



TOWN COUNCIL
Work Session
Cape Charles Civic Center
June 13, 2024
6:00 PM

At approximately 6:00 p.m. Mayor Adam Charney, having established a quorum, called to order the Work Session of the Cape Charles Town Council. In addition to Mayor Charney, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Butta, Follmer and Grossman, and Councilwoman Holloway. Also, in attendance were Town Manager John Hozey, Planner/Zoning Administrator Katie Nunez, Police Chief Jim Pruitt, and Town Clerk Libby Hume. There were 13 members of the public physically in attendance.

Mayor Charney welcomed all in attendance and explained that this was a work session so there would be no interaction between Council and members of the public.

WORK SESSION ORDER OF BUSINESS:

A. *Short-Term Rental Regulations:*

Town Manager John Hozey began by reviewing the expectations for this evening. This was the first opportunity for Council to provide their input and direction regarding short-term rentals (STRs). No formal action would be taken this evening although individual concepts might be polled to determine if they currently had majority support. Tonight's goal was to provide the town manager with general guidance on individual concepts and to confirm the process for moving forward. Final solutions would be reviewed as a comprehensive strategy and would require legal review.

John Hozey went on to address conflict of interest issues. The Code of Virginia provided guidance related to conflicts of interest and read portions of § 2.2-3112, subsections A and B.1., and § 2.2-3115. (Please see attached.) John Hozey advised that per § 2.2-3115 that any disclosures would have to be done at each meeting at which the transaction was discussed, and such disclosure would be recorded in the minutes of the meeting, then went on to ask whether the Mayor or Council members had anything to disclose.

Councilwoman Holloway stated that this was the first time for discussion of STRs differently from Bed & Breakfasts (B&Bs). She owned a B&B, felt that she could contribute her knowledge to this issue, and did not think any decision would personally impact her business.

John Hozey asked Council if they felt that a B&B was close enough to the business at hand and whether they felt Councilwoman Holloway had a conflict of interest regarding this issue.

The general consensus of Council was that Councilwoman Holloway did not have a conflict.

Councilman Butta stated that i) He owned an STR and was a member of the group that would be affected by any regulations; ii) He believed that he would be able to participate fairly, objectively and in the public interest.

Mayor Charney stated that i) He used to own an STR but had sold it; ii) He continued to manage a few STRs; iii) He felt that he was able to participate fairly, objectively and in the public interest.

John Hozey stressed that going forward, both Mayor Charney and Councilman Butta needed to make this disclosure at every meeting where STRs were discussed, and their disclosures would be included in the meeting minutes.

John Hozey went on to review the annotated version of the STR Committee recommendations, noting that items in red text denoted that there was no current consensus, items in blue text denoted that there was general consensus with minor revisions, items highlighted in yellow denoted notes or changes. There were only a couple of big unresolved issues, and his recommendation was to tackle them individually.

Discussion regarding limits:

John Hozey asked each Council member to provide their thoughts about the possible implementation of artificial limits to the number of STRs as a whole or by district.

Councilman Buchholz stated that he was not a fan of limiting the number of STRs. He preferred limiting the occupancy of an STR to 10 guests or the maximum occupancy limit of a house, if less than 10. He felt that the number of STRs would level off or be reduced based on market conditions, adding that Cape Charles was not the Outer Banks, and we did not have enough restaurants or activities. There was currently a push to come to Cape Charles but that would not last, since we did not have the infill left in Town compared to 20 years ago. He reiterated that his preference was to minimize the number of larger groups in an STR.

Councilman Follmer stated that he felt we needed to look at the big picture. We seemed to be focused on limits without elaborating our other options. He did not feel prepared to discuss the issues. The feedback from the public was that no one was happy with the way we had handled the STR issues so far. Our first priority should be a road map and regaining the confidence of our citizens and that could not be done behind closed doors. We needed a work plan which should not be done by volunteers. STRs were a critical issue of the town's future. Laurie Klingel, a member of the STR committee, repeatedly stated that she was not an expert. The Town should hire a consultant with expertise in these issues. STR regulations could end up costing the Town a lot of legal fees and potentially could not be implemented legally for several years. Rather than spending a lot of time having uninformed discussions about parking, etc., the Town should hire a consultant who could research our issues and provide precedence across the state. We needed to take a step back. A strategy was necessary before we move on. Councilman Follmer went on to state his opposition to limiting the number of STRs. There were things that could be done to manage the situation, with manage being the key word. He added that we were trying to reinvent the wheel, and it was time to bring in the expertise to provide us with options. Expecting the Council to make decisions based on information provided and language in our Town Code was amateurish.

