

Short-Term Rental Regulations

With the proliferation of short-term rentals (STRs) across Vermont, many municipalities have considered regulating them or have already adopted STR regulations. This info sheet describes the applicable statutory parameters and identifies central issues selectboards should keep in mind when deciding whether to adopt such regulations and which method of regulation(s) would be most effective for their purposes.

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Regulating Short-Term Rentals (STRs): Ordinance and/or Zoning Bylaws?

Is your municipality considering short-term rental regulations? If so, this info sheet provides a summary of your municipality's options and considerations. While every effort is made to provide members with the most accurate information possible, this resource does not constitute legal advice.?

Enabling Authority

As a Dillon's Rule state, Vermont municipalities can only exercise that authority which is expressly granted to them by the Legislature, or that which is implied by and/or necessary to carry out those explicit grants of authority. Vermont law specifically allows municipalities to regulate short-term rentals ("STRs") either through the authority granted them to regulate land use through the enactment of zoning bylaws and/or its police powers by adopting a

standalone ordinance.

The specific enabling provision permitting municipalities to regulate STRs by virtue of either an ordinance or zoning bylaw ([24 V.S.A. § 2291\(29\)](#)) states:

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

(29) To regulate by means of an ordinance or bylaw the operation of short-term rentals within the municipality, provided that the ordinance or bylaw does not adversely impact the availability of long-term rental housing. As used in this subdivision, “short-term rental” means a furnished house, condominium, or other dwelling room or self-contained dwelling unit rented to the transient, traveling, or vacationing public for a period of fewer than 30 consecutive days and for more than 14 days per calendar year.

This law identifies an STR by how long it’s rented (fewer than 30 consecutive days and for more than 14 days per calendar year). We interpret “fewer than 30 consecutive days” to mean a single rental transaction that is 30 days or less. In other words, for example, a house that is leased by a landlord to a tenant on a month-to-month basis wouldn’t fall under the statute’s definition of STR. We interpret the second qualifier of this definition (“more than 14 days per calendar year”) to mean that a residence could be rented for fewer than 14 days a calendar year without being subject to STR regulations; in other words, residences rented for 13 days in a calendar year would be exempt. We don’t interpret this as being limited to consecutive days. For example, 13 one-day rentals or one 13-day rental would not trigger the regulation. If a property in your municipality doesn’t fall within this definition, it cannot be regulated as an STR.

The law’s only express limitation on municipal regulatory authority is that no STR ordinance or bylaw can “adversely impact the availability of long-term rental housing” stock. This standard appears to be results-oriented; however, there is no clear direction from the Legislature as to how this would be applied and, consequently, will likely be left to the courts’ interpretation.

Overall, this legal framework means that local regulations can be customized to suit each municipality’s needs within the law’s relatively broad parameters. Choosing which form of regulation (ordinance or zoning bylaw) is the best fit for your municipality will depend on

various factors and considerations, as elaborated in this resource.

Ordinances

An ordinance is a legislative act by a municipality's legislative body – its selectboard, city council, aldermen, or trustees – that forbids or restricts an activity or requires one to be performed in a certain way. It's an expression of municipal will affecting the conduct of its inhabitants that carries the state's authority and has the same effect within its territorial limits as a state statute does. An ordinance sets expectations that the townspeople have for behavior in public and notifies people of potential consequences when these expectations are not met, including fines. Once adopted according to the statutorily prescribed process, an ordinance becomes a legally enforceable local law within that community. More information on ordinances is contained in our [Municipal Policies and Ordinances Info Sheet](#)

Local Zoning Regulations (“Zoning Bylaws”)

Zoning bylaws are the most common regulatory tool used for implementing a municipality's vision for land development within its borders. Vermont law ([Title 24, Chapter 117](#)) enables local land use planning and development regulation, so long as a municipality's zoning bylaws conform with its town plan. The law includes parameters for required and prohibited content in local bylaws and prescribes the statutory process for adopting and amending them. Zoning bylaws may “define different and separate zoning districts and identify within these districts which land uses are permitted as of right, and which are conditional uses requiring review and approval....” [24 V.S.A. § 4414\(1\)](#). Therefore, if STRs are regulated by zoning bylaws, STRs would need to be deemed either a permitted use subject to administrative review (by the administrative officer, aka zoning administrator or ZA) or a conditional use subject to review by the appropriate municipal panel(s) (i.e., DRB, PC, ZBA exercising development review authority). Municipalities that have already adopted zoning bylaws benefit from having the structure in place to implement their vision using these types of review. For more background information on ways to achieve your planning goals, see Vermont Planning Information Center's (VPIC) [Vermont Land Use Planning Implementation](#)

[Manual](#).

