RECOMMENDATION

That the Council continue the on-going public hearing regarding the Land Use Management Ordinance (LUMO) text amendment, receive public comment, close the public hearing, accept public comments for 24 hours, and consider enacting the ordinance on June 23, 2021.

PROCESS	DECISION POINTS
<p>The item before the Council is for approval of a Land Use Management Ordinance (LUMO) Text Amendment. The Council must consider whether one or more of the three findings for enactment of the Land Use Management Ordinance Text Amendment applies:</p> <ol style="list-style-type: none"> To correct a manifest error in the chapter; or Because of changed or changing conditions in a particular area or in the jurisdiction generally; or To achieve the purposes of the Comprehensive Plan. 	<ul style="list-style-type: none"> Allow primary residence short-term rentals (STRs) in all zoning districts, but limit dedicated short-term rentals to mixed use and commercial zoning districts. Prohibit dedicated STRs in the historic districts. Place a cap on the number of dedicated STRs permitted within multi-family dwelling developments. Establish operational standards. Permit simultaneous rentals only when the STR operator is on-site with guests as part of a primary residence STR. Provide an 18-month period in which existing STRs shall come into compliance with the enacted ordinance or cease operations if they do not comply with the ordinance.

Background

An STR is the renting of all or part of a residential dwelling unit for a period of less than 30 days. The current Land Use Management Ordinance (LUMO) predates the phenomenon of the shared economy and the rise of STRs. The North Carolina General Statutes explicitly exclude the rental of private residences for fewer than 15 days per year from paying sales and occupancy tax on accommodation rentals. Currently, the LUMO allows residents to rent their primary residence on a weekly basis without a permit; however, STRs are not specifically addressed in the Chapel Hill LUMO. STRs may be considered under the following LUMO definitions which do not accurately reflect the STR use:

- Home Occupation (allowed in most zoning districts)
- Tourist Home (allowed in non-residential zoning districts)
- Overnight Lodging (limited to the Blue Hill District)

On [June 19, 2019](#)¹, the Town Council asked staff to develop updated standards for STRs. Over the last two years, staff has worked with the STR Task Force, community members, and the Council to receive input on possible ordinance provisions. For more information regarding past meetings, materials, and recordings, please see the project website: <https://chplan.us/ChapelHillSTRs>³.

CHANGES TO DRAFT ORDINANCE FROM MAY 19, 2021 PUBLIC HEARING

During the [May 19, 2021 public hearing](#)⁴, the Town Council asked staff for changes to the draft STR ordinance:

- Modify the primary residence definition to reduce residency from 60% (219 days/year) to 50% of the year (183 days/year)
- Allow simultaneous rentals so long as the STR operator is on-site with guests
- Interest in permitting both dedicated and primary residence STRs as part of a pilot program. There was

¹ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=3985501&GUID=BFA3AA22-D1D1-4D51-9285-1C4FE6B2FF99>

² <https://chplan.us/ChapelHillSTRs>

³ <https://chplan.us/ChapelHillSTRs>

⁴ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=4955852&GUID=3AF096DD-698B-4641-9F93-1BFDAFD7EC76>

not a strong preference for a 12-month or 18-month amortization clause to bring STRs into compliance with the proposed ordinance.

- Allow on-street parking for STR guests as not all residential units have off-street parking.
- Eliminate the “Three Strikes, You’re Out” provision. Council felt that not all violations should be treated equally and there was interest in a well-defined investigation, notice of violation, and appeals process.
- Increase the age of the primary renter to 21 years.
- No dedicated STRs in any Residential (R-) zoning district.

Staff has updated the draft ordinance to reflect Council’s input on residency, rental age, parking, and prohibiting dedicated STRs in residential zoning districts.

Pilot Program

Per [GS160D-1207](#)⁵, the Town cannot require STR operators “to register rental property with the local government...” Recently, the New Hanover County Superior Court found Wilmington’s [whole-house lodging ordinance](#)⁶ to be void and unenforceable in the case of *Schroeder v. City of Wilmington* as the ordinance required STR operators to complete an annual registration. Wilmington has since filed an appeal of this decision as the city found that regulating STRs in residential areas was essential for safety and maintaining the integrity of residential neighborhoods. For more information on the Wilmington case, please see [Coates’ Canons](#)⁷.

