



Public Safety Committee

MEETING AGENDA

Berryville-Clarke County Government Center

101 Chalmers Court, Second Floor

AB Meeting Room

Regular Session

February 23, 2023

3:00 PM

Item

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1. **Call to Order**

2. **Approval of Agenda**

3. **Unfinished Business**

4. **New Business**

Berryville Code Section 10-64.1: Parking for the Disabled

Discussion: Potential Amendments to Berryville Code: Short-term Rentals

Departmental Report

5. **Other**

6. **Closed Session**

7. **Adjourn**

## Public Safety Committee Agenda Item Report Summary

February 23, 2023

### Prepared By

Chief W. Neal White

Jean Petti, Deputy Town Manager

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### Berryville Code Section 10-64.1

This issue is brought before the Public Safety Committee for review as the results of complaints concerning enforcement of the ordinance. The current verbiage of the ordinance is as follows.

Sec. 10-64.1. - Two hours' free parking in time restricted or metered spaces.

(a) The disabled person, vehicle owner, volunteer or employee for an institution or organization to which disabled parking license plates, organizational removable windshield placards, permanent windshield placards, or temporary removable windshield placards are issued or to whom disabled parking license plates have been issued under the Code of Virginia, § 46.2-739(B) shall be allowed to park the vehicle on which such license plates or placards are displayed for up to two hours in metered or unmetered parking zones restricted as to the length of time permitted and shall be exempted from paying parking meter fees of the town.

(b) This section shall not apply to zones where stopping, standing, or parking is prohibited, or parking zones for special types of vehicles, or where parking would clearly present a traffic hazard.

( [Ord. of 1-9-18\(2\)](#) )

**State Law reference**— Similar provision, Code of Virginia § 46.2-1245.

The enabling legislation from the Code of Virginia is also of note to this discussion and cites the following.

§ 46.2-1245. Four hours' free parking in time-restricted or metered spaces; local option.

A. The disabled person, vehicle owner, or volunteer for an institution or organization to which disabled parking license plates, organizational removable windshield placards, permanent windshield placards, or temporary removable windshield placards are issued or any person to whom disabled parking license plates have been issued under subsection B of § 46.2-739 shall be allowed to park the vehicle on which such license plates or placards are displayed for up to four hours in metered or unmetered parking zones restricted as to length of parking time permitted and shall be exempted from paying parking meter fees of any county, city, or town.

B. This section shall not apply to any local ordinance which creates zones where stopping, standing, or parking is prohibited, or which creates parking zones for special types of vehicles, nor shall it apply to any local ordinance which prohibits parking during heavy traffic periods, during specified rush hours, or where parking would clearly present a traffic hazard.

C. The governing body of any county, city, or town may by ordinance provide that this section shall not apply within the boundaries or within any designated portion of such county, city, or town. Any county,

city, or town adopting an ordinance pursuant to this subsection shall indicate by signs or other reasonable notice that the provisions of this section do not apply in such county, city, or town or designated portion thereof.

1997, cc. [783](#), [904](#); 2012, cc. [17](#), [286](#).

Metered parking in the downtown district has an established two-hour maximum limit at present in order to facilitate turn-over to benefit merchants. In addition to the two-hour meters, there are strategically placed 15 minute meters, spaces reserved for disabled individuals, and public parking lots accessible from Crow Street and South Church Street.

Enforcement of overtime parking at a metered space while using a valid handicap parking placard or plate is the heart of this discussion. Complaints have been received about an individual with valid handicap license plates occupying a metered space for eight hours a day without receiving a parking citation. The owner of the vehicle has been contacted directly about the compliant and violation, and they contend that there is not enough available parking for disabled individuals in the downtown area.

Enforcement of this violation poses some challenges as well. In order to successfully pursue such a violation, the officer issuing a citation must be able to prove beyond a reasonable doubt that the vehicle did not move from the space during the two hour period. Routinely, chalking the tire of the vehicle would be a source of that definitive proof. However, a recent decision by the Sixth Circuit Court found that practice by a government actor to be unconstitutional in violation of the Fourth Amendment. A similar case was decided by the Eighth Circuit Court cited that the practice of chalking tires was permissible because of the de minimus impact on the individual. No case with a similar fact pattern has been decided by the Fourth Circuit Court or the United States Supreme Court.

Concerning the matter of available parking specifically designated for disabled individuals in the downtown district, there are ninety-nine metered parking spaces with six handicap designated spaces among them. In addition to the six are an additional two handicap parking spaces in the municipal parking lot on South Church Street. Guidelines received from the Virginia Department of Transportation (VDOT) indicate that the minimum amount of handicap spaces required by the Americans with Disabilities Act (ADA) standard is four.

The discussion surrounding this matter should focus on resolving the following issues:

- Is the current two-hour time limit in accord with the Code of Virginia,
- Approach to enforcement of this specific violation, and
- Is there a suitable inventory of parking spaces restricted for handicap parking.

## **Short-term Rentals**

This discussion began with the Town Council on February 14, 2023 and was referred to this committee as well as the Community Development Committee. Deputy Town Manager Jean Petti had provided a synopsis of considerations yielded from her research to the Town Council at the February 2023 meeting, and it is also attached to this report.