Councilman Grossman stated that he felt we were at a point where some decisions could be made and limiting the numbers of STRs could be one of them. In Cape Charles, we had the STR economy versus the community. When talking about the STR economy, business owners and property owners had an interest. Home values would be impacted, as well as sales tax, transient occupancy tax, meals tax, etc. The impact to the community was objective. He looked at some of the blocks in the historic district. In his block, 500 Randolph Avenue, there were only three properties with full-time residents – Father Michael, Kathy Glaser, and he and his wife. The 400-block had one full-time resident. A duplex was sold, and the long-term tenants were evicted, one moved to Eastville and the other moved to northern Virginia. Where was the community/neighborhood? The groupings of STRs eroded the neighborhood and essence of community. At the last STR committee meeting, limits were proposed along with an overlay district for STRs. The City of Hampton recently passed legislation designating STR zones and limited the number of STRs to 1% of the total housing units. He had proposed limits based on our districts and felt that limits were needed in order to prevent further erosion of our community.

Vice Mayor Bennett stated that those that had spoken made sense. He agreed with both on some of their thoughts and disagreed with some. It was too late to turn back the clock as there were so many STRs out there already. He was not sure what could be done at this point.

Councilwoman Holloway stated that people were forgetting that some of the houses were vacant and many were not in a condition to live in. Councilman Grossman was right about the duplex that was sold. There were many others that were falling apart and we have all forgotten about those. She had seen a lot of changes in the 13 years that she had been living in Cape Charles. The number of full-time residents was not the only way to measure community. Some people bought their properties as second homes and renovated them. They might rent their houses to help pay for the renovations until such time that they could move here. She had spoken to George Proto about this in 2017 when he was the Mayor. We knew something needed to be in place and tried to work on it in 2018 and 2019, and she felt we did the best we could with the resources that we had. The genie was out of the bottle and we needed to figure out how to manage what we had. She felt that some areas could have higher density than others. She's learned from her time on the Town Council that we could not do situational zoning. She did not support instituting limits but she did not support where we were now. She was concerned with the process and how to move forward. She did not feel ready to give recommendations tonight but wanted to know the specific path in going forward. She added that she thought we needed a professional to help us through the process.

Councilman Butta stated that he thought that the perception of a significant number of residents was that the community had changed since they moved here. He expressed his concern that if we only took the viewpoint of the full-time residents, we would be shortchanging those who owned second homes in town. If someone wanted to open an STR now, they would be much less successful due to the saturation of STRs. He did not think people were rushing here to buy properties for STRs. In general, the market would dictate the number of STRs that could be sustained. If the majority of Council felt that limits in the number of STRs needed to be implemented, he would not be supportive of a hard number, but possibly a percentage in certain districts, with different thoughts in different zoning districts. Some streets in town could currently exceed the percentage, so no new STR permits would be approved.

Mayor Charney stated that he was not in favor of implementing limits to STRs. There had been a lot of discussion in other cities, with Hampton being the most recent. We were not Hampton. He had spoken to people from Folly Beach which was very similar to Cape Charles. Folly Beach implemented limits and the issue was a big problem still today with different segments of the community battling each other and signs were everywhere. Wrightsville Beach had been considering limits but after hearing about the issues at Folly Beach, they voted it down. Both of these localities were similar to Cape Charles in size, and both had beaches. It would be a big negative for the town to implement limits to STRs. We needed to start managing them and get rules in place. We needed a registry, and we definitely needed to determine how many STRs were currently operating in the Town. He had heard numbers from 100 to 500. Across the board, most STRs were down about 15% to 20% and the industry was already self-regulating. Many people buy their home here to be their forever home, but rent it out as an STR to help offset their payments until they were able to move here. We also needed to find out the number of second homes versus the houses strictly used as STRs. Parking issues needed to be resolved, and other items such as transient occupancy tax needed to be reviewed as well. He reiterated that he was 100% against limits.

John Hozey reiterated that the purpose of this evening's meeting was to obtain Council guidance and it was evident that there was no majority support regarding placement of limits on STRs. He expressed his agreement with the concept that the genie was out of the bottle and the market would correct itself, then asked that the discussion move on to 1) occupancy and 2) parking.

