

Town of Irvington Short Term Rentals (STRs): Frequently Asked Questions

October 4, 2022

1. Q: I am operating an STR currently. Is it legal under the zoning ordinance?

A: While STRs have been rented for some time, they have not been legal since they are a business use in a residential area. The zoning ordinance simply did not allow them. The use was legalized in the Town Council action of September 8, 2022, under certain conditions. But it remains illegal and must cease operation unless it has a conditional use permit (CUP), is exempted from the CUP requirement in the STR ordinance, or meets the requirements to be grandfathered under the September 8, 2022 STR zoning ordinance adopted by Town Council (see enactment clause 2 at the end of the STR ordinance). Also, STRs that are unregistered, fail to pay their transient occupancy taxes, lack a certificate of occupancy or eligibility for a certificate of occupancy, or are located in a boat, tent, or accessory structure are prohibited.

2. Q: How do I know if I have a CUP to operate an STR?

A: If you don't know, it is unlikely you do. A CUP is a legislative approval from the Council, so the minutes of the Town will confirm whether you do or don't. You can ask Justin Nelson, the Town Zoning Administrator, who can research it. Call or stop by the Town Office.

3. Q: You mentioned being exempted from the STR ordinance's requirement to have a CUP to operate an STR in Irvington. What exemptions are there?

A: There are two exemptions stated in the STR ordinance. You are exempted from the requirement of a CUP if you own and operate your STR and you occupy it as his or her primary dwelling for a minimum of 285 days per year and only operate it as an STR for up to two stays of up to ten days each per year maximum, or your STR is an Inn, Hotel, Motel or Tourist House with a valid conditional use permit. In addition, although not stated as an exemption, certain STRs actively operated, registered STRs are grandfathered from the requirement for a CUP and, if needed, the cap in the STR ordinance.

4. Q: What is being "grandfathered?"

A: When a Virginia governing body like Town Council adopts a new zoning ordinance amendment, it may choose to exclude certain described use or structures or lots from some or all the newly adopted requirements under stated terms, as of the date of the adoption of the new zoning ordinance amendment. Council chose to grandfather certain STRs from the cap and the CUP requirements in order to honor the recommendation of the STR Committee and Planning Commission that existing, taxpayer STR businesses registered with the town not be shut down but be permitted to continue operation and recognize their contribution to the welfare of the town.

5. Q: How do I know if my STR is grandfathered under the new STR ordinance?

A: The ordinance controls, but in summary, here are the requirements. The STR must have been, as of September 8, 2022: (i) registered with the Town, (ii) actively operating, as of September 8, 2022, for a minimum of three months in 2022 with at least two different guests renting during that time, and (iii) had all transient occupancy taxes for the STR current and paid. No STR is grandfathered which lacks a certificate of occupancy or eligibility for a certificate of occupancy, or is located in a boat, tent, or accessory structure.

6. Q: How do I prove my STR is grandfathered?

A: Zoning Administrator Justin Nelson will be making a grandfathering decision and communicating his decision to the STR registrants who were registered as of September 8, 2022. However, in the end, since grandfathering is an exception to the mandates of the zoning ordinance, STR operators bear the burden to prove eligibility for grandfathered status. Properly completing and filing the monthly town transient occupancy tax form would prove active operation, resulting revenue and your liability for transient occupancy taxes. If STR platforms like AirB&B and VRBO were supposed to be paying the taxes for you, they do not provide the town any taxpayer-specific information (addresses, STR names or I.D. of any kind) to prove that proper taxes are paid. In that instance, we ask that STR operators print out/screen shot their online or app dashboard tax sheet showing that the transient occupancy taxes were paid on their behalf. He has no authority to allow an STR that does not meet the criteria of the zoning ordinance.

7. Q: What if I don't have a CUP and am not exempted and not grandfathered? How do I get to legally operate an STR in Irvington?

A: Unless exempted from the CUP requirement or are grandfathered, you must apply for a CUP, as provided in the STR ordinance. Contact Justin Nelson, Town Zoning Administrator.

8. Q: You mentioned the Town STR registry. I've filled in the town registry form, and my STR information is on the list with Laurel at the Town Offices. Am I "registered"?

A: Yes, for purposes of qualifying for grandfathering, you are registered but you must meet the other requirements (taxes paid, etc.) to be fully grandfathered. Although the Town's pre-existing registry was authorized by Council, and dutifully carried out by staff, we believe it may not have been a formal registry established by ordinance per the state statute. The Council adopted a new ordinance this Spring which calls for an official registry under state law starting for calendar year 2023.

