

Short-Term Rentals



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What is a short-term rental?

- ▶ No controlling definition—municipalities may define as they choose.
- ▶ **Laconia**: A dwelling unit where transient lodging is provided for compensation for stays of between one and 14 consecutive nights, and where the dwelling unit would normally be considered a residential living unit not associated with regulated commercial activities such as a hotel, motel, rooming/boarding/lodging house, or bed-and-breakfast.
- ▶ **Jackson**: Same, but 30 nights, and omits reference to rooming/boarding/lodging house.

What is a short-term rental?



- ▶ **Durham**: An accessory use to an owner-occupied single-family residence containing, in addition to living accommodations for the owner and the owner’s family, not more than three sleeping rooms, for the purpose of providing to the general public, for compensation, lodging, with or without breakfast, for less than 30 consecutive days. A short-term rental is not considered a home occupation.
- ▶ Many other local variations. **Hanover** distinction between “hosted” and “un-hosted” STRs discussed later.

Why care about regulating short-term rentals?



- ▶ Neighbor concerns — noise, traffic, parking, trash, disorderly conduct.
- ▶ Safety – crowding, lack of code compliance.
- ▶ Effect on housing market – use of housing units for short-term rentals reduces availability for residents and drives up housing prices.
- ▶ Influx of outsiders – remember the spring 2020 Covid-19 invasion!

May municipalities restrict/ prohibit STRs?



- ▶ Absolutely. RSA 674:16 – zoning enabling statute – authorizes municipalities to “regulate and restrict . . . the location and use of buildings, structures and land used for business, industrial, residential, or other purposes.”
- ▶ [Working Stiff Partners v. Portsmouth \(N.H. Sept. 27, 2019\)](#) – short-term rental was a “transient occupancy,” not a “dwelling unit,” and was prohibited under zoning ordinance.

Legislative efforts to prohibit regulation of STRs



- ▶ Several efforts, most recently [SB 458](#) (N.H. General Court, 2020)
 - ▶ “A city [or] town . . . shall not prohibit the use of a building or structure as a vacation rental or short-term rental and shall not regulate the use of such structure or building as a vacation or short-term rental based on the structure or building’s classification, use or occupancy.”
- ▶ Bill died on the table after strong opposition from local officials.

Does your ordinance already prohibit STRs?



- ▶ Most towns have a “permissive” zoning ordinance – contains language stating that any use not expressly permitted is prohibited.
- ▶ If your “permissive” ordinance does not expressly permit STRs, they are prohibited.
 - ▶ But consider whether they’re permitted under some other name: B&B, rooming house, home rental, etc.
- ▶ A “prohibitory” ordinance is the opposite – any use not expressly prohibited is permitted.
- ▶ Check your ordinance!

Should you restrict or prohibit STRs?



- ▶ Local decision – depends on circumstances and community attitudes.
- ▶ Many municipalities have long histories of allowing STRs – for example, vacation cottage on a lake.
- ▶ STRs may be appropriate in some districts, not others.
- ▶ Historical non-enforcement does not preclude enforcement now; but current enforcement must be consistent.

One town's approach: Hanover



- ▶ Hanover has a “permissive” ordinance.
- ▶ Pre-amendment, ordinance allowed:

Short-term rental—30 days or less

- ▶ Bed and breakfast- in a single-family, owner-occupied home in Residential (SR, RR) districts
- ▶ Hotel in the Business and Downtown districts
- ▶ Tourist home – antiquated term, very restrictive use, in Business (B) district only

Long-term rental- more than 30 days

- ▶ Single-family dwelling unit or no more than 3 unrelated individuals in a Residential district
- ▶ Rooming house(boarding house, lodging house) - owner-occupied, 4-8 roomers, in Residential (RR) district

Short-term rentals do occur in Hanover . . .



- ▶ . . . and not just in B & Bs and Hotels

Reality check

- ▶ STRs were not allowed, nonetheless they were occurring regularly in Hanover.
- ▶ Airbnb, VRBO, etc, expanded the STR market.
- ▶ Rentals during graduation and alumni reunions are a robust portion of the STR market and have occurred for many years.
- ▶ Some homeowners may depend on income from STRs.