General Considerations

Adoption: Ordinance. An ordinance is adopted by the selectboard at a duly warned open meeting. After its adoption, an ordinance can be challenged by voter petition. Overall, it's a much easier and quicker process than adopting a zoning bylaw. More information on ordinance adoption can be found [here](#).

Adoption: Zoning Bylaw. The statutorily prescribed process for adopting or amending a zoning bylaw, which can be found in [24 V.S.A. §§ 4441-4442](#), first requires the planning commission to create a written report that ensures the bylaw proposal conforms with the town plan. Subsequently, the planning commission and selectboard must hold public hearings on the proposed bylaw. In both cases, there is a minimum statutory requirement for the number of public hearings required and allowance for public participation, but both bodies can certainly go above and beyond and hold more hearings to maximize public engagement and inform voters. Zoning bylaws are adopted, amended, or repealed by the selectboard after its final hearing or by the voters by Australian ballot if so warned by the selectboard. The Vermont Planning Information Center (VPIC) has created helpful guidance for adopting zoning bylaws, which you can find [here](#). Your [Regional Planning Commission](#) (RPC) can provide helpful resources on zoning bylaws, as well.

Enforcement: Ordinance. A municipal ordinance must be designated as either civil or criminal. Vermont law allows for enforcement of violations in either the Judicial Bureau or in Superior Court. [24 V.S.A. § 1974a](#). The Judicial Bureau is generally less expensive and less time-consuming than Superior Court and does not require the assistance of an attorney. Enforcement in the Judicial Bureau is more appropriate for less severe ordinance violations and situations where monetary penalties of less than \$800.00 per violation are imposed. In instances where a town seeks either penalties that escalate beyond \$800.00 or “injunctive relief” (a court order to do or not do something), enforcement must be pursued in Superior Court [24 V.S.A. § 1974a\(b\)](#) because the Judicial Bureau lacks this authority.

Enforcement: Zoning Bylaw. Zoning bylaws can also be enforced in two ways as the controlling law ([24 V.S.A. § 1974a\(d\)](#)) says, “[c]ivil enforcement of municipal zoning

violations may be brought as a civil ordinance violation pursuant to this section or in an enforcement action pursuant to the requirements of chapter 117 of this title.” As the law states, zoning bylaw violations can be enforced as an ordinance is through Judicial Bureau ticketing or as a civil action in the Environmental Division of Superior Court (aka environmental court) under [24 V.S.A. §§ 4451-4452](#). A civil action takes longer to resolve than ticketing through the Judicial Bureau and likely requires more resources since an attorney will need to represent the town.

Purpose

An ordinance in particular needs a strong basis to avoid legal challenge, and a clear purpose helps establish that basis. The enabling law for STRs states the broad purpose of this regulation as, “promoting the public health, safety, welfare, and convenience” of the municipality. If an STR regulation is contained within the zoning bylaws, it will also need to conform with the town’s land use plan and existing self-executing provisions of Vermont’s planning and development law (i.e., Title 24, Chapter 117). A town adopting STR regulations as an ordinance faces no such restrictions.

If a town wants to regulate STRs from both a land use perspective (to specify which districts they’re allowed in, if any, and under what conditions) and a quality-of-life perspective under an ordinance, then it can adopt both a standalone STR ordinance and a STR zoning bylaw, though it should be mindful to ensure they are consistent and don’t conflict with each other.

Content/Terms

How you want to regulate STRs will also help inform the decision of which tool to use. For example, identifying suitable locations for STRs is best addressed by zoning bylaws, whereas municipalities are seemingly on firmer legal ground creating things like an STR registry, residency requirement, and a cap on total annual stays through an ordinance than through zoning bylaws.