It would appear that if an ordinance is drafted with respect to the regulation of short-term rentals it would be situated in the Town Zoning ordinances. The key components of the ordinance should address the registry process, use limitations, parking considerations, revocation of registration/permit process, and define the town official(s) who manage the process.

I have included a copy of the short-term rental ordinance for the City of Winchester as an example for the committee to review.

## **Department Report**

All department positions are now filled with one employee in the process of attending basic law enforcement officer certification training. Once that employee completes their training, the department will have two shifts of four officers supervised by a sergeant.

Recruitment and retention of qualified candidates remains an issue on the national level. Fortunately for our department, many of the officers on staff have over five years invested with the department. Historically, officers who terminate their employment with the department move on to larger agencies for the increase in compensation and other benefits. The compensation and benefit package for the department is very competitive with similar agencies, but we must always keep watch on local trends with respect to the areas.

Accreditation compliance is on-going and there are no identified issues. All policies and procedures are current and in compliance with state standards. A first term virtual audit has been completed and we will not have another on-site audit until the fall of 2025.

The department budget has been submitted for review along with five-year capital improvement projects.

## Short-Term Rental Regulation

### State Code Context:

02/03/2023

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 9. General Powers of Local Governments

### **§ 15.2-983. Creation of registry for short-term rental of property.**

A. As used in this section:

"Operator" means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity.

"Short-term rental" means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy.

B. 1. Notwithstanding any other provision of law, general or special, any locality may, by ordinance, establish a short-term rental registry and require operators within the locality to register annually. The registration shall be ministerial in nature and shall require the operator to provide the complete name of the operator and the address of each property in the locality offered for short-term rental by the operator. A locality may charge a reasonable fee for such registration related to the actual costs of establishing and maintaining the registry.

2. No ordinance shall require a person to register pursuant to this section if such person is (i) licensed by the Real Estate Board or is a property owner who is represented by a real estate licensee; (ii) registered pursuant to the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.); (iii) licensed or registered with the Department of Health, related to the provision of room or space for lodging; or (iv) licensed or registered with the locality, related to the rental or management of real property, including licensed real estate professionals, hotels, motels, campgrounds, and bed and breakfast establishments.

C. 1. If a locality adopts a registry ordinance pursuant to this section, such ordinance may include a penalty not to exceed \$500 per violation for an operator required to register who offers for short-term rental a property that is not registered with the locality. Such ordinance may provide that unless and until an operator pays the penalty and registers such property, the operator may not continue to offer such property for short-term rental. Upon repeated violations of a registry ordinance as it relates to a specific property, an operator may be prohibited from registering and offering that property for short-term rental.

2. Such ordinance may further provide that an operator required to register may be prohibited from offering a specific property for short-term rental in the locality upon multiple violations on more than three occasions of applicable state and local laws, ordinances, and regulations, as they relate to the short-term rental.

## Short-Term Rental Regulation

D. Except as provided in this section, nothing herein shall be construed to prohibit, limit, or otherwise supersede existing local authority to regulate the short-term rental of property through general land use and zoning authority. Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the declaration of a common interest community as defined in § [54.1-2345](#), the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ [55.11800](#) et seq.).

2017, c. [741](#).

### Neighbors at a glance:

*Clarke County*- limited to dwellings and tenant houses, licensing required, occupancy limits established, limits on meals/events, grace period

*Leesburg*- restricted to resident owner, max 6 occupants or fire code (whichever is less), two off-street parking spaces required, annual inspection and licensing, no signage permitted

*Loudoun County*- (in-process, potentially to include) limited to residences, limited number of days per year (<185), grace period, "Unmet Housing Needs Units" disallowed (essentially eliminating possibility of STR in income-adjusted housing)

*Winchester*- SFD or townhome only, inspection every 4 years, annual ledger audit. Homesharing has flexibility, but STR as primary use of property more restricted

*Frederick County*- restricted to dwellings (no yurts), 5 max rooms and/or 10 max occupancy per LOT, permit/license/taxes, no parties, posted evacuation routes and additional fire extinguishers, must be available to inspector

### Recommended points for consideration:

*Determine if short-term rentals should be allowed. Current zoning allows:*

**bed and breakfast establishment** - A home occupation consisting of rooms maintained for the purpose of providing overnight sleeping accommodations and breakfast for paying guests, and subject to the following:

- (1) A maximum of five (5) guest rooms, with a maximum occupancy of six (6) persons;
- (2) No receptions, private parties, or similar events for a fee shall be permitted;
- (3) Guest stays shall be limited to thirty (30) days;
- (4) Applicable provisions and requirements of the Unified Statewide Building Code and the Virginia Department of Health shall be satisfied;
- (5) Adequate on-site or off-site parking shall be provided so as not to interfere with or

## Short-Term Rental Regulation

result in inconvenience to surrounding residences;