Planning & Zoning Department had to intercede



- ▶ A short-term rental complaint triggered staff review of the on-line STR rental platforms.
- ▶ Staff identified approximately 30 active STRs.
- ▶ Staff sent a letter to the identified property owners, informing them that STRs are prohibited.
- ▶ The Zoning Board of Adjustment denied variance requests for STRs and recommended that the Planning Board address STRs by a zoning amendment.

Planning board took up the issue



- ▶ A community member asked the Planning Board to consider permitting STRs.
- ▶ The Planning Board:
 - ▶ Studied the STR experience and regulatory systems of other communities.
 - ▶ Reviewed the NH Supreme Court case involving Portsmouth.
 - ▶ Reviewed STR data documenting trends in Hanover.
 - ▶ Considered staff capacity for managing STR compliance.

Board considered the negative impacts of STRs . . .



- ▶ Impact on neighborhood character due to
 - ▶ Noise
 - ▶ Parking
 - ▶ Increase in number of occupants next door
 - ▶ Poor property upkeep; trash
- ▶ Absentee landlords and transient renters lack connection to neighborhood and town.
- ▶ Loss of long-term rental adding to the region's housing shortage.

... And the positive impacts.

- ▶ Expanded rental options for visitors and new residents, especially families
- ▶ Provides additional lodging during key Dartmouth events and sports camps
- ▶ Generates income for property owners: a good investment for absentee owners; increases cash flow for Hanover residents; some residents need the revenue to stay in their homes.

What the board learned

- ▶ While many NH towns do not permit STRs, most towns do not actively enforce the prohibition.
- ▶ Durham, Portsmouth and Laconia actively enforce their prohibitions on STRs.
- ▶ The NH Supreme Court's recently issued decision (Working Stiff LLC v City of Portsmouth) offers some clarity – *“if the building's principal use is for “transient occupancies” similar to hotels, motels, rooming houses, or boarding houses, it is not being principally used as a “[d]welling unit.”*
- ▶ This decision relates directly to Hanover because Portsmouth's zoning ordinance is nearly identical to Hanover's.



STR market in Hanover has been active.



AirDNA analytics revealed (Nov. 2019 data)

- ▶ Average daily rates
 - ▶ Entire Home \$789 - 24 booked properties
 - ▶ Private Room \$ 68 - 10 booked properties
- ▶ Monthly revenue totals
 - ▶ Entire Home \$271,888
 - ▶ Private Room \$ 9,567

Decision to regulate STRs



Goals:

- ▶ Provide certainty
- ▶ Create level playing field for all STRs
- ▶ Ensure safe accommodations
 - ▶ Smoke/CO detectors
 - ▶ Ingress/egress
- ▶ Establish clear enforcement protocol

Hanover ordinance, adopted by 2020 town meeting



- ▶ “Hosted short-term rental” = “an additional use of a one-family, owner-occupied dwelling where the owner is continually present on the premises during the period of the rental.”
 - ▶ Permitted in 3 residential districts, Goose Pond district, and Forest & Recreation district.
- ▶ “Un-hosted short-term rental” = “an additional use of a one-family, owner-occupied dwelling where the owner has vacated the premises during the period of the rental.”
 - ▶ Permitted by special exception in 3 residential districts.

Hanover ordinance, cont'd



- ▶ Un-hosted short-term rental, seasonal = “additional use of a one-family seasonal dwelling where the owner has vacated the premises during the period of the rental.”
 - ▶ Permitted in Goose Pond and Forest & Recreation districts.
 - ▶ “Seasonal dwelling” = “a one-family dwelling that is unoccupied at least 182 days in any calendar year, including, but not limited to, a vacation home, summer cottage, or hunting or fishing camp.”

Hanover ordinance, cont'd



▶ Restrictions:

- ▶ Not more than 3 unrelated persons in un-hosted STR.
- ▶ ADU may not be used for un-hosted STR.
- ▶ Hosted or un-hosted (other than seasonal) STR use limited to 90 days per year, and un-hosted may not exceed 30 of the 90 days.
- ▶ Seasonal STR permitted only in seasonal dwellings and no more than 182 days per year.
- ▶ STRs limited to principal residence of owner—no investor-owned properties.
- ▶ Registration of all STRs required.
- ▶ Parking standards apply.