Occupancy:

John Hozey explained the current criteria for determining occupancy. The code official evaluated a new building and set the occupancy at two people per bedroom. When evaluating STRs a different standard was used – not the number of bedrooms, but the amount of furniture in those bedrooms. i.e., if there were two sets of bunkbeds in a bedroom, occupancy for that room would be four. With the currently ongoing zoning ordinance review, we were moving toward a

standardized method for determining occupancy for both building and zoning which would be based on square footage. 70 sq ft would be required for the first person, and an additional 50 sq ft per person for each bedroom.

There was much discussion as follows: i) Councilman Buchholz asked what the state code was regarding non-relatives, adding that in Fairfax County, over four non-related people in a dwelling was considered a brothel; ii) Mayor Charney noted that if using square footage, a big master bedroom could accommodate six or more people, adding his preference to use the number of bedrooms for consideration of occupancy; iii) Councilman Buchholz stated that the maximum occupancy, regardless of its size or number of bedrooms, should be no more than ten. Reducing the number of people in the house would drastically help with the parking issues; iv) Councilman Butta added that if an individual was old enough to sleep in a bed, they should be counted towards the occupancy, but if it was a baby or small child in a crib, they should not be counted. He also felt that the maximum should be ten; v) Councilman Follmer countered that if you had a house with four young couples each with a baby, those four babies should be counted as a person towards occupancy; vi) Mayor Charney commented that he preferred keeping the occupancy at two per bedroom, which would eliminate a house with lots of bunkbeds, etc.; vii) Councilwoman Holloway asked the definition of a bedroom; viii) Katie Nunez read the current definition of a bedroom from the zoning ordinance (Please see attached.); ix) Vice Mayor Bennett stated his opposition to the current method being used to calculate occupancy and thought our definition of a bedroom was fine. He added his preference of using two people per bedroom, up to five bedrooms, with a maximum occupancy of ten.

After some discussion regarding the age where a child would be counted towards occupancy, a consensus was reached that children five years old and under would be excluded from the occupancy count. It was also agreed that the method of calculating occupancy would be two per bedroom, with a maximum of ten.

Parking:

John Hozey asked why we would consider different parking requirements for STRs than for B&Bs? Both were in the business to provide accommodations. We required B&Bs to provide parking, but we did not require it from STRs. Homes in the historic district were built for families and each had two parking spots. If someone opened a B&B, they were required to identify areas for additional parking. Why not require STRs to identify where they would have guests with more than two vehicles to park? Why should they be handled differently?

There was much discussion regarding houses with alleys or driveways; issuing parking tags or permits and enforcement; Williamsburg issues different colored stickers for cars based on residency, being students, or visitors; management of parking on streets without many houses; some residents had more than two vehicles and as taxpayers should be able to park by their house; etc.; an alternate location for parking needed to be determined; researching what other localities in Virginia, with their streets owned by VDOT, were doing;

John Hozey stated that he received enough input this evening for the STR committee to discuss. They would review some type of town-wide permit system, research the process through VDOT, etc. and would bring back something for Council to review.

Tracking and Accountability:

John Hozey stated that he felt that the general consensus was to revamp the business license application to obtain more data to create a database to better track STRs, to collect contact information to be placed on a public website, and permits would be issued at the same time as the business license. The STR owner would lose their permit for qualifying violations.

There was much discussion about the public website. All businesses with licenses would be included in the database which would be grouped by business type. Councilwoman Holloway

stated that a database already existed on the Cape Charles Main Street (CCMS) website. John Hozey commented that he wanted it to be on capecharles.org so CCMS would not have to do it.

Miscellaneous Items (#13 of STR Recommendations):

John Hozey stated that item #13 of the STR recommendations was a group of miscellaneous recommendations which did not bring up any significant issues at the last work session.

Councilman Butta was opposed to moving from annual inspections to self-certifications (#9). Councilman Grossman agreed.

Councilwoman Holloway asked for i) a requirement that the maximum occupancy number to be displayed in the house; ii) a requirement that the business license also be displayed in the house.

Council asked John Hozey to put together a workable timeline to publish so the public would be able to better understand the process. Councilman Follmer noted that some people book a year in advance so this needed to be taken into consideration when determining implementation dates, and suggested different implementation dates for different items. John Hozey agreed with the different implementation dates.