Municipalities may continue to regulate STRs through land use regulations, including zoning ordinances, and require zoning permits for STRs.

Policies allow greater flexibility in introducing temporary measures to address zoning issues; however, staff has found that the Town cannot regulate STRs by requiring permitting through an adopted policy. No specific authorizing legislation permits municipalities to create laws through policies. STR regulations need to be incorporated into the zoning ordinance as law. Staff recommends Council adopt an ordinance based on the information currently available. Following the ordinance’s implementation, the Town can evaluate the success of the STR ordinance and refine the regulations through LUMO text amendments. Any new ordinance and amendments to the ordinance need to be created as part of the public process, which includes Planning Commission review and recommendations to the Council.

Existing STRs shall come into compliance with the enacted ordinance or, if they are unable to come into compliance, cease operations. Future changes to the adopted STR ordinance may create non-conforming uses. The LUMO defines a non-conforming use as one that was lawfully established prior to the effective date of the ordinance which does not conform to the current use regulations. Nonconforming uses are legal and may continue to operate after new ordinance requirements are in effect.

Code Enforcement & Violations

Staff has eliminated the “Three Strikes, You’re Out” clause, instead referencing [LUMO 4.5.9](#)⁸ which gives the Town Manager discretion in revoking an STR permit should an STR operator be in violation of the zoning ordinance. Further, it provides direction to reinstate STR permits should the permit be revoked by:

- Requesting a reinstatement within 90 days of the revocation
- Correcting the violations that caused the revocation
- Complying with all the conditions of the permit and all requirements of the STR ordinance

Any enforcement of the zoning ordinance would follow [LUMO 4.13 Violations and penalties](#)⁹.

TEXT AMENDMENT OVERVIEW

Staff proposes permitting two types of STRs:

- **Primary Residence STR:** The rental of a dwelling unit or dwelling unit with an accessory apartment on a property in which the host resides a majority of the year and is rented to transient guests for a fee for fewer than 30 consecutive days.
- **Dedicated STR:** The rental of a residential dwelling unit(s) on a property that is not used as a primary residence and is rented in its entirety to one party of transient guests at a time for a fee for fewer than 30 consecutive days.

Primary Residence STRs would be permitted in all zoning districts that allow for residential uses, whereas, Dedicated STRs would only be permitted in mixed-use and commercial areas. Staff would develop a STR permit (zoning compliance permit) that would require annual renewal.

⁵ https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160D/GS_160D-1207.pdf

⁶ <https://www.wilmingtonnc.gov/home/showdocument?id=10107>

⁷ <https://canons.sog.unc.edu/understanding-the-legal-basis-for-the-strike-down-of-wilmingtons-short-term-rental-ordinance/>

⁸ https://library.municode.com/nc/chapel_hill/codes/code_of_ordinances?nodeId=CO_APXALOUSMA_ART4PR_4.9ZOCOPE

⁹ https://library.municode.com/nc/chapel_hill/codes/code_of_ordinances?nodeId=CO_APXALOUSMA_ART4PR_4.13VIPE

The STR ordinance would:

1. Allow Primary Residential STRs in all residential zoning districts and limit Dedicated STRs to only mixed-use and commercial zoning districts.
2. Require a Zoning Compliance Permit (STR permit).
3. Place a cap on the number of STRs permitted in any multi-unit dwelling building to two (2) units or no more than three (3) percent, whichever is greater.
4. Amend Article 6- Special Regulations for Particular Uses to provide operational requirements for STRs.
5. Provide enforcement provisions including a process for revoking the STR permit and penalties for violations.

