



MEMORANDUM

Date: September 19, 2019
To: Henry Sladek, Mayor, Town of Skykomish
From: Lauren Moore, BHC Consultants
CC: Talia Tittelfitz, Roger Wagoner, and Katie Cote, BHC Consultants
Subject: Short-Term Rentals

1. Introduction

This memo addresses BHC's interpretation of short-term rentals (STRs) under the Town's current code and recommends potential approaches the Town may take in order to best regulate this use, acknowledging that STRs can have an impact on long-term rentals and housing affordability in general, in addition to other impacts that require mitigation (e.g., noise, traffic, parking, safety, trash).

As a general overview, we have answers to your questions from last week:

- Short-term rentals are legal under the current code, albeit with some internal contradictions and inconsistencies to resolve.
- The Town does have the authority to cap the current total of STRs by imposing a moratorium of up to six months. This isn't the only way to change the Town's direction with regard to STRs, but it is an available option.

Before delving into the code analysis, we want to give a high-level overview of the contents of this memo, as guidance for refining the Town's STR strategy. The main items to consider are:

- Whether to allow absentee-owners
- Adjusting maximum occupancy limits (as regulated by the provisions of the IRC and IBC)
- Clarifying licensing and tax requirements
- Whether to set mandatory initiation, termination, and review periods
- Elaborating on the conditional use approval criteria
- Whether to impose a moratorium on new STRs



2. Defining Short-Term Rentals

First, this is how short-term rentals are defined in the current code:

SMC 18.10.562 – Definition - Short-term rental.

“Short-term rental” means renting a single-family residence for “occupancy for dwelling, lodging or sleeping purposes of 30 consecutive days or less.” This does not include using a home for commercial purposes such as weddings, corporate retreats, or other special events. A short-term rental must be maintained and used at all times for residential occupancy.

This is consistent with HB 1798, a state law regarding STRs adopted in July 2019. HB 1798 defines a short-term rental as “a lodging use, that is not a hotel or motel or bed and breakfast, in which a dwelling unit, or portion thereof, is offered or provided to a guest by a short-term rental operator for fewer than thirty consecutive nights.”

To be clear, short-term rentals are a distinct use from home occupations, which are an accessory use that is considered incidental (as you pointed out, Henry):

SMC 18.10.295 – Definition – Home occupation.

“Home occupation” means an occupation or profession which is customarily incidental to and carried on in a dwelling unit or accessory structure by a member of the family and no more than one employee outside the family unit; provided, that:

- (1) There shall be no change in the outside appearance of the building or premises;
- (2) Traffic generated by such home occupations shall not create a traffic nuisance; and
- (3) No equipment or processes shall be used which create noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot.

The point is to affirm that STRs, unlike home occupations, do require special considerations and licensing.

As the code requires STRs to be “maintained and used at all times for residential occupancy,” please consider these interrelated questions to help refine that intent statement:

- **Should the STR be the principal residence of the property owner?** If so, the Town would effectively prohibit owners from using accessory dwelling units, second homes, or investment properties as short-term rentals.



- **Should the STR owner be required to reside on the premises during the entirety of guests' stay?** If so, the Town would effectively prohibit the short-term rental of entire homes. Property owners would only be able to rent accessory dwelling units on their property or room(s) within their home.
- **Should booking capacity be limited to a certain number of days per year?** Some jurisdictions impose these restrictions, which tend to be more applicable to large cities balancing tourism with the needs of long-term residents. However, Skykomish may find it useful to restrict the booking capacity of STRs to, say, 120 or 150 days per year.

3. Use Permissions and Occupancy

The following table compares the Town's use permissions for STRs and bed and breakfasts (again, a distinct use, but included for the sake of comparison).

SMC 18.24.010 – Table of permitted uses [abridged].

	Low Density Residential R-10,000	Moderate Density Residential R-5,000	Commercial C	Historic Commercial H	Industrial I	Public P
STR	P	P	C	C	X	X
B&B	C	C	C	C	X	X

P = Permitted, C = Conditional, X = Prohibited.

While short-term rentals are permitted outright in residential zones, further chapters of the code impose these restrictions on the number of guests who can be accommodated in STRs:

SMC 18.30.020 – R-10,000 Low Density Residential District - Accessory uses.

Accessory uses permitted in the R-10,000 district are uses and structures customarily appurtenant to the principal use, such as [...] Renting of rooms for lodging purposes to accommodate **not more than two persons** in addition to the immediate family. *[Emphasis added]*

SMC 18.32.020 – R-5,000 Moderate Density Residential District - Accessory uses.

Accessory uses permitted in the R-5,000 district are uses and structures customarily appurtenant to the principal use, such as [...] Renting of rooms for lodging purposes to accommodate **not more than two persons** in addition to the immediate family. *[Emphasis added]*



Two persons per bedroom is a fairly common occupancy standard, but a standard of two persons **maximum**, as the code currently implies, seems unnecessarily restrictive. There are a few options to consider when adjusting maximum occupancy. The simplest would be to defer to the International Building Code/International Residential Code and require STR operators to comply with those occupancy standards as a condition of approval.

Other adjustments the Town could adopt individually or concurrently:

- Provide flexibility for children (e.g., 2 persons per bedroom excluding children under the age of six).
- Adapt occupancy by time of day (e.g., overnight: 2 persons per bedroom; daytime: 2 persons per bedroom + 4).
- Adapt occupancy by zone (e.g., residential zones: 2 persons per bedroom; commercial zones: 3 persons per bedroom).

4. Licensing, Taxes, and Fees

Here, the current code is ambiguous:

SMC 5.05.040 – Business license regulations and fees - Exemptions.