Some regulations of negative secondary effects (e.g., noise, lighting, solid waste) have been tested in court more than others and, therefore, the parameters for such regulations are more clearly defined. Local STR regulations in Vermont commonly address occupancy limits

and total capacity which are untested. Zoning bylaws can include a proof of wastewater permit requirement before construction may be commenced, and conditional use review can indirectly get to capacity and occupancy concerns, but zoning bylaws would not likely be able to include an explicit occupancy limit. An ordinance can restrict total occupancy or link capacity to number of bedrooms. However, it is important to include a waiver when the imposed limit is overly restrictive (i.e., when a total occupancy limit wouldn't allow for more than one person to a bedroom) which could be challenged on constitutional grounds. Some local regulations might cap the number of rentals per year, and this should be supported by data in terms of the likely impact such a regulation on the availability of long-term housing as stated in the regulation's purpose section.

A tracking mechanism such as an annual registry is also a common element in local STR ordinances. Once a person opens their property to STRs, they become subject to State laws, rules, and codes. A registry ensures the public is aware of properly licensed, registered, and compliant STRs to further public safety goals. It also ensures proper advertising of legitimate STRs and can help in identifying violations.

Because the law is new and local STR regulations are relatively untested in Vermont, municipalities might want to approach their regulations cautiously in terms of some of the elements above where legal footing is unclear. For example, residency requirements in STR ordinances have been challenged in other federal jurisdictions with varying results. The Fifth Circuit struck down a local ordinance that required STRs to be owner-occupied as unconstitutional because it violated the dormant Commerce Clause and discriminated against non-residents.¹ But the Ninth Circuit upheld local ordinances' owner- or host/property manager- occupied requirement, which it found to be constitutional.² While neither of these decisions are controlling in Vermont, similar arguments can be made here, and the question remains open. Currently, Burlington's STR regulations are being challenged on these grounds and we will know much more once the dust settles.

Completely banning or prohibiting STRs from a municipality raises enough legal issues that considering this option will require close consultation with the town's attorney. The existence of STRs prior to adoption of a prohibition adds legal complications, as well, given their pre-existing status, though they may potentially be regulated as nonconforming uses. Each municipality will have unique circumstances and their town attorney will need to tailor their regulatory scheme based on those facts and specific cases.

One last note relative to zoning specific STR bylaws. As with all other zoning bylaw provisions, STR regulations must include measurable standards. It may help to think of your bylaws as a road map for your zoning administration and applicants alike. The lack of any signs makes it difficult to know where to go. For this reason, bylaws must include standards for when discretion is allowed; otherwise, a court could find them unenforceable (e.g. void for vagueness). Conditions imposed must also be reasonably related to the specified review criteria and supported by findings or the decision is likely to be considered arbitrary. As the Vermont Supreme Court held in *In re Appeal of JAM Golf*, “[s]uch standardless discretion violates property owners’ due process rights.” *In re Appeal of JAM Golf, LLC*, 2008 VT 110. Provisions without any standard or with a vague standard will need to be revised to include one that is measurable for the town to determine compliance; otherwise, they should be removed. Relatedly, all terms should be defined.

Below is a list of common elements found in STR regulations and which tool (bylaw or ordinance or both) might be best to address them. Note that, just because we consider one mechanism better for regulating STRs than the other, doesn’t mean that either or both can’t be used.



Ordinances

- Traffic Control
- Noise
- Parking Control
- Capacity/Occupancy Limits
- Solid Waste/Trash
- Annual Registry/Tracking Mechanism
- Cap On Total Annual Stays
- Residency Requirement of Owner/Host



Zoning Bylaws

- Determining Allowable Locations
- Type of Development Review Required (classify STR as permitted or conditional use)
- Traffic Pattern/Access
- Lighting
- Parking Pattern

Complete prohibition? Consult with an attorney.

External Resources

We have provided a list of links from external organizations that may contain useful information to consider as well (left). The National League of Cities has compiled a Short-term Rental Regulations Guide for Local Governments you might find helpful. Your regional planning commission has several resources and can provide you with direct assistance. Additionally, there are links to State of Vermont Agencies that regulate short-term rentals. Please note, the Vermont Short-Term Rental Alliance is a nonprofit business association for vacation rentals managers and hosts operating in Vermont.

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