(6) All other provisions pertaining to home occupations shall be satisfied

**country inn** - An establishment offering for compensation to the public not more than 12 guestrooms for transitory lodging or sleeping accommodations of not more than 14 days of continuous occupancy. As accessory uses to a Country Inn, meal services and/or permanent places of public assembly may be provided. The total maximum capacity of areas used for meal service and/or places of public assembly for special events shall be 500 people without additional permitting provided that areas to be used for this purpose, including food service and parking, are provided for on an approved site plan on the site on which the inn is located

**hotel** - A building designed or occupied as the temporary abiding place for fourteen (14) or more individuals who are, for compensation, lodged, with or without meals, and in which no provision is made for cooking in individual rooms or suites

*If Short-Term Rentals (STRs) are determined to be a permitted use, then consider:*

Should a registry be created? If so, set cost of initial filing/annual renewals

Whether additional licensing and inspections are required- i.e., business licenses, inspections annually or every few years.

Should STR registration be limited to dwellings or encompass accessory structures and/or temporary or non-structures?

Will listings require a Certificate of Occupancy and business license and remit Transient Occupancy Tax?

What zoning classifications should be open to STRs?

What is the maximum number of guests? Is it based on based on bedrooms and parking or on other considerations?

Is signage permitted?

Are parties/events/weddings, etc. permitted? If so, will additional restrictions exist re: parking, noise, insurance/damages

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## City of Winchester – Zoning Ordinance

### Sec. 18-29. Homeshares and short term rentals.

18-29-1 A zoning use permit pursuant to Section 18-1 of this Article shall be required prior to the commencement of a homeshare or short term rental use. Any permit issued to a homeshare or short term rental operator is non-transferrable.

18-29-2 Homeshare use requirements:

- A. Shall only be operated as a home occupation pursuant to Section 18-19 of this Ordinance.
- B. The operator shall only be an owner who utilizes and resides at the dwelling as his/her primary residence. An owner must reside at the dwelling when being rented to guests.
- C. No more than two rooms shall be rented to guests at one time.
- D. Shall not be rented to more than four guests at one time.
- E. Shall comply with provisions A through O of Section 18-29-2 of this Ordinance.

18-29-3 Short term rental use requirements:

- A. A fire extinguisher shall be provided and visible in all kitchen and cooking areas; smoke detectors shall be installed in all locations as identified in the Uniform Statewide Building Code; and a carbon monoxide detector must be installed on each floor in every dwelling.
- B. No exterior signage for the use may be utilized.
- C. The short term rental operator shall comply with all registration, filing and taxation requirements with the Commissioner of Revenue's and Treasurer's offices.
- D. Off-street parking must be available at the dwelling unit in accordance with Section 18-6, subject to special exemptions or reductions for properties located within Parking Districts A and B as provided in Section 18-6-6.
- E. The use at all times must comply with applicable noise and maximum sound level regulations per Chapter 17 of Winchester City Code, as amended.
- F. By submitting an application for a short term rental, an applicant authorizes the Administrator or designee to enter the subject property, upon reasonable advance written notice to the applicant, at least one time during the calendar year to verify that the short term rental is being operated in accordance with the regulations set forth within this Section.
- G. A property management plan must be submitted to the Administrator, illustrating how the operator will handle neighborhood complaints, trash collection/removal, noise, and other neighborhood concerns.
- H. The short term rental shall not be marketed or used for weddings, receptions, or other events.
- I. No food shall be prepared for or served to guests by the owner or operator of the short term rental. Utilization of kitchen facilities within the short term rental by guests shall not be restricted.
- J. The owner of any property applying for a short term rental, or the owner of the controlling entity that owns a property applying for a short term rental, must sign the application for a short term rental.
- K. Sub leasing, defined as a lease of a property by a tenant to a subtenant, of short term rentals is strictly prohibited.

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- L. The operator must identify a responsible party who will be immediately available to respond to and resolve issues and complaints that arise during use of the property as a short term rental.
  - M. Emergency information must be conspicuously posted inside the property, including contact information for the party responsible for management of the facility.
  - N. Multifamily and mixed-use structures are excluded from the ability to utilize the short term rental use whether owner occupied or not. Single family homes and townhouses are the only eligible structures types.
  - O. All short term rental operators are responsible for keeping a ledger containing the dates and amount charged for any stay that occurs. That information will be provided to the Commissioner of the Revenue and the Zoning Administrator on an annual basis.
  - P. The total number of sleeping rooms available for rental is limited to a maximum of five sleeping rooms. Structures that exceed five bedrooms are prohibited from operating a short term rental.
  - Q. Short term rentals may exceed the occupancy regulations found under 1-2-36. The total number of adult renters allowed in a short-term rental shall be limited to two adults per available sleeping room, with a total maximum of ten total occupants including children. Double booking which consists of more than one booking transaction occurring at the same time is not allowed. Occupancy may be further limited under the Building Code.

( Ord. No. 2021-33 , 11-23-2021)

Ord. No. 2021-33 , adopted November 23-2021, amended § 18-29 in its entirety to read as herein set out. Former § 18-29, pertained to similar subject matter, and derived from 6/12/18, Case TA-18-151, Ord. No. 2018-16 .