There have been many items proposed to be included as part of the STR program that are not included in the draft ordinance. Staff has provided the following table to show where these items will occur:

STR Permit:	Planning Dept. Policy:	STR Ordinance in the LUMO:
<ul style="list-style-type: none"> • Reminder that homeowner insurance may not include STR Use • Self-assessment of health and safety checklist 	<ul style="list-style-type: none"> • Items on the health and safety checklist • 100' mailing notification to neighbors • First come, first served approach for managing the multi-family cap which restricts STRs to 2 units or 3% of units, whichever is greater. 	<ul style="list-style-type: none"> • STR Permit Required • Operational Standards • Requiring permit number to be listed in all advertisements

These LUMO text amendments are proposed to create a program for regulating STRs. Following adoption of the ordinance, staff will collect data on existing STRs through the permitting process and gain a better understanding of where STRs exist, types of STRs, and the number of STRs in the community. The ordinance will provide an opportunity for additional monitoring, community feedback, and identifying issues that need to be addressed. Staff proposes scheduling an annual check-in with Council, as necessary, to discuss the progress of the STR program. Staff will initiate text amendments to amend the STR ordinance as necessary based on our data collection.

ATTACHMENTS	<ol style="list-style-type: none"> 1. Text Amendment Summary 2. Draft Staff Presentation 3. Resolution of Consistency (For proposed Land Use Management Ordinance amendment) 4. Revised Ordinance A (Enactment of Land Use Management Ordinance Text Amendment Proposal) 5. Resolution B (Deny Land Use Management Ordinance Text Amendment Proposal) 6. Planning Commission Recommendation 7. Planning Commission Letter to Council 8. Emails from the public
--------------------	--



PROPOSED CHANGES: TEXT AMENDMENTS TO THE LAND USE MANAGEMENT ORDINANCE ARTICLES 3, 4, 6, AND APPENDIX A

The following is a summary of the proposed text amendments to amend the LUMO to include STR regulations:

1. Allow Primary Residence STRs in all residential zoning districts and limit Dedicated STRs to only mixed-use and commercial zoning districts.

This amendment will modify the use table in order to specifically allow primary residence and dedicated STRs in certain zoning districts.

2. Require a Zoning Compliance Permit (STR permit).

This amendment will require that STR operators obtain a STR permit annually. A permit number will be assigned to each residential unit and this permit number shall be included in any rental advertisements.

3. Place a cap on the number of Dedicated STRs permitted in any multi-unit dwelling building to no more than two (2) units or three (3) percent of units, whichever is greater.

This amendment will permit only three (3) percent of units within a multi-unit dwelling development, such as apartment and condo complexes, to operate as Dedicated STRs. Permits will be issued on a first-come, first-served basis.

4. Amend Article 6- Special Regulations for Particular Uses to provide definitions and operational requirements for STRs.

A. Staff proposes adding definitions for:

- Primary Residence
- Short-term rental (STR)
- STR, Dedicated
- STR, Primary Residence
- STR Local Designated Responsible Party
- STR Hosting Platform
- STR Permit

B. Operational requirements include the following:

- Limiting simultaneous rentals to primary residence STRs and only when STR operator is on-site.
- Maximum overnight occupancy of two (2) persons per bedroom + two (2) additional persons, not including children under 12 years of age
- Designated Responsible Party that is available to respond on-site within two (2) hours to address any emergency situations stemming from the STR use
- No more than three (3) vehicles parked on- or off-street associated with STR use
- Prohibition of signs advertising the STR use
- STR operators are responsible for paying all applicable taxes and fees
- Minimum rental age of 21 years of age
- Minimum rental duration not less than 18 hours, including overnight

5. Provide enforcement provisions including enforcement of violation and penalties.

Similar to other zoning compliance permits, the STR permit is subject to enforcement. The Town Manager will have the discretion to revoke a STR permit should he/she find that the STR operator is in violation of the zoning ordinance and provides a process for reinstating revoked permits. STR violations and penalties will follow the same process as other zoning violations.

6. Amend Appendix A to clarify that these definitions do not apply to STRs.

Staff proposes amending the following definitions to clarify that they do not apply to STRs:

- Lodging Unit
- Tourist Home
- Hotel or Motel