Hanover ordinance, cont'd



- ▶ STR amendments will become effective “only upon the Selectboard adoption of a rental housing inspection ordinance that establishes occupancy standards, and a registration and inspection process for all rental properties.”
- ▶ Rental inspection ordinance not adopted yet—will include:
 - ▶ Registration requirement and fee
 - ▶ Local contact representative requirement
 - ▶ Inspection requirements and schedule
 - ▶ Enforcement provisions

Other municipalities— Laconia



- ▶ Short-term rentals are:
 - ▶ Permitted in Commercial Resort and Shorefront Residential zones.
 - ▶ Prohibited in all industrial zones.
 - ▶ Prohibited in all other zones except when property is owner-occupied.

- ▶ But also:
 - ▶ Permitted in residential zones in a “seasonal dwelling.”
 - ▶ Permitted in residential and Urban Commercial zones by special exception.

Laconia, continued



- ▶ For all STRs, owner must obtain permit from Planning Department.
- ▶ Permit requirements:
 - ▶ Pay review and abutter notification fees.
 - ▶ Contact information for service of process.
 - ▶ Pass building and fire code inspection.
- ▶ Owner responsible for trash, parking, noise, etc.
- ▶ Approval must be renewed every two years and is owner-specific.

Other municipalities— Jackson



- ▶ STRs permitted in all districts by conditional use permit.
- ▶ File application for CUP with selectmen. Planning board reviews and comments, selectmen approve or deny. No hearing by either board.
- ▶ Criteria for approval:
 - ▶ Owner provides contact info for service of process.
 - ▶ Owner affidavit:
 - ▶ Functioning smoke/CO detectors, emergency egress, functioning fire extinguisher.
 - ▶ Maximum occupancy is 2 per bedroom plus 2 more.
 - ▶ All vehicles parked on property

Jackson, continued



- ▶ Owner is responsible for trash removal, proper parking, compliance with occupancy limits, and other conditions imposed as part of the approval.
- ▶ In Rural Residential district, STRs limited to 30 rentals per dwelling unit annually unless property is occupied by at least one full-time resident.
 - ▶ Those existing at time of ordinance's adoption are exempt.
- ▶ CUP may be revoked for failure to comply with ordinance or conditions imposed as part of permit.

Other municipalities— Durham



- ▶ Short-term rentals are:
 - ▶ Permitted in “commercial cores” zones
 - ▶ Permitted by special exception in residential zones
 - ▶ Permitted by special exception in research-industry zones
- ▶ Conditions:
 - ▶ Owner must obtain permit from zoning administrator. Proposal is reviewed for code compliance. Site plan review not required.
 - ▶ Property must be the owner’s primary residence.
 - ▶ Property owner or family member must be on premises overnight for every night the property is rented.

Durham, continued



- ▶ Conditions, continued
 - ▶ Areas open to use by renters are subject to periodic safety inspections.
 - ▶ No RV or temporary shely may be used by renters.
 - ▶ Signage restrictions.
- ▶ Where special exception is required:
 - ▶ Properties within 300 feet are considered abutters for notification purposes
 - ▶ ZBA may set additional conditions based on potential impacts on neighborhood

Remember: land use approvals run with the land!



- ▶ A special exception or conditional use permit attaches to the property, not the owner.
- ▶ You can't impose a time limit on the special exception or CUP, or make it expire when the owner sells.
- ▶ But: you can impose conditions—owner must register annually, allow inspections, etc.

Governing body may require permit separate from land use approval.



- ▶ Selectmen (RSA 41:11-c) or city council (RSA 47:17, XIX) may establish regulations requiring businesses to obtain permits.
- ▶ Thus: ordinance may allow STR by right or by special exception or CUP, but still require owner to obtain permit.
- ▶ Land use approval runs with the land, but permit to operate does not.

Other considerations



- ▶ **Site plan review.** Even if STRs are permitted, site plan review may be required. Applies to “the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units.”
- ▶ **Regulation of brokers.** Do not try to regulate Airbnb, VRBO, or any other broker. Regulate only the property and the use of it.
- ▶ **Talk to your municipality’s attorney.** Please, please do not draft a short-term rental ordinance without extensive consultation and review by your attorney. This is complicated stuff!

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