Councilman Grossman brought up his role on the STR committee, adding that he would continue to participate on the committee as a citizen due to his knowledge from his research, or he could come off the committee, but he would not be in the role of a Town Council representative. There was discussion as follows: i) John Hozey expressed his preference of Councilman Grossman remaining on the committee adding that his knowledge was invaluable; ii) Councilwoman Holloway stated that a Town Council representative should be on the committee just like the other members representing their groups; iii) Councilman Follmer stated that Councilman Grossman was the best person for this role; iv) John Hozey apologized for the confusion caused by the terminology used. Council representatives on other committees or boards did not report back to the Council regarding the committee as that was staff's responsibility. Council would have the opportunity to review the recommendations; v) Councilman Follmer stated that the recommendations of the committee were initially put out without Council review and Council members were caught off guard. It put Council on the spot and we lost public confidence, and that was unacceptable. He added that issues needed to be brought to Council for review before going out to the public; vi) Councilwoman Holloway agreed that the Council needed periodic updates and might be able to provide some relevant input along the way; vii) Councilman Butta agreed adding that the beachfront master plan should be handled the same way by providing information to the Town Council prior to finalizing the draft plan.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to adjourn the Town Council Work Session. The motion was approved by unanimous vote.

The meeting was adjourned at 8:04 p.m.

Mayor Charney

Town Clerk

Attachments from June 13, 2024 Town Council Work Session

§ 2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction shall disqualify himself from participating in the transaction if (i) the transaction has application **solely** to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision B 1, 2, or 3.

B. An officer or employee of any state or local government or advisory agency who has a personal interest in a transaction may participate in the transaction:

1. If he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of subsection F of § [2.2-3114](#) or subsection H of § [2.2-3115](#);

2. When a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of subsection G of § [2.2-3114](#) or subsection I of § [2.2-3115](#); or

3. If it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

§ 2.2-3115. Disclosure by local government officers and employees.

H. An officer or employee of local government who is required to declare his interest pursuant to subdivision B 1 of § [2.2-3112](#) shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

STR Committee Recommendations



TM STR Regulation Committee

Recommendations

(Post 11/02/23 Work Session)

Red text denotes no current consensus

Blue text denotes general consensus with minor revisions

Highlights denote notes or changes

- 1) Effective date for all recommendations is **January 1, 2025**. This allows time to fully vet and develop these concepts, without them impacting operators during mid-season. It also provides additional time for those engaged in the development of an STR to potentially finish what's already been started

- 2) Set an initial cap on STRs at the number being operated per zoning district (or by village in Bay Creek) on the effective date. Establish the final cap for STRs (based on those actually operating) twelve months after the initial cap is set (to weed out those who grabbed a permit before the deadline, but who did not operate an STR). Note caps are by number, not percentage. This preserves all existing uses, while decreasing the overall density as additional construction occurs
- 3) Future changes to STR caps, or to establish caps in districts initially without STRs, would require a zoning text amendment for the affected district; enabling the Planning Commission and Town Council to evaluate the merits of such changes against the greater needs of the Town at that time
- 4) The established cap in the R-1 (historic) district may be increased for specific instances where significant investment is committed to rehabilitate a dilapidated (as determined by the Town) dwelling

No consensus on the issue of limits or caps on STRs.

Additional research requested on economic impacts other communities have encountered as a result of implementing caps or limits.

Are there any other incentives or disincentives we could put in place to control STR growth without having to institute hard limits or caps?

- 5) STR's will require an annual permit that will be applied for with their business license. Permits once issued (valid for one year), will automatically renew each subsequent year upon approval of the associated annual business license. Any break in business license coverage for a period of one year, or if a STR remains vacant or not used as a valid short-term rental for a period of one year 60 days between April 1st and October 31st each year, will constitute termination of the permit; requiring reapplication the following year, and going to the bottom of a waiting list (if any)

Consensus to move forward with minor revisions.

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- 6) STR permits in good standing are transferable with the sale of the property

No consensus on the issue of transferability as it relates to limits or caps.