9. Q: I am planning on operating an STR, but have not really started to rent it out. Can I be grandfathered?

A: No. As of September 8, 2022, the STR must have been actively operated for at least three months of the 2022 year, which includes renting it to two separate individuals for stays and payment of transient occupancy taxes. If your STR does not meet this test, it is not grandfathered and needs a CUP to operate (unless exempted).

10.Q: I am not sure whether I have paid my transient occupancy taxes. How does this affect grandfathering?

A: If you have not paid your proper transient occupancy taxes for your STR, you cannot meet the tax-paying element of the grandfathering test. Be prepared to prove that you are current on your transient occupancy taxes with the Town. If you are not current on your transient occupancy taxes as of September 8, 2022, your STR is not grandfathered and you need to bring your taxes current and will need a CUP to operate.

11.Q: The STR ordinance says there is a cap of 35 STRs in Irvington. How does the cap work and are there any exceptions?

A: The cap states that there should be no more than 35 STRs in Irvington, but like the requirement for a CUP, it is subject to certain exceptions. One, STRs with a CUP to operate as an Inn, Hotel, Motel, or Tourist Home are exempted from this cap. Two, owner-occupied STRs operated for up to two stays of up to ten days each per year maximum are also exempted. Third, those STRs that were grandfathered by the STR ordinance also do not require a CUP and so are effectively exempted so long as grandfathered.

If not grandfathered or exempted, STRs require a CUP to operate in the Town, and the cap will be enforced through the CUP process. The number of grandfathered STRs and CUP-granted STRs will be taken into account so that the 35 cap can be maintained. Council could potentially adjust the number of the cap in the future by zoning ordinance amendment, but it is not likely given the recency of the Council's adoption of the cap based on the recommendations of the STR Committee and Planning Commission.

12.Q: Why a cap of 35?

A: The STR Committee and Planning Commission recommended, and Council agreed, that a cap would be important to preserve the character of the town as predominately a residential community and not a transient one, while also allowing some reasonable number of STRs to operate. There are localities and areas which, like Irvington, are wonderful to live in and visit, and where visitors overwhelm the local residents. That is not desired here. The STR Committee considered approximately 10% of the town population, 10% of the number of structures and 10% of the number of parcels in the Town (all rounded) in selecting the number 35.

13.Q: My STR is grandfathered. Do I have to comply with the STR regulations and requirements?

A: Yes, being grandfathered avoids the CUP requirement for now, but all other regulations apply. This includes complying with the STR registry and business license permitting requirements, as applicable, paying transient occupancy taxes, and complying with all the other zoning regulations on STRs.

14.Q: Can I lose my grandfathered status? What happens if I do?

A: Yes. There are several ways to lose grandfathered status. Grandfathering of an STR expires if (i) the STR ceases active operation for more than ten months (active operation requires a minimum of two rentals to unrelated guests, payment of all transient occupancy taxes, and compliance with the STR regulations); (ii) the property on which the STR operates changes title ownership, beneficial interest, or effective control; (iii) the STR ceases to be validly registered with the Town, or if exempted, the STR Operator fails to have a valid business license permit with the Town; and (iv) Town Council adopts an ordinance to revoke grandfathering of any Short Term Rental due to a change in circumstances, including but not limited to violations of this ordinance or other applicable state or local laws. If no longer grandfathered, a CUP approved by Council is required to operate the STR.

15.Q: I am a realtor. Doesn't state law exempt me from the STR regulations?

A: Yes and no. State law does exempt realtors from mandatory registration under the STR registry statute. (Note, however, that Town Code requires realtors and other businesses to apply for a business license permit, effective January 1, 2023.) However, state law does not exempt realtors, either as STR owners or as STR operators, from the STR zoning ordinance adopted by the Council on September 8, 2022. Realtors, like all others, must comply with zoning. This includes the cap and the requirement for a CUP, unless grandfathered or exempted.

16.Q: So, what is the difference between the STR registry and the business license permit?

A: Substantively and legally, they are different things. The STR registry is a registry under the state statute allowing a locality to require registration of STRs. The business license permit is under a different state statute, allowing a locality to require a business, professional, occupational licensing permit (we call it a business license permit). But procedurally, they are largely the same. If you operate an STR, you need to come in and apply with the Town staff, pay the \$30 fee, and if you qualify, you will either get a place on the active STR registry or receive a business license permit, or both.

17.Q: What role does zoning compliance play in the STR registry/business license permitting process?