The provisions of this chapter shall not apply to [...] persons whose sole activity is the rental of real property.

As Councilmember Farnham pointed out, this could be used to construe an exemption from business licensing for operators of STRs. However, under the new state law, operators:

... **must remit all applicable local, state, and federal taxes** unless the platform does this on the operator's behalf. This includes occupancy, sales, lodging, and other taxes, fees, and assessments to which the owner or operator of a hotel or bed and breakfast is subject in the jurisdiction in which the short-term rental is located. If the short-term rental platform collects and remits an occupancy, sales, lodging, and other tax, fee, or assessment to which a short-term rental operator is subject on behalf of such operator, the platform must collect and remit such tax to the appropriate authorities. **(Sec. 2, HB 1798) [Emphasis added]**



At a minimum, Title 5 should be revised to clarify that STR operators must obtain a state business license and register with the Washington Department of Revenue in order to retain consistency with the new state regulations passed under HB 1798. The code should also explain which taxes and fees apply to short-term rentals as part of the approval criteria specific to that use. In addition to the sales and use tax (already described in Chapter 3.05 of the Town code), these include the state transient occupancy tax (Chapter 82.08 RCW) and business and occupation tax (Chapter 82.04 RCW).

One other tax element that is **not** applicable to Skykomish, but discussed only for reference purposes, is that King County allows public facilities districts (PFDs) within the county to levy an additional lodging tax – however, this does not apply to towns with a population under 300 (RCW 36.100.040(4)). Regardless, Skykomish is not subject to any County PFDs at this time.

5. Approval Criteria

These are the general approval criteria for conditional uses under the current code:

SMC 18.70.020 – Criteria for granting conditional use.

[...]

- (1) The proposed use will not be materially detrimental to the public welfare or injuring to the property or improvements in the vicinity of the proposed use or in the zoning district in which the subject property is situated.
- (2) The proposed use shall meet or exceed the performance standards that are required in the zoning district it will occupy.
- (3) The proposed development shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design.
- (4) The proposed use shall be in keeping with the goals and policies of the comprehensive land use plan.
- (5) All measures have been taken to minimize the possible adverse impacts which the proposed use may have on the area in which it is located.

Consider adding a new section with STR-specific criteria, including provisions for operators to:

- A. Obtain a business license and post a copy of the license within the rental.
- B. Provide contact information to all short-term rental guests during a guest's stay.



- C. Provide that their STR is in compliance with RCW 19.28.530 and any rules adopted by the state building code council regarding the installation of smoke detectors and carbon monoxide alarms.
- D. Post an information guide in the rental with the following information:
 - 1. The short-term rental street address;
 - 2. The emergency contact information for summoning police, fire, or emergency medical services;
 - 3. The floor plan indicating fire exits and escape routes;
 - 4. The maximum occupancy limits;
 - 5. The contact information for the operator or designated contact;
 - 6. How to safely enter and exit the property, especially under adverse weather conditions;
 - 7. The location of off-street parking spaces;
 - 8. How to dispose of trash/recycling (e.g., all trash must be in proper containers, and trash containers cannot be visible except on designated collection days);
 - 9. Hours of operation, including quiet hours (if designated) and a reminder to be courteous to neighbors with regard to noise, music, etc.;
 - 10. Additional renter responsibilities, including prohibitions on littering and trespassing on private property; and
 - 11. The consequences for failing to comply with these standards (e.g., fine, citation, and/or expulsion from the property).
- E. Obtain and document annual fire and life safety inspections.

Note that, in the list above, items A through D(1) through D(5) derive directly from the tax and consumer safety provisions of HB 1798. Items D(6) through D(11) and E are **not** required by state law, but we recommend their inclusion for safety and to mitigate potential STR impacts.

6. Monitoring and enforcement

Setting mandatory initiation, termination, and review periods for STRs is one way to monitor the overall STR landscape in Town and ensure that active permits continue to maintain compliance with their approval criteria. Depending on the intensity of STR activity in Skykomish, you may



find it helpful to impose a more stringent schedule, like the City of Sitka’s reproduced in the table on the following page.

(Sitka Municipal Code, Table 22.24.010-2)	STR Conditional Use Permit
Period in which the permit must be activated following PC approval or permit becomes void	1 year
If permit is not used during period, permit becomes void after activation	1 year
Mandatory review period	Set by PC at time of approval
Number of years after approval that permit sunsets	Set by PC at time of approval
<ul style="list-style-type: none"> • Applicant must submit materials 1 month prior to the end of any review period. • It is recognized in land sue case law that conditional use permits are grants to a property and run with the parcel and not the owner. 	

Another item to consider with regard to monitoring and enforcement is the availability and responsiveness of STR operators. HB 1798 requires that “the contact must be available to respond to inquiries at the short-term rental during the length of stay,” but the Town has flexibility to interpret that requirement. Some jurisdictions mandate a response time of 45 or 60 minutes to complaints regarding the condition, operation, or conduct of occupants of the short-term rental. Setting a reasonable response time is a helpful enforcement tool for STRs.

The Town may consider revising Chapter 18.95 SMC (Violation – Penalty) to refer to the enforcement and penalty provisions specific to STRs. For reference, under HB 1798, the first violation of the law’s consumer safety provisions will result in the Town attorney issuing a warning letter to the owner or operator. The second violation will be considered a Class 2 civil infraction under Chapter 7.80 RCW.

Finally, the Town has the option to impose a temporary moratorium on short-term rentals. This would be considered a valid zoning moratorium under RCW 36.70A.390. Doing so would allow time (up to 6 months, with extension potential) for the Town’s short-term rental provisions to undergo the review and legislative process without allowing currently unpermitted STR’s to become vested under current regulations.