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- 7) There will be no STR registry. STRs will be tracked via the business license database. Business license applications will be expanded to collect additional information. This database will include points of contact for all businesses, to include 24/7 contacts for STRs. A listing of all businesses (grouped by type), with their contact information, will be posted on the Town website
 - 8) Occupancy will be determined by the square footage of bedrooms, as already defined in ZO Article II; exception: children under the age of 10 2 are excluded from occupancy count

- 9) Initial inspections will be required for all STRs to confirm occupancy limits and other safety/building code requirements. Annual recertifications of these requirements will be made by the property owner at time of business license **renewal (with town reinspection every 2 or 3 years)**. Reinspection will occur upon a change in property ownership or management entity. The Town reserves the right to inspect any property to investigate potential violations, with adequate notice
- 10) An STR permit will be suspended for the following calendar year (to minimize impacts on reservations in the current calendar year), if any of the violations described below occur. An applicant with a suspended permit will be required to reapply once the suspension period is over. Depending on the availability of permits under the applicable district cap, this may cause the application to go to the bottom of a waiting list. **[question on how we could enforce this, how do we stop someone from operating without a permit]**

Qualifying violations include:

- a. Failure to pay business or real/personal property taxes
- b. Failure to pay transient occupancy tax
- c. Cancellation of insurance and/or failure to notify the Town of insurance cancellation
- d. Operating without a business license
- e. Owner or management entity knowingly allow exceedance of occupancy limits
- f. Failure to adhere to safety/building code requirements following reasonable notice
- g. Falsifying annual certifications or resident parking applications
- h. Applicable zoning violations
- i. Failure to provide responsive contacts (as determined through Town investigations)

Note: individual nuisance, noise, or parking citations will not be counted against the STR owner/operator, but issued directly to the offending party

- 11) Violations will be determined by the Treasurer, Zoning Administrator, Code Official, or Police Chief as appropriate. Appeals may be made to the Town Manager, who will conduct, or cause to be conducted, an investigation. The Town Manager's ruling, based on the investigation, will be final

Consensus to move forward with minor revisions.

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- 12) There are no additional parking requirements for STRs. Instead, we will add to ZO Article IV, a new section for On-Street Parking within the R-1 District designating parking areas for permanent residents of the Town. The following requirements will apply:

- a. Applicable only to permanent residents of R-1 (homeowner or long-term renters) who physically reside in the R-1 District for a minimum of 185 days per year
- b. Allow up to two parking spaces along the primary residence property frontage (for developed lots only) not to exceed 40' in length. If there is a driveway, only one on-street parking spot will be available (maximum 20' in length)
- c. Curb will be identified as permanent resident parking (painted green or other color)
- d. Permanent residents of R-1 must apply for the specific number of spaces they require (up to two) and receive stickers for their vehicle(s). Copy of vehicle registration will be required for each spot requested
- e. This does not constitute reserved parking for any resident; a permanent resident displaying a valid sticker may park in ANY area designated for permanent residents
- f. Signage and implementation requirements will need to be further explored with VDOT
- g. An application for a short-term rental permit will prompt a review of off-street parking designations for that property

- h. All other areas not designated for permanent resident parking will be open parking and available on a first come, first served basis, to all part-time residents, visitors, or STR guests

No consensus on the issue of parking.

Requested additional research on the possibility of adding other public parking lots

13) Other miscellaneous STR provisions:

- a. There are no restrictions on the types of homes that can be used for an STR (i.e., single family, duplex, condos, etc.)
- b. Except for existing legal non-conforming uses, STRs are prohibited in accessory dwelling units or accessory structures
- c. There is no requirement for owner occupancy or residency on site
- d. No simultaneous STR rentals under separate contracts within a single residence
- e. No Subleasing [check into BC practice of "sale getaways"]
- f. If within an HOA, proof that HOA has been notified
- g. No commercial events or gatherings
- h. Signage will comply with newly updated zoning requirements
- i. No person or entity may have an ownership interest in more than five STRs
- j. Refuse requirements: one and two bedroom units require one trash receptacle; three or more bedroom units require two receptacles [can this be turned off during the off season?]

Consensus to move forward with minor revisions.

Section 2.9 of Cape Charles Zoning Ordinance

BEDROOM is a room or space within a structure intended for sleeping.

Requirements include:

- A minimum size of 70 sq. ft; if more than one person occupies the room, there must be 50 sq. ft. per occupant.
- Access to a bathroom without crossing another bedroom.
- Every bedroom must have access to natural ventilation and have a permanent heat source.
- Two means of egress: one that leads to the rest of the home without going through another bedroom and one that leads directly to the outside. If the outside egress is a window, it must be at least 5.7 sq. ft and can be no more than 44 inches from the room floor, unless there is a permanent step installed. It shall be illegal to have locking bars or grates covering an egress window.
- Ceiling height must be no less than 7 feet.