A: Zoning compliance is required in order to either be placed on the active STR registry or to receive a business license permit. Your STR must have a CUP or be grandfathered and otherwise comply with the zoning ordinance, including the STR ordinance.

18.Q: Similar question, but the reverse. What role does the STR registry/business license permitting play in the question of zoning compliance?

A: Failure to be placed on the active STR registry or to receive a business license permit itself means you cannot legally operate an STR in Irvington. Operation of an STR without one or the other, or both, is prohibited.

19.Q: When does this STR registry/business license permitting requirement kick in? When can I apply?

A: The requirement is an annual one each calendar year, and takes effect for the calendar year effective January 1, 2023. Staff is preparing the proper application(s). Once available, a public announcement will be made and the application will be available on the website or by call to the Town office. Application is required on or before March 1 of each year.

20.Q: How do these STR ordinances affect the transient occupancy tax for the Town?

A: All STRs owe the Town's 4% monthly transient occupancy tax on its gross revenues, and under the current ordinance, must be reported and paid monthly. Forms are available at the Town offices. So, while the new STR regulations should provide the Town a more effective means to track the collection of transient occupancy taxes, the regulations themselves do not change how the transient occupancy taxes are owed, reported or collected. Note, however, that there are state law changes that may affect this, and Council could potentially adopt ordinances that affect this. For example, the STR Committee recommended that collection and reporting of transient occupancy taxes be changed to quarterly. Council may consider such an amendment in the future.

21.Q: How are the new STR ordinance requirements enforced?

A: The new STR ordinance is a zoning ordinance, and so enforcement is generally the responsibility of the zoning administrator. The STR registry and business license permitting processes have a zoning compliance review that makes this process easier. But the zoning administrator has authority under state law to enforce and administer the STR zoning ordinance. Each violation is a civil violation punished by a \$500/day fine. Further, violations of the STR ordinance, failure to register or failure to pay transient occupancy taxes could even result in loss of grandfathering or a CUP. If so, the STR would be prohibited in the Town.

22.Q: I saw that some trespass and noise violations were deemed to be misdemeanors. How is that enforced?

A: These are deemed to be unclassified misdemeanors which may be enforced by the Lancaster County Sheriff. They also remain zoning violations which may also be enforced by the zoning administrator, or which could result in loss of an STR's grandfathered status. The way the ordinance is written, the trespass and noise violations could potentially be committed by either a guest or an owner, but these crimes are about personal acts. As a result, only the person who commits the crime would be charged. The vast majority of STR owners and guests are "good actors" but this was needed in the statute in case a problem arose.

23.Q: Why make these a crime?

A: Given past experiences with STR guests trespassing and causing noise disturbances in the town with no practical way to address it, Council adopted this in the STR ordinance for two primary reasons: (i) it makes these a violation of the STR ordinance and this could be cause the STR to lose grandfathering or potentially have an STR CUP revoked, and (ii) it allows a neighbor to call the Sheriff's Office and seek to get the trespass or noise disturbance stopped.

24.Q. What is the role of my homeowner's association in enforcing this ordinance?

A: None. These ordinances discussed are local government ordinances adopted by the Town. Enforcement of Town ordinances is a Town responsibility. However, an HOA may have covenants or restrictions or simply rules related to STRs (or other uses) which it may wish to enforce

among property owners, and could potentially regulate STRs in the same or additional ways compared to the town STR ordinance. However, an HOA cannot veto or alter the Town's ordinances. And the reverse is true – the Town cannot enforce or alter HOA requirements, although it could take these into consideration in reviewing an application for a STR CUP or an ordinance to revoke an STR CUP or STR grandfathered status.

25.Q: I don't like aspects of this STR ordinance or its grandfathering requirements. Can these be changed?

A: As a zoning ordinance, the STR ordinance may be amended through the zoning ordinance text amendment process. This requires public hearings (or a joint public hearing), a Planning Commission recommendation and a Council action on any such amendment at the second meeting Council considers the zoning ordinance amendment.

NOTE: These FAQs and answers are intended to be helpful to Town officials and staff, STR owners and operators and the public, but it is not the law, is not controlling, and is subject to change at any time. The STR ordinance, transient occupancy tax ordinance, business license permit/STR registry ordinance, and other applicable laws control. Any statement herein contrary to these ordinances or other applicable law is not valid and does not change the law. Neither this document nor anything in it is an order, requirement, decision or determination under the zoning ordinance and it may not be appealed to the Board of Zoning Appeals. If you find something in this document inconsistent with the law, please bring it to the attention of the town staff and perhaps revisions or corrections can be considered. Thanks!